Experiences in Harmonising

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This article reports of the experiences in harmonising legal terms within the LexALP project. It starts with the theoretical background and explains why harmonised terminology is useful, illustrates the connection between legal harmonising and harmonising legal terms and explains why the legal language is a very special language for special purposes. The first section examines the importance of legal systems for legal terminology, the second the harmonising procedure. Then, the procedural order during the Harmonising Group meetings is presented and discussed with the metaphor of a marketplace. The last section discusses the consequences of harmonised terminology: can the goal of an easier legal communication be reached?

The European Union itself has no harmonised legal terminology – why does it finance a project to acquire harmonised[1] legal terminology? We should not conclude that the EU is preparing to harmonise its terminology itself – a Hercules' work with 23 languages and 27 legal systems – nor should we conclude that the EU wants to fly a testing balloon to check whether it were feasible, but we can very well assume that the EU is aware of the value of harmonised legal terminology. How many misunderstandings and negotiation efforts could be avoided if legal communication was more efficient? But how about the States, do they really need harmonised terminology? And if they need it, do they perceive that need?

1. The call for harmonised[2] terminology

One might say that the actors of international law rather avoid getting too precise and concrete about their obligations. The texts of the Alpine Convention (AC[3]) breathe a spirit of good-will in vagueness. There are only five legal definitions in all the AC, contrary to modern EU legislation, where legal definitions stand for the state-of-the-art in legistics. Most of the Members of the AC took ratification really easy[4] – an indicator of low com-

1 "Harmonisation in terminology is the process of aligning terms and definitions between languages (or between language variants within a language)." The Government of Canada's Translation Bureau, http://www.termiumplus.gc.ca/didacticiel_tutorial/english/lesson5/page5_2_9_e.html (date of consultation 12.10.2007).

2 For the definition and scope of harmonisation see Chiocchetti & Voltmer p. 47.

3 The acronym AC shall stand for the Framework Convention and all its Implementation Protocols.

4 The Alpine Convention was ratified by all Parties. Italy has not ratified any of the Protocols yet. Switzerland has ratified only the 'welcome Monaco'-Protocol (an additional Protocol for the belated accession of Monaco to the Alpine

mitment to the protection of the Alpine environment through this instrument? Not necessarily, because Italy has a huge part of the Southern Alpine Arc and high interest in the Alpine Convention, but has ratified late, whereas Switzerland has ratified early, even though the Swiss Cantons were very reluctant to yield power to a supranational institution.

But in international law as elsewhere, precision and diplomacy are two different things: Precise language is always a diplomatic advantage, even when one intends to remain vague in content. Harmonised legal language allows precision both in acting and avoiding.

This might be behind the decision of the Carpathian Convention, a 'sister' treaty of the Alpine Convention, to adopt a *lingua franca* English, which is not an official language in any of the contracting States. But will communication become clearer by the simple fact that all actors use the same language? Keeping multilingualism out of the treaty externalises the challenges of translation, but does not resolve them. The negotiators have to translate the English wording of the Convention into the national languages for their Government, their Parliament and their people. The problem of equivalent legal expressions across languages and legal systems remains.

Harmonised terminology is more than precise and effective communication. It has a legal value. Of course there is no language law with sanctions for preferring an alternative expression over a harmonised term. We are in the presence of soft law: the harmonised terms do not oblige, but not using them might harm. A simple point of departure for the interpretation of a Protocol is the meaning given by legal experts during harmonisation. Lawyers often refer to comments of legal scholars to justify a certain interpretation, and there is a sort of unwritten 'burden of proof' on anybody claiming that a term means something different than the generally accepted definition. There is also an effect for legal drafting: new legal texts in the AC treaty system will, for the convenience of all, rely on the harmonised terminology. If a State wants to circumvent the precise meaning, it needs to throw in its political weight – either to introduce in one language an alternative, non-harmonised term, or to eliminate the inconvenient content in all four languages.

The **soft-law character of legally harmonised terminology** is subtle, but most of the States act with foresight and intervene during the harmonisation process where they have vital interests. Apart from the micro-States Monaco and Liechtenstein, all Member States showed interest in a certain interpretation at some point in time. In some cases such conflicts of interpretation could not be resolved and the term had to be abandoned. For instance, there was no way to individuate equivalent concepts for the idea of "having power over an animal or a plant after its extraction from a protected area". In the Protocol, this

Convention was signed in 1994). Germany, Liechtenstein, Austria, Slovenia and France have ratified all Protocols, Monaco has ratified the four Protocols relevant for the Principality. The EU has ratified five of nine Protocols. Only in Austria and Germany there is also jurisdiction on the AC.
See http://www.alpenkonvention.org/page3_de.htm (date of consultation 05.12.2007)

concept reads *détention – possesso – Besitz* and *posedovanje* (see annex for documentation). The underlying problems are two. The first is a terminological problem: the power over a thing is conceptualized differently in the different legal systems, so that it was impossible to give four corresponding labels, when those labels mean such different things in the national systems. This could have been resolved through case distinctions (two terms to be chosen from, according to context) or a note (explaining the special restricted or enlarged meaning within the AC).

The second problem was that the cases are not distinguished in the same way because of different legal approaches to the situation: in Germany, the Civil Law conceives of a proprietor with full rights on a thing, and of a (lawful or unlawful) possessor who has more rights than anybody else except the proprietor. The underlying idea is that it would be a danger for peace and order to deny the unlawful possessor the protection of the law, for example against a robber. The reason is that the possession and propriety have the same lawful appearance. The German legislator protects therefore even unlawful possession against violence, which always appears unlawful. Therefore violence is illegal even if directed against an unlawful proprietor. It is unlawful to steal plants from somebody who has picked them illegally from a protected area.

In France and Italy, the lawful possession (*possession/ possesso*) and the (possibly unlawful) keeping of something (*détention/ detenzione*) provide a different status in Civil Law. The protection from thieves is reached through a different mechanism. In this situation, harmonising would have meant introducing a profoundly different legal concept at the very basis of any Civil Law system. The term was dropped. Terminological harmonisation requires minor differences, like the situation after harmonisation of the law.

We have come across an interesting point here, the difference and connection between harmonising law and harmonising legal terminology. For the first, the EU Community has a harmonisation strategy laid down in articles 100-102 of chapter 3 of the EC treaty: "Approximation of laws – The Council shall […] issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market." The target is the common market, and the idea is that such a market works, when all technical, administrative and normative obstacles are eliminated. Such a harmonisation is different yet connected in a complex way to the harmonisation of legal terminology. The next section will compare the two processes to clarify that relation.

