EUROPEAN REVIEW OF PRIVATE LAW
REVUE EUROPÉENNE DE DROIT PRIVÉ
EUROPÄISCHE ZEITSCHRIFT FÜR PRIVATRECHT

Contact
Marie-José van der Heijden, e-mail: espl@kluwerlaw.com

Editors
E.H. Hoitink, Universiteit Utrecht, Molengraaff Instituut voor Privatrecht, Utrecht, The Netherlands
M.E. Storme, Katholieke Universiteit Leuven, Belgium

Editorial Board
W. Cairns, Manchester Metropolitan University, England, U.K.; Florence G’Sell-Macrez, Université Paris 1, France; J.J. Cerkens, Université de Liège, Belgium; A. Janssen, Westfälische Wilhelms-Universität Münster, Germany, and Università di Torino, Italy; R. Jox, Katholische Hochschule Nordrhein-Westfalen, Aachen Köln, Germany; D.R. MacDonald, University of Dundee, Scotland; U.K.; M. Martin-Casals, Universitat de Girona, Spain; B. Pozas, Università dell’Insubria-Como, Italy; S. Whitaker, St. John’s College, Oxford University, Oxford, England, U.K.

Advisory Board
E. Bagińska, Uniwersytet Mikołaja Kopernika, Toruń, Poland; H. Beale, University of Warwick, England, U.K.; R. Clark, Faculty of Law, University College Dublin, Republic of Ireland; F. Ferrari, Università degli Studi di Verona, Italy; A. Gambaro, Università degli Studi di Milano, Italy; G. García Cantero, Departamento de derecho privado, Universidad de Zaragoza, Aragon, Spain; J. Ghent, Université de Paris, France; M. Heselink, Universiteit van Amsterdam, The Netherlands; C. Jamun, Université de Lille II, France; K.D. Kerameus, Ethniki kai kapodistriki Panepistimio Athinos, Athens, Greece; H. Kitz, Bucerius Law School, Hamburg, Germany; O. Lando, Juridisk Institut Handelshogskolen Copenhagen, Denmark; J.E. Liljefeldt, Universitetet i Oslo, Institutt for privatrett, Oslo, Norway; B. Lurker, Karl-Franzen-Universität Graz, Austria; H.L. MaxQueen, Department of Scots Law, University of Edinburgh, Scotland, U.K.; B.S. Markesinis, University College London, England, U.K./University of Texas, Austin, Texas, U.S.A.; V. Mikelenas, Teisės Fakultetas, Vilniaus Universiteto, Lithuania; A. Pinto Monteiro, Universidade de Coimbra, Faculdade de direito, Portugal; C. Ramborg, Göteborgs Universitet, Göteborg, Sweden; R. Sacco, Università degli Studi di Torino, Facoltà di Giurisprudenza, Italy; D. Spielmann, European Court of Human Rights, Strasbourg, France; L. Tichý, Univerzita Karlova, Praha, the Czech Republic; F. Wetto, Faculteit van, Universiteit Leiden, The Netherlands; H. Wilhelms, Helsinki Yliopisto, Finland.

Founded in 1992 by Essoud Hondius and Marcel Storme

ISSN 0928-9801

All Rights Reserved. ©2013 Kluwer Law International
No part of the material protected by this copyright notice may be reproduced or utilised in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage and retrieval system, without written permission from the copyright owner.

Typeface ITC Bodoni Twelve

Design Dingoo | Peter Oosterhout, Diemen-Amsterdam

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

EUROPEAN REVIEW OF PRIVATE LAW
REVUE EUROPÉENNE DE DROIT PRIVÉ
EUROPÄISCHE ZEITSCHRIFT FÜR PRIVATRECHT

Guidelines for authors
The European Review of Private Law aims to provide a forum which facilitates the development of European Private Law. It publishes work of interest to academics and practitioners across European boundaries. Comparative work in any field of private law is welcomed. The journal deals especially with comparative case law. Work focusing on one jurisdiction alone is accepted, provided it has a strong cross-border interest.

The Review requires the submission of manuscripts by e-mail attachment, preferably in Word. Please do not forget to add your complete mailing address, telephone number, fax number and/or e-mail address when you submit your manuscript.

Manuscripts should be written in standard English, French or German.

Directives pour les Auteurs
La Revue européenne de droit privé a pour objectif de faciliter, par la constitution d’un forum, la mise au point d’un Droit Privé Européen. Elle publie des articles susceptibles d’intéresser aussi bien l’universitaire que le praticien, sur un plan européen. Nous serons heureux d’ouvrir nos pages aux travaux comparatifs dans tout domaine du droit privé. La Revue est couscée en particulier à l’étude comparée de la jurisprudence. Les travaux concentrés sur une seule juridiction sont admissibles, à condition de présenter un intérêt dépassant les frontières.


