



A more coherent European wide legal language
Viola Heutger
European Integration online Papers (EIoP) Vol. 8 (2004) N° 2; http://eiop.or.at/eiop/texte/2004-002a.htm
Date of publication in the  : 23.3.2004
Full text Back to homepage PDF This paper's comments page Send your comment! to this paper
Keywords
European identity, diversity/homogeneity, Europeanization, Europeanisation, knowledge, language policy, participation, harmonisation, harmonization, European Commission, law
Abstract
In this paper I would like to elaborate on the interaction between law and language. The use of the different (legal) languages of the European Union Member States is one of the most practical and most difficult problems in the process of European integration. The linguistic matters are directly contacting all legal issues. In February 2003 the Commission launched an Action Plan on a more coherent European Contract Law. With this Action Plan a sector specific approach of legal and linguistic harmonization will start. On of the official aims will be the preparation of a common frame of reference, providing a pan-European terminology and rules. This contribution will reflect the need of a better and more coherent legal language use on a European Union level and describe a more concept-based approach of linguistic legal integration.
Kurzfassung
Recht und Sprache sind eng miteinander verbunden. Innerhalb der Europäischen Union bilden die unterschiedlichen Sprachen ein schwieriges Problem auf dem Weg der europäischen Integration. Im Februar 2003 veröffentlichte die Kommission ihren Aktionsplan für ein kohärenteres Vertragsrecht. Mit diesem Aktionsplan wurde ein weiterer rechtlicher und sprachlicher Harmonisierungsprozess eingeleitet. Unter anderem fordert der Aktionsplan einen gemeinsamen Referenzrahmen. Dieser Referenzrahmen soll auch eine gemeineuropäische Terminologie und gesamteuropäische Regeln bereithalten. In diesem Beitrag soll der Gebrauch einer kohärenteren und klaren europäischen Rechtssprache reflektiert werden.
The author
<i>Viola Heutger</i> is researcher in the field of European Private Law and team-manager of the Utrecht Working Team on a European Sales Law (Study Group on a European Civil Code) at the University of Utrecht; email: v.heutger@law.uu.nl

A more coherent European wide legal language
Viola Heutger
European Integration online Papers (EIoP) Vol. 7 (2004) N° 2; http://eiop.or.at/eiop/texte/2004-002a.htm
Date of Publication in  : 23.3.2004
Abstract Back to homepage PDF This paper's comments page Send your comment! to this paper

Contents:

- 1. Introduction
- 2. The interconnection between law and language
- 3. Cohesion and legal terminology in countries which have the same language
- 4. European law harmonization through a common legal language
- 5. Foreign languages in comparative research
- 6. A new European legal language
- 7. The efforts of the European Union to strengthen the use of clear language
- 8. Implications
- References

1

1. Introduction [↑]

Law and Language are interacting partners all over the world. But due to the European Union it is also a very specific problem for European lawyers and translators/interpreters.

Inside the European Union the use of different languages is one of the obstacles to the integration process. Legal language goes beyond the proper use of a national language. Legal language is concept-based and is not centered on linguistic knowledge and exchange of terms in different languages. Translators must translate written law into the official languages of the European Union. Spoken language must be interpreted, in order to have a common understanding of official speeches within the European Union's institutions. Translators and interpreters must translate the source language into the target language. They must resolve ambiguities and must produce language, which is adequate for the purpose.

To reach a common use of language we need to develop a curriculum for a more coherent linguistic and terminological use inside the European Union (Pozzo, 754).

2. The interconnection between law and language [↑]

Law needs language and there are many interconnected relationships (De Groot, 21). In modern society all legal provisions can be found in writing. The provisions are laid down in statutes, codifications or judicial decisions. Furthermore, the legal writings of practitioners and academics have an influence on any legal doctrine.

The interpretation of legal texts from the point of view of grammar is closely related to linguistic methods for using a language. But even with regard to this interpreting instrument it must be stated that law and language interact with each other. Language is the means of expressing the law (Sacco, 34). The use of language gives rise to specific terminology (Rüthers, 118 s.). Lawyers from the same legal system subsequently understand this terminology. Through language a single term can express a whole concept (Münzel, 641). So the addressee will not only understand the chosen language but will also pick up a message, in the case of a legal discourse a whole concept, which is expressed by a single term (Grossfeld, 151, 163). A translation process must therefore cover the transmission of concepts by choosing a specific terminology.

