Introduction

Drafting legal texts for European use is challenging. Drafting rules for consumers, and not for lawyers only, requires even more skills. Being a member of a network preparing model legislation on European Contract Law for the European Commission, I would like to present some insights into the working experiences within one of the various multilingual working groups on European Contract Law. The working group on Sales Law is trying to draft rules for the internal market with the aim to stimulate cross border transactions.1 Our main field of

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1 Dr. Viola Heutger is Associate Professor of Private Law at the University of the Netherlands Antilles (Curaçao), Dean of the Faculty of Law, and former team manager of the working group on Sales Law of the Study Group on a European Civil Code.

expertise is sales law and the working group is preparing a draft for a European Sales Law. We are part of a so-called Network of Excellence under the 6th framework program on research. In that program, a request for a European Contract Law has been formulated and a network of excellence has recently published an academic draft. By the end of 2007, the Network delivered a first proposal for the Common Frame of Reference (CFR) for European contract law as described both in the Commission’s Action Plan (COM [2003] 68 final) and the Commission’s Communication entitled “European Contract Law and the Revision of the Acquis: The Way Forward” (COM (2004) 651 Final) of 11 October 2004. The academic draft will be the basis for a CFR drafted by the European Commission. The CFR will be accessible from 2009 onwards and parties can opt in and agree on the terms set out in the CFR for their contract.

The Joint Network on European Private Law (CoPECL Network of Excellence), founded in May 2005, comprises several universities, institutions and other organizations, as well as more than 150 researchers operating in all EU Member States. The network’s proposal will be written in English and its main parts will be translated into different European Community languages.

**Working language**

The working language of most of the CoPECL working groups is English. The groups are composed of researchers from different EU Member States. The proposal will be presented in the form of principles (Common Principles of European Contract Law, CoPECL), including definitions, general concepts and legal rules. They will be supplemented by comments, comparative information and an evaluative analysis consisting of an economic impact assessment, an evaluation of the philosophical underpinnings, and the results of several case assessments regarding the applicability of the principles. The outcome of the different working groups of the CoPECL will be presented in different volumes. Following the
submission of the academic draft, the work of the European Commission will start. In 2009, and barring policy changes, the Commission will come up with a new legal instrument: a Common Frame of Reference (CFR). This instrument will be a legal toolbox that is easily accessible for parties drafting their contracts for cross-border use.1 The CFR will provide definitions and principles that can be used for all kinds of contracts.

This paper will provide an inside view on the linguistic aspects of the working method of the working group on European Sales Law of the Study Group on a European Civil Code.8 This group has drafted the Principles on Sales Law for the CoPECL draft and is composed of lawyers from different national backgrounds.9 With the exception of one, all speak English as a foreign language. The group has drafted all legal black-letter rules, comments and comparative notes of the proposal for a European Sales Law.

Models for English terminology


These English-language sources use quite different legal terminologies. Not all terms are attached to the same legal concept, and a hierarchy of sources must therefore be introduced. Our project is addressed to the European Commission, and what is known as the community acquis therefore has to be taken into account. The community acquis is the body of common rights and obligations, which bind all the Member States together within the European Union. As such, the community acquis is also binding for a new legal draft on sales law. Part

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2 For a description of the working group and their legal method, see Viola Heutger, Ein gemeineuropäisches Kaufrecht, Peter Lang, Frankfurt am Main, 2008, p. 171-199 and the website www.sgecc.net.
3 The group is composed of Ewoud Hondius (team leader), Viola Heutger (team manager), John Dickie (national reporter: English law, until October 2002), Christoph Jeloschek (national reporter: Austrian law), Hanna Sivesand (national reporter: Swedish law), Aneta Wiewiorowska (national reporter: Polish law), Georgios Arnokouros (national reporter: Greek law, until the end of 2002). The comparative notes have been elaborated with the assistance of members of the Amsterdam and Tilburg teams covering France (national reporter: Andrea Pinna), Italy (national reporter: Manola Scotton), Germany (national reporter: Viola Heutger and Roland Lohner), until June 2002, the Netherlands (national reporter: Marco Loos), Portugal (national reporter: Rui Cascao), and Spain (national reporter: Odavia Buenodiaz). The rules have been discussed at the plenary meetings of the Dutch team (in addition to the members already mentioned: Maurits Barendrecht, Martijn Hesselink, and Jacobien Rutgers). In particular, the Dutch team would like to thank Giuseppe Donatiello for his valuable comments and suggestions.
of this acquis is Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees. To a large extent, we have copied the terminology as well as the legal content of the Directive.

