



# LINGUE CULTURE MEDIAZIONI LANGUAGES CULTURES MEDIATION

7 (2020)

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Clear Legal Writing: A Pluridisciplinary Approach  
La clarté rédactionnelle en droit et ses multiples horizons

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# The Challenges of Legal Translation in Multilingual Contexts

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DOI: <https://dx.doi.org/10.7358/lcm-2020-001-jaco>

## ABSTRACT

The increasing multilateralism in international relations has led to the spreading of the principle of official multilingualism within the international and supranational organizations, which involves the need to produce legal texts in multiple languages. This paper aims to highlight the features of multilingual legal drafting within different contexts: first, within national legal systems, such as Canada and Switzerland; second, within international organizations, with particular attention to multilingual treaties and taking as paradigmatic example the United Nations' activity; and third, within the European Union, highlighting the complexity of the multilingual legislative drafting in view of the independent, multilingual and directly applicable nature of EU law. These contexts are profoundly different in various ways, such as the reasons and the legal basis of multilingualism and the criteria and methods of drafting, adopting and interpreting multilingual legal texts.

*Keywords:* co-drafting; international and supranational organizations; legal translation; multilingual legal drafting; multilingual states.

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## 1. INTRODUCTION

This paper aims to highlight the features of multilingual legal drafting within different contexts, as the question of the drafting of multilingual legal texts arises both in international and supranational organizations, such as the United Nations (UN) and the European Union (EU), and in States with two or more official languages, such as Canada or Switzerland (Akehurst 1972; Tabory 1980).

These contexts are profoundly different in various ways, such as the reasons and the legal basis of multilingualism and the criteria and methods of drafting, adopting and interpreting multilingual legal texts.

The need for the multilingual drafting of legal texts, especially legislative ones, derives substantially from the affirmation of the principle of “official multilingualism”. As known, in fact, this principle implies not only that the legislative texts must be adopted in all official languages, but also that the different language versions recognized as authentic are considered to be equally authoritative, to have the same legal value. Multilingual drafting shall aim to produce texts that all have the same meaning and the same effects (Šarčević 2000, 70 ff.; Doczekalska 2007; Gambaro 2007). The principle of the equivalence of authentic texts therefore influence the methods of production and interpretation of multilingual legal texts (Doczekalska 2007).

## 2. STRATEGIES FOR DRAFTING MULTILINGUAL TEXTS: TRANSLATION AND CO-DRAFTING

The choice of the most appropriate methodology is evidently determined by the specific conditions of each case, so it is not surprising that different approaches are adopted in the various contexts of production of multilingual texts (Šarčević 2001). In particular, the method chosen will vary firstly depending on whether in the multilingual context there is only one legal system, in most cases, or more legal systems, more rarely.

In the case of one legal system the process of linguistic-legal transposition is generally simpler as all languages share the same reference system and therefore the terms in each language refer in principle to the same concepts. However, the complexity of the transposition process grows with the increase of the number of language versions that must be produced, as the linguistic and legal concordance between all versions must be ensured (Berteloot 1999; Šarčević 2001).

The drafting of multilingual legislation is particularly complex when more than one legal system is involved, since each legal language corresponds to a specific legal tradition and all language versions must reflect the characteristics of each tradition (Doczekalska 2009).

In fact, it is essential that the “production” of linguistic versions ensure that all authentic language versions have the same linguistic and legal quality and reliability, so as to ensure equal authority (Revell 2004).

It is possible to identify different methods of drafting multilingual texts aiming to achieve this goal. The traditional and most used method is that of translation, in which the text is first drafted in one language, to then be translated into other languages. However, translation may involve some drawbacks mainly deriving from the distinction between source/original text and translation.

First of all, despite the assertion of formal equality between the various texts, there is often a factual disparity between them. In fact, the text is often drafted in the “dominant” language<sup>1</sup>, with the consequent strong probability that the translated text will not be produced in the spirit of the target language. Furthermore, the drafter generally has absolute dominion over the original text, which normally is not influenced by the translator: this situation of predominance of the drafter compared to the translator in the elaboration of the text generally ends up determining a state of inferiority of the translation compared to the original text.

Moreover, the translation is mostly carried out at a later time than the drafting of the original and often also in a separate place. This determines a temporal and sometimes spatial dissociation between drafting and translation that can prevent translators from knowing the actual meaning and purpose of the legislative act (Crépeau 1995; Šarčević 2000, 93 ff).

