

Legal Definitions – Mediating between their Legal and Linguistic Descriptions

Johanna Mattissen

Legal definitions are well known from Common law and EU law and are (or used to be) somewhat less popular in German national law (the German term is „Begriffsbestimmungen“) and Swiss law (cf. Bratschi 2009:197). They determine the meaning of a legal term for a legal act or (ideally) beyond, in order to avoid misinterpretations and facilitate subsumption decisions. As the *Joint Practical Guide* puts it:

12.1. Binding acts should lay down rules, and include provisions setting out the information (for example: the scope and the definitions) necessary to understand and apply those rules correctly.

In a definition a *definiendum* is defined by a *definiens*. Linguistically speaking, a (legal) technical term is identified with a paraphrase of its concept (cf. Bentley 2017:2.1 for types of copular constructions, including equative ones).

From the linguistic viewpoint, a legal definition is a declarative or performative speech act¹: it creates a new, and legally binding, reality (as pronouncing a couple husband and wife or declaring the games of the NN Olympiad open by an authorised person). The *English Style Guide* of the European Commission takes this up:

10.24. [...] Declarative provisions are those that are implemented directly by virtue of being declared, for example definitions or amendments.

A legal definition must not be a (i) directive, (ii) commissive or (iii) expressive speech act, i.e. it shall not contain (i) a provision, modality values, (ii) promises, (iii) evaluations nor evoke connotations (cf. Bratschi 2009:208). To cite the *Joint Practical Guide*:

14. WHERE THE TERMS USED IN THE ACT ARE NOT UNAMBIGUOUS, THEY SHOULD BE DEFINED TOGETHER IN A SINGLE ARTICLE AT THE BEGINNING OF THE ACT. THE DEFINITIONS SHALL NOT CONTAIN AUTONOMOUS NORMATIVE PROVISIONS.²

For a declarative speech act, the simple present (no *shall*) is used in English, as the *English Style Guide* instructs:

10.29. *Declarative provisions*. EU legislation uses the simple present for definitions and where the provision constitutes direct implementation (possibly adding 'hereby', as in the examples below) [...].

The following definitions do not conform to those requirements:

1 For speech act theory see Austin (1962) and Searle (1969).

2 The wording has been taken over from Point 14 of the Interinstitutional Agreement of the European Parliament, the Council and the Commission of 22 December 1998 on common guidelines for the quality of drafting of Community legislation.

(1) Regulation (EC) No 1692/2006 Art. 2(c)-(d)

(c) ‘Motorways of the Sea action’ means any innovative action [...], including, preferably, the use of the most environmentally-friendly transport modes, such as inland waterways and rail, for hinterland freight transport and integrated door-to-door services; if possible, the resources of the outermost regions should also be integrated;

d) ‘modal shift action’ means [...], this includes, where appropriate, actions where modal shift is brought about by the development of an existing service; the Commission shall examine the possibility of supporting ancillary infrastructure projects;

In addition, legal definitions must be biunique (one and the same term used for only one single concept and one single concept expressed by only one and the same term), non-contradictory, coherent (a term is used in the defined sense throughout the relevant text) and compact (i.e. no features should be added at a later point); as well as non-ambiguous and non-vague (cf. Bratschi 2009:196). As the *Joint Practical Guide* puts it:

6.4. Definitions must be respected throughout the act. Defined terms must be used in a uniform manner and their content must not diverge from the definitions given.

Legal definitions need not be coherent **across** fields of law, an issue which is seen in a critical manner from the point of view of the “algorithmisation of law” (cf. Seckelmann 2021, Wölbart 2021:18 with respect to “Wohnsitz”, “Kind” and “Einkommen” in German law). The German national Manual for Drafting Legislation/*Handbuch der Rechtsförmlichkeit* (Rn. 60) explicitly warns:

Sometimes, words have various meanings depending on the regulatory context (e.g. “Widerruf” as used in section 355 of the German Civil Code (where it means “approval”) or as used in section 49 of the Administrative Procedures Act (where it means “annulment”); “Genehmigung” as used in section 184 of the German Civil Code (where it means “ratification”) or as used in section 4 of the Federal Immission Control Act (where it means “licence”). Terms must be checked carefully to see whether they have **different meanings** and whether they have been **used properly**, because texts are hard to understand when terms are used in a different sense even though the actual meaning of the word is easy to comprehend.

Forms of legal definitions

Legal definitions vary in form depending on where in a legal act they are to be found: at the beginning of the enacting terms, somewhere within the enacting terms or in the (technical) annex, which contains further specifications (as in Regulation (EC) No 1165/2008). This is also true for Swiss law (cf. Bratschi 2009:194).

At the beginning of the enacting terms of EU law, legal definitions typically take the form of a “chapeau” (an introductory clause (in the linguistic sense)) and an ensuing catalog (enumeration of properties or referents) (see (2) and Appendix (i) for that form and the wording of the chapeau). In the German and French versions, the only predicate (*bezeichnet, on entend*

par), with scope over all definitions, is located in the *chapeau*, whereas there are complete sentences for each definition, using the predicate “means”, in the English version:

(2) Regulation (EU) 2022/868 Art. (2)

Article 2	Artikel 2	Article 2
Definitions	Begriffsbestimmungen	Définitions
For the purposes of this Regulation, the following definitions apply:	Für die Zwecke dieser Verordnung bezeichnet der Ausdruck	Aux fins du présent règlement, on entend par:
(1) ‘data’ means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audiovisual recording;	1. „Daten“ jede digitale Darstellung von Handlungen, Tatsachen oder Informationen sowie jede Zusammenstellung solcher Handlungen, Tatsachen oder Informationen auch in Form von Ton-, Bild- oder audiovisuellem Material;	1) «données»: toute représentation numérique d’actes, de faits ou d’informations et toute compilation de ces actes, faits ou informations, notamment sous la forme d’enregistrements sonores, visuels ou audiovisuels;

The German version may feature a predicate (*bezeichnen*) in the catalog, too (e.g. in Regulations (EU) 2017/746 Art. 2, (EU) 2019/2144 Art. 3).