Not being part of the acquis but serving as a model for all contributing groups for a proposal for the CFR are the Principles of European Contract Law. These principles form the general part of European contract law. They were mainly drafted before Directive 1999/44/EC, and these two legal acts do not use the same legal language. Furthermore, the Directive concerns consumer law only. We therefore also needed model legislation for commercial law: the 1980 convention on contracts for the international sale of goods (CISG). CISG also served as a model for Directive 1999/44/EC. The English translation of the Dutch Civil Code has been used as a source of inspiration.

The sales draft from the network covers all sales transactions: commercial contracts, consumer contracts, and private contracts (within the meaning of activities of a non-professional seller and a non-professional buyer).

The definition of goods to be sold

Right from the start, it was of major importance to find an adequate definition for all objects to be sold and bought under the Principles. CISG and the Directive both use the term “goods” for the object of the sale. We adopted this term for all objects to be sold under our rules, but in doing so, we encountered a problem. The Principles on European Contract Law do not provide a definition of the term goods, but the Directive and CISG do. The term goods in the Directive is limited to the notion of consumer goods and is defined as follows:

Article 1
Scope and definitions
1. …
2. For the purposes of this Directive: …
   (b) consumer goods: shall mean any tangible movable item, with the exception of:
   — goods sold by way of execution or otherwise by authority of law,
   — water and gas where they are not put up for sale in a limited volume or set quantity, electricity; …

CISG defines goods only indirectly through a formulation that provides the areas where the regulation does not apply. Through this negative definition, the meaning of the term goods can be derived.
Article 2
This Convention does not apply to sales:
(a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;
(b) by auction;
(c) on execution or otherwise by authority of law;
(d) of stocks, shares, investment securities, negotiable instruments or money;
(e) of ships, vessels, hovercraft or aircraft;
(f) of electricity.

Neither definition covers all kinds of goods we wanted to promote under the scope of application of our European Sales Principles. The term goods had to be redefined again. It took four years to reach a consensus, and our definition of goods in the Principles of European Sales Law is now as follows:

Article 1:104: Definition of “goods”
In these Principles, the word “goods”:
(a) means corporeal movables, including ships, vessels, hovercraft or aircraft, space objects, animals, liquids and gases; and
(b) includes goods which at the time of the conclusion of the contract do not yet exist.

With this definition, we incorporated objects that were excluded from the other legal texts. Because of the different expectations of contracting parties, it was important to come up with a clear definition of what kinds of objects would be covered by our rules.

As reported above, the principles are meant to be translated later on. Another problem surfaced when we realized that the different sources provided different terms in the respective languages. I will give an example from the different German translations of our sources. The Directive reads:

Artikel 1
Geltungsbereich und Begriffsbestimmungen
…
(2) Im Sinne dieser Richtlinie bezeichnet der Ausdruck …
b) „Verbrauchsgüter“ bewegliche körperliche Gegenstände, mit Ausnahme von
— Gütern, die aufgrund von Zwangsvollstreckungsmaßnahmen oder anderen gerichtlichen Maßnahmen verkauft werden,
— Wasser und Gas, wenn sie nicht in einem begrenzten Volumen oder in einer bestimmten Menge abgefüllt sind,
— Strom;
…
Whereas CISG speaks of:

Artikel 2 [Anwendungsausschlüsse]
Dieses Übereinkommen findet keine Anwendung auf den Kauf
a) von Ware für den persönlichen Gebrauch oder den Gebrauch in der Familie oder im Haushalt, es sei denn, daß der Verkäufer vor oder bei Vertragsabschluß weder wußte noch wissen mußte, daß die Ware für einen solchen Gebrauch gekauft wurde,
b) bei Versteigerungen,
c) aufgrund von Zwangsvollstreckungs- oder anderen gerichtlichen Maßnahmen,
d) von Wertpapieren oder Zahlungsmitteln,
e) von Seeschiffen, Binnenschiffen, Luftkissenfahrzeugen oder Luftfahrzeugen,
f) von elektrischer Energie.