These drawbacks are even more evident in the case of “subsequent translation”, that is when one or more language versions of the same text are produced by means of a translation carried out and authenticated after the process of adoption of the legislative act in question has been completed. This situation generally occurs when a new official language is introduced in plurilingual states or international or supranational organizations<sup>2</sup> or when, due to practical difficulties (such as time limits or lack of qualified translators), a text cannot be produced in one of the official languages before the adoption and is therefore approved and authenticated in an “irregular” manner<sup>3</sup>. The practice of the subsequent translation raises doubts about the ability of these texts to reflect the

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<sup>1</sup> For a definition see Berruto 2009, 22.

<sup>2</sup> For example, this is what occurs every time a new State joins the European Union.

<sup>3</sup> For example, in Switzerland until 1974 the Italian versions of legislative acts were ready after the adoption of the act and in Canada until 1969 the French version was prepared after the approval of the final text in English (Šarčević 2000; Doczekalska 2007).

meaning, effect and purpose of the original act, especially if the subsequent translation is carried out by reference to only one linguistic version, neglecting the others, or on the basis of a text which is itself the result of a subsequent translation<sup>4</sup>.

In view of the above the legal-linguistic revision appears to be of significant importance as during the revision phase the translated text is verified, corrected and modified in order to guarantee its linguistic and legal quality. The final examination of all language versions by the reviewers may offer the possibility – if allowed – to retroact on the source text in the event that this gave rise to difficulties in transposition or differences of interpretation in the other language versions (Gallas 2007).

Moreover, since often the translation (especially subsequent translation) is carried out making reference to one or maximum two linguistic versions, while the others – above all if they are in high number – are generally neglected because of practical factors, such as lack of time or financial resources, all language versions should be taken into consideration during the revision phase to ensure linguistic and legal concordance in all languages (Doczekalska 2007)<sup>5</sup>.

Beside revision, to overcome the abovementioned drawbacks new co-drafting methods have been developed with the aim of an ever greater integration of the translators in the drafting process, transforming them into drafter or at least co-drafter. The aim is to ensure the effective equality of language versions, improving their legal and linguistic quality and eliminating the distinction between source text and translation (Doczekalska 2009): the integration of translators in the law-making process allows them to have direct knowledge of the intention of the “lawmaker”, which should therefore be expressed more correctly in all language versions.

All methods envisage a comparison of the language versions produced and their possible modification in order to ensure linguistic and legal concordance, in a similar way to the final revision phase in

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<sup>4</sup> This happened at the time of the European Union enlargement in 2004, when most new Member States translated the *acquis* from the English version, which was necessarily a subsequent translation for all legislative acts adopted before 1973, given that before that date English was not a community official language.

<sup>5</sup> This was the approach followed at the time of the translation of the EEC Treaty in English when the United Kingdom joined the European Community in 1973 (Akehurst 1972). On the importance of considering the various linguistic versions of multilingual legislation at the time of translation and not only at the time of interpretation see Tabory 1980, 114 ff.

traditional translation procedures. While some methods combine drafting and translation, such as the “alternate drafting”<sup>6</sup>, in other methods, such as the “parallel drafting” and “joint drafting”<sup>7</sup>, it is not possible to identify a text that serves as a source text for the other (Šarčević 2000, 105 ff.; Doczekalska 2009).

However, one cannot fail to observe that in daily practice it is often difficult to clearly distinguish between translation and co-drafting, since on many occasions we are faced with mixed techniques in which the two strategies are combined (Gémar 2001; Megale 2008, 52 ff.).

Co-drafting methods are generally used, even with success, in bilingual contexts, such as Canada, while they are difficult to apply in multilingual contexts, because they would imply a high organizational complexity and be excessively time consuming. In fact, the only example of multilingual co-drafting at the international level is the United Nations Convention on the Law of the Sea in 1982 (Tabory 1980, 96 ff; Rosenne 1983; Nelson 1986; Šarčević 2000, 208 ff.), and in general the strategies applied within the European Union and the international contexts are the traditional translation method or hybrid techniques combining translation and drafting in various ways (Cao 2007, 149 ff.; Gallas 2007).