In the annex, a definition typically uses the copula verb (‘to be’) in English, French, German and most of the further official languages (see (3) and Appendix (ii)), but could also use the same verbs as in the enacting terms (e.g. in Regulations (EU) 2021/821 Annex I, (EU) 2022/109 Annex II No 2, (EU) 2017/2063 Annex II), especially when legal definitions for the purpose of the entire legal act are found in an annex, as in Directive 2014/24/EU Annex VII and Regulation (EC) No 853/2004, Annex I.

(3) Regulation (EU) 2019/787, Annex I No 18

18. Gentian	18. Enzian	18. Gentiane
(a) Gentian is a spirit drink produced from a distillate of gentian, itself obtained by the fermentation of gentian roots with or without the addition of ethyl alcohol of agricultural origin.	a) Enzian ist eine Spirituose, die aus Destillat von vergorenen Enzianwurzeln mit oder ohne Zusatz von Ethylalkohol landwirtschaftlichen Ursprungs hergestellt wird.	a) La gentiane est la boisson spiritueuse produite à partir d’un distillat de gentiane, lui-même obtenu par fermentation de racines de gentiane avec ou sans addition d’alcool éthylique d’origine agricole.

A colon or dash may be used as a graphic sign instead of a verb, indicating the equivalence relation between *definiens* and *definiendum*, note also the different use of quotation marks in all examples (cf. Appendix (i); (EU) 2021/821 Annex I):

(4) Regulation (EU) 2022/868 Art. 2

IT	SV	LT
1) «dati»: qualsiasi rappresentazione digitale di atti, fatti o informazioni e qualsiasi raccolta di tali atti, fatti o informazioni, anche	1. data: varje digital återgivning av handlingar, fakta eller information och varje sammanställning av sådana handlingar, sådana fakta eller sådan information, däribland i form av	1) duomenys – aktų, faktų ar informacijos skaitmeninė reprezentacija ir bet kokios tokių aktų, faktų ar informacijos kompiliacija,

sotto forma di registrazione sonora, visiva o audiovisiva;	ljudinspelningar, bildinspelningar eller audiovisuella inspelningar).	įskaitant garso, vaizdo arba garso ir vaizdo įrašus;
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Even definitions in the form of a table do occur, e.g. in Regulation (EC) No 1165/2008 Annex I, which lists categories of animals.

With respect to legal definitions at other places than the initial articles or the annex, the *Joint Handbook* points to the issue of definitions not valid for an entire legal act:

C.7. WORDING LAYING DOWN DEFINITIONS

[...] Sometimes, definitions are applicable only to a higher subdivision of an act (part, title, chapter or section). Those definitions should preferably be included in the definitions article but they could also appear at the beginning of the relevant subdivision, as follows: ‘For the purposes of this [section], “...” means ...’. Regardless of which method is used, such definitions raise specific questions, in particular whether it is useful to restrict a definition to a particular subdivision if the defined term is only in fact referred to in that subdivision, the meaning to be given to the defined term if it is also referred to in a different subdivision, etc.

An example is

(5) Council Regulation (EU) 2017/2063 Art. 7(2)

2. For the purposes of point (c) of paragraph 1, ‘telecommunication or internet monitoring or interception services’ means those services that provide, [...]

Types of legal definitions

Five types of legal definitions can be distinguished, three of which are explicit definitions:

1. The **intensional definition** (in German “Inhaltsdefinition”), in which the sense and intension (“content”) of a term (cf. Kroeger 2018) are specified.

The intensional definition takes the form *genus proximum* (linguistically spoken: hyperonym, in German “Oberbegriff” or “Gattung”) plus *differentia specifica* (linguistically spoken: semantic features “semantische Merkmale”) that describe the sense of the term, i.e. its semantic relations to other concepts in the network of concepts in the respective language, including its place in a taxonomy.

(6) Regulation (EU) 2019/787 Art. 2

For the purposes of this Regulation, a spirit drink is an alcoholic beverage which complies with the following requirements:	Für die Zwecke dieser Verordnung bezeichnet der Begriff „Spirituose“ ein alkoholisches Getränk, das folgende Anforderungen erfüllt:	Aux fins du présent règlement, on entend par boisson spiritueuse une boisson alcoolisée qui satisfait aux exigences suivantes:
(a) it is intended for human consumption;	a) es ist für den menschlichen Verzehr bestimmt;	a) elle est destinée à la consommation humaine;
(b) it possesses particular organoleptic qualities;	b) es weist besondere sensorische Eigenschaften auf;	b) elle possède des qualités organoleptiques particulières;
(c) it has a minimum alcoholic strength by volume of 15 %, except in the case of spirit drinks	c) es verfügt über einen Alkoholgehalt von mindestens 15 % vol, mit Ausnahme von	c) elle a un titre alcoométrique volumique minimal de 15 %, à

that comply with the requirements of category 39 of Annex I;	Spirituosen, die den Anforderungen des Anhangs I Kategorie 39 entsprechen;	l'exception des boissons spiritueuses qui satisfont aux exigences de la catégorie 39 de l'annexe I;
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The more semantic features are used in the paraphrase, the smaller the ambit (range of *denotata*/referents) covered by the definition.