Our inspiration sources, civil codes from German-speaking countries, mainly used the term Sache for the English expression of goods, whereas the Directive used the term Güter. CISG used yet another term, Waren, as a translation of goods.

Which German term would be the most fitting for a European setting? The national Sache, the European consumer-context Güter, or the international Waren? In the end, it was a matter of policy that made us opt for the term Waren. Sache was seen as too controversial with regard to rights to be sold, and Güter reflected too strongly the purely consumer-orientated Directive, whereas Waren could include all kinds of assets.

During the work on the draft European Sales Law, all team members became highly sensitive to linguistic problems; we sometimes even changed the English wording in order to facilitate an adequate translation. The principles we have been drafting are aimed to serve as rules for cross-border trade, and we have therefore had to offer rules and definitions that are clear and that do not encourage the contracting parties to use their own legal terminology when reading our rules in their own language.

Language policy

European integration cannot proceed satisfactorily without attention being given to linguistic matters. The European Union continues to grow, and recent years many more official languages have been added to already substantial collection of official languages. More languages means more translations, and more translations means more staff and a more profound impact of interpretation on the law. No two translators will produce identical translations. What is needed is a European language policy. Such a policy could, for instance, be a clear decision on which language versions would be binding when the intention of a rule is unclear. Another option could be the development of standards for coherent language use. At present, the official legal language of the European Union is far from being a common pan-European standard. The Directives do not follow a specific language policy and each Directive therefore confronts the national legislators with new legal terminology.

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13 See, e.g., “Begriff der Sache” § 90 BGB (Civil Code Germany) “Sachen im Sinne des Gesetzes sind nur körperliche Gegenstände”, and § 285 ABGB (Austrian Civil Code): “Alles, was von der Person unterschieden ist, und zum Gebrauche der Menschen dient, wird im rechtlichen Sinne eine Sache genannt.”
Furthermore, the implementation process of European Directives offers a wide range of linguistic interpretations and opens the door to different uses of language. When comparing the German and Austrian civil codes, for example, it can immediately be observed how different both legal languages are, even in areas that derive from the same European Directives. In other words, besides the German language used in the Directive (EU German), two different legal national German languages can be distinguished in the civil codes of Germany and Austria. In cross-border trading, parties must negotiate precisely what they expect from each other, even if both parties are native speakers of German. One term in a shared language can have different implications in the two legal systems. For this reason, the working group on European Sales Law tried to avoid using the terminology of a particular national code.

At the start of cross-border negotiations, it is an open question which contracting language should be used. Consider the sale of a book to be sent from the Netherlands to Germany. Should the language of the seller, Dutch, or the language of the buyer, German, be chosen? Alternatively, would it be better to conclude the contract in English? If the chosen language was German, could the same contract also be used for an Austrian buyer? As can be seen from this simple example, cross-border trade is more than offer and acceptance, transport, and payment of the price; it generally involves language choices. The language choice is not restricted to the contract, but is also relevant for such documents as instruction manuals and guarantees. Language choice does not only concern making a clear choice for a particular language, it is also a question of which terminology within a single language and what style should be used. Furthermore, language choice is a touchy consumer issue. May European consumers always expect to negotiate in their native language (assuming it is one of the official languages of the EU)?

**Binding rules or pure information?**

Another problem is the method currently used by the European Commission. As I mentioned earlier, the CFR will provide rules and definitions, and as the examples given above show, some of the rules contain definitions. These definitions have been drafted for the purposes of a common European Sales law. However, some of them could also be used for other contracts, and for that reason the European Commission has decided to create a separate CFR category of definitions. Lawyers now face the problem of determining which category is binding: the rules or the definitions. What will be the legal nature of the definitions? Are they of an accessory or of an autonomous nature? Are they subsidiary or competitive? Can this be determined by analysing the text? So far, the legal nature of neither the rules nor the definitions has been specified by the European Commission.
The draft CFR for a European contract law provides some definitions. Some of these are included in the CFR chapter on sales law. The definitions of consumer, contract, goods, and movables read as follows:14

Consumer

A “consumer” means any natural person who is acting primarily for purposes which are not related to his or her trade, business or profession.

