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**DOCUMENT QUALITY CONTROL
IN PUBLIC ADMINISTRATIONS AND INTERNATIONAL
ORGANISATIONS**

A Study

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University of Torino – Law Department

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Introduction

Any technical language may be difficult to understand for ordinary people not belonging to the inner circle of specialist professionals. It is extremely difficult to convey complex information in a way that is understandable to most people.

An established principle of the rule of law is that the need to be aware of the possible consequences of one's behaviour implies the possibility of having access to the rules, in a language that is comprehensible to most of the population. Secondly, the exercise of powers in democracies is subject to public scrutiny, which involves a duty of transparency towards citizens at all levels of State activity, from legislation to administration. Moreover, full citizenship requires the possibility of taking part in social and economic life, and this possibility is often mediated by appropriate knowledge of law. Generally speaking, 'access to law' may be considered as a crucial aspect of the functioning of democratic systems, and involves: 1. access to information; 2. access to rights and justice; 3. democratic participation in public discourse; 4. social inclusion.

At the same time legal language is specific; it refers to concepts rather than tangible objects that can be drawn, pictured, or represented by symbols, and often adapts an existing ordinary word and applies it to a different object. We have been led, more and more, to believe that anything can be explained in an easy, immediate way. Particularly, commercial advertisements have constantly sought to simplify reality in order to persuade customers that they can understand any message, even the most difficult notions about for example engines, the performance of computers, and the chemistry of cosmetics and pharmaceuticals. While superficial information, as long as it is not seriously misleading or does not affect fair competition between businesses, may be tolerated in advertising, on the contrary in a professional area, where decisions must be taken on the basis of available data, we cannot underestimate the need for a certain level of precision.

How can these two conflicting needs, precision and transparency, be combined without compromising either of the two? What answers to this question are provided by public administrations and international organisations in different contexts?

The development of document quality control (DQC) policies is a continuous process that needs constant adjustment. An overall dynamic approach must be followed to understand current practices and to outline possible improvements.

The present study adopts both a theoretical and a comparative perspective.

The theoretical analysis seeks to trace the evolution of document quality control and clear writing policies, also from a historical angle. The link between such policies and the fundamental principles of democracy and citizenship is highlighted, within national systems and international organisations.

Moreover reference is made to the nature of some plain language movements in various countries as well as to the role of plain language in preserving and enhancing the democratic process. This part of the analysis looks at how theory can be transposed into DQC measures. The pluralistic nature of society in various countries is also considered, along with impact on choices of communication style. The study looks at how diversity and gender neutrality are being dealt with by drafters and DQC policies.

The comparative part of the analysis aims at delivering a comprehensive overview of the contexts and systems where DQC and plain language policies are being implemented. This includes investigation of practices in a number of countries such as France, Germany, Italy, and the United States of America, where one language has the status of official language, or is dominant, as well as in bilingual or multilingual

countries such as Canada and Switzerland; in the UK we look at Scotland, Wales, and Northern Ireland and bilingual drafting of legislation.

The survey goes on to analyse DQC measures within international organisations such as Unidroit, the ECHR and the OECD which must tackle the additional problem of ensuring quality within a multilingual environment.

Considering that the most obvious feature in the recent practice of the EU, but also of other international organisations, is the prevalence of English as drafting language, the study also looks at how this is dealt with and affects document quality control policies.

The main parameters of the research encompass language, organisational and efficacy issues. Besides examining clear writing policies and mechanisms, the team seeks to assess the various organisational forms in order to identify at which stage of the workflow of an institution or organisation document quality control is implemented, as well as the functions or services responsible.

DQC strategies and policies are presented and compared in order to identify a selection of best practices and relevant examples from the institutions and organisations analysed. The project focuses primarily on the processes and not on the translation problems of the documents drafted by international organisations.¹

¹ For specific attention to the problems of translation, reference may be made to EUROPEAN COMMISSION, DIRECTORATE-GENERAL FOR TRANSLATION, *Study on Language and Translation in International Law and EU Law*, Studies on translation and multilingualism, Publications Office of the European Union, Luxembourg, 2012, available at: <<http://bookshop.europa.eu/en/study-on-language-and-translation-in-international-law-and-eu-law-pbHC3012627/?CatalogCategoryID=SIKABst.SEAAAEjGJEY4e5L>>.

Part I - Historical and Comparative Overview

Chapter I - Historical precedents

The notion that citizens should be able to scrutinise the action of those in control of government goes back a long way. Obviously identifying when demands for access to government action began depends on what is meant by 'access': very different perceptions of the required level of transparency have emerged over time.

1. Ancient law

The ancient experience of the Twelve Tables in the 5th century B.C. may be considered a first demand that at least the material sources of law should be available to be read by citizens. The population of Rome had succeeded in having the most important rules affecting private citizens' lives made accessible, kept in a public place, and removed from the control of the upper patrician social class.² This is generally recognised in European culture as an early realisation that laws should be accessible to people who are subject to their application. Obviously making rules accessible to the public does not guarantee real knowledge and full comprehension of legal provisions; the way they interrelate, the balance between general rule and exceptions, and the way they are interpreted by judges are just as important as their literal meaning.

It is however important to note how the desire for certainty, clarity in the legal field was a recurring concern also in the ancient world: the codification by Justinian in the *Corpus juris civilis* (529 A.D.) was aimed at rendering clear and accessible the existing elaboration of rules by previous authors and legislative provisions passed over a long period of time. As often mentioned in manuals of Roman law, Justinian wanted to establish a certain and definite body of reference for decisions and he prohibited further elaboration of what had been collected in his codification, forbidding 'commentaries' that would cause confusion or further uncertainty.³

An interesting (and provoking) observation by A. Watson points out how the 'law of citations', limiting the number of quotations that could be used to argue on some point of debate 'compares favourably with the modern strict doctrine of precedent in English law under which a court is bound by decision of a higher court, regardless of whether at that time the court was composed of undistinguished men and women or had reached its decision by illogical arguments.'⁴ The comment is interesting because it refers to the most common justification for the rule of binding precedent in common law: the need, once again, for certainty in law. Where no codification is available, the corresponding role of guaranteeing predictability of legal rules is entrusted to the *stare decisis* rule.⁵

² WATSON, Alan, *Roman Law and Comparative Law*, University of Georgia Press, Athens (USA), 1991, pp. 11 ff.; JOLOWICZ, Herbert F. & NICHOLAS, Barry, *Historical Introduction to the Study of Roman Law*, 3rd ed., Cambridge University Press, Cambridge, UK, 1972; STEIN, Peter, *Legal Institutions. The Development of Dispute Settlement*, Butterworths, London, 1984, at Chap. 6, para 1; GROSSO, Giuseppe, *Lezioni di Storia del diritto romano*, Giappichelli, Turin, 1965, at p. 93.

³ WATSON, *Roman Law and Comparative Law*, supra fn. 2, at p. 85; STEIN, *Legal Institutions*, supra fn. 2, at Chap. 6, para 2 (p. 96 in the Italian translation, Milan, 1987); BUCKLAND, William W. & MCNAIR, Arnold D., *Roman Law and Common Law*, 2nd ed., Cambridge University Press, Cambridge, UK, 1952, at p. 13 (ref. to Justinian's *Constitutiones Deo Auctore*, and *Constitutiones Tanta*); MERRYMAN, John H., *The Civil Law Tradition, An Introduction to the Legal System of Western Europe and Latin America*, Stanford University Press, Stanford, CA, 1969, at Chap. 4.

⁴ WATSON, *Roman Law and Comparative Law*, supra fn. 2, at p. 83.

⁵ GOODHART, Arthur L., 'Precedent in English and Continental Law, an Inaugural Lecture Delivered before the University of Oxford', *Law Quarterly Review*, Vol. 50, 1934, pp. 40-65; ALLEN, Carleton K., *Law in the Making*, 7th ed., Clarendon Press, Oxford, 1964, at p. 232.

We should also remember that the desire to limit the number of provisions, opinions, and qualified precedents to be consulted to ascertain the right answer to a legal issue, regularly re-surfaces in the course of history, and it is often frustrated as new needs and new theories emerge. The effort to limit which authoritative opinions should be allowed to be quoted before judges has been made repeatedly.⁶ The search for certainty is continuous: there is constant tension between the need to face new issues and the desire for a stable, clear body of authority.

The body of civil law collected by Justinian was crucial to the later development of the law on the European continent: it founded the opposition now existing between the civil and common law legal systems.⁷

2. Enlightenment and codification

A more complex and explicit need for transparency emerged, as is well-known, in the Enlightenment period. In Europe, awareness of the difficulty of understanding the law and of the consequent risk of not complying with provisions emerged with Jus-naturalism: many legal thinkers in the 18th century highlighted the need for clarity in the law.

There had of course been previous attempts to unify provisions to facilitate knowledge of them, such as the collection of *Corpus Juris Canonici* by Graziano in 1140 in the Catholic Church, or the collecting together of customs in France by King Charles VII with the well-known *Grande ordonnance de Montils Les Tours* (1454). These collections already expressed a search for order and for a clear exposition of sources, so that some certainty was granted to people who had to comply with their provisions: but the level of predictability was still low.⁸

Passing reference can also be made to experiments made in the 17th century in the first colonies of the New World where rules were arranged one after the other in alphabetical order, to allow for speedier consultation by less well-educated people, the best-known example being the 'Countenance of Authority' for Massachusetts.⁹ The aim was that no conceptual effort would be required of the reader, and extreme simplification would enable participation by the least educated members of these small societies.

Greater systematicness and awareness emerged in Europe when a more scientific approach toward all knowledge, and therefore also legal knowledge, began to be adopted in the great cultural movement of the Enlightenment. The break from

⁶ E.g. Victor Amadeus II, Duke of Savoy, King of Sardinia, in 1729 prohibited the quotation of doctoral opinions before his courts (in his *Le costituzioni di S.M., il Re di Sardegna*; see MURATORI Ludovico A., *Dei difetti della giurisprudenza*, 1743, available at: <<http://www.classicitaliani.it/index193.htm>>, Chap. IV, p. 111).

⁷ The implications of the codification by Justinian involve the written nature of law for continental Europeans, while common lawyers traditionally find their sources in the case-law. A complex web of consequences derives from this, including the different approaches to learning the law (in classrooms or in the courts), which has left a lasting mark in the development of the legal systems: WIEACKER, Franz, 'The Importance of Roman Law for Western Civilization and Western Legal Thought', 4:2 *Boston Coll. International and Comparative Law Review* 257-281 (1981) pp. 272 ff.; STEIN, *Legal Institutions*, *supra* fn. 2, at Chap. 6.

⁸ WATSON, Alan, *Sources of Law, Legal Change, and Ambiguity*, University of Pennsylvania Press, Philadelphia, 1984.

⁹ 'The Book of the General Lawes and Libertyes Concerning the Inhabitants of the Massachusetts, Collected out of the Records of the General Court for the Several Years Wherein They Were Made and Established, And now revised by the same Court and desposed into an Alphabetical order and published by the same Authoritie in the General Court held at Boston the fourteenth of the first month Anno 1647' (<<http://history.hanover.edu/texts/masslib.html>>, a scanned copy of a manuscript, discovered in the Boston Athenaeum by Francis C. Gray in 1843); COQUILLETTE, Daniel R., 'Radical Lawmakers in Colonial Massachusetts: The "Countenance of Authority" and the Lawes and Libertyes', 67 *New England Quarterly* 179-206 (1994); WATSON, Alan, *Legal Transplants, An Approach to Comparative Law*, Scottish Academic Press, Edinburgh, 1974.

medieval and *Ancien Régime* notions, as is well-known, emerged gradually, following in the steps of Jus-naturalism. Not only did law come to be perceived as independent from religion, but its comprehension was related to natural reason. Rationality in provisions became necessary.

Both rationality and accessibility of legislation were required of sovereigns at this time; codification appeared the means to satisfy needs voiced by authors writing in the 18th century. The well-known argument by Montesquieu (*De l'esprit des lois*, 1748) pleading for a distinction between the several powers of the State, a principle at the time identified with English experience, was coupled with the notion that in continental Europe the great variety of very localised and fragmented laws constituted a huge obstacle to democracy and the well-being of citizens.

This situation was well described by Voltaire:

'un homme qui court la poste, en France, change de lois plus souvent qu'il ne change de chevaux [...] et [...] un avocat qui sera très-savant dans sa ville ne sera qu'un ignorant dans la ville voisine.'¹⁰

Philosophers and jurists in the 18th century sought to encourage rulers to engage in the general enterprise of clarification of the law. The most authoritative thinkers and writers of the time insisted on the need for enlightened sovereigns to implement recommendations already advanced by Grotius, Hume, and Locke: the law needed to be rational, in conformity with natural reason, and accessible to the people who had to comply with its rules.

This need was expressed most effectively by Domat:

'Le dessein [...] est donc de mettre les **lois civiles dans leur ordre**; de distinguer les matières du Droit, de les assembler selon le rang qu'elles ont dans le corps qu'elles composent naturellement; [...] ranger en chaque partie le détail de ses définitions, de ses principes et de ses règles [...], n'avançant rien qui ne soit ou **clair par lui-même**, ou précédé de tout ce qui peut être nécessaire pour le faire entendre. [...] On s'est proposé deux premiers effets de cet ordre, la **brièveté** par le retranchement de l'inutile et du superflu, et la **clarté** par le simple effet de l'arrangement. Et on a espéré que par cette brièveté et cette clarté, il serait facile d'apprendre les Lois solidement, et en peu de temps [...]' (*Les lois civiles dans leur ordre naturel*, 1689).

It is not surprising that, in these first attempts, civil law took precedence over other fields: the inheritance of the Roman experience had left an important imprint on later centuries and private law was clearly pre-eminent in the *Corpus Juris Civilis* of Justinian.¹¹ Today continental systems are civil law systems, rather than common law systems.

Lawyers educated in European schools of law are generally also familiar with similar pleas for clear exposition of the law made by Ludovico Muratori¹² and Cesare

¹⁰ VOLTAIRE, *Des lois*, in *Œuvres complètes*, tome 15, Garnier, Paris, 1883, at p. 427 (originally written in the *Dialogue entre un avocat et un plaideur*, 1751).

¹¹ This feature is actually often mentioned in comparative law studies in describing differences between civil law legal systems to common law ones: for centuries private law was considered on the continent of Europe 'the law' and this has been one of the most lasting inheritances of the Roman past (DAVID, René, *I grandi sistemi giuridici comparati contemporanei*, CEDAM, Padova, 1973, SACCO, Rodolfo, It. transl. of the French 1971 edition, Part I, Chap. I); SCHLESINGER, Rudolf B., BAADÉ, Hans W., DAMASKA, Mirjan R. & HERZOG, Peter, *Comparative Law – Cases, Text and materials*, 5th ed., Foundation Press, New York, 1988, pp. 295 ff.; WATSON, Alan, *The Making of the Civil Law*, Harvard University Press, Cambridge, MA, 1981; WIEACKER, Franz, 'The Importance of Roman Law for Western Civilization and Western Legal Thought', *supra* fn. 7.

¹² MURATORI, *Dei difetti della giurisprudenza*, *supra* fn. 6, Chap. III:

'Dovrebbero queste esser chiare, con termini ben esprimenti la mente del legislatore; ma nè pur tutte quelle, che abbiamo nel corpo del Gius di Giustiniano, o ne gli statuti di varie città, portano in sè questo pregio; e però si rendono soggette a varie interpretazioni [...].'

Beccaria¹³, as well as with Voltaire's more radical suggestion: 'Voulez-vous avoir de bonnes lois? Brûlez les vôtres et faites-en de nouvelles.'¹⁴

The first attempts at codification, as is well known, were undertaken in Prussia, in the ALR, *Allgemeines Landrecht* (1794). This collection of laws represented considerable progress in comparison with the past, but the 17,000 provisions relating to different areas of law still caused confusion to the reader.¹⁵ For this reason both Maria Theresa from 1762 in Austria and Napoleon from 1800 in France tried to achieve greater transparency by stating rules in a more systematic manner, separating private and criminal law, and establishing procedural rules governing trials. The French revolution laid down the first seeds of the codification of civil law: the first draft of a code dates back to 1793. This initiative can be connected with the institution in 1790 of a central Cour de Cassation, whose purpose was to oversee interpretations delivered by judges, in order to guarantee that they would not follow the experience of the *Ancien Régime* Parlements when their autonomy in interpreting royal decrees had in fact negatively affected the authority of the legislator.¹⁶

The ideal of an all-inclusive code came into being with the Napoleonic code. In the words of Jean-Étienne-Marie Portalis, one of the four authors of the Civil Code, in 1804 the product of their efforts was to be:

'a body of laws designed to provide a legal framework for social, family and business relationships between individuals who live in the same geographical area.'

A code is conceived as an organised and systematic exposition of binding rules: not simply a collection of provisions approved at different periods of time, but a structured exposition where each proposition is coordinated and connected with the rest of the body of laws.¹⁷

In fact, the relationship between Civil Code and Constitution, with the primacy of private law, supported the legal framework of 19th century bourgeois liberal society. The *Code Civil* is often represented as 'the real constitution' of the French State.¹⁸ The particular care taken by the French commission responsible for this enterprise in seeking an appropriate level of communication with the public is well documented. Scholars have noted the exceptional result achieved by a language that identified the correct semantic level midway between high-ranking general principles that were too vague to implement, and the specificity of case-law.¹⁹

¹³ BECCARIA, *Dei delitti e delle pene*, 1764, para "A chi legge": 'Non tutto ciò che esige la rivelazione lo esige la legge naturale, né tutto ciò che esige questa lo esige la pura legge sociale' (available at: <<http://www.classicitaliani.it/varia/beccari1.htm#del00>>).

¹⁴ VOLTAIRE, *Dictionnaire philosophique* (1764).

¹⁵ STEIN, *Legal Institutions*, supra fn. 2, at Chap. 7.

¹⁶ GORLA, Gino, 'I precedenti storici dell'art. 12: disposizioni preliminari del codice civile del 1942', *Foro italiano*, 1969, pp. 112-132; 'La Cour de cassation est la plus haute juridiction de l'ordre judiciaire français. Elle a été précédée par le Tribunal de cassation, mis en place par l'Assemblée Constituante en 1790 pendant la Révolution Française': <http://www.courdecassation.fr/_COUR/role.htm>.

¹⁷ WIEACKER, Franz, *Privatgeschichte der Neuzeit*, Vandenhoeck & Ruprecht, Göttingen, 1952 (*Storia del diritto privato moderno*, trad. it. SANTARELLI, Umberto & FUSCO, Sandro A., Giuffrè, Milan, 1980), at p. 493. According to SCHLESINGER et al., *Comparative Law*, supra fn. 11, at p. 299 'a true code [...] i.e. a systematic, authoritative and direction-giving statute of broad coverage, breathing the spirit of reform and marking a new start in the legal life of an entire nation' (in opposition to the Corpus Juris or the Siete partidas and the German *Sachsenspiegel*: 'restatements rather than codes').

¹⁸ Cf. definition of the *Code civil* by Jean Carbonnier: 'la constitution civile des Français': CARBONNIER, Jean, *Manuel de droit civil*, 1st ed., Presses Universitaires de France, Paris, 1955, Nos 74 ff.; ID., 'Le Code Napoléon en tant que phénomène sociologique', *Revue de la Recherche Juridique*, Vol. 3, 1981, pp. 327-336; ID., 'Le Code civil', in NORA, Pierre (ed.) *Les lieux de mémoire*, Tome 2: *La Nation*, Gallimard, Paris, 1986.

¹⁹ DAVID, René, *I grandi sistemi giuridici comparati contemporanei*, supra fn. 11. STEIN, *Legal Institutions*, supra fn. 2, at Chap. 7, p. 126.

An often-quoted episode relates to Stendhal's admiration for the style of the *Code Civil*, to the extent that it was a source of inspiration for him when writing *La Chartreuse de Parme* (*Correspondance*, X, p. 277).²⁰ Some articles of the *Code Napoléon* are quoted as *topoi* of elegance and concision. The expression 'possession vaut titre' (Art. 2279) has become the shorthand formula to identify good faith purchase of goods. Another example relates to Article 1382 ('Tout fait quelconque de l'homme qui cause à autrui dommage [...]') establishing the general principle regarding civil liability for wrongs.

The choice of a direct and simple language and the attempt to limit provisions to a few lines enable even non-specialists in law to read the *Code Civil*. The drawback of such conciseness is that many details are not attended to: case-law has in time corrected some loopholes.²¹ But some legislative updating has also been needed during the two hundred years in which the *Code* has been in force.²²

It may be worth noting criticisms regarding style not only in relation to the different approach adopted by the later German Civil Code (*Bürgerliches Gesetzbuch*, BGB), but also by common law lawyers commenting on the generic, undefined, vague character of some articles.

The provision on tort (Art. 1382) has for instance been defined as 'a waste-paper basket' where anything can be put, at least from the point of view of an English legislator.²³ A comparison is drawn obviously with the very different drafting style of legislation in common law systems where precision, exact definitions, and certainty are striven for. In common law

'[...] the idea arose that every statute which deviated from the unwritten Common Law must be of an exceptional nature and therefore must be narrowly construed and applied only to the exact situation which was unquestionably covered by its terms. [...] it is astonishing how pedantic the courts could be in sticking to its precise wording.'²⁴

Obviously, the negative side of such attention to detail is the great length of provisions, and rather pedantic writing that often discourage the reader.²⁵ Lord Denning effectively summarised the contrast between continental and common law

²⁰ NEWMAN, M. L., 'Stendhal and the Code civil', 43:3 *The French Review* 434-442 (1970).

²¹ GAUDEMET, Eugène, *L'interprétation du Code civil en France depuis 1804*, Impr. G. Thone, Basileé, 1935; TUNC, André, 'The Grand Outlines of the Code', in SCHWARTZ, Benjamin (ed.), *The Code Napoleon and the Common Law World*, New York University Press, New York, 1956, pp. 19-45; BELLET, Pierre & TUNC, André, *La Cour judiciaire suprême. Une enquête comparative*, Économica, Paris, 1978, at p. 194.

²² *Travaux de la Commission de réforme du Code civil*, 1946 and ff.; 'introduction des règles sur les actions possessoires', 1975; 'introduction du quatrième livre du code' (ordonnance du 19 décembre 2002: dispositions applicables à Mayotte et ordonnance du 23 mars 2006, qui a regroupé les dispositions relatives aux sûretés dans un livre IV). The 2005 *Projet Catala* on the reform of law of obligations (<http://www.justice.gouv.fr/art_pix/RAPPORTCATALESEPTEMBRE2005.pdf>) has caused great discussions in recent years.

²³ BRIDGE, John, 'National Legal Tradition and Community Law: Legislative Drafting and Judicial Interpretation in England and the European Community', 19:4 *Journal of Common Market Studies* 351-376 (1981), text corresponding to fn. 46. The 'broad brush' character of international instruments is also often lamented by observers from an English background.

²⁴ ZWEIGERT, Konrad & KÖTZ, Hein, *An Introduction to Comparative Law*, Clarendon Press, Oxford, 1998, at Chap.18 (*Law Finding and Procedure in Common and Civil Law*), para III (*Statutory construction*), p. 265; LAWSON, Frederick H., 'The Art of Drafting Statutes – English Style', in *Festschr. Zweigert*, Geburtstag, Tübingen, 1981, pp. 879 ff.

²⁵ A well-known satirical representation of the style prevailing in the UK Parliament is due to HERBERT, Alan P., *Uncommon Law, Being 66 Misleading Cases*, Methuen, London, 1935 (later enlarged and edited); R. David once pointed out that English and American lawyers are the most obstinate enemies of 'legal standards': they 'combattent le plus le standard juridique, ils s'efforcent de le réduire petit à petit par une masse de jurisprudence, à des règles qui soient des règles juridiques' (Cp. TUNC, André, 'Colloque Standards juridiques et unification du droit', in *Livre du centenaire de la société en législation comparée*, Librairie générale de droit et de jurisprudence, Paris, 1971, pp. 105-144).

drafting styles, in the often-cited and well-known *Bulmer v Bollinger* decision concerning European law issues (1974):

'The draftsmen of our statutes have striven to express themselves with the utmost exactness. They have tried to foresee all possible circumstances that may arise and to provide for them. They have sacrificed style and simplicity. They have foregone brevity. They have become long and involved. In consequence, the Judges have followed suit.'²⁶

The clash between the two different styles of drafting became evident when the UK joined the EU: much has been written about the difficulties suffered by common lawyers having to come to terms with such a foreign drafting style.²⁷

The success of Napoleon's codification and of his five codes approved between 1804 and 1810, was enormous. In most books of introduction to comparative law, a fair amount of space is devoted to comment on the several waves of diffusion by which the *Code Civil* was first exported to the countries affected by Napoleon's campaigns: Italy, Spain, lower Germany, even Poland in the vicinity of Warsaw, Belgium and the Netherlands. Later it was imitated by European and non-European States, and then translated into Arabic in the Egyptian code that served as a model for other Arabic-speaking countries.

The competing model offered by the German BGB (1900) operated on another level. The long process of development (1873-1896) involved a search for a higher level of structural accomplishment, in the drafting of a preliminary book (*Allgemeiner Teil*) where general notions later used in specific articles would find their definition, and where the interrelation between concepts would have a precise framework.²⁸

The language was more technical: the attempt to reach a high level of consistency made the German codification less accessible to the lay person, but more attentive to consistent use of expressions. It provided a repository of the main notions later used in the single provisions, with a section where they were defined and circumscribed. This was much imitated too: in some cases in provisions and structure of the code itself (Greece, Portugal), and elsewhere in the language of scholars and judges (Italy, Spain, Switzerland). Latin America was influenced through Portugal (see codification in Brazil).²⁹

It is indicative of the great level of precision reached by the BGB that Japan opted for the German model when it finally opened up to the influence of foreign codification. The codification of 1898 – as is well known – fairly closely followed the structure of the BGB that would become binding in Germany only two years later.³⁰

In contrast to the BGB, the Swiss ZGB (1912) was 'intended for citizens'. Whereas the BGB is a masterpiece of coherence and systematic structure, conceived as a comprehensive collection of abstract principles, Swiss law, in the intention of the

²⁶ [1974] EWCA Civ 14, para 10.

²⁷ COLLINS, Lawrence & GRIEF, Nicholas, *European Community Law in the United Kingdom*, Butterworths, London, 1990; USHER, John A., 'The Impact of EEC Legislation on the United Kingdom Courts', *Statute Law Review*, Vol. 10, Iss. 2, 1989, pp. 95-109; Sir WADE, H. William R., 'What Has Happened to the Sovereignty of Parliament', *107 Law Quarterly Review* 1-4 (1991); ALLOT, Philip, 'Parliamentary Sovereignty. From Austin to Hart', *Cambridge Law Journal*, Vol. 49, No 3, 1990, pp. 377-380.

²⁸ WIEACKER, *Storia del diritto privato moderno, supra* fn. 17, at pp. 173 ff. (p. 468 of the 1967 German edition); RABEL, Ernst, 'Private Laws of Western Civilization – Part III – The German and the Swiss Civil Codes', *10:3 Louisiana Law Review* 265-275 (1950); STEIN, *Legal Institutions, supra* fn. 2, at Chap. 7; ZWEIGERT, Konrad & KÖTZ, Hein, *Introduzione al diritto comparato*, Vol. I, Giuffrè, Milano, 1995, (It. transl. of the German 1984 original) at pp. 177 ff.

²⁹ ZWEIGERT & KÖTZ, *Introduzione al diritto comparato, supra* fn. 28, at p. 177 ff. MERRYMAN, John H., *La tradizione di civil law nell'analisi di un common lawyer*, Giuffrè, Milano, 1973, at Chap. 5, pp. 43 ff., p. 50.

³⁰ MEHREN, VON, Arthur T. (ed.), *Law in Japan: the Legal Order in a Changing Society*, Harvard University Press, Cambridge, MA, 1963; ID., *International Encyclopedia of Comparative Law*, Martinus Nijhoff, Boston, 2008, Vol. VII, Chap. 6.

legislator, aimed to be accessible to all. The ZGB thus avoids abstract expressions and focuses on specific, concrete cases. It prioritises brevity (977 articles against 1533 paragraphs in the BGB): every subsection is composed by a single sentence; each article has three subsections at the most. In contrast to the BGB, only a few technical terms are used.³¹ Historical reasons and expediency suggested the adoption of the ZGB model by Turkey in 1926.³²

Throughout the process of codification, the language issue was foremost: questions about the introduction of neologisms, about the possibility of adopting expressions shaped on a foreign notion without the simultaneous adoption of that notion, and issues of terminology were discussed in depth.

3. Common law and experiments of codification

The continental experience of codification was more successful than in the Anglo-American world. The position of Jeremy Bentham should be mentioned, with his criticism of the common law system especially in Volume V of his works where he expresses his distrust for the binding precedent, defined as 'dog law'.³³ Inductive reasoning where the legal rule is exposed *a posteriori* when a real case is brought before the courts rather than deducted from a general principle of abstract character is compared to the behaviour of the owner of an animal that is trained by being punished for bad behaviour, learning the rules on the basis of the penalties inflicted. The alternative continental method of codifying rules in comprehensive legislative texts is judged by Bentham as preferable to the common law way of proceeding.

By the late 18th century the idea that the law should be expressed in an ordered and systematic fashion was gaining some ground also in England. History books also mention repeated efforts to codify the law in England during the 19th century, partly on the basis of the success of codification for India.³⁴ However the updating and organising of laws in England finally resulted in digests

'more in the tradition of Justinian, Staunford and Bacon than of Bentham. Their object was to restate in clear language the case law of the time, and the texts were supported by reference to the decisions on which they were based.'³⁵

As is often mentioned in both historical and legal research, Bentham also attempted to persuade President Madison to codify federal laws in the US.³⁶ This may well have

³¹ RABEL, Ernst, 'The German and the Swiss Civil Codes', *supra* fn. 27; ZWEIGERT & KÖTZ, *Introduzione al diritto comparato*, *supra* fn. 28, at pp. 205 ff.; WIEACKER, *Storia del diritto privato moderno*, *supra* fn. 17, Vol. II, at pp. 207 ff.; CANNATA, Carlo A. & GAMBARO, Antonio, *Lineamenti di storia della giurisprudenza europea*, Giappichelli, Turin, 1984, at pp. 209 ff.; WESENBERG, Gerhard, *Neuere deutsche Privatrechtsgeschichte im Rahmen der Europaischen Rechtsentwicklung*, It. transl.: *Storia del diritto privato in Europa*, CEDAM, Padua, 1999, at pp. 179 ff. A first part on the law of obligations was codified in 1881. Other parts were codified later: in 1907, a general part of 10 articles and four books (persons, family, inheritance and property). In 1911 the book on obligations was incorporated in the ZGB (book five).

³² SAUSER-HALL, Georges, 'La réception des droits européens en Turquie', in *Recueil de Travaux de la Faculté de Droit de l'Université de Genève*, 1938; YUNG, Walter, 'Le Code civil Suisse et nous', *ZSR (Zeitschr. f. schweizer. R.)*, Vol. 80, 1961 pp. 323 ff.

³³ TWINING, William (ed.), *Bentham: Selected Writings of John Dinwiddy*, Stanford University Press, California, 2004, at p. 54.

³⁴ See next section. HOLLAND, Sir Thomas Erskine, 'Codification', *Edinburgh Review*, Vol. 27, 1867, pp. 347-376. BAKER, John H., *An Introduction to English Legal History*, Butterworths, London, 1979, at p. 190 (the project of a future 'Code Victoria' is dated 1853; later proposals in Criminal Law date from 1861, while Lord Westbury's plea for codification caused the creation of a royal commission in 1866).

³⁵ BAKER, *An Introduction*, *supra* fn. 34, at p. 190.

³⁶ Bentham vigorously demanded a complete code of laws that were clear, simple, shaped on the principle of utility which he had advocated, and all-comprehensive. In his circular of 1817 to the citizens of the United States, whom he addresses as 'Friends and fellow-men,' he says: 'Accept my services, - no man of tolerably liberal education but shall, if he pleases, know - and know without effort - much more of law than, at the end of the longest course of the intensest efforts, it is possible for the ablest lawyer to know at present.' KEETON, George W. & SCHWARZENBERGER, Georg (eds.), *Jeremy Bentham and the Law*, Stevens & Sons,

influenced legislation in New York, as seen in later efforts by David Dudley Field to engage in a codification process: the Field Code of civil procedure (New York, 1848) was inspired by Bentham.³⁷ The five *Field codes* were later adopted in Dakota (1865) and California (1872).

It is difficult to compare the US experience with the English experience because of the many differences between the two.³⁸ A higher level of rationality in organising the sources of law is sometimes attributed to the US.³⁹ It is worth mentioning that the need for some ordering structure that would allow lawyers to have a general overview of certain fields of the law, across State boundaries, was felt comparatively early: the American Law Institute (ALI)⁴⁰ tried to satisfy this need in the 1930s through Restatements of the Law,⁴¹ while in the 1940s the area of commercial law was brought to some level of uniformity by the Uniform Commercial Code (UCC).

Issues of terminology and of clear writing emerged in this effort to clarify the law as early as the 1930s and 1940s. The project of codifying, or at least organising, the main institutions in a more intelligible manner was performed by the National Commission on Uniform State Laws.⁴² The final approval of the Uniform Commercial Code in the 1950s, after a long drafting process, produced a legislative model gradually enacted by all US States, except for Louisiana in relation to Art. 2⁴³. Louisiana of course enjoys a special situation because of its roots in French tradition and the Napoleonic Code: an interesting combination of written (codified) and unwritten (binding judicial decisions) law works in a system defined as 'mixed' in comparative law textbooks.⁴⁴

Although codification in a proper sense is alien to the common law tradition, another facet of accessibility to sources of law is well attended to in the common law world. As explained below, concerns about readability of provisions, clarity, and transparency have long inhabited the English-speaking legal world.

In England, as early as 1975, the Renton Committee made a recommendation to Parliament in a well-known document.⁴⁵ This was the beginning of a process of reform

London, 1948. Cf. also GILMORE, Grant, *The Ages of American Law*, Yale University Press, New Haven, 1977, Chap. I, para II.

³⁷ GILMORE, *The Ages of American Law*, *supra* fn. 36, at fn. 13; FRIEDMAN, Lawrence M., *A History of American Law*, Touchstone, New York, NY, 1973, at pp. 340 ff.

³⁸ SCHLESINGER, Rudolf B., *Comparative Law: Cases and Materials*, The Foundation Press, Brooklyn, 1950; MEHREN, VON, Arthur T. & MURRAY, Peter L., *Law in the United States*, Cambridge University Press, Cambridge, UK, 2007, at pp. 32 ff.; ATIYAH, Patrick S. & SUMMERS, Robert S., *Form and Substance in Anglo-American Law: a comparative study of legal reasoning, legal theory, and legal institutions*, Clarendon Press, Oxford, 1987; BODENHEIMER, Edgar, OAKLEY, John B. & LOVE, Jean C., *An Introduction to the Anglo-American Legal System: readings and cases*, West Publishing Company, St. Paul, MN., 1980.

³⁹ GILMORE, *The Ages of American Law*, *supra* fn. 36, at Chap. 1.

⁴⁰ <www.ali.org/>.

⁴¹ The ALI has in time completed Restatements in 15 areas of law including Torts, Contracts, Property, Conflict of Laws, Foreign Relations Law, and Product Liability.

⁴² National Conference of Commissioners on Uniform State Laws (NCCUSL), <<http://www.uniformlaws.org/>>. Several uniform laws were approved over a span of time (e.g. Negotiable Instrument Law 1896, Uniform Bills of Lading Act and Uniform Sales Act), before their integration in a single instrument: 'Uniform Construction of Uniform Acts, Note', in *Harvard Law Review*, 1915-16, pp. 541 ff.

⁴³ TWINING, William, *Karl Llewellyn and the Realist Movement*, Weidenfeld & Nicholson, London, 1973; MERRYMAN, *The Civil Law Tradition*, *supra* fn. 3, at Chap. V (the UCC experience is contrasted to the European models: American consolidations belong more to the restatement sort of collections than to the real code class as they do not aim to be exclusive sources of law). WHITE, James J. & SUMMERS, Robert S., *Uniform Commercial Code*, 5th ed., Practitioner Treatise Series, Thomson Reuters Westlaw, St. Paul, MN., 2002.

⁴⁴ ZWEIGERT & KÖTZ, *An Introduction to Comparative Law*, *supra* fn. 24. *Louisiana Civil Code*, 2006 ed., Volume I, ed. by YANNOPOULOS, Athanassios N., Thomson West. St. Paul, MN, 2006. PALMER, Vernon V., 'Historical Notes on the First Codes and Institutions in French Louisiana', in MORÉTEAU, Olivier, et al. (eds.) *Essays in Honor of Saül Litvinoff*, Claitor's Publishing, Baton Rouge, 2008, pp. 231-251.

⁴⁵ Report by the Committee appointed by the Lord President of the Council, chaired by Rt. Hon Sir (later Lord) David Renton (The Renton Committee), *The Preparation of Legislation*, Cmnd. 6033, HMSO, London,

in the drafting of legislation:⁴⁶ an ongoing process that is changing, for example, the use of 'shall' to express an obligation (often abandoned), of cross referencing, of punctuation, and of Latin words. The tensions between a conservative Bar and pleas for using less hermetic jargon in the law have had some effect: the Civil Procedure Rules 1998⁴⁷ have led to simplification of the terminology of trials in civil matters; words such as 'plaintiff', 'pleading', 'writ of summons', and 'leave to appeal' have been transformed into more user-friendly expressions ('claimant', 'statement of claim', 'claim form', 'permission to appeal').

In less official form, the Statute Law Society journal, the 'Statute Law Review', provides a particularly rich source of articles for those with an interest in plain language drafting. British efforts are matched by similar experiences in other common law countries such as Ireland⁴⁸, Scotland⁴⁹, Australia⁵⁰, New Zealand and the US.

Looking further afield, it should be remembered that the British Empire had a special challenge to face in areas governed in distant parts of the world: the experience of the British Raj in India deserves special mention.

Where Bentham failed to enact codification in England, the need to govern the distant regions of the British Empire succeeded: in Victorian England work was done to codify the law in India.⁵¹ Macaulay, one of the four members of the Governor-General's Council after the reform by Stuart Mill, drafted the Indian Penal Code. It was not passed until 1860, after it had been revised by Sir Barnes Peacock. This code, after twenty-one years' trial, won the highest commendation from Stephen in his history of Criminal Law.⁵² It has served as a model for all later Indian codes, and was part of a systematic scheme for codification since carried out. Now, as further clarified below, India has a penal code, contract act, bills of exchange act, limitation act, registration act, evidence act, easement act, and others, and drafts for further codifying acts have been prepared.

4. Eastern Europe experience

Looking beyond the traditional boundaries of western law, attention should be paid to experience in eastern Europe, distinguishing the socialist period from subsequent experience in the so-called post-socialist era.

1975; *Renton Committee Report on Legislation*, HL Deb 10 December 1975 vol. 366 cc945-1038, online: <<http://hansard.millbanksystems.com/lords/1975/dec/10/renton-committee-report-on-legislation>>.

⁴⁶ BENNION, Francis, *Statute Law*, 2nd ed., Longman, London, 1983.

⁴⁷ <<http://www.justice.gov.uk/courts/procedure-rules/civil>>.

⁴⁸ THE LAW REFORM COMMISSION (IRELAND), *Report on Statutory Drafting and Interpretation: Plain Language and the Law*, LRC 61 – 2000, Dublin, 2000, available at:

<http://www.lawreform.ie/_fileupload/Reports/rPlainLanguage.htm>; see also the preceding consultation paper: IRELAND, THE LAW REFORM COMMISSION, *Consultation Paper on Statutory Drafting and Interpretation: Plain Language and the Law*, LRC – CP14, Dublin, 1999, available at: <http://www.lawreform.ie/_fileupload/consultation%20papers/cpPlainLanguage.htm>.

⁴⁹ Scotland is here presented as a common law country, although it is more generally classified as a mixed jurisdiction for comparative law purposes:

<<http://www.scotland.gov.uk/Publications/2006/02/17093804/5>>.

⁵⁰ LAW REFORM COMMISSION OF VICTORIA, *Plain English and the Law*, Report No 9, Melbourne, 1987. LAW REFORM COMMISSION OF VICTORIA, *Access to the Law: The Structure and Format of Legislation*, Report No 33, Melbourne, 1990.

⁵¹ BAKER, *An Introduction*, *supra* fn. 34, at p. 190.

⁵² Sir James Fitz J. Stephen became legal member of the Indian Council in 1869, and was successor to Sir Henry Maine. He applied himself to drafting or revising codes for India on various subjects, such as contracts, wills, and evidence. On his return to England he was employed by the Government to prepare a draft evidence bill, which just failed to be approved in 1873. He transported Indian Code ideas and methods into his repeated attempts at codifying in England.

In the 1960s, contrary to some expectations or stereotyped ideas,⁵³ socialist countries codified extensively. Socialist countries in the area of influence of the USSR often reproduced the structure of the German BGB in the 1960s when codification became a frequent exercise in the area.⁵⁴ Obviously the notion that all laws should be accessible to the public did not apply in the USSR and some countries under its influence: on the contrary, secrecy was a huge obstacle to appropriate description of the legal framework at the time. The rule of law could not be implemented as long as unpublished provisions limited the effect of published rules.⁵⁵

In the post-socialist era, as is well known, a significant wave of codification has taken place in this European area: in Russia itself a civil code has come into force in separate successive parts between 1994 and 1995, with a final text on inheritance which entered into force in 2002.⁵⁶

The implementation of rules on the drafting of legal documents in eastern European countries emerging from the socialist experience has been closely linked to the process of building a social and democratic constitutional State. Therefore in these countries the technical rules for drafting legal documents often receive great attention, because they aim to realise the principles of a constitutional State and to achieve national purposes through the clarity and the consistency of legislation.

Language and linguistic issues in legislation are also a matter of great importance in many eastern European countries, especially where the national language has long been neglected in official documents for historical reasons.

The deliberate predominance of the use of the Russian language in all legislative and administrative activities during the time of the Union of Soviet Socialist Republics has in fact been the source of economic and social discrimination among Russian speaking populations and the part of the population using other, previously national (but not only) languages. Predictably, after the dissolution of the USSR, national languages assumed an important role in shaping the national identity of the newly independent countries and great attention was devoted to their usage, development and teaching.⁵⁷

The experience of the Baltic States is highly representative of these historical events and of subsequent legal and cultural developments. Lithuania, Estonia and Latvia endured Russian domination for many years. At that time they all experienced a significant amount of immigration from Russia, with consequent considerable changes in the ethnic composition of their populations and replacement of national personnel

⁵³ SACCO, Rodolfo, *La codificazione, forme dépassée de législation?, Rapports nationaux italiens au XI Congrès international de droit comparé (Caracas, 1982)*, Giuffrè, Milan, 1982, pp. 65-81; BARRY, Donald D., FELDBRUGGE, Ferdinand J. M. & LASOK, Dominik (eds.), *Codification in the Communist World*, Sijthoff, Leiden, NL, 1975; FELDBRUGGE, Ferdinand J. M., VAN DEN BERG, Gerard P. & SIMONS, William B., *Encyclopedia of Soviet Law*, 2nd ed., Martinus Nijhoff, Dordrecht, NL, 1985; IOFFE, Olimpiad S. & MAGGS, Peter B., *The Soviet Economic System, A Legal Analysis*, Westview Press, Boulder, CO, 1987; AJANI, Gianmaria, *Diritto dell'Europa Orientale*, UTET, Turin, 1996.

⁵⁴ SACCO, Rodolfo, 'Il substrato romanistico del diritto civile dei paesi socialisti', *Rivista di diritto civile*, Vol. I, 1969; ZWEIGERT, Konrad & KÖTZ, Hein, *Einführung in die Rechtsvergleichung*, Mohr Siebeck, Tübingen, 1984, Chap. 5.

⁵⁵ AJANI, Gianmaria, *Le fonti non scritte nel diritto dei Paesi socialisti*, Giuffrè, Milan, 1984; VAN DEN BERG, Gerard P., 'Joint Party and Government Decrees in the USSR and Other Socialist Countries', *Review of Socialist Law*, Vol. 11, 1985, pp. 47-73; PESCHKA, Vilmos, 'The Relation of Written and Unwritten Sources of Law in Contemporary Hungarian Legal System', in PÉTERI, Zoltán (ed.), *Hungarian law – comparative law (essays for the 8th International Congress of Comparative Law)*, Akadémiai Kiadó, Budapest, 1970, pp. 13-22.

⁵⁶ BUTLER, William E., *Russian Law*, Oxford University Press, Oxford, 2004; AJANI, *Diritto dell'Europa Orientale*, *supra* fn. 53, at p. 264.

⁵⁷ For a first reference to the issue of language questions and political factors, see MAURIS, Jacques, 'A Sociolinguistic Comparison between Québec's Charter of the French Language and the 1989 Language Laws of five Soviet Republics', *Journal of Multilingual and Multicultural Development*, Vol. 12, Iss. 1&2, pp. 117-126, 1991.

with Russian personnel, especially in the most important and prestigious jobs. All ethnic and linguistic minority schools and cultural associations were closed, as were journals and newspapers. Russian became the first language in many areas, the second in schools, and it also the language used by the ethnic and linguistic minorities. Independence from the USSR finally became possible in 1990 in Lithuania and in 1991 in Latvia and Estonia.

First of all, the issue of national language became immediately central to the building of the new States. The Estonian Declaration of Sovereignty of 1988 was in fact quickly followed by proclamation of Estonian as the official language, with the Language Law of 18 January 1989; this was later repealed and substituted by the Language Act of 1995, in use today, which regulates usage and proficiency of the national language in the public administration and local government bodies. In 1990 Estonia established the Language Board (now Language Inspectorate) to oversee implementation of the Language Law.⁵⁸ Its many duties include oversight of normative and technological words. Shortly after in 1995, the Estonian Legal Language Centre, initially known as the Estonian Legislative Support Centre, started operating as a State agency under the governance of the Estonian State Chancellery.⁵⁹ The mandate of the centre was to translate Estonian legislation into English and European Union legislation into Estonian, and to set up and manage a full-text database of translations and a terminology database. From 1 May 2004 the Estonian Legal Language Centre was charged, among others, with the task of developing and protecting Estonian legal language, organising legal terminology and revising Estonian legislation. The Centre has thus become a linguistic support to legislative drafting.⁶⁰ The centre relies solely on in-house translators and revisers, former linguists especially trained to become translators, occasionally with the help of area specialists.

In Lithuania in 1994, the national Parliament, the Seimas, enacted the Law on the State Language, aimed at the enforcement of the use of Lithuanian as the sole national language in legislation and administrative affairs. The same law provided that the State must enforce correct use of the Lithuanian language and give assistance to its studies. The State Lithuanian Language Commission was established to define policy and tasks of State language protection and approve linguistic norms and terminology.⁶¹ One of the main aims of Lithuanian language policy is to develop and render more effective the usage of Lithuanian language, especially in specialised fields such as technology and legislation, and to 'further improve the methodology for the implementation of the State language status and for the control over the correctness of public language use'.⁶²

Slovenia is another area that was under the influence of the USSR in the past. Great importance was given to the issue of the historical development of Slovenian, leading it to acquire its own technical, scientific and legal terminology and to achieve official status, first alongside other official languages, then after independence as the only national language. The predominance of Slovenian was in fact finally proclaimed by the Assembly of the Republic of Slovenia with the enactment of the Act on Public Usage of the Slovenian Language.⁶³ The Act ensures protection of the Slovenian language, fosters study and research on the subject and provides for its mandatory

⁵⁸ The website of the Language Inspectorate is <<http://www.keeleinsp.ee/?lang=1>>.

⁵⁹ The website of the Estonian Legal Language Centre is <<http://www.legaltext.ee/indexen.htm>>.

⁶⁰ For further information on the Estonian Legal Language Centre please read MERIT-ENE, Ilja, 'Estonian Legal Language Centre: Legal Translation and Terminology Work', 33 *International Journal of Legal Information* 274 (2005).

⁶¹ Law on the State Language Commission, <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=157640>.

⁶² <http://vlkk.lt/i/u/file/policy-guidelines_2003-2008.pdf> (unofficial English translation).

⁶³ The English text can be found at:

<http://www.arhiv.mk.gov.si/fileadmin/mk.gov.si/pageuploads/min_eng/legislation/APUSL.pdf>.

adoption in administrative and business activities. The same Act specifies that the Ministry of Culture shall be responsible for monitoring implementation of the Act, with the assistance of other ministries responsible for their specific sectors, and, especially, for monitoring implementation of the provisions of the Act regarding usage of Slovenian in all laws and regulations. A report is made annually to the Government of the Republic, which informs the National Assembly of the Republic of Slovenia. Lastly, the same Act sets up an inter-ministerial consultative coordination body, with the purpose of ensuring that government bills and regulations comply with the provisions of the Act and language policy aims.

In eastern European countries the same attention devoted to language is often dedicated to the drafting of legislative acts. In the Republic of Estonia, for example, the Board of the Riigikogu, the Estonian Parliament, is responsible for establishing the rules for drafting parliamentary legislation. These rules set out the substantive and formal requirements for drafting legislative acts and give instructions concerning the wording of legislative acts, presentation of references, and provisions delegating authority. In line with this duty, in 1993 the Board established the rules to be observed in preparing draft legislation to be submitted to the Parliament and in formatting them as enacted legislation. In the same year, the Government of the Republic established the procedure for obtaining the required approvals and organising legal expert analysis of draft legislation to be submitted to the Government. In 2000, the Normative-technical Rules for Drafting Legal Acts, issued by the Government, entered into force. These rules emphasise equally substantial and formal issues of legal drafting; in fact, on the one hand they require compliance with rules concerning the substance of the laws, providing in an explanatory letter a preliminary listing of the opinions of those who will be impacted by the new legislation, and a study on the social and economic impact of the same. On the other hand, they also ask drafters to verify the conformity of the new legislation to the Constitution and other pre-existing laws. At the end of 2011 the Estonian Government approved the Rules of Good Legislative Drafting, for the reason that good legislative drafting rules are essential to improve quality in drafting and content of legislative acts; in February 2011 the Riigikogu approved the Guidelines for Development of Legislative Policy, to be followed until 2018,⁶⁴ aimed at public policymaking, improving the quality of targeted legislation and enhancing the predictability and openness of policymaking. These rules explicitly provide, at Art. 9, technical instructions regarding the clarity of legal provisions.⁶⁵

Similar inspiration drives the Regulations of the State Chancellery of the Latvian Republic,⁶⁶ while the Legal Drafting Guidelines issued by the Government Office for Legislation of Slovenia in 2004⁶⁷ stress the need for unified drafting rules, seen as an

⁶⁴ The annex to the *Guidelines* can be found at: <http://www.just.ee/orb.aw/class=file/action=preview/id=55852/GuidelinesforDevelopmentofLegislativePolicyuntil2018.pdf>.

⁶⁵ 9. Law shall be clear.

9.1. Estonian Draft Acts shall be developed in a language as simple as possible, clearly and precisely, primarily in consideration of the persons who are expected to be the main target group for the legislation as to both implementing the Act and being the addressee. In particular:

9.1.1. provisions shall be worded briefly and be as harmonised as possible, and avoid provisions and sentences that are too long, complicated wording and use of abbreviations;

9.1.2. terminology used in the draft Act shall be harmonised and consistent with the existing Acts, in particular with legislation in the same area, and also with the generally known terminology of the regulated area;

9.1.3. giving a different meaning to one and the same term shall be avoided both within one legislation and the legal order as a whole;

9.1.4. it shall be ensured that all draft acts submitted for approval have been edited by the ministry that drafted the draft act taking into account the instructions and explanations provided by the Ministry of Justice.'

⁶⁶ <http://www.mk.gov.lv/en/vk/nolikums/reglaments/>.

⁶⁷ http://www.svz.gov.si/fileadmin/svz.gov.si/pageuploads/Dokumenti/Nomotehnicne_smer.pdf.

important constituent element of legal certainty based on clear, unambiguous, and understandable regulations that are well drafted in legal terms, and that define in advance the position, rights and obligations of bodies and individuals implementing the regulations. Consistent and legal implementation of regulations is given equal consideration as a fundamental aspect of legal certainty.

In Lithuania the Legal Department of the Seimas is charged by the Statute of the Seimas with drawing up '[...] conclusions on whether or not the draft is in conformity with the Constitution, laws, principles of legislation and technical rules of law-making, and whether or not the submitted documents conform to the requirements of this Statute'.⁶⁸ Monitoring of drafting of laws and regulations is carried out in compliance with the Law on Procedure of Drafting of Republic of Lithuania Laws and other Regulatory Enactments, as amended in 1999.⁶⁹

In other eastern European countries the process of formulating drafting procedures was less spontaneous, and rather the consequence of duties imposed on national governments and parliaments by EU accession negotiations. An example of this is Bulgaria: the task of drafting for the approximation of national legislation was given to specialised units in the central State administration, established by an official government act, and supported by European financial and technical aid. However the know-how and technical competencies acquired by these units during the integration process were not lost once the process of approximation of national legislation ended and were not limited to European legislation. These units successfully transferred their acquired expertise and competencies to the drafting of national legislation.⁷⁰

A similar procedure was adopted in Croatia, where the task of legislative approximation was mainly supported by the Independent Service for Translation of the *acquis communautaire* and Croatian Legislation, attached to the Ministry of Foreign Affairs and European Integration of the Republic of Croatia.⁷¹ Efforts to gather information from other eastern European countries were less successful. With regard to Poland, for example, informal sources indicated that for the time being there is little information available on administrative procedures, and that there are apparently no official guidelines regarding the translation of EU or foreign documents in Polish, and no instructions for translators of European law.

5. Beyond Europe and western experience

Elsewhere the role of codification was perceived quite differently. Experts in Chinese law believe that in the 19th century Europeans misinterpreted the function of the Qing codification of the law in China.⁷² Even though a large number of imperial provisions were collected in official form, they never became an exclusive source of law, judges never felt bound by the written rules, and the ability to adapt to features of individual cases and to surrounding circumstances was always reserved to the imperial functionaries in charge of administering justice.⁷³ Misinterpretation of the role of these

⁶⁸ See Art. 136 (3) of the Statute of the Seimas at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=284135.

⁶⁹ At: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=96262&p_query=&p_tr2=2.

⁷⁰ On the subject, reference is to MANEVA, Gergana, 'Drafting for Accession: Bulgaria's Way to Success', *European Journal of Law Reform*, Vol. 7, 2005, pp. 111-134, at p. 127.

⁷¹ On the issue of the integration of the European *Acquis* in Croatia see ŠARČEVIĆ, Susan, *Legal Translation: Preparation for Accession to the European Union*, University of Rijeka, Rijeka, 2001 and BAJČIĆ, Martina, 'Challenges of Translating EU Terminology' in WILLIAMS, Christopher & GOTTI, Maurizio (eds.) *Legal Discourse across Languages and Cultures*, Peter Lang, Bern, 2010, pp. 75-94.

⁷² JONES, William C., *The Great Qing Code*, Oxford University Press, Oxford, 1994.

⁷³ HUANG, Philip, *Code, Custom and Legal Practice in China. The Qing and the Republic Compared*, Stanford University Press, Stanford, 2001, pp. 124-125.

documents negatively affected the idea of Chinese law which Europeans formed when they first came in contact with this very foreign culture.⁷⁴

An often-quoted episode also reveals something about a possible gap between the ruling élite and the general public in eastern Asia. In Japan, Emperor Hirohito's declaration at the end of the second world war was misunderstood by part of the population because the formal classical language employed to deliver the message was unfamiliar to most citizens.⁷⁵ The adoption in 1898 of a civil code modelled on the structure of the German BGB did not bring full falling in line with the western notion of a code: a large portion of rules perceived as binding is still unwritten and affects the working of legislative sources.⁷⁶ A huge effort of comparison of concepts and of translation, introducing neologisms to cover unknown notions, had to be conducted. An interesting example mentioned by scholars specialised on the Far East's integration of legal notions conceived elsewhere concerns the notion of individual 'legal right' ('droit subjectif'): the closest pre-existing concept in Japan was found in the term expressing 'a portion' of something.⁷⁷

Other Asian cultures show a similar gap between what is written in official form and what is perceived as binding. The Indian experience is telling, in this respect. Customs still hold considerable influence, beyond the provisions of codes approved by legislators. In fact, one of the arguments used against the hotly-debated plan for a uniform civil code for family and inheritance laws is that the price of harmonisation could be increasing distance between official State laws, and customary and religious laws in various communities, particularly among Hindus and Muslims. The present system of personal law seems to be more viable; it preserves legal pluralism on the ground, allows the State to intervene through legislation and judgments, and moves towards standardisation without imposing uniformity.⁷⁸ On the other hand, also on the basis of Article 44 of the Constitution, many claim that a uniform civil code should be enacted in order to reduce differential treatment and simplify the extremely complex and difficult area of personal law.

6. Soft laws

Is codification still perceived as a powerful means of making the law clear and reflecting the current state of the law?

There was a sense of great disappointment, after the Second World War, that the written law had failed. The Nazi regime had planned new codification in Germany⁷⁹

⁷⁴ ESCARRA, Jean, *La conception chinoise du droit*, Vetch, Paris, 1935; SCHWARTZ, Benjamin, 'On Attitudes toward Law in China', in KATZ, Milton (ed.), *Government under Law and the Individual*, American Council of Learned Societies, Washington, DC, 1957, pp. 27-39, at p. 28; TIMOTEO, Marina, *Il contratto in Cina e Giappone nello specchio dei diritti occidentali*, CEDAM, Padua, 2004, at p. 13.

⁷⁵ For more details, see: <<http://en.wikipedia.org/wiki/Gyokuon-h%C5%8Ds%C5%8D>>.

⁷⁶ KNAPP, Viktor, *International Encyclopedia of Comparative Law*, Vol. I, Mohr, Tübingen, 1972, at Chap. IV; NAKATANI, Kazuhiro & TSURUTA, Jun, *Japanese National Report to the XVII International Congress of the International Academy of Comparative Law*, Utrecht, 2006, subject IC2 (*Interpretation of multilingual legislative texts*); ORTOLANI, Andrea, 'La lingua del diritto in Giappone', in AJANI, Gianmaria, SERAFINO, Andrea & TIMOTEO, Marina, *Il diritto dell'Asia orientale*, collection SACCO, Rodolfo (ed.), *Trattato di diritto comparato*, UTET, Turin, 2007, pp. 24 ff.; TIMOTEO, *Il contratto in Cina e Giappone nello specchio dei diritti occidentali*, *supra* fn. 74.

⁷⁷ TIMOTEO Marina, *Il contratto in Cina e Giappone*, *supra* fn. 74, in relation to the word 'bun', p. 243; ROSSI, Piercarlo, 'La lingua del diritto in Cina', in AJANI, Gianmaria, SERAFINO, Andrea TIMOTEO, Marina, *Il diritto dell'Asia orientale*, collection SACCO, Rodolfo (ed.), *Trattato di diritto comparato*, UTET, Turin, 2007, pp. 10 ff.; ORTOLANI, Andrea, 'La lingua del diritto in Giappone', *supra* fn. 76.

⁷⁸ MENSKI, Werner, *Hindu Law: Beyond Tradition and Modernity*, Oxford University Press India, New Delhi, 2003.

⁷⁹ WIEACKER, *Storia del diritto privato moderno*, *supra* fn. 17, Vol. 2, at p. 273 (a first book of a *Volksgesetzbuch* was published in 1941).

and the BGB did not prevent violation of basic human rights.⁸⁰ The same is true of many European codes, including the Italian Civil Code, published during the fascist period.⁸¹ This 20th century experience has negatively affected the confidence of legal scholars in the authoritativeness of codes: the conviction that law in action may be very different from law in books has gained a strong hold.

A more recent wave of legal realism has emphasised the notion of law as a process rather than a series of authoritative statements; focus has been on the legal process that involves many actors, not only legislators but also judges, consulting lawyers and interpreters of the law in general.⁸² Rather than rigid codification, meant to last for a long time, a new view is gaining ground: models of agreements are offered, restatements of case-law are collected, standard forms are drafted, and 'principles' are sponsored.⁸³

More generally scholars have called into question the solution of compact codification in the context of the welfare State. The unity of the law, especially in the area of private law, once considered as the most organic part of the legal system, has been affected by State intervention in many areas of contract and property law due to welfare policies⁸⁴ and is constantly under threat.

A huge quantity of rules tend to be collected in separate bodies of legislation, outside the traditional all-inclusive codes. This is the case of consumer law: many 'consumer codes' have been passed by parliaments that have not been able to incorporate some specific rules within pre-existing civil codes. Often this special legislation implements EU directives and is subject to frequent updating: frequent intervention on the structure of codes could produce unsettling results. Ongoing debate in many States concerns the issue of whether such private law rules should be placed within codes.⁸⁵

It is difficult for parliaments to keep up with the pace of change, and in many fields, such as artificial insemination and family law, the rapid development of technology makes it even more difficult. Indeed, statutory provisions are enacted to solve problems caused by advances in science after citizens have already developed practices, customs, and usages to deal with the most urgent needs. Consolidating *a posteriori* seems more common than pre-definition of rules. However, the process of consolidating fragmented rules, giving shape to scattered legislative interventions, and bringing some systematic order to multiple sources is still perceived as a valuable exercise. For example, the Netherlands re-codified civil law in the 1990s, Germany revised legislation on obligations in the BGB in 2002, Québec updated its Code in 1991, and Louisiana rewrote a number of chapters of its Civil Code in 1987.

⁸⁰ VAN CAENEGEM, Raoul, *European Law in the Past and the Future*, Cambridge University Press, Cambridge, UK, 2002.

⁸¹ SACCO, Rodolfo, *La codification, forme dépassée de législation?*, *supra* fn. 53, at pp. 65-81.

⁸² HART, Henry M. & SACKS, Albert M., *The Legal Process: Basic Problems in the Making and Application of Law*, Foundation Press, Westbury, NY, 1994 (a collection of legal materials that started to circulate in unpublished form at Harvard Law School in the mid-50s); ESKRIDGE, William N. & FRICKEY, Philip P. 'The Making of "The Legal Process"', 107:8 *Harvard Law Review* 2031-2055 (1994).

⁸³ BONELL, Michael J., 'The Principles and Transnational Law', *Uniform Law Review*, Vol. 2000, No 2, 2000, pp. 199-218, available at: <<http://www.org/english/publications/review/articles/2000-2-bonell-e.pdf>>.

⁸⁴ WIEACKER, *Storia del diritto privato moderno*, *supra* fn. 17, Vol. II, at p. 300 (the author speaks of a 'disintegrazione del diritto civile': a process of disintegration of the unity of civil law). A phenomenon of 'statutorification' is observed also in the common law world where the primacy of case-law is opposed by new sources of law: CALABRESI, Guido, *A Common Law for the Age of Statutes*, Harvard University Press, Cambridge, MA, 1985; WATSON, *Sources of Law, Legal Change, and Ambiguity*, *supra* fn. 8, at p. 81.

⁸⁵ SMITS, Jan M., *Complexity of Transnational Sources. National Law. The Netherlands*, Report to the XVIII International Congress of Comparative Law, Washington, DC, 25 July-1 August 2010, *ISAIDAT Law Review*, Vol. 1, Special Iss. 3, Art. 9, 2011, available at: <<http://isaidat.di.unito.it/index.php/isaidat>>; LEIBL, Stefan, 'The Approach to European Law in Domestic Legislation', *German Law Journal*, Vol. 4, No 12, 2003, pp. 1255-1275, at p. 1268.

The attitude of lawyers has in some measure changed; they realise that codes are not as lasting as they were in the past, and they see them more as mirrors of current reality rather than as monuments of human intellect. Nevertheless, finding provisions organised according to subject-matter, maintaining a standard of semantic communication, using language consistently throughout provisions, and consulting a compact repository of legal language, all still help to describe the law as it stands.

7. International and supranational legislation

Codification at an international or supranational level clearly faces additional challenges. International *uniformation* of law generally refers to documents harmonising provisions in a certain field that are signed and ratified by States: the States are responsible for transforming these obligations into national rules binding their citizens. Supranational law is the level of law reached when an institution has competence to legislate and directly bind citizens of different States without the intermediate step of a local act of reception, as happens with EU Regulations; national parliaments surrender some legislative competence. A supranational jurisdiction to enforce legislation approved at supranational level may also exist.

Both at international and supranational level, combining aims and aspirations founded on different cultural backgrounds requires compromise: even where political negotiations reach an agreement, lawyers' mindsets, shaped in their national legal systems, and their reluctance to adjust legal notions belonging to their traditions may cause difficulties in effecting compromise.⁸⁶

Even the US, with its federal structure,⁸⁷ has in the past experienced the difficulty of harmonising the laws of the various States which resisted interference by the Federal State in areas that used to be independent. The long controversial process by which a common legal heritage was built is well documented, initially by the courts and later by scholars. Law reports and legal scholarship describe how States tried to break away from federal legislation, and how legal interpretative resources were invested in order to circumvent the limits placed by the federal Government.⁸⁸ In Europe a similar process has been slowly developing, but with the additional problem that the various States do not speak a common language and do not share a common cultural background in the area of law either.

Misunderstandings are sometimes caused by an appearance of similarity. An example may illustrate the differences hidden behind similar expressions. The word 'possession' can be used to indicate two different notions. On the one hand, the Roman tradition limits the term to situations where the person holding a good or land behaves as if he/she were the owner of the item and does so with intention and denying the same

⁸⁶ CARVER, Jeremy P., *The Experience of the Legal Profession*, in , *International Uniform Law in Practice*, Acts and Proceedings of the 3rd Congress on Private Law (Rome, 7-10 September 1987), Oceana/, New York/Rome, 1988, pp. 411 ff. (at p. 415): 'the legal profession, typical of most professions, is most comfortable with and inclines towards the familiar [...] (and) faced with the option of drafting clients' contractual obligations with reference to existing and long-established domestic law, the practitioner will choose to shun the application of a novel uniform law [...] if at all possible'.

⁸⁷ DE TOCQUEVILLE, Alexis, *La Démocratie en Amérique*, 2nd ed., Pagnerre éditeur, Paris, 1848, available at: <<http://www.gutenberg.org/files/30513/30513-h/30513-h.htm>> (para 'Ce qui distingue la constitution fédérale des États-Unis d'Amérique de toutes les autres constitutions fédérales') pointed out that '[d]ans toutes les confédérations qui ont précédé la confédération américaine de 1789, les peuples qui s'alliaient dans un but commun consentaient à obéir aux injonctions d'un gouvernement fédéral; mais ils gardaient le droit d'ordonner et de surveiller chez eux l'exécution des lois de l'Union. Les États américains qui s'unirent en 1789 ont non seulement consenti à ce que le gouvernement fédéral leur dictât des lois, mais encore à ce qu'il fit exécuter lui-même ses lois. [...] En Amérique, l'Union a pour gouvernés, non des États, mais de simples citoyens.'

⁸⁸ HAY, Peter & ROTUNDA, Ronald D., *The United States Federal System: Legal Integration in the American Experience*, Giuffrè, Milan, 1982; cf. *McCulloch v Maryland* 17 US (4 Wheat.) 316 (1857); *State of Missouri v Holland*, 252 U.S. 416 (1920).

qualification to others (*animus possidendi*). On the other hand, the German approach includes a person who acts as the owner independently from such subjective attitude (*animus*). This interpretation qualifies as possessor also a person that could otherwise be qualified as mere custodian, lessee or borrower. Persons having such relations with an object would in Italian be indicated by the term *detentori*.⁸⁹

The same expression 'possessor' may identify slightly different situations in different legal systems. This is important because not everyone is entitled to take action to protect their relationship with goods or land. Some criteria must be met in order to act against interference with possession: the courts will verify that these are satisfied before granting a remedy.

In Germany the BGB's definition of possessor includes the person who has control over a good or land because he/she is a custodian, a lessee, or a borrower; the code qualifies such a person as 'possessor', while the person who granted him/her effective control over the good or land is qualified as 'indirect possessor'.⁹⁰ In Italy the Civil Code introduces a distinction: a person who holds the good or land in the interest of someone else, for example a lender, a depositant, or a lessor, is called *detentore* and will be able to protect his/her relationship with some of the available remedies but not all of them (Art. 1140 c.c.).

This issue becomes even more striking when a civil code adopts the conceptual framework of the German BGB, but the language of Italy. Such is the case of the Swiss ZGB: the word 'possessor', expressed in Italian, one of the official languages of Switzerland, will mean something quite different from the same word in an Italian context (Art. 919 c.c., ZGB 1907).⁹¹

Thus it is difficult to compare the case-law of the two countries: the observer needs to be alert to shifts in meaning between words that have exactly the same appearance. Similar considerations apply to situations involving France and Switzerland or Belgium: the interpretation given to words, having exactly the same sound and spelling, may differ according to the legal culture surrounding them.

When common law and civil law expressions come together, difficulties increase even further: many words of Latin or (Norman) French origin have found their way into legal language in England (and in the rest of countries adopting the English model).⁹² Many of these expressions have been applied to the specific experience of the royal courts and of the Chancery court, assuming new and different meanings from the original Roman matrix.

Just to introduce an example out of the many possible ones, the word 'rectification' applies both in the common law of contracts and in the civil law counterpart. Meanings do not coincide. The English word applies to a specific remedy: 'a party can apply in equity for a rectification of a written contract and he will succeed if he can prove by the strongest oral evidence that it does not properly reproduce the terms of an oral

⁸⁹ Art. 1140 of the Italian Civil Code ('Il possesso è il potere sulla cosa che si manifesta in un'attività corrispondente all'esercizio della proprietà o di altro diritto reale. Si può possedere direttamente o per mezzo di altra persona, che ha la detenzione della cosa.')

⁹⁰ BGB § 868, Indirect possession, 'If a person possesses a thing as a usufructuary, a pledgee, a usufructuary lessee, a lessee, a depositary or in a similar relationship by virtue of which he is, in relation to another, entitled to possession or obliged to have possession for a period of time, the other person shall also be a possessor (indirect possession)':
<http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p3439>.

⁹¹ Art. 919 ZGB: 'È possessore di una cosa colui che la tiene effettivamente in suo potere. [...]'; Art. 920 ZGB: 'Possesso originario e derivato. 1 Se il possessore ha consegnato la cosa ad un altro per conferirgli un diritto reale limitato od un diritto personale, **ambidue** ne sono **possessori**. 2 Chi possiede la cosa quale proprietario ne ha il possesso originario, ogni altro un **possesso derivato**' [emphasis added].

⁹² BAKER, John H., 'The Three Languages of the Common Law', 43:3 *Mc Gill Law Journal* 5-24 (1998); ID., *Manual of Law French*, 2nd ed., Scholar Press, Aldershot, 1990.

agreement.⁹³ We are dealing with a discretionary remedy that may be granted by the court according to the tradition of the Chancery court (an equitable remedy).

In the civil law tradition we may find the same word applied to the correction of a mistake in calculation (which will not cause the avoidance of the contract).⁹⁴ The remedy is not governed by the rules of Equity (an unknown distinction on the Continent of Europe), is very limited, governed by legislative provisions, and so on.

The issue of 'false friends' should not be underestimated: it is quite common to meet translations that mislead the reader into a mistaken interpretation.⁹⁵ Often dictionaries of a general character, not specialising in legal language, may be insufficient to capture the particular nature of expressions belonging to the law (e.g.: the word 'plaintiff' is often translated in Neo-Latin languages as 'victim', rather than 'claimant').

Uniformation of law

Internationally a long tradition already exists of conventions negotiated to achieve 'uniform' legislation, especially in commercial and private law matters. Some sceptical observer recalls a well-known quotation by Portalis:⁹⁶

'L'uniformité est un genre de perfection qui, selon le mot d'un auteur célèbre, saisit quelquefois les grands esprits, et frappe infailliblement les petits.'

A plan to unify the whole body of private law dates back to the beginning of the 20th century: at the first *Congrès international de droit comparé* (Paris, 1900),⁹⁷ Lambert advocated a process of comparison that would gradually bring together civil and common law to create a unified complex of laws. Such an ambitious project was not to

⁹³ LAWSON, Frederick H., *The Rational Strength of English Law*, Fred B. Rothman, London, 1951, at p. 55.

⁹⁴ See, e.g., Article 1430 of the Italian Civil Code, 'rettifica' concerning an 'errore di calcolo'. A similar expression existed also in relation to the law of persons (to mean a correction to be ordered of the file stating a person's marital status): Art. 454 c.c., 'rettificazioni dello stato civile nei registri' (a provision repealed in the year 2000).

⁹⁵ A common mistake referring to European law is the translation of *préjudiciel* (e.g.: 'renvoi préjudiciel à la Cour de Justice') as 'prejudicial', rather than 'reference for preliminary ruling'. Many other words cause similar misunderstandings, including 'tribunal' (in common law an institution not belonging to the judiciary); 'jurisprudence' ('general theory of law', rather than 'case-law'); 'consideration' (an exchange advantage in contract, a 'quid pro quo' in common law, but not in civil law); 'counsel' (the lawyer representing a party in court, rather than simply a person giving advice); '(liability) joint and several' (in France: *responsabilité solidaire et indivise*, rather than *separate*). WAGNER, Anne, *La langue de la Common law*, L'Harmattan, Paris, 2002; HOUBERT, Frédéric, *Dictionnaire des difficultés de l'anglais des contrats*, La Maison du Dictionnaire, Paris, 2000; SCHWAB, Wallace, *Les anglicismes dans le droit positif québécois*, Étude préparée pour le Conseil de la langue française, Éditeur officiel du Québec, Québec, 1984; FERRERI, Silvia (ed.), *Falsi amici e trappole linguistiche*, Giappichelli, Turin, 2010.

⁹⁶ PORTALIS, Jean-Étienne-Marie, *Discours préliminaire au projet de code civil* (21 January 1801): <<http://www.justice.gc.ca>>.

⁹⁷ LAMBERT, Edouard, 'Le droit comparé et l'enseignement du droit', in *Procès verbaux*, Librairie générale de droit et de jurisprudence, Paris, 1905, pp. 26 ff., online:

<<http://archive.org/stream/congrsinternati00compgoog#page/n15/mode/2up>>; ID., *General Report to the International Congress of Comparative Law*, The Hague, 1932; ID., *La fonction du droit civil comparé* (1903), <<http://archive.org/stream/lafonctiondudroi01lamb#page/n13/mode/2up>>; also DE LA GRASSERIE, Raoul, *Rapport au Premier Congrès de droit comparé*, Paris, 1900 pp. 198 ff.; SARFATTI, Mario, *Introduzione allo studio del diritto comparato*, Giappichelli, Turin, 1933, at p. 27; ANCEL, Marc, 'Situation et problèmes du droit comparé', in *Livre du centenaire de la Société de Législation comparée*, Librairie générale de droit et de jurisprudence, Paris, 1969, pp. 5 ff.; JAMIN, Christophe, 'Le vieux rêve de Saleilles et Lambert revisité. A propos du centenaire du Congrès international de droit comparé de Paris', *Revue internationale de droit comparé*, Vol. 52, Iss. 4, 2000, pp. 733-751.

be, as two world wars have demonstrated.⁹⁸ However many conventions have been ratified, after long negotiations, aiming to harmonise for example the law in areas of transport⁹⁹, copyright (Bern, 1886), patents (Paris, 1883), the sale of goods (Hague 1964 and Vienna 1980 conventions), and the liability of producers of dangerous items.

They have often been exposed to the problem of inconsistent interpretation by judges belonging to different legal systems.¹⁰⁰ Even when a compromise has been reached on a legislative text, it is hard to predict how interpreters from different legal traditions will read provisions. Case-law has traditionally filled gaps and adapted rules to new needs, but case-law where judges start from independent experiences can become contradictory. Communication between judges becomes more complicated when they do not share the same background.

Judicial control of uniformity

Remedies to limit divergent readings have been hard to find: a unified court of last instance has often been proposed to assist in the uniform application of treaties, but with no real success up to now.¹⁰¹

The idea of an international court competent to guarantee uniform interpretation of uniform acts was advocated at the Uncitral New York Congress of 1992 (Uncitral's 25th anniversary) by L. Sohn (George Washington University), with a paper entitled 'Uniform laws require uniform interpretation. Proposals for an international tribunal to interpret uniform legal texts'.¹⁰² A similar proposal was made a long way back by Hans Wehberg at the beginning of the 20th century,¹⁰³ and it was advanced again when the Permanent Court of International Justice was proposed (1920).¹⁰⁴ A first experiment was carried out in 1931 through a Protocol, signed at the sixth session of the Conference on Private International Law, recognising the jurisdiction of the Permanent Court of International Justice over disputes regarding the interpretation of conventions

⁹⁸ The notion that systematic comparison of legal rules would facilitate the maintenance of peace among the Nations, still nurtured in 1933 (SARFATTI, *Introduzione allo studio del diritto comparato*, supra fn. 97, at p. 125), has been reframed in much more realistic terms (KÖTZ, Hein, 'Rechtsvereinheitlichung, Nutzen, Kosten, Methoden, Ziele', *Rabels Zeitschrift für ausländisches und internationales Privatrecht*, Vol. 50, Iss. 1/2 1986, pp. 1-18, at p. 3).

⁹⁹ River navigation: Mannheim 1868; transport by train: COTIF 1890, air transport: Warsaw 1929, maritime law: Hamburg 1978, transport of goods/travelers: CIM, CIV, or by trucks: CMR 1956.