2. Differences between harmonised law and harmonised legal terminology

This table is to be read from the outside to the inside, starting from column A and D and proceeding to the middle columns B and C. The middle columns confront the differences and similarities.

Table 1: differences between harmonised law and harmonised legal terminology

Legal harmonisation →	**comparative and linguistic consequences/comments** → ←		**Harmonised legal terminology** ←
Context and point of departure: starting from 'what shall be', a specific regulation concern is ruled for its concrete application in the present.	Harmonisation starts with a research on the existing legal regimes in the Member States.	The definition of 'what is there' is done through interpretation. Interpreting a text develops its understanding and reduces the possible senses. The harmonising interpretation shows what can be understood and what not.	**Context and point of departure**: starting from 'what is there' to provide tools applicable in the future.
The underlying **intention** is to unify the legal systems, but not the languages.	When a directive is to be received by national law, it is usually not 'localised' and worked through terminologically. The EU language is taken over with the content, also because most of the directives come with definitions. As a consequence, national legal systems receive a) a homograph term with a different meaning, or b) an additional, divergent meaning for their pre-existing term. Both is regularly source of confusion and introduces obstacles for an efficient communication. The only way out is 'terminological hygiene', in the best case already when introducing directives, in the worst case later. **Legal harmonisation leads to a need for terminological harmonisation.**	In the AC there are examples where lawyers of one language claim to be in the presence of one legal concept, because in their language there is one term, but other lawyers claim that there are different concepts because in their language there are different terms: the harmonisation at text level cannot be found at term level. Hence, the legal fiction of equal content of the texts is difficult to sustain when the actual content is nearly impossible to identify. **Harmonising the terms brings harmony to the term-text-relation.**	The underlying **intention** is to unify the legal language used in intercultural specialised knowledge transfer, but not the legal system. The AC is already harmonised (i.e. of equal legal content in all systems and languages).
Legal **consequences** must be identical in all legal systems and languages.	The concepts do not have to be equal, but the need to arrive at identical results is a driving force: sometimes new conceptualisations (example: the *societas europea* in EU law) become familiar to the adopting legal systems, sometimes legal concepts change through the influence of the harmonised law (example: *Überlassung von Arbeitnehmern* before and after the directive).	The consequences do not have to be equal, but the use of identical concepts makes it easier to reach an understanding and common solutions seem more natural.	Legal **concepts** must be identical in all legal systems and languages.
Normative in the strict sense of the word: **guide behaviour!**	**Sanctions** (EU treaty) are foreseen. Reciprocity is not a condition; every Member State is bound irrespectively of the behaviour of others.	**No sanctions** are foreseen. Even if there were any, a Member State could invoke the requirement of reciprocity ('real' international law).	Normative in a large or second level sense: **influence linguistic behaviour!**
Limits of the mission: harmonise results, but support difference at the level of methods, concepts and the 23 official languages! The languages, and therefore also the languages for special purposes shall be preserved!	As to content, legal harmonisation adapts law more quickly to changing social circumstances. As to language, legal harmonisation **develops the legal language** of most of the Member States, especially in lesser used languages and in the younger legal systems of the former communist States.	Defining and harmonising terms is interpretation, but it is **not binding** for a judge. Is the text to be interpreted in the way it was meant when the treaty was concluded (harmonisation came later than the text and would not count)? Does harmonisation have any legal effect at all on a norm of international law (harmonisation has no intention of changing the content of the treaty, but to take the treaty's content and use it for communication)? But: **soft-law character** (see below).	**Limits** of the mission: harmonise terms, but do not impeach the meaning of the AC 'by' doing so! Defining a term of the AC is an act of interpreting and of 'para-jurisdiction' without democratic legitimacy.
Coherent multilingual terminology **facilitates harmonisation work.**	Coherent terminology would facilitate the research of what law there is, and it would facilitate the norm-giving act, which could be written precisely and without any possibility of misinterpretation.	If there were identical legal content, there would be no need for comparison. There would be only correct and incorrect terms and a norm saying which term is the correct one would be superfluous.	Coherent legal content **facilitates terminology harmonisation.**

We have seen that legal harmonisation and the harmonisation of legal terms are different, yet connected, even complementary activities. The harmonisation of terms is a more linguistic kind of activity. One might therefore assume that there are similarities with other linguistic standardisation activities, as they are regularly done by the International Organization for Standardization and national standardisation organisations. Both the language of the law and the language of natural sciences and technology are languages for special purposes (LSPs), and this field of research usually treats all LSPs together (see for example the European Symposium on Language for Special Purposes). Nevertheless, legal terminology is profoundly different from scientific terminology.

3. Languages for Special Purposes compared

The following metaphor shall help to understand why legal language is so different from technical language:

Scientific terminology is like looking into the sea from different continents and naming the sea animals of the ocean in-between: the fish belong to the same scientific reality, and the difficulties stem from the different points of view from the different coasts, from different categorisations (industrial fish? common fish?) or from the fact that this type of fish is rather known at one coast than at the other. Still, the linguistic representation can be checked against reality and a good picture often helps to understand. In principle, all instances of that common sea can be integrated into one conceptual tree or ontology with clear, often hierarchical connections between the concepts.

Legal terminology is like looking from the ocean onto different continents and comparing the land species, which are in most cases different. Even where similar animals exist, the type of elephant on one continent is not the same type of elephant of the other continent, and even if comparable in size, scope and function, the completely different context (savannah vs. jungle) gives the African elephant a completely different meaning than the Indian elephant. This background is called legal culture by comparative lawyers.

In fact, legal terminology is still more complicated, because legal concepts are not real-life things, but inventions. Legal terminology is actually like comparing religious rules: to understand a rule we must try to know as much of the normative system in the background as possible. In legal terminology there will nearly never be a 100% match (not even in legal systems of the same language like Germany and Austria). All legal terminology is therefore comparative, with a focus not on linguistic but on functional features. While the artificial character of law is prone to categorisation as far as a single legal system is concerned, artificialness handicaps common ontologies for more than one legal system, whereas no problem should obviously be encountered in those cases where one legal system is expressed in more languages (e.g. Switzerland).

Having said that scientific and legal terminology is profoundly different, it should be easy to distinguish a scientific term from a legal term. Nevertheless, this is often difficult. As an example, the terms in the domains of tourism and traffic are rather often human inventions, and terms concerning flora and fauna or zootechnics are often taken from nature. Both pose difficulties for harmonisation:

a) A traffic term would be 'traffic capacity'[5], with the definition "The maximum traffic volume which can transit an existing road without curtailing the traffic flow." Terms and definitions might be easy to agree on, but is this a legal term at all? If it is a technical term, it should not be harmonised, because its definition should follow the scientific progress in all languages and legal systems. On the other hand, there are often competing opinions, theories and models in science, and the use of a certain technical definition rather than another would then be a legislative, norm giving decision. The definition for 'traffic capacity' might just as well be "The maximum traffic volume which can transit an existing road, without forcing a majority of the vehicles to reduce speed below the speed limit." Or it might be "The maximum traffic volume which can transit an existing road." All three definitions are technical, but the choice of one of them is legal. Therefore harmonisation might even be necessary for apparently technical and scientific terms.