3. Cohesion and legal terminology in countries which have the same language ↑

If we examine the use of language on a national level, we realize that there are system- or sector specific legal languages within one national language. We therefore have specialist legal language in medical liability law, another legal language in economics, another in criminal law and yet another in private law (Fraser, 194). It can even be stated that the official Dutch legal language or the official Swedish legal language of the European Union is also a separate legal language. Legal language even differs in countries having the same language. The use of German in legal language differs in its terminological use in Germany, Switzerland, Austria and Belgium (Sacco, 39).

The German formalistic Civil Law Codification is largely unreadable as far as a non-German lawyer is concerned. Without any special indication as to the use of terminology this codification can rarely be understood. If we remain with the German language we must realize that with a knowledge of German legal language the other German-speaking legal systems of Switzerland and Austria or not automatically accessible (Grossfeld, 180). Very simple terms have different meanings. When a German speaks of *Besitz*, he means factual possession. However, an Austrian lawyer understands *Besitz* as the factual possession including the *animus domini*. What a German understands under *Besitz*, is for an Austrian *Innehabung*. So even German speaking lawyers from Austria, Germany, Liechtenstein and Switzerland will not understand automatically each other's concept-based legal terminology. It cannot be expected e.g. that the German knows what is meant by the Austrian terms of a *Präsenzdiener* or a *Landeshauptmann*, a *Aufsandungsurkunde* or a *Superädifikat*.

If we now shift these language problems to the level of the language used in the official legal language of the European Union we can expect far more problems in the future than on the level of different legal systems using the same national language, but not a common legal language.

Therefore it can be said that each legal term is equivalent to a particular legal concept in its own system-specific legal and national surrounding. The use of a term in one single language can cover many different concepts. A term may determine something completely different in private law than in public law. The use of the same term in another country of the same language will deliver even another concept to the same legal term. The national use of a term in its specific surrounding is not mirroring the European use of the same term in the same specific surrounding. On the European level a complete different concept may stand behind the chosen term. Furthermore the same term may be used in a translation of a document in again another meaning or concept. In the end there is one term from which many different concepts are arising. Harmonization of language will not be reached by using the same language. Understanding each other will be only be possible by being aware of each other's concepts in mind.

If we go on with databases and dictionaries as the only means for understanding each other the result will be complete misunderstanding. We are in urgent need of a new curriculum for the use of legal languages. If we do not change our habits towards legal linguistic topics it would probably more easy to create a common pan-European legal language than to synchronize the use of one language and its legal terminology in different national states.

4. European law harmonization through a common legal language ↑

In my opinion standardizing legal concepts can only attain legal harmonization. This harmonization can be achieved through the use of harmonized terminology within the European Union. Standardization as mentioned here might have the meaning of offering clear definitions, concepts and principles for specific use. Therefore a simple dictionary offering only a variety of terms cannot meet these standards (Oppermann, 2663).

In my understanding definition should not be seen as everlasting defined terms. Legal history taught us that terms and concepts behind them could even disappear, because there is no more need to use them. So e.g. the table X of the XII tables dating from around 450 B.C. speaks of *lessum*. Some hundred years later this term is out of use and the specific meaning is not known anymore. Therefore I ask for a more open system where definitions are used as a sort of commentary for specific use in a specific legal field. So the meaning of terms may differ in consumer contract law from the use of the same terminology in banking law. If, for example, we take the notion of property in German law, there we can find one notion of property in the *Grundgesetz*, the fundamental rights, and another in civil law.

A definition cannot do more than to serve as a concept for specific application that should be consequentially and coherently applied.

Recently the European Commission launched an Action Plan on a more coherent European Contract Law. This Action Plan on a more coherent European contract law was a result of the process of consultation and discussion about the way in which problems resulting from divergences between national contract laws in the EU should be dealt with at the European level. This initiative dates back to July 2001 when the commission launched a communication on European Contract law. In this Action Plan the elaboration of a common frame of reference is mentioned. This common frame of reference will be publicly accessible. It should provide for best solutions in terms of common terminology and rules (Action Plan, 62). Now, in the third millennium, the Commission starts to be aware of the need of a common terminology and a common reference frame. Unfortunately in no word the Commission is mentioning the legal systems nor the legal terminology and concepts of the acceding Eastern-European Countries. The Commission itself does not name a programmatic approach to solve the open issues (Heutger, 14,15). It is obvious that a reform of the European language policy is needed (Oppermann, 2667).

The above-mentioned Action Plan forms an example of a problematic and incoherent approach. In the Action Plan the Commission speaks of an optional instrument, the German translation is not following this one term approach, but offers three different expressions. The optional instrument is translated into an *optionelles Instrument* (Action Plan, 90), a *freiwilliges Instrument* (Action Plan, 96) and an *optionelles Rechtsinstrument* (Action Plan, abstract). Something similar happened to the translated term of general contract term. The German translation offered *Allgemeine Geschäftsbedingungen* (Action Plan, abstract) as well as *Standardvertragsklauseln* (Action Plan, 82). In the translations one and the same term was not translated by one and the same term in another language. Furthermore the chosen term itself was not even reflecting the same concept.

