Table of Contents

List of Contributors v

List of Abbreviations xv

Preface xvii

Chapter 1
The Significance of Legal Translation for Legal Harmonization 1
Cornelis J.W. Baaij

1.1. Introduction 1
1.2. Legal Harmonization in the EU 2
1.2.1. The Harmonization of Contract Law 2
1.2.2. The Consequences of Differences between National Contract Laws 3
1.2.3. The Need for a Uniform Interpretation and Application of EU Legislation 4
1.2.4. Three Shortcomings of the Harmonization Strategy Thus Far 6
1.3. Multilingual EU Legislation 7
1.3.1. Multilingualism, Linguistic Diversity and Language Equality 8
1.3.2. Equal Authenticity of Language Version 10
1.3.3. Legal Translation and Legal Revision in the Legislative Procedure 12
1.3.4. Legal Interpretation of Language Versions 14
1.4. The Requirements of Legal Harmonization on Legal Translation 16

1.4.1. Legal Uniformity versus Uniformity of Interpretation and Application 17
1.4.2. Definitions of Common Fundamental Concepts 18
1.4.3. From Minimum to Full Harmonization 20
1.4.4. Mandatory Consumer Protection Rules 21
1.4.5. The Multilingual Dimension of Legal Harmonization 23
1.5. Conclusions 24

Chapter 2
Legal Harmonization Through Legal Translation: Texts that Say the Same Thing? 25
Ingemar Strandvik

2.1. Introduction 25
2.2. General Principles of Legal Translation 26
2.2.1. Legal Terminology and Legal Drafting Styles 26
2.2.2. Norms for Legal Translation and Translation Theory 27
2.2.3. Legal Translation of Individual Legal Instruments 28
2.2.4. Translation in Multilingual Law-Making 28
2.3. The Quest for Drafting Quality 29
2.3.1. What Is the EU? 29
2.3.2. Transparency 30
2.3.3. Translation Taken for Granted 31
2.3.4. The Norms Governing EU Translation: The Rise of the Functional Approach 32
2.3.5. How to Define 'Drafting Quality'? 34
2.4. Legislative Quality 35
2.5. Terminological Quality 36
2.5.1. International Standards for Terminological Work 36
2.5.2. Specificities of EU Terminology 37
2.5.3. LSP Terminology versus EU Law Terminology 38
2.5.4. Terminological Status or Terminological Quality: Lawyer's versus Expert's Perspective 38
2.5.5. Synonymy 39
2.5.6. Definitions 40
2.5.7. Striking the Balance 40
2.6. Linguistic Quality 41
2.6.1. Clear, Simple and Precise 41
2.6.2. Who Are the Addressees? 43
2.6.3. Language Structure and Drafting Conventions 44
2.6.4. Terminological Phraseology 44
2.6.5. Drafting Rules and Subsidiarity 45
2.6.6. The Importance of Style Guides 45
2.6.7. Editing through Translation 47
2.7. Conclusions 48

Chapter 3
'Co-revision': Legal-Linguistic Revision in the European Union 'Co-decision' Process **51**
Manuela Guggeis and William Robinson

3.1. Introduction 51
3.2. Language Rules 52
3.3. Drafting Rules 54
3.3.1. General 54
3.3.2. Rules of Procedure 55
3.3.3. Declaration on the Quality of the Drafting of Community Legislation (1997) 55
3.3.4. Interinstitutional Agreement on the Quality of Drafting (1998) 55
3.3.5. Joint Practical Guide (2000) 56
3.3.6. Council's Manual of Precedents 56
3.3.7. Interinstitutional Style Guide of the Publications Office 57
3.3.8. Harmonization of Union Legislative Drafting Terminology 57
3.4. Rules on Legal-Linguistic Revision 58
3.4.1. Declaration on the Quality of the Drafting of Community Legislation (1997) 58
3.4.2. Interinstitutional Agreements 58
3.4.3. Joint Declaration (2007) 59
3.4.4. Rules of Procedure 59
3.4.5. At the Appropriate Stage 60
3.5. The Lawyer-Linguists and Their Work 60
3.6. What Do the Lawyer-Linguists Actually Look for in Practice? 61
3.7. The Co-decision Procedure 63
3.7.1. General 63
3.7.2. Commission Proposal 64
3.7.3. The Parliament and the Council 65
3.7.4. Role of Commission in the Co-decision Procedure 66
3.8. Production of the Final Text in All the Languages 67
3.8.1. Translation in Parliament 67
3.8.2. Translation in Council 67
3.8.3. Legal-linguistic Revision 68
3.8.4. Corevision 70
3.8.5. Final Steps in the Council 70
3.9. Terminology of European Union Law 71
3.9.1. Legal Terminology and Technical Terminology 71
3.9.2. Choice of Terms 72
3.9.3. Linguistic Interference 73
3.9.4. Avoid Terms Specific to One National Culture 74
3.9.5. Texts Must Be Translatable 75

3.9.6. Must Correspond in All the Languages 76
3.9.7. Terms Used in Union Law Are Presumed to Have an Autonomous Meaning 78
3.10. Conclusions 80