¹⁰⁰ HONNOLD, John, *Methodology to Achieve Uniformity in Applying International Agreements*, General Report to XII International Congress of Comparative Law (Sydney - Melbourne, 18-26 August 1986), in the 1986 *Supplement to the American Journal of Comparative Law*; PUTZEYS, Jacques, 'Le droit uniforme désuniformisé', in *International Uniform Law in Practice*, Acts and Proceedings of the 3rd Congress on Private Law Rome, 7-10 September 1987, Oceana, Dobbs Ferry, NY, 1988 pp. 440 ff.; MANN, Francis A., 'Uniform Statutes in English Law', *Law Quarterly Review*, Vol. 99, 1983 pp. 376-406, at p. 377; MUNDAY, Roderick J. C., 'The Uniform Interpretation of International Conventions', *International and Comparative Law Quarterly*, Vol. 27, Iss. 2, 1978, pp. 450-459, at p. 451; SAMUELS, Alec 'The Construction of International Conventions by the English Courts', *Journal of Business Law*, 1983, pp. 373-ff.; CARBONE, Sergio M., BARIATTI, Stefania, 'The Last Decade Interpretation of International Maritime Conventions by Italian Case Law', *Rivista di diritto internazionale privato e processuale*, Vol. 26, 1990, pp. 31-42; SUNDBERG, Jacob W. F., 'A Uniform Interpretation of Uniform Laws', in *Scandinavian Studies in Law*, Vol. 10, 1966, pp. 219-238, at p. 221.

¹⁰¹ Criminal law has a special dimension: the Hague International Criminal Court is the model sometimes referred to also in the private law area, as mentioned here below.

¹⁰² SOHN, Louis, 'Uniform Laws Require Uniform Application: Proposals for an International Tribunal to Interpret Uniform Legal Texts', *Uniform Commercial Law in the Twenty-First Century*, proceedings of the Congress of the United Nations Commission on International Trade Law, 18-22 May 1992 available at: <http://www.uncitral.org/pdf/english/texts/general/Uniform_Commercial_Law_Congress_1992_e.pdf>, pp 50 ff.

¹⁰³ According to L. Sohn (supra fn. 102), the 1911 proposal included an international tribunal that would deal with 'disputes relating to questions of private international law (on appeal from national courts); and private claims based on international treaties establishing uniform laws (on appeal from national courts)'.

¹⁰⁴ *Première rencontre des Organisations s'occupant de l'unification du droit*, in , *Annuaire de droit uniforme*, 1956: the idea was to assign competence to the court in the field of conflict of laws, copyright, patents, commercial and maritime law.

prepared by the Hague Conferences on Private International Law; the Protocol 'was ratified by only a few States, and was never resorted to by any State.'¹⁰⁵

The solution put forward in New York in 1992 was based on the model of the Hague International Court of Justice: according to the proposal, States would accept the jurisdiction of a 'tribunal, parallel to the International Court of Justice, to deal with the problems created by inconsistent interpretations of international agreements containing a variety of uniform laws, codes of conduct and declarations.'¹⁰⁶

The power to invest the tribunal with an advisory opinion on the interpretation of a convention would lie in the national court 'on request of one of the private parties to the dispute'.

The project, at world level, repeatedly met with objections connected with the failed experiences of some previous UN conventions, such as the CMR, *Convention des Marchandises par Route* (a text drawn up within the ECE, the UN Economic Commission for Europe). Some of these older documents did in fact lay down the competence of the Court of International Justice to interpret uniform acts, but the States never used the opportunity to ask for the harmonising intervention of the Court, so that the rule fell into oblivion.¹⁰⁷ Implementation of the proposal at world level has in the past been qualified as 'entirely unrealistic'.¹⁰⁸

In western Africa an experiment is being conducted in this field: the OHADA treaty¹⁰⁹ has set up a rather ambitious system at the supranational level of the organisation, with a court that has broader jurisdiction than the European Court of Justice within the EU, which is mainly accessed by national courts to request preliminary rulings. The Common Court of Justice and Arbitration (Cour Commune de Justice et d'Arbitrage – CCJA) has jurisdiction as judge of last instance in all matters related to commercial law in which the application of any OHADA norm is involved, with the exclusion of criminal sanctions. The national jurisdictions remain therefore competent to judge at first and at second instance on cases connected with the application of uniform acts.¹¹⁰ The CCJA exercises the function of judge of appeal against the judgments of the courts of appeal of the Member States, as well as against the judgments of first instance of the national courts which are not subject to appeal at national level.¹¹¹ The OHADA experience is thus particularly interesting because of the special challenge it faces.

¹⁰⁵ SOHN, 'Uniform Laws Require Uniform Application', *supra* at fn.102, at p. 51.

¹⁰⁶ According to L. Sohn, the advantage of the solution proposed would have been that of avoiding the creation of a number of courts, each competent for specific subjects, with a consequent constant increase in their number, subject after subject. 'The authors of the statute of the proposed international tribunal would be able to draw on the experience of the Court of Justice of the European Community, of the International Centre for Settlement of Investment Disputes [...] of the arbitral panels established under the Canada-United States Claims tribunal, and of the several less-known tribunals functioning in various areas of the world'; *ibidem* at p 52.

¹⁰⁷ Cf. the discussion between PUTZEYS, Jacques & LOEWE, Roland in *International Uniform Law in Practice, Proceedings of the Congress on International Uniform Law in Practice, Rome 1987*, Unidroit Oceana, New York, 1988, p 529.

¹⁰⁸ ENDERLEIN, Fritz, 'Uniform Law and its Application by Judges and Arbitrators', *ibidem*, pp. 329-353., at p 352, while L. Réczei in 1992 judged Sohn's idea in New York to be 'difficult but not impossible'.

¹⁰⁹ Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA) (October 17, 1993 in Port-Louis, Mauritius) <<http://www.ohadalegis.com/anglais/presohadagb.htm>>.

¹¹⁰ OHADA Treaty, Art. 13.

¹¹¹ OHADA Treaty, Art. 14, paras 3 and 4. Cf. MANCUSO, Salvatore, 'OHADA Report', *European Review of Private Law*, Vol. 20, Iss. 1, 2012, pp. 169-183, at p. 169: 'In the exercise of its jurisdictional function the CCJA is a supranational court whose decisions are considered as *res judicata* and can be enforced in the territory of every Member State. It is a sort of "transnational court" created through the agreement of the OHADA member States to function as supreme court in all the cases involving the application of the Treaty and the uniform acts; consequently all the supreme courts of the member States are deprived of their judicial power whenever the application of OHADA law is involved [...]. The Court functions also as an international arbitration centre dealing with arbitration under its own rules (basically modelled on the ICC rules)'.

However, as a general trend, we are witnessing an increase in 'advisory boards' (such as the Pace university advisory board on CISG),¹¹² publications of judicial decisions (CLOUT by Uncitral, Unilex by Unidroit), and data banks giving access to preparatory work on conventions, all meant to encourage coherent readings of international provisions, by soft means of persuasion, rather than by a unified jurisdiction that would risk falling behind the workload, and accumulating large backlogs of undecided cases. The Strasbourg European Court of Human Rights faces this problem because of its wide range of jurisdiction.¹¹³

In the EU system a unique procedure is in place which combines a supranational Court and a mechanism of selection of cases implemented by the national courts of the Member States. As provided for by Article 267 of the Treaty on the Functioning of the European Union, national judges facing an interpretation challenge may request a preliminary ruling from the Court of Justice or the General Court of the EU.¹¹⁴ The solution is often qualified as an innovative mechanism where the national judges act as extensions of the European court, asking for the assistance of the central court only where specific issues require a particular competence or a wider perception of an issue.

The process is not completely drawback-free. It is time-consuming, because trials are suspended while the question is pending before the European court;¹¹⁵ there are also sometimes difficulties as not all national lawyers are sufficiently experienced to engage in the process.¹¹⁶ An often-mentioned programme for training judges was

¹¹² BONELL, Michael J., 'A Proposal for the Establishment of a "Permanent Editorial Board" for the Vienna Sales Convention', in , *International Uniform Law in Practice*, Acts and Proceedings of the 3rd Congress on Private Law (Rome, 7-10 September 1987), Oceana/, New York/Rome, 1988 pp. 245 ff.

¹¹³ See also the replies to the questionnaire by the ECHR (in the third part of this study). The changes at the institutional level, abrogating the preliminary selection of cases (once performed by the Commission), have had a severe effect on the Court of Human Rights' workload: a reform is pending to allow a screening of cases. 'The reform of the Court, begun back in 2001, was the subject of a new protocol to the European Convention on Human Rights, Protocol 14. Its purpose is to guarantee the long-term efficiency of the Court by optimising the screening and processing of applications. Pending the final ratification [...], a new Protocol 14bis was adopted in May 2009 [...] in Madrid. This protocol contains two procedural measures taken from the earlier Protocol 14 to increase the Court's case-processing capacity as rapidly as possible' (<<http://conventions.coe.int/Treaty/EN/Treaties/Html/204.htm>>).

¹¹⁴ As it is well known, courts of last instance *must* refer the case to the Court of Justice if an issue involving a European rule is not clear, unless the matter has already been dealt with in a previous decision of the European Court (Art. 267: 'Where any such question is raised [...] before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court'). In the past, significant differences between the practice of various jurisdictions were detected: the French *Conseil d'Etat* being particularly resistant to referring cases to the European Court (the doctrine of *Acte Clair* exempted the administrative court from asking for the European ruling: case Cohn-Bendit, 22 December 1978, *Revue trimestrielle de droit européen*, 1979, p. 157). PESCATORE, Pierre, 'Interpretation of Community Law and the Doctrine of "Acte Clair"', in BATHURST, Maurice E., et al. (eds.), *Legal Problems of an Enlarged European Community*, Stevens & Sons, London, 1972, pp. 27 ff., at p. 43.

¹¹⁵ A famous English Factortame case is illustrative of the complexity that may derive from a reference to the European Court: a whole 'saga' was created and several decisions were necessary to disentangle the case. WEATHERHILL, Stephen, *Cases and Materials on EU Law*, Oxford University Press, Oxford, 2007, at p. 123; MAGLIVERAS, Konstantin D., 'Fishing in Troubled Waters: the Merchant Shipping Act 1988 and the European Community', *International and Comparative Law Quarterly*, Vol. 39, Iss. 4, 1990, pp. 899-914, at p. 899; GREENWOOD, Christopher, 'European Community Law', *All ER Annual Review*, Vol. 1990, 1990, pp. 102-109, at p. 104; DEARDS, Elspeth, 'The Factortame Saga: The Final Chapter?', *Nottingham Law Journal*, Vol. 8, Iss. 2, 1999, pp. 101-105.

¹¹⁶ The new Member States have engaged in large training programs to enable judges and practitioners to cope with the new procedure. E.g., SÜTÖ BURGER, Georgina, 'Hungarian Report', *European Review of Private Law*, Vol. 20, Iss. 1, 2012, pp. 123-137, at p. 123: 'the government of the Republic of Hungary by its decisions No 2282/1996 (X.25.) and 2212/1998 (IX.30.) has set out the training of judges for community law. The National Judicial Council has paid also special attention to training in community law especially in recent years in respect of administrative leaders [...] Until the end of January 2003, all judges participated in training regarding the basis of community laws. In Follow up to that, supporting training courses were organised, in which numerous (1296) judges have participated'.

started in 2002 within the European Judicial Network (EJN):¹¹⁷ it is designed to enable judges of various European countries to interact in civil and commercial matters. Effective steps in this direction are being taken in the different Member States.

Recent trends in the European Union

In general terms, recent developments in the EU with regard to codification indicate some reluctance by Member States and stakeholders. The most recent position on the issue is probably best reflected in the project for the CESL (Common European Sales Law):¹¹⁸ the immediate aim of the European institutions is to offer an **optional** instrument (Art. 8 of the Regulation and Recital 14), harmonising only the rules on the sale of goods and contracts for the supply of digital content (Art. 5 of the Regulation), exclusively in relationships binding a business with a consumer (or a small/medium enterprise).¹¹⁹

Therefore a more limited project than in the past seems to be emerging, instead of a general codification of private law, or even of all kinds of sales. More ambitious plans had previously been put forward.¹²⁰ Some steps were taken by the European Commission with the so-called Action Plan on European Contract Law of January 2003¹²¹ and with the institution of a Study Group on a European Civil Code.¹²² The latter was entrusted with the preparation of a model (a 'reference' document) including contract, non-contractual liability, unjustified enrichment, acquisition and loss of ownership of goods, proprietary security rights in movable assets, and trusts.

Academics have disagreed about the codification of private law: opposing views in favour¹²³ and against¹²⁴ have insisted, on the one side, on the insufficient level of certainty reached by directives and regulations drafted in a fragmented and discontinuous way¹²⁵ and, on the other side, on the need to build first a common

¹¹⁷ Council Decision 2001/470 establishing a European Judicial Network in Civil and Commercial matters, *OJ EC L 174/25*.

¹¹⁸ COM (2011) 635 final of 11 October 2011

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0635:FIN:IT:PDF>); the Commission by a Decision of 26 April 2010, *OJ L 105*, 27 April 2010, p. 109 (COM (2010) 233) set up the Expert Group on European contract law (to propose a possible future European contract law instrument covering the main aspects which arose in practice in cross-border transactions).

¹¹⁹ Contracts concluded between private individuals and contracts between traders none of which is an SME are not included (p. 10 of the *Explanatory Memorandum*, COM (2011) 635 final).

¹²⁰ A plea for a codification was expressed in the European Parliament's Resolution A2-157/89, *OJ EC* 1989, C 158/400.

¹²¹ COM (2003) 68 final 12 February 2003.

¹²² The work completed by the team, including the results collected by the Acquis Group, are available at http://ec.europa.eu/justice/contract/files/european-private-law_en.pdf: *Principles, Definitions and Model Rules Of European Private Law, Draft Common Frame Of Reference (DCFR)*, edited by VON BAR, Christian, CLIVE, Eric and SCHULTE-NÖLKE, Hans, et al. (2nd ed., 2009).

¹²³ LANDO, Ole, 'Why Codify the European Law of Contract?', *European Review of Private Law*, Vol. 5, 1997, pp. 525-535; BERGER, Klaus P., 'The Principles of European Contract Law and the Concept of the "Creeping Codification" of Law', *European Review of Private Law*, Vol. 9, Iss. 1, 2001, pp. 21-34, at pp. 23-28 (for a summary of the various positions on the problem).

¹²⁴ LEGRAND, Pierre, 'Against a European Civil Code', *Modern Law Review*, Vol. 60, Iss. 1, 1997, pp. 44-63; S WEATHERHILL, Stephen, *Cases and Materials on EU Law*, supra fn. 115; MARKESINIS, Basil S., 'Why a Code is not the Best Way to Advance the Cause of European Legal Unity', *European Review of Private Law*, Vol. 5, Iss. 4, 1997, pp. 519-524, at pp. 522-24. A more flexible position in ZIMMERMANN, Reinhard, 'Roman Law and European Legal Unity', in HARTKAMP, Arthur S. (ed.), *Towards a European Civil Code*, Kluwer Law International, The Hague/London/Boston, 1998, pp. 27-53.

¹²⁵ The Action Plan itself mentions a certain incoherence in the use of some notions, such as 'compensation' or 'damage' in the body of European legislation passed in the area of contract law. Communication from the Commission to the European Parliament and Council, *A more Coherent European Contract Law, An Action Plan*, 2003/C63/01 in GUCE, C63, of 15 March 03, at para 18; European Parliament, *Study of the Systems of Private Law in the EU with Regard to Discrimination and the Creation of a European Civil Code*, PE doc.168.511, at p. 569.

culture systematically and slowly through the 'private' endeavours of academics, legal practitioners, and the international business community.¹²⁶

The outcomes of the project, launched in 2002, finally found their place in the Draft Common Frame of Reference (DCFR), delivered to the European Commission in 2010. Consultation opened up by the EU to stakeholders on the use of this document has led to contradictory results as regards follow-up to the initiative.¹²⁷ The prevailing view has been that the rules formulated would best serve as a 'tool box' for the legislator (coherent definitions can be found in the DCFR), for the interpreter (a judge or a lawyer can find a more detailed explanation of the scope and meaning of some rules), and for citizens (examples illustrating the possible application of each rule help understanding).¹²⁸

The European Code of private law seems at the moment to be left on hold. To gain a full picture of the efforts invested in this direction, it should be remembered that the starting point was prepared by the work of the Lando Commission that had published the well-known Principles of European Contract Law (PECL):¹²⁹ these were updated and integrated through a complex effort of cooperation between academics from many EU Member States.¹³⁰

The work done by the Research Group on Existing EC Private Law (the *Acquis* Group) stands midway between the academic research of the Study Group aimed at identifying best solutions and the work of collecting existing provisions. The task entrusted to the group was to examine and restate, if possible in more general terms, the large body of European regulations and directives in the area of contract law, while seeking a higher level of coherence as regards terminology.¹³¹ It is worth mentioning the Glossary that the team produced: a useful standardisation or harmonisation of contract terminology is now available to drafters.

These efforts at consolidation and re-organisation of considerable amounts of EU legislation seem for the moment to be more promising than actual codification in the sense of hard rules tightly interrelated in a single large systematic structure.

¹²⁶ On the contribution of comparative law to the dialogue between different legal traditions: SACCO, Rodolfo, 'The System of European Private Law. Premises for a European Code', in PIZZORUSSO, Alessandro (ed.), *Italian Studies in Law*, Vol. I, Martinus Nijhoff, Dordrecht, 1993.

¹²⁷ ANTONIOLLI, Luisa & FIORENTINI, Francesca (eds.), *A Factual Assessment of the Draft Common Frame of Reference*, Sellier, Munich, 2011.

¹²⁸ < <http://www.acquis-group.org/>>: Council of the European Union, Justice and Home Affairs, 18 May 2008, excerpt from press release on *European Contract Law* (approving a report on the Common Frame of Reference as 'a set of non-binding guidelines to be used by lawmakers at Community level on a voluntary basis as a common source of inspiration or reference in the lawmaking process').

In the UK, '[t]he Government support the development of a CFR as a toolbox for European legislators, for use as a guideline or dictionary for EU legislators' (House of Lords Select Committee, European Union, at para 65, <<http://www.publications.parliament.uk/pa/ld200809/ldselect/ldcom/95/9507.htm>>) 'a guide or vade mecum for use by European legislators to improve the quality, coherence and consistency of European legislation' (*ibidem*, at para. 70).

¹²⁹ LANDO, Ole & BEALE, Hugh (eds.), *Principles of European Contract Law Parts I and II. Combined and Revised, Prepared by the Commission on European Contract Law*, Kluwer Law International, The Hague, 2000; LANDO, Ole, CLIVE, Eric, PRÜM, Andrø & ZIMMERMANN, Reinhard (eds.), *Principles of European Contract Law – Part III*, Kluwer Law International, The Hague/London/Boston, 2003; the personal opinion of Lando is expressed in: LANDO, Ole, 'The Principles of European Contract Law – An Alternative or a Precursor of European Legislation', *Rechts Zeitschrift für ausländisches und internationales Privatrecht*, Vol. 56, Iss. 2, 1992, pp. 261-273.

¹³⁰ The Introduction to the Draft Common Frame of Reference, para 8, reconstructs the whole process of discussion and amendment.

¹³¹ Research Group on the Existing EC Private Law (Acquis Group), *Principles of the Existing EC Contract Law, Contract I*, Sellier, Munich, 2007, at p. IX; on the terminology issue: G. DANNEMANN. Cf. European Commission, *Communication from the commission to the European Parliament and the Council, European Contract Law and the Revision of the Acquis: the Way Forward*, COM (2004) 651 final, OJ EC 2005, C 14/6 <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0651:FIN:EN:PDF>>.

Chapter II - Transparency: a wave of reforms since the 1990s

1. Changes in State-citizen communication

As mentioned above, a result of the increase in legislative production is that the centrality of codes and the idea of a clear, defined and manageable body of private law rules has been undermined. The ascertainment of law has become more difficult for jurists themselves, due to fragmentation of sources and frequent amendments of legislation. This has been due to a radical change originating in the 19th century in the conception of the role of the State as welfare State, and has prompted legislative production in civil law as well as common law countries. Importantly, this process has also affected public law and the role of administrative bodies. In modern States, administrative bodies have significant regulatory powers. More generally, contact between citizens and public administrative bodies has increased radically and this raises new issues concerning the effectiveness of State-citizen communication.

If a citizen is not able to know whether he or she is entitled to a certain benefit, such as maternity leave, or if he or she has to overcome significant hurdles to fill in forms, then they could be described as victims of maladministration:

'people should feel able to complain about cases of confusing or misleading language, as they would for any other type of poor administration. Equally, government and public sector bodies need to respond properly to complaints about bad official language' (House of Commons, Select Committee on Public Administration, *Bad Language Report*, 2009).

The language of public administration bodies is traditionally considered as obscure, archaic and difficult to manage. There are various reasons for this. Administrative bodies change slowly, and the language they use may sometimes deliberately be meant to be less accessible. Vagueness may be due to the need to protect administrators or to hide underlying issues. In many cases, poor use of language is simply the result of bad drafting due to lack of time. Administrative bodies often have to produce texts and documents in a limited amount of time, and in many cases their work is affected by original flaws in clarity of legislation.

It could be improved by an awareness of strategies to manage document flow. The transparency of the language of public administration bodies is crucial for the functioning of democracy, particularly if it is remembered that the quality of administration affects the quality of citizenship, and that nowadays public administration bodies are important even in private law matters.

Other issues to consider are interpretation of administrative acts and the impact of multilingualism on administrative acts and citizenship. The project looks at the specific nature of administrative acts, the principles of interpretation of administrative acts, documents produced by committees for simplification of the language of public administrative bodies, and the role of administrative courts and ombudsmen.

The notion that abiding by the law may occur spontaneously if laws are perceived as fair and reasonable, and that not all laws need to be assisted by coercion, was validated by H.L.A. Hart (*The Concept of Law*, 1961) in opposition to the previous approach supported by Austin, among others. It is closely connected with the need for transparency. In order to avoid the paradox of 'one citizen, one policeman', the law needs to be shared by those who are supposed to abide by it: no law can be said to be

effective unless obeyed by the majority of the people. To guarantee this result, rules must be expressed in an understandable manner. Only ready access to provisions, which either impose a particular behaviour or grant power to do something, will facilitate observance of the rules. The need for transparency, strongly argued for by those who shared the so-called 'analytic philosophy' of the 1960s, has been further increased by immigration flows. In order to reach a wider variety of citizens, from different cultural backgrounds, lawmakers and administrators face a major requirement to be clear and explicit, and to avoid ambiguities and vagueness.

2. The impact of the plain language movement

A major driving force towards improving transparency and clarity was provided by the Plain Language movement. Plain language can be defined as language which is direct and straightforward, and which is designed to deliver its message to its intended readers 'clearly, effectively and without fuss'¹³². The movement first took root in the US in the 1970s, at the same time as the first plain language laws. It soon spread to all major English-speaking countries, including Canada, Australia, New Zealand and, by the early 1990s, South Africa.¹³³ However, as noted by Williams:

'although the movement first took root in the US, and several states in the US require insurance contracts to be written in plain English, there has in fact been relatively little innovation in the drafting of legislation in the US.'¹³⁴

The same was also true of the UK, which introduced the Unfair Terms in Consumer Contracts Regulations 1999, stating that contracts must be in 'plain and intelligible language', but where laws were still drafted along traditional lines until relatively recently. However, since 2010 the situation in Westminster has changed appreciably in terms of adoption of a more modern drafting style.¹³⁵ The Scottish Office of Parliamentary Counsel in Edinburgh had already implemented similar changes from around 2006.¹³⁶ In Canada, Australia, New Zealand, and South Africa, on the other hand, plain language principles had already penetrated legal culture from the 1990s, and new laws continue to be drafted in plain English. Continental Europe has examples of similar experiences, notably Sweden.¹³⁷

Williams¹³⁸ proposes an insightful and critical outline of some of the major changes that have recently taken place in legal drafting and plain language in English-speaking countries. As mentioned above, the most striking transformation has happened in the UK, particularly in Edinburgh and Westminster. A number of areas of legal language have also been modernised in the United States in the past few years, though the impact of plain language on legislative drafting has been less incisive when compared to the UK. The author concludes that instead of the 'North-South divide' highlighted in his 2006 work, with innovation coming largely from the southern hemisphere (especially Australia and New Zealand) and with the northern hemisphere (particularly the US and the UK) being more resistant to change, the divide is now between

¹³² Cf. <<http://www.scotland.gov.uk/Resource/Doc/93488/0022476.pdf>>.

¹³³ Cf. ASPREY, Michele M., *Plain Language for Lawyers*, 3rd ed., Federation Press, Sydney/Annandale, NSW, 2003, and reference herein.

¹³⁴ WILLIAMS, Christopher, 'Legal English and Plain Language: an introduction', *ESP Across Cultures*, Vol. 1, 2004, pp. 111-124, at p. 116.

¹³⁵ WILLIAMS, Christopher, 'Legal English and Plain language: an update', *ESP Across Cultures*, Vol. 8, 2011, pp. 139-151; ID., 'Is legal English 'going European'? The case of the simple present' *Canadian Journal of Linguistics*, Vol. 58, Iss. 1, 2013, pp. 105-126.

¹³⁶ WILLIAMS, Christopher, 'Scottish Parliament and Plain language legal drafting', in ŠARČEVIĆ, Susan (ed.) *Legal Language in Action: Translation, Terminology, Drafting and Procedural Issues*, Globus Publishers, Zagabria, 2009, pp. 301-312.

¹³⁷ See Swedish Language Council <<http://www.sprakradet.se/>>.

¹³⁸ WILLIAMS, 'Legal English and Plain language: an update', *supra* fn. 135.

national drafting bodies as 'innovators' and international drafting bodies as 'conservatives'. In other words:

'the changes in drafting style that have occurred recently in the UK and, to some extent, in the US would not appear to have been matched in those international bodies where English is one of the official languages, notably the United Nations and the European Union.'¹³⁹

The plain language movement advocates a radical step forward by asserting that citizens should be able to know directly everything that affects them in the legal sphere. However, this approach has been often criticised as unrealistic.

Plain language associations are active in a number of European countries, notably the UK with the Plain English Campaign and Sweden with Klarspråksgruppen.¹⁴⁰ The European Union Translators' Service launched the Fight the Fog campaign in the 1990s, though it is no longer active today.

In the UK, the Tax Law Rewrite Project was set up in 1996 to make tax law 'clearer and easier to use, without changing the law'. It completed its work in 2010 through a policy of 'staged implementation'. In the United States, the US Plain Writing Act 2010 is now law:

'The purpose of this Act is to improve the effectiveness and accountability of Federal agencies to the public by promoting clear Government communication that the public can understand and use.' [...] 'The term "plain writing" means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.'

3. Evolving policies and tools

The demand for government action to be transparent, so that citizens may understand how decisions are taken, in which directions the administration is working, and how public money is being invested, began to become particularly strong in the 1990s.

The notion of accountability has gained ground, as is shown in France by the often-quoted *Circulaire Rocard (Circulaire du 23 février 1989 relative au renouveau du service public)*. Similar pressure has led to the implementation of policies for easier access to documents issued by the State administration in Italy (Regione Toscana and Progetto Chiaro).¹⁴¹ In the UK, efforts to bring initiatives carried out by the Government closer to the public are expressed both in 'discussion papers', which are open to anyone interested in a new reform project,¹⁴² and in the creation of a Public

¹³⁹ WILLIAMS, 'Legal English and Plain language: an update', *supra fn.* 135, at p. 139.

¹⁴⁰ In Italy the *Codice di stile* by S. Cassese was published in 1993, followed by the 1997 edition by the Dipartimento della Funzione Pubblica of the *Manuale di Stile*. The Progetto Chiaro!, also set up by the Dipartimento della Funzione Pubblica, was active until 2002. More recently Raffaele Libertini has written about the Servizio qualità della legislazione presso il Consiglio regionale della Toscana (legge sulla qualità della normazione, 22 ottobre 2008, No 55), and there has been the *Osservatori sulla giustizia civile* in co-operation with Palestra della scrittura (supervised by Luciana Breggia, a judge in Florence, and by Anna Maria Anelli): <<http://www.palestradellascrittura.it/index.php/scrivere-diritto>>. See also the Scuola Superiore per l'Avvocatura and Osservatori sulla giustizia civile's project to foster plain language: <http://www.ca.milano.giustizia.it/documentazione/D_1236.pdf>; as well as Tullio De Mauro and Maria Emanuela Piemontese's work (cf. below Part III, Sect. I, Chap. I, § 1).

¹⁴¹ Legge sulla trasparenza amministrativa (L. 241/ 1990), L. 11 febbraio 2005, No 15 e L. 14 maggio 2005, No 80: <http://www.fondaca.org/file/Archivio/ArticoliePaper/01_Un_Nuovo_Modo_Di_Amministrare.pdf>; <http://www.governo.it/presidenza/dica/4_accesso/funzioni.html>; <<http://www.foia.it/>> (comparative law data); CARANTA, Roberto, FERRARIS, Laura & RODRIGUEZ, Simona, *La partecipazione al procedimento amministrativo*, Giuffrè, Milan, 2005, at Chap. 4.

¹⁴² Cp., e.g.: in August 2011 the Commission on a Bill of Rights published a Discussion Paper entitled *Do we need a UK Bill of Rights?*: <<http://www.justice.gov.uk/downloads/about/cbr/cbr-respondents.pdf>>. Consider, previously, Lord Falconer, Ministerial Statement of 9 February 2004 on the separation of powers: the reform of the court system was 'to make a **clear and transparent** separation between the judiciary

Sector Transparency Board. This institution has been set up in the Cabinet Office to help 'embed the transparency agenda across government. [...] It has also committed to establishing a legal right to data'¹⁴³.

Consumer groups have contributed to emphasising the need for direct access to information, also in private law relationships, for example in contracts with banks or insurance companies, as shown by the Unfair Terms Directive and its implementation in the various States. Information needs not only to be given, but also to be clear, a requirement not necessarily fulfilled by a greater number of words.¹⁴⁴ This is reflected in EU insistence, in the area of contract law, on messages being 'plain and intelligible'¹⁴⁵, and 'clear and comprehensible'¹⁴⁶: businesses must enable clients to understand the clauses of a contract clearly. This requirement will be further mentioned below.

The road inaugurated in the US with the Freedom of Information Act 1966 has therefore been followed by many other similar initiatives, even in countries that have emerged from a socialist period in their history where secrecy rather than openness of sources was the prevailing rule.

4. The role of the European Union

Such a widely shared movement inevitably affected international institutions and also in the EU important steps were made toward a more open policy of communication about decision-making to the public. Many official documents reveal this trend towards increased transparency: notably the Edinburgh summit in 1992¹⁴⁷ focused on the need for openness. The very particular situation of an organisation where people are citizens of the Member States, but also bound and granted specific rights by legislation approved at the supranational level, causes complex problems, unparalleled by experiences in federal States where a system of federal courts provides some uniformity in the reading of federal provisions.¹⁴⁸

The consultations on a European Constitution in 2005 dramatically highlighted the guarded attitude of European citizens toward the mechanisms of supranational legislation, which are perceived as distant, complex, and unclear; lack of democratic

and the legislature' and Cm. 6150 (House of Commons) at p. 7: 'overriding need for **transparency and clarity**'.

¹⁴³ See webpage of the Cabinet Office: <<http://www.cabinetoffice.gov.uk/content/transparency-overview>>. Cf. also <<http://webarchive.nationalarchives.gov.uk/>>; (the Report on public service reform of 2006 states: "Public services face users who have vastly higher expectations and need to modernise and adapt accordingly. [...] The goals of public service reform should be to put the citizen at the heart of public service provision", *Introduction* to Chapter 3); see also: <<https://www.gov.uk/government/policies/making-local-councils-more-transparent-and-accountable-to-local-people>>.

¹⁴⁴ As will be recalled below, a classic of Italian legal scholarship (written at the time of the Enlightenment) reminds us, in rather elegant prose, that: '[...] quanto più di parole talvolta si adopera in distendere una legge, a fine appunto di bene spiegare l'intenzione di chi la forma, tanto più scura, e capace di diversi sensi essa può divenire [...]' (MURATORI, *Dei difetti della giurisprudenza*, *supra* fn. 6, at Chap. III, *Dei difetti intrinseci della giurisprudenza*).

¹⁴⁵ Directive 93/13/EC on Unfair Terms in Consumer Contracts, Art. 7: 'Written contracts, (1) A seller or supplier shall ensure that any written term of a contract is expressed in **plain, intelligible** language' [emphasis added].

¹⁴⁶ Directive 97/7/EC (on the Protection of Consumers in respect of Distance Contracts, Art. 4, No 2: 'the information [...] shall be provided in a **clear and comprehensible** manner in any way appropriate to the means of distance communication used [...] [emphasis added]). In the French version the expression is 'de manière claire et compréhensible'.

¹⁴⁷ The European Parliament published the conclusions of the European Council in Edinburgh, including one of the very first sections: 'Openness and transparency' (Part A, para 7 and Annex 3): <http://www.europarl.europa.eu/summits/edinburgh/a0_en.pdf> (see further below).

¹⁴⁸ In the EU, judges belonging to the single Member States most of the time directly apply European sources; they can, however, as already mentioned, request preliminary rulings of the Court of Justice of the EU).

transparency is a frequent complaint. This reaction has led to intensified efforts to reach out to the public.¹⁴⁹

The Member States have also had to provide greater access to their legal systems: much effort has been invested in producing multilingual versions of EU law,¹⁵⁰ and multilingual versions of national law, now an obligation for Member States.¹⁵¹ Since 1992,¹⁵² a number of measures have introduced the requirement for clarity in text production:¹⁵³ some examples are Declaration No 39 on the quality of Community legislation (Amsterdam Treaty, 1997), the Inter-institutional Agreement of 22 December 1998 on Common Guidelines for the quality of drafting of Community legislation,¹⁵⁴ and the Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions.¹⁵⁵

The European Council of Ministers' Resolution of 8 June 1993 on the quality of drafting of Community legislation¹⁵⁶ states that the general objective of making Community legislation more accessible should be pursued, by making systematic use of consolidation, and by implementing a precise set of criteria against which Council texts should be checked while they are being drafted.

In a number of European countries, such as Germany, consolidation has been adopted as a strategy to simplify the regulatory framework. The process of consolidation can be used to free the law from constrictions imposed by the existing legal framework: it avoids confusing or contradictory texts, eliminates outdated regulation and allows the use of single texts. With consolidation there is no need to attempt to fit in with earlier drafting styles or judicial language, some of which may have become obsolete. It is also possible to clean up the structure of existing legislation, some of which may be straining under the weight of textual amendments. Consolidating can therefore be a good way to bring order, and clarity, to a specific legislative context. This work is usually done by *ad hoc* commissions.¹⁵⁷

¹⁴⁹ See:

<http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/ai0003_en.htm>; <http://ec.europa.eu/transparency/eti/index_en.htm>. CARANTA, Roberto, 'Il diritto di accesso alle informazioni nel diritto europeo', *Rivista italiana di diritto pubblico comunitario*, 2003, pp. 870-887.

¹⁵⁰ Cf. Cielito Lindo researchers, EUROPEAN COMMISSION, DIRECTORATE GENERAL FOR TRANSLATION, *Study on Lawmaking in the EU Multilingual Environment, Studies on translation and multilingualism*, Publications Office of the European Union, Luxembourg, 2010.

¹⁵¹ See <http://jurislingue.gddc.pt/ingles_default.asp>; <<http://www.legifrance.gouv.fr/>>; see also the European Judicial network and the e-Justice portal.

¹⁵² Summit of the European Council in Edinburgh: Part A, and Annex 3 (Simplification of and easier access to Community Legislation): <http://www.europarl.europa.eu/summits/edinburgh/a3_en.pdf>.

¹⁵³ Much research has been conducted on the new European policy: POZZO, Barbara & JACOMETTI, Valentina (eds.), *Multilingualism and the Harmonisation of European Law*, Kluwer Law International, Alphen aan den Rijn, 2006 (of particular interest for this study: DRAGONE, Stefania, 'The Quality of Community Legislation and the Role of the European Commission Legal Revisers' pp. 99-106; GUGGEIS, Manuela, 'Multilingual Legislation and the Legal-linguistic Revision in the Council of the European Union', pp. 109-117; HAKALA, Pekka, 'Legislative Process from a Parliament Perspective, Past Practice with 11 Languages and Current Challenges in 20', pp. 147-164; GALLO, Giovanni, 'Organisation and Features of Translation Activities at the Court of Justice of the European Communities', pp. 179-195). The *European Commission* published in 2010 a *Study on Lawmaking in the EU Multilingual Environment*, *supra* fn. 150.

¹⁵⁴ Official Journal C 073, 17 March 1999, pp. 1-4. See at No 5: 'Throughout the process leading to their adoption, draft acts shall be framed in terms and sentence structures which respect the multilingual nature of Community legislation; concepts or terminology specific to any one national legal system are to be used with care'

¹⁵⁵ <<http://eur-lex.europa.eu/en/techleg/index.htm>>.

¹⁵⁶ Council Resolution of 8 June 1993 on the quality of drafting of Community legislation (OJ C 166, 17 June 1993, p. 1).

¹⁵⁷ OFFICE OF THE SCOTTISH PARLIAMENTARY COUNSEL, *Plain Language and Legislation Booklet*, 2006, available at: <<http://www.scotland.gov.uk/Publications/2006/02/17093804/0>>; see also OECD, *From red tape to smart tape: administrative simplification in OECD countries*, OECD Publishing, Paris, 2003.

In 2002 the European Commission presented an Action Plan for 'simplifying and improving the regulatory environment'¹⁵⁸ where it stressed the importance of transposing Community legislation more effectively and proposed a programme to simplify and update the existing body of European legislation.

The linguistic criteria provided by the Council's resolution are a clear reference to plain language: clarity and simplicity are recommended and in particular unnecessary abbreviations, Community jargon and excessively long sentences should be avoided; provisions and terminology should be consistent; and standards should be respected.

These criteria have been specified in subsequent documents. As already mentioned, according to the Inter-institutional Agreement of 22 December 1998 on Common Guidelines for the Quality of Drafting of Community Legislation,¹⁵⁹ and to the Joint Practical Guide,¹⁶⁰ EU legislation should be 'readily understandable by the public and economic operators'. The agreement adopts general principles covering both the drafting techniques to be used within EU legislation and the structure of EU acts. Again, according to these documents, EU legislative acts should be drafted clearly, simply and precisely, the drafting should be appropriate to the type of act concerned, and should take account of the persons to whom they are intended to apply, with a view to enabling them to identify their rights and obligations unambiguously; they should also take account of the persons responsible for putting the acts into effect. Further support is given to the Council's drafting guidelines by the practical guide for persons involved in the drafting of legislation within the European institutions.

More recently, clarity of language in a multilingual dimension has been considered also in terms of clear communication directly with European citizens. The EU Services Directive (2006/123/EC) provides a significant boost to one-stop shops, since it requires a uniform system across the EU internal market, and electronic processing of services. In fact the EU Services Directive states that, in relation to the creation of 'points of single contact', Member States must make sure that all information is provided in simple, straightforward language and presented in a coherent, understandable and structured way. The 'points of single contact' must not only be made available in the Member State's own language(s) but also in other Community languages. For instance, Member States should consider making information available in the languages of neighbouring Member States or in languages most commonly used by business in the EU.¹⁶¹

However, despite these measures and generally higher awareness, EU legislation has been subject to criticism for its lack of precision. 'Euro-jargon' often requires a huge interpretative effort from national and European courts. Nevertheless, the language of the European Union can also be considered a clear example of a specialised legal language developed for every language, differing from and independent of those used in each national legal system. It has developed in order to express concepts emerging within the new legal order of the European Union and its Member States.¹⁶² In this respect, the separation between drafting and translating in the legislative cycle of European Union acts has certainly had an impact in terms of clarity and uniformity of the language and the terminology used.

¹⁵⁸ In this regard, see Better Regulation Strategy of the European Commission: http://ec.europa.eu/governance/better_regulation/key_docs_en.htm.

¹⁵⁹ Inter-institutional Agreement of 22 December 1998 on Common Guidelines for the Quality of Drafting of Community Legislation (Official Journal C 073, 17 March 1999 P. 0001 – 0004).

¹⁶⁰ *Joint Practical Guide, Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions:* <http://eur-lex.europa.eu/en/techleg/index.htm>.

¹⁶¹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on Services in the Internal Market (OJ L376 of 27 December 2006, p. 36). For more information, European Communities, *Handbook on implementation of the Services Directive*, 2007.

¹⁶² Office of the Scottish Parliamentary Counsel, *Plain Language and Legislation Booklet*, supra fn. 156.

In view of improving harmonisation, two experiences of inter-institutional cooperation are worth mentioning: the Swedish experience¹⁶³ and the Network for Excellence of Institutional Italian (Rete per l'eccellenza dell'italiano istituzionale, REI). Both, among others, were established to promote cooperation between officials, involved with drafting and translating in Swedish and Italian respectively, at both EU and national level.

Sweden stands out for the work it has done to promote plain language and harmonisation at European level, not only for Swedish. As soon as Sweden became a member of the European Union it showed a strong commitment to putting plain language on the EU's agenda. The quality work by the Swedish language departments and translation units within the EU institutions has led to, among others, the publication of *Att översätta EU-rättsakter*, on how to translate EU regulations. Moreover, Swedish officials participating in working groups in the Union are encouraged to use the influence they have to improve the wording and structure of the legal documents handled by those groups. Swedish comments on the regulatory reform work in the EU are also regularly submitted, to make plain language an important part of better regulation. A network has also been created to allow easy contact and exchange between Swedish translators in the European Union institutions and Swedish officials in ministries and government bodies. This allows prompt decisions as to which terminology to use in a given context. The Swedish experience shows a strong awareness not only of the importance of benefitting from synergies between language experts and lawyers, as well as experts from other disciplines, but also of acquiring political and administrative support.¹⁶⁴

A second experience that is worth reporting is that of REI, an Italian network of professionals created in 2005 under the initiative of the Italian Department of the DG Translation of the European Commission. REI includes representatives of European institutions, Italian and Swiss public administrative bodies, universities and associations. The general purpose of the network is to promote institutional communication in clear Italian, which can be easily understood by anybody and is of appropriate quality. The REI network aims to enhance terminological harmonisation and sharing of existing databases, to identify criteria for validation of terms and neologisms, to develop tools of exchange and debate, and to organise meetings on various aspects of drafting institutional texts and of Italian usage. It also helps to spread awareness of already existing drafting manuals and guidelines. The network operates mainly through its website and forum. Several special interest groups exist within it, covering key areas such as legal terminology, economic-financial terminology, quality of standardisation in law drafting, and medical terminology.

A practical example of the type of cooperative outcomes emerging from REI is the technical English glossary relating to organised crime. All those involved at EU and national level in translating documents in this area, especially for Europol, worked together to study, analyse and agree on common solutions for a set of problematic English terminology.¹⁶⁵ The glossary was then made available for everybody on the REI website. These types of cooperation among national and European translators should be encouraged by the European Commission as they are the basis of good harmonisation of the institutional languages. As part of work to promote and implement the quality of legal documents,¹⁶⁶ it is clear that quality initiatives in

¹⁶³ See website: <<http://www.regeringen.se/sb/d/2750>>.

¹⁶⁴ EHRENBORG-SUNDIN, Barbro (Senior Adviser, Ministry of Justice, Sweden), *Plain language in Sweden, the results after 30 years*, speech delivered at the Plain Language conference *Lenguaje ciudadano* (5 October 2004), available at: <<http://www.plainlanguage.gov/usingPL/world/world-sweden.cfm>>.

¹⁶⁵ These were the European Council, the Translation Centre of the Bodies of the EU, the Italian Ministry of the Interior, PhD students from the University of Trieste, and national experts in the field. See REI's website: <http://ec.europa.eu/dgs/translation/rei/traduzione/terminologia_penale.htm>.

¹⁶⁶ See the DG Translation's programmes and resources:

translation are worth paying for, as these costs actually save resources in the long run.¹⁶⁷ One important initiative is the Quaetra Project on Quality of Legal Translation funded by the European Commission, with financial support from the Criminal Justice Programme of the European Commission Directorate General Justice.¹⁶⁸ This project was set up in response to Directive 2010/64/EU of the European Parliament and the Council, on the right to interpretation and translation in criminal proceedings.

In partnership with the European Legal Interpreters and Translation Association (Eulita)¹⁶⁹, the Quaetra project mainly focuses on the development of training materials and the implementation of training programmes in order to improve the training of legal translators and practitioners, and to interact efficiently with police, prosecutors, court staff, judges, legal practitioners. The Quaetra Project is mostly dedicated to training, testing and assessing legal translators and to training legal practitioners in the area of criminal proceedings, and the results so far provide an encouraging response to the need to improve the quality of legal translation. It involves EU Member States, universities, centres of research, translators, linguists and stakeholders, and constitutes a significant step forward, as well as providing an example to follow in other areas.

5. The case-law of the European Court of Justice and European Court of Human Rights

Generally, limitation to fundamental rights must be formulated in a clear and predictable manner. In fact, requirements which must be met to respect the rule of law have been looked at by the European Court of Justice (ECJ) and the European Court of Human Rights (ECHR). Lawfulness is a common principle that arises from common traditions and is characterised by requirements of clarity, foreseeability and accessibility. To define the boundaries of these notions, the ECJ often refers to judgements of the ECHR. Regarding the requirements mentioned above, these Courts have begun to communicate in ways which have strengthened the common legal background of Member States.

The principle of legality arises from the need to protect citizens against the arbitrary exercise of power; to satisfy this principle a norm must fulfil certain requirements, such as publication, accessibility, and sufficient preciseness to ensure that its application is foreseeable.¹⁷⁰

The ECHR underlined that the Convention stresses the requirement of clarity of the law in two circumstances: firstly, in the definition of proscribed criminal behaviour in penal statutes (the 'void for vagueness' doctrine enshrined in Article 7);¹⁷¹ and, secondly, in the interferences permitted with the enjoyment of certain fundamental rights (such as those enshrined in Articles 8 to 11). The requirement of clarity appears necessary to a higher degree in the context of Article 7.¹⁷² Foreseeability depends to a considerable degree on the content of the instrument in issue, the field it is designed to cover, and the number and status of those to whom it is addressed.¹⁷³

In *Chorherr v Austria*, (25 August 1993, series A n° 266-B, pp. 35-36, § 25), the ECHR identified the level of foreseeability required by law according to the public concerned.

http://ec.europa.eu/dgs/translation/programmes/emt/index_en.htm.

¹⁶⁷ EUROPEAN COMMISSION, DIRECTORATE-GENERAL FOR TRANSLATION, *Quantifying Quality Costs and the Cost of Poor Quality in Translation, Studies on translation and multilingualism 1/2012*, Publication Office of the European Union, Luxembourg, 2012, available at:

http://ec.europa.eu/languages/documents/publications/poor-translation_en.pdf.

¹⁶⁸ Quaetra's website: <http://eulita.eu/quaetra>.

¹⁶⁹ <http://www.eulita.eu/mission-statement>.

¹⁷⁰ See *Olsson v Sweden*, Case 10465/83 ECHR 1988, especially at para 61.

¹⁷¹ See *Kokkinakis v Greece*, 25 May 1993, Series A no. 260-A, p. 22, §§ 51-53.

¹⁷² See *N.F. v Italy*, No 37119/97 ECHR 2001.

¹⁷³ See *Groppera Radio AG and Others v Switzerland*, 28 March 1990, Series A no. 173, p. 26, § 68.

The Court had already clarified that all laws should be formulated with sufficient precision to enable citizens to regulate their conduct, and to foresee, to a degree that is reasonable in the circumstances, the consequences that a given action may entail. In this case the Court stressed that 'the level of precision required of the domestic legislation - which cannot in any case provide for every eventuality - depends to a considerable degree on the content of the instrument considered, the field it is designed to cover and the number and status of those to whom it is addressed.'¹⁷⁴

In *Vereinigung demokratischer Soldaten Österreichs and Gubi v Austria*, (19 December 1994, series A n°302, pp. 15-16, § 31) where the case was about an authority's discretion in deciding whether or not to distribute a newspaper within a military environment, which is a very specific field characterised by specific duties and discipline, the Court stated that 'as far as military discipline is concerned, it would scarcely be possible to draw up rules describing different types of conduct in detail. It may therefore be necessary for the authorities to formulate such rules more broadly. The relevant provisions must, however, afford sufficient protection against arbitrariness and make it possible to foresee the consequences of their application.'

As regards the ECJ, it is clear from the case-law that the principle that penalties must have a proper legal basis is a corollary of the principle of legal certainty, which constitutes a general principle of EU law and requires that any EU legislation, in particular when it imposes or permits the imposition of penalties, must be clear and precise, so that the persons concerned may know without any ambiguity what rights and obligations flow from it and may take steps accordingly (Case T-279/02 *Degussa v Commission* [2006] ECR II-897, paragraph 66, Case T-43/02 *Jungbunzlauer v Commission* [2006] ECR II-3435, paragraph 71).

Furthermore, in reference to the principle of legal certainty, the Court has held that this principle requires that Community legislation must allow those concerned to acquaint themselves with the precise extent of the obligations it imposes upon them, which may be guaranteed only by the proper publication of that legislation in the official language of those to whom it applies (see also, to that effect, Case C-370/96 *Covita* [1998] ECR I-7711, paragraph 27, Case C-228/99 *Silos* [2001] ECR I-8401, paragraph 15). In case C-161/06, *Skoma-Lux sro*, [2007] ECR I-10841, the Court stated that:

'Article 58 of the Act concerning the conditions of accession precludes the obligations contained in Community legislation which has not been published in the Official Journal of the European Union in the language of a new Member State, where that language is an official language of the Union, from being imposed on individuals in that State, even though those persons could have learned of that legislation by other means [because] 'making the legislation available by such means does not equate to a valid publication in the Official Journal of the European Union in the absence of any rules in that regard in Community law' (p.48).

In the judgment of 13 July 2011, case T-138/07, *Schindler Holding Ltd v Commission*, the Tribunal stated that the 'principle that penalties must have a proper legal basis applies both to rules of a criminal law nature and to specific administrative instruments which impose administrative penalties or permit administrative penalties to be imposed.'¹⁷⁵

¹⁷⁴ See also *Maestri v Italia*, 7 February 2004; *Silver and Others v the United Kingdom*, 25 March 1983, Series A no. 61, p. 33, § 88 and *Herczegfalvy v Austria*, 24 September 1992, Series A no. 244, p. 27, §. 89.

¹⁷⁵ At p. 95; see also Case 137/85 *Maizena and Others* [1987] ECR 4587, para 15. It applies not only to the rules which establish the elements of an offence, but also to those which define the consequences of contravening them (See *Degussa v Commission*, para 95 above, para 67, *Schunk and Schunk Kohlenstoff-Technik v Commission*, para 83 above, para 29).

In Case C-413/08 *P Lafarge SA v European Commission*, the ECJ stated that it is the principle of legality that requires the law to define clearly offences and the penalties sanctioning them (See also *Evonik Degussa v Commission and Council*, paragraph 39). The ECJ expressly refers to the ECHR:

'According to the case-law of the European Court of Human Rights, the clarity of a law is assessed having regard not only to the wording of the relevant provision but also to the information provided by settled, published case-law.'¹⁷⁶

In addition, the ECHR stated that the fact that a law confers a discretion is not in itself inconsistent with the requirement of foreseeability, provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim in question, to give the individual adequate protection against arbitrary interference.¹⁷⁷ In this case, the Commission was charged with having used wide discretion, but the regulation examined limited the exercise of that discretion by establishing objective criteria with which the Commission had complied:

'[...] A prudent trader, if need be by taking legal advice, can foresee in a sufficiently precise manner the method and order of magnitude of the fines which he incurs for a given line of conduct, and the fact that that trader cannot know in advance precisely the level of the fines which the Commission will impose in each individual case cannot constitute a breach of the principle that penalties must have a proper legal basis.'¹⁷⁸

In the Judgment by the Court of First Instance of 8 October 2008, Case T-69/04, *Schunk GmbH and Schunk Kohlenstoff-Technik GmbH v Commission of the European Communities*, ECR II-2567, the Court said that the principle of legal certainty, which constitutes a general principle of Community law, requires that any Community legislation, in particular when it imposes or permits the imposition of sanctions, must be clear and precise so that the persons concerned may know without ambiguity what rights and obligations flow from it and may take steps accordingly;¹⁷⁹ and it must be observed in regard both to provisions of a criminal nature and to specific administrative instruments imposing or permitting the imposition of administrative sanctions. It applies not only to the provisions which establish the elements of an offence, but also to those which define the consequences of contravening them.¹⁸⁰

In Judgment of the Court of First Instance, Case T-99/04, of 8 July 2008, *AC-Treuhand AG v Commission of the European Communities*, [2008] ECR 2008 II-1501, p. 86, the ECJ stressed also that

'the greater the adverse effects for the individual, the more precise the terms in which the act of Community law must be framed. The Court has ruled to that effect in stating that the requirement of legal clarity is imperative in a sector in which any uncertainty may well lead to the application of particularly serious penalties.'¹⁸¹

¹⁷⁶ See its judgment of 27 September 1995 in *G v France*, Series A No 325-B, § 25.

¹⁷⁷ See the judgment of 25 February 1992 in *Margareta and Roger Andersson v Sweden*, Series A No 226, § 75.

¹⁷⁸ See *Evonik Degussa v Commission and Council*, paras 50-55 (p. 95); *Cantoni v France* 15 November 1996, Series 96-v, p. 1629, (§ 35).

¹⁷⁹ See, to that effect, Case 169/80 *Gondrand Frères and Garancini* [1981] ECR 1931, para 17; Case 137/85 *Maizena* [1987] ECR 4587, para 15; Case C-143/93 *van Es Douane Agenten* [1996] ECR I-431, para 27; and Joined Cases C-74/95 and C-129/95 X [1996] ECR I-6609, para 25.

¹⁸⁰ See, to that effect, X, para 28 above, paras 22, 25.

¹⁸¹ See also Case 32/79 *Commission v United Kingdom* [1980] ECR 2403, para 46.

6. New directions

One facet of the move toward a higher level of transparency is the issue of how comprehensible written documents are; in a number of areas, efforts have been made to improve the quality of documents, especially to make them more easily accessible to citizens of average educational level, and to laymen or non-specialists in legal matters.

The question has been addressed both from the institutional level (top down) and from the users' point of view (bottom up). At institutional level, governments or government agencies in many States have made moves to clarify and simplify communication with readers.¹⁸² The section above showed moves taken by the EU. In bottom-up terms, plain language movements have emerged as a result of dissatisfaction with the style of communication of public administrative bodies; their declared aim is the

'writing and setting out of essential information in a way that gives a co-operative, motivated person a good chance of understanding the intended meaning at first reading.'¹⁸³

The mass media have played a significant role in the need for more accessible communication: growing demand for intelligibility, and for easy access to information is related to the language used in mass communication. People are increasingly used to simplified messages in advertising or in radio and TV broadcasting. Electronic communication has also affected communication styles: visual messages and images are substituting abstract discourse. Many communication experts provide services offering 'plain language' for contracts.

Significant debate has taken place as to the distinction between 'easification' and 'simplification' of messages; the latter has been criticised because of the risk it entails that important elements of information might be lost in the process of making the message more comprehensible. The correct balance to strike is not obvious and there is no one uniform standard.¹⁸⁴ Clear communication is supported and promoted by a number of international organisations¹⁸⁵ and various journals, such as *Clarity*, are published on a regular basis, revealing the importance of this issue nowadays.

In conclusion, fundamental political and social needs have existed for centuries. In modern times they have been gradually legitimated and accepted, although not in a uniform way at global level. Today an institutional dimension to practices and procedures is being sought, to make document quality control more effective. Institutional change, due particularly to phenomena of path-dependency, is difficult to achieve. However increasing research efforts and public debate on these themes make document quality control a fundamental item on the agenda for good governance and democracy in the coming years.

¹⁸² <<http://www.plainlanguagenetwork.org/Government/index.html>> (references are provided to Australia: <<http://www.opc.gov.au/plain/>>; Canada: <<http://www.tbs-sct.gc.ca/communications/index-eng.asp>>; Sweden: <<http://www.tbs-sct.gc.ca/communications/index-eng.asp>>; the US, Federal Aviation Association: <http://www.faa.gov/documentlibrary/media/order/branding_writing/order1000_36.pdf>). GOBIERNO DE ESPAÑA, MINISTERIO DE JUSTICIA, *Modernización del Lenguaje Jurídico*, <<http://www.mjusticia.gob.es/cs/Satellite/1292346648731?blobheader=application%2Fpdf&blobheadernam e1=Content...>>.

¹⁸³ <<http://www.clearest.co.uk/pages/aboutus/frequent%20questions>>. Alternative definitions are given by various authors: cf. e.g. the notions quoted by C. Williams (*Statute Law Review*) and more superficially on Wikipedia (<http://en.wikipedia.org/wiki/Plain_language>).

¹⁸⁴ An important caveat is expressed in the *Joint Practical Guide*, *supra* fn. 160: (1.4) 'Simplification is often achieved at the expense of precision and vice versa. In practice, a balance must be struck so that the provision is as precise as possible, without becoming too difficult to understand. That balance may vary according to the addressees of the provision (see Guideline 3)'.
¹⁸⁵ E.g., *Plain Language International Association*

(<<http://plainlanguagenetwork.org/stephens/intro.html>>).

Part II - A Survey of National Institutions, Procedures, and Tools

This part of the study aims at analysing the current implementation of document quality control through a survey of institutions, procedures and tools in selected contexts. The survey covers selected national experiences and does not aim to be complete. To enhance the comparative perspective, all national experiences are analysed according to a common grid, although focus may change according to particular features of a specific experience. A short historical overview and a description of the legal, cultural and linguistic contexts is provided, before going on to analyse policies, legal instruments and recent reforms. The survey also describes key actors, procedures, personnel, and main tools. Finally, it highlights critical aspects and emerging trends.

Section A - European experiences

Chapter I - United Kingdom (England)

1. Parliament and legislative drafting in the UK

In the UK the drafting style of legislation has been the object of a number of detailed official enquiries. Real improvements have been reported.

The UK is considered as a single State, but is composed of five legal systems (England, Wales, Scotland, Northern Ireland, Jersey). We shall distinguish between legislation produced at Westminster and in Scotland, since Edinburgh has legislative competence in the fields where devolution (Scotland Act 1998) transferred legislative powers to the Scottish Parliament.¹⁸⁶ Northern Ireland has independent legislative powers within the limits of devolved matters and the Northern Ireland Assembly is responsible for making laws on transferred matters in Northern Ireland.¹⁸⁷ Wales received devolved powers in 1998 as well. In its instrument of ratification of the 2001 European Charter for Regional or Minority Languages (the Language Charter), the UK recognised that there were five regional or minority languages in the UK: Welsh, Scottish Gaelic, Irish, Scots and Ulster-Scots, with English being the main language. In 2003 the UK also included Cornish and Manx as languages to which the Charter applied.¹⁸⁸

2. Westminster Parliament: historical background

As is generally known, Westminster Parliament has legislative power over England and, unless differently provided for by devolution legislation, over other regions. Often a statute specifies the extension of its scope; the title generally indicates whether the provisions extend to Wales or Scotland (e.g. Contract (Scotland) Act 1997). As

¹⁸⁶ <<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/30590.aspx>>; <<http://www.scottish.parliament.uk/visitandlearn/12506.aspx>> (on the competence transferred). See also, on plain language and legislation (Scotland): <<http://scotland.gov.uk/Resource/Doc/93488/0022476.pdf>>. In this research, we shall not especially investigate into the practice of the 'States Assembly' of the 'Jersey States' ('Channel Islands') where 'the official languages [...] are English and French'. As indicated by the official website: 'Members may address the Assembly in either language; however most of the States business is done in English': <<http://www.statesassembly.gov.je/about/history/Pages/StatesAssemblyHistory.aspx>>).

¹⁸⁷ <<http://www.niassembly.gov.uk/Assembly-Business/Legislation/>>.

¹⁸⁸ This does not mean that all the languages will in all circumstances be used on the same footing.

mentioned above in the introductory part of this study, the legislative style of the common law tradition has some distinctive features in comparison with the civil law approach. As Pollock observed, many judges in England may start from the assumption that

'Parliament generally changes the law for the worse, and the business of the judge is to keep the mischief of its interference within the narrowest possible bounds.'¹⁸⁹

Statute law was seen in the past as an 'unwelcome intruder': an unsettling intervention in the corpus of case-law, and an exceptional means to change pre-existing rules declared by the decisions of the royal courts.¹⁹⁰ This attitude has determined in some measure the specific drafting style of legislation: very precise, full of detail, with exact specifications of which previous rules will be affected by the parliamentary intervention, and dense with definitions.¹⁹¹

To an observer trained in the civil law tradition, the English style is striking as

'each sentence is unusually long: it contains the principal and the accessory, the reservation and the counter reservations, the particular cases and the general rule; and these are inserted in a succession of enumerations and parentheses which are so intermixed with the minimum of punctuation, that one sometimes wonders which part of the sentence which other part is intended to qualify [...]'¹⁹²

Rules on punctuation also differ drastically from equivalent instructions in other countries. The old rule was that '[p]unctuation is no part of the statute'¹⁹³ and that '[c]ourts will [...] disregard the punctuation, or repunctuate, if need be, to render the true meaning of the statute'¹⁹⁴. The rule has been somewhat relaxed more recently:¹⁹⁵ but style of punctuation still differs from country to country, as is well-known to drafters in multiple languages (see questionnaire responses by OECD, UNOV, and Switzerland in Part III of the study).

Long titles may define the subject-matter of a law with a description occupying a number of lines, something which, again, a foreign observer may find strange.¹⁹⁶ A Report by the Public Administration Select Committee of the House of Commons gives

¹⁸⁹ POLLOCK, Frederick, *Essays on Jurisprudence and Ethics*, Macmillan & Co., London, 1882, at p. 85.

¹⁹⁰ WILLIAMS, Glanville, *Learning the Law*, Stevens & Sons, London, 1978; ID., 'Language and the Law', 61 *Law Quarterly Review* 71 (1945-46).

¹⁹¹ 'English statutes are customarily drafted with almost mathematical precision, the object (not always attained) being in effect to provide a complete answer to virtually every question that can arise.' See: DAVIS, Sir Charles, Legal Advisor to the House of Commons Select Committee on the European Secondary legislation, *The Preparation of Legislation*, Cmnd. 6053 (1975), p. 52.

¹⁹² DAVID, René (ed.), *International Encyclopedia of Comparative Law*, Mohr, Tübingen, 1972, Vol. II, Ch. 5, para 405. According to ZWEIGERT & KÖTZ, *An Introduction to Comparative Law*, supra fn. 24, Vol.1, at p. 267: 'English statutes [...] often adopt a form of expression so complex, convoluted, and pedantic that the Continental observer recoils in horror'.

¹⁹³ GARNER, Bryan A., *A Dictionary of Modern Legal Usage*, 3rd ed., Oxford University Press, New York, 2011, at p. 730; LEWISON, Kim, *The Interpretation of Contract*, 2nd ed., Sweet & Maxwell, London, 1997.

¹⁹⁴ DORSEY, Tobias A., *Statutory Construction and Interpretation: General Principles and Recent Trends, Government series*, TheCapitol.Net, Virginia, 2010.

¹⁹⁵ OPC, Office of Parliamentary Counsel replies to questionnaire (question 9): does not mention strict rules on punctuation (cp.: Drafting Guidance at the Cabinet Office website:

<www.cabinetoffice.gov.uk/content/office-of-the-parliamentary-counsel>. The guidelines 'are not binding, but the idea is that drafters should adhere to the guidelines unless there is a good reason for not doing so in a particular case' (reply to question 5).

¹⁹⁶ See: Constitutional Reform Act 2005, An Act to make provision for modifying the office of Lord Chancellor, and to make provision relating to the functions of that office; to establish a Supreme Court of the United Kingdom, and to abolish the appellate jurisdiction of the House of Lords; to make provision about the jurisdiction of the Judicial Committee of the Privy Council and the judicial functions of the President of the Council; to make other provision about the judiciary, their appointment and discipline; and for connected purposes, <<http://www.legislation.gov.uk/ukpga/2005/4/introduction>>.

the Regulatory Reform Act 2001 an example of confusing and arcane legislative language.¹⁹⁷ It was not rare in the past to find comments by English judges describing legislation as, for example, 'very obscure'¹⁹⁸, or 'unintelligible'. In 1975 Sir David (later Lord) Renton was responsible for a report to the House of Lords, entitled *The Preparation of Legislation*¹⁹⁹ that attracted much comment. In his official remarks he highlighted examples of convoluted drafting in statutes²⁰⁰. Not all problems have been overcome as it will be documented in the final comments on the English experience.

3. Actors

One of the first observations by Sir David Renton concerned the role of the Parliamentary Counsel Office,²⁰¹ the institution responsible for drafting all government bills. The Office was created in 1869 and it was led in its first operation by Lord Thring: the aim was to have a group of specialists who would produce legislation of a constant standard, carefully drafted and certain.²⁰² However, this is how Lord Renton described one drawback of this professional drafting:

'the trouble is that the need to achieve certainty of legal effect causes the brilliant men who have to draft the Bills to resort to skilfully compressed phrases which are nothing like ordinary language.'²⁰³

A rather conservative style may be related to the service's approach to professional recruitment: as most drafters join the Office early in their career and remain involved in its work for their whole working experience, they develop a specific style that some commentators consider removed from the day-to-day application and use of statutes in legal practice.

The OPC replies to the questionnaire confirm that officers working there are specialists:

'drafting is regarded as an activity performed by specialists. All those recruited to OPC have some experience of legal practice, usually as an advocate or solicitor, though a number of us have not done law as an undergraduate degree.' (reply to question 2)

Also to be reckoned with is the inclination to conservatism by legislators. An example relates to Bennion's experience of laying down a test of whether the landlord had 'tried his best' to let office property (General Rate Act 1967, s 17A). This expression was put forward to avoid the more formal and technical clause 'used his best endeavours'. In the House of Commons the phrase was described as 'amateurish'.²⁰⁴

¹⁹⁷ An extract from the Regulatory Reform Act 2001, attempting to explain the Act's purpose: '[...] to enable provision to be made for the purpose of reforming legislation which has the effect of imposing burdens affecting persons in the carrying on of any activity and to enable codes of practice to be made with respect to the enforcement of restrictions, requirements or conditions':

<<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmpubadm/394/394.pdf>>.

¹⁹⁸ *Fleming v Associated Newspapers Ltd.* [1972] Ch. 170, p. 190 (Lord Denning). See also Lord Reid, in the House of Lords, *Associated Newspapers Ltd v Fleming* [1973] AC 628, p. 639 ('On reading it, my first impression was that it is obscure to the point of unintelligibility, and that impression has been confirmed by the able and prolonged arguments which were submitted to us').

¹⁹⁹ RENTON, *The preparation of Legislation*, *supra* fn. 45. A comment in the House of Lords:

<<http://hansard.millbanksystems.com/lords/1975/dec/10/renton-committee-report-on-legislation>>.

²⁰⁰ RENTON, *The preparation of Legislation*, *supra* fn. 45, at p. 27.

²⁰¹ Originally called 'Parliamentary Counsel Office', the Office of the Parliamentary Counsel (OPC) is a group of government lawyers specialised in drafting legislation; the OPC works 'closely with departments to translate policy into clear, effective and readable law.' See:

<<https://www.gov.uk/government/organisations/office-of-the-parliamentary-counsel>>.

²⁰² <<http://www.cabinetoffice.gov.uk/content/office-of-the-parliamentary-counsel>>.

²⁰³ BENNION, *Statute Law*, *supra* fn. 46, at p. 22.

²⁰⁴ '[...] while Denis Howell thought it a "headmaster's phrase" and demanded that "better phraseology" be provided in the House of Lords', (1974) 867 *HC Deb* cols 1545, 1551, 1573; for a comment see RENTON, *The*

Interestingly, the expression 'best endeavours' or 'best efforts' is one of the most controversial in international contracts: it is often misunderstood by people whose first language is not English, who may miss its technical meaning for a common lawyer.²⁰⁵ Some expressions tend to be read by non-native English users at their face value, disregarding their technical meaning; this is the case with the expressions 'contracting at arm's length', and 'a case of first impression', both having an ordinary meaning which is different from the legal meaning. Unless the reader is familiar with legal language, it may be difficult to spot such 'Janus' expressions.²⁰⁶

Concern about certainty has also prompted approval of a statute on interpretation,²⁰⁷ a legislative document that may cause puzzlement to civil law readers: it includes instructions on grammatical rules of reading and reaches a level of detail that seems highly unusual outside the common law world.²⁰⁸

The Renton Committee in its conclusions called for a comprehensive revised Interpretation Act²⁰⁹. The 1978 Interpretation Act,²¹⁰ produced under the auspices of the Office of the Parliamentary Counsel, however amounted to little more than direct consolidation of existing British enactments. Instructions are still very close to grammatical rules; for example, Section 6 provides that:

'In any Act, unless the contrary intention appears,—
(a) words importing the masculine gender include the feminine;
(b) words importing the feminine gender include the masculine;
(c) words in the singular include the plural and words in the plural include the singular.'

Such a detailed style in legislating has affected relations with judges. Since they know that legislation is professionally drafted, they tend to a very literal interpretation of provisions; every word is presumed to have been carefully chosen, and no concessions are made to unhappy formulations, vague expressions, or unwanted results. The drafters themselves, conscious of the strict reading that will be made of their texts, increase precision, details, specifications, and qualifications.²¹¹

The laudable intent that a statute should be drafted so that it can be understood by all those affected by it,²¹² meets a recurring objection as 'it could be achieved only by giving to judges and officials a degree of discretion unlikely to be acceptable in a

preparation of Legislation, *supra* fn. 45, para 11.3). Notwithstanding opposition, the phrase stood parliamentary scrutiny.

²⁰⁵ Cf. *ICC Model Commercial Agency Contract*, Art. 3: 'The agent agrees to use his *best endeavours* to promote the sale of the products [...]. In case-law, e.g., "[B]est efforts" requires more than "good faith", which is an implied covenant in all contracts [...]' (*Kroboth v Brent*, N.Y. App. Div. 1995, 215 A.D.2d 813, 814).

²⁰⁶ The definition 'Janus words', to indicate expressions radically changing of meaning according to the context, belongs to YOUNG, William F., 'Equivocation in the Making of Agreements', 64:4 *Columbia Law Review* 619-647 (1964), at p. 632.

²⁰⁷ Interpretation Act 1889 (An Act for consolidating enactments relating to the Construction of Acts of Parliament and for further shortening the Language used in Acts of Parliament).

²⁰⁸ TWINING & MIERS, William & Miers, David, *How to Do Things with Rules, A Primer of Interpretation*, Weidenfeld & Nicholson, London, 1976.

²⁰⁹ RENTON, *The preparation of Legislation*, *supra* fn. 45, paras 19.4-19.11, 19.31, 19.32.

²¹⁰ Interpretation Act 1978, Chap. 30, An Act to consolidate the Interpretation Act 1889 and certain other enactments relating to the construction and operation of Acts of Parliament and other instruments, with amendments to give effect to recommendations of the Law Commission and the Scottish Law Commission: <<http://www.legislation.gov.uk/ukpga/1978/30>>.

²¹¹ TWINING & MIERS, *How to Do Things with Rules*, *supra* fn. 208, at Chap. 9; BRIDGE, John, 'National Legal Tradition and Community Law', *supra* fn. 23, at p. 354.

²¹² DALE, William, *Legislative Drafting: A new Approach*, Butterworths, London, 1977, at p. 331. Cf. ZANDER, Michael, *The Law-Making Process*, 6th ed., Cambridge University Press, Cambridge, UK, 2004, at p. 14; BOWMAN, Geoffrey, *The Art of Legislative Drafting*, a revised version of the *Sir William Dale Memorial Lecture* for 2005, available at: <<http://sas-space.sas.ac.uk/136/1/BowmanGeoffreyIssue064.pdf>>.

democracy.²¹³ Moreover any simplification of language would fail to render the law really understood by all: only the very broad principles would be understood.²¹⁴

A frequent exercise carried out by observers of the British style is to compare statutory provisions across legal systems. Dale thus compares UK statutes on copyright, divorce, adoption, labour law and other topics with corresponding statutes in France, Sweden and West Germany.

The comparison shows a different level of specificity in the rules: English drafters go into extreme detail. A similar comparison is drawn by P. Atiyah and R. Summers: the North American equivalent of the Unfair Contract Terms Act 1977 provision is quite compact (UCC 2-302), a short section divided into two subsections; the British statute of 1977 includes 31 sections and four schedules.²¹⁵ More recently, the phrase 'the presentation of the product' in Article 6 of the European Directive on liability for defective products was transposed in the Consumer Protection Act 1987 by expanding those 5 words into 45.²¹⁶

Generally drafters have been encouraged to make their Bills as brief as possible:²¹⁷

'The search for brevity however causes compression of language. This is one of the principal sources of obscurity. It particularly applies where the statutory language has to be understood by lay people, such as juries.'

In the response by the OPC to our question, we found confirmation that drafters try to avoid using overtly legal or other technical terms, though inevitably Bills contain legislative terms that one would not find in other contexts. Much work has also been done in providing easy access to documents. The results can be observed in recent legislation where consultation has been significantly improved by much easier access to relevant sections using indexing aids and cross referencing by a simple click of the mouse.²¹⁸

4. Reforms

Until relatively recently, bill drafting in Britain was governed by the 'four corners' doctrine, expressed by Lord Thring in terms of fairness to the public as it would not be appropriate to ask readers 'to look beyond the four corners of the Bill in order to comprehend its meaning.'²¹⁹ The four corners' doctrine required the drafter to make the text of his bill self-explanatory. An unfortunate consequence was that bills

²¹³ Lord Bridge comes to similar conclusions, 416 *House of Lords Debates*, cols. 77-778 (p. 6-7), quoted by TWINING & MIERS, *How to Do Things with Rules*, *supra* fn. 208 (at Chap. 9, fn. 21: if legislative acts only rule on principles, discretionary powers are left to the judiciary who may not be ready to face them). Cf. ATIYAH, Patrick S., "Common Law and Statute Law", *Modern Law Review*, Vol. 48, 1985, pp. 1 ff (at p. 4: 'great anxieties at the signs in a number of recent cases that discretionary powers to do what seems just and equitable are to exercised solely by a trial judge [...]').

²¹⁴ BENNION, *Statute Law*, 3rd ed., 1990, *supra* fn. 46, at p. 23.

²¹⁵ ATIYAH & SUMMERS, *Form and Substance in Anglo-American Law*, *supra* fn. 38, at p. 326.

²¹⁶ ZWEIGERT & KÖTZ, *An Introduction to Comparative Law*, *supra* fn. 24, at p. 268.

²¹⁷ By way of example, Bennion cites '[t]he difficulties over certain provisions of the *Theft Act 1968* [...]. If drafters of criminal statutes did not feel compelled to cram a wide variety of factual situations within one formula, but were free to create separate offences for each type of situation, there would be less confusion'.

²¹⁸ 'navigational aids (such as signposts and overviews) in legislation ... can assist users in making sense of what the legislation is doing and how it works' (OPC reply to question 27).

²¹⁹ As mentioned above, Lord Thring was responsible for the institution of the Parliamentary Counsel Office in 1869. See: THRING, Henry, *Practical legislation: The Composition and Language of Acts of Parliament and Business Documents*, Murray, London, 1902, at p. 8.

amending existing legislation were almost invariably expressed in indirect or non-textual form, because textual amendments require accompanying explanatory material in order to be comprehensible.²²⁰ This drafting style was abandoned following the Renton Committee recommendations. Since the official revised edition of Statutes in Force, a publication requiring use of the textual amendment system, the four corners' doctrine has been repealed.

Some twenty years after the Renton Report, the Committee on Modernisation of the House of Commons took up several of the concerns of the previous report and successfully recommended that bills be accompanied by readily understandable explanatory notes.²²¹ Explanatory notes are now an established mechanism for making the meaning of legislation clearer to a non-specialist audience.²²² To properly appreciate this change in attitude, we should recall that quotation of preliminary works to interpret legislation has been allowed to courts in England only since 1992 (*Pepper (Inspector of Taxes) v Hart* [1992] UKHL 3): previously the four corners' doctrine prevented judges and parties from investigating the previous history of an Act to make sense of an obscure provision.

There have been other innovations to improve the accessibility of legislation: the Mental Incapacity Bill (now the Mental Capacity Act 2005) was published with a guide in easy read format to make it accessible to people with learning difficulties.²²³

Clearly a drafter faces a dilemma as regards comprehensibility: on the one hand, new legislation should fit exactly with previous provisions and be coherent with the body of pre-existing law; on the other hand, it should be understandable also to the layman. For the Parliamentary Counsel this means, first of all, making a bill comprehensible to Members of Parliament (MPs). They need to evaluate as easily as possible what the proposed legislation means. Most lack legal training and hence cannot be expected to understand proposals which are framed as legal instruments.²²⁴

At the end of the 1990s the Modernisation Committee urged that 'legislation should, so far as possible, be readily understandable and in plain English'²²⁵. The same Committee did acknowledge in 2006 that some progress had been made in making the language of bills more comprehensible. Now, the OPC is

'at the heart of an initiative relating to "good law". This covers a range of matters and is particularly focused on making legislation more accessible and removing unnecessary complexity. [...] Good law has not resulted in any redefinition of OPC's drafting policy, as such, but it may have an impact both on the way we work and on our output' (reply to question 25).

²²⁰ TWINING & MIERS, *How to Do Things with Rules*, *supra* fn. 207, at Chap. 9 (an example concerning the Finance Act 1962, Sect. 25(3), taken from STATUTE LAW SOCIETY, *Renton and the Need for Reform*, Sweet & Maxwell, London, 1979, at p. 26).

²²¹ Select Committee on Modernisation of the House of Commons, *First Report of Session 1997-98, The Legislative Process*, HC 190, paras 36-37. The website <<http://www.legislation.gov.uk>> makes explanatory materials available together with the text and its amendments.

²²² In addition to explanatory notes, 'the government department responsible for a particular piece of legislation may wish to publish its own explanatory material relating to the legislation.' (Reply to question 20 of our study).