The Commission should work more carefully; otherwise a European legal terminology could never be presented. Problematic as regard to the Action Plan is the fact that the Action Plan on the one hand asks for an elaboration of a common frame of reference including legal terminology, definitions, concepts and principles, and on the other hand the Commission itself within its paper asking for a common legal terminology is not able to provide it itself. This detail can be interpreted as a shifting of responsibility to institutions outside the Commission, whom the Commission asks to carry out research on the legal terminology, definitions, concepts and principles. It would be better, if the Commission itself would start with a coherent plain language use.

This example shows that the European Union legislator is acting as an author drafting model language for European use. For the time being due to his incoherence the European Union cannot be seen as a standard setter.

5. Foreign languages in comparative research [↑]

What can we learn from these experiences? In the discipline of comparative law the close relationship between law and language has certain consequences. A comparative lawyer has to translate continually. Even if he/she knows the language of the country where he/she is carrying out his/her research, later when explaining the outcome of this research, he/she has to translate into another language (Giesen, 230).

Comparative lawyer must report the contents of a foreign legal system in their own language (Sacco, 33f.). Furthermore, comparative lawyers inform others about their own system in legal languages other than their own and quite often they must speak and write on the contents of foreign legal systems in legal terms which do not belong to the language which that system uses as its own legal language. Translations of legal terms from one language to another very often mean the transfer of terms/concepts from one legal system to another. The exact and coherent use of language is one of the core issues in comparative law (Downes/Heiss, 36).

6. A new European legal language [↑]

Exact use may be understood as a process of standardization. Legal linguistic standardization within the European Union will help to keep integration growing. There is a clear need for review of the existing *acquis communautaire* and for harmonization and standardization. The use of standardized language seems to be a process that can only be achieved through the use of the language and the lessons learned from integrating activities, which were not as successful as intended (Action Plan, 68).

Standardization could be achieved in different ways (Sacco, *lingua*, 57). Firstly, this can be attained through the use of a common legal language at least in Private law, which is very close to European citizens, through the European legislator as a standard-setter. Like in the proposed way of the Commission in its Action Plan on a more coherent European contract law through the optional instrument, which will be a soft law approach, that is enacted by an official European Institution. Secondly, through the use of common Principles on European Private Law, which should be drafted and enacted by the European Union. Here, I think of principles like the Principles of European Contract Law and the outcome of the working teams of the Study Group on a European Civil Code (<http://www.sgecc.net>). Thirdly by making available a common frame of reference that should provide definitions and concepts for specific use. This common frame of reference, as also mentioned in the Action Plan on a more coherent European contract law, should mirror the discussion and consultation process of stakeholders, academics and the policy decisions of the Commission itself. Furthermore should the common frame of reference offer the results of the revision of the existing *acquis communautaire*.

Parallel to each of the mentioned ways, legal education should pay more attention to the use of foreign languages in the teaching process.

European integration cannot proceed without attention being given to linguistic matters. For the time being the official legal language of the European Union is far from pan-European standard. The implementation of European Directives on minimum standards offers a wide range of linguistic interpretations and opens the door to different uses of language. There is a clear need for a more coherent approach.

7. The efforts of the European Union to strengthen the use of clear language [↑]

Let us pay attention to the state of affairs on the EU level. For the time being the European Union has eleven official languages (Oppermann, 2665 s.). These languages are used at the meetings of the official bodies and all European legislation has to be published in all of them. The Union has to communicate with the authorities and the public in the Member States in their own languages. The use of all these languages is a vital and complex task.

The European Union itself provides a website for translation issues (http://www.europa.eu.int/comm/translation/index_en.htm); at this site information on legible writing campaigns, translation theory and practice, language aids and style guides are available. Unfortunately this website is not very well known and very few students and legal scholars are aware of its existence. It even has to be stated that its usefulness is rather limited.

Furthermore, the European Union is providing its own terminology database, called *EuroDicAutom* (<http://www.europa.eu.int/eurodicautom/Controller>). Eurodicautom will soon be integrated into a new inter-institutional terminology database and be part of IATE (Inter-Agency Terminology Exchange). The aim of this project is to meet the challenge of the forthcoming enlargement, which will extend the problems associated with terminological data to some twenty languages. The result will reflect Europe's linguistic diversity and richness. Further information are available (see: http://www.europa.eu.int/eurodicautom/edic/response_DG.jsp). The recent changes of this site show that the European Union is aware of the problem of linguistic diversity within the enlarging Union. In addition the European Union has different translations units. (Heutger, *Law and Language*, 13). Unfortunately, there is no institution on EU level, which interacts with the European citizens to train them and to encourage them to express themselves in more than their own native language.