Chapter 4
Coping with the Challenges of Legal Translation in Harmonization 83
Susan Šarčević

4.1. Joining the Quest for Better Translation 83
4.2. Legal Translation Studies and Multilingual Lawmaking in the EU 84
4.3. Translation Strategy and Harmonization 89
4.4. The Need for a Receiver-Oriented Approach 93
4.5. The Functional Approach of Comparative Law 96
4.6. Use of National Legal Terms in EU Directives 98
4.7. Making Translations of EU Secondary Legislation More Effective 102
4.8. Beyond Harmonization 105
4.9. Conclusions 107

Chapter 5
A Dictionary for Legal Translation 109
Marta Chromá

5.1. Introduction 109
5.2. Legal Translation and Law Dictionaries 111
5.3. Legal Translation and the Knowledge of Law 112
5.4. Legal Translation as Legal Discourse 114
5.5. Legal Translation and Interpretation 116
5.6. Contextual Interpretation 120
5.7. The Quality of a Dictionary for Legal Translation 123
5.8. Preliminary Considerations on Making a Legal Dictionary 125
5.8.1. Who Will Be a Prevalent User of the Dictionary? 126
5.8.2. What Type and Size of a Dictionary Is Planned? 126
5.8.3. What Macrostructure Should Be Chosen? 128
5.8.4. Will the Dictionary Contain Only Terminology? If Not, What Will Be the Proportion between the General Language Vocabulary and Terminology? 128
5.8.5. What Systems of Law Will Be Included If the SL Is an Official Language in More Than One Jurisdiction? 129
5.8.6. What Branches of Law Will Be Included and What Genres within Individual Branches Will Be Chosen? 130
5.8.7. What Microstructural Design of an Entry Will Be Relevant? 130

5.8.8. Practical Application: Good Faith and Fair Dealing 133
5.8.8.1. Conceptual Analysis 134
5.8.8.2. Lexicographical Solution 136
5.9. Conclusions 138

Chapter 6
The Influence of Problems of Legal Translation on Comparative Law Research 139
Gerard-René de Groot

6.1. Introduction 139
6.2. Comparative Law and Problems of Legal Translation 139
6.3. Legal Language, Legal Systems and the Principles of Legal Translation 140
6.4. The Search for 'Equivalents' and Alternatives 142
6.5. The Influence of Translation Difficulties on the Work of a Comparative Lawyer 147
6.5.1. Nationality and Citizenship 148
6.5.2. *Perdida de nacionidad and perdida de ciudadania* 150
6.5.3. *Acquisition de nationalité and attribution de nationalité* 151
6.5.4. *Nationalité d'origine/Nacionalidad de origen* 153
6.5.5. 'Nationality by Birth' and 'Nationality by Descent' 153
6.5.6. Declaration of Option and Declaration by Registration 154
6.5.7. Renunciation/Release 156
6.5.8. Withdrawal, Nullification and Nullity 157
6.6. Conclusions 159

Chapter 7
Understanding Legal Languages: Linguistic Concerns of the Comparative Lawyer 161
Jaakko Husa

7.1. Introduction 161
7.2. Challenge of Multilingualism in EU Law: 'All the Other Language Versions' 164
7.3. About Legal-Epistemic Language 166
7.4. Epistemic Level of Legal Language: The Case of *Ius Commune* Comprehension 168
7.5. What Language Law Speaks? 170
7.6. The Lack of Epistemic Legal Language: The Case of Common Law from the Point of View of Civil Law 172
7.7. Different Reader Connotations: Potentially Lost in Translation 174
7.8. Evading the Babel: Conclusion 178

Chapter 8
English as a Legal Lingua Franca in the EU Multilingual Context **183**
Barbara Pozzo

8.1. Introduction 183
8.2. Various English 'Dialects' Worldwide and the Importance of English in the EU 184
8.3. The Role of English in the EU and the Aims of the EU Institutions 185
8.4. The Problems of Legal Translation 185
8.4.1. Legal Concepts as the Result of Different Layers and Traditions 186
8.4.2. Identifying the Demarcation Function in Legal Concepts 187
8.4.3. Legal Concepts Which Result from Certain Intellectual Movements and National Cultures 188
8.5. In Particular: The Problem of Legal Translation in a Multilingual Context 192
8.5.1. The Absence of Definition in Community Texts 192
8.5.2. The Use of Non-technical Definition 193
8.5.3. The Lack of Internal Coherence 194
8.6. Initiatives of the European Institutions on the Quality of Language 197
8.7. The Initiatives Taken in Order to Harmonize Contract Law 199
8.8. English as a Common Legal Language in the EU Context 200
8.9. Conclusion 201

Chapter 9
Conclusions **203**
Cornelis J.W. Baaij

9.1. Legal Translation and Legal Harmonization 203
9.2. System-Specificity of Legal Language 205
9.3. Legal Language's Dependency on General Language 207
9.4. The Literal Method of EU Translation 209
9.5. A Functional Approach to EU Translation 211
9.6. The Importance of Comparative Legal Research for EU Translation 212
9.7. Final Remarks 214

Bibliography **215**

Table of Legislation **221**

Table of Cases **227**

Index **229**