Of course technical expertise in the field is important for harmonising technical terms. It is similar to technical expertise in law-making: norm givers consult technicians, but then they decide in the way they think best.

b) A term from zootechnics would be 'breeding animals'.[6] It seems that the concept is not abstract, but concrete, so that there should not be any harmonisation problems at all. A lion is a lion everywhere. Nevertheless, the term refers to a class of animals, and the strains used for breeding might be different throughout the Alps. They might be different in the future, when more farmers than today introduce ostriches as breeding animals. They might become different when buffalo breeding is spreading from Campania to the Italian Alps, because more and more buffalo cheese is exported. The term seems to depend on the social reality behind, and this might already be different or become different in the future. It is therefore appropriate to harmonise these terms as well.

c) Of course terms can be used in a common text in a common sense and in legal texts in a specific, legal sense. The problem arises when the legal text is somehow 'not only legal', or not in all parts, so that you can find a term also in the common sense. One example is 'responsible for soil use'.[7] The responsible might be defined legally in the sense that the environmental restrictions against over-use or under-use of mountain soil weigh on the

5 *Straßenkapazität, capacité routière, capacità stradale, cestne zmogljivosti.*

6 *Nutztierrasse, race d'élevage, razza di allevamento, pasma rejne živali.*

7 *Nutzungsgremium/ Nutzungsverantwortlicher, responsable de l'utilisation de l'espace, responsabile degli usi, odgovorni za rabo.*

landlord rather than on the lessee. The term 'responsible for soil use' might also be used in its common sense, comprising whoever is using soil. In fact, the term appears only once in the AC, where inventories should be made for any formal collaboration with persons who use the land. The AC does obviously not define who is in charge and who not, but intends to simply include any deal concerning soil use.

We might conclude that this term is close to phraseology, because its meaning is deliberately open. In any case, it is not a term that has to be defined and harmonised for better communication. But after a second thought, it might indeed be such a term after all, because it might adopt the restrictive, legal sense, and might be used in this sense in the future. Even when the AC leaves it open who the Member States collaborate with, it is obvious that the national administrations know very well with whom they have to cooperate and contract with (the landlord!) and with whom not (the lessee!). So even with an open definition at AC level the content might be precise by the simple fact that the underlying reality is already legally shaped by the national systems.

In this perspective, including that term or not is a decision of convenience. With the argument that the legal terms already in use are most important, the terms in the four languages have not been defined and harmonised, but they are still in the database to help translators.

The unfortunate consequence of the explained difficulties in identifying the (legal) terms is that the legal experts find themselves discussing about scientific or social facts. Sometimes experts in those areas would be required to resolve the discussions, and very often one of the harmonisers proposes to drop the question because it is "not a legal question at all".

Let us assume we are sure that we are in the presence of a legal term. It might have different denotations in different legal systems. But what are the legal systems? Can only States have a legal system of their own, even though the Alpine space knows also other norm-givers? Are these also different 'continents' as in the metaphor above?

4. The legal systems in the Alpine space

Two main criteria to identify a legal system are a) sovereignty and b) legitimacy.

a) A legal system is a non-contradictory normative universe, which provides exactly one answer to the question: "Is this claim sound or bad?" Only a sovereign normative universe can force some claims under the others and organise a legal hierarchy. The sovereign has to smoothen out all contradictions through meta-rules, often procedural and formal rules on how different pretences are ranked. Of course also the monopoly of power to enforce those decisions is necessary.

b) The political function of a legal system is to generate legitimacy through self-limitation. Sovereignty could not survive for long if it were not recognised as legitimate by most of the people for most of the time. Decisions of the sovereign come almost always with reasons and argumentations, making reference to meta-rules.

According to these two criteria, it need not be discussed that all eight national AC-States are legal systems of their own. It is also clear that they all have different content, as they recognise different claims and organise their self-limitation differently. Being different legal systems, their terminology has to be compared. But how about the supranational normative spheres, the EU, International Law and the Alpine Convention 'system'?

The EU fulfils the sovereignty criterion: it was founded as an emanation of national legal systems, because the Member States wanted to give equivalent, harmonised answers to a series of legal questions. Initially the EU 'borrowed' legitimacy from the national legal systems, but with its growing power the EU started to generate legitimacy on its own: the norm-giving process is checked and balanced in many ways today. Therefore the EU has started to become a legal system of its own also according to the second, political criterion.

The complication is that EU law cannot contradict national systems and the EU legal system might not be a 'different' legal system. In the metaphor we could talk of migratory birds, which visit both continents. The EU might be seen as complementary, as a common prolongation of the national legal systems. This view is only justified in those fields where the EU is ruling directly, by regulations and decisions. Where the EU is ruling indirectly, by directives, the Member States are free to use their own legal concepts to reach the intended goal. In these cases terms like 'traffic' might very well have a different meaning at EU level and at national level. The consequence for legal terminology is that EU concepts have to be compared to the presumably different national concepts (even though they might be in the same language!).

The AC has only faint traits of a legal system. The common answer of the Member States through equivalent AC Protocols and some concepts proper to the AC (e.g. *inneralpiner Verkehr/ trafic intra-alpin/ traffico intraalpino/ znotrajalpski promet*) are the first emancipatory attempts of an upcoming legal system. Another sign in this logic is the attempt to harmonise terms on the basis of concepts common to AC Members States but not necessarily to any of the other legal systems. Yet the AC is far from providing answers to all claims or from providing a political justification of its own. Nevertheless, the consequence for legal terminology is not that the AC uses concepts of the sphere of national law, EU law or International Law, but rather that it uses own concepts which are not set in a fully fledged legal system. Hence also the choice of treating the AC a system on its own, the 'Alpine Convention system', for the purposes of the LexALP project.

Therefore we still have to compare, because a concept suggested by the AC, such as the one presented above, might not exist or be different on national level. An additional complication is that we cannot see AC legal concepts directly 'at work', because AC obligations are not directly applicable like some parts of EU law. The AC Member States have to transform them into national law and enforce them. This necessity of a transformation into national law is due to the fact that the AC is part of international public law. Nevertheless, the content of concepts like 'transport' will be different in a pro-nature covenant as the AC and in a pro-economy covenant as GATT.