Contract

A “contract” is an agreement which gives rise to, or is intended to give rise to, a binding legal relationship or which has, or is intended to have, some other legal effect. It is a bilateral or multilateral juridical act.

Goods

“Goods” means corporeal movables. It includes ships, vessels, hovercraft or aircraft, space objects, animals, liquids and gases. See also “movables”.

Movables

“Movables” means corporeal and incorporeal property other than immovable property.

The use of the terms goods and movables is tricky. So far, neither term is used coherently in the draft CFR. In the years to come, this will be a challenge for interpretation, above all for those who have to translate the CFR. The draft CFR presents problems similar to those found in dictionaries. Most legal dictionaries are not linked to a specific legal source and therefore offer only a variety of different terms. This problem increases with every new legal instrument developed by the European Commission. Texts must not only be translated consistently, their legal significance must also be clearly expressed. Are they default or binding rules or do they merely have an explanatory function?

Towards a European legal language curriculum

The use of different languages is one of the obstacles to the EU integration process. Cross-border trade, especially from the consumer perspective, is hindered by language barriers. To reach a common use of legal language, a curriculum must be developed for a more coherent linguistic and terminological use inside the EU.15 Legal text of a certain quality can only be drafted when the legislator has a fundamental linguistic and legal knowledge and acts coherently. The past years have shown that the Commission is not a legislator acting coherently: legislative acts display all manner of styles, and, for no discernible reason, terms

In a multilingual environment, much more attention must be drawn to the interplay and symbiosis of linguistic as well as legal knowledge. Only a small number of EU citizens will participate in the internal market outside their home countries as long they do not trust in translations of foreign legal rules.

In the last thirty years, the interaction of law and language has developed into a particular problem for European lawyers and translators/interpreters due to the internal market and its sets of laws. Too many legal rules (or proposals) must be translated in a short time, and as a consequence, in some cases, legal rules come into force before the original document has been translated into all official languages. Many proposals for new directives will never be translated into all official languages. The capacity of the Commission to provide texts in all EU languages is overstretched as it is. Improvements are not to be expected in the near future, as the workload is simply too heavy. Now is the time to reflect on better working procedures for the future.

The twenty-seven Member States of the EU have twenty-three national or official languages among them. The linguistic expansion started in 1973 with the first enlargement of the EC when the UK, Ireland, and Denmark joined the Community. With the enlargement of 2007 the number of languages increased to the current twenty-three. Direct, language-paired translation into all of these languages will require a staff of 506 translators. Due to the high-level requirements, all these translators must also be experts in comparative law. Immediate translation from one language into another will be nearly impossible. New methods for cross-legal dialogue need to be found.

In addition, there are no legal comparatists who speak all official languages in order to diminish the infrastructure problems. Furthermore, there are well over one hundred regional or minority languages spoken in various parts of the EU. Moreover, there are no lawyers who are well-versed in all 28 legal systems, including the Scottish cross-legal system, of the European Union. In future, all European lawyers will have to be fluent in at least two official EU languages (legal or otherwise). If they are not, real legal integration and legal cross-border harmonization cannot be achieved. Furthermore, all lawyers must be aware of the fact that knowing a foreign language is not the same as knowing a foreign legal language. Only a dual approach – knowing both another legal system and its language – will enable lawyers to successfully participate in cross-border dialogue. Each term is connected to a specific concept and this concept can vary from nation to nation and even from legal field to legal field. Parties have contractual freedom and therefore probably do not need to know each other’s legal system all that well. But does this also hold true for many legal relations outside individual contract law, such as recognition of foreign diplomas, and alimony and other post-divorce expenses?

I will illustrate these reflections with some practical examples. At the working group meetings of the Study Group on a European Civil Code there were long discussions about the word “guarantee”. The term sounds very much the same in many languages: garanzia, Garantie, garantie, etc. However, it has more than one legal meaning. Depending on its national legal or European background it can mean: warranty; legal rights; extra rights of a

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16 See the German Version of the 2001 Action Plan on a more coherent contract law. Different translations of standard contract terms can be found there.