2. The **extensional definition** (in German “Umfangsdefinition”), in which the *denotata* (what is being denoted, the referents) and the extension (range of ambit) are specified.

The extensional definition enumerates what can be subsumed under a term.

(7) Regulation (EU) 2022/868 Art. 2(17)

(17) ‘public sector body’ means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities, or one or more such bodies governed by public law;	17. „öffentliche Stelle“ den Staat, Gebietskörperschaften, Einrichtungen des öffentlichen Rechts oder Verbände, die aus einer oder mehreren dieser Körperschaften oder einer oder mehreren dieser Einrichtungen des öffentlichen Rechts bestehen;	17) «organisme du secteur public»: l’État, les autorités régionales ou locales, les organismes de droit public ou les associations formées par une ou plusieurs de ces autorités ou un ou plusieurs de ces organismes de droit public;
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(8) Regulation (EU) 2019/787 Art. 4(5)

(5) ‘packaging’ means the protective wrappings, cartons, cases, containers and bottles used in the transport or sale of spirit drinks;	(5) „Verpackung“ bezeichnet die schützenden Umhüllungen, Kartons, Kisten, Behältnisse und Flaschen, die für den Transport oder Verkauf von Spirituosen verwendet werden;	5) «emballage»: les enveloppes de protection, cartons, caisses, récipients et bouteilles utilisés pendant le transport ou pour la vente de boissons spiritueuses;
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In case a future addition to the *denotata* shall be possible, a list should not be formulated in an exhaustive way, but be left open for further subsumptions, by using a generic quantor (‘any’), ‘such as’, ‘for example’, ‘including’, non-exhaustive ‘or’ (cf. Mattissen 2019, 2021), or a general extender (e.g. ‘other X of this kind’, ‘etc.’, ‘and the like’), as in (9). All these expressions refer to types/categories and examples, not to the totality of a closed class.

(9) Regulation (EU) 2021/821 Art. 2(9)

(9) ‘technical assistance’ means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services, including by electronic means as well as by telephone or any other verbal forms of assistance;

3. The **legal fiction** (in German “Fiktion”), in which the sense and the range of meaning of a term is enlarged or reduced with respect to its meaning in the general language and could

therefore easily be misunderstood. A legal fiction may combine the enumeration of semantic features and *denotata*.

(10) Swiss Regulation SR 455.1, Art. 2(3) lit. e (Bratschi 2009:199)

Gehege: umgrenzter Bereich, in dem Tiere gehalten werden, einschliesslich Auslauflächen, Käfigen, Volieren, Terrarien, Aquarien, Aufzuchtbecken und Fischteichen

The *Joint Practical Guide* specifies for EU legislation:

14.1. All terms should be given their meaning in everyday or specialised language. For the sake of legal clarity it may, however, be necessary for the act itself to define words it uses. That is, *inter alia*, true where a term has several meanings but must be understood in only one of them or if, for the purposes of the act, the meaning is to be limited or extended with respect to the normal meaning given to that term.

The definition must not be contrary to the ordinary meaning of the term. A term which has been defined should be used with the same meaning throughout the act.

Nevertheless, the clear case of legal fiction is more of an exception in EU law.

(11) Regulation (EU) No 549/2013 Annex A 1.79

<p>1.79 The definition of a transaction implies that an interaction between institutional units be by mutual agreement. [...] Illegal economic actions shall be considered as transactions when all units involved enter the actions by mutual agreement. [...]</p>	<p>1.79 La définition de l'opération précise qu'il doit y avoir commun accord entre les unités institutionnelles concernées. [...] Les activités économiques illégales ne sont considérées comme opération qu'à partir du moment où toutes les unités concernées y participent de commun accord. [...]</p>	<p>1.79 Eine Interaktion zwischen institutionellen Einheiten ist definitionsgemäß nur dann eine Transaktion, wenn sie einvernehmlich stattfindet, d. h., wenn sie mit Wissen und Zustimmung der beteiligten institutionellen Einheiten erfolgt. [...] Illegale wirtschaftliche Vorgänge gelten als Transaktionen, wenn alle beteiligten Einheiten einvernehmlich an ihnen teilnehmen. [...]</p>
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Note the predicates formed from specialised verbs “shall be considered”, “sont considérées comme” and “gelten als” in the language versions cited. A different form is used in:

(12) Council Regulation (EU) 2017/2063 Annex I, Note 2 to item 3.5

For the purposes of item 3.5, the term ‘vehicles’ includes trailers.

In Regulation (EU) 2016/1012 Art. 2(1), however, where a hyperonym (as of the general language) is defined as extremely restricted in meaning, that legal fiction is not marked as such by the use of a specialised verb:

(13) Regulation (EU) 2016/1012 Art. 2(1)

(1) ‘animal’ means a domestic animal of: (a) the bovine species (*Bos taurus*, *Bos indicus* and *Bubalus bubalis*); (b) the porcine species (*Sus scrofa*); (c) the ovine species (*Ovis aries*); (d) the caprine species (*Capra hircus*); or (e) the equine species (*Equus caballus* and *Equus asinus*);

Legal fiction rather occurs outside of definitions in EU law; note the telling predicates *shall be construed* in English, *gelten als* in German and *s’entendre comme* in French in (14).