²²³ Department for Constitutional Affairs, *A Guide to the Draft Mental Incapacity Bill: What Does It Mean for Me?*, June 2003. In 2004 the House of Lords Select Committee on the Constitution commended the efforts of parliamentary counsel in rendering bills in more accessible language: BOWMAN, *The Art of Legislative Drafting*, *supra* fn. 212, at p. 14.

²²⁴ LAWS, Stephen, 'Giving Effect to Policy in Legislation: How to Avoid Missing the Point', Renton conference 2010, 32 *Statute Law Review* 1-16 (2011), available at: <<http://www.cabinetoffice.gov.uk/sites/default/files/resources/renton-2010.pdf>>.

²²⁵ Select Committee on Modernisation of the House of Commons, *First Report of Session 1997-98*, *supra* fn. 219, at para 14.

It should also be mentioned that the OPC has announced the publication of internal guidelines on aspects of legislation and the parliamentary process. This builds on the publication of drafting guidance and the Cabinet Office's guidance to departments about the process of creating primary legislation, called the Guide to Making Legislation.²²⁶ To be sure that an enactment will have the desired effect, it is often necessary to enter into the kind of specific detail which is often difficult for the lay reader to follow. Comprehensibility involves drafters in problems for which their training as lawyers may not have fitted them.²²⁷ The issue of training is therefore relevant.

5. Training

The selection of candidates to work in the OPC is effected on the basis of an interview by senior drafters in the office and a short written test (requiring candidates to comment critically on a fictitious piece of legislation). The practice followed at the OPC in training follows an 'on the job' approach, whereby a less experienced drafter will be closely supervised, under the responsibility of a senior drafter²²⁸.

In the Government's words on the issue:

'To support its objectives OPC has a drafting techniques group which makes recommendations about drafting practice. Subjects from this group are regularly discussed more widely within OPC and at OPC office forums, reinforcing the need for clarity and simplicity in drafting.'²²⁹

It is remarkable, however, that in the OPC, which is involved in drafting all bills of primary legislation, 'no new drafters have been recruited since 2008, so any future recruitment process might differ from the process that has been followed to date' (OPC reply to question 2).

Some general initiative to train civil servants to reach a better level of communication has been taken by the Government.²³⁰ For example:

- The National School of Government (NSG) provides communications and drafting courses that teach plain English techniques. [...]

The school also runs a course that teaches government economists how to translate complex, technical information for readers who are not economists (including members of the public, MPs, ministers and other officials). A similar course is open to all civil servants. [...]

However, the National School of Government, quoted in the official reply by the Government, in reality ceased to provide training in 2012, but a new organisation, Civil Service Learning, was later set up.²³¹

²²⁶ <<http://www.cabinetoffice.gov.uk/news/cabinet-office-publish-guidance-about-producing-legislation>>. See OPC reply to question 5: 'We have a document of drafting guidance which is published on OPC's section of the Cabinet Office website (<www.cabinetoffice.gov.uk/content/office-of-the-parliamentary-counsel>). That document deals with matters relating to clarity in drafting as well as points relating to language and specific drafting techniques. The guidelines are not binding, but the idea is that drafters should adhere to the guidelines unless there is a good reason for not doing so in a particular case'.

²²⁷ BENNION, *Statute Law*, *supra* fn. 46.

²²⁸ Reply to question 1.

²²⁹ <<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmpubadm/394/394.pdf>>.

²³⁰ House of Commons, Public Administration Select Committee, *Bad Language: The Use and Abuse of Official Language: Government Response to the Committee's First Report of Session 2009-10* (30 November 2009), <<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmpubadm/394/394.pdf>> (Government Response received on 15 February 2010).

²³¹ <<http://www.civilservice.gov.uk/about/improving/civilservicelearning-civilservice-gov-uklearning>>: it will provide a common curriculum of learning for all civil servants.

6. Standardisation, accessibility to legal sources and communication

Bennion proposed an improvement in drafting through the use of standardisation as

'Far too much unnecessary confusion is caused by the tendency of drafters to say the same thing (or virtually the same thing) in different ways. [...] The drafter of a particular Bill (usually wanted in a hurry) drafts the common type of provision in his own words for the simple reason that standardisation clauses simply do not exist.'²³²

In the past, computer assistance was not much developed in this area, but significant progress has been made. The OPC now uses *Framemaker*, a computer programme designed for the purpose of drafting, while a variety of databanks are considered very helpful.²³³

Investigation in the issue of accessibility to legal sources has not been neglected. The House of Commons Public Administration Select Committee²³⁴ issued a First Report entitled *Bad Language: The Use and Abuse of Official Language*.²³⁵ According to this document

'one of the most significant plain language projects in British government is the *tax law rewrite project* started in 1995. The aim of this project is to rewrite the UK's primary direct taxation statutes in order to make the legislation clearer and easier to use, without changing the law. It has resulted in several acts being revised, the most recent revision being the *Corporation Tax Act 2009*.'²³⁶

The Report highlights that other countries have gone further.²³⁷ Incidentally we may notice that the tax field has always been particularly challenging: many judicial cases are founded on issues of interpretation of tax provisions.²³⁸ According to specialists in the matter 'drafting tax laws is a subspecialty of legislative drafting in general'²³⁹.

The House of Commons Report on *Bad Language* highlights also other significant experiences²⁴⁰ in relation to 'government forms and information', especially for

²³² BENNION, *Statute Law*, *supra* fn. 46, at p. 26; for over a century that function 'has nominally been performed in Britain by the Statute Law Committee: but its performance seems to be wanting as the members are busy on other tasks'.

²³³ OPC, answer to question 8 (legislation.gov.uk; *LexisLibrary*, Halsbury's Statutes).

²³⁴ The Public Administration Select Committee (PASC) is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England and matters in connection therewith. House of Commons Standing Orders, principally in SO No 146, available on the Internet via <www.parliament.uk>.

²³⁵ House of Commons Public Administration Select Committee, *Bad Language: The Use and Abuse of Official Language*, published on 30 November 2009, available at: <<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmpubadm/17/1706.htm#n38>>.

²³⁶ *Bad Language*, *supra* fn. 235, at para 42 ('Rewriting the legislation involves unpacking dense wording, replacing archaic expressions with more modern ones, splitting provisions into more sections and subsections, grouping related issues together, improving layout and introducing various aids to navigation. Inevitably, this results in legislation that is significantly longer but legislation that is much clearer and easier to use'); see also HM Revenue and Customs, *Tax Law Rewrite Report and Plans 2008-09*, 2008.

²³⁷ '[B]oth Australia and Canada have reviewed and rewritten other types of legislation, including legislation on explosives, employment insurance, off-shore mining and care for older people' (*Bad Language*, *supra* fn. 235, at para 43). See also ASPREY, *Plain Language for Lawyers*, *supra* fn. 133, at Chap. 4. See, Government of Alberta, Financial Consumers Act 1990.

²³⁸ The most noticeable may be the famous case *Pepper (Inspector of Taxes) v Hart* [1992] UKHL 3, the case decided by the House of Lords who made the use of statements in Parliament (as recorded in the Hansard reports) available to motivate a judicial decision. The arguments about tax provisions are always controversial (BRIDGE, John, 'National Legal Tradition and Community Law', *supra* fn. 23, at p. 354).

²³⁹ THURONYI, Victor, *Drafting Tax Legislation*, Tax Law Design and Drafting, International Monetary Fund, Washington, DC, 1996, revised 2012, available at: <<http://www.imf.org/external/pubs/nft/1998/tlaw/eng/ch3.pdf>>, at ch. 3.

²⁴⁰ '[G]ood examples include the Charity Commission's *Stop, Think, Write* guidelines and the Office for Disability Issues' guidance on *The Importance of Accessible Information*'. See Office for Disability Issues, *The Importance of Accessible Information: An Introduction for Senior Civil Servants*, November 2008. David

government departments that have many dealings with the public such as the Department for Work and Pensions (DWP) and HM Revenue and Customs. However, 'government bodies need to maintain efforts to improve [...], including by regularly reviewing forms and leaflets and redrafting those that are too long or complex.'²⁴¹ The Committee issued a number of recommendations²⁴² that prompted the following Government Response:²⁴³

'Good progress has already been made but more needs to be done. That is why a range of activities have already been put in place as part of an ongoing commitment to clear communication focused on the needs of citizens.'

Challenges include the pace of technological change. Digital media have already changed the way communication occurs. 'By its nature digital media require a simpler and clearer use of language'. Interventions in this area include guidance in communication.

In order to face new challenges, the Government Communication Network has created a *Guide to Communication Evaluation*²⁴⁴ that:

'sets out principles for effective evaluation of government communication activity [...].

In recent years, governments have re-assessed how they approach the media and the public because of changes in expectations and demands from both these groups. New technology has led to an ever-larger media [...]. It has also made it considerably easier to communicate and engage directly with the public, which in turn has changed public expectations about access to information.'

The institution has set out a number of principles governing communication policy.²⁴⁵

Reading official documents is still not always easy, especially by observers across borders.

The often mentioned Tax Rewrite project has not solved all difficulties, as, for instance, in this provision (Corporation Tax Act 2010) which does not appear as immediately comprehensible:

'(1) If there is an amount of unrelieved group ring fence profits for a post-commencement period, reductions are to be made in that period in accordance with this section.

(2) If, after making any reductions that fall to be made in accordance with section 327, the company does not have a non-qualifying pool, the remaining amount in the ring fence pool is to be reduced (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.'

Crystal, Honorary Professor of Linguistics, Bangor University acted as witness to the 2009 Government inquiry, see <<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmpubadm/17/1710.htm>>.

²⁴¹ *Bad Language*, supra fn. 235, at para 36. See also National Audit Office, *Difficult Forms*, p 8; *Using Leaflets to Communicate with the Public about Services and Entitlements*, Session 2005-06, HC 797, 25 January 2006 pp. 10-11.

²⁴² *Bad Language*, supra fn. 235, at para 21.

²⁴³ *Supra* fn. 227, ordered by the House of Commons to be printed 25 February 2010, HC 394, Published on 3 March 2010, by authority of the House of Commons London: The Stationery Office Limited. Available at: <<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmpubadm/394/394.pdf>>.

²⁴⁴ *GCN Evaluation Guide*: <<https://gcn.civilservice.gov.uk/guidance/evaluation/>>.

²⁴⁵ Notably: 'Using digital channels by default; Using owned and earned opportunities before purchased media; Working in partnership with other parts of the public sector, the voluntary sector and the private sector; Ensuring value-for-money through effective evaluation of all work; Following guidance on propriety; official languages are taken seriously and a focus on ongoing improvement is maintained'.

A tendency persists to use acronyms, which may be confusing, especially for those not familiar with the structure of the institution.²⁴⁶ Frequently changing the name of departments or offices is also confusing.²⁴⁷ The description of the role or scope of action of institutions may also cause puzzlement, and bureaucratic language may still be noticeable.

In reaction to the questionnaire, inquiring about procedure to assess quality of documents, OPC officers noted:

'There is no established procedure, though there have been a number of initiatives in recent years that might point towards such a procedure existing in the future. For example, one government bill recently had a "public reading stage", whereby anyone wishing to comment on the bill could do so by posting a comment on a website. There are plans for other bills to have a similar stage. Other developments might relate to post-legislative scrutiny of bills, though such scrutiny is often more concerned with whether a piece of legislation has achieved its substantive purpose rather than with its drafting.'

As mentioned above, the practice of opening 'discussion papers' on issues involving legislative reform has effectively worked in the direction of involving stakeholders in the drafting process of legislative bills.

The OPC respondents to the questionnaire are not involved in transposition of European directives or other adaptation to EU sources, but the House of Lords hosts a European Union Committee²⁴⁸ which considers EU documents and other EU-related matters in advance of decisions being taken on them. 'The work of the Select Committee is assisted by its Sub-Committees, which deal with different policy areas, listed under "Related Links". The Select Committee and the Sub-Committees scrutinise proposals, conduct inquiries, and prepare reports'. Easy access to updating on these matters is provided by the webpage.

²⁴⁶ E.g., in the report on *Equality: the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission merged in the Equality and Human Rights Commission* (EHRC), in 2007; *Key Performance Indicators* (KPIs) are used to measure progress in the implementation of equality policies: <http://www.equalityhumanrights.com/uploaded_files/strategicplan2009-2012summary.pdf>, at p. 26.

²⁴⁷ E.g.: Department of Trade and Industry (DTI), later Department for Business, Enterprise and Regulatory Reform (BERR), finally Department for Business, Innovation and Skills (BIS): <<http://www.number10.gov.uk/policy/business-innovation-and-skills-bis/>>.

²⁴⁸ <<http://www.parliament.uk/hleu>>. Also beyond the OPC 'there are units within the UK Civil Service which are responsible for matters relating to the implementation in UK law of European legislation' (reply to question 26).

Chapter II - United Kingdom (Wales)

1. Historical overview

Within the United Kingdom, a unitary State by structure, some measure of self-government has been granted to Wales, as part of a plan to confer autonomy to areas of the country that have historically developed a special independence. The language spoken is also an important factor motivating the desire for autonomy. Issues of bilingualism arise in drafting legislation. Traditionally Westminster Parliament approved laws in English for England and Wales. A few Acts of the Westminster Parliament apply to Wales only, such as the Children's Commissioner for Wales Act 2001²⁴⁹ and the National Health Service (Wales) Act 2006. Some Welsh can occasionally be found also in legislation approved in London.²⁵⁰

As early as 1942, a law allowed the use of Welsh in courts in Wales by a party or witness²⁵¹, and the Welsh Language Act 1967 permitted the use of Welsh in courts and public administration.²⁵² Progress was achieved by the Welsh Language Act 1993²⁵³ that further guaranteed the use, protection and teaching of Welsh.²⁵⁴ In 1998 devolution that conferred autonomy on Scotland and Northern Ireland brought new structures also in Wales. A deliberative Assembly (Government of Wales Act 1998) was formed in 1999: 'it makes laws for Wales, and holds the Welsh Government to account.'²⁵⁵

As a matter of fact among the functions transferred to the Welsh Assembly created under the 1998 Act is the making of general subordinate legislation under enabling primary legislation (passed by Westminster Parliament). In this activity,

'Unless in a particular circumstance it is inappropriate or not reasonably practical for the draft subordinate legislation to be in both languages, it may only be approved by the Assembly if the draft is in both languages.' (Sect. 4)

More recently the National Assembly for Wales was established, under Section 1 of the Government of Wales Act 2006, as the legislative branch of devolved government in Wales.²⁵⁶ One section of the Government of Wales Act 1998 is specifically relevant on the issue of language (Sect. 47) as it provides 'equal treatment' of English and Welsh languages. It reads:

'(1) The Assembly shall in the conduct of its business give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality. (2) In determining how to comply with subsection (1), the Assembly shall have regard to the spirit of any guidelines under section 9 of the Welsh

²⁴⁹ <<http://www.legislation.gov.uk/ukpga/2001/18/contents>>.

²⁵⁰ See for example 'the *Companies Act 1985* and regulations made under it': ÖRÜCÜ, Esin, 'Interpretation of Multilingual Texts in the UK', in *Electronic Journal of Comparative Law*, Vol. 10, Iss. 3, 2006, available at: <<http://www.ejcl.org/103/art103-9.pdf>>.

²⁵¹ Welsh Courts Act 1942, c. 40, (Repeal of 27 Hen. 8. c. 26, s. 17, and removal of doubt as to use of Welsh language): <<http://www.legislation.gov.uk/ukpga/Geo6/5-6/40/section/1/enacted>>.

²⁵² Welsh Language Act 1967: <<http://www.legislation.gov.uk/ukpga/1967/66/enacted>>.

²⁵³ <<http://www.legislation.gov.uk/ukpga/1993/38/contents>>.

²⁵⁴ Sect. 22: '(1) In any legal proceedings in Wales the Welsh language may be spoken by any party, witness or other person who desires to use it, subject in the case of proceedings in a court other than a magistrates' court to such prior notice as may be required by rules of court; and any necessary provision for interpretation shall be made accordingly'.

²⁵⁵ <<http://www.assemblywales.org/abthome/role-of-assembly-how-it-works.htm>>.

²⁵⁶ New legislative powers were conferred on the National Assembly for Wales at the start of the Third Assembly in May 2007: <<http://www.assemblywales.org/bus-home/bus-third-assembly/bus-legislation-third-assembly.htm?debug=210&debugimg=on>>.

Language Act 1993. (3) The standing orders shall be made in both English and Welsh.'

Section 122 of the Act confirms that the English and Welsh texts of bilingual legislation are of 'equal status'. We should, however, note that the equality is limited by the clause providing that the use of both languages will be subject to both 'appropriate circumstances and reasonably practicable opportunities' and is thus not absolute. To implement the commitment to equal recognition to both English and Welsh, the Assembly's Welsh Language Measure 2011 entered into force in February 2011:²⁵⁷ it re-affirms (Sect. 1) the official status of Welsh,²⁵⁸ creating a Welsh Language Commissioner (Sect. 2), to promote and facilitate the use of Welsh.²⁵⁹

Beyond Government, the 1993 Act places in general a duty on the public sector, defined in very broad terms,²⁶⁰ to treat Welsh and English on an 'equal basis' also when providing services to the public in Wales, it gives Welsh speakers an absolute right to speak Welsh in courts, and establishes the Welsh Language Board to oversee the implementation of these commitments and to promote and facilitate the use of Welsh. The Board's duties were shared in 2011 between the Welsh Language Commissioner²⁶¹ and the Welsh Government. Treating the two languages 'on a basis of equality' applies to the courts as well.

2. Actors

The National Assembly Translation Service²⁶² within the Welsh Office is responsible for written translation of documents, simultaneous translation during Assembly proceedings, and also legal translation of Assembly subordinate legislation.²⁶³ A recent proposal to translate all National Assembly proceedings into Welsh has met opposition, especially because of the estimated costs; the Western Mail revealed that extending the Assembly's bilingual transcription policy to cover all committee meetings would cost up to GBP 400,000.²⁶⁴

With regard to drafting style, in order to reach a bilingual result foreign experience has been taken into account:

²⁵⁷ <<http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-wl.htm>>.

²⁵⁸ <<http://www.legislation.gov.uk/mwa/2011/1/contents/enacted>>: 'The Welsh language has official status in Wales'; <http://www.assemblywales.org/welsh_language_measure_as_passed-e.pdf>.

²⁵⁹ The Chapter on functions describes its role, notably in Sections 4-17. These include, among others: 'Promoting and facilitating use of Welsh and treating Welsh no less favourably than English', 'Production of 5-year reports', 'Judicial review and other legal proceedings', 'Legal assistance', 'Complaints procedure', 'Consultation'.

²⁶⁰ 'Public body' is a very wide category, ranging from a county council to a police authority, a Special Health Authority, a Community Health Council, the Higher Education Funding Council for Wales and 'any person [...] who appears to the Secretary of State to be exercising functions of a public nature [...]': Sect. 6, <<http://www.legislation.gov.uk/ukpga/1993/38/section/6>>.

²⁶¹ <<http://www.comisiynyddygydraeg.org/english/Pages/Home.aspx>>. The position of the Welsh Language Commissioner is a full time post for 7 years.

²⁶² Translation and Reporting Service (TRS).

²⁶³ *Review of Bilingual Services in the National Assembly for Wales*, May 2010, <<http://www.assemblywales.org/review-of-bilingual-services-report-english.pdf>>. As a result of their work: 'The Record of Proceedings [...] the official report of the National Assembly for Wales [...] is a full report [...] of all Plenary contributions, recorded in the language spoken in the Chamber, along with an English simultaneous interpretation of Welsh-medium contributions.' 'Initially published in 15-minute sections for internal Assembly use throughout the afternoon and evening of Plenary days, the completed document is published on the internet the following morning. It is published again five days later as a fully bilingual, translated document': <<http://bipra.org/national-assembly-for-wales/>>.

²⁶⁴ 'At present the record of plenary meetings is published fully in both English and Welsh, but contributions made in English at committee have not been translated into Welsh since the Assembly was set up in 1999.' <<http://www.languageinsight.com/blog/2012/07/06/welsh-national-assembly-translation-proposals-shelved/>> (information posted on July 6, 2012).

'the Welsh Assembly adopted the Canadian practice of a two-column format, setting out the two languages side by side, thus underlining visually the equal status of the two languages. Another practice borrowed from Canada is the inclusion, in the respective texts of the interpretation clause in each language, of a reference to the version of the term in the other language.'²⁶⁵

The practice of co-drafting is also adopted as in Canada: it consists in contemporaneous drafting in both languages through the legislative process. A practice highly recommended to preserve also the structure of the provisions in the different languages and avoiding the effect of a superimposed container that comes into play at the last moment.²⁶⁶

'Texts are drafted side by side, one text influencing the other as the drafting process progresses. The implementation of this approach has some advantages. Both the Westminster Parliament and the Welsh Assembly are bound by the wording used in terms of grammar and syntax; neither language is categorised as second class, the appropriate legal structure is set up and each version developed from instructions which make it efficient since problems related to meaning can be explored early. This improves the quality of both versions and there is active involvement of all persons in the legislative process.'²⁶⁷

In the search for accuracy, an important issue is standardisation of terms. The two versions (English and Welsh) must be accurately mirrored and reconciled.²⁶⁸

If we move to consider the recommendations by the Independent Review Panel on the bilingual services of the Assembly,²⁶⁹ as regards tools that may assist in the translation process we learn that the Assembly should:

'consider how the expected advancement of technology can enhance bilingualism in its operations through a more detailed and expert consultation (paragraph 57)' and 'keep technological developments under review, so as to take advantage of multi-user voice recognition software as soon as it is sufficiently developed to be used efficiently (paragraph 60)'.

3. Reform

The Assembly Commission on Equalities is committed 'to promoting equalities both as an employer and service provider'.²⁷⁰ It periodically reports on progress in this field.²⁷¹ It is involved in providing accessibility, for instance 'using simple and clear language in our leaflets to help everyone to understand the information we provide'. The most interesting aspect of the programme for the future concerns accessible information, as new available formats require that all staff members that produce information about the Assembly 'have a guide to help them produce clear, accessible and concise materials. [...] Information for both our "Vote 2011" and Equality Plan consultation were produced in several accessible formats including Braille, Large Print and Easy read, community languages and BSL video'.

²⁶⁵ ÖRÜCÜ, 'Interpretation of Multilingual Texts in the UK', *supra* fn. 250, at p. 5.

²⁶⁶ See Canadian, Catalan, Swiss and South-Tyrol responses to the questionnaire, especially to question 12.

²⁶⁷ DAVIES, Iwan, *The Challenge of Legal Wales*, Lecture at The Law Society, National Eisteddfod of Wales, Denbeigh, 2001, at p. 11.

²⁶⁸ See *ibidem*, at pp. 10-11.

²⁶⁹ <<http://www.assemblywales.org/review-of-bilingual-services-report-english.pdf>>: recommendations for the Fourth Assembly, 2011-2015. at p. 7.

²⁷⁰ <<http://www.equalityhumanrights.com/wales/the-commission-in-wales/>>.

²⁷¹ <http://www.assemblywales.org/equality_annual_report_2012_english.pdf>. In its Report the Commission states: 'Following the election in May 2011, we developed a range of fact sheets to inform Members of their responsibilities as employers and service providers under the Equality Act 2010'.

Chapter III - United Kingdom (Scotland)

1. Historical background

As is known, Scotland belongs to a different legal family from neighbouring England: it is classified as a mixed jurisdiction because of the important tradition of civil law institutions that shapes Scots Law and were in force until the Act of Union of 1707. This civil law legacy still influences modern law. In this case we are not only facing issues of protection of a minority language, but also the problems connected with a significant conceptual divergence in legal notions.

Sources of law were found for a long time in the Roman *Corpus juris civilis* and the comments to it, together with the interpretation delivered by the Great Courts of the *jus commune*.²⁷² In the early materials on Scots law, traces of Roman law seem to derive from the use of Canon law rather than directly from Roman sources.²⁷³ Evidence from the 16th century confirms that Roman law and Canon law were established as subordinate persuasive authorities in the secular courts. Canon law was also applied in the Church courts as binding authority. The binding authority of Canon law ended with the Reformation when Papal authority was rejected. Where Canon law was already accepted as part of Scots law, it continued to be applied in courts dealing with matters such as status, which had been regulated by Canon law before the Reformation.²⁷⁴ For centuries, the literature consulted by Scottish lawyers belonged to the civil law tradition, and practitioners were trained in France, and after the Reformation, in the Netherlands.²⁷⁵ The teaching of Roman institutions was offered in Latin until relatively recently, for example, the 18th century at Glasgow University.²⁷⁶ The language of the law offers many traces of the past dominance of civil concepts: for instance the term *spuilzie* seems to derive from the canonist *actio spoli*.

The influence of the common law has, however, changed some of the older features, especially where statutory law passed in Westminster introduced reforms. A mingling of sources prompts the classification of Scotland as a mixed legal system.

Devolution occurred in 1998 under the Scotland Act 1998 (1998 c. 46), amended by the Scotland Act 2012, which devolved further powers to Scotland in accordance with the recommendations of the Calman Commission.²⁷⁷

2. Legislation and language issues

The policy followed nowadays in Scotland in relation to legislative drafting is in line with Westminster. The Office of the Scottish Parliamentary Counsel themselves observe that although Scots common law has much more in common with continental civilian tradition than its English counterpart one should not underestimate the fact that responsibility for legislating for Scotland lay with the Westminster Parliament for

²⁷² ZWEIGERT & KÖTZ, *An Introduction to Comparative Law*, supra fn. 24, at Vol. 1, at Chap. 5; WALKER, David M., *The Scottish Legal System: An Introduction to the Study of Scots Law*, 6th ed., Green, Edinburgh, 1992; REID, Kenneth & ZIMMERMANN, Reinhard, *A History of Private Law in Scotland*, Vol. 1, Oxford University Press, Oxford, 2000; WATSON, *Legal Transplants*, supra fn. 9, at Chap. 5; STEIN, Peter, 'The Influence of Roman Law on the Law of Scotland', 20 *Juridical Review* 205 (1963).

²⁷³ This is true both of the occasional references in early collections of legal materials and for the more extensive passages relating to Roman Law in the treatise known as *Regiam Majestatem*. The latter have been shown by P. Stein to have been written between 1241 and 1246.

²⁷⁴ John Erskine in his *Principles* (1754) and in his *An Institute of the Law of Scotland* (published posthumously in 1773), follows the scheme adopted by Mackenzie in his presentation of the law. The full title of the book has a specification: 'In Four Books: in the Order of Sir George Mackenzie's *Institutions of that Law*'. He continues the pattern of exposition of Scots law with the assistance of Roman law.

²⁷⁵ WATSON, *Roman Law and Comparative Law*, supra fn. 2, at p. 91. TIERSMA, Peter, *The Nature of Legal Language*, <<http://www.languageandlaw.org/NATURE.HTM>>.

²⁷⁶ CAIRNS, John, 'Rhetoric, Language and Roman Law: Legal Education and Improvement in Eighteenth-Century Scotland', *Law and History Review*, Vol. 9, Iss. 1, 1991, pp. 31-58, p. 31.

²⁷⁷ <<http://www.legislation.gov.uk/ukpga/2012/11/contents/enacted>>.

almost 3 centuries and this means that 'the degree of precision in Scottish Acts reflects that which appears in Acts which apply to other parts of the UK.'²⁷⁸ In general terms, however devolution and the establishment of the Scottish Parliament has presented an opportunity for divergence in the style of Scottish legislation. As a consequence:

'it has been noticed that Acts of the Scottish Parliament seem to be remarkably short and succinct compared with legislation enacted at Westminster albeit that factors other than drafters drawing on the civilian traditions of Scots law may be at least partly responsible for this shift.'²⁷⁹

If we look at the Scottish experience through continental eyes, trained in the civil law tradition, a literal rather than a purposive approach in legislative provisions is recognisable also in Scotland, as may be seen in the Interpretation and Legislative Reform (Scotland) Act 2010.²⁸⁰ This statute includes a number of provisions which mirror the Interpretation Act 1978, mentioned above, illustrating the detailed English drafting style. In particular, in Part 1, *Interpretation*, under the heading *Meaning of words and expressions used in legislation*:

'22 Number

In an Act of the Scottish Parliament or a Scottish instrument—

- (a) words in the singular include the plural,
- (b) words in the plural include the singular'.

The Act provides also a number of definitions and states that:

'25 Definitions

- (1) In an Act of the Scottish Parliament or a Scottish instrument words and expressions listed in schedule 1 are to be construed according to that schedule.
- (2) The Scottish Ministers may by order modify that schedule.
- (3) An order under this section is subject to the affirmative procedure'.

The effect is similar to that of a statute drafted in London and enforceable in England and Wales. The drafting tends to be very precise, with a high level of detail, even where issues might be seen by lawyers from different cultures as 'grammatical'.

A specific aspect of drafting legislation in Scotland is connected with the range of competence in legislating for the Edinburgh Parliament: Scottish provisions have to be harmonised with the framework of English statutes²⁸¹. Further steps towards a higher level of independence are connected with political developments under way; a referendum is scheduled for September 2014.

²⁷⁸ 'Not least because many Acts apply to the UK as a whole':

<<http://www.scotland.gov.uk/Resource/Doc/93488/0022476.pdf>>, at p. 9; CAIRNS, John W., 'Importing our Lawyers from Holland: Netherlands Influences on Scots Law and Lawyers in the Eighteenth Century', in SIMPSON, Grant G. (ed.), *Scotland and the Low Countries 1124-1994*, Tuckwell Press, East Linton, 1996, pp. 136-153; MACQUEEN, Hector L., 'Laws And Languages: Some Historical Notes from Scotland', *Electronic Journal of Comparative Law*, Vol. 6, Iss. 2, 2002, available at: <<http://www.ejcl.org/62/art62-2.html>>.

²⁷⁹ MCCLUSKIE, John, 'New Approaches to UK Legislative Drafting: The View from Scotland', *Statute Law Review*, Vol. 25, Iss. 2, 2004, pp. 136-143.

²⁸⁰ <<http://www.legislation.gov.uk/asp/2010/10/section/24>>.

²⁸¹ 'The current constitutional arrangements of the United Kingdom entail that legislative competence for the devolved Scottish context derives from the Scotland Act 1978. While as a result of that Act the Scottish Parliament has legislative competence across the entire range of activity affecting Scotland, that competence is severely constrained in particular by the specification in Sch. 5 of reserved areas within which it does not have legislative competence. Moreover the UK parliament retains competence to legislate on devolved matters, even although it would concede that so to legislate would ordinarily require the consent of the Scottish Parliament – *Sewell Convention*.' Scottish Committee Administrative Justice and Tribunals Committee (SCAJTC), <<http://ajtc.justice.gov.uk/docs/con-resp-inter-leg-scotland.pdf>>.

An additional element that affects the drafting of official documents, including secondary legislation, is concern about the use of Gaelic and Scots.

The Gaelic Language (Scotland) Act 2005 was enacted by the Scottish Parliament with a view to securing the status of the Gaelic language as an official language of Scotland.²⁸² One of the key features of the 2005 Act is the provision enabling Bòrd na Gàidhlig (the Scottish Government's principal Gaelic development body) to require public bodies to prepare Gaelic Language Plans.²⁸³ The Scottish Government was first asked to submit its Gaelic Language Plan to the Bòrd for approval in June 2008. However, in 2010:

'The Scottish Government has set out its plans to increase opportunities for Gaelic speakers to use the language when interacting with the organisation. Minister for Gaelic Fiona Hyslop announced publication of the Government's own Gaelic Language Plan (...).'²⁸⁴

The Gaelic Language Plan 2008 - 2013²⁸⁵ illustrates 'a wide range of services offered by the Scottish Parliamentary Corporate Body' including:

'[...]

- Producing and distributing a range of online and printed publications in Gaelic
- Providing a comprehensive range of Gaelic web pages [...]
- Bilingual signage in public areas in the Scottish Parliament building [...]
- Issuing a wide range of information to the Gaelic media
- Arranging interpretation/translation services to support the Parliament's business processes for debating and publishing in Gaelic where required
- Providing Members and Parliamentary staff with support in their use of Gaelic for parliamentary business related purposes
- Making Gaelic tuition available to SPCB staff.'

As far as legislation is concerned the working language of the Parliament is English.²⁸⁶ Therefore, all bills, delegated legislation and their accompanying documents must be in English. When an MSP or a committee wishes the SPCB to produce a translation of a bill and/or its accompanying documents they must seek the prior approval of the SPCB. However 'with the prior agreement of the Presiding Officer, MSPs may use any language in parliamentary debates. In committee meetings, the prior agreement of the convener should be sought. Wherever possible, at least two weeks' notice should be given to allow the SPCB to arrange for appropriate interpreting services, if required'. Furthermore 'motions, amendments to motions and questions must be in English, but may be accompanied by a translation in another language provided by the MSP. When such a translation is provided, the SPCB will arrange for it to be published in the *Business Bulletin* along with the English text of the motion, amendment or question. [...] When a committee produces a report and considers that there are good

²⁸² <<http://www.legislation.gov.uk/asp/2005/7/contents>>.

²⁸³ As a consequence, public bodies in Scotland, both Scottish public bodies and cross border public bodies insofar as they carry out devolved functions, have to consider the need for a Gaelic language plan in relation to the services they offer. The process of preparing a Gaelic Language Plan is initiated by Bòrd na Gàidhlig issuing a formal notice to that effect (under Section 3 of the 2005 Act).

²⁸⁴ 'The five-year Plan was prepared following a request from Bòrd na Gàidhlig - the national Gaelic development body - under the terms of the Gaelic (Scotland) Act 2005': <<http://www.scotland.gov.uk/News/Releases/2010/07/07105609>>.

²⁸⁵ <http://www.scottish.parliament.uk/Gaelic/GaelicLanguagePlan_English.pdf>.

²⁸⁶ <<http://www.scottish.parliament.uk/PublicInformationdocuments/lang-pol.pdf>>, at p. 2 (revised version of September 2009).

reasons for it to be sent for translation in order to print and publish it in a language other than English, the committee must seek the prior approval of the Clerk/Chief Executive for the required budget spend.'

Beyond the strictly parliamentary activity and in terms of general information to the public, the report by the SPCB states that 'the SPCB is committed to ensuring that people resident in Scotland who are not fluent in English are able to engage with the work of the Parliament. ... The SPCB's Gaelic Language Plan 2008-2013 details current services and planned service developments for the use of Gaelic in the Parliament, particularly for public access and information.'²⁸⁷

If so much emphasis is put on the use of Gaelic, we should not forget that:

'The SPCB, for historical and cultural reasons, also recognises the use of Scots. When Scots is used in meetings of the Parliament and committee meetings, the *Official Report* incorporates that language in the body of the text.'

The limitations to full multilingualism are set down, as already seen for Wales, in the reservation clause according to which:

'Throughout this language policy, translation and interpreting are described as being 'subject to availability' and it is stated that as much notice as possible is required. Experience has shown that a minimum of two weeks' notice is required to obtain the services of interpreters, as the Parliament has to hire them from external agencies.'²⁸⁸

The guarantee is therefore limited, not corresponding to a full equivalence between the languages as may be met for instance in Québec.

3. Actors

Similarity with England may be observed also regarding the duties of the Office of the Scottish Parliamentary Counsel.²⁸⁹ An institution following the English model of highly specialised drafters (14 lawyers are currently employed) with a professional training in framing legal documents.²⁹⁰ The Office published a booklet in 2006 called Plain Language and Legislation²⁹¹ where the opening declares:

'The Counsel [...] are responsible for drafting Bills for the Scottish Executive. They are committed to drafting legislation in plain language.'

Information and recommendations in the booklet cover various areas such as defining plain language,²⁹² drafting legislation in plain language,²⁹³ international comparisons²⁹⁴ and plain language techniques²⁹⁵. In the considerations accompanying the examples, the familiar concern emerges about the balance to be reached between simplicity and accuracy (p. 4), being well aware of the risk that a simplified, restrictive version of the language may be 'dumbing down' the topic.

²⁸⁷ More information is available at:

<<http://www.scottish.parliament.uk/vli/language/gaelic/gaelicplan.htm>>.

²⁸⁸ <http://www.scottish.parliament.uk/PublicInformationdocuments/Lang_policy2012.pdf>: 'The Standing Orders rule 7.1 is the reference point for the use of languages in parliamentary business meetings'.

²⁸⁹ Its purpose is: 'To support the Government's Purpose and achievement of the National Outcomes by delivering the legislative programme through the drafting of effective, clearly-drafted, accessible Bills': <<http://www.scotland.gov.uk/About/People/Directorates/OSPC>>.

²⁹⁰ <http://www.scotland.gov.uk/About/People/Directorates/LPS/glss/glsslsla#a7>.

²⁹¹ <<http://www.scotland.gov.uk/Resource/Doc/93488/0022476.pdf>>.

²⁹² Explains what plain language is and gives some historical context to its association with the law.

²⁹³ Makes some objective observations about the interaction between the desire to use plain language and the constraints placed on the legislative drafter.

²⁹⁴ Describes steps which legislative drafters in other countries have taken to enhance the clarity and accessibility of legislation.

²⁹⁵ Gives some examples of techniques currently associated with plain language drafting. An extensive bibliography on plain language policies implemented also in other countries is included at pp. 43 ff.

'The challenge for legislative drafters is to produce law which not only implements policy effectively but which does so in a manner which is self-evident to all those who can reasonably be expected to read and use both the Bill and the Act.' (p. 17)

4. Emerging trends

An issue that has been handled with particular care in Scotland is the question of equality.²⁹⁶

We find the definition of equal opportunities as:

'the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes including beliefs or opinions such as religious beliefs or political opinions.'²⁹⁷

This has meant giving particular attention to equality proofing, that '[...] involves checking that the Bill complies with anti-discrimination and human rights legislation, a procedure that in any case is already obligatory for legislation submitted to the Scottish Parliament, whether or not explicit "equality proofing" procedures exist.'

More recently the Scottish Government published an Equality Statement²⁹⁸, alongside the Scottish Draft Budget 2013-2014. The provision having perhaps the most practical impact regards the section on administration where it is stated that the Scottish Government 'is currently exploring mandatory online diversity training for all staff.'²⁹⁹

²⁹⁶ At EU level – as is generally known – the anti-discrimination policy has led to two European anti-discrimination directives, adopted under Article 19 TFEU (ex Article 13 TEC). Directive 2000/43 prohibits all forms of discrimination based on race or ethnic origin in a number of areas. Directive 2000/78 prohibits all forms of discrimination in employment and occupation based on religion or convictions, handicap, age and sexual orientation.

²⁹⁷ The Scotland Act (1998) Sch.5, Section L.2.: see MACKAY, Fiona & BILTON, Kate, *Equality Proofing Procedures in Drafting Legislation: International Comparisons*, 2 April 2002, available at: <<http://www.scotland.gov.uk/Publications/2002/04/14506/2658>>.

²⁹⁸ <<http://www.scotland.gov.uk/Publications/2012/09/5750/0>>: dated 20 September 2012.

²⁹⁹ <<http://www.scotland.gov.uk/Publications/2012/09/5750/19>>. The issue of equality is overseen by the Scottish Human Rights Commission (SHRC) since 2008.

Chapter IV - United Kingdom (Northern Ireland)

1. Overview

As mentioned above, the United Kingdom incorporates several different legal systems, but the UK is a unitary State rather than a federation. Therefore the working language of the Westminster Parliament, the executive and the courts is English.³⁰⁰ We should recall that the Constitutional Reform Act 2005 has transferred the highest judicial powers from the House of Lords (Appellate Committee) to a Supreme Court for the United Kingdom. This has emphasised the separation of powers and has a highly symbolic significance making explicit reference to the whole Kingdom.³⁰¹

However, since 1998, devolution has brought to Northern Ireland legislative and executive institutions provided for by the Northern Ireland Act 1998:³⁰² political problems have hindered for some time full operation of transferred powers. Since 1998 a certain amount of legislation and a number of regulations have been published in more than one language.³⁰³

Following a long struggle, a compromise on the use of English and Irish has been finally reached with the Republic of Ireland's Official Languages Act (2003) and the introduction of language rights under the legislation proposed by the Northern Ireland Human Rights Commission (2004).³⁰⁴ The most obvious effect of the policy enacted is expressed in the Northern Ireland Assembly Standing Order 78, as follows:

'78. Language

Members may speak in the language of their choice.'³⁰⁵

Further, the Standing orders also state:

'80. Official Report (Hansard)

(1) A substantially verbatim report of the proceedings at all sittings of the Assembly and committee meetings that form part of the legislative process or at which evidence that will contribute to a report by a committee is being taken shall be prepared and published. The report shall be known as the Official Report (Hansard) and shall be a record of the proceedings **in the language spoken** [emphasis added].

The Orders have their foundation in the Official Languages Act 2003.³⁰⁶

³⁰⁰ ÖRÜCÜ, 'Interpretation of Multilingual Texts in the UK', *supra* fn. 250.

³⁰¹ 'The Court hears appeals on arguable points of law of the greatest public importance, for the whole of the United Kingdom in civil cases, and for England, Wales and Northern Ireland in criminal cases.' <<http://www.supremecourt.gov.uk/about/appellate-committee.html>>. The text of the Constitutional Reform Act is available at: <<http://www.legislation.gov.uk/ukpga/2005/4/contents>>.

³⁰² <<http://www.legislation.gov.uk/ukpga/1998/47/contents>>.

³⁰³ The website of the Assembly states: 'The Northern Ireland Assembly is the devolved legislature for Northern Ireland. It is responsible for making laws on transferred matters in Northern Ireland and for scrutinising the work of Ministers and Government Departments': <<http://www.niassembly.gov.uk/Assembly-Business/>>.

³⁰⁴ CROWLEY, Tony, *Wars of Words. The Politics of Language in Ireland 1537-2004*, Oxford University Press, Oxford, 2005. The policy enacted is founded on the 'Belfast Agreement's recognition that languages are part of the cultural wealth of the island of Ireland'.

³⁰⁵ <<http://www.niassembly.gov.uk/Assembly-Business/Standing-Orders/Standing-Orders/#78>> (The languages promoted are Irish and Ulster-Scots (Gaelic)). According to Sect. 2 of the *Official Languages Act 2003*: 'the official languages' 'means the Irish language (being the national language and the first official language) and the English language (being a second official language) as specified in Article 8 of the Constitution'.

³⁰⁶ '6. (1) A member of either House of the Oireachtas has the right to use either of the official languages in any debates or other proceedings in that House or of a committee of either House, a joint committee of both

In order to implement the policy of equality of languages, Section 10 of the Act establishes the '[d]uty of public bodies to publish certain documents in both official languages simultaneously' and (Sect. 11) the power of the minister to:

- 'require the public body to prepare and present to him or her for confirmation [...] as is specified in the notice a draft scheme specifying—
- (a) the services which the public body proposes to provide—
 - (i) exclusively through the medium of the Irish language,
 - (ii) exclusively through the medium of the English language, and
 - (iii) through the medium of both the Irish and English languages'.³⁰⁷

2. Actors

Once again, as seen above for England, Wales and Scotland, we observe the role of the Office of the Parliamentary Counsel to the Government and the Chief State Solicitor's Office, included in the Office of the Attorney General.³⁰⁸ The OPC (Office of Parliamentary Counsel) works closely with the Government Legislation Committee (GLC)³⁰⁹ in ensuring that the Government Legislation Programme is implemented. As in England and Scotland, this institution is involved in the legislative process, with the additional task of treating both languages equally.³¹⁰

The Office of the Attorney General prepared a scheme for the use of languages for 2010-2013.³¹¹ In Chapter 5 of the new Scheme a series of commitments to this end are listed.³¹² These include, notably: 'continue to update the electronic Irish Statute Book (eISB)³¹³ to include the text in the Irish language of all Acts [...]; to keep under review the panel of counsel who have indicated their willingness to act for the State and who are fluent in the Irish language; [...] to maintain separate Irish language Sub-Groups of Partnership in the Office of the Attorney General [...]'³¹⁴; to maintain a post of Irish Language Officer in both Offices [...]; to keep under review the number of staff with proficiency in the Irish language and the recruitment of staff with a capacity to work through the medium of the Irish language and the English language [...]; to maintain and update on an ongoing basis an electronic and paper-based inventory of Irish language resource material; to maintain and update the Offices websites in

Houses or sub-committee of such a committee or joint committee [...]', published in the website <<http://www.achtanna.ie/en.act.2003.0032.2.html>>.

³⁰⁷ 'and

(b) the measures the body proposes to adopt to ensure that any services that are not provided by the body through the medium of the Irish language will be so provided.

(2) (a) A draft scheme referred to in *subsection (1)* shall specify the means of communication that are to be provided exclusively in the Irish language, exclusively in the English language and in both the Irish and English languages. [...]'

³⁰⁸ Office of the Attorney General, Office of the Parliamentary Counsel to the Government Chief State Solicitor's Office, *Scheme under Official Languages Act 2010-2013*, at: <http://www.attorneygeneral.ie/pub/New_scheme_2010_to_2013_English_version.doc>.

³⁰⁹ 'The function of the GLC is to assist the Government in fixing legislative priorities for the forthcoming Parliamentary session and to oversee the implementation of the Government legislation programme'.

³¹⁰ As stated officially: 'The mission of the Office of the Parliamentary Counsel to the Government (OPC) is to draft Bills on behalf of the Government, and statutory instruments on behalf of the Government and Ministers of the Government, to a consistently high standard.'

<<http://www.attorneygeneral.ie/pc/pco.html>>.

³¹¹ On the basis of the guidelines by the Minister for Community, Equality and Gaeltacht Affairs. Following a first 'Irish Language Scheme', see: *Official Languages Acts, Scheme 2010-2013*, *supra* fn. 312, at p. 3.

³¹² Enhancement of services to be provided bilingually or through Irish (p. 13).

³¹³ <www.irishstatutebook.ie>.

³¹⁴ Including the Office of the Parliamentary Counsel and the Chief State Solicitor's Office with a role in promoting the Irish language generally in each Office, through social and other activities.

bilingual format [...] ³¹⁵; to ensure that the content on any new websites introduced by the Offices during the course of this scheme will be bilingual. [...] ³¹⁶

Obviously commitments to language also include training of staff, extending to training stages for young students during their legal studies. ³¹⁷

Expressing rules in several languages is not sufficient to make them understandable by citizens if the structure of the sentences is complex or the vocabulary is too alien to the ordinary person. A complementary intervention to render the corpus of sources of law more accessible has been implemented. The Law Reform Commission in Ireland was established in 1975 ³¹⁸ with the purpose of keeping the law under review and making recommendations for law reform so that the law reflects the changing needs of Irish society. ³¹⁹ In December 2000, in its Report *Statutory Drafting and Interpretation: Plain Language and the Law*, ³²⁰ the Commission recommended that

‘a comprehensive programme of reform of Irish law, with a view to replacing existing statutory provisions with alternatives expressed in plain language, be undertaken’.

The Report encourages the use of familiar and contemporary language and shorter and less elaborate sentences but recognises that ‘this aim should not be achieved at the expense of legal certainty’.

The Government in its turn elaborated a detailed action programme set out in its 2004 White Paper, *Regulating Better*, which proposes clarity and accessibility of regulations as the key to better legislative regulation. ³²¹ The commitment works also retrospectively, to improve the whole complex of legislative measures passed in previous years. In this line, the Irish Government established a Statute Law Revision Unit in 1999 with the aim ‘to consolidate, streamline and simplify Irish statutes and to make legislation more accessible to the public.’ ³²²

The first of the SLRU’s recommendations paved the way for the Statute Law (Restatement) Act 2002. What is material from the practical point of view is that the Act allows Ireland’s Attorney General to consolidate and restate legislation in a more readable format, and to make those restatements available in printed and electronic form, ‘without having to guide a bill through the Irish Parliament’. ³²³

³¹⁵ ‘In that regard the Offices will ensure that all publications, including any information leaflets and brochures that are produced in Irish or bilingually, will be made available on the Irish version of the website at the same time as the English version’.

³¹⁶ Instrumentally to these goals, some other commitments are mentioned (‘ensure that application forms produced by the Offices will continue to be made available simultaneously in both official languages on the websites and where appropriate, publish such forms bilingually under one cover’).

³¹⁷ The practice ‘to offer a three month work experience position each year to a student studying law through Irish in the University College Cork Faculty of Law’ will be part of the recruitment policy.

³¹⁸ Law Reform Commission Act 1975, <http://www.lawreform.ie/_fileupload/Law%20Reform%25%2020Commission%20Act%201975/LAW%20REFORM%20COMMISSION%20ACT%201975%20INFORMAL%20RESTATEMENT%20MAY%202010.pdf>.

³¹⁹ <<http://www.lawreform.ie/>>. The Commission’s law reform research work arises from two main sources: first, under a Programme of Law Reform prepared by the Commission and agreed by Government and laid before the Houses of the Oireachtas under the 1975 Act; and second, in accordance with a request from the Attorney General under the 1975 Act. <<http://www.lawreform.ie/law-reform.83.html>>.

³²⁰ Report on *Statutory Drafting and Interpretation: Plain Language and the Law* (LRC 61-2000), <http://www.lawreform.ie/_fileupload/consultation%20papers/cpPlainLanguage.htm>.

³²¹ Department of the Taoiseach, *Better Regulation*, Dublin, January 2004, at pp. 34-35. The strategy builds on the previous report of 1999 entitled *Reducing Red Tape – An Action Programme of Regulatory Reform in Ireland*.

³²² <<http://www.attorneygeneral.ie/slru/slrp.html>>. The SLRU’s programme of statute law restatement gives priority to groups of connected statutes which are considered most likely to benefit from being restated in a more simple and coherent manner.

³²³ Section 5(1): ‘Administrative restatements prepared under the Act are “*prima facie* evidence of the law contained in the provision to which they relate” and must be judicially noted. Restatements do not however alter or otherwise affect the substance or operation of those provisions.’

The Law Commission itself is also committed 'to ensuring greater accessibility to laws. This includes preparing administrative consolidations of Acts, called Restatements, making it easier to see the up-to-date text of the law.'³²⁴

In terms of ready access to documents, we should also recall that the Commission is responsible for updating the *Legislation Directory*, a searchable guide to amendments made to Acts.³²⁵

3. Reforms

Equality proofing

In Northern Ireland, efforts to mainstream equal opportunities have been strengthened by the introduction of a Statutory Duty on public bodies to promote equality of opportunity.³²⁶ The definition of public bodies in Section 75(3)(b) and (3)(c) of the NI Act 1998 'is wide ranging and includes government departments who are required to produce equality schemes for approval by the Equality Commission.'³²⁷

As for the procedural steps to be followed, these may be summarized in two stages under Section 75. 'Firstly, public authorities (including government departments of the Northern Ireland Executive and the Northern Ireland Office) have been required to prepare an Equality Scheme and to submit this to the Equality Commission for approval. Once the Commission approves the scheme, the second stage begins - the implementation of the Equality Scheme. A detailed procedure for the implementation of the duties is set out in Schedule 9 of the Act. The Equality Schemes produced must conform in form and content to any Guidelines issued by the Commission with the approval of the Secretary of State.'

Specific requirements for the proofing of proposals for legislation are, clearly even if somewhat laboriously, set in the Equality Commission Guide to the Statutory Duties.³²⁸

'In the case of proposals for legislation, an assessment of the implications for the Section 75 duties must be included in any proposal which seeks Executive Committee approval for the policy to which the proposed legislation is to give effect, and in the Memorandum accompanying a Bill which goes to any Committee of the Assembly considering legislative proposals.'

As regards the way the requirement on legislation works, we may notice that no power of veto exists, as

'The Statutory Duty does not compel the department to make changes to the proposed legislation following consultation or impact assessment. However, if the recommendations are at odds with these findings, the department must state very clearly the reasons why this is so.'

³²⁴ 'For example, the Freedom of Information Act 1997 has been amended by more than 47 Acts since 1997, and it is therefore important to have available an up-to-date version that incorporates all amendments to the 1997 Act. [...] The Law Reform Commission has prepared over 110 restatements under its two initial programmes of restatement and it intends to ensure that restatements are maintained up-to-date on an ongoing basis.'

³²⁵ See <<http://www.lawreform.ie/legislation-directory.93.html>>.

³²⁶ MACKAY & BILTON, *Equality Proofing Procedures in Drafting Legislation*, supra fn. 297.

³²⁷ For an update, see: *Equality Screening and Equality Impact Assessments (EQIAs) 2012-2013*, at: <<http://www.niassembly.gov.uk/ABOUT-THE-ASSEMBLY/Corporate-Information/Publications/Publications/Equality-Screening-and-Equality-Impact-Assessments-EQIAs/>>.

³²⁸ EQUALITY COMMISSION FOR NORTHERN IRELAND, *Guide to the Statutory Duties: A guide to the implementation of the statutory duties on public authorities arising from Section 75 of the Northern Ireland Act 1998*, April 2010, available at: <<http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>>, at p. 37.

Chapter V - Germany

1. Overview³²⁹

The Federal Republic of Germany is a parliamentary federal democracy, established in 1949. Further to the reunification of 1990, the number of States (*Länder*) composing the federation was increased to sixteen. Each State has its constitution, parliament, government, administrative structures and courts. There are three levels of government (federal, *Land* and local). The sixteen *Länder* exercise State authority in the areas set out in the Basic Law (*Grundgesetz*). The Federation-*Länder* relationship is based on the principle of co-operative federalism.

In Germany regulations are produced at the federal level, covering areas of federal competence. These laws are transposed in secondary regulations produced by the *Länder*, as part of their responsibilities for implementing federal legislation. The *Länder* also issue laws and regulations within their exclusive competences. The municipalities comprise around 12,200 cities and communities, and 301 rural districts. While they are part of the *Länder*, municipalities have residual responsibilities and a certain degree of independence.

In 2006, constitutional reform clarified the relationship and division of competences between the federation and the *Länder*. A key aim of the reform was to rationalise and simplify important parts of the decision-making process. The reform, among other changes, abolished 'framework' legislation (*Rahmengesetzgebung*).

The German legal system is strongly influenced by EU law. Co-ordination is mainly carried out through the federal foreign office and the federal Ministry of Economics. Transposition may be seen as a challenge by the administration, especially when directives lack precision and there is no direct correspondence with German legal terminology. Nonetheless, the need to fix administrative burden reduction targets, and implement the Services Directive, are some examples of the link between the German agenda for better regulation and the Lisbon Strategy.

Commitment to streamlining the regulatory State, reducing bureaucratic machinery and simplifying the legislative environment has been a feature of German policy over the last decades. The country has also been putting substantial effort into its reviews of existing legislation. In the past years, the federal Government has passed more than ten laws to repeal redundant regulations, and also passed a Simplification Act.

Simplification measures have taken different forms, ranging from 'legislative clearing' (*Rechtsbereinigung*) to codification. The latter has been used to rationalise legislative stock in specific policy areas. In spring 2009, for example, the federal Government prepared a Simplification Act repealing some 85 acts and ordinances concerning environmental policy. Simplification efforts have produced the removal of approximately 950 legal terms and concepts dating back to imperial Germany as well as regulations predating the Basic Law which were obsolete in terms of language or substance.

The number of federal regulations has been decreasing, due to an overall tendency to enact new legislation only when alternatives are not available. The abolition of framework legislation was also intended to reduce the likelihood of unnecessary production at the *Länder* level.

³²⁹ For further detail, see OECD, *Better regulation in Europe: Germany*, OECD Publishing, Paris, 2010.

2. Document quality control: the German way

Institutional actors

The Federal Chancellery (Bundeskanzlei) acts as co-ordinator and negotiating platform for the federal ministries. It consists of units mirroring the work of corresponding ministries. Since 2005, the Committee of Permanent Secretaries has co-ordinated a programme known as Bureaucracy Reduction and Better Regulation. In this task, the Committee is supported by a special Better Regulation Unit (Geschäftsstelle für Bürokratieabbau), under the Chancellery, dedicated to co-ordinating the administrative burden reduction programme for business.³³⁰

The Federal Ministry of Interior plays a key role in the regulatory process. The Ministry provides support on legal and procedural aspects in the preparation of legislative proposals, notably through its Electronic Guide to Law Drafting (see below). The Interior Ministry shares the task of checking the constitutionality of draft regulations with the Ministry of Justice and, in case of uncertainty, verifies compliance with the Joint Rules of Procedure (*Gemeinsame Geschäftsordnung der Bundesministerien, GGO*) for the preparation of draft legislation.

The Federal Ministry of Justice has a crucial role in the development of laws. The Ministry is responsible for technical legal quality and stands as point of reference for the examination of draft legislation in accordance with systematic and legal scrutiny principles. Before a legislative draft is sent to the federal cabinet, the staff of the Ministry checks the constitutionality of the proposal and its compatibility with EU and international law (vertical scrutiny). Regulations based on EU law are also reviewed by the Ministry for their compliance with the principles of subsidiarity and proportionality. The Ministry of Justice also performs a horizontal scrutiny, checking compatibility with other laws and the internal consistency of the draft. The Joint Rules of Procedures grant the Ministry the right to oppose but not to veto the adoption of a bill if this is not consistent with current law. Finally, the Ministry checks compliance with formal drafting requirements. Overall, scrutiny may last up to four weeks.

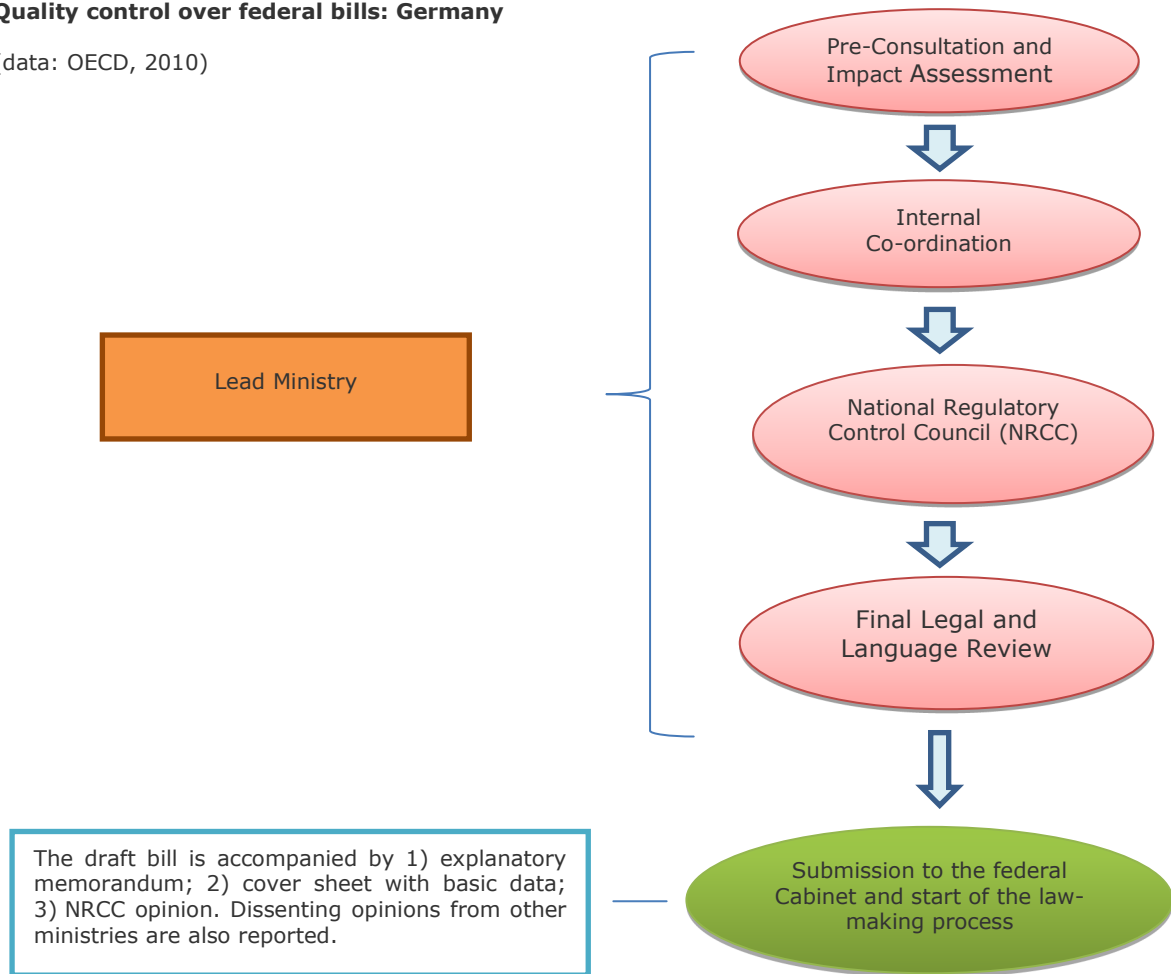
In 2007 and 2008, the Ministry conducted a project on 'understandable legislation'. The conclusions were that comprehensibility and clarity of draft legislation could be improved significantly by involving key experts, lawyers and linguists at an earlier stage. As a result, such multi-disciplinary linguistic counselling was institutionalised as of 2009. Training was provided to other administrations. As part of this commitment, additional posts were created and overall ten staff members were added within the Ministry of Justice working exclusively on easily understandable legal language.³³¹

³³⁰ See OECD, *Better regulation in Europe: Germany*, supra fn.329.

³³¹ See OECD, *Better regulation in Europe: Germany*, supra fn.329.

Quality control over federal bills: Germany

(data: OECD, 2010)



The Federal Ministry of Economics and Technology³³² must be consulted for the mandatory regulatory impact analysis, and for impact on unit prices, on price levels and on consumers. It plays a central role in the co-ordination of EU affairs, including the process of transposition of European directives into German law, a process which can be demanding. This is especially the case for very detailed directives, which do not leave much leeway in the transposition.

The National Regulatory Control Council (Nationaler Normenkontrollrat, NKR)³³³ was established in 2006 as an independent advisory and control body, by the federal Parliament; hence securing regulatory quality has been a concern not only of the federal executive. The NKR's mandate is to support the federal Government in reducing administrative burdens found in federal legislation (ex-ante and ex-post assessment). It is particularly involved in the preparatory phase of drafting, before proposals are presented to the federal Cabinet for decision. If requested, the NKR also intervenes during the decision-making process, and may advise the committees of the Bundestag. Federal ministries must submit their drafts to the NKR as a part of inter-

³³² See OECD, *Better regulation in Europe: Germany*, supra fn.329.

³³³ See Nationaler Normenkontrollrat: <<http://www.normenkontrollrat.bund.de/>>; and *Better regulation in Europe: Germany*, supra fn. 329. The answers highlight its effectiveness.

ministerial co-ordination and the NKR's opinion is necessary for a draft to reach Cabinet. Overall the NKR appears to be a well-structured advisory and assessment body for quality control, although more from a content than a linguistic point of view.

The German Language Society (Gesellschaft für deutsche Sprache, GfdS)³³⁴, with its headquarters in Wiesbaden is Germany's most important government-sponsored language society. Re-founded after the Second World War in 1947, the GfdS is politically independent and the declared successor of the Allgemeiner Deutscher Sprachverein (ADSV), the General Association for the German Language, originally founded 1885 in Brunswick, Germany. Its aim is to research and promote the German language, to critically evaluate the current German language change, and to give recommendations concerning the current usage of German.

Through its language advice service, the GfdS provides support for individuals, companies, authorities and institutions on questions of usage of contemporary in areas such as German spelling, grammar and style. Since 1971, the GfdS has produced the annual language retrospective, well known for its *Word of the Year (Wort des Jahres)*. The association consists of a total of 103 branches in 35 countries on four continents, 47 in Germany and 56 abroad.

In 2009, the GfdS, with the Zentrums für Rechtslinguistik of the Martin-Luther-Universität Halle-Wittenberg, assisted by the Institut für Demoskopie Allensbach, produced a survey entitled *What Germans think about the language of law and administration (Wie denken die Deutschen über die Rechts- und Verwaltungssprache?)*. The survey highlighted the problem of understanding legal texts and the need for the linguistic community to eliminate language barriers. In particular, the respondents complained about:

- unclear organisation of texts;
- formal expressions;
- nominalisation;
- passive constructions;
- nested sentences.³³⁵

The survey showed that not only lay people, but also lawyers have, at least occasionally, problems understanding legal German. Most of those interviewed also recommended there should be direct participation of linguistic experts in the law-making process.³³⁶

Another pilot project started by the GfdS, in collaboration with the *Landeshauptstadt* (capital city) Wiesbaden, has been Clear Texts in the City (*Klartext in Wiesbaden*)³³⁷, aiming at clearer administrative language. In this project the GfdS, with the specialist support of the Zentrum für Rechtslinguistik of the Martin-Luther-Universität Halle-Wittenberg, provided functionaries with language advice and seminars, focusing on administrative language accessible to citizens. The training covered areas such as official letters, forms, replies, and Internet texts.

The Editorial Panel of the German Language Society within the Bundestag (Redaktionsstab der Gesellschaft für deutsche Sprache e. V. beim Deutschen

³³⁴ See Gesellschaft für deutsche Sprache und Redaktionsstab: <<http://www.gfds.de/>>; and Wikipedia: <http://en.wikipedia.org/wiki/Gesellschaft_f%C3%BCr_deutsche_Sprache>.

³³⁵ We refer to the so-called *verschachtelte sätze*, a peculiarity of the German sentence structure, in which entire series of arguments (and subordinate clauses) are often concatenated within a single sentence.

³³⁶ See Gesellschaft für deutsche Sprache und Redaktionsstab: <<http://www.gfds.de/>>.

³³⁷ City of Wiesbaden: <<http://www.wiesbaden.de/rathaus/stadtpolitik/oberbuergermeister/klartext-wiesbaden.php>>.

Bundestag)³³⁸ is a unit specialising in linguistic advice for draft legislation. It provides information and advice on matters such as choice and meaning of words, organisation of texts, spelling and punctuation, as well as the new spelling system. All legislative drafts must be transmitted to the Editorial Panel in order to verify the correctness and comprehensibility of the language. An important function of the Panel is revising draft laws and regulations to achieve plain and clear wording, still using where necessary specific legal language. This revision process should take place as early as possible, at the latest before the draft is submitted to Cabinet. In practice, the value of such revisions varies according to the time, sometimes very limited, available for doing them.

The Panel also provides general language advice to both chambers of Parliament, Bundestag and Bundesrat, by telephone, in writing, via e-mail or personally. It also undertakes linguistic revision of any type of text and advises upon possible gender-neutral wording. Since moving to Berlin, the Panel's workload has increased considerably; a lawyer-linguist heads the office, assisted by a linguist.

The Centre of Legal Linguistics (Zentrum für Rechtslinguistik)³³⁹ was established in 2008, after developing from a working group created in 1998 specialising in legal linguistics. The main aim of the Centre is to promote a language of law and administration that mediates between the need for legal precision and the importance of being accessible to everyone.

The Council for German Orthography (Rat für deutsche Rechtschreibung, RdR)³⁴⁰ is the main international committee entrusted with ensuring uniformity of orthography within the German-speaking world. With its headquarters in Mannheim, the RdR was formed in 2004. A new reform of German orthography had been underwritten in 1996 by eight countries where German is an official or minority language. The declaration of intent for the reform provided for the introduction of the new system in schools and institutions and the setting-up of an international committee, entrusted with the further reform of German orthography, as well as the final word on spelling issues. In August 2006 new rules were introduced. The Federal Ministries of the Interior and Justice keep the highest federal authorities updated through regular circular letters on the situation of the reforms. The complete rules and the glossary have been published in an annex of the Federal Gazette.

Drafting tools

The Joint Rules of Procedure state that the language used in bills must be 'correct and understandable to everyone as far as possible' (Section 42-5). Overall legal quality is a strong feature of the German system, with important recent developments that are also aimed at improving the linguistic quality of drafts, namely:

- the *Electronic Guide to Law Drafting*;
- the *eNorm* software tool.

The *Electronic Guide to Law Drafting (Handbuch der Rechtsförmlichkeit)*³⁴¹ was developed by the federal Academy of Public Administration, with support from the federal Ministry of Interior, and in co-operation with the federal Ministry of Justice. The aim was to address a series of problems observed in the federal public administration. First, officers could not easily identify quality drafting requirements. In addition, responsible services rarely put the necessary rigour into legal clarity at an early stage. Thirdly, although desk officers often have a legal background, they have not been

³³⁸ See Gesellschaft für deutsche Sprache und Redaktionsstab: <<http://www.gfds.de/>>.

³³⁹ Zentrum für Rechtslinguistik: <www.zentrum-rechtslinguistik.de>.

³⁴⁰ Rat für deutsche Rechtschreibung: <<http://www.rechtschreibrat.com/>>.

³⁴¹ See also for more information, Handbuch der Rechtsförmlichkeit: <<http://hdr.bmj.de/vorwort.html>>.

specifically trained to draft legislation and there is not a special body of officials as, for example, in the United Kingdom.

The *Electronic Guide* focuses on effective suggestions on the content, structure and form of laws and regulations. It contains technical suggestions on legal definitions, stylistic criteria, and references. The *Guide* provides drafters with the latest information directly on their computers, allows rapid updates, provides examples and templates, and establishes links to background documents. It also provides guidelines on many aspects of drafting such as linguistic structure and drafting styles:

- legal language;
- linguistic clarity;
- technical means and clarity in lawmaking;
- general and particular advice in word selection;
- sentences length and structure;
- language equality for women and men;
- abbreviations.

The *eNorm* software is a tool which makes it possible to improve the quality of legislation, developed by the federal Ministry of Justice on the basis of the *LegisWrite* software used by the European Commission. It helps comply with formal and editorial requirements and makes it possible to use the same format throughout the law-making process. This software offers document templates, indicating the proper order of all necessary components of a legislative draft. It also provides automated quality check and correction functions, and allows synoptic documents to be produced and consolidated automatically. In particular, the drafter receives error messages or warnings whenever certain given legislative form rules are ignored. Quotation of legal provisions can be directly verified and updated according to the *juris* database of the federal legislation (see below). Furthermore, it is possible to export data in a structured form (XML) in order to optimise the later promulgation of the text and streamline the documentation attached to the rule.

The adoption of the tool is not binding. However, almost all federal Ministries have so far introduced *eNorm* or are planning to do so. The Bundestag and the Bundesrat are also closely involved in this project, and are progressively integrating it into their activities. Four parliamentary committees have already embraced the initiative. Most *Länder* have concluded licence agreements with the federal Ministry of Justice to use the software.

Together with the *Electronic Guide*, it provides a comprehensive checklist for law drafters, speeding up the drafting and amendment process, and standardising both format and media for use throughout the lawmaking process. For autonomous ministries it sets an important central standard, aids co-ordination, and enhances transparency.

Hints for Administrative and Legislative Language (Fingerzeige für die Gesetzes- und Amtssprache) is a manual published by the German Language Society together with the Federal Ministries of the Interior and of Justice. It provides a tool for drafting and improving the clarity of laws and official texts, including many examples of wording and suggestions.

With regard to the language of public administration, further support is provided by the federal Administrative Office for Office organisation and Technology (Bundesverwaltungsamt Bundesstelle für Büroorganisation und Bürotechnik, BBB). In particular their publications entitled *Administrative Language Close to Citizens*

(*Bürgernahe Verwaltungssprache*) and *Language Equality for Women and Men (Sprachliche Gleichbehandlung von Frauen und Männern)* have proven very useful, providing many tips, useful options and examples.³⁴²

Mention must be made of the *Arbeitshilfe Gesetzgebung*³⁴³, online support for formulating draft laws and regulations provided by the Federal Academy of Public Administration (Bundesakademie für öffentliche Verwaltung), within the Federal Ministry of the Interior. It presents all the procedural steps that a legislative act must follow, from the initial preparatory work to publication in the Federal Gazette.

Electronic databases

In Germany, institutional drafters have access to the following main databases.³⁴⁴

Juris GmbH. Juris is an information system that provides an extremely comprehensive legal archive and is constantly updated. The quality of information offered is ensured by close cooperation with the documentation services of the federal constitutional court, the five higher courts of justice, the federal office of justice and the federal *Land*. This system can also be accessed by anybody on payment of a fee.

For legal drafters *juris* offers various search possibilities, under the following main categories: court rulings, laws and regulations, and administrative provisions. There are also categories for literature references, journals, lexicons, collective agreements, working aids, communication and media. For each single legislative act it is also possible to access the wording of former versions and in the footnotes it is possible to consult the various modifications with references and date of entry into force.

The possibilities offered by this database in the formulation of legal provisions are significant: data required for correct quotation of a law or a regulation can be quickly accessed; it is possible to verify if an amendment relates to the correct sentences within the provision to be changed; it is possible to identify accurately which provisions have impact for a given matter.

Gesetze im Internet is a database which collects almost all federal laws and regulations, in their current wordings. This database is freely accessible and is prepared in collaboration with the *juris GmbH* legal information system.

EUR-Lex. Similarly to other European revisers, German legal revisers also refer to *EUR-Lex*, in particular for all EU legislation.

Gesetzesportal is a database which provides information on current legislative proceedings and amendments and new legislation appearing in the Federal Gazette, parliamentary reports and plenary protocols, as well as consolidated laws, in current and historical versions.

GESTA and *DIP*. The information system *GESTA (Stand der Gesetzgebung des Bundes)* collects all legislative proposals presented to the *Bundestag* and to the *Bundesrat* and related work until summer 2007. *GESTA* is also a component of *DIP (Dokumentations- und Informationssystem für Parlamentarische Vorgänge)*, a database which is the general information system of the *Bundestag* and *Bundesrat*. It fully documents the course of parliamentary consultations regarding a specific law and provides a thorough overview of all electronically available documentation.

*Deutschland Online*³⁴⁵ is a joint strategy by the federal Government, the *Länder* and the municipalities established in 2003. It seeks to foster co-operation and co-

³⁴² Both publications are available at: <http://www.bva.bund.de/cln_351/nn_2147736/DE/Veroeffentlichungen/AbisZ/abisz-node.html?__nnn=true>.

³⁴³ <http://www.bakoev.bund.de/DE/03_Unser_Fortbildungsangebot/03_Unser_elektronisches_Angebot/01_Arbeitshilfen/arbeitshilfen_node.html>

³⁴⁴ See, also for more details, BUNDESMINISTERIUM DER JUSTIZ, *Handbuch der Rechtsförmlichkeit*, 3rd ed., Bundesanzeiger, Köln, 2008.

ordination for integrated e-government, and is based on priorities ranging from the development of integrated e-services, and the interconnection of Internet portals, to the development of common infrastructures and standards and the transfer of experiences and knowledge.

3. German drafters: recruitment and training

In Germany, most civil servants are law graduates. This tradition of requiring a good degree in law for entry into the civil service dates back to the 16th century and persists today. It follows that the ministries, except some of the newer, more technical ones, have no need for legal advisers or for drafters.

Considerable emphasis therefore shifts onto on-the-job further training. For instance, in the preparation of drafts, staff members may use the electronic aid of the federal Academy for Public Administration (Bundesakademie für öffentliche Verwaltung, BaköV) on legislative procedures, which is constantly updated. Also various manuals and guidelines are available providing relevant information on Better Regulation.

Further training on issues related to document quality is also available. Each ministry runs internal training courses on specific topics related to Better Regulation. Where needed, the federal Ministry of Justice carries out training courses on legal language, on review of laws, on legislative procedure and on the use of the *eNorm* programme. The training courses target everyone participating in legislation and review of laws. In addition, the BaköV is an overarching institution providing further training for federal administration staff. The range of seminars and courses offered by the Academy is wide and covers fundamental aspects as well as special topics such as administrative language and techniques, as well as training programmes on EU law.

The *Länder* also maintain their own training institutions, which add to the efforts made by the federal administration. Moreover, a large number of training courses take place locally or in-house. According to the OECD, each year some 120-150 staff attend the regular BaköV seminars. Those attending BaköV seminars especially for *Land* authorities should be added; their number fluctuates, ranging roughly from 100 to 130 staff members.³⁴⁶

4. The Free State of Bavaria

In the early 2000s, the Stoiber Government decided to act to remedy what was known as the 'legislative flood' (*Normenflut*). Several causes relating to the social and legal framework have been identified for such legislative excess: they include complexity of social processes, implementation of political reforms; protection through detailed regulation arising from political compromises. The media and public opinion pressure were instrumental in bringing about change.³⁴⁷

As part of this drive to reduce bureaucracy and simplify administration, in March 2003, regulatory control was centralised to a special service inside the State Chancellery (Zentrale Normprüfstelle).

This service is in charge of: quality control of the regularity of statutes and regulations; formal control according to drafting guidelines; clarity and overall coherence; correct juridical language; and regular participation of stakeholders, especially regular consultation proceedings. This service functions under rather restrictive standards and only statutes that are urgently needed are admitted. Investigation is also made into whether the legislative draft is coherent with the principle of subsidiarity of State governance, whether the matter could be settled by

³⁴⁵ OECD, *Better regulation in Europe: Germany*, supra fn. 329.

³⁴⁶ See OECD, *Better regulation in Europe: Germany*, supra fn. 329.

³⁴⁷ Bayerische Staatskanzlei, *Normsetzung – Fortbildungsveranstaltung in der BS*, Munich, 2011.

business or society, or whether the public interest requires legislative intervention. In case of a negative answer, the proposal would not advance beyond the control stage.

Since the end of 2006 the procedure of regulatory control has been included in the Rules of Procedure of the Bavarian Government, and has proven a success. During the legislative process, regulatory control occurs right after drafting of the proposal, and in parallel with the hearing stage for departments concerned. A minimum deadline of three weeks is foreseen for the control to be performed.

The most interesting aspect is that in case of disagreement by the leading Ministry with recommendations emerging at the end of regulatory control, the Ministry may bring the matter before the regulatory control committee or the Bavarian Government, for a final decision. In any case, recommendations from the service cannot be simply disregarded.³⁴⁸ This requirement creates a significant difference between the Bavarian service and the NKR, at federal level. It has to be noted that this significant power of veto of the Bavarian regulatory control was introduced at a time when the Christlich Soziale Union (CSU) party enjoyed a political majority of over 60%. In other words, it is more unlikely that a coalition government would hand over this power over legislative process to a Chancellery service. However, so far the service has never exercised this veto.

