

Putting on the (legal) style

Maeva Cifuentes and Richard Lackey take a look at the language in which legal documents are written, and the implications this has for legal translators



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How many times do you have to read the following sentence before you understand it? 'It is not necessary that an investment adviser's compensation be paid directly by the person receiving investment advisory services, but only that the investment adviser receive compensation from some source for his or her services.'

Suppose it were changed to 'Although the investment adviser must be paid, the source of the payment does not matter.' How many times do you have to read it before you understand it now?

The new sentence has been recast to change its register, style and form. At the same time, it has not lost any meaning or legal accuracy. It is simply much clearer.

This example was taken directly from the second edition of Bryan A Garner's *Legal Writing in Plain English*. Some legal translation agencies require their in-house editors to read this book as a starting point for following their in-house style guide. However, not all language service providers (LSPs) issue any kind of style guide. Some don't even consider style and register at all when they are preparing a client brief.

'Register' is a hard term to define. To us it means a text's tone, style, and level of formality. We are interested in looking at how these choices operate for legal translation. What choices are legal translation professionals making about register and style, and what role do translators play in mediating the style of the whole document? How much

responsibility do we translators have to the source text, to our clients and indeed towards our own translation?

Clarity versus word for word

Interviews with a dozen legal translation professionals suggest that there are two main camps: those who think clarity and concise language is indispensable, and others who are adamant about strictly reflecting the style and register of the source text – an almost word for word translation

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preference, if you will. One reviewer feels this is mainly inexperienced translators, who are worried that they do not fully understand the underlying legal principles. Yet we also have heard from lawyer-linguists who are reluctant to recast the sentences in their own translations because they are concerned about potential litigation and liability.

Is it, as this second group feels, the translator's role to recreate ambiguity at all costs? Marketing translators would respond with a thundering 'no'. But legal translation has to pay very close attention to the issues of liability and responsibility.

Terminology can also be a minefield of false equivalents (or near-equivalents) between legal systems, non-equivalent terms, different terms used across the jurisdictions of the target language, and terminology changing in one jurisdiction but not another (for instance, 'plaintiff' changing to 'claimant' in the UK, but not in the US). Then there's in-house terminology (or organisation-specific terminology, such as that used by the OECD or EU).

Contexts and general trends

But in the end, terminology is absolute: either it's right or it's wrong. If you choose the wrong term, you have mistranslated the document. The situation is different for style and register. You can have as many approaches as you have translators and still finish with a correct translation. So where does that put the translator?

In most cases, the translator needs to be driven by the purpose of the translation. Is this text to be used for litigation, is it expected to be harmonised with EU legislation or adapted to another jurisdiction, or is it simply a 'straight' translation of the content? Yet many translators we talked to did not know the purpose of their translation, often because their clients did not tell them.

We also need to be aware of trends in the law and legal language. Standard practice in the legal field is only changing slowly from archaic prose to more modern, accessible language, as different types of commercial contracts clearly demonstrate. As the sentence at the start of this article shows, the texts we are translating are often very unclear in the first place. It's not just that many law firms do not have style guides for translation; some of them do not even have style guides for drafting – and those that do often don't cover register. Contract language can range from archaic to borderline casual – and additionally, each state's legal system has its own particular style. For instance, Spanish and French legal language tends to be more archaic, and sentence length occasionally reaches 150 words.

English drafting tends to be plainer and more succinct. Indeed,



one of the most interesting outcomes of General Data Protection Regulation (GDPR) is that it requires privacy policies to be written in easily understandable language that avoids jargon or heavy legal terminology – a key break with the previous stylistic demands. However, many translators and lawyers are reluctant to let go of the style they've always known, even where it is no longer appropriate. Sometimes this is just because they want to stick with what they think of as 'legal language'; but also, they have legitimate concerns that making the text more concise will make it less accurate. Certainly, if a legal translator cuts 'alienate, transfer, and convey' to 'transfer', they have to do so consciously. They cannot do anything that would actually change the meaning of a clause. Cutting out necessary legal aspects in favour of a more fluid text may be good writing, but it's bad translation. The peculiar position of

a legal translator is that they need to know the legal ramifications of every choice, and consciously cast their text to maintain exactly the same legal meaning as the source.

Choices and consciousness

Yet is there also a case for arguing that, by translating concisely and clearly, we can save our readers time and confusion: a better user experience, if you will? Of course some texts will be written ambiguously for legal reasons, but what about translating texts that are simply written badly, or in an archaic language which does not translate well into English? It is worth noting that those organisations that do use a style guide for legal translators tend to recommend that translators opt for greater clarity and easy reading.

The fact is that, as translators, we are constantly choosing the terminology and indeed the register in which we are working. That includes translators who stick to some

unwritten guidelines on the basis that they have always translated that way, or they always thought legal documents should look that way, or that is how they were trained. They might not be able to explain why they are making those choices, but they are still making them. A translation is always our own interpretation of the text, an approximation at best.

So what choices should legal translators be making? Should they keep with the style of the source document or target document? Or should they make their own decisions about register?

We will be making a presentation on this topic at the Mediterranean Editors and Translators meeting in October, and we would very much like your views. To give us your insight on some practical examples, please go to www.xl8.link/17p. As legal translators ourselves, we feel this is a major debate, to which we should be contributing. 

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