8. Implications [↑]

Let me conclude: the European Union is aware of the problem of interpreting and translating legal language. But efforts to strengthen the use of harmonized legal language in all the European Union Member States must be seen in a critical light. The databases provided to date are not sufficient to offer adequate means to provide guidance to the citizens of the European Union. Nearly no official paper or database is dealing with the linguistic problems of an enlarging Union. As soon as possible the Union should integrate new languages to their existing efforts. An interacting institution for supporting linguistic integration is urgently needed.

A short analysis of translation quality of the Action Plan shows that the Union itself cannot be considered as a standard setter. It is time for a review of the existing *acquis communautaire*.

For the future of a common legal language new methods must be chosen in order to obtain a higher quality of language use. A common legal language can be attained on different levels:

1. Legal education must pay more attention to the use of foreign languages in the teaching process.
2. The Union itself must abide by the strict coherent use of terms and concepts and should not differ from Directive to Directive. At least within one sector a concept behind a term must be coherently applied.
3. The Union itself must provide better linguistic instruments for their citizens and must evaluate the activities carried out by the Commission itself.
4. Plain legal language is not attained by the sole use of English as a global means of understanding. All the other official languages have their own value and they must be used in the most coherent way, accessible even to foreign lawyers with a passive knowledge of these languages. The sensibility towards the use of the concept-based legal language needs a permanent training and an easily accessible support from a European Institution. Learning each other's language within the enlarging Community must be encouraged on all levels. A better and more coherent legal language use will also help European legal integration growing.

References

Fraser, Janet, The Discourse of official texts and how it can impede public service translators, in Journal of multilingual and multicultural development, Vol. 20, No. 3, 1999

De Groot, Gerard-René, Language and law, in Netherlands Reports to the fifteenth international congress of comparative law, Intersentia, Antwerp/Groningen, 1998,

Downes, Noemi and Heiss, Helmut, Sprachregulierung im Vertragsrecht: Europa- und internationalrechtliche Aspekte, ZVglRWiss 98 (1999), 28 –53

Giesen, Dieter, Über das Schwundern, das die Rechtsvergleichung auszulösen vermag, ZVglRWiss 97 (1998), 227 –239

Grossfeld, Bernhard, Macht und Ohnmacht der Rechtsvergleichung, Tübingen, 1984

Heutger, Viola, Ein kohärenteres europäisches Vertragsrecht, see <http://www.jusletter.ch> (<http://www.weblaw.ch/jusletter/Artikel.asp?ArticleNr=2211&Language=1>), 17.2.2003 (quoted as Heutger)

Heutger, Viola, Law and Language in the European Union, in Global Jurist Topics, Vol. 3, Issue 1, 2003, Article 3 (quoted as Heutger, Law and Language)

Lando, Ole / Beale, Hugh, Principles of European Contract Law, Part I and II, Kluwer International, Den Haag, 2000

Münzel, Frank, Lexicographical Musings – The Variegated Language of Sales Law: a Modern Tower of Babel, in Uniform Law Review, 2003 –3, p. 641 ss

Oppermann, Thomas, Reform der EU-Sprachenregelung ?, Neue Juristische Wochenschrift 2001, p. 2663 ss

Pozzo, Barbara, Harmonisation of European Contract Law and the Need of Creating a Common Terminology, in European Review of Private Law, Volume 11, No. 6 –2003, p. 754 ss

Rüthers, Bernd, Rechtstheorie, München 1999

Sacco, Rudolfo, Einführung in die Rechtsvergleichung, Baden Baden 2001, translated by Jacob Jousen, the original title in Italian, Introduzione al diritto comparato, was edited by UTET (quoted as Sacco)

Sacco, Rudolfo, Riflessioni di un giurista sulla lingua, in Rivista di diritto civile, 1996, p.57 ss (quoted as Sacco, lingua)

Websites:

Action Plan on a more coherent European contract law:

http://www.europa.eu.int/comm/consumers/policy/developments/contract_law/com_2003_68_en.pdf.

Communication on European Contract law:

http://www.europa.eu.int/comm/consumers/policy/developments/contract_law/cont_law_02_en.pdf

©2004 by Viola Heutger
formatted and tagged by KH, 18.3.2004