5. Conclusions

Administrative procedures, legal quality and forward planning reflect the importance that Germany traditionally attaches to a sound and formal framework for lawmaking. Legal quality is an especially strong feature of the German system, with important recent developments which include the *Electronic Guide to Law Drafting*, the *eNorm* software tool for law drafters, and a project to improve linguistic clarity.

The *eNorm* software is especially interesting: in a context of autonomous ministries, it sets an important central standard, aids co-ordination and enhances transparency. Other measures to simplify legislative stock have also been promoted, with encouraging results and a significant reduction in the number of regulations.³⁴⁹

Nonetheless, clarity in the language of law and administration remains in Germany a constant matter for constant study, research, and ultimately criticism.³⁵⁰ In 2008, under the aegis of the German Language Society, a book appeared under the eloquent title *Comprehensibility, a civil right? (Verständlichkeit als Bürgerrecht?)*; it gives a good picture of the vast effort that legislative and administrative authorities are making in order to reach better quality in their documents, in terms of clarity and accessibility.

³⁴⁸ From January 2003 till January 2007 the number of Land statutes in Bavaria has decreased from 346 to 293. See website of the Bayerische Staatsregierung, Kommissionen, Deregulierung (<http://www.bayern.de/Deregulierung-.2223.49076/index.htm>).

³⁴⁹ OECD, *Better regulation in Europe: Germany*, supra fn. 329.

³⁵⁰ See for all the remarks of the Federal Tax Court (Bundesfinanzhof) in a decision on 6 September 2009: 'Gemessen an den vom BVerfG aufgestellten Grundsätzen verletzen die streitgegenständlichen Vorschriften den Grundsatz der Normenklarheit, denn sie sind sprachlich unverständlich, widersprüchlich, irreführend, unsystematisch aufgebaut und damit in höchstem Maße fehleranfällig.'

Chapter VI - France

1. Historical overview

Since the Renaissance, language policy has been crucial to the development of the French nation. This policy has long been marked by the desire to oppose Latin, reducing the power of the Church while increasing that of the monarchy and the State. From the 13th century, royal notaries wrote in French, and between the 14th and 16th centuries, French slowly emerged as the administrative language in royal charters instead of Latin and other vernacular languages. The promulgation of the *Ordonnance* of Villers-Cotterêts in 1539 by Francis I established French as the official language of law and administration. In the Renaissance, the educated urban population used French, but a large part of the rural population did not. Political unity and thus the further spread of the language began under the *Ancien Régime* and strengthened during the Revolution.³⁵¹

At the fall of the Second Empire, the Third Republic introduced secular, compulsory primary education which was free for everyone. This was provided for under the Ferry laws, which brought democratisation and the imposition of the French language throughout the country. A single common language was established throughout France, and also in the French colonial empire. The use of French was imposed, mainly in official documents and in schools, with the aim of raising the level of education of the population.

Since the second half of the 20th century, the State has begun to view regional cultures and diversity as cultural elements to be preserved, rather than eliminated. This philosophy has resulted in the adoption of various government policies to prevent the disappearance of regional languages. The Vichy regime attempted to introduce the teaching of dialects in primary schools through two acts in 1941 and 1942, but they were repealed after the Liberation. Since 1951, the law has allowed for the optional teaching of regional languages in France. This provision may have been introduced too late, as younger generations have lost confidence with local languages over the years. In 1976 Law 75-1349 was enacted, forbidding the use of foreign words by the public administration when it is possible to use a French word with the same or a similar meaning.³⁵²

More recently, Article 2 of the Constitution of the Fifth French Republic was amended in 1992, in order to make it compatible with the Maastricht Treaty. The words 'The language of the Republic is French' were added. An application of this principle is the 'Toubon Law', enacted on 4 August 1994, which recognises the right of French citizens to access legal texts, the right of employees to access all aspects of their employment contracts and the right of consumers to receive useful information on products, or in manuals and warranties, in French.³⁵³

³⁵¹ For revolutionaries, lack of knowledge of French was an obstacle to democracy and the spread of revolutionary ideas. In 1790, the National Assembly began to translate certain laws into regional languages. This initiative was abandoned after some time as it was too expensive. The Decree of 2 Thermidor Year II required French as the only language of any administration, as the revolutionaries sought to impose French and oppose indigenous languages or dialects, referred to as 'feudal idioms'. But such measures could not have an immediate effect, and during the Terror decrees were usually repealed a few weeks after their promulgation.

³⁵² Loi n. 75-1349 du 31 Décembre 1975 relative à l'emploi de la langue française (Journal Officiel du 4 Janvier 1976).

³⁵³ A similar policy is present in Russia: 'The Federal Anti-Monopoly Service tries to implement a 2006 legislation preventing advertising in foreign languages' (*International Herald Tribune*, 23 November 2010, p. 17). The ADIDAS slogan 'impossible is nothing' becomes 'impossible is possible'. China also bans the random use of foreign languages in publications and, particularly, Chinese media organisations and publishers are banned from randomly mixing foreign languages with Chinese in

2. Policy, legal instruments, reforms

Legal drafting has always been a focal issue in France. The most recent guidelines are provided by the Circular (*On the Quality of the Law*) issued by the Government on 7 July 2011.³⁵⁴ In addition, the *Guide to Legislation*,³⁵⁵ a 500-page manual in French available online, provides a wealth of information, ranging from laws and legal data to legal drafting rules and style.

Content of the *Guide to Legislation*

The *Guide*, written for drafters, contains both theoretical insights and practical tips on how to write effective, legally secure texts. The guide includes:

- Formation of rules: describes the various types of norms and their hierarchy from constitutional texts to standing instructions (*circulaires*). It encourages regulators to question the usefulness and efficiency of proposed new norms.
- Stages in the preparation of a new text: These stages are described in line with rules indicated by the Prime Minister.
- Drafting regulations: include rules and examples of good practice, as well as solutions to common issues met when drafting new legislation, presented as a series of practical *fiches*.

The *Guide* gives special attention to drafting legislation implementing EU law. It emphasises that it is necessary to respect specific procedures, which may differ according to type of text, and specific rules, as in the case of the implementation of international conventions or EU law; sometimes different consultation processes (compulsory or not), approval procedures and formal presentation rules are required.

How effective is the *Guide*? The box above, summarising the contents, shows an emphasis on process rather than on product. Formal prescriptions are abundant, while little is said on how to collect evidence about the 'usefulness and efficiency of the new norm'.

The simplification of administrative procedures consists of a series of pragmatic and concrete measures to facilitate relations between the administration and users,³⁵⁶ including simplification of the *langage administratif* that is central to our study. The use of plain language is an intuitive tool that can greatly improve regulatory compliance and enforcement. The easier it is to understand a regulation, the easier it will be to comply with its requirements.

It is important to consider the following experiences, as regards simplification of administrative procedure and language:

publications. When it is necessary to use foreign phrases or words, they should be accompanied by a translation or explanation in Chinese (*China Daily*, 22 December 2010).

³⁵⁴ <http://circulaire.legifrance.gouv.fr/pdf/2011/07/cir_33427.pdf>.

³⁵⁵ <<http://www.legifrance.gouv.fr/Droit-francais/Guide-de-legistique>>.

³⁵⁶ See the following websites:

<<http://www.ladocumentationfrancaise.fr/dossiers/d000097-la-modernisation-de-l-etat/chronologie>>;

<<http://www.vie-publique.fr/decouverte-institutions/institutions/approfondissements/grandes-etapes-reforme-etat.html>>;

<http://www.lemonde.fr/societe/article/2012/02/21/mademoiselle-disparait-des-formulaires-administratifs_1646538_3224.html>;

<<http://www.lisibilitejuridique.net/articles/francaisjuridique.pdf>>;

<http://credo-multimedia.com/Bib_num/E-books/Information-documentation-et-veille-juridiques%5B1%5D.pdf>.

a. *Circulaire Rocard*

'Le service public sera à lui-même son propre recours'. This was the slogan of the 'civil service renewal' movement in France, led by Prime Minister Michel Rocard in the early 1990s. It was a distinctive message and it distinguished France's approach to administrative reform from most other European countries. The latter based their reforms on critical review of their bureaucracies and the efficiency of their civil servants, seen as the cause of problems and impediments to change. Thus, politicians imposed administrative reforms using a top-down approach, particularly in the UK. The main idea in France, on the contrary, was that reform should on some level be designed by and carried out with the co-operation of civil servants, and should rely on their sense of public interest or public service to guarantee its success.

The *Circulaire Rocard* includes four parts: the revision of labour relations policy (Part I); the responsibility of the public administration (Part II);³⁵⁷ the duty to evaluate public policies (Part III); and a policy regarding relations with users (Part IV).³⁵⁸

In the area most relevant for this study, Part III, the *Circulaire Rocard* focuses on the problems related to administration accountability and policy evaluation. It states that the administration cannot be autonomous without responsibility, responsibility cannot occur without evaluation, and evaluation without consequence ('Il ne peut y avoir ni autonomie sans responsabilité, ni responsabilité sans évaluation, ni évaluation sans conséquence').³⁵⁹

In Part IV, the *Circulaire Rocard* stresses the need to pursue and develop public information and participation ('[u]ne politique d'accueil et de service à l'égard des usagers'). The drafting and publication of a set of *Guides Télématiques* is indicated as an essential tool for the modernisation of public information. In addition, it suggests reflecting on the use of other media, such as broadcast media or fax, which could facilitate the transmission of documents to users, save time and avoid delays. The development of the above-mentioned service projects would open opportunities for local negotiations on working conditions in very broad terms, in areas such as more flexible opening hours and access to and care of the elderly, of foreigners, and of the disabled, helping them to meet their needs. In addition, the *Circulaire Rocard* underlines that efforts made to personalise relations between public administration agents and users must be pursued.³⁶⁰

³⁵⁷ The *Circulaire* also focuses on the responsibility of the public administration (Part II) by introducing the concept of 'responsibility centres': the idea was to grant more budgetary leeway to administrative services on the ground (the framework for setting objectives was based on contracts with the central services of the ministries). Responsibility centres were subsequently formalised in the Circular of 25 January 1990 (Official Journal of French Republic; Commission. Commissariat Général du Plan, 1989, 1990). This introduced the principle of services' commitment to a more rigorous management of resources and precise quantification of results. In return, services were to enjoy more managerial flexibility, including freer use of a lump sum for running expenses, pluri-annual management, automatic carrying forward of resources from one year to the next, and a switch from *ex ante* to *ex post* control of operating budgets.

³⁵⁸ JEANNOT, Gilles, 'The "Service Project" Experience in the French Civil Service', *International Journal of Public Sector management*, Vol. 16, No 6, 2003, pp. 459-467. QUERMONNE, Jean-Louis & ROUBAN, Luc, 'French Public Administration and Policy Evaluation: The Quest for Accountability', 46:5 *Public Administration Review* 397-406 (1986).

³⁵⁹ In the document at issue, the fundamental principles of any evaluation should be: the presence of independent assessment bodies in relation to government managers; the competence of the actors in evaluation, since the results are intended to feed important debate; the transparency of the process.

³⁶⁰ As an example, any administrative correspondence should clearly show the name of the caseworker, the address of the service provider and a phone number for the user to contact the appropriate person for further information. 'Personalisation' also means that the administration should involve the citizens in the improvement of public services. As a foreseeable consequence, relations between governments and users will be improved if it is really possible to provide opportunities for joint reflection and by involving the unions. In this perspective, the citizen must become a partner who makes suggestions and proposals and also takes into account the concrete working conditions of civil servants.

b. Latest developments: the Steering Committee for the Simplification of Administrative Language (COSLA)

Since 1990, French governments have been active in attempting to simplify the administrative process. For example, the obligation to present proof of residence in a large number of administrative procedures has been cancelled by the Decree of 26 December 2000. Similarly, the certification procedures required for original copies of official documents have been largely abandoned (Decree of 1 October 2001). Simplification also includes harmonisation of procedures and terms of administrative procedures. An example is the 12 April 2000 Law concerning the rights of citizens with respect to government-introduced communication by technological means, such as e-mail, except for proceedings under the Procurement Code and those where physical presence is expressly required. The Law also requires the administration to pass misdirected requests to the appropriate public services.³⁶¹

3. Actors: key players, organisations, and academics

In general, a civil servant who is an expert in legal drafting is responsible for drafting and is subject to quality checks and legal supervision. Key-actors in this process are: Secrétariat général du gouvernement (SGG) and the Conseil d'État. The role played by these actors is detailed under the 'Procedures' section.

With respect to EU law, the Government has established a system that monitors transposition of directives very closely and clearly highlights who is ahead or behind within the framework of a contact group. The SGAE (General Secretariat for European Affairs) holds regular monitoring meetings, keeps a scoreboard and has a network of contacts drawn from both government departments and ministerial staff. In terms of transposition, the focus has been mainly on reducing delays (successfully). The main weakness of the current monitoring system is its failure to fully cover the quality of transposition.

As regards simplification of administrative procedure and language, the main actors are:

a. Secrétariat général pour la modernisation de l'action publique (SGMAP)

SGMAP was established on 30 October 2012 by a Decree, for the following reasons. The public administration is still drafting its forms and documents in technical language that is obsolete. This can lead to user confusion and misunderstanding as well as time wasting when users deal with the administration. The approach adopted for simplification of administrative language has been designed to simplify the terms used in administrative correspondence, promoting the efficiency of public services in their work and interactions with users.

b. Comité d'orientation pour la simplification du langage administratif (COSLA)

In July 2001 the French Government established COSLA (Comité d'orientation pour la simplification du langage administratif), a committee to simplify official language.³⁶² It is responsible for advancing concrete proposals to improve the quality of administrative language and for monitoring implementation by the Government. The Committee comprises language experts, civil servants and end users, and is headed

³⁶¹ Several structures have been successively responsible for these simplifications: the Commission for the simplification of formalities (Cosiform, decree 18 December 1990), the Commission for administrative simplification (COSA, Decree of 2 December 1998), the Delegation to users and administrative simplification (DUSA, Decree of 21 February 2003) and today the Direction Générale de la Modernisation de l'État (DGME Decree of 30 December 2005).

³⁶² <http://www.fonction-publique.gouv.fr/files/files/Espace_Presse/plagnol/cosla_151203.pdf>.

by the Minister for the Civil Service and the Minister for Culture and Communication. Its role is to simplify official forms and government correspondence.³⁶³

c. Juriscope (CNRS)

An important consultative body is Juriscope (CNRS), which is responsible for setting up a translation programme for French Law to promote the dissemination of national law to foreign countries.³⁶⁴ In particular, Juriscope has a twofold mission that consists of facilitating access to foreign law and disseminating French law abroad. To facilitate access to foreign laws, Juriscope has also translated laws written in major foreign languages into French.³⁶⁵

Between 1999 and 2006, Juriscope worked on the translation of French law into foreign languages. In this project, primary focus was given to the appointment of legal specialist advisors and translators, coordinated by a leading translator, to guarantee the quality of translation. It is interesting to briefly examine the procedures adopted.

The specialist adviser works with the translator (or translators) from the beginning of the translation, applying his or her knowledge and specialist expertise with the aim of safeguarding the quality of the translation. This knowledge may include descriptions or explanations of the legal institutions of other legal systems and consultancy on terminological choices. The adviser reads the translation, monitors the consistency of terminology, and determines, after discussion with the translator and the contractor, possible improvements to be made. In case of conflict, after discussion and in the absence of a solution, the opinion of the adviser prevails over the opinion of the translator. For our purposes it should be noted that the adviser provides a list of terms that give rise to discussion and makes terminological choices for the translation.

Specialised translators are essential for Juriscope, to ensure translation quality. Translators are selected based on various skills as well as on their knowledge of foreign languages. Criteria for selection include, for example, knowledge of French law, knowledge of the legal systems in countries using the target language, and proven experience in translating legal texts. Interestingly, translators are often reluctant to define relevant terminology in advance, as they generally feel terminology cannot be separated from the translation process.

The quality standard developed by Juriscope relies on a number of elements. The adviser will intervene throughout the translation process, and internationally recognised specialist advisors will be selected. Communication tools must be identified, in case of division of the work into several lots. Finally changes must be able to be tracked through the process and published documents must be validated by all project participants. Another element that increases the level of quality of the work is the development of glossaries and notes, including points of contention, to be returned to the institution at the conclusion of the translation.

The methodology clearly distinguishes between the translator's role and the advisor's role. While the intervention of these two figures is separate, they are present from the

³⁶³ COSLA initially focused its work on the six most used forms (more than 132 million times each year). The forms are: (1) legal aid form; (2) application form for nationality identity card; (3) application form for family allowances; (4) application form for general health cover; (5) retirement application form and; (6) income declaration form and inheritance declaration form and civil status form. These forms have now all been modified to meet the requirements of COSLA.

³⁶⁴ <<http://www.juriscope.org>>.

³⁶⁵ To date, the institution, part of the CNRS, has completed more than 200 working papers, including some on behalf of the Ministry of Justice and Freedoms. The target users of Juriscope are scientific researchers and legal practitioners.

beginning of the translation process; the translator is able to ask for advice at any time, if needed.³⁶⁶

d. Legicoop

Finally, the Legicoop project, established by a resolution of the European Council in November 2008, aims to facilitate exchange of information between Ministries of Justice and to promote comparative law studies on national legal systems and laws. One function of the project is to launch a new electronic platform to promote the exchange of information disseminated by the national focal points in each ministry of justice. This means that the project has to deal with a number of official languages in the Member States, plus federal or regional rights in some countries.³⁶⁷

4. Procedures

In legal drafting, the quality of the final draft relies on a process consisting of a number of steps and involving various actors, that are indicated in the table below³⁶⁸.

Phase of preparation	Tools and quality checks
<p>Production of the first legal draft</p> <p>Both government and parliament can initiate policy change, but government has more resources and parliament's domain is limited in the Constitution (Articles 34 and 37) to major principles except in selected areas.³⁶⁹ Generally the first draft of a new policy appears in the form of a memorandum addressed to the minister for discussion (if necessary also to other ministers) and endorsement. This key document is prepared in the office in charge and sent via the line management to the cabinet (<i>note au ministre</i>)³⁷⁰</p>	<p>Making sure that the policy desk has all the information about implementation of the current legislation</p> <p>Maintenance of a comprehensive consolidation of legislation for the policy area (SGG); centralisation of all guidance, and reports about implementation</p> <p>IT supported workflow for processing draft legislation, with corresponding unification of formatting and drafting style</p> <p>RIA requirement for new primary legislation</p>
<p>Controls during the consultation process</p>	<p>Formal rules for prior consultation of stakeholders</p> <p>Legal requirement for consultation, failing which the new law may lack legal basis</p>

³⁶⁶ WAGNER, Anne, & CACCIAGUIDI-FAHY, Sophie (eds.), *Linguistic Insights, Studies in Language and Communication 'Legal Language and the Search for Clarity'*, Peter Lang, Bern, 2006.

³⁶⁷ In August 2010, the French Ministry of Justice obtained the approval of the Directorate General for Justice of the European Commission to support 80% of the total budget of the Legicoop project (in French 'RCLUE'). The remaining 20% of the budget is funded by the Ministries of Justice of Finland, France, Italy and Czech Republic. The new website: <<https://intra.legicoop.eu>>. Requests are notified by e-mail, but are filed and processed by the management team. A public open space is available at: <<http://www.legicoop.eu>>.

³⁶⁸ MONTIN, Charles-Henri, *Legistics and the Quality of Legislation in France*, 4 July 2012, available at: <<http://www.montin.com/documents/legistics.pdf>>.

³⁶⁹ FOURNIER, Jacques, *Le Travail Gouvernemental*, Presses de la Fondation nationale des sciences politiques et Dalloz, Paris, 1987; LONG, Marceau, *Les Services du Premier Ministre*, Presses Universitaires d'Aix-Marseille, Aix-en-Provence, 1981.

³⁷⁰ Circulaire du 30 janvier 1997 relative aux règles d'élaboration, de signature et de publication des textes au Journal Officiel et à la mise en oeuvre de procédures particulières incombant au Premier ministre, at: <<http://www.gouvernement.fr/gouvernement/le-secretariat-general-du-gouvernement-4>>.

Finalisation of the bill	<p>Consistency checks with other policies, and coordination where needed with government (Prime Minister's office)</p> <p>Consultation of the Council of State for draft bills and important secondary legislation</p> <p>Specific controls such as regulatory burdens on local government</p> <p>Enactment in Council of Ministers</p>
Controls after enactment	<p>Careful monitoring of effective delivery of implementing rules by the Prime Minister's Office, reports to Parliament on individual laws</p> <p>Consolidation and codification, for easier access to legislation by stakeholders</p> <p>Evaluation of policies and legislation by various senior audit bodies</p>

Key steps in the procedure illustrated above are coordination by the Secrétariat général du gouvernement (SGG), and supervision by the Conseil d'État.³⁷¹

At an early stage, the SGG is informed of the planned reform, for inclusion into planning of the government's activity. This step also provides communication to the public on upcoming reforms, when appropriate. At this stage, the SGG decides whether an impact assessment is necessary, in which case the ministry will need to arrange the necessary resources. Moreover, in case of conflict between various ministries, arbitration is ensured by the Prime Minister's office. The SGG is a highly efficient machine, not limited to solving inter-ministerial disagreements, and it often monitors programmes or applies pressure to achieve important reforms. In the French policy-making system, great emphasis is placed on 'prior consultation' with stakeholders. This process is very formally organised: consultative bodies are numerous (3,000), and are established by law. Failure to comply with a consultation requirement can be a cause of annulment of the resulting text.³⁷²

The role played by the Conseil d'État is of particular interest and there are at least three distinct phases to the process of scrutiny of proposed new legislation:³⁷³

- a) The private consultancy role of *rapporteurs* from the Conseil d'État when working with staff at the ministry. This is primarily an advisory role: the *rapporteurs* have a technical drafting role, helping to turn political and administrative goals into legal text.
- b) The second phase involves public scrutiny of the outcome of this process. The *rapporteur* can still change position at this stage. He introduces the proposals to the rest of the Conseil and interprets the objectives. The Government has its own representatives to argue a particular position and to answer criticisms. A detailed

³⁷¹ MONTIN, *Legistics and the Quality of Legislation in France*, supra fn. 368.

³⁷² ÉCOLE NATIONALE D'ADMINISTRATION, *Le Travail Gouvernemental sous la Direction de Dominique Laurent et Marc Sanson*, La Documentation française, Paris, 1996; MASSOT, Jean, *Chef de l'Etat et Chef du Gouvernement*, La Documentation française, Paris, 1993; INSTITUT FRANÇAIS DES SCIENCES ADMINISTRATIVES, *Le Secrétariat Général du Gouvernement*, Economica, Paris, 1986; PY, Roselyne, *Le Secrétariat Général du Gouvernement*, La Documentation Française, Paris, 1985.

³⁷³ BELL, John, 'What Is the Function of the Conseil d'État in the Preparation of Legislation?', *The International and Comparative Law Quarterly*, Vol. 49, No 3 (July 2000), pp. 661-672.

scrutiny at this stage enables the bill to be refined through discussion and to be technically ready for policy debate in Parliament.

c) Debate in the *Assemblée* performs yet another function: that of widening the scrutiny of general principles to a less well-briefed audience.

The Conseil d'État performs a number of functions. Some of these are aimed at improving the drafting in a technical sense (redrafting), but this task falls primarily to the *rapporteur*. More importantly, the debate in the Conseil is designed to clarify the legislative objectives and to integrate them with other objectives, which the law pursues through other texts (integration). This involves probing and scrutiny not only of the text, but also of the objectives that the ministry wishes to pursue. Finally, as broader adviser and regulator of the government, the Conseil examines the way in which a text respects fundamental values and is administratively workable.

Finally, the Circular of 27 September 2004 from the Prime Minister is the benchmark for ministries transposing EU law into domestic legislation.³⁷⁴ Responsibility for the transposition process lies with the individual ministry acting alone or lead ministries when a directive covers more than one policy area. In principle, the responsibility for transposition lies with the ministry that leads the negotiation. The ministries forward the correlation tables to the European Commission when required to do so by the directive but do not make them public. The SGAE monitors the transposition in liaison with the contacts appointed in each ministry, in liaison with the European Commission.

With respect to EU law, a 2007 Report by the Conseil entitled *Better integration of Community regulations into domestic law* included recommendations that the unconditional provisions of a directive be written directly into domestic law without amendment.

As regards simplification of administrative procedure and language, the main actors adopt a variety of procedures.

SGMAP has developed a method involving various stages and objectives. It considers the experience of agents working with the public and listens to the views of users, as well as studying their behaviour when filling in the administrative forms. It clarifies wording and adopts plain language in administrative forms. Its aims include seeking to establish a relationship of trust through clear presentation and using polite expressions in forms, and improving relationships between businesses and the public administration.

In addition, forms redrafted in a simplified manner are published on the Internet so that they are accessible to all users. The forms can be downloaded, and many can also be completed online. This 'dematerialisation' is an excellent way of helping users.³⁷⁵

COSLA has chosen to move in two main directions, focusing both on practices in the public administration and on the needs of citizens and businesses in dealing with public actors. COSLA primarily deals with redrafting administrative forms and developing tools for translators with particular emphasis on translation of legal and administrative documents. For example, application forms for national identity cards (now coupled with passport application) and application forms for pensions were rewritten and circulated in 2002. A recent second wave of form redrafting has focused on the declaration of inheritance form and the annual declaration of social data for enterprises. In addition, COSLA has created a set of tools for translators, illustrated below in the 'Tools' section.

³⁷⁴ Circular of 27 September 2004 from the Prime Minister on the procedure for transposing into domestic law the directives and framework decisions negotiated within the framework of the European institutions, at: <<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000256457>>.

³⁷⁵ See at: <<http://www.modernisation.gouv.fr/index.php?id=165>>.

5. Recruitment, training and tools

The SGG and SGMAP are composed of civil servants, while the Conseil d'État is composed of civil servants and judges.³⁷⁶ COSLA is composed of civil servants, who can also cooperate with linguists, and comparative lawyers. The diversity of its members has allowed COSLA to establish a set of operational tools for civil servants and legal practitioners.

Training in the art of legislative drafting is provided to trainees by senior civil servants at the National School of Administration (ENA) and places great store on legal expertise: young officials handle real cases where reforms systematically lead to new legislation.

Resources available to officials to improve legislative drafting quality are:

Full access to the existing legal corpus through *Legifrance*, a powerful and effective online search tool, limited to the text itself;

Codes, which help considerably in the retrieval of texts. These codes exist for all areas of legislation and are continuously updated by 'dynamic' codification (integrating a simplification dimension) or static (no changes to content of existing texts); there are two parts in each code, legislative and 'regulatory' (governmental) (*décrets* and *arrêtés*). Articles are designated by letters L and R (corresponding to the level of the norm) and the numbering is the same in each part for the same content;

Reviews of legislation are frequently undertaken, with ensuing simplification (or complication) of the legal corpus.

The tools offered by the SGMAP programme include: a glossary of administrative terms including nearly 4,000 words or expressions that are obscure or ambiguous in nature, explained and accompanied by rewording proposals; a practical guide to business writing which provides guidance on the presentation of letters, the selection and organisation of information, and numerous examples of letters.

COSLA has developed a series of useful tools:

Guide pratique de la rédaction administrative. The guide was prepared under the supervision of COSLA by the Centre for Applied Linguistics from the University of Besançon edited by Blandine Rui-Souchon.³⁷⁷ It is based on analysis of a large corpus of actual letters, providing an analysis of problems and a set of simple rules to solve them, with particular emphasis on the structuring of the 'conversation' with the user.

Le lexique des termes administratifs. In addition to the guide, COSLA has published a dictionary under the direction of Dominique Le Fur. It consists of an administrative lexicon based on analysis of more than five thousand letters sent by the administration.³⁷⁸ It includes words generally not used in everyday language, with synonyms, paraphrase and explanations.³⁷⁹ It comprises about 5,000 words in its final version.

Logiciel d'Aide à la Rédaction Administrative (LARA). Developed by Vivendi Universal Education France, this software helps in administrative drafting by a series of indications concerning complex words, too long sentences, the use of acronyms, normative references and courtesy phrases.

³⁷⁶ MONTIN, *Legistics and the Quality of Legislation in France*, supra fn. 368.

³⁷⁷ See at:

<http://www.ac-limoges.fr/IMG/pdf/Guide_de_la_redaction_administrative.pdf>;

<http://www.dglff.culture.gouv.fr/terminologie/rediger_simplement.pdf>.

³⁷⁸ See at: <<http://www.lerobert.com/dictionnaires-thematiques/collection-le-petit-decodeur/le-petit-decodeur-de-ladministration.html>>.

³⁷⁹ COMITÉ D'ORIENTATION POUR LA SIMPLIFICATION DU LANGAGE ADMINISTRATIF, *Le lexique des termes administratifs*, Paris, 2005.

6. Critical aspects and emerging trends

To conclude, our analysis of the literature on legal drafting in France has confirmed that centralised control over proposed legislation, like the control exercised by the Secrétariat général du gouvernement (SGG) and the Conseil d'État, can ensure the quality of legislation. The SGAE (General Secretariat for European Affairs) holds centralised control over the full implementation of EU directives in French law.

Our analysis has also revealed some persistent problems, such as a bias in favour of new legislation instead of other forms of government action, resulting in 'normative inflation', that is to say, a rapid increase in the number of regulations produced annually. This is regularly criticised by the Conseil d'État as one of the most serious problems of the French regulatory management system. Finally, the different types of legal texts are extremely complex and formal in style.

Notwithstanding the efforts previously described, the administration still does not manage to avoid the use of bureaucratic language when it communicates with the public. On the contrary, the drafters of administrative acts, far from expressing themselves in an accessible manner, seem to over-identify with their administrative identity, their different status and their distinctive role. Civil servants still reveal 'cultural resistance' to modifying their technical and bureaucratic language and to adopting clearer language for the public.³⁸⁰

Today, French authorities are relaunching a campaign for *modernisation de l'action publique*³⁸¹ and the simplification of legal rules.³⁸² In addition, there is a trend towards providing online legal databases accessible to the public. This service started in 2002, pre-dating implementation of the European Directive on the use of public sector data. Doubtless, this field is a very rich incubator of ideas for the public administration and the editors of these legal databases are, to the best of their abilities, trying to use new technologies.³⁸³

³⁸⁰ ENCREVÉ, Pierre, 'La simplification du langage administratif', *La Jaune et La Rouge. La revue de la communauté polytechnicienne*, No 595/2004, available at: <<http://www.lajauneetlarouge.com/article/la-simplification-du-langage-administratif>>.

³⁸¹ See at: <<http://www.gouvernement.fr/premier-ministre/jean-marc-ayrault-lance-le-chantier-de-la-modernisation-de-l-action-publique>>; <<http://www.gouvernement.fr/premier-ministre/remise-du-rapport-sur-l-inflation-normative#tab2t>>; <http://www.gouvernement.fr/sites/default/files/fichiers_joints/03.26_rapport_de_la_mission_de_lutte_contre_l'inflation_normative.pdf>.

³⁸² See at: <http://www.gouvernement.fr/sites/default/files/fichiers_joints/dp-cimap_18_decembre_2012.pdf>.

³⁸³ COTTIN, Stéphane, 'The Public Service of Dissemination of the French Law on the Internet', *Acta Universitatis Sibiu (Romania)*, (supp. 2005), pp. 115-140, available at SSRN: <<http://ssrn.com/abstract=1032198>>.

Chapter VII - Italy

1. Introduction³⁸⁴

In Italy, the quality of legal and administrative drafting has come under intensive scrutiny, at national and especially regional level. However, perhaps unsurprisingly, the gap between theory and practice is still significant. Criticisms of the incomprehensibility of the law have been voiced by both lawyers and linguists. Ainis³⁸⁵ and De Mauro³⁸⁶ both comment on the absurd complexity of Law 662 of 23 December 1996, Article 1 which contains 23,510 words. On the other hand, the clarity of the language of the Italian Constitution has been commended by many scholars.³⁸⁷

The sections below aim to highlight the most important achievements in research and policy on the monitoring of drafting quality, with the exclusion of multilingual drafting contexts, such as Alto-Adige, which is covered in detail by the questionnaire, and Valle d'Aosta.³⁸⁸ The legal regime of bilingualism (*bilinguismo normativo*) in Italy, under which all legislation must be drafted in two languages, concerns these two regions only.

2. Background and sources

Interestingly, Italian legal and administrative language originates in a translation process. As noted by P. Fiorelli,³⁸⁹ medieval notaries, besides drafting reports, statutes and other writings in Latin, had the task of illustrating the content of these documents to their clients, such as merchants, who did not know Latin. Looking at the Latin text, the notary would paraphrase terms and expressions and provide a direct translation into the vernacular in his public reading of the documents. Such public readings in the vernacular were transcribed, and eventually adopted as trustworthy,³⁹⁰ the last Latin statute dates back to 1566. This is how the core Italian legal vocabulary was formed: either via a direct derivation from Latin: *comitatus* > *contado*, *recidere* > *ricevere*, *datio* > *dazione*; or via a change in a suffix: *camerarius* > *camarlingo*, *castrum* > *castello*; *extimatio* > *stima*; or as a complete innovation: *curia* > *corte*, *solvere* > *pagare*.³⁹¹

Later, other models and sources enriched Italian legal and administrative language: French, mainly through legislation, in the 19th century; German, mainly through the doctrine, at the beginning of the 20th century.³⁹²

³⁸⁴ This survey benefited from suggestions and cooperation by a group of specialists actively involved in this field: Pietro Mercatali (AquAA), Francesco Romano (AQuAA), Raffaele Libertini (ITTIG CNR), Roberto D'Orazio (Camera dei Deputati).

³⁸⁵ AINIS, Michele, *La legge oscura*, Laterza, Roma, 1997.

³⁸⁶ DE MAURO, Tullio, 'Obscura lex sed lex? Riflettendo sul linguaggio giuridico', in BECCARIA, Gian Luigi & MARELLO, Carla (eds.), *La parola al testo. Scritti per Bice Garavelli Mortara*, Edizioni dell'Orso, Alessandria, 2002, pp. 147-159.

³⁸⁷ CIGNETTI, Luca, 'Sfondi e rilievi testuali nella Costituzione della Repubblica italiana' in FERRARI, Angela (ed.), *Rilievi. Le gerarchie semantico-pragmatiche di alcuni tipi di testo*, Cesati, Florence, 2005, pp. 85-134, at pp. 89 ff.; DE MAURO, Tullio, 'Introduzione', in DE MAURO, Tullio (ed.), *Costituzione della Repubblica Italiana* (1947), UTET, Turin, 2006, pp. vii-xxxii; ID., '1947. Costituzione' in ARCANGELI, Massimo (ed.), *Itabulario*, Carocci, Rome, 2011, pp. 184-186; LESO, Erasmo, *27 dicembre 1947: Lingua della Costituzione e lingua di tutti*, forthcoming; KORZEN, Iorn, 'Lingua, cognizione e due Costituzioni' in VISCONTI, Jacqueline (ed.) *Lingua e diritto*, LED, Milan, 2010, pp. 163-202, at pp. 180 ff.

³⁸⁸ Cf. IORIATTI, Elena, 'Multilingualism, Legal Drafting and Interpretation of Bilingual Law in Italy', *Language & Law*, Vol. 1 (2012), available at: <<http://www.languageandlaw.de/volume-1/3341>>.

³⁸⁹ FIORELLI, Piero, *Intorno alle parole del diritto*, Giuffrè, Milan, 2008, at p. 20.

³⁹⁰ FIORELLI, *Intorno alle parole del diritto*, supra fn. 389, at pp. 20-21, 77 ff.

³⁹¹ FIORELLI, *Intorno alle parole del diritto*, supra fn. 389, at p. 307; cf. also BAMBI, Federigo, *Una nuova lingua per il diritto*, Giuffrè, Milan, 2009.

³⁹² Cf. e.g. SACCO, Rodolfo, 'Lingua e diritto', *Ars interpretandi*, Vol. 2000, Iss. 5, 2000, pp. 117-134; Pozzo, Barbara & BAMBI, Federigo, *L'italiano giuridico che cambia*, Accademia della Crusca, Florence, 2012.

An invaluable resource for studying the development of and key-policies in normative drafting is the *Bibliografia del Parlamento Repubblicano (BPR)*, which can be accessed via the portal of the Camera dei Deputati: <<http://bpr.camera.it/bancadati.asp>>. This immense archive of documents includes a section on legislative drafting (D51) containing over 600 works, often downloadable from the site.³⁹³

Another important resource is the portal <<http://www.tecnichenormative.it/>> by Pasquale Costanzo, Professor of Constitutional law at the University of Genoa. Here, the *Code of drafting* provides an extensive historical account of normative drafting both at national and regional level, and contains key documents, such as M. Longo's *Per la fondazione di una scienza della legislazione*, the Giannini Report, the Barettoni Arleri Report and the Cassese Report (*vide infra*).

Another important source of information is in the Rete di Eccellenza dell'Italiano istituzionale (see above references to REI) and Proceedings of the Symposium on the quality of normative drafting: *Il linguaggio e la qualità delle leggi. Le regole per la redazione dei testi normativi a confronto*.³⁹⁴

The key actions and actors in quality control policies, at both national and regional level, are described below.

3. Policy, legal instruments, reforms

National level

Although interesting reflections on legislative drafting date back at least to 1861, when the legal landscape of Italy was strongly influenced by regional differences, and continue in the following decades,³⁹⁵ the beginning of institutional involvement in the problem of the quality of legal drafting can be seen in the 1978 *mozione* of the Consiglio superiore della pubblica amministrazione and in the 1979 report by the Ministro per la funzione pubblica, Massimo Severo Giannini, on the main problems of public administration. In 1980 the Commissione di studio per la semplificazione delle procedure e la fattibilità e applicabilità delle leggi was created, led by Barettoni Arleri, with a focus on both substantial and formal drafting. In their 1981 report the Commission refers to difficulties in the intelligibility of legislation ('*difficoltà dell'intelligibilità dell'enunciato normativo*').

A milestone resulting from the work of both Minister Giannini and the Commission are the 1986 *Circolari* by the Presidenti of Camera, Senato and Consiglio dei Ministri, containing a set of rules and recommendations to improve drafting of legal texts.³⁹⁶ The context in which this text was produced is very different from today: then, law was almost uniquely made within Parliament.

Principles currently in use for drafting laws at State level are contained in the *Circolari* adopted on 20 April 2001 by the Presidenti of the Camera dei Deputati, Senato della Repubblica and Presidenza del Consiglio dei Ministri. A more detailed guide was adopted on 2 May 2001, specifying formal features of normative texts, partitions and cross-referencing formulae. The guide contains both *regole* (more binding) and *raccomandazioni* (applicable when appropriate); special care is paid to precision, correctness and linearity of both syntactic and logical structure, as well as to accuracy

³⁹³ Cf. also: D'ORAZIO, Roberto & VENTURINI, Fernando (eds.), *BPR: bibliografia del Parlamento repubblicano: 1948-2000*, Camera dei Deputati, Roma, 2002.

³⁹⁴ <http://ec.europa.eu/dgs/translation/rei/documenti/giornate/7rei_atti_integrali.pdf>.

³⁹⁵ Cf. e.g. RUINI, Meuccio, *La funzione legislativa: Tecniche delle leggi e dei lavori parlamentari*, Giuffrè, Milan, 1953; CARNELUTTI, Francesco, 'Tecnica ed arte legislativa', *Diritto dell'economia*, Vol. 3, Iss. 3, 1957, pp. 263-270.

³⁹⁶ COSTANZO, Pasquale (ed.) *Codice di drafting*, Book I, available at: <<http://www.tecnichenormative.it/libro1.html>>.

of internal and external references. The handbook is grounded in a radically different legislative setting from the 1986 *Circolari*: now law is made not only in Parliament, but increasingly, especially for sectorial legislation, in the Government and the Regions, although the 2001 *Circolare* was enacted a few months before the reform of Title V of the Constitution.³⁹⁷

Overall, the 2001 *Circolare* is a re-working of the 1986 document. Recommendations include terminological harmonisation; uniformity in the use of verbs; avoidance of modal verbs such as *dovere* (must) except in specific cases, and a preference for the indicative present as a way of expressing obligation; avoidance of passive forms and double negatives; avoidance of neologisms and anglicisms, as far as possible accompanying them if necessary by translation or definition; clarification of ambiguous words or constructions; using punctuation and word order (areas given special attention) as instruments to facilitate comprehension, clarifying syntactic relations and resolving ambiguities without altering the approved text. An example is provided by attention to collocations: instead of *lesione alla persona di lieve entità*, better solutions would be *lesione di lieve entità alla persona* or *lesione personale di lieve entità*.

Other useful tools for legal drafting are databases of statutes and case-law, in particular: *Leggi d'Italia*³⁹⁸ and *Normattiva*.³⁹⁹

A significant moment in the history of Italian normative drafting is the creation of the Comitato per la legislazione within the lower Parliament Chamber (Camera dei Deputati) in 1997, a committee composed in equal proportion by MPs of the governing and opposition parties, with the supporting Osservatorio sulla legislazione. Their reports provide a picture of the problems related to legal drafting in the past fifteen years.⁴⁰⁰

In the same year (10 January 1997), the *Circolari* on the *istruttoria legislativa* within the Parliamentary Commissions were adopted by the Presidents of both Chambers. In this document the importance is recognised of attempting to counter fragmentation and lack of clarity in drafting legislation in the interest of both citizens and institutions; cp.: <<http://leg16.camera.it/116?conoscereilacamera=82>>.

Articles dealing with aspects of normative drafting, to mention a few, are also contained in the following laws: 212/2000; 340/2000; 50/1999, on AIR (Analisi di impatto della regolazione, Regulatory Impact Analysis) and 246/2005 for VIR (Valutazione di impatto della regolazione, Regulatory Impact Evaluation).

Finally, the *Servizio per i testi normativi*, composed of both lawyers and linguists with experience in the legislative field, may suggest formal modifications to bills (*progetti di legge*) proposed to the Camera dei Deputati; the *Servizio* is also in charge of the final revision of bills after discussion in the *Assemblea*, of proofreading and of transmission to the *Senato* after approval by the proponents and original authors of the text (MPs or Government). A similar procedure is in place within the *Senato*.

Regional level

A strong reaction to the problems raised by the Giannini report and the Barettoni Arleri Commission came at regional level.

³⁹⁷ DI PORTO, Valerio, Proceedings from conference *Il linguaggio e la qualità delle leggi* (Rome, 24 April 2009): http://ec.europa.eu/dgs/translation/rei/documenti/giornate/viirei_di_porto.pdf.

³⁹⁸ <<http://online.leggiditalia.it/>>.

³⁹⁹ <<http://www.normattiva.it/>>.

⁴⁰⁰ <<http://www.camera.it/385>>; cf. also DUILIO, Lino, Proceedings from conference *Il linguaggio e la qualità delle leggi* (Rome, 24 April 2009): <http://ec.europa.eu/dgs/translation/rei/documenti/giornate/viirei_duilio.pdf>.

One of the most important initiatives was the publication of the text *Regole e suggerimenti per la redazione dei testi normativi* (1991) by the Osservatorio legislativo interregionale under the lead of U. Rescigno, immediately adopted at regional level, but not at national level.⁴⁰¹

A second relevant element is the attention given to drafting issues within the new regional Statutes following the adoption of constitutional laws modifying Title V of the Constitution. Some Regions now explicitly state in their Statutes that norms should conform to principles of good drafting, such as clarity and simplicity, and should be subject to both *ex ante* and *ex post* evaluation:⁴⁰² Art. 40 St. Abruzzo; Art. 29 St. Campania; Art. 36 St. Lazio; Art. 44 Lombardia; Art. 34 St. Marche; Art. 48 St. Piemonte; Art. 37 St. Puglia; Art. 44 St. Toscana, Art. 61 Umbria.

This great interest and activity in normative drafting is accompanied by great effort in training personnel through seminars and training.

A third milestone is the Tuscan regional law on legislative quality (22 October 2008, No 55), which is unique both at regional and national level.⁴⁰³ One of the most innovative aspects concerns reasons for proposing legislation, which should be explained clearly to citizens, a practice which is well-known in the UE context, but unknown in Italy both at regional and national level. According to Art. 9, such motivation should be placed in a preamble that is part of the legislative text.

Other significant initiatives concern the language of administration: the 1993 *Codice di stile delle comunicazioni scritte ad uso delle amministrazioni pubbliche* (1993), by S. Cassese;⁴⁰⁴ the 2002 Directive by the Ministro della Funzione Pubblica for the simplification of the language used in public administrations;⁴⁰⁵ the 2001 *Guida alla redazione degli atti amministrativi. Regole e suggerimenti* by CNR-ITTIG and Accademia della Crusca.⁴⁰⁶

Whereas drafting of primary legislation has mainly been the concern of lawyers,⁴⁰⁷ linguists, as noted by B. Mortara Garavelli,⁴⁰⁸ have taken a keen interest in drafting problems related to the language of administration. Examples are T. De Mauro and his research group⁴⁰⁹ and Piemontese⁴¹⁰ who elaborated the Gulpease index for calculating the readability of such texts.

⁴⁰¹ The *Handbook*, presently in its third edition (2007), is found at: <<http://www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/Manuale/indice.asp>>; see also: <<http://www.tecnichenormative.it/draft/regionale2.pdf>>. A detailed description of both the text and its genesis is provided by PARADISO, Carla, Proceedings from conference *Il linguaggio e la qualità delle leggi* (Rome, 24 April 2009) at: <http://ec.europa.eu/dgs/translation/rei/documenti/giornate/viirei_paradiso.pdf> who also lists a series of important conferences and seminars on drafting laws.

⁴⁰² COSTANZO, *Codice di drafting*, *supra* fn. 396, at Book 3.1.

⁴⁰³ Detailed discussion is provided by LIBERTINI, Raffaele: Proceedings from conference *Il linguaggio e la qualità delle leggi* (Rome, 24 April 2009), at: <http://ec.europa.eu/dgs/translation/rei/documenti/giornate/viirei_libertini.pdf>.

⁴⁰⁴ <<http://www.funzionepubblica.gov.it/media/875448/codice%20di%20stile%20cassese-1994.pdf>>.

⁴⁰⁵ <<http://www.funzionepubblica.gov.it/media/342424/direttiva.pdf>>.

⁴⁰⁶ <<http://www.ittig.cnr.it/Ricerca/Testi/GuidaAttiAmministrativi.pdf>>.

⁴⁰⁷ Cf. e.g. CASSESE, Sabino, 'Introduzione allo studio della normazione', *Rivista trimestrale di diritto pubblico*, 1992, Iss. 2, pp. 307-330.

⁴⁰⁸ MORTARA GARAVELLI, Bice, *Le parole e la giustizia. Divagazioni grammaticali e retoriche su testi giuridici italiani*, Einaudi, Turin, 2001, at p. 49; EAD., 'La lingua delle Costituzioni italiane 1848-2011' *La Crusca per Voi: Foglio dell' Accademia della Crusca*, Vol. 43, 2011, pp. 4-7; EAD., 'L'italiano della Repubblica: caratteri linguistici della Costituzione' in COLETTI, Vittorio (ed.), *L'italiano dalla nazione allo Stato*, Le Lettere, Florence, 2011, pp. 211-218.

⁴⁰⁹ Cf. e.g. DE MAURO, Tullio & VEDOVELLI Massimo, *Dante, il gendarme e la bolletta. La comunicazione pubblica in Italia e la nuova bolletta Enel*, Laterza, Rome, 1999.

⁴¹⁰ PIEMONTESE, Maria E., 'Leggibilità e comprensibilità delle leggi italiane. Alcune osservazioni quantitative e qualitative', in VERONESI, Daniela (ed.), *Linguistica giuridica italiana e tedesca/Rechtlinguistik des Deutschen und Italienischen*, Unipress, Padova, 2000, pp. 103-118.

Other important actors and tools at regional level are the *Portale per la produzione e l'accesso agli atti dei Comuni e degli altri Enti Locali della Toscana*⁴¹¹ and the Associazione per la qualità degli Atti Amministrativi,⁴¹² founded by the ITTIG-CNR and the Accademia della Crusca and based at the ITTIG-CNR. A very useful list of handbooks of drafting can be found at the Rete per l'eccellenza dell'italiano istituzionale (REI) portal.⁴¹³

4. Critical aspects and emerging trends

A first urgent issue is the harmonisation of drafting rules, with the aim of overcoming differences between national and regional levels.⁴¹⁴

A second issue concerns the impact of digital legal information and current technological progress that is shaping the law, starting from *legimatica*⁴¹⁵, to current research on the implications of free access to law and on computational implementations, such as ontologies, that is to say explicit formal specifications of a common conceptualisation with term hierarchies, relations and attributes that enables reuse of such knowledge for automated applications.⁴¹⁶

Other crucial critical aspects are the lack of systematic practices and policies in impact evaluation. There is a lack of structured and permanent monitoring on compliance with State and regional drafting rules, in order to verify whether approved provisions do meet the requisites of clarity and precision. At national level, such activity is episodically carried out by the Comitato della legislazione della Camera; at regional level, by offices in Regions most attentive to drafting issues. Yet these are haphazard moments that do not form part of a regular practice based on precise quality criteria, such as those developed in Tuscany.

There is also no permanent training programme for functionaries in charge of legal drafting either at regional or national level; such training should crucially involve the presence of linguists.

Finally, politicians should not counter efforts made towards good legal drafting by presenting *maxi-emendamenti* and articles with hundreds of sections and sub-sections referring to regulations that are impossible to reference, as the sections are not organised under an appropriate title. This violates Art. 72 of the Italian Constitution, which states that legislative acts must be approved article by article, each article referring to one topic identified by the title of the article.

⁴¹¹ <<http://www.pacto.it/>>.

⁴¹² <<http://www.aquaa.it/>>.

⁴¹³ <http://ec.europa.eu/dgs/translation/rei/redazione/drafting_it.htm>.

⁴¹⁴ Cf. DI PORTO, *supra* fn. 413.

⁴¹⁵ MERCATALI, Pietro, BIAGIOLI, Carlo, SARTOR, Giovanni (eds.), *Legimatica: informatica per legiferare*, ESI, Napoli, 1995.

⁴¹⁶ TISCORNIA, Daniela (ed.), *The Multilanguage Complexity of European Law: Methodologies in Comparison*, European Press Academic Publishing, Florence, 2007; and publications by the ITTIG: <<http://www.ittig.cnr.it/EditoriaServizi/AttivitaEditoriale/IndiceGenerale.php?idx=4>>.

Chapter VIII - Switzerland

1. Background

The Swiss Confederation was founded in 1291, when the cantons of Uri, Svitto and Untervaldo signed an alliance to protect themselves through mutual assistance from external threats. During the 14th and 15th centuries other communities joined the original alliance allowing the Confederation to strengthen enough to gain relevance in European wars that took place in this period. 'Expansion proceeded in several ways. In some cases new members joined the Confederation as equals; other communities or territories came by purchase or conquest. The members of the Confederation defended their increasing power and independence for two hundred years against a variety of opponents.'⁴¹⁷ During the Peace of Westphalia in 1648, Switzerland's independence from the Holy Roman Empire was formally recognised for a short period of time until 1798 when the French army conquered Switzerland, and the old Confederation collapsed. This made way for the creation of the Helvetic Republic, under French influence, taking the form of an imposed constitution. In 1803 Napoleon dictated the *Act of Mediation* to Switzerland.⁴¹⁸

From a linguistic perspective, Napoleon established the principle of linguistic equivalence. After France's defeat, the old Confederation was 'restored' in 1815, with a return to a German monolingualism. After a period of unrest, civil war broke out in 1847 when some of the Catholic cantons tried to set up a separate alliance (the Sonderbundskrieg). At this time the Swiss drew up a Constitution that was largely inspired by the American format. The new Constitution provided for a federal layout and was drawn up by the central authority as a *Confederation*, rather than a nation. The rights of the Swiss people have been guaranteed in the framework of different cantonal constitutions. In concession to those who favoured the power of the cantons (the Sonderbund Kantone), the National Assembly was divided between an upper house (the Swiss Council of States, with two representatives per canton) and a lower house (the National Council of Switzerland, with representatives elected from across the country). Two presidents, one French-speaking and one German-speaking, directed the Commission charged with preparing a constitutional text. Linguistic issues were settled in Art. 109 of the 1848 Constitution, which established that the three principal languages of Switzerland – German, French and Italian – were national languages of the Swiss Confederation, meaning that the Confederation was charged with bearing the translation costs of official texts.⁴¹⁹

An important innovation gave citizens the possibility of changing the Constitution by referenda. In 1938, the national languages were officially recognised.⁴²⁰ A fourth language, Romansh (Rumantsch, Romontsch, Rumauntsch, Romancio) struggles to obtain equal status with other languages (see the Swiss replies to questionnaire). Romansh is a Romance (or Neo-Latin) language. 'It developed as the Vulgar Latin of the Roman invaders merged more and more with the existing languages of the peoples from today's canton of Grisons.'⁴²¹ Switzerland is organised in three political

⁴¹⁷ See <http://www.swissworld.org/en/history_old/middle_ages/middle_ages_general_overview/>.

⁴¹⁸ For an overview of the history of the Swiss confederation, see *The Swiss Confederation: a brief guide 2013*, available at: <<http://www.ch.ch/ebuku/index.html?lang=en>>.

⁴¹⁹ Cf. WIDMER, Jean, 'Constitution d'une Suisse plurilingue' in WIDMER, Jean, et al. (eds.), *La diversité des langues en Suisse dans le débat public. Une analyse socio-historique des transformations d'ordre constitutionnel des langues de 1848 à 2000*, 2nd ed., Peter Lang, Bern, 2005, pp. 1-30.

⁴²⁰ See Art. 116 of Constitution of 1938.

⁴²¹ 'According to the traditional scientific concept (now rejected by some linguists), it belongs to the Rhetoromance languages (together with Dolomitic Ladin and Friulan)'. See Point 13 of the Report of the Committee of Experts on Switzerland of 26 October 2001, presented to the Committee of Ministers of the

levels: the communes, cantons and confederation. The aim of the new Constitution was to provide Switzerland with a more centralised government that would assume many of the rights and duties that formerly belonged to the cantons. In the aftermath the Assembly passed a series of laws centralising and unifying the administration. The most important juridical innovations were the establishment of an elected two-chamber Federal Assembly and Federal Council - the government - consisting of seven members with a rotating presidency. The new Constitution gave citizens a number of rights and freedoms, including freedom of the press, freedom of religion and the right to choose their place of residence.

A revision of the Constitution was passed in 1974. In his message to General Assembly in 1973, the Conseil Fédéral summarised the role of language in Switzerland as:

'La Confédération ne repose donc pas sur une unité linguistique ou ethnique; notre communauté étatique est encore moins une association de groupes linguistiques. La Suisse est davantage une fédération d'états historiques, les cantons, dont les frontières ne sont ni linguistiques ni confessionnelles.'

Since then, constitutional provisions have been changed minimally. On a basic level, it established the principle that all new legislation can be put to a nationwide vote if a sufficient percentage of citizens demand it. The Swiss political culture of direct democracy certainly explains why issues of readability, clarity and access to justice are not as in demand as in other communities. As the example of the civil code demonstrated, the legibility requirement has been a fundamental feature of Swiss legislative culture, particularly when considered in comparison with the experiences of other nations.⁴²² This remains a cornerstone of the Swiss political system today.

In 1999, the Swiss people and the cantons approved the totally revised Federal Constitution, which entered into force in 2000. Currently, Switzerland is divided into 26 cantons and 2495 communes. Accordingly to the Federal Constitution, all cantons have equal rights, and retain a high degree of independence, including in matters that concern education. Undoubtedly, the territoriality principle is central to the question of cohesion:⁴²³ cantons are entitled to decide on the official language for schooling and citizen interaction.⁴²⁴ In fact, through a regime of cantonal sovereignty, each linguistic group has control over public schools and media, and is permitted to use the language of the majority as the official language of the canton. However, the canton is also mandated to apply the non-discriminatory principle within the canton so as to ensure that speakers of other languages are not discriminated against simply because they belong to other linguistic groups.

Council of Europe (in accordance with Article 16 of the European Charter for Regional and Minority Languages), available at <<https://wcd.coe.int/ViewDoc.jsp?id=233617&Site=CM>>.

⁴²² FLÜCKIGER, Alexandre & DELLEY, Jean-Daniel, 'L'élaboration rationnelle du droit privé : de la codification à la légistique', in CHAPPUIS, Christine, FOËX, Bénédicte, THEVENOZ, Luc (eds.), *Le législateur et le droit privé, Mélanges en l'honneur de Gilles Petitpierre*, Schulthess, Genève, 2006, pp. 123-143.

⁴²³ PAPAUX Alexandre, 'Droit des langues en Suisse: état des lieux', *Swiss Political Science Review*, Vol. 3, No 2, 1997, pp. 3-6.

⁴²⁴ See STOTZ, Daniel, 'Breach of peace: struggles around multilingualism Switzerland', *Language Policy*, Vol. 5, Iss. 3, 2006, pp. 247-265.

Legislative Framework concerning the use of Languages in the administration

Article 116 of the Swiss Constitution of 1996.

Articles 4 and 70 of the Swiss Constitution of 2000.

Federal law of 5 October 2007 on national languages and comprehension between linguistic communities, entered into force on 1 January 2010.

The Federal law of 6 October 1995 on financial assistance for the protection and promotion of the Romansh and Italian languages and culture (RS 441.3)

Federal law of 18 June 2004 on official publishing, entered into force on 1 January 2005 (L. Publ, RS 170.512).

Federal law of 24 March 2006 on Radio and Television, entered into force on 1 April 2007 (LRTV, RS 78.40).

Federal law of 24 March 2000 on federal official, entered into force on the 1 January 2001 (LPers 172.220.1).

Federal law of 21 March 1986 on Official Publications (RS 170.512).

Ordinance of 14 November 2012 on linguistic services of Federal Administration entered into force on the 1 January 2013 (RS 172.081).

Ordinance of 4 June 2007 on national languages and comprehensions between linguistic communities, entered into force on the 1 July 2010 (RS 441.1).

Instruction of Federal Council of 22 January 2003 concerning the promotion of plurilingualism in public administration. (RS 172.220.111.3).

Several sectorial laws and regulations at cantonal level in the fields of education, justice, culture, media.

As already mentioned, Switzerland is comprised of three main linguistic and cultural regions: German, French, and Italian, to which the Romansh-speaking valleys are added. This means that Swiss people, though predominantly German-speaking, do not form a nation in the sense of a common ethnic or linguistic identity. 'Under Article 7 of the Act on the organization of the government and public administration, the procedure for the preparation of legal acts is launched by the federal government Bundesrat, in charge of accepting the justification of the bill and of submitting to the federal assembly, which consists of the two chambers of the Parliament. Preparatory work is done by the administration or it is commissioned to an expert, an *ad hoc* working group or a standing committee. Usually it is up to a Ministry of the Bundesrat to choose.'⁴²⁵ During consultations, texts are available in French and German. The *Legal and linguistic service* of the Federal Chancellery may be consulted during preparatory procedures. Motions of the *Bundesrat* and administrative bodies are translated into German and French. Finally,⁴²⁶ the text is translated into the remaining three official languages and voted upon.

In general, most texts are drafted in German (See questionnaire's replies). 'Central language services are responsible for the Italian section of texts proposed by the

⁴²⁵ Cf. *Study on Lawmaking in the EU Multilingual Environment*, supra fn. 150.

⁴²⁶ *Study on Lawmaking in the EU Multilingual Environment*, supra fn. 150.

Bundesrat to be published in the Swiss Official Gazette, while Ministry decrees are translated by Ministries themselves and revised by central services.’ The Public Administration Drafting Committee (*Verwaltungsinterne Redaktionskommission*, ViRK, also *Commission interne de rédaction*, or *Commissione interna di redazione*, CIR) is an interdisciplinary and interdepartmental organ composed of linguists from the Central linguistic Service of the Federal Chancellery and lawyers from the Federal Office of Justice. This composition guarantees interdisciplinary synergy between legal knowledge and linguistic ability while ensuring that both perspectives are taken into account. The ViRK has the task of examining all legal texts that are prepared under the federal administration, checking documents meet standards of comprehensibility, correctness and consistency. This organ is responsible for examining the linguistic quality and drafting of legal acts in German and French and, in some cases, Italian. The ViRK examines whether the designs of legislation comply with the principles of comprehensibility and linguistic quality, acting as first reader and conducting an impartial assessment of the texts. An independent examination of this nature is important because the texts are usually written by experts of the subject-matter that are not especially trained in drafting legal documents.

A further issue that is connected to the public is that technical requirements must be coupled with simplicity, as provisions address both citizens and authorities. Legal terms, typical legal expressions, technical terms, intra-textual and extra-textual connections, idioms and redundancies⁴²⁷ make multilingual translation particularly difficult:⁴²⁸ the interpretation given to words may vary according to different cultural contexts. The Federal Office of Justice offers drafting training to technical experts who work on legal documents, with only German courses regularly available. In this context, two approaches can be outlined:

a) For important pieces of legislation (the Federal Constitution, federal decrees, laws) the ViRK uses a procedure of co-drafting: texts are examined in German and French, and in rare cases, Italian. They are processed and compared in parallel to guarantee the equivalence of both versions and confirm that the use of formulations is suited to the respective linguistic usage.⁴²⁹

b) With regard to the remaining pieces of legislation, the ViRK examines the drafts in the original language, with the comparison with other language versions occurring later in the review.

In both cases the ViRK must always be conferred with at the final stage of drafting at the consultation office on legislative acts. However, it can often be useful to contact it as early as possible, to discuss difficulties and problems that can arise in drafting a legal text. As a rule, once the ViRK examination is completed, it is advisable to carry out a joint meeting between the committee and the Office responsible for the dossier to discuss open issues and arrive at solutions that meet the requirements of both parties.⁴³⁰ Concerning the activities of public bodies not covered by translation

⁴²⁷ EGGER, Jean-Luc, ‘Prescrivere la prescrizione: ridondanze e ambiguità della legge’, *LeGes*, Vol. 2003, Iss. 1, 2003, pp. 149-166.

⁴²⁸ EGGER, Jean-Luc, ‘Prolegomeni a un approccio traduttivo dei testi normative’, *LeGes*, Vol. 2006, Iss. 2, 2006, pp. 173-184.

⁴²⁹ The Swiss translations of the United Nations Convention for the International Sale of Goods, 1980 (CISG) are interesting as Italian and German are not official languages of the CISG. See POIKELA, Teija, ‘Conformity of Goods in the 1980 United Nations Convention of Contracts for International Sale of Goods’, *Nordic Journal of Commercial Law*, Iss. 2003/1, 2003, available at <http://www.njcl.fi/1_2003/article5.pdf>. The unofficial German translation was prepared with the aim of sharing it among the German-speaking countries of the CISG. The joint translation was welcomed and praised since it eliminated the situation of having different versions of the document in the same language. Without a joint translation the law that was applied in some parts of Switzerland could have differed from the law applied in Germany. BERGSTEN, Eric, ‘Methodological Problems in the Drafting of the CISG’, in JANSSEN, André & MEYER, Olaf (eds.) *CISG Methodology*, Sellier European Law Publishers, Munich, 2009, pp. 5-32.

⁴³⁰ <<http://www.bk.admin.ch/themen/lang/04921/05462/index.html?lang=de>>.

services, co-drafting is preferred over translation of the text by a native speaker of the administration staff.

A Drafting Committee (Parlamentarische Redaktionskommission-PRK) checks the wording of the bills and legal texts and confirms the final version before the final vote in the parliamentary procedure. On occasion, ViRK representatives will assist the drafting committee. Before official publication, the text is scrutinised by the legal and linguistic service with special focus on drafts that are not co-drafted by the Verwaltungsinterne Redaktionskommission. Not all the documents are translated into Romansh (Rumantsch) or English. The Federal Chancellery also provides services in lawmaking with standardised legal document models. This is considered a very helpful tool in the harmonisation of style and structure of nearly all administrative documents.⁴³¹ Special attention is dedicated to gender equality in the language used, as emphasised by Article 7 of the Federal Law on national languages and comprehension between linguistic communities.⁴³²

As regards case-law, the Federal Tribunal, while recognising that language freedom is a constitutional right, even though it is not explicitly written, has adopted a comprehensive approach in recognising the cantons' linguistic autonomy.⁴³³

In the context of public law remedies for violations of constitutional rights, the Federal Tribunal did not void a decision by the President of the Tribunal of Fribourg refusing a German language pleading before the Court in a French district.⁴³⁴ Despite the fact that the City of Fribourg is predominately populated by German-speaking people, the French district has its own rules. In this case, the applicant was asked to provide a translation.

Additionally, the Federal Tribunal annulled a cantonal decision that refused to deal with an application drafted in the canton's language as the possibility to use a translation was not granted.⁴³⁵ On the other hand, the Federal Tribunal did not annul a decision of the Zurich Tribunal preventing francophone children from attending a French school for more than two years, under the principle of territoriality expressed at Article 116 of the Federal Constitution and on the basis of a supposed threat to the German language.⁴³⁶

Concerning the relation between the public administration and citizens, where it is possible, the language of the citizen is used.

The equal status of languages also plays an important role in case-law. To interpret provisions, courts begin with the literal meaning.⁴³⁷ This means that throughout the process they also have to examine which language version is closer to the true meaning of the provision, along with other systematic, teleological and historical

⁴³¹ <<http://www.bk.admin.ch/dokumentation/sprachen/04850/05005/index.html?lang=it>>.

⁴³² See *Guida al pari trattamento linguistico di donna e uomo*, available in Italian only at: <www.bk.admin.ch/dokumentation/sprachen/04850/05005/index.html?lang=it>.

⁴³³ DUTOIT, Bernard, 'Droit et plurilinguisme en Suisse', in *Travaux du 6ème Colloque international de droit comparé*, Éditions de l'Université d'Ottawa, Ottawa, 1969, pp. 39-58.

⁴³⁴ Arrêts du Tribunal fédéral suisse, Recueil officiel (ATF), 106 Ia 299.

⁴³⁵ Arrêts du Tribunal fédéral suisse, Recueil officiel ATF 102 Ia 35.

⁴³⁶ Arrêts du Tribunal fédéral suisse ATF. 91 I 480. HAEFLIGER, Arthur, 'Die Sprachenfreiheit in der bundesgerichtlichen Rechtsprechung', in ZWAHLEN, Henri (ed.), *Mélanges Henri Zwahlen*, Association Henri Zwahlen pour le développement du droit administratif et du droit fiscal, Lausanne, 1977, pp. 77-86, at p. 78. In this context, in case *Marly* of 4 March 1993, the Federal Tribunal did not recognise the right of German children to be provided with German education in a French-speaking 'commune', allocating the fee on the French community. 'La menace éventuelle que le règlement attaqué et la gratuité accordée aux enfants de langue allemande pour suivre leur classes à Fribourg dans leur langue maternelle feraient peser sur le caractère majoritaire du français dans la commune de Marly relève de l'intérêt général qui appartient aux autorités cantonales de sauvegarder -, mais ne porte pas directement atteinte à la liberté de la langue de la recourante'. Cfr. TF C.R.J. (*Marly*) 2.P.51/1992 consid. 2.

⁴³⁷ KRAMER, Ernst A., *Juristische Methodenlehre*, 3rd edition, Stämpfli, Bern, 2010, at p. 57.

arguments. Although Italian and French are translated from German, there is no means that prevents judges from deciding that the Italian or French literal version of a provision is closer to the real meaning of a given provision at a specific time. The divergent language versions then have to be interpreted in one uniform way, despite possible word variations.

2. Regional languages

Switzerland signed the European Charter for Regional or Minority Languages (hereafter referred to as 'the Charter') on 8 October 1993. The Federal Council ratified the Charter on 31 October 1997. Through this decision, the Charter became part of Swiss law.⁴³⁸ According to the *Initial Periodical Report* presented by Switzerland to the Secretary-General of the Council of Europe in accordance with Article 15 of the Charter, 'before ratifying the Charter the Confederation consulted twice the Cantons, in October 1993 and in May 1996. Those two consultation procedures were the occasion of a widespread discussion of the content and objectives of the Charter and of whether it was compatible with Swiss national practice. When the Federal Assembly (Parliament) approved the Charter in 1997, the parliamentary debates were given wide coverage in the Swiss press and the media. More generally, the principles found in the Charter are the same as the rights conferred on the Romansh-speaking and Italian-speaking communities by federal and cantonal law.'⁴³⁹

The collaboration performed in the sphere of language policy inevitably leads to extensive discussion involving the organisations and cantons concerned. As already mentioned, Switzerland consists of 26 cantons that self-designate their official languages. There are 3 bilingual cantons (Bern, Fribourg and Valais) where the official languages are German and French and 1 trilingual Canton (in Grisons official languages are German, Italian and Romansh). Following the results of the federal census of 2010, the Swiss residents declared their 'main language' to be: German (65.6%), French (22.8%), Italian (8.4%), Romansh (0.6%).⁴⁴⁰

Although Romansh and Italian appear to be the less widely used official languages in Switzerland, they are granted special protection under Part III of the Charter. In certain cantons, German and French may be less widely used, but as Switzerland does not grant these languages any special protection under Part III of the Charter, they fall, in principle, outside of its scope. There may be cases, as with the speakers of the Walser variant of German in the canton of Ticino, where one of the main languages of the Confederation does not benefit the status of official language of the canton and thus becomes a minority language covered by Part II of the Charter.

Cantonal level

In virtue of the Italian and Romansh communities' limited size, the judicial authorities do not have sufficient language competence, even in areas where Romansh and Italian are traditionally spoken. Nevertheless, any party is entitled to address the judicial authorities in writing in Romansh or Italian. Theoretically, it is also possible to do so orally, with the aid of simultaneous interpretation. But since all Italian and Romansh speakers are German speakers as well, this option is not generally used. In a referendum held on 10 June 2001, the Romansh population adopted Rumantsch Grischun as the official cantonal language. As a result, the laws of the canton of Grisons are now only published in Rumantsch Grischun. This innovation enables the canton to make further progress in the field of legal terminology.

⁴³⁸ The Swiss authorities formally ratified it on 23 December 1997. The Charter entered into force in Switzerland on 1 April 1998.

⁴³⁹ The report is available at: <http://www.coe.int/t/dg4/education/minlang/report/PeriodicalReports/SwitzerlandPR1_en.pdf>.

⁴⁴⁰ See 5th Swiss Report on the European Charter for Regional or Minority Languages, edited by Bundesamt für Kultur (Federal office of culture). The report is available at: <<http://www.bak.admin.ch>>.

Federal level

In the case of Italian, there are no obstacles concerning the Federal Court. Under existing law, appeals may be lodged in Italian, irrespective of the language of the appealed decision (Article 4 of the Constitution and Section 30, paragraph 1, OJ (Federal Legal System Act) [RS 173.110]), many judgments are written in Italian. The Federal Court has several Italian-speaking judges and staff members. However, it should be noted that the language of proceedings in the Federal Court is generally the one used in the contested decision (Section 37, paragraph 3, sub-paragraph 1, OJ). Federal Court judgments may nevertheless be written in another official language if all parties speak this language. The proposed revision of the entire federal legal system (FF 2001 4000) will not change the situation.

Appeals may be lodged in Romansh (no matter what idiom), irrespective of the language of the contested decision (Article 4 of the Constitution and Section 30, paragraph 1, OJ). When the Federal Court rules on an appeal lodged by municipalities or individuals against decisions given by the Grisons canton, the decisions are written in Romansh (Rumantsch Grischun)(ATF 122 I 93). The Federal Courts Bill (P-LTF) presented by the Government provides the same regime for Romansh as the other official languages, except that only Rumantsch Grischun can be used by the Federal Court (Section 50 P-LTF, FF 2001 4292). Even if one of the official languages is used before the Federal Courts in a trial, (usually in the language of the contested decision), Art. 40, par 2, let. b of Regulation of 20 November 2006 on Federal Tribunal (R.S. 173.110.131) provides that the President of the Federal Tribunal has to take into account the linguistic skills of the judges: where possible the Judge-Rapporteur must be mother tongue speaker of the language of the proceedings. At the moment, there is not a Romansh judge sitting on the Federal Court.⁴⁴¹

In the case of the other courts of the Confederation, the federal appeals commissions, the legal situation is similar to that of the Federal Court (Section 37 PA, RS 172.021).

To summarise, there is no legal obstacle to the parties for the proceedings in front of the Courts of the Swiss Confederation using Italian or Romansh. It is generally possible for Romansh speakers to submit oral and written applications in Romansh, but sufficient Romansh linguistic skills may be lacking in among the staff in relevant municipalities, especially when regarding administrative terminology. The Lia Rumantscha provides linguistic advice and translations for local authorities with financial support from the federal and cantonal authorities. Pursuant to the Language Law of Graubünden, the cantonal authorities monitor whether local authorities publish their official documents in Romansh. If official documents are not published in Romansh, the municipality is asked to remedy this absence within an assigned period of time.⁴⁴²

⁴⁴¹ Cf. message du Conseil Fédéral concernant la révision totale de l'organisation judiciaire fédérale du 28 février 2001, FF 35, pp. 4079, available at: <www.admin.ch/ch/f/ff/2001/4000.pdf>. 'Selon l'art. 70, al. 1, Cst., la Confédération compte quatre langues officielles puisque le romanche est langue officielle pour les rapports que la Confédération entretient avec les personnes de langue romanche. Si actuellement le Tribunal fédéral comporte un juge romanche, le cercle des juristes romanches est bien trop restreint pour que l'on puisse obliger l'Assemblée fédérale à élire au moins un juge romanche. A l'inverse, une disposition qui ne mentionnerait que les langues allemande, française et italienne serait discriminatoire à l'égard des Romanches et ne répond à aucun besoin: la composition de l'Assemblée fédérale fournit une garantie suffisante que cette autorité veillera à une représentation équitable des différentes parties de la Suisse au sein du Tribunal fédéral.'

⁴⁴² The Application of the Charter in Switzerland Evaluation report of the Committee of Experts: ECRML (2004) 4th monitoring cycle, available at: <http://www.coe.int/t/dg4/education/minlang/report/EvaluationReports/SwitzerlandECRML4_en.pdf>.

3. Policy, legal instruments, reforms

Legislative language must follow two principles that at first sight may seem contradictory. On the one hand, it must be as comprehensible as possible by those whom it is addressed. On the other, it must be sufficiently precise to avoid creating uncertainty, or the risk of becoming scientific jargon.

Consistency, clarity, brevity and respect of any existing terminological framework are the requirements laid down in the *Guide de législation-Guide pour l'élaboration de la législation fédérale*,⁴⁴³ focused on a good quality lawmaking. The starting point is that legislation has to use a specialised language that can often be understood by a limited number of recipients. It is unrealistic to expect that all recipients can grasp the exact scope. However, it is assumed that even if one accepts that legal language is a distinctive language for specialists, it is still necessary to make the provisions as comprehensible as possible. Basically, good quality legislation must keep the purpose of the act, the normative content, and the structure of the act at the forefront. There are another three measures the Federal Council wants to employ to improve legislation quality: provision of a forum for legislation, development of a basic guide to legislation and clarification of the legislation process through drawing up a plan of the normative acts.

Within the legislation forum, federal offices that respond to normative fundamental questions that arise from legislative drafting will update the Federal Office of Justice (FOJ) and the Federal Chancellery. The forum will be designed to ensure the quality and clarity of federal law and, if necessary, to improve it. It promotes the exchange of experiences and contributes to an integrated network.⁴⁴⁴ Issues that arise from an obscure law are not unknown in Switzerland,⁴⁴⁵ with seminars organised that deal with this topic.⁴⁴⁶ In Switzerland, the political culture of direct democracy certainly explains why issues of readability, clarity and access to justice are not as fundamental as in other communities. The establishment in the Federal Constitution of 18 April 1999 of a general duty of assessment about the effectiveness of measures taken by the Confederation on which Parliament must watch over, is in Switzerland a major symbolic turning.⁴⁴⁷

4. Organisations and tools

The Institute of Multilingualism

The Institute of multilingualism is an Inter-Academy organisation between the University of Freiburg and the High Pedagogical School in Freiburg. Created in 2008, it runs activities that include management of research projects focused on multilingualism, support of education at all levels (bachelor, master, doctoral,

⁴⁴³ Guidelines are available in French and German and are accessible in the mentioned languages at: <www.ofj.admin.ch>.

⁴⁴⁴ See Communiqués, DFJP, 28.02.2007, available at: <www.ejpd.admin.ch>.

⁴⁴⁵ DELLEY, Jean-Daniel, 'La commission externe d'évaluation des politiques publiques', *LeGes*, Vol. 2005, Iss. 1, 2005, pp. 111-119.

⁴⁴⁶ The Swiss legislation society (SSL), in collaboration with the Federal Office of Justice and the Federal Chancellery and with the support of the Faculty of Law of the University of Bern, organised the 6th Congress of the European Association of legislation (EAL) on 13 and 14 May 2004 at Rathaus Bern, with the theme of 'the participation of civil society in the legislative process'.

⁴⁴⁷ See Art. 170 of the Constitution: 'L'Assemblée fédérale veille à ce que l'efficacité des mesures prises par la Confédération fasse l'objet d'une évaluation.' (Office fédéral de la justice, *Effacité des mesures prises par la Confédération: propositions de mise en oeuvre de l'art. 170 de la Constitution fédérale dans le contexte des activités du Conseil fédéral et de l'administration fédérale*, Rapport du Groupe de contact interdépartemental 'Evaluations de l'efficacité' à la Conférence des secrétaires généraux de la Confédération suisse, Bern, 14 June 2004).

professional training) and dissemination of scientific knowledge. The Institute is involved in the organisation of scientific and general interest events.