17 Irish, Bulgarian, and Rumanian have been official languages of the EU since 2007.
buyer in case of defective goods added to the buyer’s legal rights; a security; a pure consumer guarantee; or a confirmation that something will not change. Following the policy of consumer protection, the interpretation of the term cannot be left to the judge. The legislator must come up with a clear definition for the specific application of the term.

Another example is the term “consumer” as defined in Article 1, paragraph 2 of the Consumer Sales Directive 1999/44/EC. There a consumer is described as “a natural person who, ..., is acting for purposes which are outside his trade, business or profession”. In other Directives, however, another definition is given. And what about the definition in the door-to-door selling Directive, where a consumer is defined as “a natural person who, ..., is acting for purposes which can be regarded as outside his trade or profession” (Art. 2)? The price indication Directive defines a consumer as a “natural person who buys a product for purposes that do not fall within the sphere of his commercial or professional capacity” (Art. 2(e)). And according to Article 1(a) of the Unfair Commercial Practices Directive 2005/29/EC a consumer is “any natural person who, in commercial practices covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession”.

Two common features in the consumer definitions are that the consumer is a natural person and that the purpose should be outside some kind of business, commercial or trade activity. However, the given definitions are far from being coherent. Our own draft, being an abstract of the community acquis of the consumer notion, reads:

Article 1:202: Definition of consumer sale
For the purpose of these Principles, a consumer sale is a contract under which a natural or legal person who is acting to any extent for purposes related to that person’s trade, business or profession (the professional) sells goods to a natural person who is acting primarily for purposes which are not related to that person’s trade, business or profession (the consumer).

I will not provide here more definitions of the consumer notion from national codifications. Suffice it to say that these are not identical and raise a variety of open questions. One term can have different impacts. That in itself need not be a problem, as long as lawyers know how to interpret legal terms. However, in cross-border trade the context of a foreign rule quite often is not as clear to the lawyers involved as the context of their native legal system.

These examples show that the EU legislator cannot be seen as successfully setting standards and that improved law-making is much needed. Furthermore, there is an urgent need for higher-quality legal language training of lawyers throughout Europe. Such schooling should of course focus on the foreign language itself at least as much as on a standardized style of drafting. No two legislators dealing with a similar topic will produce identical drafts, but what should be possible is a style guide for all European lawyers. Such a style guide should take into account comparative methods.

**Eurobarometer survey**

Levels of foreign language proficiency differ throughout Europe. In a 2005 Eurobarometer survey, half of the citizens of the EU expressed their ability to have a conversation in at least one language other than their mother tongue. The percentages vary between countries and social groups: 99% of Luxembourgers, 93% of Latvians and Maltese, and 90% of
Lithuanians know at least one language other than their mother tongue, whereas a considerable majority in Hungary (71%), the UK (70%), Spain, Italy, and Portugal (64% each) only speak their mother tongue. Men, young people, and city residents are more likely to speak a foreign language than women, senior citizens, and rural residents, respectively. The best foreign language skills are found in relatively small Member States whose national languages are not widely spoken. It would make sense to analyze the legal education in these smaller countries in order to gain insights into how to train students in acquiring the knowledge of one or more foreign languages. Another question is what kind of conversation the Eurobarometer meant: a casual conversation about the weather or the capacity to negotiate and to conclude a contract? I am quite skeptical about the Eurobarometer as an indicator of how many Europeans are able to understand a legal document in a foreign language.

Nevertheless, it can be argued that there is no need for all people to speak one or more foreign languages. Nobody is obliged to participate in cross-border trade and, furthermore, there are many indications that the average consumer does not know the legal language of his or her mother tongue. This argument, however, is at odds with the aims set out by the Commission. In order to strengthen the internal market everybody must be able to participate in it. Only active participation will bring European integration, and foreign language knowledge is therefore needed.

According to the Eurobarometer, the most widely known foreign language in the EU is English with some 34%, followed by German (12%) and French (11%). This preference for specific foreign languages is reflected in the contract-law-harmonization projects in Europe. The official working language of the Study Group on a European Civil Code is English, the unofficial working language of some sub-working groups is German, and for another project, the so-called Pavia or Gandolfi Group has chosen French as its working language. French and English are also the main working languages of the Commission officials in Brussels.