Leitfaden für Autoren

Style guide
A style guide for contributors can be found in online at http://www.kluwerlawonline.com/europeanreviewofprivatlaw.

Index
An annual index will be published in issue No. 6 of each volume.
Conference Report: Pragmatic Issues in Legal Translation

LUCIA MORRA & BARBARA PASA

The conference ‘Pragmatic Issues in Legal Translation: From the Different Language Versions of the DCFR to the CESL Proposal’ took place in Torino, Italy, at the end of November 2012. The conference was organized by the Centro di Diritto Comparato e Transnazionale (CDCT) (Centre for Comparative and Transnational Law, see www.cdct.it) and the Department of Law of the University of Torino; the event was part of a research project titled ‘The Making of a New European Legal Culture: Prevalence of a Single Model, or Cross-fertilization of National Legal Traditions?’ coordinated by Michele Graziadei, a member of the Scientific Committee, together with Gianmaria Ajani, Silvia Ferreri, Lucia Morra, Barbara Pasa, and Rodolfo Sacco.

The aim of the conference was to promote debate on legal translation, with reference to recent philosophical, linguistic, and jurilinguistic reflection on translation in general.

The conference framework was outlined in the opening session by keynote speaker Susan Šarčević (University of Rijeka), an expert in the field of legal translation, with her seminal interdisciplinary work *New Approach to Legal Translation* (1997). She outlined theoretical as well as practical issues in legal translation, starting from the difficulty of guaranteeing the principle of legal certainty in translating multilingual legal texts, as is the case with European law.

The first session of the conference, *Vagueness in Legal Texts and Equivalence in Legal Translation*, centred on philosophical and jurilinguistic issues arising from the relationship between law, language, and translation.

The pragmatician Nicholas Allott (University of Oslo) described the varieties of vagueness that characterize normative texts and highlighted the value that vagueness may have in these texts and the importance of preserving it in translation, a task that requires reference to tools developed by inferential pragmatics. Endorsing this view of vagueness in law, the jurilinguist Jan Engberg (Aarhus University) emphasized that legal translation, as a form of human communication, cannot avoid some general vagueness, although specific points of indeterminacy can be recognized and signalled.

Francesca Ervas (University of Cagliari), a philosopher of language, spoke about semantic and pragmatic equivalence in translation, concentrating especially on what sort of equivalence a translation can achieve, since absolute equivalence between texts of different languages is impossible. She suggests that the value of a translation may be usefully related to the particular kind of ‘exchange value’ that

* LUCIA MORRA, Ph.D., Lecturer in Logic and Philosophy of Science at the University of Torino; BARBARA PASA, Associate Professor of Private Comparative Law at University of Torino.
texts acquire in the boundary areas between different communities. Translation may then be considered as a negotiation process in which the translator decides step by step, throughout the text to be translated, which words of a language are to be exchanged with the words of another language.

The comparatist Barbara Pozzo (University of Insubria, Como) spoke about various problems of legal translation, such as false friends, boundaries of legal concepts, stratification of meaning, immanent meanings, and those connected with the ‘genius’ of a language, which lead comparative lawyers to conclude that absolute equivalence in legal translation is a myth.

The session was concluded by two further contributions. Jaap Baaij (University of Amsterdam) described the need for a ‘Common Coordinate System’ to establish a concrete methodology in translation; he argued that once this system is set up, legal definitions in different languages will be able to refer to the same common legal concepts. Finally, Martina Bajić (University of Rijeka) adopted a cognitive terminological approach to discuss the issues raised by the translation of case law of the Court of Justice of the European Union.

The second and the third sessions of the conference attached special emphasis to a number of practical issues.

The second session, Legal Translation as an Exercise in Comparative Law, focused in particular on the five language versions of the ‘Draft Common Frame of Reference’ (DCFR). As is known, the DCFR, originally drafted in English, is the ‘tool-box’ of definitions and model rules that a network of European legal scholars have produced in the last ten years in response to the European Commission invitation to restate the existing acquis (both national and European legal rules) on private law.

Most panellists in the second session had been involved in translating the DCFR from the ‘original’ English version into versions in German (Christoph Busch – Viadrina, Frankfurt Oder), French (Michel Séjean – Université Panthéon-Assas, Paris), Spanish (Carmen Jerez – Universidad Autónoma de Madrid), and Italian (Cristina Amato – Università di Brescia; Anna Veneziano – Università di Teramo). They either discussed the reasons that had led them to adopt a specific term or a certain expression rather than other possible solutions, or they questioned the principle of equivalence and correspondence in these legal translations. Gerhard Dannemann (Centre for British Studies, Berlin) explained what ‘system neutrality’ means in the legal drafting process before the legal translation process, providing examples (translation of non-performance, agreement, termination, due) drawn from his experience as a member of the Terminology Group within the Research Group on Existing EC Private Law (known as the Acquis Group, see Contract II, 2009).