It focuses on multilingual issues concerning 'social, political, economic and educational development, in collaboration with other institutions and universities in Switzerland (Basel, Neuchâtel, Lausanne) and abroad (University of Toronto, Canada; University de Strasbourg, France; Universitat Autònoma de Barcelona, Spain).'⁴⁴⁸ The Institute carries out research mainly in the fields of education and teaching, migration, the scope of work and assessment of language skills. Within the Institute of Multilingualism the Research Centre on Multilingualism (RCM) is financed by the Swiss Confederation in accordance with the Language Law (See Art. 12 of Ordinance on national languages and comprehension between linguistic communities of 4 June 2007). Under the direction of the Institute of Multilingualism on behalf of the Swiss Confederation, this research centre focuses its activities on applied research, establishing networks in the field of research on multilingualism, documentation, and providing an information service on questions concerning multilingualism.⁴⁴⁹ A current project at the Institute is focused on the study of the representation of Swiss language communities in the Federal Administration: *Swiss Federal Administration and the representation of language communities: An analysis of processes and strategies for recruiting personnel*, in cooperation with the Centre for Democracy Studies (ZDA) of the University of Zurich (2012-2013).⁴⁵⁰

Termdat

Termdat is the terminology database of the Swiss Federal Administration. It is a useful and reliable tool for professional communication and translation. It contains Swiss legal and administrative terminology in the four official Swiss languages - German, French, Italian, and Romansh - and English. The terms are recorded in thematic glossaries compiled in collaboration with experts from the Federal Administration or from the private sector. The Terminology Section of the Swiss Federal Chancellery runs *Termdat*. They are in charge of updating the database and providing training and supporting legislative projects.⁴⁵¹ In addition to this, it is a tool for professional communication, including translation. Entries belong to a variety of fields that are basically covered by federal legislation or belong in its scope. Swiss collections of terms have been recently imported in IATE (Inter-Agency Terminology Exchange), the EU inter-institutional terminology database system used since 2004. In fact, *Termdat* is a multilingual dictionary with entries in Swiss official languages and other EU languages, covering areas where the Federal administration is involved.⁴⁵² It was created as a consultation tool for of public institutions (cantonal administrations, universities, research institutes) and public access is currently available.⁴⁵³

⁴⁴⁸ <<http://istituto-plurilinguismo.ch/it/istituto>>.

⁴⁴⁹ 'The RCM is supported by a steering committee commissioned by the Swiss Confederation. The committee is made up of members from affected federal offices and the Conference of Cantonal Ministers of Education, and is principally responsible for discussing the RCM's research program. In addition to the steering committee, the RCM is advised by an international academic advisory board'. Cf. University of Fribourg, Institute of Multilingualism, *Annual Report 2011*, available at <www.institut-plurilinguisme.ch/assets/files/ipl/120703%20Jahresbericht%20IPL%202011%20def.pdf>.

⁴⁵⁰ For more information, see: <www.centre-multilingualism.ch/strategies-recruiting-personnel-federal-administration.html>, and the 2011 Annual Report, available at: <<http://www.institut-plurilinguisme.ch/assets/files/ipl/120703%20Jahresbericht%20IPL%202011%20def.pdf>>.

⁴⁵¹ See: <www.bk.admin.ch/themen/sprachen/00083/00854/index.html?lang=en>.

⁴⁵² Cf. *Study on Lawmaking in the EU Multilingual Environment*, *supra* fn. 150, at p. 56.

⁴⁵³ See: <www.termdat.bk.admin.ch/Search/Search>.

Chapter IX- Finland

1. Background

Between the 12th and early 19th centuries, Finland was part of the Kingdom of Sweden.⁴⁵⁴ This meant that all Finnophone people, including those belonging to the ruling class, adopted the Swedish language, with the usage peaking in prevalence in the 'modern era', between the beginning of the 16th century and the end of the 19th. As a result of this, Swedish was the official language used in administration and legislation, with officers of importance in the administration barely mastering the local language. Historically, the replacement of Swedish as legal language with Finnish is linked to a gradual acceptance in the 19th century of the Finnish language. At this time, Finnophones pushed to have the language admitted to public administration and the courts (a pivotal step was an order by czar Alexander II in 1883 to allow for the use of Finnish in legal disputes).⁴⁵⁵ At the time, the policy was prompted not only by the liberal attitude of the Russian Emperor (who had gained control over Finland from Sweden in 1809), but by political considerations as well as from the Russian perspective the increase in the use of the local language meant a reduction of connections with another foreign country, Sweden.⁴⁵⁶

In 1860 a Bulletin of Finnish legislative acts and decrees was published, written in both Swedish and Finnish. However, the Finnish version was still considered less authoritative (as evidenced by the possibility of amending the linguistic style of the document), while the Swedish version was conclusive as soon as it was approved. Equality between the languages dates from 1902, with parliamentary reforms in 1906 boosting the prestige of the Finnish language. The reforms were a result of modernisation that resulted in a more strongly represented Finnish-speaking working class who challenged the use of Swedish as a formal language by the ruling.

Nowadays 'Finland has two national languages, Finnish and Swedish, and the equal status of the languages requires that government proposals be presented to the Government in both languages.'⁴⁵⁷ However, although statutes are to be published in both languages,⁴⁵⁸ 'legislative texts are not drafted in Finnish and Swedish simultaneously. In practice, almost all laws are drafted in Finnish.'⁴⁵⁹ The exception or the mitigation element of this biphasic system is that for legislative projects set out in the Government Programme, it is possible to assign a translator to the process from the first stages of discussion so that the translator may participate in preparatory meetings and start terminology work in good time before the actual translation phase.⁴⁶⁰

2. Actors

On the organisational side, in Finland a Permanent Commission for the drafting of legislation was created in 1884 and its proceedings have been published in both

⁴⁵⁴ MATTILA, Heikki, 'Diritto dei paesi scandinavi (nordici)', in *Digesto Italiano*, 4th ed., UTET, Turin, 1990, pp. 3-12; ID., *Comparative Legal Linguistics*, Ashgate, Aldershot, 2006 (French version published by Bruylant, Brussels in 2005).

⁴⁵⁵ MATTILA, Heikki, 'Les matériaux non finnois dans l'interprétation juridique en Finlande', in SACCO, Rodolfo (ed.), *L'interprétation des textes juridiques dans plus d'une langue*, L'Harmattan Italia, Turin, 2002, pp. 151-182.

⁴⁵⁶ MATTILA, Heikki, 'Les matériaux non finnois dans l'interprétation juridique en Finlande', *supra* fn. 455, at p. 157.

⁴⁵⁷ Reply by officer working at *Government Translation Unit*, Prime Minister's office, *introductory remarks*. See art. 17 of the Constitution of 1999.

⁴⁵⁸ Under the Constitution, Art. 79, § 4.

⁴⁵⁹ Translation occurs at a later stage, when the Government submits its proposal to Parliament. Reply to question 12.

⁴⁶⁰ It should be noticed, however, that '[u]nfortunately, so far there have not been legislative projects where this opportunity for enlarged cooperation with the translator' has been put into practice.

Swedish and Finnish since 1890 (the Finnish version being a translation from an original Swedish version until 1906 when the trend was reversed). The task now falls to a specialised office at the Ministry of Justice and work may be initiated through instruction by an *ad hoc* commission appointed by the Government or a specific ministry.⁴⁶¹ Preparatory works of a legislative act are generally accessible to the public, may be quoted in disputes brought in front of the court and are usually written in Finnish first.⁴⁶² The legislation process may be tracked through the website of the Ministry of Justice where it is noted that 'the Bills drafted in the Ministries are scrutinised by the Government in general session prior to their submission to Parliament.'⁴⁶³ Drafting manuals such as the *Law drafter's handbook* and *EU law drafter's handbook*⁴⁶⁴ are available. In considering this procedure we should bear in mind that in Finland, as it is true for England, most bills originate from Government proposals. 'Only in extremely rare cases does a parliamentary motion lead to the emergence of a new law. As in most parliamentary systems, Parliament normally ratifies the contents of proposals issued by the Government.'⁴⁶⁵

Reports by legislative commissions must also be available in the two languages (Constitution, Art. 51, Sect. 2). Collections of statutes and regulations are published officially every year in Finnish and every two years in Swedish: an important step in a legal system lacking a systematic codification in the civil law style (a feature common to the Scandinavian countries).

3. Translation issues in a bilingual country

Personnel

In order to provide for the translation requirement in Finland (as in several other bilingual countries), translation is centralised through the Government Translation Unit 'which is located at the Prime Minister's Office.'⁴⁶⁶ A strong link with the Ministry of Justice is provided on legal issues as the Government Translation Unit has regular cooperation with the legislative inspectors of the Ministry of Justice.⁴⁶⁷ The mechanism put in place to provide interaction between drafters and translators is framed to allow the translator to contact the drafter in the course of the translation work, especially if the text is difficult or unclear. And it is also common that the drafter may change the text precisely on the basis of the inconsistencies, obscurities or direct errors pointed out by the translator. When broad government proposals are involved and the translation work is divided among several translators,

'it is usual that towards the end of the translation project, the translators, the drafter, a reviser from the Government Translation Unit, and possibly a

⁴⁶¹ At the Ministry of Justice the 'Law Drafting Department takes part in the preparation of the other Ministries' projects and the general development and guidance relating to legislative drafting in the Ministries': <<http://www.om.fi/en/index/theministry/organization/lawdraftingdepartment.html>>. The unit of legislative inspection has a revising task within the organisation.

⁴⁶² As an example of bilingual drafting, the legislation on the use of languages (2001) is mentioned because the report of the drafting committee is available in two languages (MATTILA, 'Les matériaux non finnois dans l'interprétation juridique en Finlande', *supra* fn. 455, at p. 162: quoting *Uusi kielilaki 2001/Ny spraklag 2001*).

⁴⁶³ <<http://lainvalmistelu.finlex.fi/en/>>.

⁴⁶⁴ The *Bill drafting instructions* (HELO) of 2006 distributed by the Ministry of Justice are available on line at: <<http://www.om.fi/sv/index/julkaisut/julkaisuarkisto/1149508943707/Files/7b3b69oecmj2dy2.pdf>>.

⁴⁶⁵ TALA, Jyrki, KORHONEN, Juhani & ERVASTI, Kaijus, 'Improving the Quality of Law Drafting in Finland', 4 *Columbia Journal of European Law* 629 (1998), available at: <http://www.cjel.net/print/4_3-tala/>.

⁴⁶⁶ 'The Translation Unit provides services to all ministries'. Beyond that service, '[m]ost ministries have one or two legislative translators of their own as well. The division of duties between the Translation Unit's legislative translators and the ministries' legislative translators is as follows: the ministries' translators mainly translate the ministries' decrees and decisions whereas the Translation Unit's translators translate government decrees and government proposals.' Reply to question 13.

⁴⁶⁷ 'There is also daily cooperation with, for example, the law revisers, and the language institute's specialists are often contacted for advice in terminological questions'. Reply to question 23.

legislative inspector from the Ministry of Justice come together to discuss any problems within the text before the translation is finalised and sent to the drafter.'

What becomes evident through the translation process in Finland is the observation that a particular revision of a text acts in another capacity as a 'safety net' to identify uncertainties, ambiguities and contradictions that may have been overlooked by the first drafter.

In the working flow drafters can give feedback to translators via an electronic feedback form.⁴⁶⁸

To cope with the large bulk of translation that is a result of the bilingual nature of the country, the Translation Unit has developed a system of controlled outsourcing, an estimate is that approximately 30% of translations are outsourced to freelance translators.

'The Translation Unit trains its freelancers by revising new freelance translators' texts and by providing feedback and guidance. [...]

The freelancers must follow the PMO's guidelines provided in a handbook entitled Swedish legal language "*Svenskt lagspråk i Finland*"– they will also receive new information and guidance from the Translation Unit regularly. If a politically important text is outsourced to a freelancer, it will always be revised at the Translation Unit before sending it back to the drafter.⁴⁶⁹

With regards to intervention by lawyer-linguists, – the Government's approach initially seems surprising as the Government Translation Unit employs **one lawyer-linguist** who is in charge of the revision team, while the team consists of senior translators (linguists) with extensive experience in legislative translation. The lawyer-linguist role is focused on legislative texts which are 'particularly demanding from the legal point of view'.⁴⁷⁰ However, the Ministry of Justice, where all translations are referred has further mechanisms for control in place:

'The Unit of Legislative Inspection employs **four Finnish-speaking and three Swedish-speaking lawyer-linguists**.⁴⁷¹

Tools

In general terms the Swedish language represents a connection with the legal past of Finland, and the Swedish legal model. This is often referred to in pursuit of the policy of legal cooperation between Nordic countries.

As an example of this close relationship with Swedish we may consider that Finnish translators working on EU documents use, when applicable, the publication *Att översätta EU-rättsakter* which has originally been issued by the Swedish language departments and translation units within the EU institutions. This instrument is coupled with the handbook entitled *Swedish legal language* or *Svenskt lagspråk i Finland* issued by the Prime Minister's Office which applies to legislative language in

⁴⁶⁸ 'A more comprehensive customer satisfaction survey is conducted at the end of each electoral period'. Reply to question 21.

⁴⁶⁹ Reply by Government translation unit to question 13.

⁴⁷⁰ [Emphasis added] 'The reviser examines the Swedish text against the Finnish original to find out potential mistakes made by the translator and to ensure that the translation corresponds with the source text and follows established language requirements and conventions. The revision procedure covers issues relating to terminological consistency and style as well.' Reply to question 13.

⁴⁷¹ Reply to question 13 [Emphasis added].

Swedish. The handbook provides e.g. models for parts of legislative texts which must be followed.⁴⁷²

Also in order to cope with the reception of European legislation, the Finnish language department at the Commission's Directorate-General for Translation has set up a network for the translation of EU legislation (ESKO), to facilitate cooperation between Finnish translators at EU institutions and national officials, especially in the drafting and translation phases of the EU's legislative work. 'The network was inspired by a similar kind of network between EU language revisers in Sweden, established in early 2000s.'⁴⁷³

To carry out their work, translators have the support of shared data banks including, beyond *MultiTerm termbank* and *Iate*, also *Lagrummet.se* which is 'a portal for Swedish public administration legal information, and other electronic termbanks in Finland and Sweden'.

4. Reform: 'better regulation' and simplification of language

The effort to simplify the language (an endeavour with some history behind it) reveals further harmony with Sweden as inspiration on this work on the clarity and modernisation of the Swedish legal language came from Sweden. As a matter of fact:

'For the past 50 years already, the Prime Minister's Office has hosted the Swedish Language Board with a role to foster clarity and comprehensibility in the legal and administrative Swedish used in Finland. The Board may initiate measures to improve the authorities' language use.'⁴⁷⁴

In terms of simplification of language, some initiatives go back to the end of the 1990s when the Government published a set of recommendations to drafters (*Instructions on the Drafting of Government Proposals*),⁴⁷⁵ standardising information required and style.⁴⁷⁶

It is worthwhile noting that 'the need for amendments and legislative revision is always done on the basis of the Finnish text'. Therefore 'as a main rule, old law texts in Swedish can only be modernised if the same is done to the Finnish text at the same time.'⁴⁷⁷

An important step in promoting plain language policies in legal drafting was taken in the Better Regulation project, launched by a Government Programme in June 2011.⁴⁷⁸

⁴⁷² Reply to question 14. The Swedish legal language handbook, published by the Swedish Language Board: *Svenskt lagspråk i Finland*, is available at: <www.finlex.fi/data/normit/35799-Svenskt_lagsprak_i_Finland_2010.pdf>.

⁴⁷³ Reply to question 26.

⁴⁷⁴ Reply to question 27, specifying that: 'The members of the Board represent the various bodies involved in the legislative translation process: the Government Translation Unit, the Unit of Legislative Inspection at the Ministry of Justice, the Swedish Office of Parliament, and language revisers. The most important result of the Board's work is the handbook on Swedish legal language "Svenskt lagspråk i Finland".'

⁴⁷⁵ '[T]he Government Program approved in May 1996 to improve law drafting [...] includes thirty-three guidelines and recommendations'. TALA, KORHONEN & ERVASTI, 'Improving the Quality of Law Drafting in Finland', *supra* fn. 465, at p. 629.

⁴⁷⁶ Mainly in four directions. 'First, law-drafting must be based on a sufficient compilation of background information, including: (a) a presentation of the current legislation; (b) a record of its current application; (c) information about the prevailing social situation in terms of the issue in question; and (d) a summary of foreign legislative practices including related international trends. Second, in the general justification section, the proposed legislation must include a description of its goals and means - the core issues of the proposal. Third, the proposal must be accompanied by a discussion of alternatives for solving the problem. [...] Fourth, a prerequisite of the instructions regarding all law-drafting is that the presumed impact of a bill is presented' (see footnote above).

⁴⁷⁷ Reply to question 14.

⁴⁷⁸ <<http://www.om.fi/en/index/basicprovisions/legislation/parempisaantely.html>> (a webpage in English, reachable by a reference in the Commission's Translation Services, 'language resources and useful links', choosing 'Finnish' as relevant language, see: <http://ec.europa.eu/translation/finnish/finnish_en.htm>).

According to the Government Programme, among other priorities, 'more resources will be allocated for the drafting of legislation in the ministries', 'the language used in regulations will be clarified', 'open interaction, assessment of alternatives for regulation, and impact assessments will be developed', 'a legislative agenda, including the key legislative projects of the Government, will be drafted and special attention will be paid to projects that involve shared responsibility between ministries, improving the clarity in regulation, and increasing alternative ways of regulation'. Interestingly, in the Government Programme of 2011, under the heading of *An open, fair and confident Finland* we read:

'Finland's status as a bilingual country is a strength and resource'.⁴⁷⁹

The Institute for the languages in Finland (ILF), has been involved in several initiatives promoting the project of 'plain language': including participation in working groups on legislative drafting and proposed improvements to terminology and overall phrasing.

As a matter of fact, a representative from ILF was part of an advisory board appointed by the Government for 2007–2011, with the aim of improving the overall quality of legislation and legislative drafting. Together with the unit responsible for legislative revision at the Finnish Ministry of Justice, the ILF is 'currently working on a webpage providing information and guidance to legislative drafters'.⁴⁸⁰ When cooperating in the act of drafting legislation, such as the 2011 project to make the *Housing Companies Act* easier to understand, specialists observe that the most commonly accepted linguistic amendments involve the simplification of sentence structures and proposals to replace legal jargon with plain-language expressions. While the most commonly opposed linguistic amendments relate to attempts to clarify and explain legislative references and change the order of presentation. Beyond cooperation in the legislative field, the ILF 'includes a five-member training team providing tailored training to private companies and public bodies. This team also organises plain language courses open to all. Central and local government authorities have been an important client group since the 1970s'.

5. Judicial practice

Looking at judicial practice, it is worthwhile noting that judges of the Supreme Court and the Supreme Administrative Court utilise all relevant materials, whether they are in Finnish or in Swedish, when deciding cases. Particularly in the fields of land rights and the law of property, it is necessary to refer to past documents and decisions. When this occurs, all found materials are in Swedish. The same applies to the second half of the 19th century when laws and legislative materials were published in both Swedish and Finnish. As Swedish was still the original language of law drafting in Finland at the end of the 19th century, the Swedish versions of statutes dating back to this period are preferred by judges when resolving interpretation problems.⁴⁸¹

A useful academic tool has been offered by the linguistic project that analysed and collected legal abbreviations used in the literature belonging to the 19th and 20th centuries. This research has shown a frequent polysemy of abbreviations and has

⁴⁷⁹ <<http://valtioneuvosto.fi/hallitus/hallitusohjelma/en.jsp>>.

⁴⁸⁰ ILF webpage: <<http://www.kotus.fi/index.phtml?l=en&s=4305#Clarifyinglegislativelanguage>>; PIEHL Aino, 'Implementing the Better Regulation Programme in Finland', *Clarity* 2010, available at: <http://www.kotus.fi/files/1935/Microsoft_PowerPoint_-_Clarity2010_-_Aino_Piehl.ppt_Yhteensopivuustila_.pdf>.

⁴⁸¹ MATTILA, Heikki E. S., *Finland National Report to the XVII Congress of the International Academy of Comparative Law*, Utrecht, 2006; ID., 'Les matériaux non finnois dans l'interprétation juridique en Finlande', *supra* fn. 455, at p. 164. References should be read with special focus on the fields mentioned in the text: in other areas (e.g. criminal law) a large number of amendments have been carried out to update legislative sources. It is obviously true that conceptual tools are framed by case-law and legislative innovation is not always sufficient to affect the whole complex of notions elaborated in the past.

identified the most quoted sources of information used by writers. It is intended to assist judges and scholars in their work.⁴⁸²

When looking at Finnish case-law one should also consider that legal literature may be helpful in solving disputes and as several authors in legal matters have Swedish as their mother tongue, often the work of documentation implies reading the works in the original language, often the first edition published.⁴⁸³ More generally, judges in Finland may prefer a linguistic version that utilises the language spoken by the majority of the population in the selected area, such as the province of Åland where Swedish is the prevailing language.⁴⁸⁴

However, even if comparing two linguistic versions of the same text may clarify the meaning of the provision better than reading just one version, as long as the interpreter has sufficient knowledge of both languages, occasionally divergent results may occur. In these situations, the strategy of judges seems to be to attempt to reconcile the meanings and to avoid linguistic controversies: however a certain level of priority is implicitly recognized to the Finnish version of the text as every lawyer knows that this is the first approved version and it more closely reflects the meaning of the legislator.⁴⁸⁵ This attitude may imply the prevalence of one version over the other even if in principle one is not supposed to start from the assumption that the Finnish version is the authentic one, simply because it is the original draft.⁴⁸⁶

The case-law does not present evidence of many cases where serious contradictions between linguistic versions have been met by judges: an example sometimes quoted is the case of the legislation on bankruptcy where the Finnish version caused some puzzling results while the Swedish version, dating back to 1868, seemed more rational. Considering that at the time of redaction, the Swedish language was still the primary language in use, courts have given preference to this linguistic version.⁴⁸⁷

A feature more significant in the representation of the reality of judicial practice in the Nordic countries is connected to the level of reciprocal confidence and accessibility that the judiciary of the different Scandinavian countries have towards each other. Not only do the justices of the highest courts meet regularly, but they also consult the case-law of different countries, especially if they concern some uniform act approved within the framework of the Nordic Council or matters connected with maritime law.⁴⁸⁸

6. Nordic co-operation

Scandinavian countries have for long periods of time had a common past, with Norway and Iceland governed by Denmark and Sweden controlling Finland. This has resulted

⁴⁸² MATTILA, Heikki E.S., 'Comparative Jurilinguistics: a Discipline *in statu nascendi*', in Pozzo, Barbara & JACOMETTI, Valentina (eds.), *Multilingualism and the Harmonisation of European Law*, Kluwer Law International, Alphen aan der Rijn, 2006, pp. 21-32, at pp. 27 ff.

⁴⁸³ Such may be the case of Thomas Wilhelmsson, whose literary production is well reflected in the bibliography of Helsinki university (not only in the field of consumer law, but also on more general themes of unification of law and legal cultures). See e.g. WILHELMSSON, Thomas, 'Introduction: harmonization and national cultures', in WILHELMSSON, Thomas, PAUNIO, Elina & POHOLAINEN, Annika, *Private Law and the Many Cultures of Europe*, Kluwer Law International, Alphen aan der Rijn, 2007, pp. 3-20.

⁴⁸⁴ In the islands between Sweden and Finland 'le suédois est la seule langue officielle': MATTILA, 'Les matériaux non finnois dans l'interprétation juridique en Finlande', *supra* fn. 455, at p. 164.

⁴⁸⁵ MATTILA, 'Les matériaux non finnois dans l'interprétation juridique en Finlande', *supra* fn. 455, at p. 169 ('malgré le fait que la version suédoise soit, selon la Constitution, aussi authentique. Ils sentent que la version finnoise reflète la *volonté du législateur*').

⁴⁸⁶ PALMGREN, Sten, 'Översättning av lagtext till finska i Finland', *Språkvärd*, Vol. 2, 1990, p. 17: reference by MATTILA, 'Les matériaux non finnois dans l'interprétation juridique en Finlande', *supra* fn. 455, at p. 168 [Italics added].

⁴⁸⁷ MATTILA, 'Les matériaux non finnois dans l'interprétation juridique en Finlande', *supra* fn. 455, at p. 168.

⁴⁸⁸ MATTILA, 'Les matériaux non finnois dans l'interprétation juridique en Finlande', *supra* fn. 455, at p. 175. Several specialists in transport law belong to Scandinavian countries: e.g. K. GRÖNFORS, 'Transport Law', in *International Uniform Law in Practice*, Unidroit, Oceana, New York, 1988, p. 376.

in two main sub-families, identified in the Scandinavian legal experience as Western Nordic and Eastern Nordic. A tradition of cooperation in the legal field has developed during the 20th century, especially in private law. Perhaps the most well known example is the Uniform Sale of Goods Act.⁴⁸⁹ Several uniform legislative acts have been approved within the Nordic Council⁴⁹⁰ and a certain parallelism exists in the development of legal reforms. Since 1959 a case-law report collecting decisions issued by the judiciary of the several Scandinavian countries has been published under the title *Nordisk Domssamling*. In the maritime law area a similar publication regularly appears as *Nordisk Domme i Sjofatsanliggender*.

In terms of linguistic communication it should be remembered that the Danish, Norwegians and Swedish understand Finnish and Icelandic (Íslenska) only rarely. As a consequence the Finnish and Swedish use Swedish as communication instrument in the Nordic cooperation, while Danish and Icelanders use Danish and the Norwegians use one or another version of Norwegian. According to an acute observation by Mattila this linguistic arrangement means that the Finnish generally use Swedish in communicating with all Nordic countries, but on the other side it is expected that Finnish institutions and authorities understand Danish and Norwegian without any problems – an expectation that may be overoptimistic.⁴⁹¹

⁴⁸⁹ The 1987 Scandinavian Sale of Goods Act has been adopted by Finland, Norway, Sweden (replacing a previous harmonisation that followed the model of the Swedish Sales Act of 1905). Problems have arisen in the ratification of the 1980 Vienna Convention on the international sale of Goods (CISG), as 'upon ratifying the Convention, Denmark, Finland, Norway and Sweden declared, pursuant to Article 94, paras 1 and 94, para 2, that the Convention would **not** apply to contracts of sale where the parties have their places of **business** in Denmark, Finland, Iceland, Sweden or Norway' in order to preserve previous harmonisation within the Scandinavian area.

The Nordic countries have adapted their national system to the new instrument following different approaches: LOOKOFKY, Joseph, 'Alive and Well in Scandinavia: CISG Part II', 18 *Journal of Law and Commerce*, 1999, pp. 289-299; SEVÓN, Leif, 'Uniform Law and its introduction into National Law, Intervention', in *International Uniform Law in Practice*, Unidroit, Oceana, New York, 1988, p. 135.

⁴⁹⁰ <<http://www.norden.org/en/nordic-council>>.

⁴⁹¹ MATTILA, 'Les matériaux non finnois dans l'interprétation juridique en Finlande', *supra* fn. 455, at p. 170 [emphasis added].

Section B - Non-European experiences

Chapter I - United States

1. Overview

When addressing the US legal situation, it is necessary to consider that the system is not unitary, or comprised of a limited number of variations (as in the UK where 5 legislative practices are to be compared). The US is comprised of 51 legal systems; with each State and the federal Government possessing its own special features. In addition to this, State agencies and the courts must be taken into account, creating an extensive number of elements to be considered.

The Plain Language movement had an early start in the US: as mentioned above, the first initiatives date back to the 1970s. The movement recognised a need to express public messages in terms accessible to the general population, rather than using language reserved for bureaucratic agencies and legislators.

We shall first consider the more formal setting, where legislative drafting is involved. At the administrative level in other areas, information sources are more disseminated, less officially consolidated and are difficult to investigate effectively. Once again it is noted below that intervention to simplify the language has been perceived as urgent especially in the field of tax law. Scholars generally comment more favourably on the legislative style in the US than that in England. Archaisms, Latin, complexities seem to be less noticeable. This is in part because the relationship between statutes and case-law were initiated on a different basis than in the traditional matrix of the common law.

The American legal experience does not date back to the medieval era; it is not as deeply affected by the guarded attitude of judges towards interference by the legislator or by the extreme attention to the exact words used in legislative acts. As stated by an American judge, an English lawyer would be amazed to hear that an American judge 'rarely starts his inquiry with the words of the statute, and often if the truth be told, he does not look at the words at all.'⁴⁹²

In the interpretation process, the use of 'preparatory works' for legislation has been accepted in the US much earlier than in England (where the House of Lords opened access to Hansard Reports in 1992, with the famous case *Pepper v Hart*⁴⁹³): in the 1930s J. Landis of Harvard Law School argued that archaic rules limiting the tools available to identify the meaning of a statutory provisions should be abandoned.⁴⁹⁴

'Most American federal court judges, and also [...] most American state court judges, go deeply into any legislative history for evidence of any actual legislative intent.'⁴⁹⁵

In saying this, generally 'English judges tend to adopt a more textual, literal approach, while American courts tend to take a more purposive and, therefore, substantive approach.'⁴⁹⁶

⁴⁹² POSNER, Richard A., 'Statutory Interpretation: In the Classroom and in the Courtroom', 50 *University of Chicago Law Review* 800-822 (1983), at pp. 807-808.

⁴⁹³ *Pepper (Inspector of Taxes) v Hart*, [1993] 1 All E. R. 42 ss. Cf. ATIYAH & SUMMERS, *Form and Substance in Anglo-American Law*, supra fn. 38, at p. 102.

⁴⁹⁴ '[...] in these days of carefully kept journals, debates, and reports.' LANDIS, James M., 'A Note on Statutory Interpretation', 43:6 *Harvard Law Review* 886-893 (1930), at pp. 890-91.

⁴⁹⁵ ATIYAH & SUMMERS, *Form and Substance in Anglo-American Law*, supra fn. 38, at p.102 ('and also into other purposes and policies whether or not evidence of any legislative intent is forthcoming'). '[I]n these days of carefully kept journals, debates, and reports. Unfortunately they persist with that tenaciousness characteristic of outworn legal rules' (LANDIS, 'A Note on Statutory Interpretation', supra fn. 494).

Of course, trends change over time and a wave of textualism has affected the American judiciary in recent years, especially under the influence of Justice Antonin Scalia in the US Supreme court. However as a general attitude purposivism seems to prevail in American courts, to a higher degree than in its English counterparts.

Looking at various examples, a more detailed style may be observed in British legislating drafting. As an example, the Unfair Contract Terms Act 1977 consists of 32 sections, and 4 Schedules.⁴⁹⁷ The highly detailed and accurate style may be in part due to the presence of the Office of Parliamentary Counsel, a professional body with the role of assisting Westminster Parliament in legislating.

In the US, on the contrary, 'there is no single centralized office where all Congressional legislation is prepared, and where control of methodology, technique, and also training-on-the-job can be undertaken.'⁴⁹⁸

However, according to a recent update: 'Congress does have a drafting office. But it doesn't have the impact that State offices have for several reasons. In most States, every bill and amendment goes through the official office. This helps ensure consistency and quality. This isn't the case in Congress; many bills and amendments don't go through the office. Another issue they have is that Federal law isn't entirely codified [that is to say collected in a single instrument]. The process has been started by slowly adopting official codes.'⁴⁹⁹

Many States have laws that instruct the State Government (and sometimes private entities) to use plain language. An example of a standard recommendation evidences this:

'2-2-801. Plain language requirement in state laws. Any person, including members of the general assembly and employees of each house of the general assembly, the office of legislative legal services, the legislative council staff, and the staff of the joint budget committee, shall ensure that, to the extent possible, all bills and amendments to bills prepared or proposed by such person are written in plain, nontechnical language and in a clear and coherent manner using words with common and everyday meaning which are understandable to the average reader. Enactment of a bill by the general assembly shall create a presumption that such bill conforms to this section.'

In some cases statutes may go further in setting more stringent standards. Similarly to England and Scotland, Interpretation Acts may limit the range of meanings of some legal expressions. For instance Colorado has an article on the construction of statutes that states the meaning of certain words and phrases.

The vast majority of States have document drafting manuals that set drafting standards. An attempt to collect as many of these as possible has been carried out and they may be retrieved online on a website hosted by the NCLS (National Conference of State legislatures).⁵⁰⁰

⁴⁹⁶ ATIYAH & SUMMERS, *Form and Substance in Anglo-American Law*, *supra* fn. 38, at p. 101.

⁴⁹⁷ (1977 Chapter 50) <<http://www.legislation.gov.uk/ukpga/1977/50>>.

⁴⁹⁸ ATIYAH & SUMMERS, *Form and Substance in Anglo-American Law*, *supra* fn. 38, at p. 318.

⁴⁹⁹ Information forwarded by the Office of Legislative Legal Service (Denver, Colorado).

⁵⁰⁰ A bipartisan organisation that serves the legislators and staff of the nation's 50 states, its commonwealths and territories: <<http://www.ncsl.org/legislative-staff/lsss/bill-drafting-manuals.aspx>>.

Online, some 30 electronic manuals are available, while some others are only accessible in a paper version or are not published at all. The House of Representatives has published its *Manual of drafting style*.⁵⁰¹

Most States have legislative drafting offices. These offices set the standards for drafting and monitor performance. The office lawyers and editors typically do this. In Colorado's drafting office, a rigorous process is used to ensure drafting quality.

When a lawyer finishes a draft it is then passed to an editor. The editor reads the document and proposes suggested changes. The lawyer reviews the changes and accepts, rejects, or modifies suggestions. Following this, the editor will read the draft out loud to another editor: an old-fashioned proofreading process. This sometimes catches issues not picked up from a mere reading. After the editors have finished, the draft is then sent to a senior lawyer, who reads the draft and suggests changes. Again the drafting and reviewing lawyer discuss any possible changes. When these modifications are made, the editors will proofread it again. This process takes place each time a change is made to a draft. Every State follows different procedures (however most State offices will employ editors to ensure quality and professionalism).

To provide an illustration of the US practice in legislative bodies, we shall compare drafting procedures in the Office of the Legislative Counsel, US House of Representatives (Washington, DC) (federal level) and in the Louisiana State Law Institute. Some indications on Massachusetts and Texas will complete the general overview.

2. US House of Representatives (Washington, DC)

The Office of the Legislative Counsel, US House of Representatives (Washington, DC) drafts legislation for the members and committees of the US House of Representatives.⁵⁰² They produce bills for introduction in the House by members, draft amendments to bills in consideration in committees and on the House floor, and draft final compromise text (with their Senate colleagues) between the House and Senate for presentation to the President of the US for signature (enactment into law). Regarding transparency of public action, it is interesting that bills and amendments are published to allow the public easy access. In order to obtain feedback, anyone can contact any Member of Congress on any piece of legislation on any topic.

At a congressional level, in the practice in the House of Representatives, drafting is regarded as an activity to be performed by specialised drafting **professionals**. Drafters are recruited directly from top law schools in the US. They must have a law degree, with strong academic credentials and communication skills, and be admitted, or be awaiting admission, to the Bar of a State or the District of Columbia. Intensive training in drafting legislation, under the tutelage of experienced attorneys,⁵⁰³ lasts for a period of about 2 years.

Attorneys generally work in teams based on subject-matter, so that those with expertise can handle legislative requests in the law on the subject. A single attorney generally handles bills on a single subject.⁵⁰⁴

⁵⁰¹ <<http://www.house.gov/legcoun/pdf/draftstyle.pdf>>.

⁵⁰² Cf. the office's website: <www.house.gov/legcoun>.

⁵⁰³ The American expression 'attorney' applies to law school graduates who qualify for the legal profession, having passed the Bar examination in one or more States; see: <http://www.americanbar.org/groups/legal_education/resources/bar_admissions/basic_overview.html>; <http://www.law.cornell.edu/wex/attorney_at_law_or_attorney-at-law>.

⁵⁰⁴ Obviously bills dealing with multiple subjects will be worked on by attorneys with expertise in the different subjects.

The role of the drafter is to correct errors such as: lack of coherence or cohesion between paragraphs; lack of consistency in gender, numbers or cases; inconsistent cross-referencing; out-dated forms that have survived later corrections and typographical errors. Provided that time permits, proofreading is regarded as the best method to avoid these errors being carried through. Professional proofreading services from the US Government Printing Office are used at all stages of the drafting of a bill.

There are 47 attorneys who draft legislation and a support staff of 16 (clerical, paralegal, and information technology professionals). Newer attorneys will have their work reviewed by their mentors, but ultimately, each attorney is responsible for his or her work product. There is a Legislative Counsel (head of the office) and a Deputy Legislative Counsel. Publication only occurs if the Member of Congress for whom the bill is drafted decides to introduce the legislation to the House of Representatives.

The Offices of the Legislative Counsel of both the House of Representatives and the Senate use a uniform legislative drafting style. The main objective in legislative language is precision in expressing the underlying policy of the legislation. Keeping language simple is a goal, but it cannot overshadow the main objective. That is, if the policy is complex; the corresponding language of the bill may also have to be complex.

How the bill is drafted depends to an extent on the target audience for the legislation. Pursuant to House Rules, the drafters prepare a 'redline' that shows changes to existing law made by a bill. The bill is reported by a committee to the House prior to consideration on the House floor. Contrary to the practice that has become common in England, no separate explanatory documents accompanying the legislation are published.

A uniform drafting style is used (stated in a manual which is available to the public). The goal is to provide absolute clarity in presenting the policy of the legislation's sponsor, although in some cases that means that the language is complex. Drafters at the House of Representatives are strong proponents of using definitions to avoid ambiguity in the language.

The style manual provides general guidance, but all the different aspects of drafting (legal analysis of the proposed legislation, acquiring knowledge of existing law, analysis of parliamentary and constitutional issues and learning how to write clearly and succinctly) are learned over the 2-year training period mentioned above.

Specific points considered in guidelines include: gender neutrality of legislation; consistent use of the same words or phrases, as variation causes ambiguity and courts will look for a reason for the variation and specific conventions regarding the use of colons, semicolons, and other punctuation. No particular length or number of words is prescribed.

The Office's website has information on drafting, including an internal page for Members and staff that provides additional tools, including compilations of laws from the office's database. These compilations of laws are deemed to be essential to accurate drafting.

In the US, less than half of the laws are officially codified, so the Office must maintain a database of laws that are not yet codified in the US Code. *THOMAS* (Thomas.gov), *congress.gov*, *LIS*, *Potomac Publishing* (potomacpublishing.com; a paid service); *uscodes.house.gov*, and *GPO.gov* are used for databases of bills, laws, regulations, and papers on various legal issues. Lack of adequate time can lead to lack of precision in drafting; the time allowed depends on the congressional schedule, which changes from week to week.

As regards tools, the software *Xmetal* is used. It is customised for the drafting of bills, resolutions, and amendments (i.e. formatting is customised). A *text-to-XMetal* program helps to convert text from one format to *XMetal*. There is also an interesting work in progress for the development of software that will show changes made to an existing law by a proposed bill, and changes to a bill made by a proposed amendment (during the consideration of a bill). The *XMetal* program checks for formatting and similar errors.

Legislation is published by the Government Printing Office within a day or two (if it is a lengthy bill) of introduction, and is available online. As mentioned previously, commentary on the bills prepared is not provided, as this could be perceived as conflicting with the nonpartisan/impartiality mandate. The Library of Congress' Congressional Research Service provides research and analysis to Members of Congress.

There are opportunities to amend a bill in the committee, on the floor of the House (or Senate), and in preparing the final text for presentation to the President. The Rules (of procedure) of the House (and to some extent the Senate) can limit the types of amendments that may be offered.

3. Louisiana State Law Institute

The Louisiana State Law Institute drafts Bills and Reports to be presented to the Louisiana legislature (legislative) for members of the parliamentary assembly (cp. <www.legis.la.gov> and <www.westlaw.com>). Their by-laws are the basis for the organisational structure. Experts are members of their various committees. The 'Reporter' or 'Chair' of the committee is generally an expert in the area of study assigned.

Lawyers who have graduated from law schools in Louisiana or elsewhere perform drafting. Drafters attend seminars that discuss various problems that normally arise during drafting. The production of a bill or report begins with the preparation of a document by a law professor. A committee of lawyers reviews this document. The revised document is presented to a council of lawyers, following which, a bill or report is then prepared for the legislature. This process may take several years. Some bills may become law and reports may affect legislative action. A legislative manual of guidelines and an in-house drafting manual are used. Some guidelines relative to the drafting of bills are binding.

This is an established procedure that has remained unchanged for many years (apart from the introduction of electronic communication and document transfer between the Louisiana State Law Institute/Committees/Council/Printer). The Institute does not publish their documents. Bills and reports are presented to the legislature. A different group of staff drafters at the legislature level reviews the bills. All proposed legislation is reviewed by a committee, then by the Council of the Law Institute, following which it is then prepared in bill form and submitted to legislature, then again reviewed by bicameral legislative committees and, ultimately, by the legislature.

As regards tools, there are general guidelines and also, occasional instructions from legislature to review laws for politically correct terminology.⁵⁰⁵ Gender neutrality is sought when appropriate. General instructions on punctuation are delivered.

The work of a team on bills may last for several years, while work on reports may last for one or two years. All documents are drawn up in English. Foreign law is researched/reviewed in the course of the Louisiana Civil Code revision. Drafters are multi-lingual in most cases where foreign law is consulted.

⁵⁰⁵ For example, reference is no longer made using the phrase 'illegitimate children'. The phrase 'children born out of wedlock' is used.

In their bills, Louisiana State Law Institute drafters include 'comments' that provide additional information. These comments may create problems of coherence (between rules and comments). During later legislative hearings, legislators and the public respond to bills and reports that have originated within the Institute. Responses, however, are usually related to the substance of the bill or report, rather than to the formal aspects. A bill that goes through the legislative process may be amended by the legislature before it is enacted. A report that is submitted to the legislature is not revised further.

4. Massachusetts General Court

The House and Senate Counsel of the Massachusetts General Court (the legislature for Massachusetts) published a *Legislative Research and Drafting Manual*⁵⁰⁶ in February 2010, to help lawyers and other staff in drafting tasks.

The drafting of the Legislative Committee's legislative documents is carried out with the help of attorneys and committee staff personnel. Members of the House and the Senate or members' staff can ask the offices of the House and Senate Counsel advice on the form, substance and legality of bills. They can request review and comment on draft bills, and draft legislation based on an outline. Resolutions are drafted by a member's staff and edited by an Assistant Counsel. The same Counsel's offices provide research and advice on legal matters.

Drafting procedures must follow a research checklist. After establishing if the new law will be a general or special law, committee attorneys and staff personnel must check if a similar law or pending bill already exists. The committee must prepare a detailed section-by-section summary, including the current law and the proposed changes, following a checklist that has been especially drafted for summaries. The summary must include a detailed analysis, based on substantial issues, which in turn must comply with another special checklist.

The bill must be organised by chapters and sections, which eventually can be further broken down by subsections, paragraphs and other divisions.⁵⁰⁷ Bills related to existing laws must take into consideration this organisational structure. The format and structural organisation of the bill shall be in the most useful and logical format for the reader. Drafters must follow quite detailed basic principles, which are also illustrated with practical examples: simplicity (e.g., do not use 'ancient words' such as 'aforesaid', 'withheld' and 'hereinabove'), conciseness, consistency, directness and use of appropriate material for inclusion and revision. It is also important to stress that drafters should use ordinary English, avoiding slang, abbreviations, contractions, complicated words, and out-dated terminology.

Instructions are given regarding the use of the correct parallel structure (that is to say a structure with the same meaning but a different construction in the arrangements of the words) and the subject of the sentence. Regarding verb usage, it is suggested to use the present tense and indicative mood, active voice, finite verbs and singular verbs (reputed generally simpler than the plural). The use of split infinitives is not recommended, and instructions on the use of modifiers and provisos are given. Special attention is given to the issue of gender neutrality in drafting and simple drafting (for this latter there is a list of 'do not say' and 'say'). Finally, rules are also given on capitalisation, spelling of particular words, punctuation and the use of particular words such as 'and' and 'or', 'said' and 'such', 'shall' and 'may'.

⁵⁰⁶ The manual can be found at <<http://www.malegislature.gov/legislation/draftingmanual>>.

⁵⁰⁷ Detailed instructions are given regarding the numbering of bills and the organisation of the sections. It is suggested to break down sentences into parts and present them in itemised form. Advice is given on the use of the connectors.

As regards tools, first of all, mention should be provided on the *Legislative Research and Drafting Manual*, prepared by the House and Senate Counsel on February 2010, and the adjoined *Glossary of terms*, partly adapted from the *Massachusetts Legislative Procedure and History*.⁵⁰⁸ Other tools used by the drafters are electronic sources such as the General Court website, *Westlaw*, *Lexis/Nexis* and the *Legislative Data Management System* (LDMS). *Lexis/Nexis* offers the *Shepard's Citations* tool, that can be used to determine whether a statute has been amended or repealed or a court has interpreted the law, overturned, limited, or questioned it. A similar service is offered by *Westlaw*, but is for use with statutes only. *Shepard's Citations* books are available in the House and Senate Counsels' offices and the State Library.

Other sources and information can be found in different libraries: the State House Library; the Social Law Library⁵⁰⁹ (which provides members with numerous online resources, included the online Massachusetts substantive law and administrative agency databases); the Massachusetts Trial Court Libraries,⁵¹⁰ whose website includes executive orders, selected Code of Massachusetts Regulations, links to agency decisions and town by-laws and ordinances, as well as many other legal resources and helpful summaries; the Massachusetts State Library,⁵¹¹ whose website includes access to *Loislaw*, an online legal research, *Boolean*, a search system for State statutes and case-law in all jurisdictions and *Proquest*, a periodical database which provides full text for most Massachusetts newspaper archives.

Drafters can also request the assistance of the National Conference of State Legislatures, charged with assisting legislators and their staff in researching bills and laws filed throughout the United States. Other web resources used in drafting documents are the *Nolo*⁵¹² legal dictionary and *LawDictionary*.⁵¹³

5. Texas Legislative Council

All the key principles on drafting followed by the Texas Legislative Council are reported in the *Texas Legislative Council Drafting Manual*. The legal division of the Texas Legislative Council conducts the drafting of legislative and other legal documents, including bills, joint resolutions, floor and committee amendments and substitutes, conference committee reports, legal memoranda, and requests for opinions of the attorney general for all members of the legislature and the lieutenant Governor. The legal division also offers its drafting services to the governor's office and executive agencies, as a courtesy (and as workload permits).

The legal division is also in charge of a continuing statutory revision programme, conducting complete, non-substantive revisions of the Texas statutes. The purpose of the revision is 'to clarify and simplify the statutes and to make the statutes more accessible, understandable, and usable'. It is interesting to note that the legal division encourages any interested party to participate in the revision of the review of the drafts of the proposed code chapters. The same legal division is the author of the *Texas Legislative Council Drafting Manual*,⁵¹⁴ a compilation of legislative drafting guidelines on various topics, such as bill formats and content requirements, germaneness,⁵¹⁵ citations, style and usage. Drafting should comply with the instructions given in the *Texas Legislative Council Drafting Manual*. This highly detailed

⁵⁰⁸ NEARY, Mary Ann, *Handbook of Legal Research in Massachusetts*, Massachusetts Continuing Legal Education, Boston, 2002, Appendix A, *Legislative Research Checklist* and Appendix B *Legislative Summary*.

⁵⁰⁹ <<http://www.sociallaw.com>>.

⁵¹⁰ <<http://www.lawlib.state.ma.us/source/mass/index.html>>.

⁵¹¹ <<http://www.mass.gov/anf/research-and-tech/oversight-agencies/lib/>>.

⁵¹² <<http://www.nolo.com/dictionary/index.htm>>.

⁵¹³ <<http://www.lawdictionaries.com/>>.

⁵¹⁴ <<http://www.tlc.state.tx.us/legal/dm/draftingmanual.pdf>>.

⁵¹⁵ That is to say the pertinence by virtue of a close relation to the matter at hand.

manual (295 pages long) is written in a discursive style and is full of examples. A special place is given to existing drafting conventions and customs.

The principal parts of a bill are outlined, with rules, examples and main functions emphasised. These parts include introductory formalities such as headings, title or caption and enacting clause. Particular attention is dedicated to problems arising out of the use of inaccurate, confusing or unnecessary terms. The manual gives instructions on the use of the terms 'means' and 'includes'. It is suggested that artificial definitions and the use of substantive law as definition should be avoided, and pre-existing definitions should be preferred, and referred to in the new texts. The existence of different provision categories requires a different organisation of the texts. The principles to be followed when organising a drafting are listed in the *Manual*.⁵¹⁶ Auxiliary verbs, adverbs, adjectives, and the parts of speech known as articles are usually excluded from headings to promote brevity. Substantive provisions and enforcement provisions should be separated. Special instructions are given for penal provisions.

For the amendment of existing law, there are special rules on drafting. In this case drafters must take into careful consideration the different amendment techniques, and use the most appropriate one for the case in question, keeping in mind that amendments should not be confusing or unclear. Similar consideration is key for the drafting of resolutions and other acts and documents. A side-by-side analysis is suggested to compare different versions of the same bill.

With regards to the rules of style, clear instructions are given for abbreviations, capitalisations, numbers, plurals, possessive, punctuation and spelling of certain words. Use of the active voice is suggested, as is consistent and concise writing, with preference for the usage of finite verbs to the corresponding nouns or adjective forms. Gender-neutral language is preferred and legalese should be avoided. Distinctions are made in the usage of 'shall', 'must' and 'may', and instructions in the use of modifiers are given. Parallel constructions and positive sentences are preferred, as they are clearer. The present tense is favoured over future tense. The use of the word 'shall' is eschewed so as to avoid creating the impression of an imperative. The manual also contains a list of 'perplexing pairs', such as affect-effect, continual-continuous, fewer-less and practicable-practical and a list of preferred terms and phrases, to avoid a discriminative or demeaning impact. The manual also provides a drafting checklist, for use after the draft of a bill is finished, to verify if the document is complete and it complies with the adopted rules and usages. A final point is devoted to the writing of letters, memoranda and others documents.

As regards tools, drafters can use the resources at the Legislative Reference Library of Texas,⁵¹⁷ which performs research for Texan legislators, their staff, and legislative committees and provides access to paper files on bills and resolutions introduced in the House or the Senate from 1973, and of the Texas State Library and Archives Commission⁵¹⁸ which provides access to paper files on bills and resolutions introduced before 1973. The Legislative Archive System (LAS) on the Legislative Reference Library's website also provides access to scanned PDF bill files from 1949 to 2001.⁵¹⁹ Drafters and legislators can also use a large variety of Intranet web resources.⁵²⁰

⁵¹⁶ The bill must be divided by headings, denominated as articles, parts, or sections. No smaller units should be admitted.

⁵¹⁷ <<http://www.lrl.state.tx.us/index.cfm>>.

⁵¹⁸ <<https://www.tsl.state.tx.us/ref/senatetapes/index.html>>.

⁵¹⁹ <<http://www.lrl.state.tx.us/legis/billsearch/lrlhome.cfm>>.

⁵²⁰ Just to mention a few: *Capweb* (providing links to legislative web applications such as TLIS, TLO, *Westlaw® e-Libraries* as well as to other sources of legislative and related information, including the Texas Constitution and statutes, the Texas Administrative Code, the Senate and House rules of procedure, the Senate and House daily journals, the Legislative Clipping Service, the Index to Sections Affected, the

Chapter II - Canada

1. Introduction

In Canada, the French and English languages are awarded official language status. This bilingual context has historical roots from 1763 when Canada, which was part of New France, became a British North American colony.⁵²¹ Although Canada is characterised as a bilingual country, a certain number of distinctions are implied. All institutions that fall under federal jurisdiction i.e., the Parliament (House of Commons and Senate), federal administration, federal courts, Crown agencies and corporations, international treaties, and so forth, are subject to official bilingualism, whereas provinces, municipalities, private businesses, and so forth are not.

Nevertheless, the Canadian Constitution and federal statutes provide the following rights, in the provision of English or French:

- Federal services are available in both official languages 'where numbers warrant'.
- Official documents are either bilingual or available in both official languages throughout Canada.
- A bilingual Parliament (House of Commons and Senate) where discussion can occur in either of the two languages with simultaneous interpretation available. Legislation must be enacted and adopted in both languages, which are of equal value.
- A bilingual Criminal Code.

2. A historical overview of Canadian bilingualism in the legislative field

In Canada, a large number of constitutional provisions recognise the right of both official language communities to have a fair participation in the parliamentary process; 'these provisions are the result of the collective history of Canadians, and their presence in the Constitution of Canada confirms the fundamental nature of those rights.'⁵²²

Constitutional provisions

During the negotiations preceding Confederation in 1867, 'one of the proposed approaches was *optional* bilingualism in the activities of the future Parliament of Canada. French-Canadian members at the time vigorously opposed this option, and their protests culminated in the adoption of a resolution providing for the *mandatory* use of English and French in certain specific areas of parliamentary activity.'⁵²³

That resolution became Section 133 of the Constitution Act, 1867, which reads as follows:

'Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the

bill/session law chapter cross-reference, the Texas Appointment System, a description of the legislative process, and a legislative glossary); TLIS (Texas Legislative Information System, to track and to search for, view, and print bill text, bill history, bill analyses, and so on); *Westlaw® e-Libraries; Texas Legislature Online* (providing links to a number of sources of legislative and related information).

⁵²¹ <http://www.slmc.uottawa.ca/?q=english_french_legal>.

⁵²² HURTUBISE-LORANGER, Élise, Law and Government Division, *Official languages and Parliament, Parliamentary Information and Research Service*, Publication No PRB 06-28E, Library of Parliament, Ottawa, Canada, 2008, reviewed 17 May 2012, available at: <<http://www.parl.gc.ca/content/LOP/ResearchPublications/prb0628-e.pdf>> at pp. 1-2.

⁵²³ BRAËN, André, 'La rédaction bilingue des comptes rendus des comités de la House of Commons', *Revue générale de droit*, Vol. 26, 1995, at p. 536, cited in HURTUBISE-LORANGER, *Official languages and Parliament, supra* fn. 522.

Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.'

As a result of two decisions rendered by the Supreme Court of Canada in 1986 *MacDonald v City of Montréal*⁵²⁴ and *R. v Beaulac*, the right to use English or French in parliamentary debates also includes the constitutional right to simultaneous interpretation. Thus, Section 133 and language rights in general must now be given a broad and liberal interpretation based on their object.⁵²⁵

According to Section 133: 'records and journals'⁵²⁶ must be written in both official languages: 'it is not one language or the other as one wishes, but both languages that must be used at the same time in the records and journals.'⁵²⁷

It's useful to note that prior to 1976, the Journals were printed in separate English and French versions.⁵²⁸ The interpretation made by the Superior Court in *Blaikie v Québec*, revealed that 'the obligation to print and publish Acts in English and French necessarily included the obligation to use English and French simultaneously throughout the legislative process. Thus, for the English and French versions to be equally authoritative, they must be passed and assented to in both languages. Simply printing and publishing them in both languages is not sufficient to respond either to the letter or the spirit of section 133.'⁵²⁹

Delegated legislation follows the same provisions stated under Section 133 as confirmed by the Supreme Court of Canada in *Blaikie No 2*:⁵³⁰ the obligation of bilingualism applied to regulatory enactments issued by the Government, by a minister or by a group of ministers.

The Canadian Charter of Rights and Freedoms essentially restates the same rights and obligations provided by Section 133, but with a few additions and clarifications.

Statutory provisions⁵³¹

In 1969, Parliament passed the first Official Languages Act following the recommendations of the Royal Commission on Bilingualism and Biculturalism. For the first time, the official language status of English and French was recognised in all matters pertaining to the Parliament and Government of Canada.

After the adoption of the Charter in 1982, the Official Languages Act was revised and modernised to take into account new constitutional guarantees contained in the Charter regarding language rights. A new Official Languages Act (hereinafter the OLA) was passed in 1988.

Additionally, the courts gave quasi-constitutional status to the OLA. In *Lavigne v Office of the Commissioner of Official Languages*, the Supreme Court of Canada affirmed that the OLA is no ordinary statute:

⁵²⁴ *MacDonald v City of Montréal*, [1986] 1 S.C.R. 460, at p. 488, cited in HURTUBISE-LORANGER, *Official languages and Parliament*, supra fn. 536, at p. 2.

⁵²⁵ HURTUBISE-LORANGER, *Official languages and Parliament*, supra fn. 522.

⁵²⁶ The term 'records' includes act and bill whereas the term 'journals' means the *Minutes of Proceedings and Journals*.

⁵²⁷ HURTUBISE-LORANGER, *Official languages and Parliament*, supra fn. 522.

⁵²⁸ See, HURTUBISE-LORANGER, *Official languages and Parliament*, supra fn. 522, at p. 3.

⁵²⁹ *Blaikie v Québec (Attorney General)* (1978), para 56, cited in HURTUBISE-LORANGER, *Official languages and Parliament*, supra fn. 522, at p. 3.

⁵³⁰ *Blaikie v Québec (Attorney General)*, [1981] 1 S.C.R. 312, paras 18, 19 (*Blaikie No 2*), cited in HURTUBISE-LORANGER, *Official languages and Parliament*, supra fn. 522, at p. 3.

⁵³¹ R.S.C. 1985, c. 31 (4th Supp.).

'The importance of these objectives and of the constitutional values embodied in the Official Languages Act gives the latter a special status in the Canadian legal framework. Its quasi-constitutional status has been recognized by the Canadian courts. [...] The constitutional roots of that Act, and its crucial role in relation to bilingualism, justify that interpretation'⁵³²

As official languages, English and French have equal status, rights and privileges within the institutions of both Parliament and the Government of Canada. The OLA clearly states that:

- any member of the public has the right to use English or French to communicate with the central administration of federal institutions subject to the OLA as well as with any of the other designated offices or facilities;
- federal public servants have the right to work in the official language of their choice in designated regions; elsewhere in Canada, the treatment of both official languages in the work environments should be reasonably comparable between parts and regions where one or the other official language predominates;
- the Government of Canada is committed to ensuring that English-speaking and French-speaking Canadians have equal opportunities to obtain employment and advancement in federal institutions; and the Government of Canada is committed to enhancing the vitality of the English and French linguistic minority communities in Canada, supporting and assisting their development, and fostering the full recognition and use of both English and French in Canadian society.

It's worth noticing that Canada's linguistic duality also involves the parliamentary procedures and practice of the Senate and the House of Commons. The first bilingual Speaker of the House, Joseph-Godéric Blanchet, alternated between English and French versions of the prayer recited at the start of each sitting.⁵³³ As established by the Standing Order 7(2) of the *Standing Orders of the House of Commons*: the Deputy Speaker of the House shall be required 'to possess the full and practical knowledge of the official language which is not that of the Speaker for the time being.'

3. Policies, legal instruments, reforms

Federal policies and programmes in the area of official languages are enacted and lead by the Treasury Board: a committee of ministers of the federal Government. This ensures that federal institutions respect their official languages obligations. The Official Languages and Employment Equity Branch of the Treasury Board Secretariat is the administrative arm of the Board for the application of the Official Languages Act (OLA). However, federal institutions are primarily responsible for implementing the Official Languages Act and the service to the public regulations.⁵³⁴

In all communications, institutions must respect the equality of status of the two official languages as established by the already mentioned Canadian Charter of Rights and Freedoms.⁵³⁵

⁵³² *Lavigne v Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773, para 23.

⁵³³ HURTUBISE-LORANGER, *Official languages and Parliament*, *supra* fn. 522, at p. 7.

⁵³⁴ See, Official Languages in Federal Institutions, Treasury Board of Canada, Secretariat, <http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tb_a3/olfipr-eng.asp?format=print>.

⁵³⁵ <<http://laws-lois.justice.gc.ca/eng/Const/index.html>>, given effect through the Official Languages Act (Official Languages Act (R.S.C., 1985, c. 31 (4th Supp.)) and the Official Languages (Communications with and Services to the Public) Regulations (Official Languages (Communications with and Services to the Public) Regulations (SOR/92-48)).

Institutions must adhere to all legal requirements and regulations derived from these statutory provisions; they must abide by the Treasury Board's *Official Languages Policy Framework* (<<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12515>>), which sets out various requirements with respect to communications. They must also abide by the requirements of the Federal Identity Program Policy⁵³⁶ concerning the visual presentation of the official languages in communications or information materials.

Moreover, persons directly involved in the development and the processing of regulations should refer to the Regulatory Policy and the Process Guides:⁵³⁷

- Communication Policy of the Government of Canada, procedures;⁵³⁸ Communications Policy of the Government of Canada, Treasury Board of Canada Secretariat, 2002. Communications Policy of the Government of Canada.⁵³⁹
- Communicating with Seniors, Health Canada, 1999.⁵⁴⁰

The Statutory Instruments Act (SI Act), the Statutory Instruments Regulations (SI Regulations)⁵⁴¹ and the Regulatory Policy of the Government of Canada govern the making of regulations. Other directives concerning policy and lawmaking are:

- Cabinet Directive on Law-making;
- 1999 Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals;
- Regulatory Policy and the Policy and Process Guides of the Regulatory Affairs and Orders in Council Secretariat of the Privy Council Office approved by the Treasury Board in 1995;⁵⁴²
- Federal Gender Equality Action Plan, approved by the Cabinet in 1995;⁵⁴³
- Federal Identity Program.⁵⁴⁴

4. Drafting style and presentation

'The wording of a regulation must be clear, precise and concise. Drafting a regulation calls for discipline in selecting vocabulary and structuring sentences.'⁵⁴⁵ Because of the increasing in legislation drafting, the Regulations Section of the Department of Justice has improved its services to respond 'to its mandate, which is to ensure that federal regulations are legally sound and that their draftsmanship, in both official languages, is of the highest quality.'⁵⁴⁶ Moreover, since 1990, the Government of Canada has started to adopt Plain Language features to improve the quality of the style of drafting legislation.

⁵³⁶ <<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12314>>.

⁵³⁷ GOVERNMENT OF CANADA PRIVY COUNCIL OFFICE, *Guide to making Federal Acts and Regulations* (2nd ed.), 2001, <<http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=legislation/part3-eng.htm>>.

⁵³⁸ <<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12321>>.

⁵³⁹ < <http://www.tbs-sct.gc.ca/archives/sipubs/communication/2002/comm01-eng.asp> >

<http://www.tbs-sct.gc.ca/pubs_pol/sipubs/comm/dwnld/comm_e.rtf >.

⁵⁴⁰ <<http://publications.gc.ca/collections/Collection/H88-3-26-1999E.pdf>>.

⁵⁴¹ <<http://laws-lois.justice.gc.ca/eng/acts/S-22/>>.

⁵⁴² <http://www.collectionscanada.gc.ca/eppp-archive/100/201/301/tbs-sct/tb_manual-ef/Pubs_pol/opepubs/TB_B3/RP1-1E.html>.

⁵⁴³ <<http://publications.gc.ca/collections/Collection/SW21-15-1995E.pdf>>.

⁵⁴⁴ <<http://www.tbs-sct.gc.ca/fip-pcim/index-eng.asp>>.

⁵⁴⁵ *Federal Regulations and the regulations section, an overview, Federal Regulation Manual*, 1998, <<https://www.dropbox.com/sh/tgi64b5ovqk60km/NleVQT1-qc?n=7625712>>.

⁵⁴⁶ *Federal Regulations and the regulations section, an overview, Federal Regulation Manual*, 1998 <<https://www.dropbox.com/sh/tgi64b5ovqk60km/NleVQT1-qc?n=7625712>>.

Quality of drafting legislation

In 1998 the Government of Canada attempted to improve the quality of draft legislation. This was in response to awareness of the fact that 'people involved in the law-making process did not always have enough information on the process or their role in it. Another finding was that there is a wealth of information on the law-making process, but relatively few people know about it.'⁵⁴⁷

These issues were supported by two previous documents issued by the Government before 1998: *The Preparation of Legislation*, a directive approved by the Cabinet in 1981, and the first edition of the *Guide to the Making of Federal Acts and Regulations*, published by the Department of Justice in 1995.

Two big steps forward on this important issue have been made.

The first in 1998, when the regulations Section of the Legislative Services Branch of the Department of Justice prepared a Federal *Manual* aimed to cover all aspects of the process of federal regulation development within the framework of federal legislation: developing policy and drafting a text. The second one on 23 March 1999, when 'the Cabinet took an important step towards addressing these deficiencies' by the approval of an updated directive on the law-making process for federal Acts and regulation: the 1999 Cabinet Directive on Law-making.

The directive sets out the expectations of Ministers in relation to this process and generally orients the activities of government officials in this regard. It also envisages the issuance of supplementary documents to provide detailed guidance to ensure that the Cabinet's objectives and expectations are met.⁵⁴⁸

The manual contains the main rules for drafting and formatting delegated legislation at the federal level. Its aim is to help drafters in preparing documents that are as clear, concise and uniform as possible.

The rules discussed in the *Manual* apply primarily to regulations, statutory instruments and other documents subject to the examination, registration and publication requirements of the Statutory Instruments Act.

These rules also provide models and practical solutions to the problems faced by legislative counsel when drafting or examining regulations. Numerous examples illustrate some important principles.⁵⁴⁹

To give an example, the drafting instructions Section of the *Manual* gives some practical advices and guidelines such as:

- Start with a clear, detailed policy.
- Set out the main themes (rules) of the policy.
- Set out the ideas logically— which may mean in chronological order or according to the sequence of events.
- Begin with the general, and then move to the specific.
- State the most important first, the least important last.
- Set out the general rule clearly before moving on to the exceptions.
- Ensure that, for each element of the policy, you have answered the following questions: WHO? WHEN? WHERE? HOW?

⁵⁴⁷ *Guide to Making Federal Acts and Regulations*, supra fn. 537.

⁵⁴⁸ *Ibidem*.

⁵⁴⁹ See: DRAFTING AND ADVISORY SERVICES GROUP, DEPARTMENT OF JUSTICE, *Federal Regulations Manual*, Canada, 1998, <<https://www.dropbox.com/sh/tgi64b5ovqk60km/NleVQT1-qc?n=7625712>>.

A final general recommendation is always present: 'KEEP IT SIMPLE — USE SHORT, UNCOMPLICATED PHRASES'.

In 2001 the Government published a new edition of the *Guide to Making Federal Acts and Regulations*.⁵⁵⁰

Actors, key players

As confirmed by the respondent's replies to the questionnaire, drafting activity is performed by professional drafters: 'as far as law is concerned, drafting is regarded as an activity performed by professionals specialising in drafting specific documents (statutes, regulations, contracts, securities, memos, etc.). Law students can take university courses in (legal) drafting, and later, legal practitioners are offered specialised courses and seminars by their respective Bar associations. Even judges are offered courses and seminars in judgment writing. For translators (and terminologists), their formation in (written) communication makes drafting part of the "writing" formation/education, know-how and practice as "writers" (a translator is primarily a "writer"), followed by different drafting specializations: legal/medical/business/technical/etc. Legal translators do not necessarily have qualifications in law.'⁵⁵¹

The Legislative Services Branch

The Legislative Services Branch of the Department of Justice consists of the Regulations Section, the Legislation Section, and the technical and linguistic support unit. It aims to 'harmonize standards for drafting statutes and regulations'. Furthermore, the Chief Legislative Counsel has established a legal training programme for all Branch lawyers to standardise the approach used in the legal opinions they give to clients, he also promotes exchanges of personnel between them to obtain a greater flexibility in constituting teams of drafters.

'More recently, a committee co-chaired by the Chief Legislative Counsel and a senior Privy Council official was created to study the possibility of improving the legislative and regulatory processes. The committee will consider the efficiency of these processes and the manner in which they can be better integrated. The committee includes representatives of Treasury Board, the Privy Council Office and a number of regulatory departments and agencies.'⁵⁵²

At present, there are more than 40 Department of Justice lawyers specialising in delegated legislation dedicated to improve and guarantee the quality of draft regulations under the Statutory Instruments Act provisions. It is interesting to note that, 'about half of these lawyers are responsible for examining the English version of draft regulations, and the other half, the French version.'⁵⁵³

As already mentioned, a technical and linguistic support unit helps lawyers to 'ensure that the quality of both versions is high and that they convey the same meaning.'⁵⁵⁴

As a bill is a complex legal document, all departments have instructing officers that are 'departmental legal advisers well-suited to the task of giving drafting instructions and commenting on both language versions of the successive drafts of the bill.

⁵⁵⁰ 'To promote awareness of the 1999 *Cabinet Directive on Law-making* and to provide complementary detailed guidance on these matters'. A current version of the Guide is available on the Privy Council Office website at <<http://www.pco-bcp.gc.ca>>; *Guide to Making Federal Acts and Regulations*, *supra* fn. 537.

⁵⁵¹ Reply to question No 2 by Jean Claude G mar, Professor (*Emeritus*), Universit  de Montr al, former Director of the D partement de Linguistique et Traduction.

⁵⁵² <<http://www.justice.gc.ca/eng/dept-min/pub/legis/rm-mr/part1/part1.html>> (last accessed April 2013).

⁵⁵³ <<http://www.justice.gc.ca/eng/dept-min/pub/legis/rm-mr/part1/part1.html>> (last accessed April 2013).

⁵⁵⁴ <<http://www.justice.gc.ca/eng/dept-min/pub/legis/rm-mr/part1/part1.html>> (last accessed April 2013).

Departmental legal advisers must be familiar with the subject-matter of the bill as well as the legal difficulties that it may involve.⁵⁵⁵

Drafting involves transforming government policy into legislative form and style⁵⁵⁶. Drafters in the Legislation Section of the Department of Justice are active partners with the instructing officers and are equally responsible for ensuring that the bill gives effect to the policy. Drafters have an advisory role on many issues involving legal principles and policies. Because they are less involved in developing the underlying policy, they are better able to draft language that will be understood by members of Parliament, the public and the courts. Legislative drafters often use legislative drafting conventions. One widely recognised set of drafting conventions are from the Uniform Law Conference of Canada.⁵⁵⁷

The main functions of legislative drafting conventions are:

1. reducing vagueness or ambiguity;
2. facilitating access to Acts and regulations;
3. facilitating the revision of Acts and regulations.

Jurilinguists in the Legislative Services Branch of the Department of Justice are specialists in legal language⁵⁵⁸. Their primary role is to help drafters achieve the highest possible quality of language when drafting legislation. They keep a watchful eye on linguistic quality, focusing in particular on style, terminology and phraseology, to ensure that the linguistic quality is appropriate to legislative drafting and the subjects dealt with. They also guarantee that the two official language versions of legislation are parallel in meaning.

The first jurilinguists were employed in conjunction with the implementation of co-drafting. Their services were essential because the French version of federal Acts had been neglected for decades. Despite the constitutional rule that the French and English versions are equally authoritative, hasty translations from the English had peppered the French versions of federal legislation with peculiar anglicisms and clumsy constructions, which have been difficult to eradicate. The jurilinguists were given the mandate of ensuring that in the future the French version of legislation would be drafted in pure French. More recently, with the growing impetus toward plain language, a need has emerged for similar support for the English version. In 1998 the Jurilinguistic Services Unit was established, comprised of jurilinguists who work under the supervision of the Chief Jurilinguist and legislative counsel.

Jurilinguists keep abreast of the evolution of language in terms of both the law and legislation and the subject-matters. By carrying out the necessary research, they provide advice to drafters, either during the systematic revision of bills or in response to specific questions. The recommendations of jurilinguists are not binding on the drafters, who are ultimately responsible for their own documents.

Despite this, jurilinguists have been instrumental in bringing about a marked improvement in the quality of federal legislation over the years.

Legislative revisers provide support to drafters by revising and editing draft legislation. The Office also prepares Acts for printing and maintains consolidated versions of all

⁵⁵⁵ <<http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=legislation/chap2.3-eng.htm>>.

⁵⁵⁶ <<http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=legislation/chap2.3-eng.htm>>.

⁵⁵⁷ <<http://www.ulcc.ca/en/>>.

⁵⁵⁸ Source for this paragraph: <<http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=legislation/chap2.3-eng.htm>>.

federal Acts and regulations. Revising relates to the substance, form and language of legislation.⁵⁵⁹

In addition to checking for correct grammar and spelling, the legislative revisers check for clarity, consistency of language and the logical expression of ideas. They also verify the accuracy of cross-references, check historical precedents and citations, and ensure conformity with the rules and conventions governing the drafting and presentation of legislation.⁵⁶⁰ In addition to performing revising functions, legislative paralegals in the Office also assist drafters by drafting consequential and related amendments to lengthy bills.⁵⁶¹

Another function carried out by the Office is overseeing the printing of government bills before they are introduced in Parliament and the printing of Acts after Royal Assent.⁵⁶² Finally, the Office maintains master copies of all federal Acts and regulations, including historical indexes of amendments. These master Acts and regulations are for internal use and are essential tools in the drafting of bills.⁵⁶³

It is worth noticing that in Canada there are always two editors, one edits the English version and one edits the French. Among other things, they verify the logic, grammar, consistency, punctuation, format, citations and references.

The linguistic revisers compare the two language versions to ensure that they have the same meaning. They also provide other services, such as documentary and terminological research and writing assistance.⁵⁶⁴

5. Guides, guidelines and tools

As confirmed by Professor J.-C. Gémar, 'in Canada (and Québec, specifically), there are various style manuals, and training seminars available in both English and French, in most public institutions (Communications, Justice, Transportation, Energy, etc.) and utilities, as well as in most private large business entities', although some specific areas, as for instance, the criminal law field, and the income tax area (Revenue Canada), are not adequately addressed.⁵⁶⁵

As regards tools,⁵⁶⁶ we may recall among others:

⁵⁵⁹ <<http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=legislation/chap2.3-eng.htm>>.

⁵⁶⁰ 'Revisers provide advice on appropriate wording of amending clauses, the format of schedules, the standard wording of particular expressions, the formulation of coming into force provisions, and other matters of a technical nature. Finally, they edit motions to amend bills and review reprints of bills amended by parliamentary committees.' <<http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=legislation/chap2.3-eng.htm>>.

⁵⁶¹ <<http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=legislation/chap2.3-eng.htm>>.

⁵⁶² Acts are published in the 'Assented to' service, the *Canada Gazette* and in the Annual Statutes.

⁵⁶³ <<http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=legislation/chap2.3-eng.htm>>.

⁵⁶⁴ Federal Regulation Manual, 1998

<<https://www.dropbox.com/sh/tgi64b5ovqk60km/NleVQT1-qc?n=7625712>>.

⁵⁶⁵ Reply to question No 6, by Jean Claude Gémar, Professor (*Emeritus*), Université de Montréal, former Director of the Département de Linguistique et Traduction. Cp., for instance: *Guide de rédaction et de communication du gouvernement de l'Ontario*,

<<http://www.sse.gov.on.ca/mgs/onterm/Documents/Guides/Guide.pdf>>; Regulations Section of the Department of Justice, *Federal Regulations Manual*,

<<https://www.dropbox.com/sh/tgi64b5ovqk60km/NleVQT1-qc?n=7625712>>; LEBLANC, Valmond, *Guide de rédaction parlementaire* (pour le Nouveau-Brunswick), revised 22 November 2012, available at:

<www.gnb.ca/legis/publications/publications-f.asp>; *Guide du rédacteur = Canadian Style*, available at: <www.termiplus.translationbureau.gc.ca/>.

⁵⁶⁶ Most of the tools cited in this paragraph have been extracted from the respondent's reply and from SAVOIE THOMAS, Sylvette & SNOW, Gérard, *Liste d'outils linguistiques pour la traduction juridique au Canada*, Centre de traduction et de terminologie juridiques, Faculté de droit – Université de Moncton, January 2013, available at: <http://www.cttj.ca/Documents/Outilspourlatraductionjuridique_copiemaitresse_.pdf>; see

Testing drafts to establish and maintain quality control with: style guides; editors (several legislative counsel offices in Canada use editors to check grammar and consistency of drafting);⁵⁶⁷ readability tests by a computer software writing 'score' which gives some indication of how easy, or difficult, the drafts will be to read; peer review: the Working Group Study to the Law Reform Commission of Canada called Drafting Laws in French (1979) established a consistent review process and directed the writer and reviewer to important issues. The Study suggested a 'review control sheet' dealing with issues of substance and drafting.

The *Lexique analogique*: a database to find French equivalents for widely used English terms that are difficult to translate.

Les mots du droit: lists French equivalents for common English legal terms that pose special difficulties because of their multiple meanings. This tool includes a glossary of nearly 300 English terms and their French equivalents, a usage guide for prepositions and a bilingual index.

Department of Justice, Regulations Section's automated 'styles' to format documents.

late.europa.eu:

<<http://iate.europa.eu/iatediff/SearchByQueryLoad.do;jsessionid=9ea7991c30d564f1a7ad28d746f2a24fad59b3619dae.e3iLbNeKc3mSe3aNbxuQa3qKc40?method=load>>.

Tradulex, serving translators: <<http://www.tradulex.com/en/translators/intro>>.

Site de l'aménagement linguistique au Canada, Site for Language Management in Canada, <<http://www.salic-slmc.ca/>>.

National Adult Literacy Database, <<http://www.noslangues-ourlangues.gc.ca/collaborateurs-contributors/articles/instadult-adultliter-eng.html>>.

ONTERM (Ontario Terminology) ONTARIO:

<www.onterm.gov.on.ca/SearchTempl_f.asp>, <www.onterm.gov.on.ca/geo/>, <http://www.onterm.gov.on.ca/olc_lexicon.pdf> (free),

<<http://www.sse.gov.on.ca/mgs/onterm/Pages/splash.htm>>.

Terminology bank (University of Ottawa)

<<http://www.uottawa.ca/services/lsl/eng/terminology.html>>.

Lexicool.com: <www.lexicool.com> (free).

