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A fascinating game of ‘what if?’ and ‘why not?’: an out-of-the-chorus proposal to EU legal translation

*Review of Legal Integration and Language Diversity:
Rethinking Translation in EU Lawmaking*, written by
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312.

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Authored by C.J.W. Baaij, Professor at Yale Law School University, *Legal Integration and Language Diversity* provides a comprehensive, engaging, and highly innovative analysis of the primary translation challenges posed by multilingual lawmaking in the EU. The volume constitutes a welcome addition to the vibrant field of institutional translation, which, since the publication of Šarčević’s *New Approach to Legal Translation* in 1997, has almost exclusively veered into target-oriented avenues, dwelling on the core principles there behind (Šarčević

2012; Biel 2014, 2017; Wagner et al. 2014; Castagnoli 2017). Against this quite monolithic backdrop, Baaij formulates his out-of-the-chorus proposal to shed new light on the timeless issue of how to achieve legal certainty within institutional multilingualism. In a pragmatist spirit, thus acutely aware of the legitimacy of the counter-party's requests for more natural and fluent translations, Baaij warns against the risk that freer translations may cause the entire system to collapse under its own weight. What Baaij foresees is a situation plagued with legal uncertainty caused by linguistic discrepancies among equally official parallel texts.

One block at a time, this central thesis is developed dynamically between principles and practicalities through an integrated-interdisciplinary approach broadly encompassing translation theory and comparative law. The result is an unprecedented research effort offering an ambitious and groundbreaking proposal: crowning English as the sole official EU language and adopting a renewed source-oriented approach to EU institutional translation. As a researcher and professional translator devoted to this field for many years, I can vouch that only rarely has a similar change been envisaged in such a pervasive, radical, and clear-cut way as suggested here, while simultaneously challenging both the ideal of EU formal multilingualism proclaimed in the Treaties and the current dominant reader-oriented paradigm within legal translation studies.

Aware, as I am, that the controversiality of the solution may irk some legal translators and practitioners in European policymaking – I still would recommend this book even to the most sceptics, tempted to toss it away before giving it a try. Whatever the precise implications, readers are not necessarily presumed to endorse every one of Baaij's suggestions. They are simply invited into a fascinating game of 'what if?' and 'why not?'. An invitation that I strongly believe should not be missed in an ever-increasing integrated political European Union facing the challenge to remain faithful to the noble intention to communicate with every EU citizen in their own heritage language.

The text comprises 312 pages, organised into seven chapters, each concluding with a short sound commentary. The first one, "Introduction", succinctly reports the key thread of the book, worded as follows: "How can the EU create laws that are uniform in a multitude of languages? "Specifically, how is to attain both legal integration and language diversity simultaneously, without the latter compromising the former?"(p.1). The strongest point in Baaij's epistemology is then made clear from the outset. In a triangulation of perspectives never seen

before in the field of institutional translation, the reader will most benefit from (i) qualitative case studies dealing with written translations, (ii) interviews conducted with translators, lawyer-linguists, and legal revisers between 2008 and 2015, (iii) quantitative analysis of Court's case law relating to discrepancies among language versions between 1960 and 2010.

Chapter 2, "Articulating the Task of EU Translation", clearly highlights how Baaij's critical pragmatism does not stand *per se* but is rather strongly related to a heightened awareness of EU programmatic identity policy. In this vein, the conceptualisation of new translation assessment standards is shaped by cross-fertilisation between translation theory and the fundamental principles underpinning the EU's goals. What strikes the reader the most in this lucid exposition is Baaij's ability, probably relying on his experience as a law professor, to synthesise complex technical legal knowledge and make it approachable and digestible for translators and translation researchers. In light of these considerations, the case study "Multilingual Interference in Contract Law Integration" elaborates on the ways in which discrepancies among language versions can hinder the promotion of legitimacy, transparency, and efficiency of EU law. The explanatory comments are plentiful but not excessive in number and give ample evidence for a reliable roadmap for explicit evaluative criteria to avoid terminological inconsistencies and legal uncertainty in commercial and legal practices.

As the title suggests, Chapter 3, "Formalising the Primacy of English", sets out to shake the foundation of the current EU principle of equal authenticity of language versions. The metaphor of a "veil" (p. 70) – to be lifted once and for all – is deep and persuasive in revealing the contradictions of this form over-substance principle, actually built on a very strict number of internal working languages (English and – to a much lesser extent, French). The most convincing part is the quantitative-qualitative analysis of the Court's interpretative activity in 264 language cases from 1960 to 2010, which clearly confirms that only rarely an explicit comparison or an assessment of more than a single language version is included in the Court's reasoning. This evidence provides Baaij with a rock-solid basis to argue for the need to allow the English language version to function not only substantially but also formally as source text, thus reflecting more coherently the legislative drafting process. Throughout the chapter, readers may find passages of

relevance that expand upon the need to bring uniform interpretation and application of EU law back at the heart of the debate.