5. Methodology and procedural order

The validity of any scientific process depends heavily on the method, and the backbone of any scientifically valid method is the prescription of a certain order. Defining the 'perfect' order has been a big challenge for several reasons. The points of departure for harmonisation are very different, but the only possibility to understand the point of departure is starting to harmonise. Before harmonising, no categorisation is possible. This very abstract statement will be made clear with the following examples.

a) The AC has four official languages, but the languages fan out differently than the legal systems: Some legal systems have the same language as others (Switzerland, Germany, Austria, EU), some legal systems have several languages (EU, Switzerland, Italy). Therefore we encounter three different cases: language translation but no legal comparison (e.g. Italian and German in Switzerland), legal comparison but no linguistic translation (German in Germany and Austria), both language translation and legal comparison (France and Slovenia).

There is no compulsory order for the description of a concept and the terminographic itinerary through all the languages and legal systems varies a lot. But during the LexALP project, a best procedure has been developed (see next section).

b) Legal harmonisation is always interdisciplinary work with different points of view on how to proceed. For example, both lawyers and linguists agree on working with a corpus of authoritative texts, which are connected to the terminological data through schematic and controlled references. But when collecting this corpus of documents, linguists desire large amounts of text and in any case complete texts, while legal experts prefer to be more specific. For example, at the beginning of corpus collection it was debated whether text excerpts, e.g. only a few articles of a legal text, could be uploaded into the corpus.

Another question concerned the terminological relevance of legal texts. Whereas the legal experts were in favour of uploading any relevant legal text in the corps, even those containing only lists of place names, numbers or similar data, linguists were absolutely against burdening the corpus with relatively useless data. When the terms are extracted

from the corpus, linguists consider phraseology quite useful for translators, and they see the advantages of automatic extraction relying on frequency, while legal experts see concepts where they are not even explicitly named in the text. In the same way linguists are especially interested in the contexts and strive for the most meaningful context in every language, even when parallel texts exist. On the contrary, legal experts are almost exclusively interested in definitions and wish to have corresponding definitions in the four languages at AC level, so they will happily use parallel texts, they being translated or original language versions. A different point of view could be noticed during the constitution of glossaries, the subdivision of the AC-terminology into thematic sub-domains. It is neither legal nor linguistic but pragmatic, because it follows the division of AC texts into different thematic Implementation Protocols.

At the end of the day, different points of view are daily bread for any interdisciplinary project. What makes LexALP an additional challenge is that the output of one task is the input for the next: the corpus was collected with a legal perspective, which implied more effort from a linguistic point of view (research of equivalents, contexts and definitions also outside the corpus). In a second step, the extracted terms had to be defined from the legal point of view, but not all terms corresponded to legal concepts. Finally, during harmonisation, terms were changed to satisfy the legal congruence of the underlying concepts, with the consequence that the coined term lacks linguistic description (i.e., a context).

c) A naive procedural rule for harmonisation could be: check the correspondence of the terms first, then check the correspondence of the legal content. Such an approach would distinguish between 'phraseological units' and 'real terms', because phrases do not describe a specific legal concept and would only require the first step, i.e. comparison at linguistic level. Unfortunately, exactly this distinction has posed a recurrent difficulty when harmonising four languages.

To proceed step by step in a predefined order is not only impossible for term and definition, but also for the label 'phraseology'. There was a lot of discussion about this data category during the LexALP project. The point of departure was the linguistic category 'phraseology', but it soon became clear that the scope of phraseology is different in legal terminology: a legal concept has to have a definition for comparison purposes, as described in the example above. Non-legal concepts and phraseology do not need a legal comparison, and therefore do not need to be defined. Linguistic dictionaries do of course define non-legal concepts, and even for phraseologies it is possible to formulate what they mean. For the purpose of the harmonising project the importance lay in the distinction between what indicates a legal concept and what not.

One might assume that all terms to be harmonised are chosen in accordance to their legal meaning, so that all terms stand for a legal concept. Unfortunately, things are not that easy. When extracting four corresponding strings from an AC text, one ends up for

example with *UVP-Recht* (German), *droit national applicable aux études d'impact* (French), *normativa sulla VIA* (Italian), and *pravni predpisi o PVO-ju* (Slovene). The German string is a legal term with a precise meaning in law, but the expressions in the other languages are not. An explanation for this is that the Protocol on Transport was first written in German and then translated into the other languages. As a consequence, the German term would need a definition whereas the others would not. But then, can there be harmonised equivalents when there is only one term? In any case, for the benefit of translators, also a quartet of four corresponding phraseological units were harmonised in LexALP. Therefore also the recommended translations of a term can be harmonised.

Coming back to the data category 'phraseological unit', there was much discussion about the fact that it was used to indicate that a legal definition is not required. As explained, it means 'anything but a legal concept', independently of the linguistic category 'phraseology'. We find therefore all kinds of non-fixed word formations: phraseology, non-legal terms strings and even half-sentences. For the purpose of harmonisation, these strings were labelled 'phraseological unit'.

d) The two-step approach is also impossible for another reason: terms may seem easy enough, but their legal definitions might diverge all the same. For example, the two Romance languages Italian and French seem to have a perfect correspondence for the terms *protezione del clima* and *protection du climat* (climate protection). Even in English the Latin etymology is obvious, and the meaning seems to be granted. Only when it comes to define the concept for the Italian legal system on the one hand and the French and Swiss legal systems on the other hand, then we find out about the profound difference. In Italy *protezione* means protection of an object from negative influence, for example protection of a child, a building or a computer. The protection of something as complex and constantly evolving as the climate is always labelled *salvaguardia*, a word with the same roots as safeguard. From this surprise at definition level we have to go back to the term level and couple the Italian *salvaguardia del clima* with the French *protection du climat*, even though the Italian *protezione* and the French *sauvegarde* do exist. Any uninformed user of the database would consider this, judging from the linguistic point of view and backed by any Italian-French dictionary as an error.

In those 'surprising' cases the harmonisers feel that they should justify or explain their choice in a harmonising note. Unfortunately there are too many comparative and linguistic considerations for any given term to fit into a short note (which should come in four languages, for the benefit of all users).

Despite all those difficulties, procedural rules have been defined, and we present them in full conscience that they are not more than a basis for discussion.

6. Work-flow during the Harmonising Group meetings

When the glossary reaches the Harmonising Group (HG), it has proven to be the best procedure to proceed as illustrated in Figure 1.