- Glossaire de la Banque du Canada (English-French and French-English) <<http://www.bankofcanada.ca/fr/glossaire/glossaire.html>> (free).
- Termium Plus: Government of Canada's terminology and linguistic data bank, <<http://www.noslangues-ourlangues.gc.ca/collaborateurs-contributors/articles/instadult-adultliter-eng.html>>.
- PAJLO (Programme national de l'administration de la justice dans les deux langues officielles): a programme launched in 1981 by the Department of Justice, devoted to the standardisation of common law terminology in French.⁵⁶⁸

also: EUROPEAN COMMISSION, DIRECTORATE GENERAL FOR TRANSLATION, *Study on Lawmaking in the EU Multilingual Environment*, *supra* fn. 150.

⁵⁶⁷ Over 140 lawyers have participated in a specially designed legal writing course offered by Wordsmith Associates, Calgary. The Plain Language Centre also provides a variety of writing courses and assistance in writing.

⁵⁶⁸ A technical group of legal experts: jurilinguists, representatives of federal and provincial authorities, researchers and law professors work on each term following an in-depth analysis and discussion in order to

The CTTJ, the Moncton Center of Legal Translation and Terminology (Centre de traduction et de terminologie juridiques de Moncton, CTTJ): it developed the so-called CLEF (Common Law en Français): a system-linked terminology which can only be assessed in the context of common law.⁵⁶⁹

Juriterm, a database containing the results of the ongoing research of the Centre in developing French vocabulary for Canadian common law, particularly in the fields of private law (property, contracts, torts, trusts, corporate law, mortgages, wills, leases, family law) and adjective (procedural) law (civil procedure, evidence, judicature).⁵⁷⁰

The CTDJ Ottawa Centre of Legal Translation and Documentation (Centre de traduction et de documentation juridiques d'Ottawa, Centre for legal translation and documentation at the University of Ottawa, Justice Sector Lexicon (Ontario).⁵⁷¹

Laboratoire de recherche appliquée en linguistique informatique (RALI): Université de Montréal, *TransSearch*: <<http://www.tsrali.com>>.

- Portail linguistique du Canada, Canada, Gouvernement du Canada: <www.noslangues.gc.ca> = Language portal of Canada: <www.ourlanguages.gc.ca>, where much information is offered on all aspect of linguistic quality, assessment and control.
- Renseignements pertinents pour les traducteurs, Canada, Ministère des Ressources naturelles: <http://geonames.rncan.gc.ca/info/tra_f.php> (free).
- A large number of dictionaries are available (and mentioned in the annexed bibliography).

6. Plain language in Canada⁵⁷²

The Government of Canada fixed 'a deadline of 2005 for all departments to have plain language information about their programmes and services on the Internet. Communication Canada produced a Successful Communication Toolkit in 2003, which includes a section on plain language written communications. It also contains a listing of successful communications projects lead by the federal Government, other Canadian institutions, and by other countries'.⁵⁷³

find the most adequate equivalent. As a result of their work, some 700 legal terms were finalised. The Institut Joseph-Dubuc de Winnipeg continued the work started under the auspices of PAJLO.

⁵⁶⁹ The aim of the creators of the CLEF was to ensure that common law is readable in French and in English alike. Approved terms are uploaded into the *Juriterm* database, which is comprised of a free version and an integrated version for subscribers. The terminology databank comprises some 13,000 entries.

⁵⁷⁰ A great many of the recommendations it contains in the areas of private law stem from collaborative efforts on a national scale to standardise the French vocabulary of the common law. However, as most matters of private law fall mainly under provincial jurisdiction under the Canadian Constitution and little legislation at the federal level deals with private law, the impact of *Juriterm* and the work undertaken by the CTTJ on federal legislation is much less than on provincial legislation and municipal by-laws. Although the use of *Juriterm* is not recommended officially either at provincial or at federal level, draftspersons at both levels do consult *Juriterm* constantly, (<<http://www.juriterm.ca/>>).

⁵⁷¹ <http://www.ctdj.ca/index.cfm?Repertoire_No=2137989592&Vair=corporatif>.

⁵⁷² Source: *Regulatory Policy* and the *Policy and Process Guides of the Regulatory Affairs and Orders*, at: <<http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=legislation/part3-eng.htm>>; Regulations Section of the Department of Justice, *Federal Regulations Manual*.

⁵⁷³ 'The head of each department and institution is responsible for following the communications policy, including the plain language provision. The policy states that the Treasury Board Secretariat and Privy Council Office will monitor compliance through communications plans and audit reports within departments. Monitoring and enforcement tools are now being developed'. BROCKMAN, Aggie, *Putting Plain Language Into Practice*, Government of the New Territories, NWT Literacy Council, May 2004, available at: <<http://www.nwt.literacy.ca/resources/plainlang/practice/practice.pdf>>.

The basic approach to writing documents in plain language is set out in *Plain Language Clear and Simple* prepared by the Human Resources Development, National Literacy Secretariat.

Another very helpful reference for writing and editing is *The Canadian Style*, which contains a chapter on plain language. 'Although these publications deal mainly with non-legal documents, they contain many principles for writing clearly that can also be applied when writing regulations. Traditionally, regulations have been written in legal, technical language that many readers find difficult to understand. Plain language writing focuses on the users (usually non-lawyers) of the regulations'.⁵⁷⁴

A whole section of the already mentioned *Federal Regulations Manual* outlines various plain language techniques that drafters can use to make regulations easier to understand. It concludes with an example of traditional drafting and an example of how it can be redrafted in plain language. In accordance with the Federal Regulation Manual, the key rules in writing regulations in plain language are:

1. Know who your readers are.
2. Know what you want to communicate.
3. Organise the regulation in a way that your readers will understand.
4. Use language that your readers can understand.
5. Use formatting features to help your readers.
6. Test to see if you have achieved your purpose.

Some specific points that are useful in using plain language are described below.

- (A) Use words that your readers can understand.
- (B) Be careful using definitions.
- (C) Use gender-neutral language.
- (D) Use verb forms that are clear and easy to understand.
- (E) Alternatives to 'shall'.
- (F) Be careful when using the passive voice.
- (G) Avoid turning verbs into nouns.

'The federal government is only in the initial stages of using plain language techniques, but has already recognized how beneficial they can be.'

The emphasis on consultation with 'the users and stakeholders is not new, but it underlines the importance of communicating in a way that the users can understand. Testing the regulations before they are finalised, to find out if the users and stakeholders can actually read, understand and use the regulations, is a very valuable tool. In addition to getting these groups' reactions from the outset, the consultations and usability testing make the user group more aware of the regulations that they should be following and, in so doing, perform a "marketing" role. They may also

⁵⁷⁴ Among advantages to be obtained they mention 'reduce costs' by reducing:

- 'the need for secondary explanatory material, such as pamphlets and brochures;
- the number of inquiries from the people who use the regulation; and
- the need for interpretative desk books or training programs for those who enforce the regulation'. 'In short, a regulatory regime will work more efficiently if the starting point is a regulation that can be easily understood by the intended audience'. *Federal Regulations Manual*, <<https://www.dropbox.com/sh/tgi64b5ovqk60km/NleVQT1-qc?n=7625712>>, at p. 21.

increase commitment to the regulations, since the users will have been involved in the entire process.⁵⁷⁵

7. Training

Such high awareness on the importance of co-drafting obviously entails care for training civil servants.

The most significant initiatives on this front are as follows:

- The Plain Train: an online training programme in cooperation with the Department of Justice, in both English and French.⁵⁷⁶
- The Canadian Association of Chiefs of Police and their project Target Crime with Literacy (policeABC.ca) promoted plain language to police forces and trainers across Canada, as a tool to meet the communication needs of Canadians.
- The Regulation Section has developed format styles on computer drafting. It also provides Training on 'how to use the Styles'.
- Jurilinguistic Training and Documentation.

In the late 1970s and early 1980s, the Government of Canada took a series of innovative measures, as for example:

- the creation of four jurilinguistics centres affiliated with a university or university college;⁵⁷⁷
- the creation of associations of French-speaking lawyers in seven common law provinces and at the national level;
- the development of common law tools in French and civil law tools in English as well as judicial information and education tools;
- the creation and standardisation of French common law vocabulary;
- the production and distribution of reference and awareness documents concerning access to justice in both of Canada's official languages;
- the creation of the National Program for the Integration of Both Official Languages in the Administration of Justice (or PAJLO);⁵⁷⁸

⁵⁷⁵ Once again advantages in careful planning of style is highlighted: 'Although the short-term cost of developing plain language regulations may be greater than the cost of developing other regulations (because of consultations and usability testing), there are many long-term benefits and savings:

1. There is less need to develop secondary documents to explain the regulations.
2. Since the regulations are of better quality, they will not need to be revised as frequently.
3. Less time will be spent answering readers' questions.
4. The consultations allow the drafters to understand the context of the regulations better, allowing for more informed drafting.
5. Since the user group is involved in the development of the document, the regulations are of better quality and elicit a higher degree of commitment.

Usability testing ensures that individuals understand the document they must comply with'. *Federal Regulations Manual*, <<https://www.dropbox.com/sh/tgi64b5ovqk60km/NleVQT1-qc?n=7625712>>, at p. 53.

⁵⁷⁶ <<http://plainlanguage.com/PlainTrain/Index.html>>

⁵⁷⁷ Namely:

- Centre de traduction et de terminologie juridiques at Université de Moncton;
- Centre for Legal Translation and Documentation at the University of Ottawa;
- Institut Joseph-Dubuc, affiliated with the Collège universitaire de Saint-Boniface;
- Québec Research Centre for Private and Comparative Law at McGill University in Montréal.

⁵⁷⁸ See: PAJLO <www.pajlo.org>.

- the Canadian Institute for the Administration of Justice (CIAJ).⁵⁷⁹

8. Other experiences

Québec

Québec's Centre of Expertise promotes plain language as a best practice in the delivery of services.⁵⁸⁰

North West Territories

The NWT Literacy Council has been training GNWT (Government of the Northwest Territories) employees to write in plain language for a number of years. The Council has continued to deliver training. The Council produced a Plain Language Handbook and a Plain Language Audit Tool. These projects were funded by the GNWT Department of Education, Culture and Communications. The Council distributed the books widely within government.⁵⁸¹

British Columbia

The British Columbia Securities Commission made plain language a strategic priority so that securities regulations would be easy to understand for everyone. It has trained its staff and developed plain language guidelines for all written communications. The Plain Language *Style Guide*, developed by a committee set up in 2001, helps employees communicate more clearly.⁵⁸²

Nova Scotia

The Department of Justice provides a *Style and Procedures Manual (A Guide to Drafting Regulations in Plain Language)*, prepared by the Registry of Regulations Nova Scotia Department of Justice, Province of Nova Scotia, January 2005, Communications Nova Scotia.⁵⁸³

Ontario

In 2001-02, the Ontario Securities Commission started to adopt plain language writing training, and is now adapting the British Columbia Securities Commission style guide.⁵⁸⁴

Alberta

Plain Language techniques have been employed in the Communications Plan of Alberta for Agriculture and Rural Development.⁵⁸⁵

⁵⁷⁹ A voluntary, non-profit, organisation dedicated to improving the quality of justice for all Canadians: <<http://www.ciaj-icaj.ca/en/about-us/our-activities>>.

⁵⁸⁰ <<http://grandsorganismes.gouv.qc.ca/?page=element&nIDElement=1978>>.

⁵⁸¹ BROCKMAN, Aggie, *Putting Plain Language Into Practice*, *supra* fn. 573; see also: *Doing Our Part. The GNWT's Response to the Social Agenda*, 2002, Department of Education, Culture and Communications, GNWT, *NWT Literacy Strategy*, 2002; Government of the Northwest Territories, *Doing Our Part: Progress Report*, 1 March 2003, <<http://pubs.aina.ucalgary.ca/health/62477E.pdf>>; Government of the NWT, *Communications Policy*, August 2003, <[http://www.gov.nt.ca/publications/policies/executive/Communications_\(11.21\).pdf](http://www.gov.nt.ca/publications/policies/executive/Communications_(11.21).pdf)>.

⁵⁸² BROCKMAN, Aggie, *Putting Plain Language Into Practice*, *supra* fn. 573; see also: BC Securities Commission, *Plain Language Style Guide*, <<http://www.bcsc.bc.ca/uploadedFiles/BCSCstyleguide2002.pdf>>.

⁵⁸³ <<http://www.gov.ns.ca/just/regulations/styleman/Style%20Manual%202005.pdf>>.

⁵⁸⁴ For further details see: BROCKMAN, Aggie, *Putting Plain Language Into Practice*, *supra* fn 573.

Chapter III - India

1. Legal, cultural and linguistic context

At the time of Independence in 1947, the newly formed Republic of India had the possibility to assist in moving past the colonial legacy through the adoption of an Indian language as an official language. This language would be in the place of English and use would additionally be as the language of the law. The choice made by the Constituent Assembly was characterised by considerable pragmatism and the desire to promote Indian languages, especially Hindi, but did not lead to a rejection of the English language.

To understand this point it is necessary to take into account the linguistic diversity that has always characterised the Indian subcontinent. In reality, 'the' Indian language does not exist, rather, many Indian languages are spoken in different parts of the country and sometimes in competition with each other. Indian languages, in addition to being numerous, are very diverse and can be classified into five distinct language families. The two most important ones are the Indo-Aryan, which includes Hindi, the main language of the North, and the Dravidian, which includes Tamil, one of the major languages of the South.⁵⁸⁶ This variety has the important consequence of difficulty in communication between Indians living in different parts of the country. This is not surprising when one considers that India is actually a subcontinent.

In this context, when Indians had to decide on the matter of official languages, the majority opinion was that, while recognising constitutionally a plurality of languages as suitable for official purposes and adequately protecting linguistic minorities, it was necessary to choose *one* official language of the Union. This choice was dictated by the aspiration to promote a unitary construction of India. Once this decision taken, the only choice of language was the Hindi language, as the majority of the population speaks it. But the percentage of Hindi speakers is just over fifty per cent of the population and is localised in the Northwest of the country. For those Indian nationals who spoke regional languages such as Bengali or Tamil there was good reason to protest the imposition of the official language as Hindi. Many immediately saw the English language as a *lingua franca* to be preferred, since it did not introduce privileged positions among the Indian languages and thus among the Indian citizens. In other words, for a Tamil-speaking Southern Indian the adoption of English as the official language was felt as less discriminating, as Hindi is a language known by many Indians, but excluding a significant portion of the country.

The Hindi language was adopted as the official language of the Union, but the Constitution recognised a number of regional languages and established a transitional fifteen-year period during which English would be used in all cases in which it was used prior to Independence.

In summary, immediately after Independence it was necessary to ensure continuity with the colonial period, even if only for practical reasons, but a choice was made in favour of the Hindi language over English, providing a gradual path to evaluate the feasibility of this substitution and also to develop the Hindi language as a technical language and to stimulate further development and diffusion in the country. As noted by Jain, three phases were prefigured: in the first there would have been a prevalence

⁵⁸⁵ MOWAT, Christine, 'Alberta Agriculture Saves Money with Plain Language', *Clarity*, Iss. 38, 1997, pp. 6-7, at p. 6; See also: KIMBLE, Joseph, 'Answering the Critics of Plain Language', 5 *Scribes Journal of Legal Writing* 51-85 (1994-1995), available at: <<http://www.plainlanguagenetwork.org/kimble/Answering2.pdf>>.

⁵⁸⁶ Other linguistic families are that of the Munda languages spoken mostly in the Himalayan area and the Austro-Asiatic and Tibeto-Burman languages, both spoken in the North-East. Remarkably, Indian languages also adopt different writing systems.

of English over Hindi, in the second the prevalence of Hindi over English, and finally, the complete replacement of English with Hindi.⁵⁸⁷

The choice made by the Constitution was to make Hindi the official language of the Union and to recognise other regional languages. The Constitution does not speak of a national language. Moreover, the very idea of a national language would be unsustainable under the circumstances, if not in some form of radical nationalism. An official language is a language recognised by the State and adopted in official documents. It is the language of the law, but is also in a broader sense the language of administration, the language of contact between citizens and administration and usually, the language of the educational system.

Of the many languages spoken in India, constitutional recognition as official regional languages has been provided to twenty-two languages in Annex Eight of the Constitution, which was amended several times until 2003. The Constitution speaks of 'regional languages'. Their importance is to be found mainly in the opportunity to be chosen as official State languages. The official regional languages are: Assamese, Bengali, Bodo, Dogri, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Maithili, Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu, Urdu. They are almost unknown outside of India, but it must be emphasised that almost all of them have a greater number of speakers than languages such as Italian. These languages were chosen not only on the basis of the number of speakers, since there are some non-official regional languages not included in the list that are more widely spoken than others inserted, but also according to their importance and the need for recognition of certain minority language groups. It is interesting to note that the list also includes Sanskrit, which is a learned language and not a mother tongue. The inclusion of Sanskrit is for historical and cultural reasons, as it is the primary classical language of India, which has had and continues to have great cultural weight. Additionally, Sanskrit is recognised under the Constitution as the primary source for the development of the modern Hindi vocabulary.

Mediation of the Constitution lies between the need for unity and recognition of diversity. Under the Constitution, a distinction was made between the Federal Government and the individual States. This means that Hindi is the official language of the Union, but individual States can have their own official language, or languages, which may differ from State to State. Therefore, there exists multilingualism at the level of individual States. That said, while Hindi may not be the official language of the State, it remains a language of that State by being an official language of the Union.⁵⁸⁸

A careful and articulate regulation accompanied the choice of Hindi as the official language of the Union. Article 343 (2) provides that for a period of fifteen years from the entry into force of the Constitution, the English language shall continue to be used for all official purposes of the Union for which it was used immediately before the entry into force of the Constitution. After the period of fifteen years, Parliament may by law allow the use of the English language for certain purposes. Article 344 introduces a complex institutional mechanism for the progressive use of Hindi.

⁵⁸⁷ See JAIN, Mahabir P., *Indian Constitutional Law*, Wadhwa, New Delhi, 2004.

⁵⁸⁸ Hindi is one of the official languages of the States of Uttar Pradesh, Bihar, Jharkand, Uttarakhand, Madhya Pradesh, Rajasthan, Chattisgarth, Himachal Pradesh, Haryana and of the Delhi Territory. Bengali is the official language of West Bengal and some North-East areas. Marathi is the official language of Maharashtra. Panjabi is the official language of Panjab, Haryana and Delhi. Gujarati is the official language of Gujarat. Tamil is the official language of Tamil Nadu, Puducherry, Andaman and Nicobar Islands. Malayalam is the official language of Kerala and Lakshadweep. Kannada is the official language of Karnataka. Telugu is the official language of Andhra Pradesh. Oriya is the official language of Karnataka and is spoken also in West Bengal, Chattisgarth and Jharkand. Assamese is the official language of Assam.

Article 351 provides that it is the duty of the Union to promote the spread of Hindi language, to develop it so that it can serve as a means of expression for all the elements of the composite culture of India and secure its enrichment by assimilating, in accordance with its nature, forms, style and expressions used in Hindustani and in the other languages of India specified in Annex eighth, and drawing, if necessary or desirable, its vocabulary primarily from Sanskrit, and secondarily from other languages.

Even at the State level the Constitution has provided for the use of English for all cases in which it was used at a time prior to the entry into force of the Constitution. This remains until a different decision is adopted by State parliaments, but the duration of the transitional period is not specified.

If this applies in general to the official languages, the most interesting rules are those relating specifically to the language of the law. Article 348 (1) provides that, regardless of the general provisions, until the moment a new measure is adopted by the Parliament, all the proceedings of the Supreme Court and of the High Courts, and all the legislation of Union's Parliament and States' legislatures must be in English. In addition to this, Ordinances of the President or the Governors of the States and orders, rules, regulations and by-laws adopted under the Constitution or under any Act of Parliament or of the legislature of a State must be in English.

Article 348 (2) provides that the Governor of a State may, with the prior approval of the President, authorise the use of Hindi or any other language used for official purposes of the State in the proceedings of the High Court. It is understood that this clause does not apply to judgments, decrees or orders, which must be in English. Clause 3 also provides that for Bills, Acts and Ordinances promulgated at the State level in a regional language, an official English translation should be published.

The transitional period ended with the Official Languages Act, 1963, which provided for the use of English as an additional language. It was impossible to eliminate the use of the English language in favour of Hindi although the latter language has increased in usage and importance. In particular, the Acts are now being published with an official version in both English and Hindi, although the second is a translation of the first and no co-drafting is made. The Official Languages Act has also provided the opportunity for the governor of a State to authorise the use of Hindi, or even of another official language of India, in the High Courts, although the official translation of the judgments into English remains mandatory.

2. Policy and reforms

The debate on languages is not over. English remains the main language of the law and this is evidenced by the fact that the Supreme Court should always 'speak' in English. To understand the reasons for this situation one must consider the number of existing cultural but also political and economic factors in favour of the preservation of English and the forces at work in the promotion of Hindi and other Indian languages.

The current terms of the issue can be analysed through a recent report by the Law Commission, with the title *Non-feasibility of introduction of Hindi as compulsory language in the Supreme Court of India* (216th Report), 2008. This Report follows a proposal for introduction of Hindi in place of English in the Supreme Court. The report reviews the constitutional provisions that apply to the issue, and a series of views from eminent Indian lawyers, particularly former members of the Supreme Court, advocates of the higher courts and professors. A brief review of some of these views can give a perspective on the perception of the problem among Indian lawyers. The report refers to the language of the Supreme Court only, but, given the importance of the Supreme Court and the type of arguments proposed in the report, the considerations can have a general impact.

The opinions of Indian jurists considered in the Report and the opinion of the Law Commission are all contrary to the adoption of Hindi as a compulsory language in the Supreme Court. Schematically, three arguments can be summarised. The first relates to the chaotic situation that would result. Not all judges know the Hindi language, with many of those who are native Hindi speakers educated in English and accustomed to thinking and interpreting texts in English. The change to Hindi would place them in a seriously troubling situation. The resolution to this should be a complete educational reform and eventual results would take generations. The second argument, related to the first, is the connection between the language and the legal system. One cannot see the sense of abandoning English as the language of the law in a system belonging, albeit with strong specificity, to the common law world, which uses conceptual categories mediated by the English language. English also enables the flow of legal knowledge and can increase the weight of India on the international legal scene. The third argument, which summarizes the background and points out the crucial, implied objection ('English is a foreign and colonial language') is that the English language and the common law are now part of Indian culture in all respects.

Out of the several arguments that are under consideration is the so-called 'indigenisation' of the English language. English in India undoubtedly has its own history and at present India is the second largest country in the world in terms of the number of English speakers, including those who speak it as a second or third language. The process of indigenisation of the English language, as well as that of the common law model, involves a change and adaptation in a new context. Indian-English is accepted and has acquired autonomy in a way similar to what occurred in the case of American English. Indian-English presents characters that become significant at a level of in-depth linguistic analysis.

Worth noting in the context of an Indian legal language analysis is that literary texts, legislation and other legal documents in Indian-English may contain a number of terms that are derived from Hindi or other Indian languages that are used in practice and are untranslatable. This means that legislation may be untranslatable for a non-Indian reader. Some of these terms belong to the common language, while others are technically used.

It should also be considered that Indians normally learn English as a second or third language. Therefore, an Indian who uses English as the language of the law also speaks another language, an Indian language. The Indian jurist speaking Hindi or Tamil does not translate into English when it enters his professional context. The situation that is observed can be broadly described as a situation of bilingualism, where one switches from one language to another without having to translate. The fact that a judge who writes a judgment in English does not speak English outside his professional context, but for example, Hindi, shouldn't be underestimated. The intersections between the professional context and other communicative contexts can be numerous and may also affect the professional context.

3. Actors, procedures and tools

Ministry of Justice – Legislative Department

The Indian Ministry of Law and Justice works alongside the Department of Justice, which is entrusted with the organisation of the Indian judicial systems, and the Department of Legal Affairs, which advises central Government ministries, a Legislative Department that has the role of drafting primary legislation for the central Government.

The Legislative Department pursues a policy of 'excellence in legislation' and acts as the model drafting office of the Union of India, and indirectly for the States of the Union. The main objective of the Legislative Department is to ensure uniformity and

consistency with 'brevity, clarity and precision' of Bills, Ordinances and Subordinate legislation. Secondly the Department aims at scrutinising and standardising precedent and legislation. Most notably the Department is entrusted with the role of disseminating principal legislation 'for the benefit of the common man'.

Institute of Legislative Drafting and Research

The Legislative Department is in the process of restructuring the *Institute of Legislative Drafting and Research*, the key Indian institution in providing training in legislative drafting in English and Hindi. The Institute was founded in 1989 'for the purpose of giving training to Central Government/State Government officers so as to build capacity in the field of Legislative Drafting to meet the shortage of trained draftpersons in the country'. The Institute organises courses on legislative drafting at different levels.

Official Language (Legislative) Commission - Union

In 1961 the Official Language (Legislative) Commission was created at the Ministry of Justice by Presidential Order on the basis of recommendations by the official language Commission and Parliamentary Committee. The Commission is responsible for preparing Hindi translations of Statutes drafted in English. This activity is supplemented by preparatory work that is required to build a legal Hindi as complex and comprehensive to match legal English in the translation process. Translation of Central Acts into regional languages, which can be official languages at the State level, was envisaged as a task to be pursued at the Central level. The Commission is thus engaged in translation of Statutes into regional languages as well. One of the most ambitious works carried out and revised on a regular basis is the preparation of a *Legal Glossary* for facilitating consistent translation from English into Hindi or other Indian languages, such as Tamil.

Official Language (Legislative) Commissions - States

Following the establishment of this Commission at the Union level, Official Language (Legislative) Commissions were established in the several States of the Union. The State of Kerala, for example, created a commission in 1968. This Commission was entrusted with scrutinising the glossary prepared by the Central Commission for the definition of standard Hindi legal terminology. The peculiar role of the Kerala Commission and other State Commissions, particularly in the South where languages belonging to the Dravidian family are spoken (rather than to the Indo-Aryan family, which includes Hindi), was to suggest modifications, taking into account peculiarities of the Malayalam language with a view to make the translation of English and Hindi texts into Malayalam easier. Furthermore, the Kerala Commission had to scrutinise the quality of translation of central Acts into Malayalam and to translate State Acts, Ordinances and rules into Malayalam. This complex process of institutionalised interaction has now changed. Now, the translation of Central Acts in Malayalam is conducted directly by the State Commission and translated texts are sent for approval to the Official Language Wing of the Ministry of Law. The Union still bears the costs of the procedure. Following this change, the Commission does not translate State Acts, which are translated by the Translation Wing of the Law Secretariat of the Government of Kerala.

Malayalam translations of Central Acts are official texts and are published under the authority of the President of India. They are particularly important following the decision of the Government of Kerala to allow use of Malayalam as a language of the Subordinate Courts. The Commission explicitly considers its mission as meant to 'help the common man to have access to various laws in the language which he knows' and at 'spreading Official Language and [...] improving legal literacy among the people'.

From an organisational point of view, the Commission is divided into administrative, sales and technical wings. The technical wings personnel amount to one language expert, four draftsmen, two language assistants, and seven other assistants. The procedure is described in the following terms:

'The Central Acts translated by the Assistants, the Language Assistants and the Draftsman in the Technical Wing are submitted before the Commission for approval. After examination with due care, the Commission approves the same with modifications, if any, after obtaining the approval of the Commission, the translated version of those Acts are forwarded to the Official Language Wing of Ministry of Law, Justice and Company Affairs, Government of India, New Delhi. If the Official Language Wing is desirous of making any modification, the wing will return the Act with their suggestions on the proposed modifications. Thereafter, the Sign Manual of the translation will be printed and forwarded to the Official Language Wing for obtaining the assent of His Excellency the President of India. The translated version of the Act approved by the President of India will be published in the India Gazette, as provided under section 2 of the authoritative texts (Central) Laws Act, 1973. This will also be made available for sale to the public in book form from this Commission'.

A significant number (255) of Malayalam translations have been approved. Most of them are printed and sold at the lowest rates on the basis of the mentioned policy of favouring legal literacy.

Similar Commissions exist in other Indian States and normally follow the same pattern. In the State of Tamil, Nadu, the State Official Language (Legislative) Commission was founded in the year 1965 and has the same tasks as the Kerala one, that is to say, it takes part in the construction of the glossary of legal terms, undertaking the translation of Central and State Acts into Tamil, and other normative texts such as Ordinances, Rules and Notifications. When aiming at expediting the translation of Union and State Acts, the translation may be entrusted to the Teachers at the Law College, as an additional remunerated work. The translation made at the Law College will be thus scrutinised and finalised by a Committee consisting of the Additional Secretary to Government, Law Department and experienced Officers of the Official Language (Legislative) Wing.

The diffusion of the use of Hindi is a major concern in Indian Public Administration. Even though English remains an additional language for official purposes, Hindi, as the official language of the Union, is the language normally used in communication with citizens at the Union level. Nonetheless, many Indians do not speak Hindi and this poses particular problems that include ministry personnel. Special policies are adopted to ensure Hindi proficiency among public officials.

At the Ministry of Statistics an Official Language Implementation Committee has been established, which produces quarterly reviews on the progress in the use of Hindi in official work within the Ministry and subordinated offices. The same Committee is entrusted with reviewing the statutory requirements of the Official Languages Act, 1963, and Official Languages Rules, 1976.

Legal informatics is a well-developed field in India and is sustained by increasing public investments. The Legislative Department and the National Informatics Centre have developed *India Code* (<www.indiacode.nic.in>) including all Central Acts from 1836 onwards. The information system for State Acts is less developed. Recently an important project has been launched by PRS legislative research, a think-tank working to 'strengthen the legislative process making it better informed, more transparent and participatory' to fill this gap. The *Laws of India* database (<www.lawsfindia.org>) is already a suitable tool for retrieving legislation of 10 States and progressively will

cover all States. Among the materials produced by the Official Language Wing, the Legal Hindi glossary providing the standard for legal Hindi is of particular importance.

4. Critical aspects and emerging trends

Minister of Law and Justice, Dr Ashwani Kumar at the 2013 inauguration of the 15th Appreciation Course in Legislative Drafting conducted by the Institute of Legislative Drafting and Research (ILDR) pointed out 'the need to draft laws in simple language easily understandable by the public'. The quality of legal provisions in this regard is explicitly linked to safeguarding the constitutional and other rights of the 'common man'. In the same speech Dr Kumar highlighted that 'some of the laws are not worded in plain language and the time given to the Legislative Counsel who drafts Government Bills is less than required'.

The crucial importance of plain language is claimed at the highest level in the context of one of the main training courses addressed to drafters. The plain language movement finds a fertile ground in the basic principles of the Constitution and its emphasis on promoting inclusive democracy. Similarly, the development of an Indian legal multilingualism is mandated by the Constitution. The Indian judiciary and public administrations in several fields further continue this constitutional inspiration. The development of better regulation can be seen as part of the same processes and ideals that have led to the promotion of access to justice for poor and uneducated sections of the population through Public interest litigation.

Even though English continues in use as an official language, especially for Union legislative acts and decisions of the higher courts, the 'movement' for Hindi is far from over and continues to be supported by investments and public policies. Similarly, movements for the development of other Indian languages as technical languages have emerged.

The reasons that favour Hindi as the language of law are widely agreed upon, with the democratic effects of having the law expressed in an Indian language being considered greatly important. Since the knowledge of English is not really widespread, especially among the most disadvantaged sections of the population, this is not a trivial matter. The Government and international organisations actively pursue legal literacy programmes. In these literacy programmes an obstacle is the fact that the official language of the law is widely unknown. In India the proliferation of mechanisms for translation of documents into Hindi and other regional languages is inevitable. It is important to remember that the Constitution requires the promotion and development of Hindi as a language that is technically capable of expressing all required issues. The basic idea, as demonstrated, is to modify and adapt Hindi syntactic structures and lexicon, with a primary basis in Sanskrit and a secondary basis in other Indian languages.

This analysis evidences that there is a degree of simplification inherent in the assertion that 'English is the language of Indian law'. Federal legislation is in English but is now increasingly accompanied by an official version in Hindi. State legislation is in many cases directly drafted in Hindi or in regional languages and normally translated into English, although this is not necessary. The language of the Supreme Court is always English. The language of High Courts may not be English. The language of inferior courts is normally a regional language. It must be considered that in the trial process, evidence can be taken in a language other than that of the Court and the laws applied may be found in both English and other language texts. This implies that many languages interact in the Indian legal system and the system itself could be considered as multilingual. In spite of this, at a certain level of analysis, English could appear to be the sole language of law, as it still is the primary language.

From a comparative point of view, it is interesting to observe some differences from European multilingualism. Multilingualism in the context of European law could be defined as 'perfect' in the sense that the law is expressed formally in all EU languages and reflects European multilingualism. In the Indian case we have a legal multilingualism that could be called 'imperfect' in the sense that the laws are not expressed in all Indian languages and thus do not reflect the Indian multilingualism.

In India, where twenty-two Indian languages, with added English, are recognised, law is expressed in two languages at the Union level and in one or two languages at the level of individual States. European law is multilingual in general but not in the context of individual States, while Indian law is multilingual at all levels. Considering that lower courts work in Hindi, Tamil and other recognised languages, the higher courts work in English and legal proceedings may be conducted in a local language, languages inevitably intersect. One could consider this system a vertical multilingual system, that is to say, a system in which different languages are in use but in varying degrees and at different levels of the justice administration. Horizontal multilingualism can be understood as a system in which there exists a plurality of languages on certain levels, but at the lower levels there is normally linguistic homogeneity. European law is distinctly multilingual but within States law is generally monolingual.

These structural differences are not surprising. Indian law is administered by a unitary court system. States may have different official languages, but there is a level of federal legislation. In this context, a plan for drafting/translating laws into twenty-three languages does not seem feasible and effective.

Ultimately, the model that is emerging in India is that of a trilingual system, consisting of English, Hindi and a regional language, which - according to the single State - could be Tamil, Punjabi, Bengali, etc. On one hand, the implementation of such a system poses major practical problems. On the other hand, the need for multiple versions is evident when one considers the mass of rules that must be known to all citizens. The underlying concerns are inclusive democracy and effectiveness of protection of rights.

Part III - Identifying Best Practices and Recommendations for Document Quality Control

Chapter I – Issues of readability

1. The contribution of Plain language movements

The part devoted to historical and comparative analysis examined the impact of the Plain language movement on improving transparency and clarity. In this part an analysis of the main features of this movement is provided. As stated in the Plain Language Association International website,⁵⁸⁹ plain language 'is communication designed to meet the needs of the intended audience, so people can understand information that is important to their lives'. One of the main assumptions of the movement is that 'what is clear, or what is plain to the intended audience, can only be decided by the audience'.⁵⁹⁰ In this view, plain language can be considered more as a process – a means to an end. However, as Richard Coe points out:⁵⁹¹

'Language that is "plain" to one set of readers may be incomprehensible for others. "Plain language" is a variable, not an absolute [...] we can and should define it as language they can understand, language that gives its readers the information they need [...] Insofar as our readers vary, so too will "plainness" vary.'

The Plain Language Association for revising written texts (or editing the writing of others) suggests the following:⁵⁹²

- Organise clear sentences: keep the subject and verb close together at the beginning of the sentence.
- Explain only one idea in each sentence.
- Keep sentences under 35 words – 25 words on average.
- Use verbs instead of nouns for your action.
- Use the active voice: make sure the actor is identified as well as the action.
- Use passive voice when appropriate and necessary.
- Use positive words and sentence constructions, avoiding negatives.

⁵⁸⁹ <<http://plainlanguagenetwork.org/stephens/intro.html>>, from which the following paragraphs in the text are excerpts.

⁵⁹⁰ *Ibidem*.

⁵⁹¹ COE, Richard M., 'Three Approaches to "Plain Language": Better, Best and Better than Nothing', In *Proceedings: Just Language Conference 1992*, The Plain Language Institute Vancouver, BC, 1992, pp. 99-109 (<<http://plainlanguagenetwork.org/stephens/intro.html>>).

⁵⁹² <<http://plainlanguagenetwork.org/stephens/intro.html>>. For another set of guidelines, cf. Edward Fry's 'Writeability Checklist': FRY, Edward B., 'Writeability: The Principles of Writing for Increased Comprehension' in ZAKALUK, Beverly L. & SAMUELS, S. Jay (eds.), *Readability: Its Past, Present and Future*, International Reading Association, Newark, DE, 1988, pp. 77-97.

- Keep your grammatical constructions parallel.
- Use a tone that suits your audience and avoid unnecessary formality.
- Simplify your words; choose everyday language.
- Cut the jargon and avoid acronyms.
- Use technical words with care: define or provide descriptive examples.

The process of testing documents, a crucial phase in this approach, is called 'usability testing'.⁵⁹³ The following questions are recommended when assessing documents:⁵⁹⁴

- Will members of the intended audience use this document?
- Does it appear interesting?
- Does it appear relevant to the reader?
- Will the audience member take the time to read this document?
- Is the information accessible?
- Is it well organised and comprehensible?
- Can the reader understand the language and concepts?
- Is it clear? Is it concrete?
- Is it personal?
- Does it answer readers' questions?

Plain language proposals for legal documents include:⁵⁹⁵

- eliminating archaic and Latin expressions;
- removing all unnecessary words;
- ensuring the text can be understood by someone 'of average intelligence';
- including a 'purposive' clause at the start of the text;
- reducing the use of the passive;
- reducing nominalisation (exercising the right instead of in the exercise of the right);
- replacing shall with must or the semi-modal is/are to construction (as in There is to be a body corporate) or the present simple;
- ensuring the text is gender-neutral.

⁵⁹³ Cf. DUMAS, Joseph S. & REDISH, Janice C., *A Practical Guide to Usability Testing*, Ablex, Norwood, NJ, 1993.

⁵⁹⁴ <<http://plainlanguagenetwork.org/stephens/intro.html>>.

⁵⁹⁵ WILLIAMS, Christopher, 'Legal English and Plain language: an update', *supra* fn. 135, at p. 140.

As pointed out by Emma Wagner:⁵⁹⁶

'The major EU enlargement was a fantastic achievement for democracy and for Europe, but it brought two problems for drafting in the Commission: the continued rise of bad English as the Commission's lingua franca, and the massive influx of new staff who naturally adopted the prevailing in-house style, rather than trying to reform it.'

Indeed, as noted by Williams,⁵⁹⁷ the English version of the 2004 European Constitution 'bore many of the hallmarks of a traditional style of drafting such as the inclusion of the adverbials *hereinafter* or *therein* and the massive use of the modal auxiliary *shall*'.

In Italy, research groups headed by Tullio De Mauro and Emanuela Piemontese have carried out interesting work inspired by Plain language ideals.

A crucial preliminary distinction is made concerning 'readability' and 'comprehensibility'.⁵⁹⁸ Readability refers to the material difficulties met by the reader; a text is the more readable the fewer 'hurdles' it presents to the reader. Such hurdles may be archaic or rare terms, excessively long sentences with a high number of subordinate clauses or reader trouble in identifying the subject, the predicate, or the object of a clause. Readability is a necessary but not sufficient condition to producing comprehensible texts. Comprehensibility is a qualitative feature of the text, concerning its logical and conceptual organisation: a text is more comprehensible when the information conveyed is more explicit (see for example <<http://www.eulogos.net>>).⁵⁹⁹

In 1982 the Gruppo universitario linguistico pedagogico (University of Rome, La Sapienza) defined the Gulpease formula, starting with the Italian language. The formula was calculated by empirically testing the real comprehensibility of a corpus of texts on readers with different levels of education. This led to the definition of both the formula and a scale of interpretation of the results. Thus, a text having a Gulpease index of 60 is very difficult for a reader with primary school education (5 years of schooling); difficult for a reader with 8 years of schooling; easy for readers with a secondary school diploma (13 years of schooling). Over previous readability testing methods, such as the Flesch index,⁶⁰⁰ the Gulpease formula has the advantage of relating the result to both the text and the type of reader.⁶⁰¹ The Gulpease index measuring formula is as follows:⁶⁰² Gulpease Index = 89 - (Lp / 10) + (3 x Fr); where: Lp = (100 x total letters) / total words and Fr = (100 x total clauses) / total words.

⁵⁹⁶ WAGNER, Emma 2010, 'Why Does the Commission Need a Clear Writing Campaign?' in PEREIRA, Anabela (ed.) *European Commission Directorate-General for Translation, Languages and Translation: Clear Writing*, Iss. 1, pp. 4-5, available at <http://ec.europa.eu/dgs/translation/publications/magazines/languagestranslation/documents/issue_01_en.pdf> at p. 4.

⁵⁹⁷ WILLIAMS, 'Legal English and Plain language: an update', *supra* fn. 135, at p. 141.

⁵⁹⁸ Cf. PIEMONTESE, 'Leggibilità e comprensibilità delle leggi italiane. Alcune osservazioni quantitative e qualitative', *supra* fn. 410, pp. 103-118, at p. 110.

⁵⁹⁹ LUCISANO, Pietro & PIEMONTESE, Maria E., 'Gulpease: una formula per la predizione della difficoltà dei testi in lingua italiana', *Scuola e città*, Vol. 31, Iss. 3, 1988, pp. 110-124; PIEMONTESE, 'Leggibilità e comprensibilità delle leggi italiane', *supra* fn. 410.

⁶⁰⁰ <http://en.wikipedia.org/wiki/Flesch%E2%80%93Kincaid_readability_test>; FLESCHE, Rudolf, 'A New Readability Yardstick', *Journal of Applied Psychology*, Vol. 32, Iss. 3, 1948, pp. 221-233; <<http://www.standards-schmandards.com/exhibits/rix>>.

⁶⁰¹ LUCISANO & PIEMONTESE, 'Gulpease: una formula per la predizione della difficoltà dei testi in lingua italiana', *supra* fn. 595; LUCISANO, Pietro, *Misurare le parole*, Kepos, Roma, 1992.

⁶⁰² PIEMONTESE, 'Leggibilità e comprensibilità delle leggi italiane', *supra* fn. 410, at p. 110.

The use of 'shall'

An interesting set of recommendations concerns the modal verb 'shall'.

While the elimination of 'shall' from legislative texts was actively pursued by the UK Drafting Techniques Group (2008),⁶⁰³ a different attitude is found in international bodies where English is one of the official languages.⁶⁰⁴ According to the *EC English Style Guide*, 7.17: 'The use of verbs, in particular the modal verb *shall*, in legislation often gives rise to problems, since such uses are rarely encountered in everyday speech. Consequently, writers may lack a feel for the right construction'. Section 7.18 ff. of the Guide provide the following guidelines.

'Shall' is suggested for 'positive command' (*EC English Style Guide* 7.19):

'This form *shall* be used for all consignments'

Note that this provision expresses an obligation. However, this is not always the case:

'This Regulation shall enter into force on [...]'

Theoretically, it is stated, '*must* could be used instead of *shall* in the first case, while *will* could be used in both cases. However, this is not the practice in EU legislation'.

For declarative terms, i.e. terms that are implemented directly by virtue of being declared, for example definitions or amendments – in main clauses, the simple present is suggested (together with an optional 'hereby' where the declaration constitutes an action, as in the first three examples) (*EC English Style Guide* 7. 23):

- Regulation [...] is (hereby) repealed.
- A committee [...] is (hereby) established.
- Article 3 of Regulation [...] is (hereby) amended as follows:
- This Regulation applies to aid granted to enterprises in the agriculture or fisheries sectors.

For the purpose of this Regulation, 'abnormal loads' means [...]

It is noted in the Guide that 'shall' could be used in the first four examples (without 'hereby'), but the meaning would be different: 'instead of declaring something to be so, this would be ordaining that something is to be so at some point or in some event (Two years after the entry into force of this Regulation/Should the Member States so decide...). In the last example as well, "shall mean" would in effect be instructing people how to use the term "abnormal loads" from now on, rather than simply declaring what it means in the regulation. Consequently, where no futurity or contingency is intended, the correct form here is a declarative term using the simple present' (*ibid.*).

'Shall' is not recommended in non-enacting terms, for example recitals or points in annexes, because these are not normally imperative terms and 'shall' is not used with the third person in English except in commands (and to express resolution as in it 'shall' be done) (*EC English Style Guide* 7.24). Other verbs are suggested in these cases, such as 'will' or 'must' as appropriate. It is also recommended to avoid the archaic use of 'shall' in subordinate clauses to express contingency: instead the present tense should be used (for example, 'if an application is [**not** "shall" be] submitted after the deadline, ...') or the inverted construction with 'should' (for example, 'should an application be submitted after the deadline, ...').

⁶⁰³ Cf. WILLIAMS, 'Legal English and Plain language: an update', *supra* fn. 135, at p. 142.

⁶⁰⁴ WILLIAMS, 'Legal English and Plain language: an update', *supra* fn. 135, at p. 141.

In instructions, the second person imperative is suggested rather than 'shall' for commands (*EC English Style Guide* 7.25):

Place a sample in a round-bottomed flask [...]

'Must' is recommended to express objective necessity:

The sample must be chemically pure [...] (i.e. if it isn't, the procedure won't work properly).

Indeed, as noted by Martin Cutts and Emma Wagner in *Clarifying EC Regulations*⁶⁰⁵:

'*Shall* is much used here [in regulations] to denote obligation. *Must* is a more modern legal alternative that lacks the potential ambiguities of *shall*. As explained in *Clarifying Eurolaw*, "In modern British conversational English (and even in most formal writing), *shall* has lost its association with obligation. *Shall* is becoming unusual even in the simple future tense, except in questions. Most speakers of British English use only will in the future tense. When imposing an obligation, *must* is now preferable. It is becoming more common in British law, where *shall* and *must* seem to be used interchangeably.'

The authors quote a line of argument of the New Zealand Law Commission they consider convincing:

'*May* should be used where a power, permission, benefit or privilege given to some person may but need not be exercised: exercise is discretionary. *Must* should be used where a duty is imposed which must be performed. Although *shall* is used to impose a duty or a prohibition, it is also used to indicate the future tense. This can lead to confusion. *Shall* is less and less in common usage, partly because it is difficult to use correctly. Use *must* instead of *shall*: it is clear and definite, and commonly understood. *Shall* and *must* are often used unnecessarily in declarative expressions, in an attempt to capture a sense of authority and obligation. In this situation, the present tense is often more appropriate.'⁶⁰⁶

Other authorities also favour 'must' for obligation. Butt and Castle⁶⁰⁷ list the many legal cases where the word 'shall' has required judicial interpretation because of its twin dichotomies of futurity–precondition and direction–obligation. Butt and Castle, in almost suggesting the abandonment of 'shall' in legal documents have stated:

'The differing senses of *shall* point up the dangers inherent in its uncritical use.'

On the indeterminacy of 'shall' between a deontic and a performative value, one may also consult the literature, such as the work of Garzone.⁶⁰⁸

In 2008 the Drafting Techniques Group at the Office of the Parliamentary Counsel in Westminster produced two highly significant papers, one on the subject of 'shall' (March 2008), the other on gender-neutral drafting techniques (December 2008).⁶⁰⁹ The former devoted 24 pages to this controversial modal auxiliary that has characterised legal English for centuries, acknowledging that:

⁶⁰⁵ CUTTS, Martin & WAGNER, Emma, *Clarifying EC Regulations*, Plain Language Commission, Whaley Bridge, 2002, available at: <<http://www.clearrest.co.uk/pages/publications/books/clarifyingecregulations>>.

⁶⁰⁶ LAW COMMISSION OF NEW ZEALAND, *Legislation Manual: Structure and Style*, 1996.

⁶⁰⁷ BUTT, Peter & CASTLE, RICHARD, *Modern Legal Drafting: A Guide to Using Clearer Language*, Cambridge University Press, Cambridge/New York, 2001.

⁶⁰⁸ GARZONE, Giuliana, *Performatività e Linguaggio Giuridico. Una Proposta di Classificazione. Con Osservazioni Contrastive Inglese-italiano*, Centro Linguistico Università Bocconi, Milan, 1996; EAD., 'Deontic Modality and Performativity in English Legal Texts', in GOTTI, Maurizio & DOSSENA, Marina (eds.), *Modality in Specialized Texts*, Peter Lang, Bern, 2001.

⁶⁰⁹ For a full comment, cf. WILLIAMS, 'Legal English and Plain language: an update', *supra* fn. 135, at pp. 142 ff.

1. 'Shall' can be controversial. Few other words have the potential to evoke such strong feelings among writers on legal drafting. It has been said that '*shall* is the hallmark of traditional legal writing. Whenever lawyers want to express themselves in formal style, *shall* intrudes.' But its supporters can be forthright in its defence. Thus Craies *On Legislation* argues that 'shall' 'is simply too precious a commodity to discard in the absence of an obvious modern equivalent, however archaic it appears.'

2. This difference of opinion is reflected in the practice of the Office. Some recent Acts use 'shall' freely whilst others avoid it altogether, or perhaps reserve it for textual amendments to Acts in which it already appears.⁶¹⁰

The Group examined the various alternatives to 'shall' in detail – such as 'must', the 'is/are to' construction, the present simple, and expressions such as 'it is the duty of' – in different contexts. In the end it recommended a more restrictive use of *shall* than was proposed by the Office of the Scottish Parliamentary Counsel (2006), endorsing the almost total elimination of 'shall' from legislative texts, even going so far as to conduct textual amendments. Several references were made to the Tax Law Rewrite Project and to drafting practices in Australia, New Zealand, Scotland and Canada. Thus, in the *Drafting Guidance*,⁶¹¹ it is suggested:

'There are various alternatives to *shall* which can be used, depending on context: *must* in the context of obligations (although *is to be* and *it is the duty of* may also be appropriate alternatives in certain contexts); *there is to be* in the context of the establishment of new statutory bodies etc.; use of the present tense in provisions about application, effect, extent or commencement; *is amended as follows* in provisions introducing a series of amendments; *is repealed* in the context of free-standing repeals; *is to be* in the context of provisions relating to statutory instruments (and, if appropriate, *may not* as an alternative to *shall not*). A reason for not departing from *shall* might be that it would appear in text to be inserted near to existing provisions that use *shall* in the same sense.'

Bowman expresses some insights on the OPC in an article:⁶¹²

'Traditionally, Acts contained phrases like "It shall be the duty of the Secretary of State to keep the arts under review (or whatever)." But the word "shall" is not generally used (outside legal documents) in this sense. In common speech it is generally taken to imply a statement about the future rather than to impose an obligation. In my view it is often enough simply to say, "The Secretary of State must ..." . And a phrase like "This Act shall extend to England and Wales only" can be expressed as "This Act extends to England and Wales only". On the other hand it is difficult to replace the legislative "shall" in setting up a statutory body. For instance, section 1(1) of the Scotland Act 1998 provides that

"There shall be a Scottish Parliament..."

But I know that the legislative "shall" can arouse deep passions. Some drafters are sticking to it more than others. Perhaps I had better leave it at that'.

The use and translation of connectives

A second topic that we explored in more detail concerns the use of connectives (i.e. coordinating conjunctions, subordinating conjunctions and adverbial expressions, such

⁶¹⁰ WILLIAMS, 'Legal English and Plain language: an update', *supra* fn. 135, at p. 142.

⁶¹¹

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Office_of_the_Parliamentary_Counsel_revise_d_guidance_16_12_11.pdf>.

⁶¹² BOWMAN, *The Art of Legislative Drafting*, *supra* fn. 212, at pp. 24-25.

as: 'and', 'but', 'or', 'although', 'subject to'), which poses many problems in both monolingual and comparative drafting. Despite the crucial role of connectives in steering the interpretation of a text, as highlighted below, such expressions have received little attention in drafting manuals and guides. More in general, a frequently neglected aspect of manuals and guides is the fact that the problematic character of legal translation concerns not only the concepts expressed by terms such as 'consumer', 'property', 'good faith', etc., but also other levels of language than the lexicon, and that a fine-grained analysis of all linguistic levels of legal texts ought to become a prerequisite for both translation and 'good' drafting practice in multilingual contexts.⁶¹³

As said, careful use and translation of such expressions is a prerequisite for both good drafting and interpretation at the Court level. Indeed, in a considerable number of cases debated by the Court of Justice of the European Union the dispute revolves around a connective.⁶¹⁴ Even apparently simple connectives, such as 'and', 'or', 'but', hide insidious traps. The case *Afrasiabi*, Judgment C-72/11 (21/12/2011), for instance, concerns Article 7(4) of Regulation No 423/2007, where it is stated:

'The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1, 2 and 3 shall be prohibited.' (Regulation EC (No) 423/2007, Art. 7(4))

It is argued in the judgement that: 'as the Italian Government and the Commission point out, the use of the coordinating conjunction "and" in that provision shows unequivocally the cumulative nature of the factors corresponding to "knowingly" and "intentionally" respectively' (para 64). Thus, '[...] Article 7(4) of Regulation No 423/2007 must be interpreted as meaning that: [...] the terms "knowingly" and "intentionally" imply cumulative requirements of knowledge and intent, which are met where the person participating in an activity having such an object or such an effect deliberately seeks that object or effect or is at least aware that his participation may have that object or that effect and he accepts that possibility' (paragraph 68).

Despite the crucial role of connectives in steering the interpretation, evidently shown by the Court case quoted above, their use and translation are often inaccurate in both primary and secondary legislation.⁶¹⁵ Consider, as an example, the non equivalence of examples (a) and (b):

Commission Regulation (EU) No 748/2012, 21.A.158

(a) 'In certain circumstances and subject to the nature of the finding the competent authority may extend the three month period *subject to* the provision of a satisfactory corrective action plan agreed by the competent authority.'

(b) 'In alcune circostanze e sulla base della natura della non conformità l'autorità competente può estendere il periodo di tre mesi *salvo* la

⁶¹³ Cf., among others, VISCONTI, Jacqueline, 'La traduzione del testo giuridico. Problemi e prospettive di ricerca', *Terminology and Translation. A Journal of the Language Services of the European Institutions*, 2000/2, pp. 38-66; EAD., 'A textual approach to legal drafting and translation' in AJANI, Gianmaria, et al. (eds.), *The Multilingual Complexity of European Law: Methodologies in Comparison*, European Press Academic Publishing, Florence, 2007, pp. 107-132.

⁶¹⁴ Cp.: <<http://curia.europa.eu/juris/documents.jsf?pro=&nat=&oqp=&lg=&dates=&language=it&jur=C%2CT%2CF&cit=none%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&td=ALL&text=congiunzione&pcs=O&avg=&page=1&mat=or&jge=&for=&cid=1398499>>.

⁶¹⁵ Cf. e.g. VISCONTI, Jacqueline, 'European integration: connectives in EU legislation', *International Journal of Applied Linguistics*, Vol. 23, Iss. 1, 2013, pp. 44-59.

presentazione di un soddisfacente piano d'azione correttiva approvato dall'autorità competente.'

Notice indeed the strikingly different semantic relationship conveyed by the two connectives *subject to* vs *salvo* in the example above, potentially problematic from a legal point of view: in the English version the provision of an approved correction plan is a prerequisite for the discretionary extension; in the Italian version it is an exception! Indeed, in this type of texts *salvo* invariably translates *except* and *unless*, as in the following examples:

Treaty establishing the European Coal and Steel Community, Art. 20b

(a) 'In the course of its duties, the European Parliament may, at the request of a quarter of its Members, set up a temporary Committee of Inquiry to investigate [...] alleged contraventions or maladministration in the implementation of Community law, *except* where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.'

(b) 'Nell'ambito delle sue funzioni, il Parlamento europeo, su richiesta di un quarto dei suoi membri, può costituire una commissione temporanea d'inchiesta incaricata di esaminare [...] le denunce di infrazione o di cattiva amministrazione nell'applicazione del diritto comunitario, *salvo* quando i fatti di cui trattasi siano pendenti dinanzi ad una giurisdizione e fino all'espletamento o della procedura giudiziaria.'

Commission Regulation (EU) No 748/2012, 21.A.158

(a) 'The type-certification basis to be notified for the issuance of a type certificate or a restricted type-certificate shall consist of the applicable airworthiness code established by the Agency that is effective on the date of application for that certificate *unless* otherwise specified by the Agency.'

(b) '[...] il codice di aeronavigabilità di riferimento, definito dall'Agenzia, in vigore alla data di richiesta del certificato in questione, *salvo* indicazioni contrarie da parte dell'Agenzia.'

A particularly problematic conjunction in legal texts, as noted already by L. Allen,⁶¹⁶ is the disjunctive conjunction 'or'. Logically, two types of disjunction are identified, which correspond to two distinct truth tables: 'inclusive', which is true when at least one of the propositions is true, thus when both are true; 'exclusive', which is true if and only if one of the propositions is true.⁶¹⁷ Although the most frequent use in legal texts is inclusive, exceptions are found.⁶¹⁸

⁶¹⁶ ALLEN, Layman E., 'Symbolic Logic: A Razor-Edged Tool for Drafting and Interpreting Legal Documents', 66 *Yale Law Journal* 833 (1951); SOLAN, Lawrence, *The Language of Judges*, University of Chicago Press, Chicago, 1993, at pp. 45 ff.

⁶¹⁷ Cf. e.g. MANZOTTI, Emilio, 'Alternative' in SABATINI, Francesco & SKYTTE, Gunver (eds.), *Linguistica testuale comparativa*, Museum Tusulanum Press, Copenhagen, 1999, pp. 57-88.

⁶¹⁸ Cf. e.g. VISCONTI, Jacqueline, *Il testo scritto: il contratto*, Accademia della Crusca, Florence (forthcoming). Cf. also GAMBARO, Antonio, 'Interpretation of Multilingual Legislative Texts', XVII International Congress of Comparative Law, Utrecht, July 2006, *Electronic Journal of Comparative Law*, Vol. 11, Iss. 3 (December 2007), available at: <<http://www.ejcl.org>>, at p. 14, quoting the EEC case T 143/89 where the judges stated that 'The applicant may not rely on the Italian version of Article 85 of the Treaty in order to require the Commission to demonstrate that the agreement had both an anti-competitive object and effect. That version cannot prevail by itself against all the other language versions, which, by using the term "or", clearly show that the condition in question is not cumulative but alternative.'

An interesting suggestion to overcome the ambiguity of *or* is found in the Italian handbook *Regole e suggerimenti per la redazione dei testi normative*,⁶¹⁹ where the use of **listings is recommended instead of 'o' [or]**. If the disjunctive relation is of inclusive kind, the suggested formulation is 'To obtain G at least one of the following prerequisites has to obtain:

- a)...
- b)...
- c)...'

If the relation is of exclusive kind, the formulation suggested is 'To obtain G one and one only of the following prerequisites has to obtain:

- a)...
- b)...
- c)...'

The disjunctive conjunction is linked to listings also by the Manual of precedents for acts established within the Council of the European Union (p. 119):⁶²⁰

'It is advisable to specify the link between the different items in a list. Where there is a list in a sentence, that link may be expressed by "and", (cumulative list), "or" or "either... or...", (alternative list). (In this case it is usually enough if only the penultimate element is followed by "and" or "or" respectively. In Union texts, however, lists are most often simply free-standing items, without connecting words.) The conjunction "or" should only be used when the nature of the link is clear because, as the Court has held, the meaning of this conjunction differs depending on the context in which it is used'.

In this respect, Case C-304/02 *Commission v France* [2005] ECR I-6263 (paragraph 83) is quoted: '... the use in [Article 260(2) TFEU] of the conjunction "or"... [t]hat conjunction may, linguistically, have an alternative or a cumulative sense and must therefore be read in the context in which it is used. In light of the objective pursued by [Article 260 TFEU], the conjunction "or" in [Article 260(2) TFEU] must be understood as being used in a cumulative sense.'

As a set of recommendations towards a detailed textual analysis, we suggest considering:

- (i) the type of entity on which the connective has scope: clause, noun phrase, etc.;
- (ii) the position of the subordinate clause or phrase introduced by the connective in relationship to the other text units: preposed, postposed, parenthetical;
- (iii) the degree of communicative foregrounding vs back grounding of main vs subordinate clauses or constituents;
- (iv) the specificity of the logic-semantic relationship expressed by the connective (temporal, causal, of purpose, conditional, etc.);
- (v) which relationship, from a legal point of view as well, do referents exist linked by the connective? Which connective best renders such a relationship in the target language?

⁶¹⁹ *Manuale per le Regioni promosso dalla Conferenza dei Presidenti delle Assemblee legislative delle Regioni e delle Province autonome*: <<http://lexview-int.regione.fvg.it/iterleggi/drafting/drafting.pdf>>.

⁶²⁰ <http://ec.europa.eu/translation/documents/council/manual_precedents_acts_en.pdf>.

Further potentially problematic points are:

- Collocations e.g. 'cassare'/'impugnare una sentenza' cross-linguistically.
- Nominalisations e.g. 'exercising the right' instead of 'in the exercise of the right'.
- Methods of indicating the beginning and end of periods of validity and deadlines.⁶²¹

2. The contribution of cognitive psychology

Much of the literature surrounding legal drafting is based on anecdotal and empirical support. Cognitive research, however, has much to offer in terms of a more analytical understanding of the processes involved in the act of reading. Reading and understanding are competences that are learned through a process that is barely verbalised. In this sense, the human mind does not work by implementing a set of clear instructions but by making recourse to very complex cognitive processes. There is no doubt that a better understanding of these cognitive processes can be helpful to identify ways to make a text more understandable. In this regard, a legal text, although having some peculiarity, has features that are common to every kind of text.

A huge literature exists on the act of reading in different research fields, from cognitive pragmatics to neuroscience. A part of this research is firmly grounded in linguistics and the philosophy of language, albeit lacking in cognitive terms, while other parts are related to the physiology of reading⁶²² and the areas of the brain involved in the act of understanding a text.⁶²³ In this context, a few points can be highlighted here to support the contribution that drafting could receive from findings by cognitive sciences.

A central concept in the recent literature is that of 'fluency'. 'Fluency is not a cognitive operation in and of itself but, rather, a feeling of ease associated with a cognitive operation.'⁶²⁴ A reader processes fluent communications with greater ease and alacrity. To assess the relevance of the concept of 'fluency' a preliminary remark is necessary. Cognitive psychology recognizes two different systems for information processing: the associative system and the rule-based system. The first system operates by comparing a novel stimulus with known information about the world and is characterised by quick, automatic reasoning decisions based on inferences. The second system has an analytic character, allowing for a conscious consideration of the stimulus in decision-making situations, and involves logical analysis.

Fluency plays a role in determining which mental operation is used for information processing. Where the stimulus is novel or lacks fluency, the problem solver will likely opt to use the second system.

Fluency influences judgments across several fields. For example, people consider fluent statements to have a greater level of truth and find them to be more likeable on the whole. Fluent statements are perceived as coming from a more intelligent person

⁶²¹ Cf. *Manual of precedents for acts established within the Council of the European Union*, <http://ec.europa.eu/translation/documents/council/manual_precedents_acts_en.pdf> at p. 102.

⁶²² The ocular movements in the act of reading are not a matter of secondary concern for studies on understanding. Gaps in the process of reading affect understanding. Dispositions of texts, length of sentences, even the type of font, make of a specific text a kind of object that is more or less attractive and clear.

⁶²³ In this respect, useful insights could come from experiments using neuro-imaging of legally trained personnel and not legally trained, lesser-educated citizens reading the same text.

⁶²⁴ OPPENHEIMER, Daniel M., 'The Secret Life of Fluency', *Trends in Cognitive Sciences*, Vol. 12, Iss. 6, 2008, pp. 237-241, at p. 237.

than non-fluent statements. In fact, very complex vocabulary and sentence structures are perceived as involuted and as pronounced or written by a person of lower intelligence.

Greater fluency results in increased positive judgments, and lower fluency results in more negative judgments. The profound effect that fluency has on comprehension and likeability has been used to influence language choices in advertising, customer relations and politics. The same processes used to think about stock names, slogans, customer manuals, and political speeches, are also used to think about legal texts. At first sight there is a strong argument for targeting fluency, in the measure in which a legal text's objective is to persuade and convey a message to its intended audience in the most possible effective way.

However, it has been correctly observed that for the legal writer it is important to understand that 'the possibility exists to consciously elicit varying levels of fluency in order to trigger a particular type of reasoning.'⁶²⁵ Recent work in fluency has demonstrated that when a problem is disfluent, people adopt a more deliberate processing strategy. In some cases 'making material harder to learn can improve long-term learning and retention. More cognitive engagement leads to deeper processing, which facilitates encoding and subsequently better retrieval.'⁶²⁶

Less fluent communications 'require the brain to engage in more complex processing – which also means processing that is more careful and, often, more interesting'; 'thus, skilful legal writers should actually be able to *choose* the level at which they cause their readers to engage by choosing the level of fluency that they employ'.⁶²⁷ In many cases a fluent text will have better results; but at least some passages may be deliberately left disfluent, in order to elicit a more deliberate processing strategy. This leaves open the question of how to achieve the desired level of fluency. Here again, some important suggestions may come from the cognitive sciences; neuroscience researchers have done significant work on the cognitive processes every reader must complete to understand a text. The fruits of this research are considerable.⁶²⁸

The reading brain processes certain classes of words, sentence structures, and text organisation, more efficiently than others. On the lexical level, unfamiliar words or words with multiple meanings considerably slow cognitive processing. Conversely, the more constraint both context and sentence structure place on a word, the more efficiently readers process the text by recognising words more rapidly.

On the syntactic level, studies have suggested that the act of reading is based on syntactic preferences that are deeply embedded. For instance, sentences in written English, with their subject-verb-object order, unfold after the introduction of the main subject and verb. This default structure produces an expectation and readers may have difficulty to understand 'left-branching sentences', that is to say, sentences where information is loaded before the main subject or where the subject of the sentence is difficult to find.

In other words, readers tend to process subject-verb-object sentences rapidly and efficiently, based on the expectation that the subject will precede the verb and the

⁶²⁵ BAKER, Julie, 'And the Winner Is: How Principles of Cognitive Science Resolve the Plain Language Debate' 80:2 *University of Missouri-Kansas City Law Review* 287-545 (2012), available at SSRN: <<http://ssrn.com/abstract=1915300>>, at p. 13.

⁶²⁶ See OPPENHEIMER, Daniel M., DIEMAND-YAUMAN, Connor & VAUGHAN, Erikka B., 'Fortune Favors the BOLD (and the Italicized): Effect of Disfluency on Educational Outcomes', *Cognition*, Vol. 118, Iss. 1, 2011, pp. 111-115.

⁶²⁷ BAKER, *And the Winner Is*, *supra* fn. 625, at pp. 20-21.

⁶²⁸ See, generally, DOUGLAS, Yellowlees, 'How Plain Language Fails to Improve Organizational Communication: A Revised Neuro-cognitive Basis for Readability', *The Journal of International Management Studies*, Vol. 7, No 2, 2012, pp. 28-39, available at: <<http://www.jimsjournal.org/4%20Yellowlees%20Douglas.pdf>>.

object will follow it. The recognition of the role of nouns depends on their position. In syntactically complex or anomalous sentences, an additional effort is required to detect the syntactic pattern that results in increased activity. Ultimately, reading slows down considerably and the risk of misunderstanding the sentence is considerably higher.

In this perspective, if one wants to produce a fluent text, subject and verb should be placed as close as possible to the beginnings of sentences, and kept as close together as possible. On the other hand, it is now well established by cognitive psychologists that both syntactic and inferential levels of processing rely on frameworks for understanding, known as 'schemas'. Schemas are patterns that enable us to make sense of what we perceive. Schemas tend to be focused on default conditions—the standard configurations, features, and outcomes that tend to characterise an object or scenario. In a sense, schemas act like inference-generators that establish our expectations for how a situation will play out.

Cognitive psychologists have beamed light on sentence-level features that make for sentences that are capable of being read more quickly and recalled more accurately. Studies have attested that readers often interpret sentences in terms of implicit causality. When readers encounter sentences where either overt or implicit causality is present, their reading times speed up, while recall increases in accuracy.

Further, studies have repeatedly established that readers tend to rely on the iconicity assumption in processing sentences. As a result, the more events in the written text obviously deviate in the told order from the chronological order of the events they represent, the more difficulty readers experience in comprehending the text; at the same time, readers display better recall when sentences clearly flag relationships between elements, and when events in the text correspond to the chronological order of the events they represent.

Another well-established element in working and long-term memory is priming, which can considerably boost the readability of any document. Priming is an implicit memory process in which exposure to a stimulus influences a response to a later stimulus. For example, if a person reads a list of words that includes the word *table*, and is later asked to complete a word starting with 'tab', the probability that he or she will answer 'table' is greater than if they are not primed.

The implications of the priming effect for reading are considerable, suggesting that the introduction of key words in a text at the outset of a paragraph will enhance readers' comprehension of the entire paragraph. Further, the repetition of key words central to a topic throughout a paragraph might easily boost readers' sense of continuity between sentences, thus making the schemas necessary for comprehending the meaning of the paragraph more accessible.

Varying word choice will make a text disfluent. Instead, key terms should be introduced at the outset of sentences and repeated throughout the text. It can be highlighted that fluency is related to path-dependence and expectations. In other words, there is not an inherently superior way of writing a sentence, but readability depends on the possible contrast with the expectation of the reader. In this case an additional task for the reader is to discern the new structure that he or she is dealing in that specific case. This has a clear impact in multilingual drafting. In fact, considering the existence of different syntactic structures, the resilience of the structure of the original text in translated versions could challenge the expectations of readers.

Furthermore, one could point out that legal texts have in many cases a codified structure that could pose some barriers to understanding. It should not be underestimated that the division of information under articles and sections, even

though in principle making the text more understandable, actually will require an additional effort to the non-specialist reader, who is not used to reading highly structured texts of this kind. In fact, the reader will have to process additional information concerning the structure of the text. In other words the problem here is one of fluency, of conflict with deeply embedded expectations of the non-specialist reader. For the same reason a specialist reader such as a public official has an expectation towards a text that is structured under sections and articles and would require an additional effort to adapt to a new form.

This leads to a point that cannot be overlooked. Notwithstanding any effort to make the text clearer, much depends on learning. A common reader who has read many legal texts will find a specific text clearer than a common reader who has read few legal texts and perhaps of a specialist reader belonging to a different jurisdiction and used to a different legislative style. The involvement of the reader in the learning process is necessary. Therefore, a consistent style of drafting is useful to avoid continuous challenge to expectations. Furthermore, when introducing novelties with the intention of making texts easier to understand, one should carefully assess the costs of innovation, particularly the learning curve.

An additional concept developed by cognitive psychology can be mentioned here: relevance. D. Sperber and D. Wilson have developed the theory of relevance.⁶²⁹ According to the principle of relevance: 'any utterance addressed to someone automatically conveys the presumption of its own relevance'⁶³⁰. This concept acquires its meaning in a peculiar theory of communication. Sperber and Wilson define communication:

'not as a process of duplication of meaning from the communicator's into the addressee head, but as a more or less controlled modification of the mental landscape - the 'cognitive environment' as we call it - of the audience by the communicator, achieved in an intentional and overt way. A person's cognitive environment can be modified by the addition of a single piece of new information, but equally well by a diffuse increase in saliency, or in plausibility, of a whole range of assumptions, yielding what will subjectively be experienced as an "impression". Between the communication of specific information and that of an impression, there is, on our approach, a continuum of cases. Instead, then, of contrasting "meaning" and "rhetorical effects", or "denotation" and "connotation", we include both under a single unitary notion of "cognitive effects".'⁶³¹

Sperber and Wilson then explain that in order to arrive at understanding, one has to make recourse to inferential and largely unconscious processes, with relevance intervening to guide in this process.

Processing information requires an effort of attention, recall, reasoning and so on, which modifies the cognitive environment. In fact, in the process, new information will be added, old information will be cancelled and the hierarchy of information will be changed. A notion of relevance may be provided in comparative terms:

'(a) Everything else being equal, the greater the cognitive effect achieved by the processing of a given piece of information, the greater its relevance for the individual who processes it.

⁶²⁹ WILSON, Deirdre & SPERBER, Dan, 'Rhetoric and Relevance', in WELLBERY, David & BENDER, John (eds.), *The Ends of Rhetoric: History, Theory, Practice*, Stanford University Press, Stanford, 1990, pp. 140 ff.

⁶³⁰ *Ibidem*.

⁶³¹ *Ibidem*.

(b) Everything else being equal, the greater the effort involved in the processing of a given piece of information, the lesser its relevance for the individual who processes it'

In communicative processes one person grasps the other's attention. Relevance means that communication requires sufficient attention and thus relevance of the information to the audience. According to Sperber and Wilson, humans automatically aim at maximal relevance, which is 'maximal cognitive effect for minimal processing effort'.

A few observations can be made to show the possible import of the concepts of 'cognitive effect' and 'relevance' concerning the readability of legal texts. First of all, it is not unusual that legal texts are read in the attempt to identify the specific information that is relevant for a specific case and a specific person. This means that one needs to go through a mass of non-relevant information, making the process slower and requiring more effort. The cognitive effect may consist of new information and in changing the quality of information in terms of saliency and plausibility. From this point of view, one could argue that a text including all and only relevant information in the context would be the optimal text. Needless to say that this condition is hardly achievable and it is inherently difficult for legal texts. In fact, in legal texts, one could say that the reader continuously collects and organises details that are actually scattered in different sections of the text and other (perhaps not immediately available) texts.

The cognitive environment is inherently defective. An experienced lawyer with exceptional skills will effectively 'write' his or her own text that is comprised of explicitly relevant information to the case in hand. Common readers cannot be expected to carry out this work. However some strategies could be assessed to make the text more readable in this perspective. First of all, normally a legal text is understandable on the basis of information that is outside the text. Reference to other norms could be made in an explicit way by quoting their content (making recourse to footnotes if necessary). Amendments are normally made through specific enactments that the jurist has used to interpret the original act. The consolidated text of Acts and amendment could also be useful for common readers.

Thinking about communication in law, one could also question the pragmatic effect of a legal text. One example would be sufficient. A legislative text has a prescriptive nature. Nonetheless it is perceived in most cases as a text describing the legally appropriate action to do something. What one should do to buy a house, to marry, etc. In other words, it is a set of courses of action. In other cases, the prescriptive nature is more evident. The same could be repeated for administrative acts.

The way in which the addressee understands what the text is meant to do is as important as the linguistic content and is part of the same context of communication. This affects the understanding. First of all it can be unclear what happens if one does not do the appropriate thing. Secondly, every understanding is a rational endeavour but implies emotional aspects. Clarity in the text is also clarity about the pragmatic nature of the message conveyed by the text. Furthermore, in some cases the addressee may read the text in a state of apprehension and this may disturb understanding. Jurists are not exempted from emotional distress that can affect the understanding of a text, specifically when, as judges, they are called to deliver a difficult judgment or, as legal practitioners, they are interpreting some contract clause that can turn to be a menace to their client or even to a personal interest.

These are just some sketched arguments meant to highlight the issue. To draw any operative instruction from this seems difficult, particularly considering that the emotional context of communication and understanding is beyond the control of the author of the message. Nonetheless a general principle can be established. All

communicative acts have a pragmatic effect, they say something and do something. Every effort should be made to convey the pragmatic content in an appropriate way. In administrative acts where communication is more specific than in legislative acts, particularly when an act is addressed to one person, the pragmatic effect can be taken into account more accurately. From another point of view, attitudes and emotions of the people who draft the text also may affect the quality of the message. In some cases, one could fear the effect of clarity or of saying too much and thus be bound or subject to some kind of liability.

To sum up, cognitive studies are a promising field. Much useful knowledge can be at the service of legal drafting. However one should not forget that, even if we knew everything about the cognitive processes involved in reading and understanding a legal text, this does not automatically mean that this knowledge can be transferred into effective drafting. A series of instructions on drafting texts are still 'cognitive effects' that may be more or less fluent and more or less relevant.

Chapter II – Questionnaire⁶³²

1. Background and methodology

The methodology of the questionnaire has been chosen by the research team to integrate the present research study with a practical overview of actual trends and policies, and to evaluate as closely as possible the effectiveness of materials and working structures. It is based on a questionnaire on 'document quality control' policies within public administrations, from both monolingual and multilingual countries, and international organisations.

The way the questionnaire has been conceived is to reflect the main objectives of the study, that is: (a) to review existing knowledge on the present topic, identifying solutions provided to emerging problems in different institutional contexts; (b) to identify current best practices; (c) to take account of the interaction between various issues: social needs, cultural aspects, policy-making, institutional practices, assessment practices and institutional change; (d) to highlight the relationship between certain institutional practices and their outcomes (documents); (e) to aggregate data and model findings in order to facilitate comparative assessment.

The purpose of the questionnaire was to gather quantitative as well as qualitative data.⁶³³ Whenever possible, for clearly defined issues we opted for multiple choice or yes/no questions, limiting the use of synonyms (e.g., recommendations, guidelines, instructions) to avoid major misunderstandings. Recipients still found a number of open questions. This model has ultimately prevailed to allow for certain flexibility in answers, thereby gathering as much information as possible.

The research is founded on empirical data provided by contact persons working in legislative bodies in some States and in the administration of international organisations. Answers reflect the information collected by the respondents and are subject to interpretation by researchers.

The main frame of our analysis is as follows:

- **Actors (e.g. international organisations, such as OCDE, UNOV, Unidroit, and national public administrations):**
 - institutions/organisations;
 - national public administrations;
 - advisers and experts.
- **Type of documents:** a distinction of the typologies of documents for each group.

In this respect, it should be noted that the relevant types of documents vary significantly between national administrations and international organisations, so that this difference can affect not only the content of drafting instructions but also revision, quality control, and ultimately attitude in users.

It should be noted that at national level, the notion of quality embraces substantial aspects relating to the impact within a legal system of a given regulation. On the other hand, from the point of view of translation, quality acquires a more purely linguistic

⁶³² The questionnaire has been drafted with the kind advice of Gerhard Dannemann, Jean-Luc Egger, Michele Graziadei and colleagues at the Centre for Comparative and Transnational Law, Turin, Elena Lauroba Lacasa, Annette Lenz, Pietro Mercatali, William Robinson, Francesco Romano, Susan Šarčević, Michael Scheen, Anna Veneziano, Christopher Williams.