Regardless of the chosen method – translation, co-drafting or mixed mechanisms – a central factor in order to ensure a high level of consistency in the drafting of bi- or multilingual texts is the centralization of the production process of the different language versions. As can be easily imagined, centralization is easier to carry out within national systems, as can be seen from the Canadian and Swiss experiences. On the other hand, with the spread of multilingualism during the twentieth century, within the framework of international organizations an attempt was made to coordinate the production of the various language versions,

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<sup>6</sup> The alternate drafting involves two drafters-translators who establish which parts of the text must be written in one language and which in the other, and then each one drafts the assigned parts; subsequently, the parts are exchanged and translated into the other language by the same drafter or by a legal translator; finally, the two texts are reviewed by the same drafter or by an ad hoc committee.

<sup>7</sup> The parallel drafting involves two drafters who jointly prepare a detailed outline of the legal text and then each one draws up the respective language version. Subsequently the two texts are compared article by article and therefore possibly modified where necessary in order to ensure linguistic and legal concordance. Finally, the method that provides for greater integration is that of joint drafting, where the co-drafters work together in all phases of the drafting of the legal text, proceeding article by article, comparing and modifying the text in the two language versions as they proceed with the drafting. Neither language version is the result of a translation, both are actually “original” texts.

by trying to organize the work of the translators where negotiations take place, even if this has almost always proved impossible. Within the European Union, centralized translation services have been set up in each of the main EU institutions, which guarantee the coordination of the production of all the language versions of EU legislation (Šarčević 2000, 110 ff.).

### 3. MULTILINGUALISM IN NATIONAL LEGAL SYSTEMS: CANADA AND SWITZERLAND

With regards to multilingual states, two interesting examples are those of Canada and Switzerland<sup>8</sup>.

The Canadian experience is particularly interesting due to the fact there are not only two languages – English and French – but also two legal systems – common law and civil law.

In fact, first of all, the federal law and four provinces (New Brunswick, Manitoba, Ontario and Saskatchewan) follow the common law tradition and are bilingual and one province (Quebec) follows the civil law tradition and is bilingual<sup>9</sup>. Thus the need arose to express the federal and provincial common law legislation also in French and the civil law provincial legislation in English. Moreover, as far as federal law is concerned, the laws need to be expressed in a way that is also adequate to the civil law tradition – both in English and in French – if they concern matters pertaining to private law, bearing in mind that this matter is mainly of provincial competence and in Quebec it is dominated by civil law. The linguistic and legal dualism has therefore led to the development of a French common law terminology (CLEF, *common law en français*) and an English civil law terminology (DCA, *droit civil en anglais* or *civil law* in English).

French was a translation language until 1969 when the *Official Languages Act* recognized “equality of status and equal rights and privileges” of English and French. In practice, however, equality was achieved only

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<sup>8</sup> For a more detailed analysis of the Canadian and Swiss experience see among others Bergeron 2000; Labelle 2000; Revell 2004; Šarčević 2005a-b; Wagner 2005; Beaudoin 2009; Lötscher 2009; Cashin-Ritaine 2011; Doetsch 2011.

<sup>9</sup> The remaining provinces follow the common law tradition and are only English-speaking.



later and the French texts of federal laws were still subsequent translations of laws approved in English. Only in the second half of the 1970s, following public pressure to improve the quality of legislation in French, there was a decisive change with the progressive introduction of different co-drafting methods in which translators were gradually transformed into co-drafters through their integration into the legislative production process. Currently the drafting of federal laws is entrusted to a bilingual team composed by two legal counsels: an English-speaking one – preferably, but not necessarily with common law education – and a French-speaking one – preferably, but not necessarily with civil law education. The success of the co-drafting process depends largely on the interaction between the two co-drafters and their active participation in the preliminary consultative sessions with the sectoral experts of the competent ministry and the persons who are responsible for the draft law. After the information meeting, the co-drafters discuss the draft law in depth so as to prepare a common strategy for drafting the text in the two language versions following the instructions of the competent minister. The two co-drafters then prepare their respective language versions, working side by side in the same office, proceeding article by article, comparing and modifying both texts as they proceed in the drafting. The bilingual drafting team is also composed of revisers and lawyer-linguists, who deal with the revision of the language versions produced by the co-drafters ensuring their quality as well as linguistic and legal concordance (Labelle 2000; Gémar 2001; Doczekalska 2009).

The Swiss experience, instead, appears interesting from another point of view since the Swiss Confederation is a multilingual state with a single legal system.