Figure 1: workflow during the Harmonising Group meetings

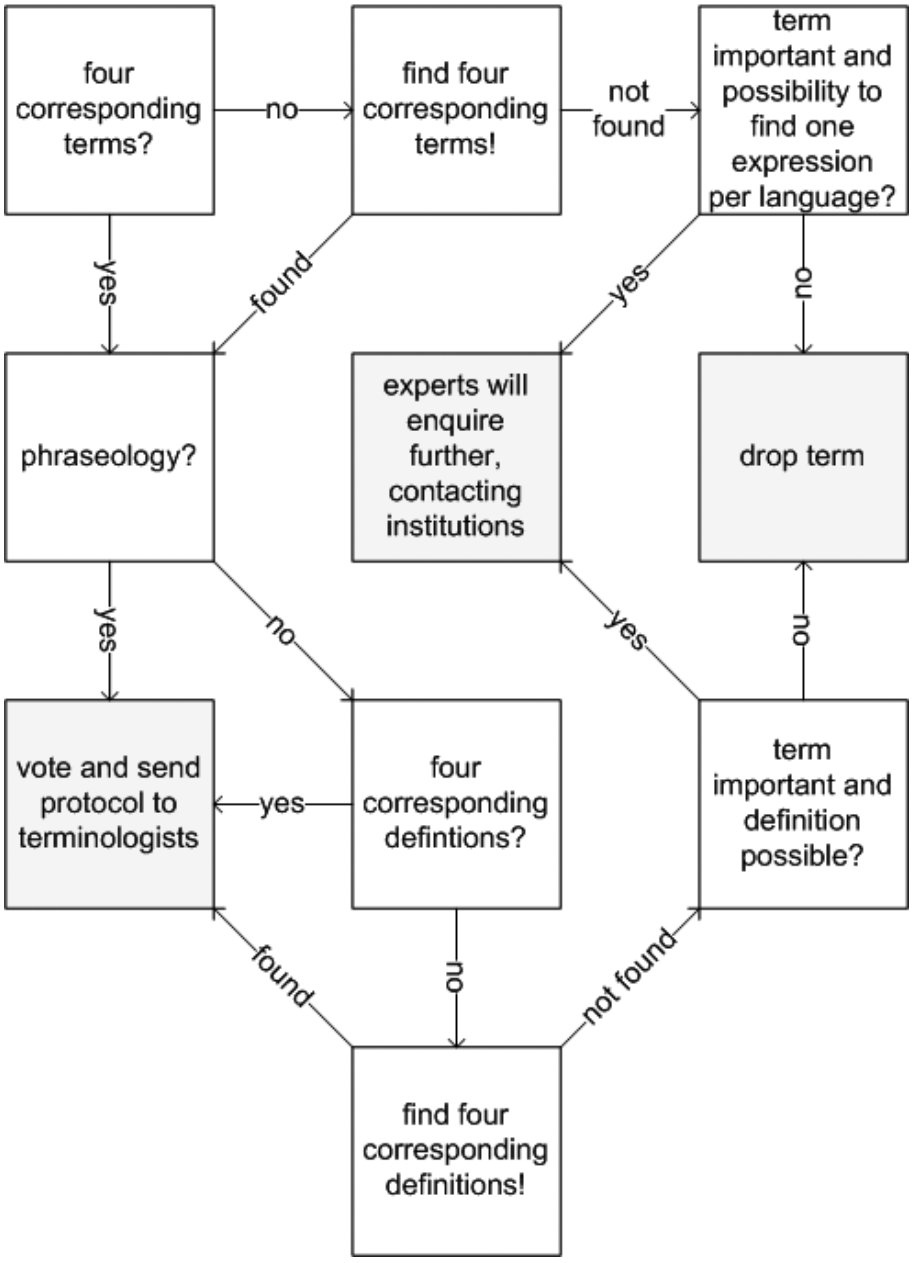


Figure 1 shows that terminology has three ways out of the Harmonising Group: harmonised, to be enquired further and be presented again, or to be dropped and left not harmonised. Actually, the second option, further enquiry, is only preliminary, because the cycle will start again for those terms, so that the two final exit points are harmonisation or 'not harmonised'. We should not conclude that 'not harmonised' is a failure. Actually, the concerned terms are labelled 'rejected', which is important information in itself! 'Rejected' means that there term is not congruent with the main concept described or that the terms available do not refer to four congruent concepts. Lawyers and translators will understand that there is a trap of incongruence hidden, and they can get more information on it from the terminological description. The user might find that the incongruence is not at lexical level, or not between the language pair the user is interested in. But he or she will be warned.

We can also learn from the figure that labelling a term as phraseology absolves from defining the term. This means easier and quicker harmonisation. In terms of work efficiency, the Harmonising Group has therefore an interest in seeing phraseologies everywhere. One major break to this is the German language: long chunks of words in French (*surfaces pour lesquelles subsistent des soupçons de pollution* in the AC) or Slovene (*površine, za katere sumijo, da so ekološko obremenjene* in the AC, with even two commas!) are only one word in German: *Altlastenverdachtsfläche*! And following the common definition, one word terms cannot be phraseology! While discussing terms like this one, the Harmonising Group has defended for a long time the theory of the conceptual unity, in the sense that a legal concept of the Alpine Convention remains one and the same legal concept for all treaty languages, without regard to the number of words you need to utter it. Actually, the Protocol on Soil Protection where the word *Altlastenverdachtsfläche* is taken from had been drafted by the Germans and the other languages are really a translation.

This definition of 'phraseological unit' according to legal dogmatics was scathed by linguists, who argued that even if all things on earth can be uttered, not all things can be uttered using a term; sometimes you simply need more words even when you refer to one specific thing. Concepts like 'meme', 'Weltgeist' or 'Über-Ich' are either taken over as *mot d'emprunt* (!), or they translate into a bit more than one word. Linguists say that phraseology is a purely linguistic phenomenon, which is not necessarily connected to the meaning. In the end the lawyers had to back down and accept that legal concepts can not always be expressed through a term. The consequence is that there are harmonised items which are terms in one language, but phraseology in another.

A dogmatic question is also if only the terms are harmonised, or also the definitions, when present. The four corresponding definitions prove that the concept is the same in all four languages of the AC. For harmonised terms the definitions cannot, therefore, remain contradictory. But they can be different, for example one definition can be more

explicit and another more general. Also, a definition can be reformulated without disturbing the harmonised meaning, which is not so for the terms, where the precise linguistic formulation is prescribed. Sometimes the Harmonising Group was close to a solution, having already individuated four corresponding terms and only discussing about the best formulation of a definition. In this moment the presence of many excellent linguists was rather complicating harmonisation, because the real task of finding a correct label for a common concept had already been reached. At this point, it was not legal expertise which was required, and the perfection of the definition (or of other terminographic aspects) should have better been left to the terminologists.