⁶³³ The draft questionnaire was initially discussed with various legal and linguistic experts during a dedicated seminar in Turin on 14 December 12, as well as with several academic and institutional experts in prior mail exchanges. The draft was presented to DG Translation for feedback and approval, so that the final version aims to cover remarks and observations gathered during this preliminary process.

weight, moving toward faithfulness, elegance of target language and so on. During consultations, some questions were refined in order to cover all possible recipients and alternatives. For instance, 'false friends', which are especially appropriate in a multilingual context, have been presented together with 'anglicisms' and 'neologisms' that may be more relevant in monolingual contexts. Special focus was given to legal drafting/translation, to identify existing instructions and techniques for transposing legal language into clearer wording, without losing any content or raising misunderstandings.

The questionnaire starts by identifying recipients, respective type of documents and target readers. The notion of 'document', in order to acquire practical meaning for our recipients, has been broken down into legislation, guidance, reports, information material, brochures, press releases, letters, and website material.

❖ **Procedural issues.** On the basis of the general information (actors and typology of documents), procedural issues have been analysed as follows:

Phase I: Drafting of documents
▪ Personnel
▪ Tools
Phase II: Multilingual Redaction and Translation
Phase III: Internal Revision and Publication
Phase IV: Feedback, Ex-post Controls and Correction

The process of identifying respondents was carried out in two phases. From a first circle of experts in the field chosen as project correspondents in different countries and international organisations we were able to reach a second level of accessible civil servants in a number of countries. The final number of contacts we established was about 80; effective replies reached the final number of 27: a number that seems if not exhaustive, at least fairly representative of a variety of experiences for a first investigation.

A factor limiting the number of collected replies, as admitted by a number of contacts, was connected with the need to reply in English or in some other vehicular language such as French or German. Further enquiries in this field would require increased resources to translate questions and answers from languages other than Italian, German, French and English.

Not everyone agreed to be quoted: some replies are reported indirectly. More thorough research may investigate the areas where documenting is harder to achieve. The fact that some institutions did not respond because their country or organisation did not have sufficient elements to provide useful information is in itself significant; policies on plain language and quality of documents still remain to be implemented, in some areas.

On the basis of collected results, we may say that some sections of the questionnaire yielded predictably more analytical feedback: partly because the units we were able to reach work mostly in the translation department of Ministries or Governments, and partly because the stages of 'final revision and feedback' seem not to strike a chord with respondents. Only a limited number of respondents spent time answering questions on the final stage of 'publication, correction of printing/typing errors,

feedback reactions by audience'. In several replies the general justification for such limited answers was that the previous stages that included several readings of texts by different members of the organisation or ministry were sufficient to guarantee a satisfactory level of quality.

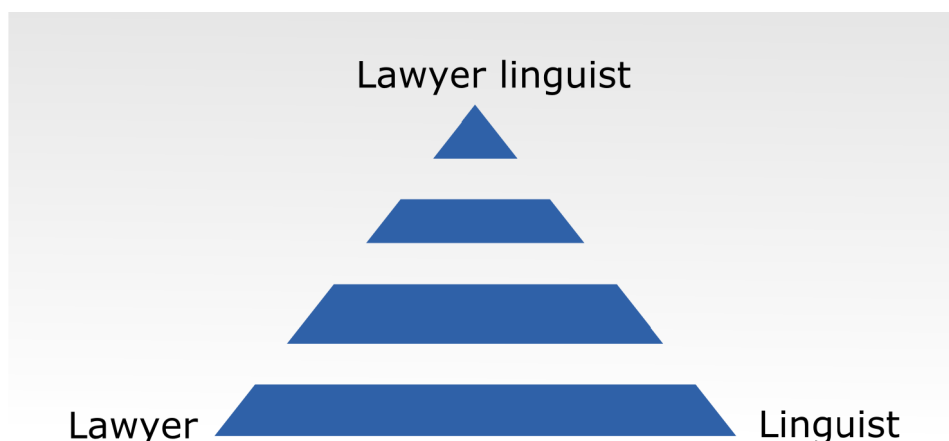
Our investigation has covered in particular the drafting of legislative documents. All the replies the respondents provided to the team highlighted the contribution of 'lawyers' in the process. We wish to draw attention to the fact that the definition of who is a lawyer for these purposes may vary in the different contexts. There is no single curriculum to qualify for the legal profession, which is organised in a different way in different countries, and the role assigned to people trained in the law may also vary, depending on the specific national procedure involved in the making of legislation.

It may therefore be an oversimplification to assign to the same function the overseeing of draft legislation by experienced judges belonging to the French Conseil d'État and the examination of draft legislation effected by civil servants having a law degree but working in a Ministry (often the Ministry of Justice).

As the collected replies were provided by national respondents, they did not always highlight the exact nature or implication of the 'legal' revision entrusted to the legal experts involved in the preparation of legislation; each respondent had in mind the local practice and procedures, and their own experience of what can be expected from a legal reviser. To properly appreciate the contribution that 'jurists' may bring in improving the quality of legislative drafts, a reader should consider that this element may fall along a continuum. At one end is the French system, with highly experienced lawyers belonging to the judiciary for administrative matters, and, at the opposite end are civil servants having a university degree in law but not necessarily qualified to practice law and working in the departments of some Ministry. Obviously, the French solution cannot be replicated, e.g., in countries where no distinction exists between the ordinary courts and the specialised administrative courts. At the same time, the English and US professionalisation of the bill's drafting (by a specific Office having almost full control over this activity), would be hard to reconcile with systems in which the legislative initiative lies in the hands of private MPs, rather than in those of the government.

In addition, it is important to remember, while comparing the replies by national respondents, that the institutional framework of lawmaking powers is subject to significant variations across the cases that we have examined, due to the different historical foundations of each form of government. Some respondents have thus highlighted how the procedural steps carried out to ensure the 'quality of legislative documents' are related to the origin of the document. In the UK, but also in Finland, almost all proposals for new legislation depend on government input; sometimes on the basis of an *ad hoc* commission, but still dependent on the executive's initiative. Elsewhere the situation may be different, but one should not underestimate the important shift that over the years has brought countries of 'parliamentary democracy' closer to those having a balance of powers where the executive has a tighter control over the legislative process. In several countries the role of parliament in the legislative process has become rather formal, and much legislation is passed by ratification of the government's proposals so that parliament is less and less an authentic forum of discussion for each piece of legislation.

Considering the vast array of professional profiles working in the field of document quality control, a general scheme may be provided from a typological point of view.



In the following analysis the term 'lawyer' is used in its most general meaning to denote a person who has been trained in law and deals with legal questions in his or her working activity. Academics, judges, legal practitioners, civil servants may fall under this label. These more specific terms are used when required from the context.

List of Respondents			
Abbreviation	Full name	Typology	Types of documents⁶³⁴
ACA-Europe	Association of the Councils of States and Supreme Administrative Jurisdictions of the European Union	International Association (working languages: English, French)	<u>Judgments</u>
Belgium	Belgian Senate, Legal service	Multilingual administration (Dutch, French, German)	<u>Legislative</u>
Canada/Uni-Montréal	Canada, Université de Montréal (Quebec) Professor, former Director of Département de Linguistique et Traduction	Bilingual administration (English, French)	<u>Administrative</u> <u>Orientative, explanatory</u>
ECHR	European Court of Human Rights Senior Translator	International Organisation (official languages: English, French)	<u>Orientative, explanatory:</u> <u>press releases,</u> <u>information notes</u> <u>Other: judicial documents</u> <u>(judgments, decisions)</u>

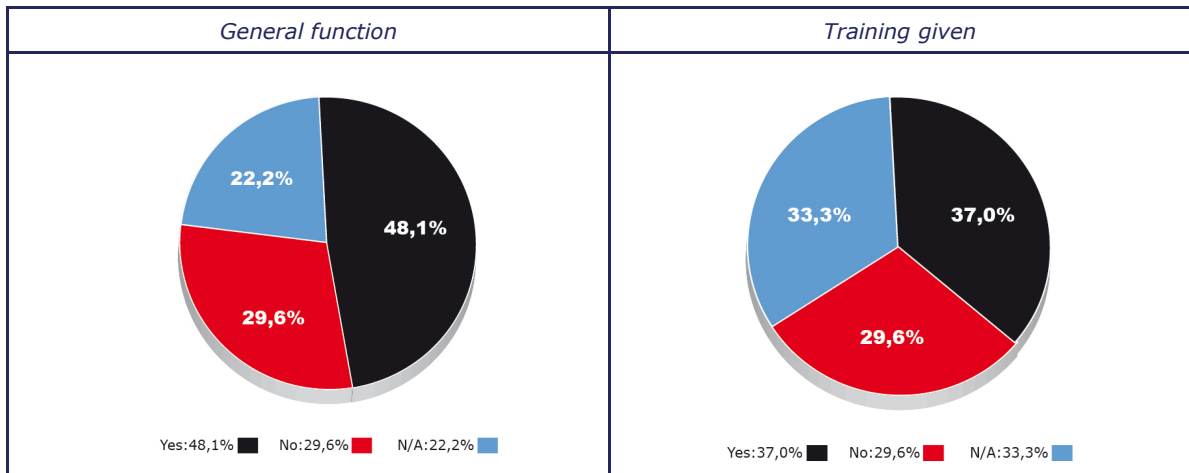
⁶³⁴ In this column, the types of documents produced by each institution interviewed are presented. In their replies to this survey, the respondents focused on one or more types of documents, which appear in this table as underlined. Some respondents (Canada/Uni-Montréal, ILO), although belonging to institutions producing only some types of documents, addressed other typologies in their replies. In particular, the respondent at the University of Montréal addressed: (a) legislative documents (including model laws); (b) administrative documents; (c) orientative, explanatory documents; (d) other documents; the respondent at the ILO examined (b) administrative documents; (c) orientative, explanatory documents; (d) other documents.

Finland	Government Translation Unit, Prime Minister's Office, Head of Government Translation Unit	Bilingual administration (Finnish, Swedish)	<u>Legislative</u> (including <u>government proposals</u>) Administrative Orientative, explanatory Other: government resolutions, press releases, speeches and correspondence
France/Independent	Independent Expert	Monolingual body (French)	<u>Legislative and tax policy documents</u>
France/Juriscopie	Juriscopie Director	Monolingual body (French)	<u>Other: publications for scientific research</u>
France/Ministry of Finance	Ministry of Finance and economic ministries (a unit for 6 ministries) Translation officer	Monolingual administration (French)	<u>Legislative</u> <u>Administrative</u> <u>Orientative, explanatory</u> Other: <u>technical (fiscal, accounting, etc.)</u>
France/Senate	French Senate Conseiller, Service de l'Initiative parlementaire (Division de Législation comparée)	Monolingual administration (French)	<u>Legislative</u> <u>Orientative, explanatory</u>
Germany	Germany Federal Chancellery (Better Regulation Unit)	Monolingual administration (German)	<u>Legislative</u> Administrative <u>Orientative, explanatory</u>
ILO	International Labour Organization/Org. Int. Travail (Onu) Centre International de Formation, Coordonnateur de l'unité Traduction, Révision et Rapports	Multilingual international organisation	<u>Didactic material</u>
Israel/Uni-Jerusalem	Israel, Hebrew University of Jerusalem	Monolingual administration (Hebrew)	<u>Legislative</u> (proposed <u>statutes</u>)
Italy/ISS	Italy, Istituto Superiore di Sanità (National Health Institute) Documentation Service and Publishing Unit	Monolingual administration (Italian)	<u>Other: clinical guidelines</u>
Italy/Parliament	Italian Parliament, Lower Chamber (Camera dei Deputati)	Monolingual administration (Italian)	<u>Legislative</u>
Italy/South-Tyrol	Provincia Autonoma di Bolzano - Alto Adige (Autonomous Province of Bolzano-South Tyrol) Director of Office for Language Issues	Multilingual administration (German, Italian, Ladin)	<u>Legislative</u> <u>Administrative</u> Orientative, explanatory Other: brochures, booklets, bills, texts for schools, information schedules of all kind
OECD	Organisation for Economic Co-operation and Development Former Head of Translation Division	International organisation (English, French)	Legislative Administrative <u>Orientative, explanatory</u> Other: <u>publications, standards</u>
Romania/Uni-Bucharest	Romania, University of Bucharest, Faculty of Law Deputy Dean Professor	Monolingual administration (Rumanian)	<u>Legislative</u> <u>Administrative</u> Orientative, explanatory
Spain/Basque Country	Basque Government Director of Legal Development and Regulatory Control	Bilingual Administration (Basque, Spanish)	<u>Legislative</u> <u>Administrative</u> <u>Orientative, explanatory</u>
Spain/Catalan Parliament	Parliament of Catalonia (Catalan Parliament) Head of the Language Consulting Services,	Bilingual administration (Catalan, Spanish)	<u>Legislative</u> Administrative Orientative, explanatory Other: press releases

	Language adviser, translator		
Sweden	Sweden, Government Offices Language expert and Deputy Director	Monolingual administration (Swedish)	<u>Legislative</u> Administrative Orientative, explanatory Other: guidelines
Switzerland/FC-Italian Division	Swiss Confederation, Federal Chancellery, Central linguistic services, Italian Division, Legislation and language Section Head a.i., Italian language subcommittee (Editing commission of the General Assembly)	Multilingual administration (German, French, Italian, Romansh)	<u>Legislative</u> <u>Administrative</u> Orientative, explanatory Other: websites, speeches, correspondence, etc.
Switzerland/FC-Terminology	Swiss Confederation, Federal Chancellery Head of Terminology Section	Multilingual administration (German, French, Italian, Romansh)	<u>Administrative</u> <u>Orientative, explanatory</u>
UK	United Kingdom, Office of the Parliamentary Counsel, Cabinet Office Legislative drafter	Monolingual administration (English)	<u>Legislative</u> Orientative, explanatory Comment on explanatory material prepared by others
Unidroit	Institute for the Unification of Private Law Deputy Secretary General	International organisation (official languages: English, French, German, Italian, Spanish; working languages: English, French).	<u>Legislative</u> Orientative, explanatory Other: <u>contractual guides, non-binding rules to be used by parties to a contract</u>
UNOV	United Nations Office at Vienna Chief of English, Publishing and Library Section, Conference Services	International organisation (official languages Chinese, English, French, Russian, Spanish working languages English, French)	<u>Legislative</u> Administrative <u>Orientative, explanatory</u> Other: <u>publicity, annual reports of UN bodies, informational documents, results of surveys/questionnaires</u>
US/Legislative Counsel	US, Washington, DC, Office of the Legislative Counsel, US House of Representatives Head of the Office	Monolingual administration (English)	<u>Legislative</u>
US/Louisiana	US, Louisiana State Law Institute, Assistant coordinator of research	Monolingual body (English)	<u>Legislative (bills and reports)</u>

2. Drafting of documents (questions 1-10)

Question 1. Is drafting regarded as a general function, performed by people who perform other tasks as well? If so, what training are they given?



A general function with some exceptions in national public administration

Among multilingual organisations and institutions, drafting is regarded as a general function, mainly performed by civil servants in the framework of other activities. Usually this task is not performed as an exclusive occupation. On the other hand, the need for clarity invokes an increased attention given by national public administrations to this issue. This need has been faced by public administrations in different ways, especially in the recruiting of officials with a strong legal background, but also providing administrative staff with *ad hoc* support by experts in the relevant field. Training principally consists of study days or seminars. The following experiences refer to those administrations where drafting is a specific function (e.g. Canada, United Kingdom, Switzerland, US) as well as a function to be performed among other tasks (e.g. Sweden, Basque Countries Government, Belgian Senate, Parliament of Catalonia).

Drafting as a specific function

In Canada, which as of yet represents the most relevant co-drafting experience in the legislative sector, drafting is a specific function. Therefore, Canadian legislative drafters have been trained for that purpose (the respondent said that drafting and/or editing –revising are taught in some advanced university classes) and are supposed to consult each other to improve the quality of the text. In order to facilitate the equivalence of legal documents, these are often structured in the same way, and are finally revised by a juri-linguist. Conversely, drafting is regarded as a general function in Canadian universities: at the University of Montréal, for example, university documents are drafted by people who perform other tasks as well; in this case they do not have a specific training.

In the United Kingdom, the Office of the Parliamentary Counsel (OPC) is responsible for drafting primary legislation. Lawyers in the office spend the vast majority of their time on this occupation: this is not considered a general function. Training of drafters is something that happens mainly 'on the job' (rather than as part of a formal training

programme). It is through the supervision of a more experienced drafter that a less practiced one gains experience. In other government departments there are lawyers, who in addition to their advisory role and other tasks, are charged with drafting secondary legislation.

In Switzerland, specialists in the field addressed by the text perform drafting services. These experts are not trained in legislative drafting. At a later stage, linguists and lawyers, from the central language services of the Federal Chancellery and from the Federal Justice Office respectively revise legal texts. The Federal Office of Justice, in collaboration with the Federal Chancellery, provides specialists of different fields with training in legal drafting. The Drafting Committee at the Federal Chamber (Commission de rédaction de l'Assemblée fédérale, Commissione di redazione dell'Assemblea federale, Redaktionskommission der BVers) is charged with the task of ensuring the quality of legislation (logical structure of legal acts, simplicity of the style, consistency of both content and terminology and resolve orthography and language use issues).

In the US, according to our respondent in the Office of Legislative Counsel (within the House of Representatives), drafters must hold a law degree and are exposed to an intensive two-year training by experienced attorneys.

Drafting as a general function

The following experiences refer to those States or organisations in which drafting is considered as a general function.

In Belgium, the legal service focuses on researching bills, writing technical legal notes and advice on demand by the committees. In this country, drafting is more a marginal task of the legal service. According to our respondent, members of the legal service hold a master degree in law and can benefit from study days during the course of their career for further training.

In France, civil servants are recruited by means of competitions focused on written tests. For example, at the Senate, officials may assist *Senateurs-rapporteurs* in drafting texts that may have a legislative or an informative content. During their career, French officials have to guarantee a certain level of mobility, which means that they can be expected to fulfil different tasks.

In the Basque Country all jobs and positions within the Administration have specific requirements in terms of legal expertise and language knowledge. Applicants must be tested on these competences as part of the selection process. For example civil servants in the area of legal affairs need a command of the Basque language equivalent to C-1 or C-2. Knowledge of Spanish does not require a specific exam. The drafting of administrative documents (agreements, notices, plans, web pages, etc.) is a task common to civil servants and a specific training programme is foreseen to gain competence in different fields of the Administration and to increase the command of the language. However, the extent of the training programme and the level of competence will often lead to encounters with budgetary restrictions. People usually involved in the drafting of provisions, as well as in the responsibilities of each department (management, consulting, etc.), are lawyers working in each department. Legal training is provided for these lawyers in the specific area in which they work, in addition to language training. Almost 50% of them know both official languages (Basque and Spanish). However, some bills are drafted by non-lawyer technicians. In some other cases, drafting is contracted out to private legal offices and firms.

In Catalonia, the initial stage of drafting does not usually involve people with a specific training in legislative drafting. In the case of government-proposed bills, drafting is incumbent upon the staff of the Government of Catalonia and the Administration of the Generalitat of Catalonia (composed by lawyers or experts in the relevant subject-

matter of the bill). In other cases, drafting is performed by the members of the parliamentary groups presenting the legislative initiative.

When the bill reaches the *Parlement de Catalunya*, both parliamentary linguists and legal advisers are involved in drafting. When amendments are incorporated into the text, the linguists are competent for adaptation, unification, and global revision of the text.

A joint special committee is responsible for preparing draft laws proposed by members of the parliament, where a text is not elaborated by the proponent. In these cases drafting is usually performed by the legal advisers of the Parliament of Catalonia with the support of the language advisers of the Parliament of Catalonia, who revise the text and often propose changes to it. It is a joint task of legal and language advisers.

In Germany, drafters usually hold a university degree, not necessarily in law. In fact, among drafters there are many professions represented, such as engineers, economists, sociologists, natural scientists, etc. The Federal Academy of Public Administration (*BakÖV*) offers comprehensive training seminars on legislation for all drafters.⁶³⁵ Drafters are additionally supported on demand by specialised services such as the Linguistic Consultation Service at the Federal Ministry of Justice, the Federal Office of Statistics (*Destatis*), the Secretariat of the Regulatory Control Council, the computer application *eNorm* and the Better Regulation Unit of the Federal Chancellery.

In Italy, the situation varies according to the administration concerned. At state level, legal drafting is mainly performed within the administration of the lower Chamber (*Camera dei Deputati*). At the *Camera dei Deputati*, the technical quality of legislation is entrusted to a political body, the Committee on Legislation. This committee, with the assistance of technical structures of the administration (the Office of Regulations and Research Department with the Observatory on legislation) – provides opinions to the competent parliamentary committees for the examination of legislative drafts. The Committee is composed of 50% of members of the majority party and 50% of members at the opposition, in order to ensure the impartiality of its advices. At local level, in the bilingual Autonomous Province of Bolzano-South Tyrol, civil servants holding the highest qualification (8th level out of 9) with a university degree and/or who are deemed experts in the field in which the drafting is to take place will perform the drafting. Persons without a university degree may perform the task as long as they have a specialisation or a specific career in Administration. For new employees training consists of a compulsory bilingual workshop divided into several units per day – one of these units concerns drafting correction and the other linguistic aspects in drafting.

In Romania, the drafting of administrative documents within the University is regarded as a general function, usually performed by members of the teaching body, given the legal profile of the faculty. There is no special training in drafting. As a special remark, we should mention that members of the teaching body are invited by the Ministry of Justice to participate as experts in legislative drafting commissions (for example members of the commissions drafting the new Romanian Civil Code, Code of Civil Procedure, Criminal Code, Code of Criminal Procedure).

In Sweden, drafting is above all performed by people in the legal departments of each ministry. They are given in-house training sessions.

Within international organisations, specialists in the target areas will generally perform drafting tasks. However, external experts, such as academics or scientists, draft an increasing bulk of documents. When outsourced, in-house staff will check drafted texts. At the OECD for instance, most of documents are drafted in English, so that in-

⁶³⁵ See: <www.bakoev.bund.de>.

house staff can attend seminars (e.g. *Drafting in English*), which are not compulsory. Only a small number of documents are drafted in French.

Unidroit does not have specialised drafters. When preliminary studies are undertaken, that task concerns the Institutes senior officers, or a third party (generally, an academic). They are not provided with specific training.

That said, when final versions of the instruments are written, texts are drafted by smaller 'drafting groups' created within the working groups of specialists, not specifically trained for this activity (except for personal training as academics/civil servants/lawyers). The working groups are usually composed of international experts and/or practitioners, chaired by a member of the Governing Council of the Institution (members are appointed by governments), supported by the Secretariat (senior officers who draft the reports).

At UNOV, subject specialists perform drafting functions and drafting skills are a secondary concern. Some training is provided under editorial outreach by the *Editorial Control Unit* and the outreach officer in the form of drafting courses and materials available online. The amount of training received varies greatly among the drafters.

At the ECHR, drafting is a general function; in-house seminars are held in order to improve drafting skills.

Question 2. Is drafting regarded as an activity to be performed by professionals who specialise in drafting? If so, how are they recruited? What type of qualifications must they have (e.g. in communication, in law)? What training are they given?

Drafting: a professional function for specialised people?

As highlighted, drafting is effectively regarded as a general function. Nevertheless, in Canada, United Kingdom and US House of Representatives, drafting is considered a specific function, to be performed by trained professionals. Even when drafting is considered as a function to be performed alongside other tasks (e.g. Sweden, Basque Country Government, Belgian Senate, Parliament of Catalonia), it still requires a strong legal background and training. A legal background is required by all the administrations involved in our enquiry, even if they differ in terms of how to consider it. A large group has determined a law degree or a master in law as sufficient to guarantee proved drafting skills. In this case, civil servants are expected to have a sufficient legal practice to perform their duties: trainings or seminars are useful to provide specialisations.

In Canada, as far as law is concerned, drafting is regarded as an activity performed by professionals specialised in writing specific documents (statutes, regulations, contracts, securities, memos, etc.). According to our respondent at the Université de Montréal, law students may attend university courses in legal drafting, and later, legal practitioners may profit of specialised courses and seminars offered by their respective Bar associations. Even judges may attend courses and seminars in judgment writing. For translators (and terminologists), training in (written) communication includes drafting as part of the 'writing' training/education, know-how and practice as 'writers', followed by different drafting specialisations: legal/medical/business/etc. It is not necessary that legal translators have qualifications in law.

In Switzerland, the author of the first draft is usually an expert in the subject-matter. Technical support is required only at the second stage, when texts are revised by jurists, linguists, translators, and, at least, by Members of the Swiss Parliament. Each

text is the culmination of different skills, which are different in accordance with the legislative progress (see answer 3). In the United Kingdom, drafting is regarded as an activity performed by specialists. All those recruited to work at the OPC have some experience in legal practice, usually as a barrister or solicitor, though a number of them have not studied law as an undergraduate degree. Drafters are usually recruited on the basis of an interview by senior drafters in the office and a short written test (requiring to comment critically on a fictitious piece of legislation).

In the Office of the Legislative Counsel of the US House of Representatives, drafters are recruited directly from top law schools in the US. As for qualification, they must have a law degree, with strong academic credentials and communication skills, and must be on the verge of being admitted or awaiting admission, to the Bar of a State or the District of Columbia. They receive an **intensive training** in drafting legislation, under the tutelage of experienced attorneys, for a period of about two years.

Several countries do not have services that specialise their civil servants in drafting. In the case of Belgium, where this function is shared with other tasks and Sweden, lawyers perform most of the drafting, they are often associate judges, who are employed by the ministries. In France's Senate, drafting is a general function but an emphasis is placed on writing skills. In fact, the recruitment of civil servants is based largely on written exams. A master degree is required, but no training is foreseen. The only way to improve drafting skills is the 'learning by doing' method often during periods of assistance to senior servants. In Italy, at the lower Chamber (Camera dei Deputati) drafting is performed by a specific unit called 'Servizio per i testi normativi' that submits amendments to the text to be introduced with the agreement of the proponent. It intervenes before and after the discussion in the Assembly in preparation for transmission to the Senate. Officials have legal and linguistic background.

In the Basque Country, drafting of Administrative acts is usually the responsibility of legal experts (being able to draft documents is taken for granted). They write mostly in Spanish and the Basque text is usually a translation, left in the hands of professional translators. However, from 2010 onwards there has been some experimentation in the use of other bilingual drafting techniques. According to our respondent within the Basque Government, regulatory activity in general (when not left in the hands of private offices outside government) is entrusted to lawyers employed by the government. In addition to legal training, proficient command of the Basque language is required for about 50% of the legal positions within the Government. Those who received training in the use of Basque in addition to Spanish (Castilian) seem to be more sensitive towards clarity and precision. In subcontracted work, there is no guarantee of this double knowledge and most texts are only in Spanish. In Catalonia, language advisers and legal advisers work together to finalise the last version of a text.

In drafting, 'learning by doing' is usually considered necessary (see, US, UK). For the Louisiana Law State Institute, lawyers who have graduated from law schools in Louisiana and elsewhere perform drafting. If a new drafter is needed, a notice is sent to local law schools. Drafters also attend seminars that discuss problems that other drafters have encountered. At the ECHR, in-house lawyers are expected to perform drafting, under the supervision of a more experienced lawyer and under the language check by a linguist. At the OECD, officials perform the drafting function. Their main task is to carry out studies in their area of expertise or to organise events and participate in the management of expert groups and committees.

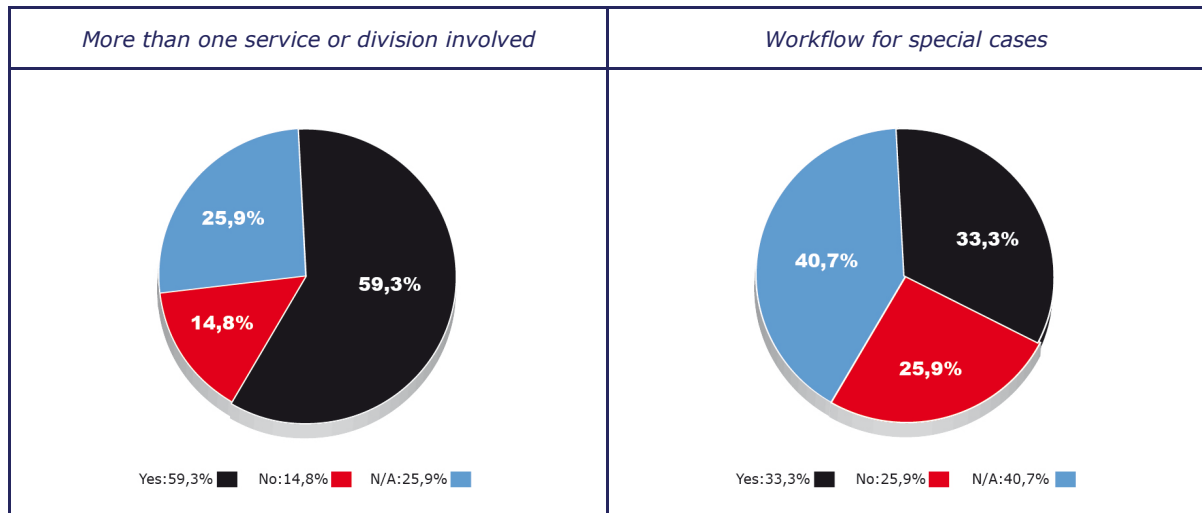
It should also be noted that an education programme in Swedish Language Consultancy is offered by Stockholm University. The program, run by the Department of Scandinavian Languages, was set up in 1978 as a consequence of the debate on

plain Swedish and democracy in the 70's. The programme combines lectures, seminars, discussions, practice and independent work under tutorial guidance. It aims at providing the students with a solid knowledge of all aspects of the Swedish language. The programme starts every other year and it runs for five terms, around twenty candidates are selected each time.

Recommended Best Practices

- 1.** A strong legal background should be a requirement for legislative drafting.
- 2.** When drafting is considered a general function, specific training on legal/legislative drafting techniques should be offered.
- 3.** Study days and thematic seminars should accompany a 'learning by doing' method, consisting of an active revision by more experienced drafters.
- 4.** In the long term, the inclusion of educational programmes and/or internships for professional drafters could be envisaged. Special initiatives (prizes for students, new teaching modules, scholarships, etc.) could be designed to promote the diffusion of legal drafting courses at the university level.

Question 3. How many services or divisions are involved in the production of a single document? Are there different workflows for routine and special cases?



Fixed procedures with one exception

The involvement of several services in the process is generally an indicator of an in-depth elaboration of the text under legal and linguistic aspects, but the increased complexity of the procedure can produce shortcomings if effective management of the workflow does not support it. Generally, the most significant differences arise from the kind of document issued. In fact, concerning legal or regulatory provisions, different services or divisions will intervene in the production of a text.

In international organisations and national public administrations, documents are created following a process that changes according to the nature of texts and the multilingual or monolingual dimension. In contexts such as parliaments or other legislative bodies, rules of procedure establish a fixed *iter* that cannot change depending on the workflow or the topic concerned.

In almost all the public bodies considered, many services or divisions are involved in the production of documents. Only for organisations not formally divided into 'services' or 'divisions' and composed by a limited number of people, text production is an unshared task.

A distinction between routine cases and special cases does not seem necessary when difference is made on the basis of quantitative aspects, while it might prove successful when the distinction is qualitative (cases having substantial diversity or novelty) and difficult issues have to be dealt with.

According to our respondent at Unidroit, each senior officer is informally entrusted with specific tasks and subject-matters. Routine documents such as internal memoranda or studies, as well as reports for working groups are drafted by the competent senior officer, while international conventions are drafted mostly by an *ad hoc* Working Group (and by a specific Drafting Committee within the Working Group) composed by experts in the field (academics, legal practitioners, other experts) and discussed first by inter-governmental committees, then approved by the Governing Council of the Institute and finally by a Diplomatic Conference (at

political/governmental level), which will nominate another Drafting Committee: this is the case of how texts are gradually concerted, where cooperation with other institutions/organisations leads to a sharing of the drafting activity (e.g. projects developed together with FAO). Other products do not undergo scrutiny by governments.

Services or divisions in multilingual legislative contexts

A different legislative process characterises the following experiences, and none of them change the workflow for routine and special cases.

According to our respondent in the Basque Country, regulatory procedures are defined by Law 8/2003 on guidelines on how to draft General Provisions and are walked through various steps: the department appointed to the project should prepare a draft and give 'initial approval'; after some procedures, including the hearing of interested parties and technical or legal reports, the same department will give the project the 'provisional approval'; the project is then submitted to a final approval by the Governing Council of the Basque Government, in case of regulatory provisions, or it is sent to be approved by Parliament, in case of provisions of law. During the procedure, reports from the Bureau of Economic Control and the Legal Advisory Commission are compulsory. To ensure the equivalence of the two linguistic versions (Spanish and Basque) the Basque Institute for Public Administration (IVAP) and the Official Translation Services (IZO) under IVAP are responsible for linguistic revision. Most of the procedures are processed in Spanish, and translation into Basque is one of the last steps. Some rules have been processed in Basque. But they represent a very small percentage. Throughout the whole process there is chance for the initial text to be amended and changed. Law 8/2003 on legislative procedure is currently digitised and this process has offered an opportunity to rationalise the regulatory process itself.

Within the Parliament of Catalonia, several services and divisions are involved in the production of parliamentary documents. During the legislative process, basically the Legal Services and the Language Consulting Services of the Parliament of Catalonia must intervene. There is a workflow established by the Rules of Procedure of the Parliament of Catalonia and internal circuits have also been established.

At the Belgian Senate, our respondent confirmed that there are no different workflows for special cases. A legislative text has to pass through four steps: committee service, legal service, translation service and plenary session service.

In Canada, the production of laws/statutes is a highly complex process and differs according to the status (bill, statute, charter, code, treaty, etc.) of the document. Pursuant to the document production, different services are involved (three, at least) and different actions are taken at each stage of it. Generally, a wide range of officials in the supporting department may be involved in the preparation and enactment of a bill. They are responsible for developing the policy that the bill expresses as law and are usually referred to as 'program officials'. Program officials should be well versed in the various aspects of the bill's subject-matter. Their expertise should guide the drafters and canalise correct information. They should have ready access to senior officials in their department so that they can get answers or decisions about priorities and policies. Furthermore, the Department of Justice provides legal services to each department of the Government through its Legal Operations Sector. Each department has a legal services unit staffed by legal advisers from that Sector, who help identify the material impact of provisions. Particularly, they may advise departmental official in amending provisions that are likely to raise legal issues.

In Switzerland, we observe a more flexible process with different workflows ranging from one or two to up to six or seven (due to e.g. five language versions to be produced). According to our respondent within the Federal Chancellery Terminology

section, workflows tend to be set up on an *ad hoc* basis. That means, in terms of administration, examining the linguistic and editorial quality of legislative acts within the jurisdiction of the internal Drafting Committee (CIR). Within the Parliament, this review is for the Drafting Commission at the Federal Chamber (Commission de rédaction de l'Ass. féd, Commissione di redazione dell'AF, Redaktionskommission der BVers). The development of the Italian version of normative acts follows to a large extent, a separate procedure. The Italian Language Service of the Federal Chancellery provides monitoring of Italian texts at all stages of the procedure. This service coordinates the work of Italian translation and ensures quality control.

Among administrations where no separate workflows are established, we may mention the Autonomous Province of Bolzano-South Tyrol. Generally, two divisions are involved: the division/office responsible for the technical contents and the Advocacy Division, with two offices to check the draft. One is a legal office, which checks the draft from a legal point of view. The second is the Office for Language Affairs, which is responsible for checking the draft from a linguistic point of view. After the conclusion of this procedure, the draft goes to the Council, where it follows another separate procedure

Texts' production in international organisations

At UNOV, texts' production follows three phases: a substantive office, who drafts the text, the editorial revision and the translation unit. According to information provided by our respondent, in the case of reports based on the outcome of meetings, the body involved (e.g. a commission or working group), a rapporteur or other members of the body may be closely involved in the draft submission.

At the OECD, the genesis of a document changes accordingly to its nature. Our respondent points out that several directorates work on documents or publications jointly when topics dealing with different areas are concerned. The text can be originally developed either by an in-house administrator or outsourced, or by a member or several members of an OECD working group or committee. It can be amended at different levels (Head of Division, Director and Secretary General's Office – for politically sensitive topics –) or, in the case of a country study, by the relevant country which can suggest changes, update data, etc. Publications can also be edited, mostly outside, if the relevant Directorate or the PAC⁶³⁶ so decide.

At the ECHR, the production of a judgment involves three to six services and the number of services is established on the basis of the workflow, which is directly proportional to the importance of the case. Depending on this feature, services change. For cases declared to be inadmissible, only one lawyer and one judge (and the on-line information unit for publication) are responsible, while for the most important 'Grand Chamber cases' the number of people involved increases (two or more lawyers and secretarial assistants, 17 judges, research division, language department, information unit, publications unit).

Texts' production in monolingual administrations

According to our respondent at the Office of the Parliamentary Counsel, in the UK the responsibility for the production of the actual legislative document ('bill') lies with the drafter in the OPC, in collaboration with instructing officers in the government department that is responsible for the policy. Beyond that, there is a great deal of policy work occurring in the relevant department, involving ministers, policy officials and lawyers; that work is what ultimately finds its expression in the bill produced by the OPC. The bill is then handed into Parliament, and as a result of proceedings there the OPC may be required to draft amendments and procedural motions in order to secure the bill's further progress. Essentially the same process applies for routine and

⁶³⁶ Acronym for Public Affairs and Communications Directorate.

special cases – the main variable is generally the speed with which the legislation is required, but that seems not to affect the process.

At the US House of Representatives, the main office responsible for drafting is the Attorney of the relevant field. Attorneys generally work on teams based on subject-matter, so that those with expertise can handle legislative requests in the law on the subject. A single attorney generally handles bills on a single subject, while attorneys with expertise in the different subjects concerned will deal with bills dealing with multiple subjects.

In Germany, each ministry is free to design its own workflows. For that reason workflows and services/divisions involved might differ. According to our respondent, in general, eight steps might be typically followed, as provided by the Joint Rules of Procedure of the Federal Ministries. The procedure starts with the identification of interests by the competent ministry, followed by drafting within the ministry and sometimes with the support of government services. Then a first round of consultations with state and municipal administrations and non-administrative stakeholders, in most cases regarding single issues of the draft, takes place. In a growing number of cases, this culminates with publication of the non-approved draft (*Referenten-Entwurf*) on the Ministry website. After a formal approval from the respective minister, and a second round of consultations, there is a final inter-service consultation with all ministries, the federal court of Auditors, the Regulatory Control Council. At the end, the cabinet will make a decision. While this is the general procedure, the sequence of steps might differ from case to case.

At the Louisiana State Law Institute the production of a bill or report takes place over four phases. It begins with the preparation of a document by a law professor. A committee of lawyers subsequently reviews this document, and the revised texts are presented to a council of lawyers. A bill or report is finally prepared for the legislature. This process may take several years.

In Sweden the number of phases to produce a text differs. According to our respondent, all legislation passes through the budget department of the Ministry of Finance and the Secretariat for legal and linguistic draft revision in the Prime Minister's Office. Three phases are necessary in Romania to produce a regulatory text within the University of Bucharest. In fact, in the case of normative acts, three levels of services are involved: the department, the management structures of the faculty and the university. As far as administrative acts are concerned, there are two services involved: the university services and the management structures of the university.

Recommended Best Practices

- 1.** Procedures should provide the necessary flexibility to manage all kinds of cases. Alternative paths should be foreseen according to the degree of document complexity, including those relating to timing and specificity. Specifically, open cooperation between plain language or drafting experts, lawyers and other experts should be ensured.
- 2.** Furthermore, a sound procedure, stating clearly when revision and quality control should take place, and who carries them out, would be helpful. The opportunity to discuss amendments and revisions with the authors should be provided for, at least for major project.
- 3.** According to our respondents, procedures should foster a certain level of adaptability within the document cycle. To this end, *Ad hoc* procedures and informal distribution of roles might be suitable organisational tools. Such tools appear to be better suited for smaller teams.

Question 4. Are documents classified according to type, subject and target audience? In your institution or organisation, are drafters explicitly instructed to adapt style to target audience (e.g. explanatory material to be read by ordinary citizens, press releases, information booklets)?

Question 5. Which guidelines are most frequently given to drafters? Are they considered as binding in some cases? Which guidelines exist for transposing legal or other technical terms into more user-friendly or clearer/transparent wording?

Question 6. How are guidelines brought to the attention of drafters? Are there any style manuals, or training seminars?

Question 7. How helpful are guidelines and training in your daily work? Is there any specific area which in your view is not adequately addressed?

Classification of documents, adaptation to target audiences and guidelines

In most cases, there is no previously established document classification that is managed by the organisation or institution. This may be contingent on several factors. In some cases, there is no need for any classification because the organisation deals with very few or just one type of document. In other cases classification is not explicit and formalised but exists implicitly within the organisations through the expertise of personnel. By contrast, in Germany a very detailed classification system is followed with objectives and procedures that must be utilised. In the Basque Parliament documents are classified by type into 'families'.

Regardless of where a document classification scheme is in place, all respondents have confirmed that their institutions are fully aware of the need to adapt documents to target audiences. The target audience is widely perceived as being one of the foremost criteria to be considered in distinguishing between documents, even if distinction is wide and may be comprised of two easily distinguished classes: normative and explanatory/informative documents.

Unidroit working groups for the drafting of documents devote particular attention to the type of document to be drafted from early on in the process. Style and format are decided upon accordingly and the target audience is taken into account. At the Catalan Parliament, language advisers are responsible for adapting texts to type and target audience. At UNOV, the document's purpose and readership determines the style and the type of processing, such as the editing/proofreading effort that is deemed as appropriate.

The existence of guidelines and instructions is evidence of a culture of drafting existing and permeating an organisation. From a practical point of view they play an important role in standardisation, as strategy for making drafting consistent, enhancing clarity and improving work effectiveness. Guidelines provide a point of reference that facilitates collaboration within the organisation. A further dimension within a single institutional context is that guidelines can provide continuity and a common basis for possible changes within institutional practices. In some cases a need to update them is pointed out. Some guidelines are institution-specific; others are shared by several organisations. In all cases, a process of imitation and adaptation may be discerned in a way that is similar to imitation of legal rules.

Replies concerning the binding character of guidelines must be carefully assessed. All guidelines are normative in nature, but there is a difference between guidelines that may be recommended to drafters, who remain free to adapt them, and guidelines that are considered binding. Even though guidelines are not classified as binding they may be *de facto* binding as drafters assume that they can set them aside in only specific cases when a strict compliance would lead to bad results. Sometimes mandatory drafting guidelines may be unnecessary and incur costs in terms of workflow and flexibility. It may be that drafters tend to want to follow guidelines because they simplify their work by providing solutions to problems that otherwise would have to be assessed each time.

In Canada (Montréal) many guidelines are binding (cf. 'simplify legal writing'). At ECHR there are no binding guidelines but lawyers are expected to follow certain principles: 'clarity of expression, precision of style and correct application of relevant case-law to facts'. This principled approach allows some flexibility. The ECHR respondent also points out the existence of 'unwritten rules' on using clearer wording when writing texts meant for the general public. In the US Legislative Counsel the use of a uniform drafting style (accessible to the public) is understood as necessary to achieve the goal of absolute clarity in presenting policy, although in some cases this may result in the use of complex language.

Standardisation is seen as a means to limit inconsistency and significant variations in style, length and comprehensiveness of provisions. Additionally, in some practices templates and models of acts are accessible to drafters, to limit variation, or inventiveness that may negatively affect rapid comprehension of content. Recourse to models is significant and may in some cases be most effective, providing an 'image' of the document that may work better than a long series of verbal instructions. The often quoted remark 'the drafter works in a stark literary environment, and he is denied some of the techniques allowed to other writers'⁶³⁷ is a reminder that predictability is an advantage when dealing with documents that must be consulted by different people with different cultural backgrounds. As we noted in the section on cognitive psychology, expectations and fluency play an important role in the understanding of a document.

Guidelines may be more or less detailed. In France's Senate no guidelines are found except for a guide drafted by the Service de la Séance. Unidroit has no formal guidelines, but informal drafting suggestions according to the text type.⁶³⁸ Our respondent at UNOV highlights that standard practice is embodied in existing documents, providing good models, but it would be useful to produce a style handbook with the most important guidelines. Detailed guidelines may be seen as unnecessary in a specific institution. For instance no specific guidelines for dealing with jargon or unnecessarily complicated language exist at UNOV because this is not perceived as a particular problem. This also shows how guidelines may emerge from below by verbalising good practices and selection of concrete drafting needs.

In Germany a distinction is made between guidelines that are *de facto* binding for all proposals (such as the *Manual on Legal Drafting* issued by Federal Ministry of Justice,

⁶³⁷ BOWMAN, *The Art of Legislative Drafting*, supra fn. 212, p. 8. As a matter of fact 'the techniques commonly employed to harness a reader's interest are rarely available to the legislative drafter. Reliance on examples, metaphors, repetition, nuances or implications to communicate a message would only increase the chances of legislation being misinterpreted' (Office of the Scottish Parliamentary Counsel, *Plain Language and Legislation*, <<http://www.scotland.gov.uk/Resource/Doc/93488/0022476.pdf>>, at p. 12).

⁶³⁸ For instance, conscious choice of a 'neutral' language that does not explicitly refer to any specific legal system or use terms of art well known by practitioners (e.g. taken from the UNIDROIT Principles, 'agreed payment for non-performance' instead of 'penalty clause' or 'liquidated damages clause'; 'hardship' instead of 'excessive benefit' or other expressions). Conventions tend to adopt more formal and technical language than other instruments; comments/explanatory notes are often added to explain in plainer language or using illustrations the meaning/effects of the black-letter rules.

and the *Guidelines of the Federal Government on Identification and Presentation of Compliance Costs in Legislative Proposals* by Federal Government) and guidelines that are recommendations rather than binding. In the Italian Parliament principles currently used for normative drafting are contained in *Circolari* adopted on 20 April 2001 by the Presidenti of the Camera dei Deputati, Senato, and Consiglio dei Ministri; a more detailed guide was adopted on 2 May 2001, specifying formal features of normative texts, partitions and cross-referencing formulae. The guide contains *regole* (more binding) and *raccomandazioni* (applicable when appropriate). In Italy's South Tyrol, binding Guidelines have existed since 2008 for gender-neutral language, based on gender-equality-law.

In multilingual contexts normally several sets of guidelines will exist in two or more languages, but one language may be prevalent (see Switzerland/FC-terminology). In Italy's South Tyrol, trilingual Guidelines exist from 1997 on drafting techniques, *Direttive di tecnica legislativa/Legistische Richtlinien*.

The actual accessibility and diffusion of existing guidelines is an important indicator of their use in practice. Guideline access is generally open to the public. Training programmes supplementing guidelines may be seen as necessary to produce a comprehensive and effective learning environment. The survey shows a fair degree of satisfaction with guidelines and training. However, respondents identify some issues that must be addressed.

At the University of Montréal training seminars are offered in both English and French, both languages are used in most public ministries (such as Communications, Justice, Transportation, and Energy), as well as in most large private business entities. Our respondent identifies as an area to be addressed criminal law and the income tax area (Revenue Canada). Even though the question was designed to glean whether drafting manuals published by government, parliament, or other administrative body had gaps in instructions, the reply highlights an important point in the comparative absence of guidelines and training opportunities in very specific legal areas that may have special vocabulary and strong implications in terms of policy and interaction with addressees.

In Germany there are several training programmes for civil servants and the Federal Academy of Public Administration (*BAkÖV*) organises comprehensive training seminars on legislation for all drafters, which are considered helpful. In Italy, South Tyrol's guidelines and *Direttive di tecnica legislativa* are brought to the attention of drafters in obligatory and voluntary training courses on drafting for employees.

At the OECD, style guides and terminological databases are available to all in-house staff and drafters on the OECD Intranet. External drafters can generally access OECD documents and publications via an on line information system (*OLIS*) and *Style Guide*. Training seminars on drafting are available to in-house staff. The OECD highlights some issues to be addressed: general difficulty found in implementing broad policy aimed at improving general drafting quality; authors are often not native speakers; texts are often amended at successive stages; editing is often forgone due to limited resources or tight deadlines; an increasing percentage of documents are outsourced; there is a damaging practice of 'cutting and pasting' from websites. Quite clearly guidelines as texts themselves are not exempt from the problems they attempt to remedy in the target texts.

At Spain Basque Parliament, style guides on clear and concise administrative language and digital communication are supplemented with courses offered by IVAP. Specific training programmes exist for bilingual activity providing both individual and collective training. Some style guides may be quite old and in need of updating. Some, although very useful, are not regularly used. One main problem is the absence of a stable structure to coordinate all initiatives in the area and a lack of coordination.

In the Spanish Catalan Parliament, Guidelines and recommendations by Language Consulting Services of the Parliament of Catalonia are available to all users (MPs and staff), both through the Administration and Parliament Intranet, and through the Parliament's website for the general public.⁶³⁹ Training for parliamentary staff in specific sessions within a parliamentary postgraduate course is offered. An on-going project at the Escola d'Administració Pública (School of Public Administration) revolves around legislative drafting carried out by legal advisers and language advisers, and will offer specific training on legislative technique for legal experts of the Generalitat of Catalonia. Courses are considered very helpful even though they are rather general. There is a need for more courses on regulatory technique and legal and administrative language, aimed at staff of parliamentary groups and MPs.

The OPC's internal group on drafting techniques also circulates guidance on matters not covered by the drafting guidance document. Guidelines are brought to the attention of drafters in day-to-day work and through access to internal resources. 'On the job' training is seen as a vital part of learning how to draft and of disseminating good practice.

UNOV provides an extensive learning environment with several kinds of courses (in-house and on-line) web integrated resources and helplines.⁶⁴⁰ However, the respondent highlights that they are not always effective because 'those who need them most use them the least'. This general problem is also noted by our respondent at ECHR, who provides interesting data on the use of the Council of Europe's *Style Guide* and *Drafting in English Guide* (31.4% systematic use; 20% never or rarely; 37.1% sometimes). There may be a psychological explanation here. The use of all these tools presupposes adherence to some values in drafting that cannot be taken for granted. Too many tools and excessively detailed instructions may result in 'overload' for drafters (see also question 9).

Our respondent in Washington extols the usefulness of a two-year training period on all aspects of drafting (legal analysis of proposed legislation, acquiring knowledge of existing law, analysis of parliamentary/constitutional issues, how to write clearly/succinctly). In this regard, a unique long-term integrated training programme may be seen as a valid alternative to the provision of many training courses, if they are not coordinated.

⁶³⁹ <http://www.parlament.cat/web/documentacio/recursos-linguistics?p_id=6188>.

⁶⁴⁰ In-house course for drafters with an instructor (senior editor), online course for drafters on clear, focused writing, Intranet providing links to other resources for drafters, editorial manual used by editors can also be accessed by drafters, editorial outreach programme (<<http://www.unodc.org/intranet/cms/en/editorial-outreach-services.html>>); ECU website: providing links to UN *Editorial Manual*, spelling list, documents, resolutions and more (<www.unodc.org/intranet_ecu/>); ECU helpline: answering questions about drafting documents in English (by phone or e-mail); Report writing workshops: assisting drafting pre-session reports for submission to Economic and Social Council/General Assembly; workshop on in-session drafting: short training session on the preparation of in-session documentation (under development); online writing course: short, self-study course for staff unable to attend live workshops; ECU presentations: information on ECU services given at orientation and induction courses for incoming staff.

Question 8. Which tools do you use in your work and how helpful are they? (a) databases/portals, b) software designed for the purpose of drafting or translation, c) thesauri, d) subject dictionaries and lexicons, e) models, f) others

Most frequently used tools

Technology has greatly improved: electronic support is used either to retrieve recurring sentences, to compare previous usages, to choose previous translations and so on. Obviously these devices (both software and databases) work best if a text undergoes pre-editing, so that ambiguities are avoided, references are checked and areas of relevance are defined (see UNOV). Templates may help in framing the general structure of documents even if some features of a model may be forgotten rather than deleted as non-applicable to the specific case on hand. New software is under construction to flag changes in previous legislation, to track down changes in different steps of procedure, to show alternative formulations and so on. Many institutions use electronic translation tools, switching from one to another as there is no prevailing model: the differences between the various tools may be better appreciated by professionals in the field. Translators and drafters share many tools (see in more detail question 14).

	Analytical list of frequently used tools indicated by respondents
ACA-Europe	n/a judges take responsibility for the French version and act in synergy with (external) translators for the English version
Belgium	commercial legal databases; crossroads bank for legislation of the federal government administration; models found on the website in (5)
Canada/Uni-Montréal	<i>Termium</i> (Ontario) Justice Sector Lexicon; <i>Iate.europa.eu</i> ; etc. - very helpful online dictionaries (French, English, Spanish, etc.) - very helpful < http://www.btb.termiumplus.gc.ca/ > - helpful Dept. of Justice Canada, Supreme Court of Canada: < http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=legislation/chap2.3-eng.htm > - very helpful
ECHR	Court's own public database of case-law < http://www.echr.coe.int/ECHR/Homepage_EN > - very helpful <i>Logiterm</i> software - not so helpful Council of Europe dictionaries - very helpful document templates (mandatory for standard documents) and other models - very helpful Macros (automatic insertion of references, standard

	paragraphs etc.) - very helpful
Finland	<p><www.finlex.fi/data/normit/35799-Svenskt_lagsprak_i_Finland2010.pdf></p> <p><i>SDL Trados Studio</i> and <i>MultiTerm</i> termbank. In addition to this they rely on IATE, Lagrummet.se which is a portal for Swedish public administration legal information, and other electronic termbanks in Finland and Sweden electronic dictionaries</p>
France/Independent	n/a
France/Jurisclope	CAT tools: Fusion, Wordfast
France/Ministry of Finance	<p><i>Minéfiterm</i> (terminological data bank of the ministries); CAT tools</p> <p><i>Glossaire du Code monétaire et financier</i> (version EN 2011), <i>Glossaire de la Loi organique sur les lois de finances</i> (LOLF) Le style du Monde, dictionnaire de la rédaction / Les règles typographiques en usage à l'Imprimerie nationale / Code de rédaction interinstitutionnelle de l'UE</p>
France/Senate	<p>many websites, also institutional, used in comparative drafting (Parlements, Gouvernements, Collectivités territoriales, organisation professionnelles) - very helpful</p> <p><i>Linguee</i> - very helpful</p>
Germany	<p><i>Juris</i> -online law information service or <www.gesetze-im-internet.de> - very helpful</p> <p><i>eNorm</i> -MS-word based program to support legislators - very helpful</p>
ILO	<p>database <http://www.ilo.org/MultiTransWeb/Web.mvc>; software: <i>SDL Studio 2011</i></p>
Israel/Uni-Jerusalem	<p>Websites specialising in international law, e.g. ejiltalk; websites of international institutions, e.g. UN Security Council, websites of international tribunals, e.g. International Court of Justice, International Criminal Court</p> <p>Databases: ssrn website, Max Planck Encyclopedia of Public International Law, Lexis/Nexis, Oxford Reports on International Law, Investment Arbitration Reporter</p>
Italy/ISS	TIB Tesauro italiano di Bioetica
Italy/Parliament	<p>database of normative texts and case-law, constantly updated, in particular:</p> <p><i>Leggi d'Italia</i> <http://online.leggiditalia.it/> - very helpful</p> <p><i>Normattiva</i> <http://www.normattiva.it/> - helpful</p> <p>other tools and services, when necessary, e.g. Biblioteca della Camera dei Deputati</p>
Italy/South-Tyrol	<i>Lexbrowser</i> , bi(tri)lingual collection of Provincial Legislation (Bolzano);

	<p><i>Termdat</i> terminology database from Switzerland/EU terminology https://www.termdat.bk.admin.ch/Search/Search</p> <p><i>Eurlex</i> (EU legislation/terminology)</p> <p><i>Bistro</i> http://dev.eurac.edu:8080/cgi-bin/index/index.de?r2=5 terminology database for German law terms in South Tyrol</p> <p>portal with online dictionaries collected on their website</p> <p><i>Multiterm</i> : database with our own terminology collection - very helpful</p> <p><i>Translators Workbench</i> (SDL) - helpful only to save time in case of repetitive texts and to guarantee equality of terminology in the texts; in the end not too helpful for law texts because normally they are not of the repetitive kind</p> <p>paperback versions of dictionaries (e.g. Conte Boss) but more use of the Internet; lexicons consulted online - not so helpful</p> <p>models of some kinds of documents in training seminars, such as models for resolutions, or models for forms destined to the public - helpful</p> <p>information hotline for language/drafting problems available at Office for Language Issues - very helpful</p>
OECD	<p>terminological databases developed and maintained by the Translation Division in a portal accessible to all in-house staff</p> <p><i>IATE</i></p> <p>terminological databases developed by other organisations/institutions through the <i>Jiamcatt</i> website</p> <p>OECD resolutions also accessible on line in both official languages. Some Directorates also developed databases of terms and definitions in very specific fields (statistics, transport, fisheries, etc.) - very helpful</p> <p>CAT tool (<i>Multitrans</i>) mainly used by Reference and Terminology staff as part of a 'precooking' process and by a few translators - helpful</p> <p>numerous hard-paper glossaries available in the Reference and Terminology Unit of the Translation Division, less and less are used as translators prefer electronic databases on line on Intranet or Internet - not so helpful</p> <p>list of sentences or expressions to be used is available in the Translation Division for some recurrent publications and for some specific texts like job vacancies (quicker translation and stronger coherence) - helpful</p>
Romania/Uni-Bucharest	<p>www.cdep.ro; www.monitoruloficial.ro; http://eurlex.europa.eu/en/index.htm - helpful</p> <p>legal dictionaries, www.dexonline.ro - helpful</p> <p>models: ancient regulation in a specific domain, forms adapted to new provisions, similar provisions in other systems of law -</p>

	helpful
Spain/Basque Country	<p><i>IDAB, Elet, Westlaw</i> and other legal banking data - very helpful</p> <p><i>Tramitagune, IDABA</i> - very helpful</p> <p><i>Euskalterm</i> - helpful</p> <p>subject dictionaries and lexicons offered by IVAP - very helpful</p> <p>models offered by IVAP; also models of most documents published in the Official Gazette of the Basque Country (computer platform called 'Platea') - very helpful</p>
Spain/Catalan Parliament	<p>Centre for Terminology in the Catalan Language - TermCat <http://www.termcat.cat> - very helpful</p> <p>specific publications from the Generalitat of Catalonia on linguistic guidelines (abbreviations, use of capital letters, non-sexist language, translation, etc.) <http://tinyurl.com/27x2r7n> - very helpful</p> <p><i>IATE, InterActive Terminology for Europe</i> <http://iate.europa.eu/iatediff/SearchByQueryLoad.do?method=load> - helpful, but it would be more so if it incorporated Catalan</p> <p>linguistic tools of the European Commission: <http://ec.europa.eu/translation/index_es.htm> / <http://ec.europa.eu/translation/english/guidelines/documents/styleguide_english_dgt_en.pdf> - helpful</p> <p>linguistic portal of Canada: <http://www.noslangues-ourlanguages.gc.ca/index-eng.php> - helpful</p> <p>United Nations terminology and documents database: <http://unterm.un.org/ http://www.un.org/en/databases/> - helpful</p> <p>Institut d'Estudis Catalans (regulatory authority of the Catalan language): <http://www.iec.cat/coneixement/entrada_c.asp?c_epigraf_numero=2> - useful</p> <p>own database, currently under development, which should be integrated into the <i>Multiterm</i> database of Trados, which will prove very helpful for translations</p> <p>for translations into Catalan or Spanish CAT software Trados Studio 2011: <http://esl.proz.com/forum/sdl_trados_support-65.html> - very helpful (better translation quality than machine translation) support forum also very helpful</p> <p>for translation from Catalan and into Spanish, Parliament of Catalonia specific machine translation software program: very helpful and time-saving, but editing inevitable</p> <p>sometimes the EU thesaurus, <i>Eurovoc</i>, is used, but it is not very helpful in daily work: <http://eurovoc.europa.eu>. The Catalan thesaurus is also used, developed by the Parliament of Catalonia: <http://www.parlament.cat/web/documentacio/recursos-</p>

	<p>documentals/tesaurus</p> <p><i>Justiterm</i>, legal and administrative terminology browser (Departament de Justícia de la Generalitat): http://www.gencat.cat/justicia/justiterm</p> <p>various Dictionaries of Catalan</p> <p><i>Corpus Textual Informatitzat de la Llengua Catalana</i> (CTILC): http://ctilc.iec.cat/</p> <p>text models for parliamentary documents (various types of resolutions, motions, agreements, etc.) - very helpful</p> <p>other helpful tools:</p> <p><i>Optimot</i>, language advice website on Catalan language and translation from and into Spanish: http://optimot.gencat.cat/</p> <p>on-line tools of the Language Services of the Universitat de Barcelona: http://www.ub.edu/sl/ca/recursos.htm</p> <p>language portal of the Catalan Broadcasting Corporation ('ésAdir'): http://esadir.cat/</p> <p>official toponymy of Catalonia of the Departament de Territori i Sostenibilitat de la Generalitat: http://www.gencat.cat/toponimia/nomenclator</p> <p><i>Linguee</i> (comparing texts with their translation): http://www.linguee.es/</p>
Sweden	http://www.regeringen.se , Intranet
Switzerland/FC-Italian Division	<p>http://www.admin.ch, <i>Termdat</i>, <i>digesto elettronico</i>, <i>EurLex</i>, <i>IATE</i> etc - very helpful</p> <p>Sistema di memoria di traduzione Multitrans . very helpful</p> <p>Thesaurus del tribunale federale svizzero - very helpful</p> <p>dictionaries of all kinds (on paper and online) - very helpful</p> <p><i>OMNIA</i>: collection of models of texts related to federal legal procedure:</p> <p>http://www.admin.ch > Cancelleria federale > documentazione > lingue > documenti in italiano > documentazione per la redazione di testi ufficiali - very helpful</p> <p>search engines - very helpful</p>
Switzerland/FC-Terminology	<p>Custom Intranet Portal Federal Administration - helpful</p> <p><i>Multitrans</i> - helpful</p> <p>various commercial thesauri, subject dictionaries and lexicons - helpful</p> <p><i>Termdat</i> (proprietary terminology database)</p> <p><i>WordSmith</i> - very helpful</p>
UK	legislation.gov.uk ; <i>LexisLibrary</i> ; Halsbury's Statutes - very

	<p>helpful (virtually indispensable, and therefore used daily)</p> <p>drafting software program <i>Framemaker</i>, generally a robust and effective piece of software - very helpful</p> <p>thesauri rarely used, if ever, - not so helpful</p> <p>Shorter Oxford English Dictionary - helpful</p> <p>models not obviously applicable - not so helpful</p> <p>legislative handbooks, in particular <i>Craies on Legislation</i>, occasionally valuable resources - helpful</p>
Unidroit	<p>EU Law databases; databases on international case-law relating to international instruments where both summaries are in English and the original text are contained - very helpful</p> <p>standard software free on the Web is generally of poor quality; no experience with other kinds of software - not so helpful</p> <p>subject dictionaries and lexicons - very helpful/helpful</p> <p>academic work - language used by scholars writing in English in the specific field - helpful</p>
UNOV	<p>for editors: in-house database for previously edited documents (<i>DtSearch</i>).</p> <p><i>Google</i> - obvious, but completely changed fact-checking/replaced terminology bulletins</p> <p>VINTARS - Terminology and reference database in all official languages of UN (Vienna)</p> <p><i>UNTERM</i> (via Intranet or Internet) - Terminology database in all official languages of UN (New York)</p> <p>Official Document System of the United Nations - ODS public access</p> <p>Dag Hammarskjöld Library - UNBISnet and UN Pulse</p> <p>United Nations publications - Quick access to titles and sales numbers of United Nations publications</p> <p>DETERM - United Nations Terminology in German, with English, French and Spanish equivalents</p> <p>United Nations documentation: research guide - Guide to reports, resolutions, meeting records, sales publications and press releases</p> <p>United Nations Treaty Collection</p> <p>More terminology databases can be found at the linguistic support website - very helpful</p> <p>some experiments with drafting templates and software, but problems have occurred - poor fact-checking/research, self-editing, critical thinking, logical organisation, unnecessary or repetitive documents;</p> <p>software routine correcting proper nouns, treaty references and footnotes (developed in-house)</p>

	<p><i>Mercury CAT</i> tool being refined through user feedback and promises to be a helpful tool - helpful/ not so helpful (opinions differ)</p> <p>thesaurus.com - helpful</p> <p>subject dictionaries and lexicons - helpful</p> <p>editorial toolbar providing quick access to documents and databases - helpful</p>
<p>US/Legislative Counsel</p>	<p><www.house.gov/legcoun> office's website with information on drafting; internal page for Members and staff providing additional tools, e.g. compilations of laws essential to drafting accurately (in US less than half of the laws are officially codified, so there is a need to maintain a database of laws not yet codified in US Code).</p> <p>heavy users of <i>THOMAS</i> (Thomas.gov), congress.gov, <i>LIS</i>, <i>Potomac Publishing</i> (potomacpublishing.com; paid service); uscode.house.gov, and GPO.gov for databases of bills, laws, regulations, and papers on various legal issues - very helpful</p> <p><i>XMetal</i>, customised for drafting of bills, resolutions, and amendments (i.e. formatting is customised) and text-to-<i>XMetal</i> program to convert text in another format to <i>XMetal</i> - very helpful</p> <p>thesauri, subject dictionaries and lexicons - not so helpful</p> <p>models of other bills, and definitions in the US Code useful starting point, but knowing context is crucial - helpful</p> <p>software in development to show changes to existing law made by proposed bill, and changes to a bill made by proposed amendment - very helpful</p>
<p>US/Louisiana</p>	<p><www.Legis.la.gov>, westlaw.com - very helpful</p> <p>models: prior legislation and reports - very helpful</p>

Question 9. Do you have specific guidelines on issues such as gender neutrality or any other issue relating to political correctness (awareness of diversity); use of neologisms, anglicisms or false friends; words that cannot or should not be translated; use of paraphrase; ways of expressing obligation (use of verb and/or tense); punctuation?

In which cases do you find it is useful to have detailed instructions (e.g. fixed number of words, limits to paragraph length)?

Specific drafting issues

Guidelines may not solve all possible problems but they provide a model for comparison. This is the reason why they are so frequently provided. Instructions tend to overlap:⁶⁴¹ most often guidelines suggest avoiding passive forms, colloquialisms and idiomatic turns of phrase or jargon. The last issue is especially relevant for translation: examples show how difficult it is to strike exactly the same colloquial meaning in the recipient language. Guidelines may be more or less specific. Some issues are recurring and may have important implications for technical reasons (for instance, use of neologisms) or for policy issues (for instance gender neutrality or awareness of diversity. Gender neutrality is an area where binding guidelines are likely to exist (see Italy/South Tyrol).

Some concern is expressed about the streamlining of instructions issued. A constant reminder expressed by experts in drafting is that too many instructions can fail in their purpose, and simply be ignored by drafters.⁶⁴²

	Analytical list of guidelines on specific issues indicated by respondents
ACA-Europe	n/a
Belgium	no specific guidelines, only general guidelines provided by guide in (5).
Canada/Uni-Montréal	<p>simplicity, concision, precision (not always easy to implement)</p> <p><http://www.opc.gov.au/calc/docs/Loophole_papers/Poirier_Jan2010.pdf></p> <p>gender neutrality or any other issue relating to awareness of diversity</p> <p>use of neologisms, anglicisms or false friends</p> <p>words that cannot or should not be translated (there are not many e.g. 'common law', 'Equity')</p> <p>ways of expressing obligation (e.g. shall, must, may / <i>peut, doit, devra</i>)</p> <p>ways of addressing people</p> <p>punctuation (until recently not considered essential in Common law for statute construction purposes vs French)</p>

⁶⁴¹ Not every manual provides punctuation standardisation (for a positive case: see UNOV replies).

⁶⁴² See also the part on the contribution of cognitive psychology and the concept of relevance.

	<p>other; see <www.ourlanguages.gc.ca> (and its Tools for Writers, in both languages)</p> <p><http://www.gov.mb.ca/chc/pdf/guide_de_style_dec2011.pdf>. See 8. e) f)</p>
ECHR	<p><i>Style Manual</i> has basic rules on gender (e.g. when possible 'he or she'/'his or her'/'his or hers')</p> <p>in English text, certain institutional words listed in the <i>Style Manual</i> are left in French e.g. <i>Conseil d'Etat</i>, <i>tribunal de grande instance</i>; also Spanish e.g. <i>amparo</i>, <i>Audencia Nacional</i></p> <p>lawyers' manual: sometimes useful to give the original language version (in brackets) of the names of the courts (e.g. Greek name for the Court of Cassation: <i>Areios Pagos</i>)</p> <p>use of 'shall' to be avoided unless in translation of normative texts.</p> <p>various rules on punctuation in <i>Style Manual</i>: colons, commas, hyphens etc.</p>
Finland	n/a
France/ Independent	French grammar and spelling rules
France/Juriscope	n/a
France/ Ministry of Finance	abbreviation, Country official names, typographical error rules
France/Senate	no
Germany	gender neutrality or any other issue relating to awareness of diversity
ILO	gender neutrality or any other issue relating to political correctness (awareness of diversity); use of neologisms, anglicisms or false friends; words that cannot or should not be translated; use of paraphrase; ways of expressing obligation (use of verb and/or tense); punctuation. All these issues can be found in the <i>Style Guide: Règles de présentation des textes au BIT</i>
Israel/Uni- Jerusalem	n/a
Italy/ISS	no
Italy/ Parliament	<p>gender neutrality is considered hard to reconcile with the nature and use of the Italian language</p> <p>use of neologisms, anglicisms or false friends is to be avoided, as far as possible; if necessary, their use is to be accompanied by translation or definition</p> <p>ambiguous words or constructions are to be clarified when possible</p> <p>as a way of expressing obligation the indicative present is preferred, while the use of 'dovere' (must) is avoided, except in specific cases</p>

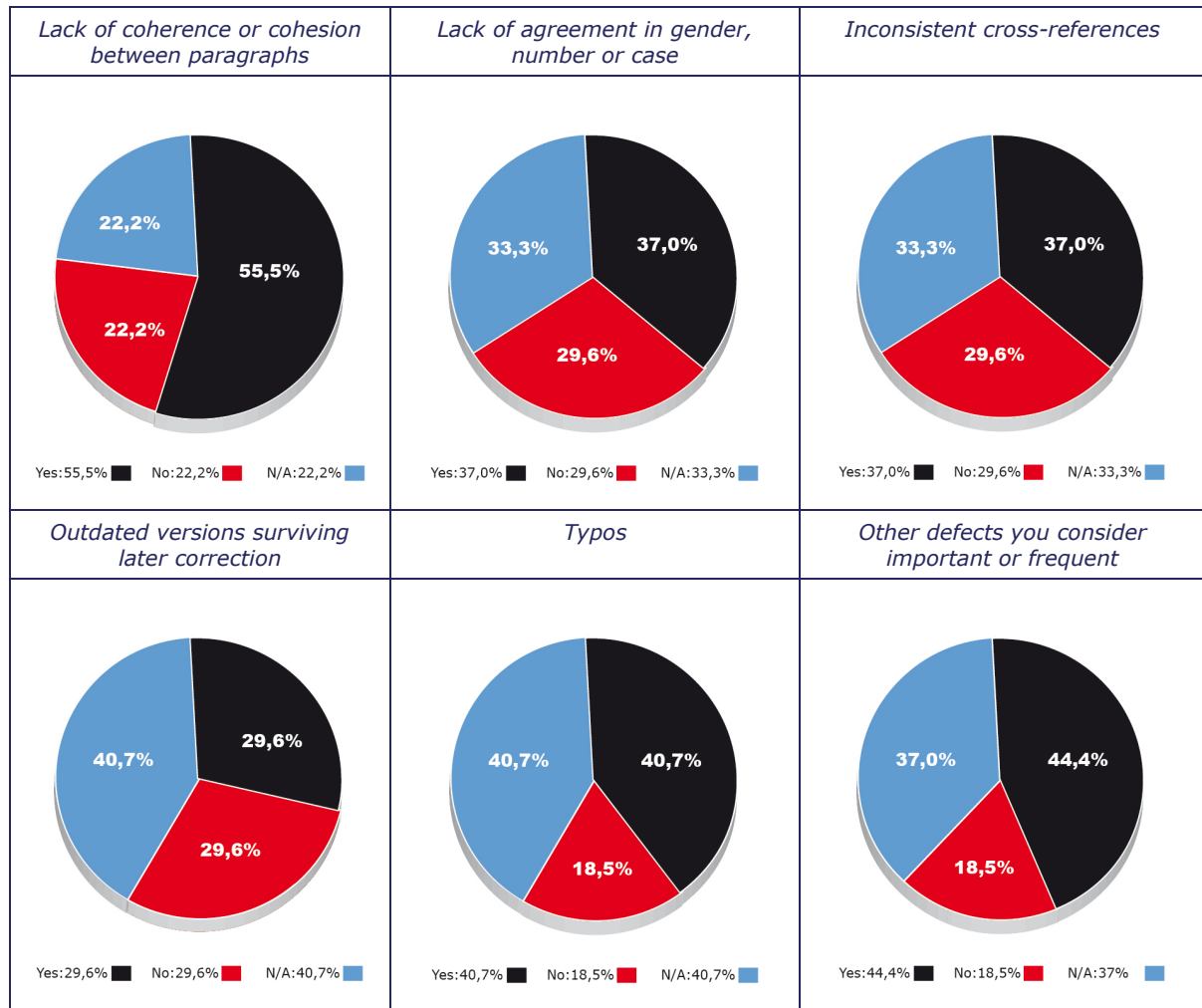
	<p>punctuation receives special care as an instrument to facilitate comprehension of the normative text, clarify syntactic relations and clear ambiguities without altering the approved text</p> <p>other defects:</p> <p>defective word order, especially in collocations introduced by the preposition <i>di</i> (of), e.g.: <i>lesione alla persona di lieve entità</i>: better: <i>lesione di lieve entità alla persona</i> or, <i>lesione personale di lieve entità</i></p> <p>many readings during all phases of presentation and evaluation of the law proposal; readings by different agents, focusing both on the content and on formal accuracy, precision and coherence of the formulation, cross-references and sections numbering</p>
Italy/South-Tyrol	<p>all texts as directed by circular letter of the Director General (based on Provincial law from 2011) have to be gender neutral - special trilingual guidelines for this and, starting in autumn 2013, specific training courses</p> <p>anglicisms/neologisms to be avoided, unless there are no equivalents (Ladin versions have to use many neologisms, since many law/technical terms do not exist in this language)</p> <p>words that cannot or should not be translated admitted if necessary</p> <p>use of paraphrase ok if helpful</p> <p>normally use of present tense to express obligation (<i>der Käufer unterzeichnet den Vertrag</i>; <i>l'acquirente presenta</i>)</p> <p>in regulations <i>muss/deve (essere)</i> allowed to stress obligation</p> <p>usual national rules for punctuation followed (e.g. for German: <i>DUDEN</i>)</p> <p>detailed instructions (e.g. fixed number of words) always useful, particularly for those without particular writing skills, especially experts from very technical fields not used to writing for the public, but also for jurists used to write for other jurists and not for a general public</p>
OECD	<p>Translation Division's <i>Dictionnaire des difficultés générales</i> (English to French) numerous recommendations concerning the translation into French of specific English terms, like <i>policy</i>. <i>Style Guide</i> also gives numerous examples: false friends, words to be avoided, foreign words and expressions, gender-sensitive language, hyphenation, numbers, spelling, punctuation</p> <p>giving detailed instructions to translators is pointless (except for new-comers) because they are experts mostly hired via very selective recruitment procedures; detailed instructions would certainly be very useful for administrators and external collaborators who are not drafting experts</p>
Romania/Uni-Bucharest	<p>Law 24/2000 on the legislative technique norms for drafting normative acts.</p>

	<p>Art. 36: use of neologisms, Anglicism or false friends,</p> <p>Art. 38: ways of expressing obligation (use of <i>verbe</i> and /or tense) words that cannot or should not be translated</p> <p>Other: the style of normative clear precise and foreseeable, grammatical and orthography rules, avoid the regionalisms and explications given by square brackets.</p>
<p>Spain/ Basque Parliament</p>	<p>gender neutrality or any other issue relating to awareness of diversity</p> <p>punctuation</p> <p>other - developed by style books published by IVAP</p>
<p>Spain/ Catalan Parliament</p>	<p>recommendations on non-sexist language whenever possible (though neutrality with regard to gender may conflict with some features of Romance languages)</p> <p>specific recommendations on politically correct language (texts should avoid all forms of discrimination for example for ideological, political, or gender reasons), with examples, included in the <i>Style Guide</i>.</p> <p>Use of neologisms often inevitable for new concepts, but recommended clarifying their meaning in definitions</p> <p>as for loanwords, recommended using genuine terms, whenever possible</p> <p>when the text of a draft law comes with loanword, often an anglicism commonly used in the field, recommended introducing standard term together with loanword in italics and in brackets</p> <p>certain names of public bodies not translated, such as '<i>Síndic de Greuges</i>'; equivalent in another language is used to clarify the concept: The '<i>Síndic de Greuges</i>(Ombudsman)'</p> <p>recommend avoiding use of explanatory paraphrases and use of connectors such as 'i.e.' or 'therefore'</p> <p>insistence that an obligation is not expressed through the future tense in legal Catalan, unlike Spanish or English, but through the verb in the present tense</p> <p>specific guidelines regarding use of punctuation to improve precision and avoid ambiguity</p> <p>other very important guidelines include use of verb forms (principle of effectiveness), active voice (principles of clarity and conciseness), consistent terminology, intertextual coherence and formal structure of texts adopted by the Parliament of Catalonia</p> <p>Detailed instructions are helpful when writing texts, amending laws or when structuring legislative initiatives (e.g. numbering of paragraphs and articles, phraseology and types of provisions)</p> <p>No quantitative limits set regarding number of words or length of subparagraphs; yet recommended that each paragraph or subparagraph of an article should contain one single period or sentence; laws including more than twenty articles should be subdivided into chapters; chapters and sections including a single</p>

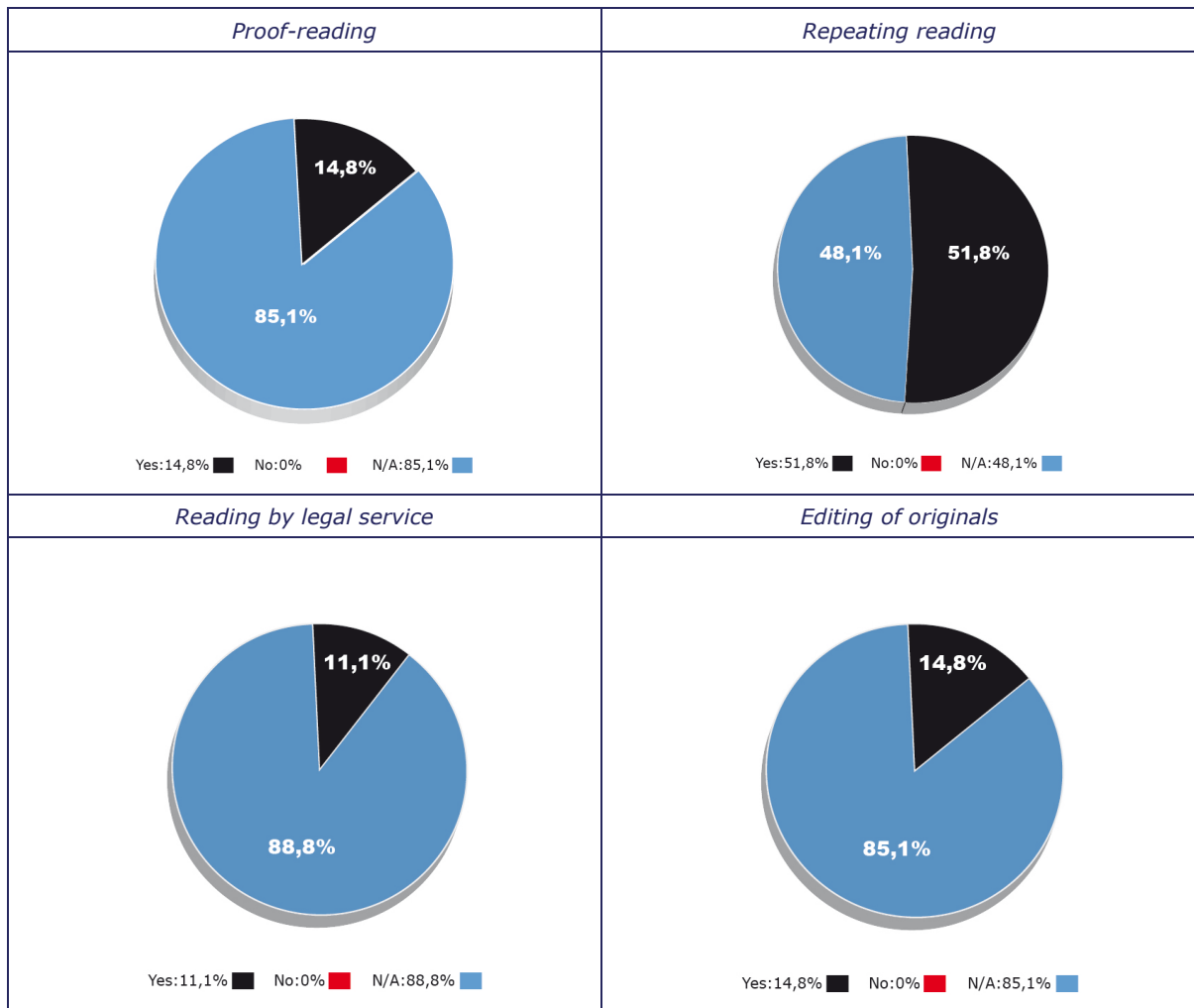
	<p>article should be avoided; lengthy regulations, such as the Civil Code, which contains the rules of Catalan Civil Law, should be divided into books</p>
Sweden	n/a
Switzerland/FC-Italian Division	<p>Gender neutrality: Guida al pari trattamento linguistico di uomo e donna, www.admin.ch</p> <p>Anglicisms: http://www.bk.admin.ch/dienstleistungen/db/04813/index.html?lang=it</p> <p>words that cannot or should not be translated: J.-L. Egger, 'Prolegomeni a un approccio traduttivo dei testi normativi', in <i>LeGes</i> 2006/2, pp. 173-184. (<http://www.bk.admin.ch/themen/lang/00938/02124/02346/index.html?lang=it#sprungmarke_2_27></p> <p>ways of expressing obligation: J.-L. Egger, '(Pre)scrivere la prescrizione: ridondanze e ambiguità della legge', in <i>LeGes</i> 2003/1, pp. 149-166.</p> <p>Other : Direttive di tecnica legislativa (<">http://www.bk.admin.ch/themen/gesetz/00050/index.html?lang=it_>>)</p> <p>Detailed instructions not always useful: depending on text type and language</p>
Switzerland/FC-Terminology	<p>Gender neutrality or any other issue relating to awareness of diversity</p> <p>Use of neologisms, anglicisms or false friends</p> <p>Punctuation (for German)</p> <p>Other: legal text rules (German/French/Italian), user-friendly texting (for German)</p>
UK	<p>Since 2007, required to draft in gender-neutral terms, so far as practicable; limited exceptions, for example when textually amending legislation not originally drafted in gender-neutral terms.</p> <p>No specific guidelines on any other similar matters.</p> <p>Obligation usually expressed by the use of 'must' (instead of 'shall'), to convey clearest sense of obligation. In general, present tense and active voice, though exceptions; alternative formulation for imposing obligation: 'is to be' (e.g. compensation 'is to be determined' in accordance with X), but 'must' prevailing technique.</p> <p>No detailed instructions, as such; certain 'rules of thumb', like trying to keep a section to manageable length (e.g. not more</p>

	<p>than 7 or 8 subsections), applied flexibly and according to case.</p>
Unidroit	<p>As no guidelines are formally adopted, drafting groups/individual drafters try to achieve the following:</p> <p>Gender neutrality or any other issue relating to awareness of diversity: to a limited degree</p> <p>Neologisms used if other terminology could generate misunderstanding</p> <p>Words that cannot or should not be translated: not often, only some terms of art in international trade (e.g. <i>force majeure</i>, hardship)</p> <p>use of paraphrase: recommended in comments to black-letter rules; in black-letter provisions, a short provision is usually preferred to a longer one (to the extent possible).</p> <p>Ways of expressing obligation: no specific guidelines</p> <p>Punctuation: no specific guidelines</p> <p>Too detailed rules on length or number of words may hinder clear drafting</p> <p>General guidelines suggesting short sentences in black-letter rules certainly useful, when accompanied by more explanatory texts such as comments or notes.</p>
UNOV	<p>Generally, few guidelines on these, although some issues addressed indirectly as editor tries to keep language unambiguous and translatable.</p> <p>Punctuation: yes, standardised.</p> <p>Rather than specific guidelines, best practices acquired through actual practice and training by senior editors; dangers in outsourcing or distance training</p>
US/ Legislative Counsel	<p>Legislation should be gender neutral</p> <p>Always use same words or phrases when describing same thing; variation causes ambiguity and courts will look for a reason for the variation</p> <p>Ways of expressing obligation: depends on the context</p> <p>Specific conventions regarding the use of colons, semicolons, and other punctuation.</p> <p>No particular length or number of words prescribed</p>
US/Louisiana	<p>Gender neutrality, punctuation general instructions</p>

Question 10.A. The following defects are frequent: (a) lack of coherence or cohesion between paragraphs; (b) lack of agreement in gender, number or case; (c) inconsistent cross-references; (d) outdated versions surviving later corrections; (e) typos; (f) other defects you consider important or frequent.