The third session, From the DCFR to the Proposed Regulation on CESL, focused on the Common European Sales Law (CESL), the ‘Proposal of Regulation on a Common European Sales Law’ (October 2011). The CESL is a concrete Proposal of Regulation on sales law and comes directly from the European
institutions and not from legal scholars. This means that, once promulgated, it will have direct effect: thus, the definitions of legal concepts and the terminological choices will play a strategic role in the process of translation of the CESL into the 23 authentic language versions of the EU. Although Article 33, paragraph 3 of the Vienna Convention on the Law of Treaties states that the terms of a Treaty are presumed to have the same meaning in each authentic text and Article 55 of the Treaty on European Union codified the same idea, namely that all language versions of the Treaty are considered as authentic (the so-called principle of equality of EU official languages), legal scholars are the first to admit that equal meaning is rarely achieved in the parallel texts of a legal instrument.

How then can the multilingual version of the CESL enhance transnational commerce within the EU internal market? On the other hand, could EU citizens agree to be regulated by a ‘monolingual’ CESL, written in ‘European English’? As regards sales law, does the requirement to respect linguistic diversity better protect European consumers and their health and safety?

The panellists of the third session offered some examples of the complexity and ambiguity of multilingual legal instruments: Onofrio Troiano (Università di Foggia) looked at the CESL and the exclusion of ‘mixed-purpose contracts’; Elena Ioriatti (Università di Trento) dealt with the CESL and the concept of ‘obligation’, with its varying national connotations. The linguist Jacqueline Visconti (Università di Genova) provided examples of comparative textual analysis of the CESL in four language versions (English, French, German, Italian). Finally, Manuela Guggeis, Head of Unit of the ‘Quality of Legislation Directorate’, Legal Service (Council of the European Union) described the legislative process for the adoption of the Regulation on CESL and the role lawyer linguists can play within the EU institutions.

Rodolfo Sacco (Università di Torino, Accademia dei Lincei) closed the conference with his speech in French (a fitting choice, in view of the conference theme) on legal translation as translation of an untranslatable text (Traduction juridique: traduction d’un texte intraduisible?).

The conference proceedings will be published by Peter Lang (Summer 2013).
List of Contributors

THOMAS KADNER GRAZIANO
Dr. iur., LL.M. (Harv.)
Professor of Law/Professeur ordinaire
Faculty of Law, University of Geneva
Department of Private International Law (INPRI)
40, boulevard du Pont-d’Arve
CH-1211 Geneva 4
Switzerland
Tel.: +41 22 379 85 07
Fax: +41 22 379 84 63
E-mail: Thomas.Kadner@unige.ch

PETER ROTT
Associate Professor
Faculty of Law, University of Copenhagen
Studiestraede 6
1455 Copenhagen K
Denmark
E-mail: Peter.Rott@jur.ku.dk

JOSEPH SPOONER
Ph.D. Candidate, Teaching Fellow
Faculty of Laws, University College London
Bentham House, Endsleigh Gardens
London WC1H 0EG
United Kingdom
Tel.: +44 (0)7758616605 E-mail: joseph.spooner.10@ucl.ac.uk
Website: http://www.ucl.ac.uk/laws/experts/selfservice/index.php?id=9

ANNINA H. PERSSON
Professor of Private Law
Department of Law, Psychology and Social Studies, Örebro University
Sweden
E-mail: ahp@live.se
annina.persson@oru.se

ANN-SOFIE HENRIKSON
Doctoral candidate of Private Law
Department of Law, Umeå University
Sweden
E-mail: ann-sofie.henrikson@jus.umu.se

KARIN LUNDSTRÖM
Doctoral candidate of Private Law
Department of Law, Psychology and Social Studies, Örebro University
Sweden
E-mail: karin.lundstrom@oru.se

NADJA JUNGMANN
Law Professor at the University of Applied Sciences Utrecht in the Netherlands
Management Consultant at Social Force
Heidelbergerlaan 7
3508 AJ Utrecht
The Netherlands
E-mail: nadja.jungmann@hu.nl

MARC ANDERSON
Researcher and Teacher
University of Applied Sciences Utrecht in the Netherlands
Hogeschool Utrecht
Heidelbergerlaan 7
Postbus 85397 - 3508 AJ Utrecht
The Netherlands
E-mail: marc.anderson@hu.nl

THOMAS HOFFMANN
Dr iur., LL.M.
DAAD-Lecturer in Law
Faculty of Law, University of Tartu,
Näituse 13a, 50409 Tartu,
Estonia
Tel.: +372 5919 6614
E-mail: thomas.hoffmann@ut.ee
Website: www.rechtintartu.ee