Perhaps the most theoretical of the book, Chapter 4, “The Mixed Approach of Current Eu Translation”, takes an expansive view when claiming that the loudly heralded receiver-oriented method employed in EU legal translation practices is *de facto* a largely invisible “mixed approach” (p. 105). The line of reasoning is straightforward: despite all the proclamations about EU Translation being receiver-oriented, source-oriented techniques would inevitably be bound to re-emerge to achieve “formal equivalence” (Nida 1964) among equally official parallel texts. The issue is not a novel concept to anyone who has been following institutional translation literature. However, Baaij gives the topic further scholarly heft by justifying his much-promoted breakthrough on the grounds of an inherent inconsistency in current translation practices, incapable of fully meeting either of the opposite divergent aims entailed in a mixed approach.

Chapter 5, “Considering a Source-Oriented Alternative”, presents an unprecedented analysis of EU translation practices aimed at meticulously classifying types of discrepancies among language versions as observed by the Court in its case law from 1960 to 2010. Results are scrutinised in tables and figures to demonstrate that translations showing a high degree of textual homogeneity are less likely to give rise to interpretative controversies requiring the Court’s intervention to be solved. The discussion provides Baaij with a springboard for a defence of an entirely committed source-oriented approach to EU institutional translation. In reflecting more deeply on this conclusion, one minor criticism must be made. Though compellingly argued, Baaij’s reasoning does not seem to give due consideration to upstream elements, such as language indeterminacy of the source text, which could act as *prima facie* candidates for the emergence of such issues. Because of this weakness, the reader’s curiosity about the proclaimed superiority of a source-oriented approach over a target-oriented one in better preserving the spirit of the law is aroused but never completely satisfied.

Chapter 6, “The Implementation and its Challenges”, continues exploring the issues presented in all previous sections but from a more practical perspective. A crucial step towards demonstrating the strength of Baaij’s solution is therefore made by applying the proposed approach to the European Contract Law *acquis*. This analysis provides an excellent opportunity for the reader to evaluate how a renewed source-

oriented approach could solve, or at least reduce, current discrepancies among language versions toward legal uniformity. The examples especially direct our attention to the strategic use of neologisms and syntactic correspondence to avoid diverging national connotations of EU legal terms. The closure provides the readership with fresh food for thought when upholding that contrary to common belief, language versions which appear less than natural may nevertheless better secure the uniform application of social rights and the fundamental freedoms of the internal market.

The last chapter of the book, “Summary and Conclusions”, pleasantly surprises the reader with the openness of the debate, as Baaij’s harsh tone fades out to make room for a milder and more dialogic attitude. In this compelling closing argument, Baaij states that the book was not meant to have the final say on the matter, being “not so much a resolution [but] an invitation for further discourse” (p. 239). In this way, the author encourages linguists, translation specialists, terminologists, and law theorists to collaborate toward vital contributions to the current literature on EU institutional translation.

As this review reveals, *Legal Integration and Language diversity* is a thought-provoking book which combines an impressive breadth of material with careful attention to essential details. On the downside, its Achille’s heel may be considered the time boundary set by Baaij to the year 2010. No real comparison is made between the consistent source-oriented approach proposed by Baaij and the newest solution, widely regarded as more reader-oriented than ever, launched precisely in 2010 to solve shortcomings in EU translation practices, bearing the emblematic name of *Clear Writing throughout Europe*¹. Although minor, such results could have proven to be worth mentioning if only to add puzzle pieces to the overall picture and, in the best-case scenario for Baaij, even better support his thesis about target-oriented translation practices relying on irreconcilable divergent aims. This lack of comparison may give most critics the misleading impression of wishing to score an easy win, which, I genuinely think, is not the case. Rather, it suggests a potential niche worth pursuing in future related studies.

¹ For more information, please consult <https://op.europa.eu/en/publication-detail/-/publication/bb87884e-4cb6-4985-b796-70784ee181ce/language-en> (accessed February 22, 2023).

Despite the above quibble, the book is a great event that has yet to be fully and adequately appreciated in the field of institutional translation. Instead of feeling threatened, translators should take full advantage of the chance to explore the relationship between the two critical concepts cited in the title from the privileged perspective of a jurist.

Scratching beneath the surface, they may well discover that Baaij's proposal goes much deeper than framing English as a forced choice in EU normative policy. It is also an attempt to acknowledge the presence of a continental legal English, which is developing differently and independently from Common law systems and international law rules. Based on this novel *lingua franca*, it could be possible – and I think *sensible* (if we limit Baaij's approach to the terminological realm) – to expand the other Eurolects for the benefit of multicultural and inclusive communication. This would avoid unintended overlaps with national-specific terminology. For our purposes, here, two central elements should be highlighted to understand the reason why Baaij's ahead-of-its-time proposal can gain new momentum: Brexit, which is bound to give English a surprise boost by making it the neutral option (Modiano 2017) and the relentless eastward expansion which could lead the European Union to the Tower of Babel situation, collapsing due to the weakness of its linguistic foundations.

Turning now to the book's most controversial proposal, it is unclear, at the time of writing, whether a comprehensive and all-rounded source-oriented approach could be politically justifiable considering the enormous steps already taken to reduce the democratic deficit of the EU. What is certain is that a stone has been thrown into the pond. Ripples may move from the epicentre towards a hypothetical future or just go back towards Baaij, the only one who dared to break the taboo.

In the meantime, it seems vital to contribute to keeping alive interest in this book, even in consideration of the most recent events, on the certainty that this thought-provoking, original work will surely inspire further innovative contributions in the field of institutional translation, both in favour and against the proposed approach.

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