(14) Regulation (EU) 2019/787 Art. 49(3)

3. References to Regulation (EC) No 110/2008 shall be construed as references to this Regulation and be read in accordance with the correlation table set out in Annex IV to this Regulation.	(3) Bezugnahmen auf die Verordnung (EG) Nr. 110/2008 gelten als Bezugnahmen auf die vorliegende Verordnung und sind nach Maßgabe der Entsprechungstabelle in Anhang IV dieser Verordnung zu lesen.	3. Les références au règlement (CE) no 110/2008 s'entendent comme faites au présent règlement et sont à lire selon le tableau de correspondance figurant à l'annexe IV du présent règlement.
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Furthermore, legal definitions may be of the following two implicit types:

4. The **condensing definition** (“Klammerdefinition” in Bratschi 2009:194)

This type is found in German and Swiss law. An expression in parentheses is understood to be used as a term for the state of affairs described directly in front of it. In (15), “Schengen-Staaten” is used as an abbreviation for “Staaten, die durch eines der Schengen-Assoziierungsabkommen gebunden sind”; in (16), “Anspruch” is defined as “das Recht, von einem anderen ein Tun oder Unterlassen zu verlangen”.

(15) Swiss Regulation SR 142.204, Art. 15(4) (Bratschi 2009:195)

Die Auslandvertretung darf ein Ausnahmewisum gestützt auf Artikel 2 Absatz 4 nur mit Ermächtigung des BFM ausstellen. Dieses veranlasst, dass die anderen Staaten, die durch eines der Schengen-Assoziierungsabkommen gebunden sind (Schengen-Staaten), unterrichtet werden [...].

(16) German BGB § 194(1)

Das Recht, von einem anderen ein Tun oder Unterlassen zu verlangen (Anspruch), unterliegt der Verjährung.

The condensing definition is used in Swiss law for quantitative (economic) reasons because of its abbreviating effect (cf. Bratschi 2009:197). In EU law, this type of definition is not used. Besides abbreviations and explanations, technical terms used as loan words appear in EU law in parentheses at places within the recitals or enacting terms, which may come close to condensing definitions, e.g.

(17) Regulation (EU) 2017/1129 Recitals 13, 29; Art. 19(2)

- a. (13) [...] die es den Betreibern von multilateralen Handelssystemen (multilateral trading facilities – MTF) ermöglichen [...]
- b. (29) [...] Unter diesen Risikofaktoren sollten gegebenenfalls die Risiken, besonders für Kleinanleger, hervorgehoben werden, die bei Wertpapieren bestehen, die von Kreditinstituten ausgegeben werden und der Gläubigerbeteiligung („Bail-in“) nach der Richtlinie 2014/59/EU unterliegen.
- c. (2) [...] Insbesondere muss der Prospekt eine Liste mit Querverweisen enthalten, damit Anleger bestimmte Einzelangaben leicht auffinden können, sowie elektronische Verknüpfungen (im Folgenden „Hyperlink“) zu allen Dokumenten, [...]

The donator language version (English for (17)) does not use any parentheses at the corresponding places:

(18) Regulation (EU) 2017/1129 Art. 19(2)

In particular, a cross-reference list shall be provided in the prospectus in order to enable investors to identify easily specific items of information, and the prospectus shall contain hyperlinks to all documents containing information which is incorporated by reference.

Abbreviations are rather defined together with their full forms in EU legal acts:

(19) Regulation (EU) 2017/1129 Art. 2(f)

f) „kleine und mittlere Unternehmen“ oder „KMU“: i) Gesellschaften, die laut ihrem letzten Jahresabschluss [...]

5. The **embedded definition**, which only points to a definition spelled out in another legal act, by way of an intertextual reference (similar to “referential definitions” of UK law, cf. the *Drafting Guidance* of the Parliamentary Counsel).

(20) Regulation (EU) 2022/868 Art. 2(3)

(3) ‘personal data’ means personal data as defined in Article 4, point (1), of Regulation (EU) 2016/679;	3. „personenbezogene Daten“ personenbezogene Daten im Sinne des Artikels 4 Nummer 1 der Verordnung (EU) 2016/679;	3) «données à caractère personnel»: les données à caractère personnel au sens de l’article 4, point 1), du règlement (UE) 2016/679;
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The *Joint Handbook* uses the term “dynamic definition” for a reference to a definition in another legal act, as when the original definition is amended, this amendment is valid for all legal acts that reference the definition:

C.7. WORDING LAYING DOWN DEFINITIONS

[...] For the purposes of this [Regulation/Directive/Decision], the following definitions apply:

(1) ‘...’ means ...; [static definition]

(2) ‘...’ means ... as defined in [Article 4(1)(43) of Regulation (EU) No 575/2013]; [dynamic definition] ...”

This referencing technique is used in German national law, as well, cf. *Handbuch der Rechtsförmlichkeit* (Rn. 231):

[...] The following phrases can be used to make a reference so as to avoid having to repeat terms once they have already been used:

“... in accordance with section ...”; “... pursuant to section ...”; “... within the meaning of section ...”; “... referred to in section ...”

This is not necessary, however, if the relevant legislation begins with a list of definitions. [...]