Cross-border trade in a multilingual environment

The European Commission drafts legal texts in languages whose words usually have a fixed legal connotation at the national level. Quite often, these terms have other connotations on the EU level. This is one reason why Directives contain so many different definitions. These definitions strive for clarity and a context-based terminology. Unfortunately, the intention of the European Commission to create a clear and conceptually orientated terminology can ultimately not be reached by this method. The definitions as codified in Directives will be implemented into national law and redefined in accordance with existing definitions. The language of Directives is a more or less artificial one in order to give guidance to a national legislator. In the coming years, the Commission will come up with more Directives that provide maximum standards, which will lead to more obligations to follow the way set out in the Directives. It remains to be seen whether this new approach will be effective.18

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Cohesion and legal terminology in systems which have the same language

On the national level, there are specialist legal languages within one national language in such sectors as medical liability law, economics, criminal law, and private law. The term property, for example, has entirely different meanings in constitutional law and private law.

It can even be said that the Dutch legal language or the Swedish legal language as used in EU documents are also separate legal languages, detached from the national legal language.

Legal language even differs between countries having the same tongue. The use of German in legal language differs in its terminological use in Germany, Switzerland, Liechtenstein, Austria, South Tyrol, and Belgium. Germany, Switzerland, and Austria do not have a political unity, nor even a common legal source. Furthermore, there is a lack of interaction in law-making. As these countries do not share a common legal discourse, they inevitably use more than one German legal language. Nevertheless, there is a great deal of intermobility among lawyers in these German-speaking countries. Austrian professors are appointed in Germany, German professors work in Switzerland and Austria. In other words, the German-German language barrier is not an absolute one.

Other countries with the same language have chosen an alternative approach. The Dutch legislator Meijers helped his Belgian colleague Van Dievoet to translate the French version of the Belgium Civil Code into Flemish in the early fifties of the last century. Furthermore, in Scandinavia national legislature cooperate closely in law-making. These initiatives should be stimulated. Knowledge of another legal language makes cross-border understanding much easier.

A legal language framework

The developments of recent years have shown that the Commission has not been very sensitive to either language use or coherence. In order to improve consistency and coherence, several projects haven been launched. In the field of European contract law, the 2003 Communication from the Commission to the European Parliament and the Council titled “A more coherent European contract law – An action plan” (COM(2003) 68 final) was a first step towards rethinking legal harmonization and responsible use of legal concepts and definitions. In the Communication, the Commission expressed the hope that a CFR will improve the transparency and accessibility of enacted regulations. This CFR is now in its final drafting stage, but many linguistic problems remain unsolved.

If the practice of including document-specific definitions in Directives, databases, and dictionaries is continued as the only means of achieving a common understanding, the end result will be mutual incomprehension. Law develops and changes; not every term will be used for the same concept for ever. Some terms have a short life span, for example, the

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medium telex, which has been replaced by fax, which itself may soon be obsolete. Other terms take on a new meaning, such as the concept of possession in the New Dutch Civil Code. Legal developments do not stop on the European level. The rejected European Constitution anticipates new legal instruments using existing terms with different meanings. Article 33 of the Constitution provides definitions for the legal terms European laws, European framework laws, European regulations, European decisions, recommendations, and opinions. These definitions are not identical to those currently in use. Legal language is not drafted for eternity. Like any language, it is an instrument to help people understand each other.

Towards a coherent European legal language

Standardization of legal language within the EU will help widen integration. On the one hand, it is evident that the existing community acquis (the legal documents enacted by the Commission) must be reviewed. On the other hand, lawyers long for harmonization and standardization. Cross-border trade is only possible with standards and the parties’ confidence in the regulations.

The use of standardized terms seems to be a process that can only be achieved through a coherent use of language and the lessons learned from integrating activities, which have not been very successful,\(^23\) as the example of the consumer notion shows. Nevertheless, law and language are developing; there is a need to find names for new legal instruments and it must be accepted that these terms can only have a temporary connotation.