In my opinion, term, definition and context have three different 'creators' and 'target groups':

data category	who creates it	what it refers to
term	terminologist	concept
definition	lawyer	Law
context	linguist	language

Lawyers usually know their own legal language, and they intuitively know what concept they deal with, even when it is difficult to give an exhausting definition immediately. A definition in their own legal system should therefore be mainly directed at translators, who are proficient in their language, but not legal experts. The context would normally not represent an added value for a lawyer, but it does for the linguist. The important part for both lawyers and translators is obviously the harmonised term, for lawyers because it is harmonised and has a specific legal meaning (the one defined), and for the translator, because the translational choice is restricted and therefore easier.

7. Will legal communication after harmonisation be really easier?

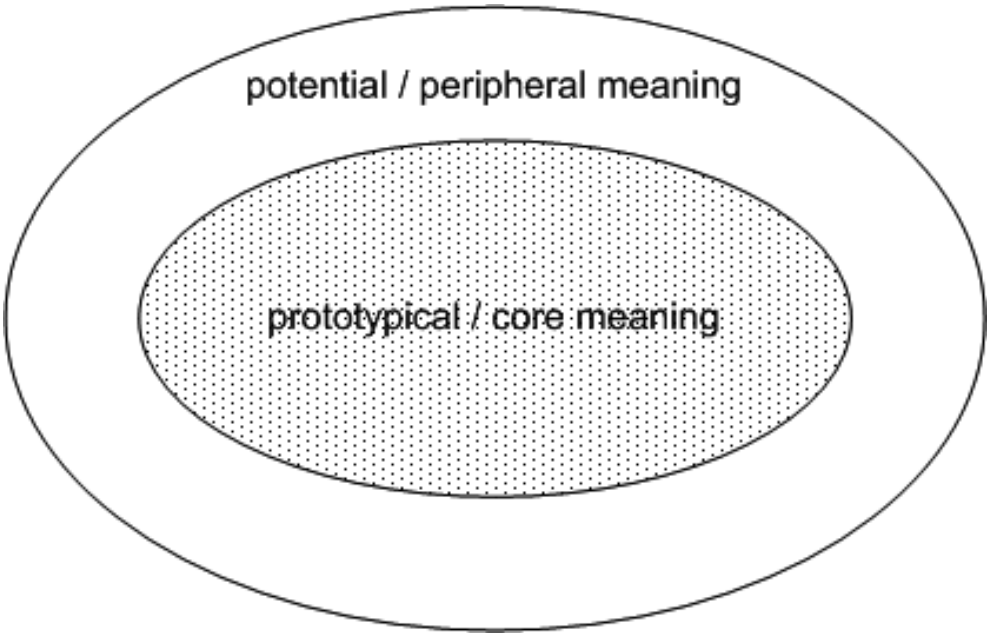
When one person is using confusing and inconsistent language and another uses clear words, we start to appreciate the difference. We might only be able to prove that harmonising works when harmonised terminology is actually used. But we can, of course, give an outlook of what will change with harmonised terminology.

As was mentioned earlier, the Protocols have already been harmonised as such, but the single terms, expressions and phraseologies in the texts of the Protocols have not. To describe this situation, it is useful to think of the distinction between phenotype and genotype in biology. The Protocol is the phenotype, the observable result as a whole. The terms, expressions and phraseologies are the genes or building blocks behind that result.

It is the genes which constitute the real heritage and value, because they allow rebuilding the same or another result. Some of the terms or genes might be defect without damage for the whole, because in the quadrilingual texts there are three other languages which give the correct meaning. In genetics, those terms would be called recessive. Still, this term might do harm to the next generation, when it is applied in a translation or a draft. Harmonisation finds the misinformation and mistakes and excludes them by assigning them the right definition, by pointing out the preferable term or even by proposing the use of the correct term. In this way, the genetic heritage is improved.

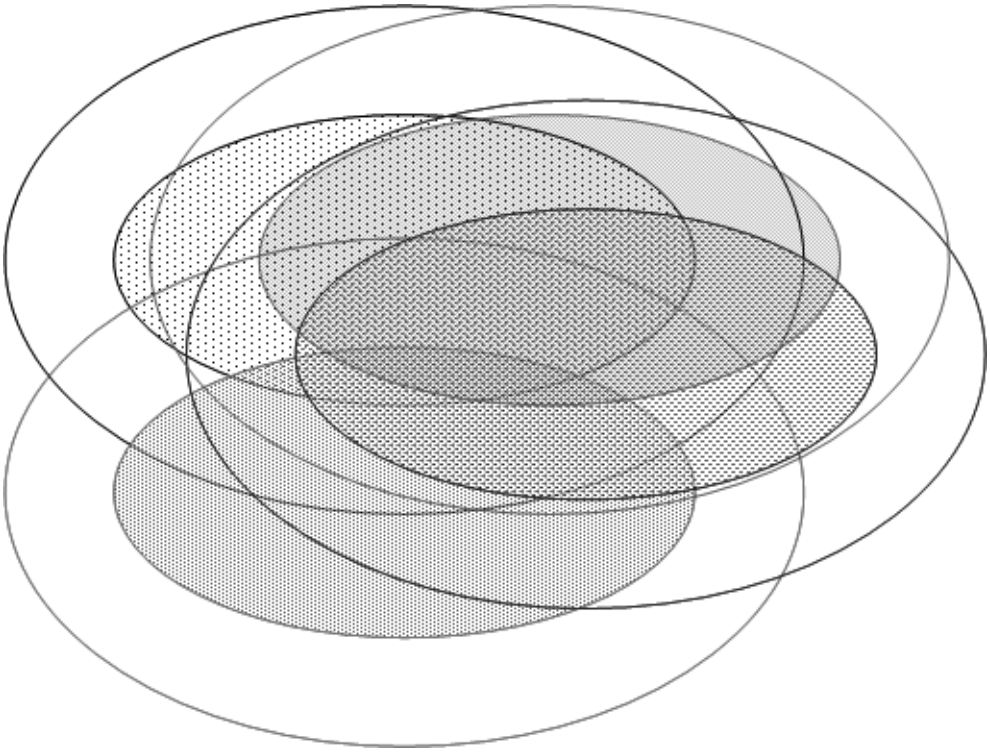
But how do harmonisers know what the correct meaning is? It might be more precise, but it might also be precisely wrong! A graphic illustration is useful here. Any term has a core of instances which are clearly designated and around that core a sphere of instances which may or may not be designated, depending on broad or strict interpretation of the term (Figure 2).