Federal laws published in the three official languages (German, French, Italian) are equally authentic<sup>10</sup>. However, due to the predominance of the German language in Switzerland and consequently in the federal administration, most federal legislation is written in German and then translated into French and Italian.

Although in Switzerland there is not a co-drafting system similar to that developed in Canada, the Swiss have developed their own methods of drafting texts in multiple languages.

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<sup>10</sup> For sake of completeness it shall be mentioned that according to the current Federal Constitution Romansh is a national language, but is considered as official language only with regard to the Romansh-speaking people.

In particular, for the most important federal legislative acts the German and French versions are subjected to a parallel review – so-called “corédaction” – which is carried out by the Commission interne de rédaction (CIR)<sup>11</sup>. The commission is made up of four people: a lawyer of the Federal Office of Justice and a linguist of the language services of the Federal Chancellery for each language. Despite the name, this procedure does not consist in the simultaneous drafting of the two language versions, but in the review of the comprehensibility, correctness and consistency of the two language versions, which are treated as equivalent, without making any difference between original and translation. Even if it would be technically possible, this procedure is not applied to Italian versions, which are still the result of a traditional translation by the Italian Division of the Central Language Services<sup>12</sup>. After approval by the Council, the text is discussed in Parliament: there, before the final vote, the legislative acts are subject to further examination by the drafting commission – composed of three subcommittees, one for each official language – which verifies the consistency, comprehensibility and concordance of the three language versions<sup>13</sup>.

#### 4. MULTILINGUALISM IN THE INTERNATIONAL CONTEXT

After this quick overview of the Canadian and Swiss experience the paper will now focus on the international context.

Despite the practical difficulties posed by multilingualism, the tendency to adopt two or more official and working languages has spread in the various international organizations established during the 20th century. International organizations have different options: they can allow the use of all the languages of the States that are part of the organization (integral multilingualism) or may choose to use only some of them on the basis of their diffusion and/or political, economic, cultural relevance, etc. (limited multilingualism). Integral multilingualism is undoubtedly

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<sup>11</sup> See *Guide de législation, Guide pour l'élaboration de la législation fédérale*, 4th ed., 2019; *Guide de législation Modules “loi”, “ordonnance” et “initiative parlementaire”*, 2014; *Règlement de la Commission interne de rédaction (CIR)*, 1/11/2007.

<sup>12</sup> The reason is mainly practical since in the Swiss federal administration there would not be enough competent Italian speaking officials to take on this task. On the Italian legal language in the Swiss context see Egger 2019 and references therein.

<sup>13</sup> Articles 56-59 of the *Federal Act on the Federal Assembly*, 13/12/2002.

the approach that best meets the objective of equality between languages, but it appears difficult, if not impossible, for organizations with a high number of members and languages. Therefore, in most international organizations there is limited multilingualism. Moreover, in order to limit costs and administrative problems, in international organizations there is often a distinction between official languages and working languages. Even if a generally recognized definition of the meaning of official language and working language is lacking, it can be stated that official languages are more numerous and are those into which the most important documents and legislative acts are translated, while working languages are usually of smaller number and are those in which the ordinary activity takes place and in which all the documents of the organization are produced (Tabory 1980, 21 ff.).

In this context it is not possible to take all the existing organizations into consideration, therefore just to give a concrete example the paper will try to briefly illustrate the experience in the United Nations, placing the emphasis on aspects aimed at ensuring the drafting quality of multilingual texts.

First of all, it should be recalled that the current official languages of the United Nations – Arabic, Chinese, English, French, Russian, Spanish – are also recognised as working languages. Notwithstanding this, draft decisions and resolutions are normally the result of consultations and negotiations that take place on the basis of an informal project presented by one or more delegates in one official language, which in most cases is English. Drafts are generally negotiated in one language – only rarely in multiple languages – and drafters seldom take translation issues into consideration. Once the draft document is ready, it is sent to the Documentation Division of the Department for General Assembly and Conference Management of the Secretariat, which is an expression of the multinational and multilingual nature of the UN and is directly responsible for translations. The essential task of the division is to ensure concordance between the language versions of the legal instruments negotiated within the UN. Translations are carried out by Translation Services that comprise a section for each official language. The most difficult legal texts are assigned to translators with legal training, while texts concerning other specific sectors are entrusted to translators specialized in the topics at stake. As a rule, translations are checked by reviewers, whose intervention is particularly important especially when the translation has been carried out by more than one person. In order to ensure the utmost accuracy of all texts, contacts are established with