Standardization could be achieved in different ways.\(^24\) One approach could involve CFR as has been drafted by an academic network under the guidance of the European Commission. Such a CFR should provide definitions of terms and concepts for a sector-specific use in order to help develop a uniform and coherent use of language. It should reflect the discussion and consultation process of stakeholders, academics, and the policy decisions of the Commission itself as well as national legal tradition. Furthermore, such a CFR should clearly indicate whether or not its definitions can be used as a binding interpretation instrument.

Moreover, a new method of drafting legal texts for a multilingual environment must be developed. A monitoring period should be the start. An evaluation of how legal texts must be drafted is needed. Should legal texts be drafted by multilingual commissions together in one language or in at least two language versions? Should all translations be made on the basis of one original document or should all authentic language versions in principle be able to serve as the source document for translation? Another option is a drafting process involving legislators from at least three different language and legal backgrounds that represent quite different linguistic groups, such as German, Hungarian, and Italian, or Polish, French, and Irish.

As there is currently no clear European legal language policy, the different drafting techniques should be monitored and be evaluated in order to improve the clarity and coherence of legal language in the multilingual context of the EU.

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\(^{23}\) Action Plan, 68.

\(^{24}\) Sacco, “Riflessioni di un giurista sulla lingua”, Rivista di Diritto Civile, 57, 1996.
The struggle between legal and linguistic requirements

European integration cannot proceed without attention being paid to linguistic matters. There is a clear need for a more coherent approach. From a legal perspective, a comprehensive solution would be preferable: a single all-encompassing codification constituting one sweeping review resulting in one authentic and linguistically coherent text. This would be the only way to avoid fragmentation of language use. However, such a solution does not take into account differences in legal backgrounds and culture, and linguistic diversity, let alone diverging interpretations made by national judges. Keeping such a code up-to-date will also be quite difficult.

For that reason, an additional or alternative route must be explored: minimum sector-specific harmonization. In this incremental way – for instance, first harmonizing sales law, then insurance law, then tort law, etc. – the use of a coherent European legal language will develop gradually and naturally. Citizens will have time to become familiar with new terminology. They do not have to quickly acquaint themselves with an artificial legal language with an enormous amount of legal terms. This process could be dubbed the cultivation approach.

Unfortunately, although the EU is aware of the problem of linguistic diversity within the enlarging Union, adequate action is not taken. There is no institution on the EU level that interacts with European lawyers, linguists, and citizens to train them and to encourage them to express themselves in a language other than their native tongue. In addition, there is no European Law Institute safeguarding a coherent legal language use.

Participation in the legal integration process

Nevertheless, in recent years the Commission has attempted to start an EU-wide discussion on European contract law involving interested parties and stakeholders through the following documents: COM (2001) 398 final, COM (2003) 68 final, COM (2004) 651 final, and COM (2006) 744 final. This initiative has so far not drawn any response from legal linguists, and the replies that have come in do not consider language problems an obstacle to an integrated European Contract Law and to effective or improved consumer protection.

The process of designing a European Contract Law started in 2001, so before the enlargement with twelve new Member States. These new Member States have almost entirely neglected the opportunity to submit requests for a better linguistic approach. It seems fair to ask whether lawyers care enough about language, their main tool of the trade, to take care of language problems.

Conclusion

In the EU, legal language is interpreted and translated every day, but even so a strategy for a coherent approach is lacking. Recent efforts to strengthen the use of harmonized legal terminology and legal language in all EU Member States must be seen in a critical light. They are pure paper work and not a method on how to solve the problem. Hardly any official legal papers deal with the linguistic problems of an expanding Union.
A clear policy decision is needed in order to support and to maintain the legal and linguistic quality of European legislation. An interdisciplinary institution as a standard safeguard and a collective memory would be advisable. Furthermore, legal education should pay more attention to the use of foreign legal languages in the teaching process. At the very least, optional courses should be offered in foreign legal languages. Students must be trained in more than one legal language and must, as part of their academic curriculum, be able to express themselves and to explain their own legal system in more than one language. Legal integration needs people with access to more than their own legal system. Legal education should contribute to the European legal integration. It is to be hoped that the CFR and its translations will contribute to the improvement of legal languages.

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