Characteristics and limitations of actual legal definitions in EU legislation

In the definitions article of a EU legal act, different types of definition may be combined within a single legal definition:

(21) Regulation (EU) 2022/868 Art. 2(16)

<p>(16) ‘data altruism’ means the voluntary sharing of data on the basis of the consent of data subjects to process personal data pertaining to them, or permissions of data holders to allow the use of their non-personal data without seeking or receiving a reward that goes beyond compensation related to the costs that they incur where they make their data available for objectives of general interest as provided for in national law, where applicable, such as healthcare, combating climate change, improving mobility, facilitating the development, production and dissemination of official statistics, improving the provision of public services, public policy making or scientific research purposes in the general interest;</p>	<p>16. „Datenaltruismus“ die freiwillige gemeinsame Nutzung von Daten auf der Grundlage der Einwilligung betroffener Personen zur Verarbeitung der sie betreffenden personenbezogenen Daten oder einer Erlaubnis anderer Dateninhaber zur Nutzung ihrer nicht personenbezogenen Daten, ohne hierfür ein Entgelt zu fordern oder zu erhalten, das über eine Entschädigung für die ihnen durch die Bereitstellung ihrer Daten entstandenen Kosten hinausgeht, für Ziele von allgemeinem Interesse gemäß dem nationalen Recht, wie die Gesundheitsversorgung, die Bekämpfung des Klimawandels, die Verbesserung der Mobilität, die einfachere Entwicklung, Erstellung und Verbreitung amtlicher Statistiken, die Verbesserung der Erbringung öffentlicher Dienstleistungen, die staatliche Entscheidungsfindung oder die wissenschaftliche Forschung im allgemeinen Interesse;</p>	<p>16) «altruisme en matière de données»: le partage volontaire de données fondé sur le consentement donné par les personnes concernées au traitement de données à caractère personnel les concernant, ou l’autorisation accordée par des détenteurs de données pour l’utilisation de leurs données à caractère non personnel sans demander ni recevoir de contrepartie qui aille au-delà de la compensation des coûts qu’ils supportent lorsqu’ils mettent à disposition leurs données, pour des objectifs d’intérêt général prévus par le droit national, le cas échéant, par exemple les soins de santé, la lutte contre le changement climatique, l’amélioration de la mobilité, la facilitation du développement, de la production et de la diffusion de statistiques officielles, l’amélioration de la prestation de services publics, l’élaboration des politiques publiques ou la recherche scientifique dans l’intérêt général;</p>
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Furthermore, a legal definition may contain necessary and optional features, e.g.

(22) Regulation (EU) 2019/787, Annex I No 39

- (a) Egg liqueur or advocaat or avocat or advokat is a liqueur, whether flavoured or not, produced from ethyl alcohol of agricultural origin, distillate of agricultural origin or spirit drink, or a combination thereof, and the ingredients of which are quality egg yolk, egg white and sugar or honey or both. [...]
- (c) Only flavouring foodstuffs, flavouring substances and flavouring preparations may be used in the production of egg liqueur or advocaat or avocat or advokat.
- (d) Milk products may be used in the production of egg liqueur or advocaat or avocat or advokat.

A legal definition, as any definition, should not be circular, i.e. define a term by itself. An exception may be condensing definitions (Bratschi 2009:201). Some definitions in EU law, however, get close to circularity or tautology.

(23) a. Regulation (EU) 2022/868 Art. 2(4)

(4) 'non-personal data' means data other than personal data;	4. „nicht personenbezogene Daten“ Daten, die keine personenbezogenen Daten sind;	4) «données à caractère non personnel»: les données autres que les données à caractère personnel;
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b. Regulation (EU) 2022/1925 Art. 2 No. 26 (DA)

»andre data end personoplysninger«: andre data end personoplysninger

What makes legal definitions on EU level a greater challenge than on the national levels are basically two issues:

Firstly, as is well-known (e.g. *Joint Practical Guide* section 5., going back to the Interinstitutional Agreement (see fn. 1)), care must be taken to avoid conflicts and confusion by legally defining a term that already exists as a legally defined term in the national law of the same language, as the concepts expressed by the term may be different (cf. also the *Guide de légistique*). An example is *Kind* 'child' in germanophone laws:

(24) Directive 2011/36/EU Art. 2(6)

(6) Im Sinne dieser Richtlinie bezeichnet der Begriff „Kind“ Personen im Alter von unter 18 Jahren.

A legal definition of “Kind” in national German law is found in § 7(1) of the Sozialgesetzbuch, Achtes Buch (SGB VIII):

(1) Im Sinne dieses Buches ist

1. Kind, wer noch nicht 14 Jahre alt ist, soweit nicht die Absätze 2 bis 4 etwas anderes bestimmen,
2. Jugendlicher, wer 14, aber noch nicht 18 Jahre alt ist, [...]

However, “Kind” is also used for minors (under 18 years) in even the same Sozialgesetzbuch (§ 7(3)), and also in the sense of ‘offspring’ in German national law.

Secondly, the difference in the lexical systems of the official languages can cause difficulties in one language where there are none in another. In (25), the Italian version uses “rimpatrio”, which means ‘return to one’s home country or own place of residence’ (cf. (26)). However, this ‘return to one’s home country’ is then defined, close to a legal fiction, by returning to one’s country of origin or to a country of transit or even to any third country. The latter two options clearly are not “rimpatrio” in the proper sense of the word.