the document's authors, as well as with all the units involved in the production of the various language versions. Once the text is ready in all the official languages, the different translations are verified by the delegations, who can propose amendments if they deem it necessary, after which the text is adopted in all the language versions. The Office of Legal Affairs (OLA) of the Secretariat does not have a specific role in the drafting of multilingual documents, except in cases where they concern topics falling within the scope of its advisory functions. However, OLA is often consulted informally also on linguistic issues, especially when it comes to legal documents. Furthermore, OLA can carry out advisory functions with regards to draft articles of international treaties prepared by the International Law Commission (ILC) or by drafting committees in the framework of diplomatic conferences (Tabory 1980, 70 ff.; Bar 1999; Cao and Zhao 2008).

In addition, the drafting of international treaties involves specific issues. Given the space limits the paper will not deal with simple bilateral treaties and the paper will focus on some aspects of the drafting of multilateral treaties. Treaties are generally concluded either within the framework of international organizations, through the direct drafting and adoption of the treaty within the organization or one of its bodies, or at the end of a diplomatic conference. With regard to multilateral treaties, there has been a progressive increase in the number of linguistic versions recognized as authentic, due to a series of factors, such as the different attitude of international relations, the increased importance of the principle of equality between States, the extension of the members of the international community, etc. Most of the treaties written in multiple languages indicate which versions are considered authentic – in principle those in the official languages of the “proposing” organization or those chosen by the Contracting Parties – and in some cases the version prevailing in case of divergence.

In addition, it is worth reminding that in some cases there are “official texts” which are signed by the Contracting Parties, but are not considered as authentic, as they have not been adopted according to the required procedure, or “official translations” produced by one or more Parties or a body of the relevant international organization. These texts have no binding value for interpretative purposes, but are useful for facilitating the practical application of treaties at national level. However, they may contain discrepancies with respect to authentic texts. A possible solution in these cases could be that countries that use the same official language adopt a common official translation in order to avoid

different versions in the same language that could lead to further difficulties in interpretation. Another solution could be that official translations would also be produced centrally by an international organization. Such centralization, however desirable, appears difficult to achieve from an operational point of view, even if a solution to reduce the possible costs could be that the interested State provides the relevant international body with a draft translation in its own language of the authentic text of the treaty (Ivrakis 1955).

Although it cannot be excluded *a priori*, co-drafting is rarely used for international treaties, as it is difficult to apply in multilingual contexts. As a rule, the draft text of the treaty is first prepared in one language, generally the language of negotiation, but the choice of the drafting language can be influenced by other factors, such as the language of the person in charge of the drafting. The draft text is then translated in the other languages in which the treaty will be authenticated. The text of the treaty may be prepared directly by the international organization/diplomatic conference or by the ILC. Sometimes, given the highly political nature of the issues at stake, drafting is not entrusted to a technical commission like the ILC, but to an ad hoc “political” commission composed of the State’s representatives, whose text will then be discussed by the international organization or diplomatic conference. Since each State is responsible for verifying and approving each text before signing the treaty, all translations should be prepared before adoption, so as to allow sufficient time for review by experts. With this in mind, a drafting committee is normally appointed with the task of harmonizing and coordinating all the texts, although various differences can be noted in the drafting procedures of the various treaties, both with regard to the language of the basic text, and as regards the persons in charge of drafting and preparing the translations.

Finally, with regards to the drafting process, even if the procedures vary according to the context in which the specific treaty is concluded, two – sometimes overlapping – operations can be generally identified: harmonization, which consists in ensuring the internal consistency of the terminology and the outlook of a specific text; concordance, which instead aims at ensuring the consistency of the terminology and the outlook between all the authentic texts (Rosenne 1983; Šarčević 2000, 200 ff.; Cao 2007, 149 ff.). In any case, the objective is to ensure not only the linguistic consistency between the texts, but also the legal one. In fact, it must be kept in mind that discrepancies between the different language versions of a treaty can cause international disputes and unrec-