Figure 2: core and peripheral meaning



When we have several terms supposed to refer to the same concept, then we usually receive a wider core area (all cores together), and a much wider potential meaning, indicated by the sphere of indetermination resulting from the combination of the four peripheries (Figure 3).

Figure 3: terms of four languages overlapping in core and peripheral meaning



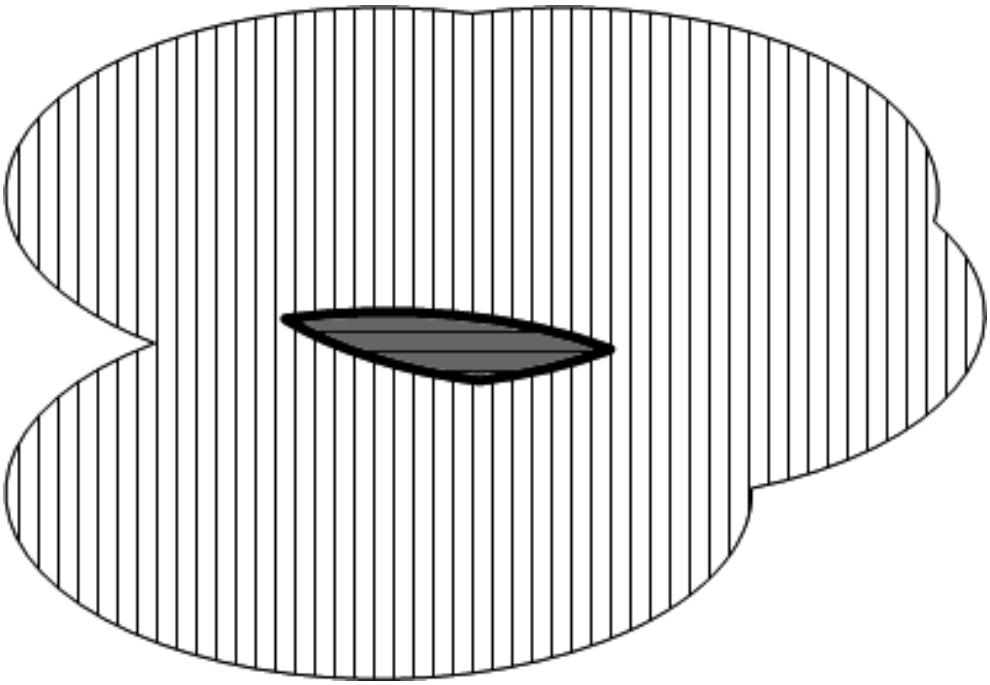
The picture has become quite blurred now, and it is difficult to see where the core meanings overlap. This is exactly what happens during harmonisation. Especially the speakers who start from the term at the bottom of the picture will have some difficulty to understand that their normal understanding of the term is quite far away from the signification of the terms in other languages, even though those terms are given in a dictionary as perfect translations.

The first impression is therefore that precision has not increased, but decreased, because both the core meaning of the concept and the potential meaning have become larger. As all four texts are binding, a lawyer would simply look for the most advantageous term and claim that meaning. With repeated operations of this kind throughout the whole text, the legal norm becomes blurred.

This is where harmonisation comes into play. The task of harmonisation is exactly to reduce the (core and potential) meaning to the common meaning. Starting from the above figure and operating a simple set theory operation, i.e. intersection, we receive a very small and hence precise common core meaning. The potential meaning is represented by the union of the four core sets. This union set is in the figure above about as large as the potential meaning of any of the four basic terms. Reducing the potential meaning

beyond would equal a (teleological) reduction against the core meaning of at least one of the terms. The resulting harmonised term is visualised in Figure 4.

Figure 4: core and periphery of the harmonised term



The figure can be interpreted as follows: meanings and interpretations which are possible in one language are not considered at all. They may or may not be included in the harmonised term. Core meanings and interpretations for one language become downgraded to potential meanings of the harmonised term. Only the intersection of all four core meanings becomes core meaning of the harmonised term. The resulting shape has usually a smaller core than any of the pre-existing terms (horizontal line filling in Figure 4). The resulting shape has usually a larger periphery than any of the pre-existing terms (vertical line filling in Figure 4). Core and periphery taken together cover approximately the same space as any of the four pre-existing terms. This is important, because after harmonisation the legal consequences are more narrowly contoured than before and it is more difficult for a lawyer to circumvent the binding force by combining several favourable terms. The conclusion is that harmonisation restricts the meaning of the terms.

We have to consider also a psychological effect: normally the text will be read in one language and it will appear having a certain rather precise meaning. In reality the meaning is not this one-language meaning. In reality, it is the combined meaning of the confusing Figure 3, because we have to think in a union of all meanings of all terms. It is only after

harmonising that the real meaning is as restricted as it appears from reading the text in one language only. Nevertheless, reading in one language is still misleading, because the meaning one might draw from this language has been very much restricted. Before or after harmonisation, reading the text in one language only never gives a complete idea of the legal content. The great advantage of harmonisation is however that this meaning is given explicitly for every term and in every language. Instead of reading the text in all four languages, the lawyer can read it in one language assisted by the harmonised terminology. In fact it would be technically nice to have harmonised texts with all terms annotated with their definitions as screen tips. On the other hand, many people do not read the law text and abide to it all the same. Also harmonisation will be one of those products one does not perceive until something is going wrong.

There is by the way an interesting back door for DIVERSITY AFTER HARMONISATION. Consider the term 'indigenous plant'. After harmonising the terms in all languages and for all legal systems,[8] the concept might still refers to different instances, because in all parts of the Alps the indigenous plants may differ.

Another possibility how diversity remains after harmonisation is when the AC legal term refers in its definition to the applicable national legal concepts. This is the case of 'protected species'.[9] The definition is: "Threatened, vulnerable or endangered species which are protected from extinction by preventive measures."[10] Those preventive measures might be anything, but in practice the prominent form of species protection is done by national law.[11] In this way the concept of 'protected species' fully corresponds in all languages, because the abstract content is identical, but the concrete instances are different in every legal system. This might be justified where a species is endangered in one country, but abundant in another. Still, it might also be misleading when a species is endangered everywhere, but only protected in some of the countries. A similar example would be 'protected area'[12], where obviously no overlapping is possible at all. A norm of the AC which shall be valid in all 'protected areas' may be linguistically harmonised, but still have a very different meaning for every Contracting Party. Still another example is 'mountain forest'[13]. It seems to be really simple, but a mountain area is defined above 600 metres in

8 *Heimische Pflanzenart, espèce végétale indigène, specie vegetale autoctona, domorodna rastlinska vrsta.*

9 *Geschützte Art, specie protetta, espèce protégée, zavarovana vrsta.*

10 The definition has been taken over from the European Environment Agency, http://glossary.eea.europa.eu/EEAGlossary/P/protected_species (date of consultation 11.10.2007).