(25) Directive 2008/115/EC Art. 3(3)

3. 'return' means the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced — to: — his or her country of origin, or — a country of transit in accordance with Community or	3) «retour»: le fait, pour le ressortissant d'un pays tiers, de rentrer — que ce soit par obtempération volontaire à une obligation de retour ou en y étant forcé - dans: — son pays d'origine, ou — un pays de transit conformément à des	3) «rimpatrio» il processo di ritorno di un cittadino di un paese terzo, sia in adempimento volontario di un obbligo di rimpatrio sia forzatamente: — nel proprio paese di origine, o — in un paese di transito in conformità
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bilateral readmission agreements or other arrangements, or — another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted;	accords ou autres arrangements de réadmission communautaires ou bilatéraux, ou — un autre pays tiers dans lequel le ressortissant concerné d'un pays tiers décide de retourner volontairement et sur le territoire duquel il sera admis;	di accordi comunitari o bilaterali di riammissione o di altre intese, o — in un altro paese terzo, in cui il cittadino del paese terzo in questione decide volontariamente di ritornare e in cui sarà accettato;
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(26) Treccani (<https://www.treccani.it/vocabolario/ricerca/rimpatrio/>)

rimpàtrio s. m. [der. di *rimpatriare*]. – L'azione di rimpatriare, il fatto di venire rimpatriato (opposto a *espatrio*) [...]

rimpatriare v. intr. [der. di *patria*, col pref. *rin-*] (*io rimpàtrio*, ecc.; aus. *essere*). – Tornare in patria: *si è rifugiato all'estero, e non è più rimpatriato*; tornare nel comune della propria residenza [...]

In the English version, return to one's country of origin or to a country of transit are both licensed by the sense of 'return' and therefore unproblematic. Returning to a third country where one has not been before is, of course, as much a legal fiction in English as in all the other languages.

Different conceptualisations may lead to quite daring correspondences across languages, as in

(27) Council Directive 2003/86/EC Art. 2(c)

c) "Zusammenführender" den sich rechtmäßig in einem Mitgliedstaat aufhaltenden Drittstaatsangehörigen, der oder dessen Familienangehörige einen Antrag auf Familienzusammenführung mit ihm stellt bzw. stellen;	(c) "sponsor" means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;	c) "soggiornante": il cittadino di un paese terzo legalmente soggiornante in uno Stato membro che chiede o i cui familiari chiedono il ricongiungimento familiare;
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where the ideas behind the rather unidiomatic "Zusammenführender" (cf. the French term "regroupant"), "sponsor" and "soggiornante" evoke three different aspects of the content of the *definiens*: causing the family reunion in German (and French), assuming responsibility for or paying for the family in English (cf. *Cambridge Dictionary* <https://dictionary.cambridge.org/dictionary/english/sponsor>) and simply residing in Italian. The terms are then convergences *per conventionem* (as are the correspondences *rule of law* and *Rechtsstaat* or to the corresponding use of *shall* and indicative present in the enacting terms), with the definition representing the convention.

In lieu of a conclusion

The "terms and conditions" of legal definitions can be gleaned from other national drafting guidelines (e.g. *Handbuch der Rechtsetzungstechnik*, *Principes de technique législative*, *Guide de légistique*), as well, which may distinguish other types of definitions (e.g. in the United

Kingdom, cf. the *Drafting Guidance* of the Parliamentary Counsel; cf. also Petru 2015 for Czech law). A practical overview of “do”s and “don’t”s is Bratschi (2009).

The Data Governance Act boasts 21 legal definitions in its enacting terms. Compared to other legal acts, this is not a lot. Regulation (EU) 2019/787 on the definition, description, presentation and labelling of spirit drinks etc. has 44 in its Annex I, where all the “spirit drinks” are listed. Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market etc. has 26 legal definitions (from a) to z)) in Art. 2, Regulation (EU) 2019/2033 on the prudential requirements of investment firms etc. has 58 legal definitions in Art. 4, and Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms etc. even 128 definitions in Art. 4, which suggests that legislation in financial issues has to cope with a fine-grained matter. The top-scorer found at random is Regulation (EU) 2021/821 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items with 22 definitions in Art. 2 and another 194 in Annex I.

So, not only do drafters need to know how to define and where, but they should have a multilingual database of extant EU definitions at hand. In addition, a homogenisation of the formulation of legal definitions could facilitate their AI processing.

Appendix

(i) Regulation (EU) 2022/868 Art. (2)

Articolo 2	Artículo 2	Artigo 2.o
Definizioni	Definiciones	Definições
Ai fini del presente regolamento si applicano le definizioni seguenti:	A efectos del presente Reglamento, se entenderá por:	Para efeitos do presente regulamento, entende-se por:
1) «dati»: qualsiasi rappresentazione digitale di atti, fatti o informazioni e qualsiasi raccolta di tali atti, fatti o informazioni, anche sotto forma di registrazione sonora, visiva o audiovisiva;	1) «datos», toda representación digital de actos, hechos o información, así como su recopilación, incluso como grabación sonora, visual o audiovisual;	1) «Dados», qualquer representação digital de atos, factos ou informações e qualquer compilação desses atos, factos ou informações, nomeadamente sob a forma de gravação sonora, visual ou audiovisual;