essary uncertainty. Furthermore, it should also always be considered that the drafting and translation of international treaties are strongly conditioned by the “negotiated” character of these texts: they are the result of negotiations conducted by the representatives of the States, who sometimes may not be able to reach an agreement on certain controversial points and therefore end up adopting compromise solutions that mask their differences through vague and ambiguous wording. Consequently, translations should also maintain such vagueness and ambiguity, because otherwise they could alter the difficult balance achieved by, and the intention of, the Parties. However, it is not so simple to distinguish the cases of deliberate ambiguity resulting from a political compromise and the cases of unintentional ambiguity, which would need clarification (Rosenne 1983; Šarčević 2000, 200 ff.; Correia 2003; Cao 2007, 149 ff.; Denza 2008). It is also for these reasons that some scholars underline the importance of keeping the translation procedure connected with the treaties negotiation and avoiding subsequent translations in order to avoid that translations do not adequately reflect the effective “will” of the Contracting States and therefore prejudice the unity of the instrument, thus making its uniform interpretation more difficult (Rosenne 1983; Šarčević 2000, 200 ff.).

## 5. MULTILINGUALISM IN THE EUROPEAN UNION

As is well known, one of the main features of the European Union (EU) is the recognition of integral multilingualism: the languages of all Member States are recognized as official languages of the EU, currently twenty-four<sup>14</sup>.

Although the principle of equal authenticity of all linguistic versions would ideally require that legislative acts be drafted simultaneously in all languages, it does not seem practical to apply this method with twenty-four official languages. Therefore, while documents addressed to the Member States and their citizens are drafted in all official languages, everyday work within the EU Institutions takes place in a restricted number of working languages. The number and methods of use of

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<sup>14</sup> The literature on European multilingualism is quite extensive, see among others: Creech 2005; Pozzo and Jacometti 2006; Cosmai 2014; Wagner, Bech, and Martínez 2014; Šarčević 2015.

working languages vary in the different EU institutions and depending on the circumstances, but in general English and French are the most widely used languages for internal communication and for the drafting of legal acts (Robinson 2005).

With regards to the EU multilingual drafting process, first of all it should be noted that it is not based on the traditional translation method, but rather on a hybrid method, which combines translation elements and co-drafting elements and which entails considerable interaction between the different language versions (Gallas 2007; Doczekalska 2009; Lautissier 2011). Indeed, the process is characterized by the constant presence of all the official languages and the condition of equality between them. It is not only the final version that is subject to translation: the translation intervenes in the course of all the phases of this process, thus determining the constant presence of all the official languages. The presence of all the languages of the Union and the condition of equality between them is then particularly evident in the revision phase by the lawyer-linguists of the various institutions involved in the legislative process. In fact, during the revision, not only are all language versions taken into consideration, but it is also possible to retroact on the “original” text in the case it has given rise to difficulties of transposition or divergences of interpretation in the other language versions (Gallas 2007; Doczekalska 2009)<sup>15</sup>. The language versions are influencing each other and are subject to numerous changes during the legislative process, from the Commission proposal to final adoption, so it is often difficult to determine which language has been used in drafting a specific article and then distinguish between “original” versions and translations<sup>16</sup>.

Furthermore, the complexity of EU multilingual drafting is increased by some factors.

First, one has to consider the linguistic interferences which may affect the comprehensibility and clarity of texts in various ways. In fact, texts are generally drafted by non-native speakers of the drafting language: this of course has a strong impact on the text, where one can find “translations” (or hidden interferences) from the native language of

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<sup>15</sup> See *Joint Practical Guide of the European Parliament, the Council and the Commission for Persons Involved in the Drafting of European Union Legislation*, 2015, point 5.5.2.

<sup>16</sup> For a more detailed analysis of the drafting procedures in EU institutions see among others Jacometti 2006, 140 ff.; Pozzo and Cosmai 2014; Wagner, Bech, and Martínez 2014, 13 ff.

the drafter<sup>17</sup>. In addition, one cannot overlook the fact that the working language is English, but it is not the English of the common law, but a transnational English which is used as *lingua franca* in the international context and which does not express common law concepts (Pozzo 2012; Künnecke 2016).

Second, the legislative drafting takes place through an intercultural dialogue between persons belonging to different legal systems, whose communication is constantly challenged by the lack of equivalence between the respective legal languages. This has an impact on the clarity of the concepts of EU legal acts, since it is possible that different drafters understood a term in a different way (Kjær 2007).