11 Even when the content of the concept 'protected species' has been harmonised within the EU, for example through Annex IV of European Community Directive 92/43/EEC, the difference still remains with the Swiss legal system.

12 *Schutzgebiet, espace protégé, area protetta, zavarovano območje.*

13 *Bergwald, forêt de montagne, foresta montana, gorski gozd.*

Italy and above 700 metres in Germany, with a colder and wetter climate in Germany at the same altitude.

A quite debated term was *Bodenkataster/ Kataster*, *cadastre/ cadastre des sols, catasto/ catasto del suolo, kataster tal/ kataster* from Article 5, 1 of the Protocol on Soil Protection. The AC refers to national registers where the quality and destination of the soil is (or should be) registered. In some countries, such inventories have yet to be created (Monaco), in others there is a cadastre for the purpose of taxation (France and Italy) or proving property rights (Germany and Austria). In Germany there are even two land registers, one rather for Civil law but containing also public servitudes (*Grundbuch*) and one for spatial planning. In one word: a complex situation to which the AC refers quite nonchalantly by saying 'soil cadastre'. Obviously it was very difficult to find a common definition, because by starting from the national understanding of the soil registers, neither contents nor purposes overlap. Starting from the AC and trying to comprise all national registers, the definition had to be extremely open. The solution was the following: The term was defined in the plural and refers to an inhomogeneous collection of national realities (see term in annex).

This class of terms is large, but not a majority. The term 'plant heritage'[14] seems to be, as above, different in every country. But the definition is already flexible: "All plants of one or several types in an ecosystem, given on an area or volume." This concept is limited from the beginning to a certain territory, and this is made explicit. In any use of the term, the context will have to make clear to what specific ecosystem it refers to, and it cannot refer to different realities in different legal systems.

8. Harmonising as a marketplace

Harmonisers cannot proceed step by step; they proceed through market-like behaviour. All market participant have their own legal system in mind and try to get as much of it into the AC level as possible. The result should be the perfect compromise between all participants. In economical terms, the perfect price is found through an invisible hand, or in other words, by iterative negotiation.

Let us assume that there are two terms for every AC language and therefore eight terms designating one concept. Now the Harmonising Group members of the legal system A choose one of the two terms as preferable, because it corresponds best to the terms used in European and national law. This changes the situation for the harmonisers, because now they have to refer only to this term. The harmonisers of legal system B continue negotiation. They choose the term that matches best the term chosen by A, and propose a legal definition for that term. Such a definition is often strongly influenced by the definition of

14 *Pflanzenbestand, patrimoine végétal, patrimonio vegetale, rastlinska združba.*

the term in the national law of B or in European law. This in turn changes the situation profoundly for A, C and D. They have to look for a term that corresponds to the terms of A and B, and also to the definition suggested by B. The negotiation continues with C, choosing a term which fits this situation best. C will often have to propose a change in the definition, because in legal system C the definition of the term discussed is different. Again, this changes the situation for A, B and C. At this point A, confronted with the two preferred terms of other languages and a specific definition, proposes to change the term. This is like making a new offer under modified circumstances, like at a market. Continuing with this marketing process, the harmonisers eventually end up with a compromise.

The parallels with a market are: the process is supported but not guided centrally, it is determined by the participants, and it is an open process, because until the final agreement is reached it is never clear how close a compromise is or if it will ever be reached. The final agreement mirrors the interests, but it is not simply a price. It is a much more complex bartering, with many aspects to be taken into account. Sometimes the harmonisers have to take a time-out to ask the national governments for instructions if a certain result would be acceptable, and harmonisation is postponed or delayed until confirmation. The negotiation is also limited in time and often resembles an auction. As a certain number of harmonised concepts was declared goal of the project, it was necessary to introduce a time limit for discussion. Its use was, however, not impeding on the quantity or quality of the results, because the consequence of a lacking pact was neither that the concept was dropped, nor that it was harmonised according to the last proposal, but the procedure just postponed the decision. Very often the discussion on the concept showed the basic difficulties to all partners and the open questions could then be resolved with more research and reflection in a later session or by e-mail. Sometimes a rapporteur solution was used, which also worked well.

These solutions prove another parallel to market systems: with repeated deals cooperation kicks in. Every pact creates a plus-value for all partners and inspires trust for the next negotiation with these partners. Of course this could be felt not only at personal level, but also at institutional level. Trust is not irrational, when it is based on the previous behaviour of the market participants. Trust is rather a factor of rational behaviour.

9. Conclusions

Harmonised terminology is the result of the interaction of different legal cultures. The concept of legal culture by definition contains a reference to itself, explaining the meaning and formulating the critique of a legal setting. There is an implicit relativism in the expression 'legal culture', and admitting relativeness is already half-way to comparison, discursive explanation and integration of different solutions from foreign legal cultures.

The result of such comparison and interaction is, as mentioned before, contained in every single harmonised translation relation.

This section tried to describe the nature of comparison and interaction of legal cultures, how such interaction has been organised, and how the procedure can be read from the standpoint of legal theory. Contrary to the harmonisation of legal content, a related but different activity, harmonisation of legal terms for more than two languages has not attracted much attention in doctrine, therefore this contribution shall also catalyse discussion in this field.

10. Annex of all terms quoted

The following table shows all the terms discussed in this article, in the ways these terms appear in the context of the Protocols of the Alpine Convention:

Table 2: annex of all terms quoted in order of appearance

Italian	German	French	Slovene
possesso di esemplari	Besitz von Exemplaren	détenir des spécimens prélever des spécimens	posedovanje primerkov posedovanje posameznih primerkov
capacità stradale	Straßenkapazität	capacité routière	cestne zmogljivosti
razza di allevamento	Nutztierrasse	espèce d'animal d'élevage race d'animal d'élevage race d'animal de rente	pasma živine
responsabile degli usi	Nutzungsgremium Nutzungsverantwortlicher	responsable de l'utilisation de l'espace	odgovorni za rabo
traffico intraalpino	inneralpiner Verkehr	trafic intra-alpin	znotrajalpski promet
normativa sulla VIA	UVP-Recht	droit national applicable aux études d'impact	pravni predpisi o PVO-ju
protezione del clima salvaguardia del clima	Klimaschutz Klimavorsorge	protection du climat sauvegarde du climat	varovanje podnebja varstvo podnebja

For more information related to these terms, like definitions, context in the AC and harmonised terms please consult the term bank at http://www.eurac.edu/lexalp.

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