Articolul 2	Άρθρο 2	Artikolu 2
Definiții	Ορισμοί	Definizzjonijiet
În sensul prezentului regulament, se aplică următoarele definiții:	Για τους σκοπούς του παρόντος κανονισμού, ισχύουν οι ακόλουθοι ορισμοί:	Għall-iskopijiet ta’ dan ir-Regolament, japplikaw id-definizzjonijiet li ġejjin:
1. „date” înseamnă orice reprezentare digitală a unor acte, fapte sau informații și orice compilație a unor astfel de acte, fapte sau informații, inclusiv sub forma unei	1) «δεδομένα»: κάθε ψηφιακή αποτύπωση πράξεων, γεγονότων ή πληροφοριών και κάθε συλλογή τέτοιων πράξεων, γεγονότων ή πληροφοριών, μεταξύ άλλων σε μορφή ηχητικής, οπτικής ή	(1) “data” tfisser kwalunkwe rappreżentazzjoni digitali ta’ atti, fatti jew informazzjoni u kwalunkwe kompilazzjoni ta’ tali atti, fatti jew informazzjoni, inkluz fil-forma ta’ regjistrazzjoni awdjo,

inregistrāri audio, video sau audiovizuale;	οπτικοακουστικής εγγραφής·	viziva jew awdjoviziva;
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Artikel 2	Artikel 2	Artikel 2
Definities	Definitioner	Definitioner
In deze verordening wordt verstaan onder:	I denne forordning forstås ved:	I denna förordning gäller följande definitioner:
1) "gegevens": elke digitale weergave van handelingen, feiten of informatie en elke compilatie van dergelijke handelingen, feiten of informatie, ook in de vorm van geluidsopnames of visuele of audiovisuele opnames;	1) »data«: enhver digital repræsentation af handlinger, kendsgerninger eller oplysninger og enhver samling af sådanne handlinger, kendsgerninger eller oplysninger, herunder i form af lyd- eller videooptagelser eller audiovisuelle optagelser	1. data: varje digital återgivning av handlingar, fakta eller information och varje sammanställning av sådana handlingar, sådana fakta eller sådan information, däribland i form av ljudinspelningar, bildinspelningar eller audiovisuella inspelningar).

Член 2	Članak 2.	Člen 2
Определения	Definicije	Opredelitev pojmov
За целите на настоящия регламент се прилагат следните определения:	Za potrebe ove Uredbe primjenjuju se sljedeće definicije:	V tej uredbi se uporabljajo naslednje opredelitve pojmov:
1) „данни“ означава всяко цифрово представяне на актове, факти или информация, както и всяка съвкупност от такива актове, факти или информация, включително под формата на звукозапис, видеозапис или аудио-визуален запис;	1. „podaci“ znači svaki digitalni prikaz akata, činjenica ili informacija i svaka kompilacija tih akata, činjenica ili informacija, uključujući u obliku zvučnog, vizualnog ili audiovizualnog zapisa;	(1) „podatki“ pomeni vsak digitalni prikaz dejanj, dejstev ali informacij in vsako zbiranje takih dejanj, dejstev ali informacij, tudi v obliki zvočnega, vizualnega ali avdiovizualnega posnetka;

Článek 2	Článok 2	Artykuł 2
Definice	Vymedzenie pojmov	Definicje
Pro účely tohoto nařízení se rozumí:	Na účely tohto nariadenia sa uplatňuje toto vymedzenie pojmov:	Do celów niniejszego rozporządzenia stosuje się następujące definicje:
1) „daty“ veškeré digitální záznamy jednání, skutečností nebo informací a všechny soubory takových jednání, skutečností nebo informací, včetně záznamů v podobě zvukové, vizuální nebo audiovizuální nahrávky;	1. „údaje“ sú všetky digitálne formy úkonov, skutočností alebo informácií a všetky kompilácie takých úkonov, skutočností alebo informácií, a to aj v podobe zvukových, vizuálnych alebo audiovizuálnych nahrávok;	1) „dane” oznaczają cyfrowe odwzorowania działań, faktów lub informacji oraz wszelkie kompilacje takich działań, faktów lub informacji, w tym w formie zapisu dźwiękowego, wizualnego lub audiowizualnego;

2 artikla	Artikkel 2	2. cikk
Määritelmät	Mõisted	Fogalommeghatározások
Tässä asetuksessa tarkoitetaan:	Käesolevas määruses kasutatakse järgmisi mõisteid:	E rendelet alkalmazásában:
1) 'datalla' kaikkea toimenpiteiden, tosiseikkojen tai tietojen digitaalista esittämistä	1) „andmed“ – tegevuse, faktide või teabe mis tahes digitaalne väljendus ja selliste tegevuste,	1. „adat”: aktusok, tények vagy információk bármilyen digitális megjelenítése, vagy az említett

sekä kaikkia tällaisten toimenpiteiden, tosiseikkojen tai tietojen koosteita, myös ääni- tai kuvatallenteena tai audiovisuaalisena tallenteena;	faktide või teabe kogum, muu hulgas heli-, visuaal- või audiovisuaalsalvestise kujul;	aktusok, tények és információk összeállításai, többek között hang-, kép- vagy audiovizuális felvétel formájában is;
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2 straipsnis	2. pants	Airteagal 2
Terminų apibrėžtys	Definīcijas	Sainmhíithe
Šio reglamento tikslais vartojamos šios terminų apibrėžtys:	Šajā regulā piemēro šādas definīcijas:	Chun críocha an Rialacháin seo, tá feidhm ag na sainmhíithe seo a leanas:
1) duomenys – aktų, faktų ar informacijos skaitmeninė reprezentacija ir bet kokios tokių aktų, faktų ar informacijos kompiliacija, įskaitant garso, vaizdo arba garso ir vaizdo įrašus;	1) “dati” ir darbību, faktū vai informācijas un šādu darbību, faktū vai informācijas apkopojuma digitāls atspoguļojums, tai skaitā skaņas, vizuāla vai audiovizuāla ieraksta veidā;	(1) ciallaíonn “sonraí” aon léiriú digiteach ar ghníomhartha, ar fhíricí nó ar fhaisnéis agus aon tiomsú de ghníomhartha, fíricí nó faisnéis den sórt sin, lena n-áirítear i bhfoirm taifead fuaime, físe nó closamhairc;