Furthermore, the clarity of terms is also impaired by the political dimension of the drafting process. In fact, quite often the terms are intentionally ambiguous probably because of the difficulties in reaching a political agreement on certain “significant” terms that express concepts which are related to the different legal cultures in the individual legal systems of the Member States<sup>18</sup>. Having been faced with the difficulty in finding an agreement as to the definition and use of shared concepts, sometimes law-makers have chosen to make use of a terminology which is a-technical from a legal point of view (Dannemann 2014). On the other hand, the use of a neutral terminology is also required by EU drafting guidelines, which provide that EU legal acts should be drafted respecting “the multilingual nature of union legislation” and “concepts or terminology specific to any one national legal system are to be used with care”<sup>19</sup>.

Since we are dealing with legal rules, this complexity does not involve only language problems, since legal language – as already mentioned – is the expression of a specific legal culture and consequently it varies from one legal system to another. The issue is not just the problem of understanding the rules, but rather the problem of implementing the rules in such a way as to achieve an effective harmonization of the laws of the Member States. Indeed, in order to achieve this fundamental

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<sup>17</sup> As a consequence, there is a large use of “precedents” in the drafting practices. Even if precedents can be helpful for drafters, their use is not without risks, since drafters who are not lawyers and are not working in their mother tongue can end up choosing a “wrong” precedent (Robinson 2005; Ioriatti 2009).

<sup>18</sup> See also the remarks on the “negotiated” character of international treaties at paragraph 4 above.

<sup>19</sup> See *Joint Practical Guide of the European Parliament, the Council and the Commission for Persons Involved in the Drafting of European Union Legislation*, 2015, point 5.



goal of EU law, the EU law-maker should ensure a high degree of consistency between adopted legal provisions so that they can be interpreted in the same way and produce the same effects in all Member States. However, this does not always occur as a consequence of a number of issues deriving from the drafting and implementation of EU legislation, such as in particular those related to legal terminology, interpretation, and translation specific of the EU context.

## 6. CONCLUSIONS

As highlighted in the previous paragraphs it is possible to identify different contexts of multilingual drafting: national States, regional or international organizations, with two, three or more official languages. Each multilingual context is characterized by specific features – such as the grounds and legal basis of official multilingualism, the criteria and methods for drafting, adopting and interpreting multilingual legislation – which obviously affect the approach followed in the production of multilingual texts. Thus in each context we find different approaches and solutions to multilingual drafting – from traditional translation to effective co-drafting and all the nuances in-between – depending on the peculiarities of each case. It is therefore not possible to identify an “ideal” model that can be exported as such to other contexts. This also depends on the fact that, as the analysis of legal transplants teaches, a model need to be adapted to the context in which it is being inserted and in any case will acquire different connotations at the time of its concrete implementation.

On the other hand, however, it is certainly possible to identify similar problems and solutions in the different contexts, such as the objective of producing language versions that will be uniformly interpreted and applied; the need to overcome the distinction between source/original text and translation; and the need to take account of the “political” character of legislative texts.

In particular, the awareness of the complexity of multilingual drafting leads to pay more attention to the drafting quality of the legislation, also in relation to its multilingual nature, given that the improvement of the quality of the “source” texts facilitates the translation activity and therefore also improves the quality of all language versions. Moreover, the adoption of guidelines for drafting quality are also relevant for trans-

lation, as they make both editors and translators aware of the impact of multilingualism on drafting quality. Multilingualism therefore seems to have a positive effect on legislative drafting, as it implies a need for clarity that must be respected in all language versions. In addition, in multilingual systems it is easier to identify drafting mistakes and inaccuracies, which are generally more difficult to recognize in a monolingual system, and the presence of several language versions allows a more in-depth revision of all versions. This is even more true in the EU context, where the texts are often written in a language different from mother tongue of the drafters, while the translators enjoy the advantage of writing in their own mother tongue and can thus positively influence the drafting quality of the “original” texts.

Finally, in a broader perspective, multilingual drafting prompts the reflection on legal terms to a greater extent than in monolingual contexts and is characterized by a strong capacity for innovation since, on the one hand, it significantly influences both the drafting and translation activities, and on the other hand, it leads to a reconsideration of the relationship between interpretation and translation and above all to a renewed appreciation of the affinities between the two operations<sup>20</sup>.

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<sup>20</sup> For some interesting remarks see Gambaro 2007; Grosswald Curran 2019.

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