(ii) Regulation (EU) 2019/787, Annex I No 18

18. Genziana	18. Genciana	18. Genciana
a) La genziana è la bevanda spiritosa proveniente da un distillato di genziana ottenuto da radici di genziana fermentate, con o senza aggiunta di alcole etilico di origine agricola.	a) La genciana es una bebida espirituosa producida a base de un destilado de genciana, obtenido a su vez de la fermentación de raíces de genciana con o sin adición de alcohol etílico de origen agrícola.	a) Entende-se por genciana uma bebida espirituosa produzida a partir de um destilado de genciana, por sua vez obtido por fermentação de raízes de genciana, com ou sem adição de álcool etílico de origem agrícola;

18. Rachiu de gențiană	18. Γεντιανή	18. Spirtu tal-ġenzjana
(a) Rachiul de gențiană este o băutură spirtoasă produsă dintr-un distilat de gențiană care, la rândul său, a fost obținut prin fermentarea rădăcinilor de gențiană cu sau fără adaos de alcool etilic de origine agricolă.	α) Γεντιανή είναι το αλκοολούχο ποτό που παράγεται από προϊόν απόσταξης γεντιανής, το οποίο με τη σειρά του λαμβάνεται από τη ζύμωση ριζών γεντιανής με ή χωρίς προσθήκη αιθυλικής αλκοόλης γεωργικής προέλευσης.	(a) L-ispirtu tal-ġenzjana huwa xarba spirituza prodotta minn distillat tal-ġenzjana, li jinkiseb permezz tal-fermentazzjoni ta' għerq il-ġenzjana biż-żieda jew mingħajrha ta' alkoħol etiliku ta' oriġini agrkola.

18. Gentiaan	18. Ensian	18. Gentiana
a) Gentiaan is een gedistilleerde drank die uit een gentiaandistillaat op basis van vergiste gentiaanwortels wordt bereid, al dan niet met toevoeging van ethylalcohol uit landbouwproducten.	a) Ensian er en spiritus, der er fremstillet på basis af et destillat af ensian, der selv er fremstillet ved gæring af ensianrødder med eller uden tilsætning af landbrugsethanol.	a) Gentiana är en spritdryck som har framställts av ett destillat av gentiana, som i sin tur erhållits genom jäsning av gentianarot, med eller utan tillsats av jordbruksalkohol.

18. Спиртна напитка от тинтява	18. Encijan	18. Encijan
a) Спиртна напитка от тинтява е спиртна напитка, произведена от	(a) Encijan je jako alkoholno piće proizvedeno od destilata	(a) Encijan je žgana pijača, proizvedena iz destilata

дестилат от тинтява, който от своя страна е получен чрез ферментация на корени от тинтява със или без добавяне на етилов алкохол от земеделски производ.	encijana dobivenog fermentacijom korijena encijana, uz dodatak etilnog alkohola poljoprivrednog podrijetla ili bez njega.	encijana, pridobljenega s fermentacijo korenine encijana z dodatkom etanola kmetijskega porekla ali brez njega.
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18. Hořcová pálenka	18. Gentian (Horcová liehovina)	18. Goryczka
a) Hořcová pálenka je lihovina vyrobená z destilátu, který byl získán destilací zkvašených kořenů hořce s přídavkem nebo bez přídavku lihu zemědělského původu.	a) Horcová liehovina je lihovina vyrobená z destilátu horca, ktorý sa získava fermentáciou koreňa horca s pridaním etylalkoholu poľnohospodárskeho pôvodu alebo bez jeho pridania.	a) Goryczka jest napojem spirytusowym wytwarzanym z destylatu goryczki otrzymanego w wyniku fermentacji korzeni goryczki z dodatkiem lub bez dodatku alkoholu etylowego pochodzenia rolniczego.

18. Gentian	18. Emajuurepiiritusjook	18. Tárnicspárlat
a) Gentian on tislattu alkoholiuoma, joka valmistetaan gentiantisleestä, joka puolestaan on valmistettu gentiankasvin juurista käyttämällä ja tislaamalla; tisleeseen voidaan lisätä maatalousperäistä etyylialkoholia.	a) Emajuurepiiritusjook on piiritusjook, mis on valmistatud emajuure destillaadist, mis omakorda on saadud emajuure juurte kääritamisel põllumajandusliku päritoluga etüülalkoholi lisamisega või ilma selleta.	a) A tárnicspárlat olyan tárnicdesztillátumból készült szeszes ital, amelyet erjesztett tárnicgyökérből állítanak elő mezőgazdasági eredetű etil-alkohol hozzáadásával vagy anélkül.

18. Gencijonų spiritinis gėrimas	18. Genciāns	18. Ceadharlach
a) Gencijonų spiritinis gėrimas yra spiritinis gėrimas, pagamintas iš gencijonų distiliato, gauto fermentuojant gencijonų šaknis, įpylus arba neįpylus žemės ūkio kilmės etilo alkoholio.	a) Genciāns ir stiprais alkoholiskais dzēriens, ko ražo no genciāna destilāta, ko savukārt iegūst no genciāna sakņu raudzējuma, neatkarīgi no tā, vai tam ir pievienots lauksaimnieciskais izcelsmes etilspirts.	(a) Is deoch bhiotáilleach é ceadharlach a dhéantar as driogáit cheadharlaigh a fhaightear ó choipeadh fréamhacha ceadharlaigh a gcuirtear alcól eitile de thionscnamh talmhaíochta leis nó nach gcuirtear.

Acknowledgement

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