Question 10.B. To avoid these defects, do you revise the text by focusing on each kind of problem separately? Are repeated readings usually done?



Frequent defects in texts and possible solutions

Almost all respondents acknowledge that while these defects may be present in drafts, they are not frequent, due to effort made to avoid them as much as possible. Time and resources are crucial in this case. Checklists to identify problems such as omissions, defective concordances, or cross references are not seen as especially useful (see in more detail question 17). Neither are separate readings for different aspects of a written text. But in Switzerland (Chancellerie Fédérale, Assemblée, Drafting commission) a practice of autonomous re-readings that focus, each time, on an aspect such as grammar, structure, or references, is deemed necessary. In the revision phase, some respondents indicated the use of gradual checklists, and the use of separate readings to verify single features of texts, such as verb-subject concordance, cross references, or acronyms (see Switzerland): in case of a complex text such as an international treaty, this may be necessary. But most respondents just register the use of repeated general readings by different persons as necessary and sufficient to improve quality.

Providing detailed instructions does not seem to be always effective. For instance, as noted by the OECD, giving detailed instructions to translators is pointless (except for

new-comers) because they are experts mostly hired via very selective recruitment procedures and they generally only need to be made aware of some specific in-house conventions during the initial test period. On the other hand, detailed drafting instructions would certainly be very useful for administrators and external collaborators who are not drafting experts and consider policy analysis as their main task: generally in-house courses do not appear available to them. Administrators and experts seem to be in lack of drafting expertise but they are often not aware of this, even if they are native speakers. It would be also helpful to comment on the quality of their drafting, but time may be lacking and it may be difficult to comment on a text drafted by a highly-regarded expert.

	Analytical list of frequent defects and practices to avoid them indicated by respondents
ACA-Europe	
Belgium	<p>Lack of coherence or cohesion between paragraphs</p> <p>Lack of agreement in gender, number or case</p> <p>Inconsistent cross-references</p> <p>Out-dated versions surviving later corrections</p> <p>Several readings by legal service (named 'legal evaluation'); remarks in form of note to committee service, which may choose to fail to adhere to the note; for a bill to be voted, it is not mandatory to profit from legal service: this would enhance quality of legislative work</p>
Canada/Uni-Montréal	<p>Nonsensical formulations; contradictions; loose sentences and style</p> <p>Repeated readings are necessary (one to understand subject, context and purpose of text; one for grammar/syntax/style; one for logic/coherence between paragraphs; one for cross-references)</p>
ECHR	<p>All these defects may occur, but not frequently: texts undergo 'language check' when the drafter is not a native speaker; texts for publication in print undergo downstream editing, often in addition to upstream check; also quality checks dealing more with legal content upstream; translators may also indicate corrections; language issues as above would not be checked separately, except perhaps cross-references</p>
Finland	<p>Old words to be replaced</p>
France/Independent	n/a
France/Juriscopie	n/a
France/Ministry of Finance	n/a
France/Senate	n/a
Germany	<p>No particular defects</p> <p>Repeated readings</p>

ILO	All defects mentioned in the question are relatively frequent
Israel/Uni-Jerusalem	n/a
Italy/ISS	n/a
Italy/Parliament	Difficulty in ordering the words in the right position in the sentence, especially in case of indirect objects.
Italy/South-Tyrol	<p>Frequent defects:</p> <p>Lack of coherence or cohesion between paragraphs: yes</p> <p>Lack of agreement in gender, number or case: no</p> <p>Inconsistent cross-references: no</p> <p>Out-dated versions surviving later corrections: no</p> <p>Typos: yes</p> <p>Translation defects: wrong translations/texts which sound 'translated';</p> <p>Too long and complicated sentences containing too many regulations which do not belong together</p> <p>Lack of uniform terminology</p> <p>Use of antiquated terms</p> <p>All aspects of quality of drafts considered coevally during numerous proofreadings (first in technically responsible dept. and eventually during 'legal' and 'language' checks by the Advocacy staff - at least 2 readings, often up to 3 or 4 readings, if there is time); then draft to Council, where again proofreading</p>
OECD	Yes, several readings: translators contact in-house authors (or administrators in charge) on errors detected; revisers check important translations and fill in a standard form to mention types of errors and evaluation of translation quality; form discussed with in-house translators or sent to external translators
Romania/Uni-Bucharest	n/a
Spain/Basque Country	<p>Several flaws in clarity, also very common in the Spanish text: long sentences, ambiguous and not very clear use of concepts, use of jargon, excessive nominalisation and improper use of punctuation</p> <p>Lack of standardisation in administrative documents</p> <p>Lack of coordination, duplication of models, terminology and expressions used causing harm to juridical certainty.</p> <p>Models developed not yet been disseminated and regularly applied as they should</p> <p>Several readings, particularly useful when revision done by la group of awyers</p>
Spain/Catalan	Lack of coherence or cohesion between paragraphs frequent,

Parliament	<p>especially when amendments are adopted.</p> <p>Lack of agreement in gender or number also a frequent defect.</p> <p>Cross-references often inconsistent and must be updated after law passed and finally adopted.</p> <p>Versions of documents can be problematic, especially preambles, which must often be adapted to the final text of the law.</p> <p>Typos less and less frequent</p> <p>Other defects: inconsistent terminology, explanatory paraphrases, improper use of connectors, poorly drafted definitions, excessive use of passive voice (always best replaced by active voice in Catalan), excessive use of subordinate clauses, and lack of intertextuality, as all parliamentary texts should have same style.</p> <p>Most defects remedied during the global revision of the text, always at least threefold: first when draft law is introduced, then after text adopted in committee (just before adoption in plenary session), and finally when Spanish and Occitan versions made, after adoption of the law; depending on complexity of text, up to six readings.</p>
Sweden	n/a
Switzerland/FC-Italian Division	<p>Lack of coherence or cohesion between paragraphs;</p> <p>Lack of agreement in gender, number or case;</p> <p>Inconsistent cross-references;</p> <p>Out-dated versions surviving later corrections;</p> <p>Typos;</p> <p>Terminological inconsistency, lack of precision in lexicon, lack of intra- and intertextual cohesion and of creativity</p> <p>Worst: non conformity of two linguistic versions of the same text</p> <p>Normative texts revised by several agents with different perspectives to identify such defects.</p>
Switzerland/FC-Terminology	<p>Lack of coherence or cohesion between paragraphs;</p> <p>English versions produced by non-native speakers;</p> <p>Number of readings depends on document type; in some cases double proofreading for each language (usually 5 = 10 proofreadings)</p>
UK	<p>Not obvious any of the above defects in primary legislation produced</p> <p>Several opportunities to correct typographical errors and other editorial points; practice at the OPC is for two drafters to work on a topic, one taking responsibility for draft and other reviewing it.</p>
Unidroit	<p>All of the above not frequent</p> <p>Other defects: turn of phrase or terminology which makes it difficult to translate text into another language</p> <p>Repeated readings by more than one person (and by non-</p>

	<p>drafters); great attention to linguistic consistency to the extent possible in the reviewing of the text in final readings by Secretariat / Drafters; result varies according to individual skill of drafter(s) and/or time constraints</p>
UNOV	<p>Lack of coherence or cohesion between paragraphs, to a degree</p> <p>Lack of agreement in gender, number or case; sometimes</p> <p>Inconsistent cross-references; sometimes</p> <p>Out-dated versions surviving later corrections (not common, most documents are created anew).</p> <p>Typos; of course</p> <p>Others: missing crucial information, ambiguity, lack of fact-checking by author.</p> <p>For some texts, an editorial assistant corrects the footnotes and references to treaties, bodies, etc. ('pre-editing'): unusual in UN system, but efficient and greatly appreciated by the editor.</p> <p>No one method of editing is prescribed; logic, sense and grammar on the first reading and fact-checking at second stage; or one main reading, with final reading to proofread printed final product.</p>
US/Legislative Counsel	<p>Role of the drafter is to catch these errors; time permitting, proofreading best method to avoid these errors</p>
US/Louisiana	<p>none</p>

Recommended Best Practices

1. A feedback on the quality of drafts should be foreseen not only for in-house drafters, but also for freelance and external experts. Therefore, detailed drafting instructions should be annexed to the contract proposed to an external expert. This instruction should also mention the maximum admissible length of the study. Moreover, returning an edited version to authors might be useful.

2. In general, monitoring the relationship between substantive and formal interventions on the draft should ensure consistency and correctness of the final texts. In particular, a careful monitoring of the 'text history' should be implemented especially to ensure semantic and textual correspondence between different versions of a bill proposal at the various legislative stages.⁶⁴³

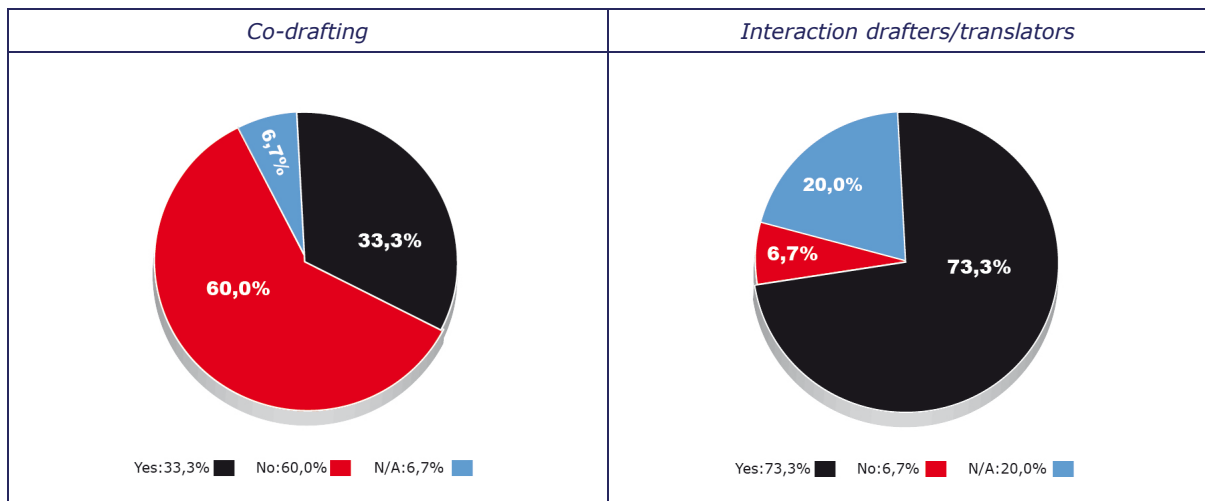
3. A structured and permanent monitoring of compliance with drafting rules should facilitate verifying whether approved provisions meet the requisites of clarity and precision.

⁶⁴³ For instance, it was noted in the Italian Parliament that the application of their guidelines is limited to the structural and formal aspects of the normative text, while interventions on the technical writing or drafting of the content are subordinate to political choices.

3. Multilingual redaction and translation (questions 11-15)⁶⁴⁴

Questions 11-12. Does drafting in the different languages take place simultaneously (co-drafting)?

Is there interaction between drafters and translators?



Co-drafting, drafting and translating: different kinds of interaction?

A few co-drafting models

Among multilingual organisations and institutions, co-drafting is a rare choice, and so far has been implemented, or merely experimented with, in bilingual contexts. We did not find evidence of co-drafting involving more than two languages, so far. Nonetheless, co-drafting entails a strong and close interaction among drafters, as well as a very early breakdown of linguistic and terminological problems, which allows more time for finding acceptable solutions and a more in-depth comparative analysis.

In principle all respondents agree that co-drafting, the simultaneous discussion and writing of documents in all the languages involved, is the most satisfying solution from the point of view of the results.

(a) Canada

There is significant difference between cases when two or more languages are used, but the legal concepts belong to the same tradition, and cases where the legal structures also differ. In the latter case we shall speak of a 'bi-jural' rather than bilingual system, as in Canada.⁶⁴⁵

⁶⁴⁴ This section of the questionnaire applies only to a restricted group of respondents.

⁶⁴⁵ We could speak also of a 'mixed system', where the specificity (for instance in relation to Scotland) is that both an Anglo-Saxon and a Neo-Latin (or Romance) language are used in parallel. In Scotland as well civil law notions are expressed with a specific terminology, but legislation is not drafted in French (or Dutch) any longer: drafting takes place primarily in English so that even if old terminology may still linger, in Scotland new notions tend to give in to the prevailing English models. Brief mention should be made also of the bi-jural systems in the Republic of South Africa and in New Zealand. In the first case, civil law notions descending from the historical roots in the Dutch tradition have to be compared with common law notions of more recent import. On the other hand, in New Zealand legislation is enacted in English, but Maori is also identified as an official language. 'The Maori Language Act 1987 does not require all legislation to be published in Maori. Since this Act makes Maori an official language, the use of the language in statutes has become increasingly common'. As a result, legislative texts are written in English, but some texts are also in

As observed several years ago by Michel Bastarache, judge of the Supreme Court of Canada: 'Canadian Bijuralism refers to the co-existence of both the common law and civil law tradition in the same country, at the same time'.

In Canada, for a significant period of time legislation was mainly drafted in English, but gradually the parallel drafting of an Anglophone and French text by lawyers working simultaneously became the ordinary practice. When French versions of Canadian laws were mere literal translations of the English version, the results were rather 'stilted in terms of style', so that jurists who had to interpret the text were forced to refer to the source language. Such a translation technique was perceived as being in contradiction with the principle of language equality. Therefore, the method used to draw up laws in French and English had to evolve to avoid literal translation and to ensure that, as regards private law, it can be understood in the legal context of both civil and common law.⁶⁴⁶

Nowadays Canada has the most relevant experience with co-drafting in the legislative sector, with remarkable progress achieved both in the production of bilingual legislation as well as in the judicial field, over the last few decades (1970-2012), with a significant improvement of decisions written in either language. Canadian bills are co-drafted by pairs of drafters within the Legislation Section, working simultaneously on English and French versions of the bill, where neither version is subordinated to the other. Although only one of the drafters co-ordinates the various steps, communicates with instructing officers and manages administrative tasks, he or she does not assume sole responsibility. Each version must fully reflect the departmental instructions, while respecting the nature of each language as well as Canada's twin legal systems (common law and civil law). In particular, here is not one version which may not be changed, as is the case for translation. The two drafters may prompt each other to change or improve their versions. Both versions include the same headings, sections and subsections. Although they need not be parallel at the level of paragraphs or subparagraphs, an effort is made to arrive at an aligned structure in order to make it easier to read both versions together. Once drafting is nearing completion, both versions of the draft are reviewed by a jurilinguist in the Legislative Services Branch to ensure they are consistent with one another. It should be stressed that the Canadian Cabinet Directive on Law-making requires not only that draft legislation be prepared in both official languages, but also that departments sponsoring the bills ensure that they are able to instruct in both languages, to respond to questions about the proposed legislation from drafting officers in either language and to evaluate critically drafts in both languages.⁶⁴⁷

The adoption of co-drafting has given rise to perceived changes in federal legislation:

'[...] the historical rigidities of bilingual drafting have been relaxed to a degree. It is no longer necessary for the French version to track the sentence structure and wording of the English version. [...] On the English side, common law drafting has evolved toward a higher level of generality and abstraction, which has brought it more in line with civilist style. Since the introduction of co-drafting, English drafters have been free to follow the lead of their French co-drafters in including

Maori or some Maori words are inserted into a specific Act. The trend, however, moves toward limited bilingual legislation, while there is no evidence of co-drafting. See GAMBARO, 'Interpretation of Multilingual Legislative Texts', *supra* fn. 618.

⁶⁴⁶ WELLINGTON, Louise M., *Bijuralism in Canada: Harmonization Methodology and Terminology*, Canada, Department of Justice, 2001, available at: < <http://www.justice.gc.ca/eng/rp-pr/csj-sjc/harmonization/hfl-hlf/b4-f4/bf4.pdf>>.

⁶⁴⁷ See GOVERNMENT OF CANADA PRIVY COUNCIL OFFICE, *Guide to making Federal Acts and Regulations* (2nd ed.), 2001, Part II, 'Making Acts'.

two sentences with a single section or subsection, in declining to paragraph and the like.⁶⁴⁸

(b) *Switzerland*

The Swiss experience in legislation is consistently oriented toward co-drafting, at least for German and French texts. In 2010 a legislative act and a regulation came into force. The act clarified the use of all the official languages by the federal authorities and created new positions for civil servants in the areas where some languages were weaker. The language services assess the linguistic quality of texts, with particular attention to the structure, clarity and linguistic precision of drafts, as well as coherence of contents and terminology. This activity takes place in the initial phase of the legislative process, when it is still possible to add substantial linguistic corrections. Within the federal administration the Internal Drafting Commission is responsible for linguistic monitoring of the quality of legislation.

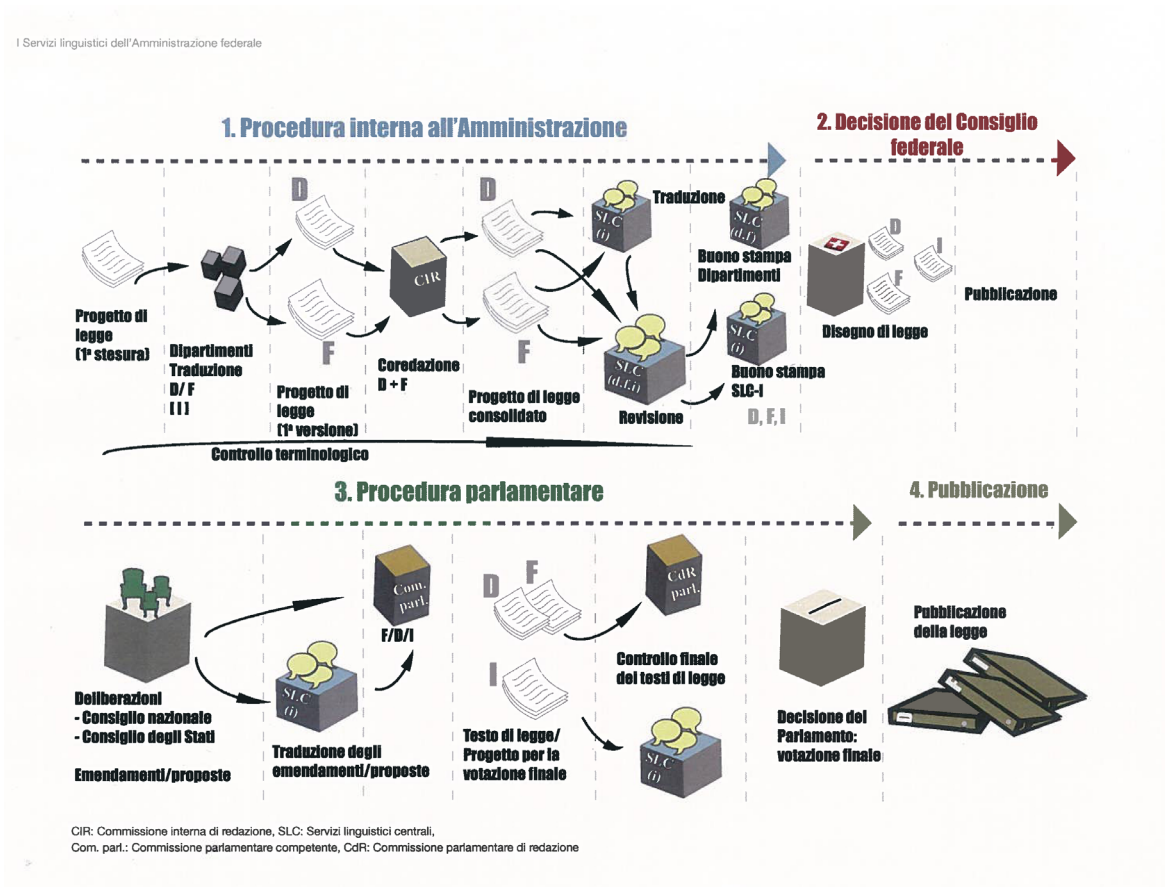
This interdisciplinary and interdepartmental body includes linguists from the central language services of the Federal Chancellery and lawyers from the Federal Justice Office. For important legislative acts, such as Federal Constitution amendments and federal decrees and statutes, the Internal Drafting Commission follows a co-drafting procedure in which the German and French drafts (more seldom Italian) are examined, developed and compared in parallel, to ensure the equivalence of both versions, and wordings that are appropriate to the respective languages. This work takes place within small multidisciplinary and multilingual teams. The Commission is also in charge of assessing any legislative text coming from the federal administration in the French and German versions, and sometimes also in the Italian. Overall this Commission acts as a first and impartial reader of drafts, ensuring an independent examination of legislative texts, taking into consideration the target readers of all legislative acts. At the latest, the Commission must be heard during consultation with the offices involved in the acts. However, it is often contacted earlier during development, in order to discuss any drafting issue. In general, once the Commission is finished with its examination, a common session between the Commission and the office sponsoring the draft takes place to discuss any open issues and to find common solutions.⁶⁴⁹

The Legal service examines all the draft proposals and verifies the formal correctness and legislative technique of the draft messages, statutes and ordinances as well as their consistency with the legislative process. The German and French language units, within the Internal Drafting Commission and with the legislative support of the Federal Office of Justice, see that legislative acts of the Confederation are drafted in a precise, clear and coherent and, as much as possible, simple manner. The entire legislative cycle takes place mostly in German and French, mostly because there are not enough Italian speaking members of the federal administration: 70% of employees within the federal administration use German as their first language (see Switzerland/FC-Italian Division).⁶⁵⁰

⁶⁴⁸ Government of Canada, Cabinet Directive on Law-Making, 1999, quoted by GAMBARO, 'Interpretation of Multilingual Legislative Texts', *supra* fn. 618.

⁶⁴⁹ See website of the Swiss Federal Chancellery:
<<http://www.bk.admin.ch/themen/lang/04921/05462/index.html?lang=it#>>.

⁶⁵⁰ See Internet Page of The Swiss Federal Chancellery:
<<http://www.bk.admin.ch/themen/lang/04921/index.html?lang=it>>.



(c) Belgium, South-Tyrol and the Basque Country

The following experiences relate to multilingual legislative drafting, all in civil law systems. In these regional contexts, co-drafting can be either limited to certain documents or a recommended option, where drafters are merely advised to co-draft in both languages, or still at an experimental stage. A certain level of hierarchy between the official languages is therefore generally unavoidable.

In Belgium, co-drafting in Dutch and French is limited to State legislative bills, decisions and orders, as well as decisions from the Brussels Region and from the Common Community Commission; all other bills are translated into one of the two languages depending on the region. When co-drafting is required, neither version can be a mere translation of the other language. The drafting of each text should take place at the same time, with each drafter writing in his or her language, and checking the concordance of each language's version.⁶⁵¹ However, in all other cases the second option of translating prevails, with interaction among drafters and translators (see Belgium).⁶⁵²

⁶⁵¹ See BELGIUM, CONSEIL D'ÉTAT, *Principes de technique législative, Guide de rédaction des textes législatifs et réglementaires*, 2008, available at: http://www.raadvst-consetat.be/?page=technique_legislative&lang=fr.

⁶⁵² Please note that 'French, Dutch and German are the official languages in Belgium, but only the first two are used for the authentic version of a law. The German translation is only published in *Moniteur Belge* at a later stage, and therefore it has an informative function for German-speaking citizens. Belgium pays particular attention to achieving effective parity between French and Dutch' (GAMBARO, 'Interpretation of Multilingual Legislative Texts', supra fn. 618, at p. 6).

The legal regime for bilingualism in Italy, which provides for the obligation to draft the whole body of law in two languages, concerns two regions: Alto Adige/South-Tyrol and Valle d'Aosta. Here we shall focus on South-Tyrol.⁶⁵³ In this region, despite the recent inclusion of German as a drafting language, Italian remains dominant. A hierarchy between the two versions is provided by the law, with Italian being the only authentic text for interpretation, so that in case of discrepancies the Italian version prevails. In South-Tyrol, the Provincial Office for Languages of Bolzano is an important actor within the legislative process as it not only deals with the translation of texts into German or Italian, but also with legal/linguistic equivalence between the two versions. In general, drafters are advised to co-draft the texts in both languages, Italian and German. Often, however, mostly because of restricted time or co-ordination, co-drafting is replaced by monolingual drafting of the whole text followed by translation (see Italy/South-Tyrol).⁶⁵⁴

A remark in favour of co-drafting, from our respondent in South-Tyrol, is worth mentioning: 'we have observed that those [co-drafted] texts automatically use a less complicated, a more common language, because they passed through a first filtering process'. It would seem that results become less convincing when a text is first drafted in one language and later translated because the risk of such texts sounding 'translated' becomes much higher (see Italy/South-Tyrol).

Translation takes place before transmission to the Provincial Council which has the competence to approve and enact statutes. The Provincial Office for Languages works in close cooperation with the Joint Terminology Commission. The latter has a duty to establish German equivalents for legal, administrative and technical terminology of every kind, where it already exists in Italian, as well as defining, in case of adoption of new terms, the corresponding expressions in both languages.⁶⁵⁵ Still according to our respondent in Bolzano, translators have less scope in terms of comprehensibility, unity of terms, and, in some cases, of sentence structure. While national law must be translated with a 1:1 structure of sentences, due to the system of amendments, more flexibility is allowed at the Provincial level; if translators note mistakes in the original version, they may still correct them. Also, in case of long and complicated sentences, they can add a comment to the original version and try to convince the author to modify his or her version (see Italy/South-Tyrol). Overall, the level of interaction with drafters seems high: not only may translators discuss ambiguities with drafters, but the latter may ask the Advocacies' staff (linguists and jurists) for linguistic/legal advice.

The Basque Government began to introduce bilingual drafting techniques in 2008, in order to ensure collaboration between bilingual lawyers and professional translators. The Governing Council of the Basque Government approved the *Criteria to use the official language and the bilingual writing techniques*, and, among others, co-drafting was introduced as a special technique for writing administrative texts. The digitisation process should also allow for bilingual provision drafting projects using various

⁶⁵³ IORIATTI, 'Multilingualism, Legal Drafting and Interpretation of Bilingual Law in Italy', *supra* fn. 388.

⁶⁵⁴ A passing sceptical note on the effectiveness of the German translations (as well as other linguistic versions such as French, Catalan, Albanian, Greek etc.) at judicial level is expressed by GAMBARO, 'Interpretation of Multilingual Legislative Texts', *supra* fn. 618, at p. 10: 'The decisions of the Italian "Corte di Cassazione" ("Court of Cassation") that guide the interpretation of laws only take into account the text written in Italian and never refer to texts written in other languages, because these are considered as merely translations that do not reveal the intention of the legislator. In other words, the texts written in languages other than Italian are only a source of information for communities speaking a different language but do not contribute to the creation of legal rules'.

⁶⁵⁵ In this respect, some of the difficulties reported relate to the correct terminology to implement EU sources on Public Procurement, into German. 'A number of terms would have been unclear or capable of being misunderstood by the South-Tyrolean audience if just taken over from the official German translation of the European legislation' (see Italy/South-Tyrol).

techniques, such as tutored translation, linguistic revision of the text by a lawyer or co-drafting.

The co-drafting cycle has been broken down as below. It might be interesting to note the focus on terminological issues (see Spain/Basque Country):

- drafting of a summary of the proposed regulation, specifying areas to be dealt with and, in parallel, working out terminology for the two linguistic versions worked out;
- while developing this summary, writing ideas and plans for each issue in both languages, not necessarily in a structured manner;
- as the process progresses, and after clarifying any doubts, writing articles in both languages;
- comparing both versions, and making the necessary corrections;
- preparing and approving the two linguistic versions of the first draft; following the procedure of Act 8/2003.

According to our respondent, the use of this technique is not yet standardised, so that the handling of the drafting process in Spanish, with later translation in Basque, remains the most common procedure. In this case, the work is normally handled by the official translation services, and the relationship between translators and drafters becomes occasional and seemingly more bureaucratic. On their side, the official translation services (IZO) of the Basque Government are trying to establish alternative solutions such as tutored translation, and linguistic editing of legal writing,⁶⁵⁶ which should ensure a certain level of interaction between translators and legal drafters.

Interaction between drafters and translators

The remark of a Swiss officer in the language revision section of the federal Government defines very well the special kind of interaction that should exist between drafters and linguists/translators:

'In order to provide a high level of text quality, the linguistic dimension of bills must be taken into consideration from the beginning, planning the activity so that language specialists are involved all along the process of elaboration. The linguistic shape of a legislative project is not a container added to the final product, but a fundamental component of its development'.

Here we shall present some practical models of interaction, and see how close - or how far - theory is from reality.

In Finland, legislative texts are not drafted in Finnish and Swedish simultaneously. In practice, almost all laws are drafted in Finnish and then translated into Swedish as part of the law drafting process, with both language versions eventually aligned when the Government submits its proposal to Parliament. In the case of proposed legislation set out in the Government Programme, there is the possibility of assigning a translator to the process right from the beginning. This should allow the translator to participate

⁶⁵⁶ The IZO organised a seminar to promote collaboration between lawyers and linguists, and to help bilingual drafting of general provisions. This gave pace to several attempts to boost the use of these techniques of bilingual drafting.

in preparatory meetings and start terminology work in good time before the actual translation phase takes place. However, it seems that no proposed legislation has so far profited from this opportunity of increased cooperation with translators (see Finland). Interaction between drafters and translators seems in practice rather sporadic, also because translation happens at a very late stage of the procedure, resulting in little chance for feedback to drafters.⁶⁵⁷

Only in cases of major drafting projects, such as broad government proposals, when the translation work is shared among a number of translators, toward the end of the translation project, translators, drafters, revisers, and legislative instructors from the Ministry of Justice might come together to discuss problems encountered in the text before the translation is finalised and sent to the drafter (see Finland⁶⁵⁸).

On the other hand, the Italian Division for the Central Language Services (SSI) in Switzerland is an interesting example of interaction and involvement of linguists in the legislative process. The Italian Division consists of the Translation and Editing Section and a Legislation and Language Section. The Division follows the Italian version of official texts of the Federal Council or the Parliament during their entire cycle, from the draft of the Federal Council to the final vote in Parliament. It participates permanently in the work of the Parliamentary Commission of Italian drafting, therefore being an executive and a legislative body. The reason why the SSI has this special and autonomous role is mainly due to a *de facto* bilingualism of preliminary work and *de jure* trilingualism of the final legislative outcome.⁶⁵⁹

Interaction between translators and drafters occurs also informally any time it is necessary for clarifying concepts, wording and terminology. In this respect, problems might arise when offices responsible for the original texts are lacking in specialised staff, hence the importance of specialised external networks allowing the exchange of information and necessary technical consultancy (see Switzerland/FC-Italian Division).

In general, according to our survey, both translators and drafters may ask for linguistic advice from linguists and jurists (see Italy/South-Tyrol, Spain/Basque Country, Belgium, Europe-ACA). In other words, once one of the official versions has been adopted, during the process of translation into the other official language(s), the original version may still be improved, especially when problems of clarity or confusion are detected. However, when translations occur after publication of the official version, the original can only be amended when gross errors have occurred, through a *corrigendum* in the official journal (see Spain/Catalan Parliament).

However, the overall preference seems to be moving toward an informal channel of communication between drafters and translators, where the latter may contact drafters in the course of the translation work, especially if the text is difficult or unclear (see Finland, Belgium). In some cases, mainly in the phase before delivery, translators may attend drafting committees or deliberations in view of amending translation, checking amendments/new drafts in the target language (for subsequent back-translation) (see ECHR, OECD).

Within international organisations, simultaneous drafting, although regarded as an interesting option, is rather unlikely in practice. Sometimes, members of drafting committees may work together to produce black-letter rules in the various languages, and such committees can be purposely composed of different mother tongue drafters

⁶⁵⁷ See PIEHL, Aino, 'Finland Makes its Statutes Intelligible: Good Intentions and Practicalities, A History of Finnish Legal Language and the Efforts to Make it Plain', in WAGNER, Anne & CACCIAGUIDI-FAHY, Sophie (eds.), *Obscurity and Clarity in the Law. Prospects and Challenges*, Ashgate, Aldershot, 2008, pp. 151-163.

⁶⁵⁸ In this respect it should be noted that this channel is bidirectional so that drafters can modify the original on the basis of inconsistencies, obscurities or direct errors pointed out by the translator (see Finland).

⁶⁵⁹ See Internet Page of The Swiss Federal Chancellery:
<<http://www.bk.admin.ch/org/bk/00332/04831/index.html?lang=it>>.

in order to help produce texts in all languages at the end of each day or session (see Unidroit).

In these organisations, the presence of a 'dominant' language, English being the first, is also becoming more evident (see Unidroit, UNOV) with translation services working mainly to provide translations for the other language versions (see Unidroit).⁶⁶⁰ Moreover texts can be drafted by authors who write in English or French as a foreign language. These are usually experts in the field, who may not always belong to the organisation, and who generally care more for concepts than for clarity of presentation. In such case, if there is not an editing of the originals, translations may easily be of better linguistic quality (see on this line OECD).

Translation issues are particularly conspicuous in organisations working across national borders. The main distinction is between institutions producing binding legal instruments such as treaties and regulations, and those producing 'soft law' or model legislation, to be further transposed and implemented by Member States. International jurisdictions deliver judgments, rather than ordinary documents, and their process of drafting and revising is therefore different.

The ECJ has confirmed many times that the meaning of a directive or regulation is not exclusively contained in the linguistic version familiar to the interpreter, and that a judge may not rely on one version only. Other institutions face similar challenges, on a smaller scale. For example, the European Court of Human Rights' documents are drafted mainly in English and/or French, but are intended for 47 Member States with about 38 other languages.⁶⁶¹

Within the largest multilingual international organisation, the United Nations, interaction between drafters and translators appears to be largely centralised inside the Department for General Assembly and Conference Management under the UN Secretariat. This department is responsible for all matters related to documentation, including translation and general language management. It is responsible for the issue of over 200 documents a day in the six official languages. Within the Department, the Documentation Division is directly responsible for translation and a number of support services.

The Division comprises the Translation Services for the six official languages, the German Translation Section, the Editorial, Terminology and Reference Service which provides translators with the background information they need to do their work, the Text Processing Unit, and the Contractual Translation Unit. The Division ensures linguistic concordance among the six official languages of resolutions, decisions and other legal instruments negotiated under the aegis of the UN. It also issues editorial directives for the UN Secretariat. The Division provides reference and terminology services for authors, drafters, editors, interpreters, translators and verbatim reporters. It develops terminology databases that are available to users within the UN system and to the general public. Inside this framework, interaction among drafters, editors and translators appears rather compartmentalised. The provision of documentation is structured according to the following process: (1) documentation programming and monitoring; (2) document control (this function covers the scheduling and monitoring of the processing of documents in all official languages simultaneously); (3) editorial control; (4) reference and terminology (documents often contain text based on material previously translated or references to resolutions or other published materials. The proper referencing of the texts should help ensure correct translation

⁶⁶⁰ Vice versa it can happen that translators, especially English ones, mostly translate comments and reports sent by Member States, articles in the media, national legislation, official letters from the host country government and so forth. In such cases, the English translators seldom have the option of speaking to the author (see UNOV).

⁶⁶¹ ECHR, introductory note to replies by officer.

and speed up processing); (5) translation (UN translators, like their EU colleagues, are often required to work with tight deadlines and at the same time to produce translations of the highest standards of quality and accuracy); (6) text processing and typographic style; (7) official records (editors ensure that all six language versions comply with UN editorial standards and, operating in multilingual teams, play a crucial role in maximising consistency across languages); (8) copy preparation and proofreading; (9) publishing.⁶⁶²

Compared to the national legislative process where contact between drafters and translators is in general rather informal and fluid, the UN has created an entire structure to cope with translators' needs. Considering the volume of pages to translate each day, this structure of units and services dealing with all matters around translation is certainly necessary. On the other hand, as a side effect, it may keep translators apart from drafters.

Recommended Best Practices

1. For legislative documents, in particular co-drafting should be the first choice in order to achieve precision, clarity and equality. In a multilingual dimension, close interaction among drafters should be the basis for genuine respect of the nature of each language and each legal system involved in a legislative process. It would allow for a more critical approach in terms of wording and syntax, and an enhanced concordance among language versions.⁶⁶³

Co-drafting allows for more genuine versions, in which neither sounds 'translated', as drafters tend to use more linear language (see Italy/South-Tyrol). By writing with a constant focus on the results of communication between languages, it is possible to avoid some of the hurdles met when an established text has to be transformed using the conceptual categories of the target language.

In the case of a large number of official languages, smaller co-drafting teams to represent all legal systems (e.g. common law and civil law) and linguistic families (e.g. Romance, Anglo-Germanic, Slav) could be introduced. This would facilitate subsequent translation into the remaining languages, improve uniformity of all versions and facilitate transposition of supranational legislation into national, resulting in an easier interpretation of the law for national judges.⁶⁶⁴

2. Among drafters and translators, there should be open channels of communication. This would help to solve divergences among text versions, as well as to prompt responses to issues from the start (see Italy/South-Tyrol). Working premises and systems should also be organised in such a way as to allow direct contact between drafters and translators, at least via e-mail or telephone.

⁶⁶² CAO, Deborah & ZHAO, Xingmin, 'Translation at the United Nations as Specialized Translation', *Journal of Specialised Translation*, Vol. 9, Iss. 1, 2008, pp. 39-54.

⁶⁶³ See Conseil d'Etat, *Principes de technique législative - Guide de rédaction des textes législatifs et réglementaires*, Belgium, 2008, p. 13.

⁶⁶⁴ As an example of this 'pivoting' system, let us consider this Far Eastern experience: 'Most of the words which implied a legal concept unknown to the Japanese legal tradition are translated into Japanese by either creating Japanese legal neologisms, or making references to and quoting the legal words from the Chinese translated versions of legal books written in foreign languages. By using these methods, the foreign legal concepts could be absorbed from countries where French, English and German are used, but which were unknown in Japanese legal tradition.' (GAMBARO, 'Interpretation of Multilingual Legislative Texts', *supra* fn. 618.)

3. In order to ensure a high level of document quality, the linguistic component should be considered from the start of a legislative project, and not added at the very end of the process (see Switzerland).

In the absence of co-drafting, in case of proposed legislation, appointing the team of translators from the beginning would allow translators to be involved in the preparatory work and therefore gain better awareness in terms of content and terminology. This should also allow two-directional cooperation, where translators could advise drafters on any linguistic matter.

In particular, specific occasions or regular meetings among drafters, editors and translators should be formally structured in a multilingual legislative drafting procedure, to clarify and reconcile terminology issues, target audience, specific legal issues and any other aspect that cannot afford to be 'lost in translation', or worse, misunderstood.

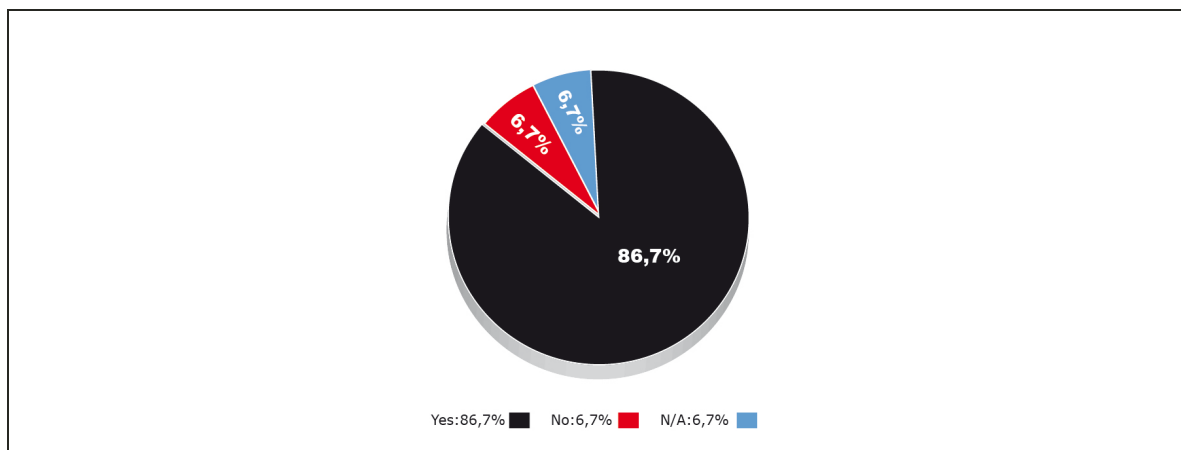
In case of a large number of official languages, smaller language teams, as mentioned under point 2, could also be considered.

All these aspects should not simply be dismissed to the later stage of translation: not only would this entail a potential loss of uniformity and clarity among language versions, but it would subject a delicate part of the legislative process to the well-known time constraints under which translators usually work.

4. Translation should not be considered as a completely separate phase within the document cycle. Creating diversified units of translation support should not result, for translators, in a *de facto* loss of contact with the source of original texts.

5. Translators should have the possibility of interacting with specialised external networks, allowing for the exchange of information and necessary technical consultation (see Switzerland/FC-Terminology).

Question 13.A.: Is there an internal translation service in your institution or organisation?



According to our analysis of the questionnaires, the vast majority of the institutions in multilingual countries, and in international organisations, have established an internal translation service. To clarify the results of our analysis we consider it useful to separately report the results for national public administrations and international organisations.

National public administrations

In some institutions (see Louisiana State Law Institute and UK, Office of the Parliamentary Counsel, OPC), where all documents are drafted in English, the service is not perceived as necessary. Minority languages, however, are preserved by drafting bilingual legislation in certain regions (Scotland, Wales, and Northern Ireland in the UK experience).

Some academic institutions have an internal translation service. For example, at the University of Montréal, texts to be translated are usually addressed to the Department for Linguistics and Translation, to the appropriate, certified translators.

In Finland, the translation into Swedish of government proposals and legislative texts is centralised to the Government Translation Unit, which is attached to the Prime Minister's Office. This Translation Unit provides services to all ministries, but most ministries have one or two legislative translators of their own. Therefore,

'the ministries' translators mainly translate the ministries' decrees and decisions, whereas the Translation Unit's translators translate government decrees and government proposals'.

With respect to the Italian experience, our analysis focuses on the bilingual province of Bolzano, where the main task of the Office for Language Issues (Amt für Sprachangelegenheiten or Ufficio questioni linguistiche) is to check bilingual versions of all drafts and other texts addressed to the public, from a linguistic point of view. The translators of the Office for Language Issues usually translate only rather complex or difficult texts, such as national legislative provisions (e.g. traffic law or data protection) if requested by a department and also help the staff of other departments to translate texts intended for the general public, if this for any reason cannot be done in-house. Another public institution, the Istituto Superiore di Sanità (ISS), the leading

technical and scientific public body of the Italian National Health Service has no internal translation service. At the central level a terminology unit has the task of harmonising medical terminology especially where English expressions do not coincide with equivalent Italian scientific terms. Researchers interested in linguistic translations or revisions of their papers addressed to international scientific journals for publication may also contact freelance mother-tongue or non mother-tongue translators. These professionals are preferably chosen among those included in the official list of suppliers held by ISS. Their names are currently put forward by the researchers themselves, who are in a position to evaluate their expertise in specific research domains and in dealing with the work.

In Belgium, apart from co-drafting of State bills, decisions and orders, as well as decisions from the Brussels Region and from the Common Community Commission, all bills are translated into one of the two languages, according to the region.⁶⁶⁵

Finally, academic advisers in Israel who have worked with the Government in drafting bills reported that an internal translation service is usually not provided.

International organisations

International organisations, generally, have an internal translation service. In particular, in-house translation is considered a fundamental service by the *rapporteur* at UNOV in Vienna, as well as for all the United Nations (see above).

Question 13.B. What is the recruitment policy of your organisation, for example in terms of translator experience requirements?

Among institutions and organisations with an internal translation service, the basic requirement for recruitment is a university degree. Generally, professional experience is considered an important requirement. It should be noted that in Canada, Catalan Parliament and Bolzano Province, preference is given to degrees in Translation, Linguistics or Language studies.

Professional experience of translators

With regard to translation experience, the level (years) of experience required is not specified for translators working for either the Senate of Belgium, the Canadian Government, the Catalan Parliament, the Bolzano Province, the Federal Chancellery of Switzerland, and, finally, for the United Nations Office in Vienna. Although, according to the *rapporteur* of the UNOV, there is no formal experience requirement for entry-level recruitment, experience does help considerably in a translator's professional development. The European Court of Human Rights requires that translators have at least five years of experience and the OECD requires at least three full years of experience.

National public administrations

Analysis of the questionnaires shows that the experience of Finland is particularly relevant. In Finland, the Government Translation Unit applies a competence profile for translators and revisers, drawn up at the Prime Minister's Office, in planning the Unit's functions and the competencies required to fulfill them. However, not all translators need to possess all the required skills and competencies at the moment of their recruitment. It is usually enough that certain specialised skills and experience can be found among some of the Unit's translators, such as one of the translators' experience working in an EU institution or some other kind of experience with EU institutions. In

⁶⁶⁵ See the part of the analysis that concerns the interaction between translators and drafters.

recruiting new translators, the unit looks for 'persons with such skills and competences [...] that will complement the staff's overall competence pool'.

With specific attention to legal translation, experience in the legal field (legal translation and legal knowledge) is considered a preferential and useful requirement (see Catalan Parliament, Finland-Government Translation Unit, France/Juriscopie, Bolzano province, Unidroit). According to the Government Translation Unit in Finland, the translation of legislative texts is

'a special domain that cannot be studied as part of translation studies at the University; therefore translators must learn the required skills in practice. To this end, discussions with and feedback from experienced colleagues can serve as effective methods for building up the necessary competencies. The Government Translation Unit has placed emphasis on the training role of revision as we need to provide new generations of legislative translators with opportunities for learning the skills of the trade. As part of revision, discussions on the translated texts provide learning opportunities for the experienced translators, too.'

In other words, according to the Government Translation Unit, practical experience, revision and feedback from senior colleagues are essential to build up the necessary skills.

Our analysis also shows that the experience of the French organisation Juriscopie, as a consultative body, is particularly interesting. Juriscopie applies a methodology where a legal translator cooperates with an expert who is specialised in the legal field (see the section on France). The Senate of Belgium also has a very selective procedure to hire legal translators.

International organisations

This section focuses on the replies to the questionnaires answered by *rapporteurs* from international organisations. For example, Unidroit does not require specific training for translators. However translators have specific legal training and a deep knowledge of English and French, and, sometimes, of additional languages.

The OECD and United Nations Office in Vienna have a specific recruitment policy. Specifically, at the United Nations Office in Vienna, recruitment is based on a competitive examination. A very selective recruitment procedure is also organised by the OECD: 1) selection based on CVs, requiring at least three full years of experience for translators, preferably in an international setting; 2) written exams (general text plus a specialised text: candidates have to choose beforehand between two or three different topics); 3) oral examination. Finally, a *rapporteur* has noted that at the ECHR most documents are also translated by internal services, while a percentage of non-official languages are outsourced.

<p>Question 13.C. Which percentage of translations is outsourced to freelance translators? In these cases, how is internal revision organised?</p>

National public administrations⁶⁶⁶

Generally, in the case of outsourcing, there is internal revision (see Canada, Catalan Parliament, European Court of Human Rights, Finland-Government Translation Unit, Belgium, for German, France/Juriscopie, Switzerland Federal Chancellery, UNOV). In

⁶⁶⁶ As percentages vary widely, reference is made to the summary of replies, Annex, question 13 c.

Canada, in most legal offices practicing translation, the internal revision is done by competent lawyer-linguists.

As regards European countries, in Finland at the government level, the Translation Unit trains its freelancers by revising new freelance translators' texts and by providing feedback and guidance.

'In about a year's time the freelancers must be able to cope on their own and they will be monitored by spot checks. The freelancers must follow the PMO's guidelines provided in a handbook entitled Swedish legal language ("*Svenskt lagspråk i Finland*") – they will also receive new information and guidance from the Translation Unit regularly. If a politically important text is outsourced to a freelancer, it will always be revised at the Translation Unit before sending it back to the drafter'.

In Italy, at the Istituto Superiore di Sanità, as already noted, researchers interested in translations or revisions of their papers addressed to international scientific journals for publication, may contact freelance mother-tongue or non mother-tongue translators. By contrast, at Bolzano Province, the departments, according to new guidelines, must avoid any outsourcing of translations. They can outsource a translation only if they have written evidence that the translation cannot be produced in-house.

In the Catalan Parliament, translations are revised by language advisers (usually the one who took part in the drafting and revision of the original text), who then lists possible questions to be answered by the freelance translator. Questions and clarifications are then exchanged between the translator and the language adviser. Questions may sometimes be asked to the legal adviser, and he or she may also revise the translation, if his or her knowledge of the target language is sufficient; in any case, it needs to meet his or her approval.

Furthermore, according to the policies of the French organisation, Juriscope, outsourced translations should be revised by internal specialist advisors (see the section on France).

In Switzerland an increase in translation resources has been introduced, with more people working in languages other than German.

International organisations

Internal revision is performed by senior revisers at UNOV. The degree of quality control depends on the time available and the extent to which the external contractor has been found to be reliable in the past. Senior reviser posts were created at the P5 level with the aim of providing for better quality control of outsourced work.

At the European Court of Human Rights, Belgium Senate and OECD, outsourcing is mainly done for non-official languages. At the European Court of Human Rights, revision consists of an overall quality check (spot checks). In the OECD workflow, translations into German are done by the German Section, which is part of the Translation Division. In particular, at the OECD,

'translators get in touch with in-house authors (or administrators in charge) when they detect errors in important documents/publications they are translating. Revisers check important translations and have to fill in a standard form to mention the type of errors detected and to give a general appreciation of the translation quality. This form is commented on with concerned in-house translators or sent to external translators'.

Question 13.D. Are lawyer-linguists involved? If so, what are their tasks and when are they performed?

National public administrations

In Canada, where lawyer-linguists have been involved for a long time in the public as well as in the private sectors, their tasks depend on the type of text involved, such as statutes, judicial decisions, contracts, or doctrinal texts, but their participation is not bypassed.

As regards European Member States, the Government Translation Unit in Finland employs one lawyer-linguist who is in charge of the revision team. The team consists of senior translators (linguists) with extensive experience in legislative translation. All legal texts translated at the Translation Unit undergo revision before they are sent to the drafter. The lawyer-linguist revises those legislative texts which are particularly demanding from the legal point of view. The reviser examines the Swedish text against the Finnish original to find potential mistakes made by the translator and to ensure that the translation corresponds with the source text and follows established language requirements and conventions. The revision procedure covers issues relating to terminological consistency and style as well. After the drafter has received the translated legislative text, he or she then sends it to the Unit of Legislative Inspection at the Ministry of Justice for examination. The Unit of Legislative Inspection employs four Finnish-speaking and three Swedish-speaking lawyer-linguists.

In France, at Juriscope a legal translator collaborates with a reviser specialised in the two legal systems. In Switzerland, at the Federal Chancellery, where drafting for the Assemblée Fédérale takes place, lawyer-linguists are not involved, but currently two terminologists have legal backgrounds.

In Italy, at Bolzano Province, lawyers-linguists are not involved, but the administration employs lawyers who check the draft from a legal point of view, whereas linguists check the language. Both can be involved in an early phase of drafting, but normally the drafting is done in the departments and the 'product' is sent to the Advocacy's Director, which forwards the draft to lawyers and to the linguists of the Office for Language issues.

Finally, the Basque Government, although still not using this procedure in most cases, has, since 2008, started to introduce bilingual drafting techniques and in these cases bilingual lawyers and professional translators work together on drafting.

International organisations

With respect to international organisations, lawyer-linguists are generally not involved in Unidroit. The situation is different at the European Court of Human Rights, where the official-language linguistic work (translation and language checking) is done by the language department staff, where they employ people with legal qualifications (the term 'lawyer-linguist' is not used). Generally, texts are revised by senior lawyers (whether or not the text has been translated). Some initial ('covert') translation from non-official languages will be done by the lawyers themselves.

Recommended Best Practices

1. The presence of an internal translation service should be the first choice to ensure the quality of the translations.

Where this service does not exist, it is advised to have a centralized system of quality control and revision at least for the translations drafted by external and freelance translators.

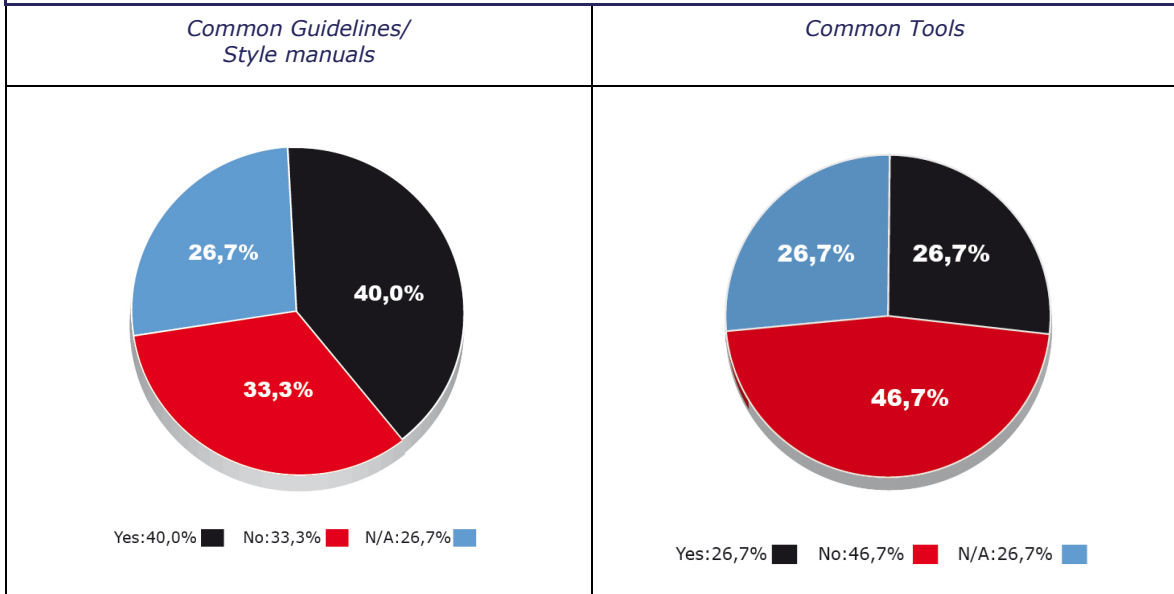
In general, systematic revision should be in place, especially for work done by new drafters or translators. This not only would improve the quality of the final product, but would allow an exchange of precious experience.

2. Part of the problem with inserting lawyer-linguists into the workflow may be connected with the low availability of such professionals in the job market; universities are just starting to provide specific courses.⁶⁶⁷

Although presently law graduate traineeship programmes are in place at the Commission, the Parliament and the Translation Centre for the Bodies of the EU, these should be expanded and redesigned, in collaboration with academic institutions, with the goal of offering young law graduates an intensive and constructive translation experience.

⁶⁶⁷ For more details, see <<http://www.umoncton.ca/>>.

Question 14. How do the tasks of translators differ from those of drafters in terms of guidelines and tools?



Drafters and translators: same tools, same guidelines?

Overall translators and legislative drafters seem to share guidelines and style manuals.⁶⁶⁸

Drafters, more than translators, may be urged to attend drafting seminars and to comply with style guides (OECD). However, common training for both categories is also provided, such as workshops on plain language and comprehensibility (see Italy/South-Tyrol).

In terms of tools, we did not observe significant differences, although translators require additional tools in support of their practical activity and specific to each language. Moreover, translators make extensive use of online tools for referencing work and dictionaries, thesauri and translation search engines. SDL Trados, computer-assisted translation tools (translation memory rather than machine translation), terminological databases and electronic dictionaries such as MultiTerm seem to be the most used.

CAT tools are also used by reference and terminology units as part of a pre-treatment process, to check if full sections of documents have been previously translated, and to determine whether outsourcing is justified. It seems that the costs of outsourced translation can be significantly reduced thanks to this preliminary procedure (see OECD). External drafters and translators sometimes have access to documents and publications via an online information system (such as OLIS) and an online *Style Guide* (see OECD).

As regards terminology, translators and editors tend to use terms and expressions that are present in databases which have been developed either internally or via the

⁶⁶⁸ The only reported exception is Canada where guidelines and tools seem to differ considerably, according to our respondent, due to the different type of expertise of drafters and translators (see Canada/Uni-Montréal).

Internet, by other institutions or organisations such as IATE, and JAMCATT website (see OECD, Finland, Italy/South-Tyrol).⁶⁶⁹

An interesting example is the Swiss *DORES* database (*Dokumentation zu Recht und Sprache*) which combines publications, press releases, case-law, legislative acts and other texts regarding the linguistic situation in the country as well as relations between language and law, focusing in particular on legislation and interpretation of the law and codification of language and communication.⁶⁷⁰

In Canada, some drafting and translating tools reflect, especially for terminology, the bilingual and bijural dimension of the Canadian system.

PAJLO (*Programme national de l'administration de la justice dans les deux langues officielles*) is a programme launched in 1981 by the Department of Justice. This programme focuses on standardisation of common law terminology in French, building on multidisciplinary cooperation for improving access to justice in both official languages. Since 2003, this programme has taken on broader meaning, now encompassing all of the Department of Justice's various activities to promote access to justice in both official languages, and for the development of common law tools in French and civil law tools in English as well as judicial information and education tools. One important output of this process of standardising French common law vocabulary, is the Canadian Common Law Dictionary. More specifically, the Dictionary is intended to provide methods of expressing concepts that are unique to common law, using French terms that are consistent not only with the conceptual framework of that system of law, but also with the demands of the French language, and to establish a legal language that is precise and suited to the needs of French-speaking common law professionals. The content of such work is increasingly finding its way into legislative texts as well as into numerous translations intended for students, professors and practitioners, among others.⁶⁷¹ The Canadian Common Law Dictionary has been published since the end of the 1970s in six volumes.

Furthermore, in the 1990s, terminology work was gradually expanded to specialised academic centres.⁶⁷²

In particular, the Centre of Legal Translation and Terminology (CTTJ) developed the so-called CLEF (Common Law en Français). The aim of the creators of the CLEF was to ensure that the common law is understandable in French and in English alike. Approved terms are uploaded into a database called *Juriterm* which has a free version and an integrated version for subscribers. The terminology database comprises some 13,000 entries. *Juriterm* is a database containing the results of the on-going research of the Centre in developing French vocabulary for Canadian common law, particularly in the fields of private law (property, contracts, torts, trusts, corporate law, mortgages, wills, leases, family law) and procedural law (civil procedure, evidence, judicature). A great number of the recommendations it contains in the areas of private law stem from collaborative efforts on a national scale to standardise the French vocabulary of the common law. The use of *Juriterm* is not recommended officially

⁶⁶⁹ At the OECD, the Translation Division has created databases of official names (OECD and other institutions/organisations) and updates a bilingual list of all OECD working groups and committees. Some OECD Directorates have developed databases (and/or publications) containing terms and definitions in very specific fields (statistics, transport, fisheries, etc.), which are deemed very useful (see OECD).

⁶⁷⁰ Also for more information, see Swiss Federal Chancellery website:

<<http://www.bk.admin.ch/themen/lang/05225/index.html?lang=it>>.

⁶⁷¹ See PAJLO website: <<http://www.pajlo.org/en/who/objectives.htm>>

and EUROPEAN COMMISSION, DIRECTORATE GENERAL FOR TRANSLATION, *Study on lawmaking in the EU multilingual environment*, *supra* fn. 150.

⁶⁷² In particular, the Moncton Center of Legal Translation and Terminology (Centre de traduction et de terminologie juridiques de Moncton, CTTJ); the Ottawa Centre of Legal Translation and Documentation (Centre de traduction et de documentation juridiques d'Ottawa, CTDJ); the Institut Joseph-Dubuc de Winnipeg, the latter continued the work started under the auspices of PAJLO.

either at the provincial or federal level. However, drafters at both levels do consult *Juriterm* constantly.⁶⁷³

Another interesting Canadian terminological tool is *Juridictionnaire*. This original work in jurilinguistics helps solve the many language problems associated with the distinctive nature of legal language, the co-existence and interaction of two systems of law, the influence of common law on Canadian public law and its language, and the anglicisation not only of vocabulary, but also of syntax and style. The *Juridictionnaire* is a compendium of difficulties and expressions in French legal language, and—to a lesser extent—outside Canada.⁶⁷⁴ This drafting and translating tool is the result of in-depth analysis of legislative texts, case-law and doctrine.⁶⁷⁵

In Finland, the Swedish Language Board has been created to foster clarity and comprehensibility in the legal and administrative Swedish used in Finland. The most significant output of the Board is the handbook on Swedish legal language available online. The Translation Unit's own translators and freelancers receive training on the use of the handbook on Swedish legal language. Training is organised by the Translation Unit itself and by the Swedish Language Board.⁶⁷⁶ (see Finland)

In international organisations a working platform of databases, templates and style manuals, mostly online, appears to be a common feature for drafters and translators (see ECHR, ILO, UN, OECD).

However, compared to translators and editors, drafters seem to be less prone to the use of such working aids. This may reflect a different approach to the creation of a document, focusing more on the content rather than on linguistic aspects (see Switzerland/FC).

Within the United Nations, drafters, editors and translators seem to all have access to the same tools and drafting aids. The basic handbook for drafting manuscripts to be published by the Organisation is the United Nations *Editorial Manual* which is a compendium of rules and directives on United Nations editorial style, publication policies, procedures and practices. It was published in 1983 under the authority of the Chief of the Editorial, Terminology and Reference Service, which remains the primary authority for United Nations editorial policy. A broad range of internal and external guidelines and resources, including support for authors, is also featured in the United Nations *Editorial Manual Online*. An online report-writing course has also been posted in the *Manual Online*.

In 2007- 2008, with the support of information technology specialists, the Editorial Control Section designed the Editorial Toolbar providing authors with access to editorial and reference sources such as *UNTERM*, *ODS* and the United Nations *Editorial Manual Online*. The *Editorial Toolbar* and web-based distribution system are available to a global audience. It should also be mentioned that the United Nations Official Document System (ODS), a system for storing and retrieving United Nations documents, allows users to search for and retrieve documents via high-speed

⁶⁷³ See EUROPEAN COMMISSION, DIRECTORATE GENERAL FOR TRANSLATION, *Study on lawmaking in the EU multilingual environment*, *supra* fn. 150.

⁶⁷⁴ See Public Works and Government Services Canada, 2013. The *Juridictionnaire* was produced by Jacques Picotte, Jurilinguist/Advisor, for the Centre de traduction et de terminologie juridiques (CTJ) of the University of Moncton's Faculty of Law (<<http://www.btb.termiumplus.gc.ca/tpv2guides/guides/juridi/index-eng.html?lang=eng>>).

⁶⁷⁵ See SNOW, Gérard, 'Techniques de transfert du droit dans un contexte multilingue. Exposé sommaire', in SACCO, Rodolfo & CASTELLANI, Luca (eds.), *Les multiples langues du droit européen uniforme*, L'Harmattan Italia, Turin, 1999.

⁶⁷⁶ At the following website: <www.finlex.fi/data/normit/35799-Svenskt_lagsprak_i_Finland2010.pdf>.

The members of the Board represent all bodies involved in the legislative translation process: the Government Translation Unit, the Unit of Legislative Inspection at the Ministry of Justice, the Swedish Office of Parliament, and language revisers.

networks and the Internet, and permits high-speed transmission of documents through telecommunications links.⁶⁷⁷ However, the UNOV database and the databases developed in all other UN duty stations and regional commissions will be merged in the future into a single terminology database (see UNOV).

Recommended Best Practices

1. In times of budget cuts, an efficient use of tools could help improve quality and save money. A regular and proficient pre-treatment of texts to be translated should save precious time for translators and allow for a certain basis of terminological uniformity. Outsourcing could also be decreased as a result of efficient pre-treatment of documents (see OECD).

2. Reuniting all available drafting and translating sources on a common online platform or information system may facilitate access to information, templates, terminology and guidelines for both drafters and translators.

This platform could contain language-specific sub-sections and should be regularly updated with linguistic and terminological news, as well as any other useful information regarding the evolution of the language concerned.

This system would allow all members of a language team to be equally informed about any convention or formal approach to common linguistic issues agreed within the team. Moreover, it would help integrate new team members.

3. With all due consideration to any confidentiality issue at stake, online platforms, tools and guidelines should be available and easy to access for external drafters and freelance translators.

4. Regular training and updating on the use of tools should always be planned for translators and drafters.

Training, also online, on the use of templates, handbooks and style manuals should be planned for freelancers in addition to internal translators.

5. Such training should specifically involve newcomers within an organisation. In this case, a solution of short one-to-one training modules focusing on the use of all online tools that are available for drafting and translating should be preferred to more crowded modules. The latter tend to be rather time-consuming and not all questions can be answered.

Training that focuses on tools for new translators should also serve as an introduction to the use of all reference documents and material available, providing, among other things, a good overview of all reference materials and documentary sources. This could be useful later on, if, for example, the translator is faced with source language terms recurring in slightly different versions in previous legislative instruments, or when the vagueness of the original imposes a reasoned choice over the available alternatives. Providing keys for searching the web should also be taken into serious consideration, along with *ad hoc* training on proficient use of *Google* and *Google toolbar*.

⁶⁷⁷ See *Language Outreach by the United Nations* (<<http://www.unlanguage.org/default.aspx>>).

Question 15. Are you aware of any case in which the source language had an impact on the translation and led to difficulties in understanding?

The acid test for a good draft: translation

Professional translators know that to determine whether a text is well written, it is necessary first to try to translate it; this inevitably reveals ambiguities, stylistic inconsistencies, or errors that simply do not stand against translation, especially if the language source is English.

On the other hand, issues of translation may arise when the meaning to be conveyed has no equivalent in the target language, or where only a core element of the message has some correspondence, and a whole set of differentiating elements accompany that central core. The original drafting language may then leave traces on the translation, hindering correct understanding of the content.⁶⁷⁸ The main problems that translators generally encounter are related to terminology, general understanding due to the ambiguity of the original, and style (see Italy/South-Tyrol). Terminological problems can be various and attain different dimensions: a whole range of problems, for example, arises at the moment of transposing EU legislation containing legal terms which do not correspond to the specific national system (see Italy/South-Tyrol).⁶⁷⁹ Especially at the legislative level, the most significant problem for translators is that of transposing a term relating to a concept belonging to a legal system for which there is no equivalent in the target legal system (see Belgium, Spain/Catalan Parliament).

Problems may also arise when the target reader is 'moving target'. A good example is provided by the Italian Istituto Superiore Sanità (ISS), the leading research institution in Italy in the field of public health. Its Documentation Service and Publishing Unit provides translation of medical terminology, indexing, and quality control of bibliographic data entered in the internal database of publications produced by ISS research staff. Documents have to be drafted in two different versions. One for medical doctors and another for the public at large. This exercise of simplification towards a non-professional audience may be problematic.⁶⁸⁰

As to a general understanding, although the content and message must remain identical, the different nature and structure of languages may impact translation. For example, differences in morphology between German and French or Italian create constant difficulties, as the latter two need to resort to paraphrasing whereas German works with compounds (see Italy/South-Tyrol, Switzerland/FC-Italian Division).⁶⁸¹

⁶⁷⁸ As recalled in the historical introduction, the translation of both the French and German civil codes in Japan was a challenge.

⁶⁷⁹ For example, when the Public Procurement legislation had to be translated into German, some terms could have triggered misunderstandings in the South-Tyrolean target audience if simply taken over from the official German translation of the European legislation (see Bolzano).

⁶⁸⁰ Even though some English terminology is no longer considered 'foreign' in the medical field (e.g. 'follow-up', 'screening' 'counselling' are reported with the English spelling as perceived as part of the technical/scientific lexicon) conceptual inconsistencies may still emerge. For example 'during the work of Medical Subject Headings (MeSH)' translation, several terms related to the US Health System could not be translated because they are not present in the Italian context. Another example could be Kidney Failure/Kidney Insufficiency, two different concepts in MeSH, while in Italian only "insufficienza renale" is used' (see Italy/Istituto Superiore Sanità).

⁶⁸¹ For example, a long Italian sentence might still sound clear, if the verb remains close to the subject, even if it is followed by a sequence of subordinates. In a German translation this same structure would be difficult to follow for the reader (see Italy/South-Tyrol, Switzerland/FC). Another classic example is the German word *Umgang*, referred to chemicals: the wording *Umgang mit Chemikalien* is translated with *utilizzazione di prodotti chimici*, which in Italian is restrictive compared to German (Switzerland/FC-Italian Division).

Various amendments and further versions may also render source texts ambiguous or vague (see Spain/Catalan Parliament). Moreover, translators sometimes have to deal with the constraints of the source language terms and the 'looseness' already therein, in addition to having to juggle the similar terms used in various international instruments as well as previous cases that must be taken into consideration (see ECHR).

It is especially true that in international organisations, translation services and divisions seem to play a substantial role in terms of the linguistic quality of documents. Considering that most of the time drafters do not write in their mother tongue, the role of translators and editors is therefore very important in terms of clarity of communication for the entire body.

Even though the source language has an impact on translation, translators very often detect errors in original texts and correct them. Conversely, it may happen that the author decides to amend the translation because he or she considers it defective. Sometimes this may be right concerning the content, but rarely concerning the drafting, because translators translate into their native language only and are language and drafting experts (see OECD). Certainly in such cases an open and easy channel of communication between authors and translators is very important.⁶⁸²

In this respect an additional problem may be constituted by younger translators, who lack confidence and cannot distance themselves enough from the text, having not fully understood the original, or by translators who have not properly grasped that their function is not just to decode the original text but to write a well-drafted equivalent in their own language (see UNOV).

Co-drafting may also reveal problems when the drafting of the two linguistic versions may lead to interpretative differences, harming the clarity of the rule and the juridical certainty of the law (see Spain/Basque Country, Canada/Uni-Montréal).⁶⁸³

⁶⁸² In this example provided by the ECHR, *Soering v the United Kingdom* (7 July 1989, § 113), the expression 'flagrant denial of a fair trial' was translated into French as *un déni de justice flagrant*. The French was subsequently back-translated in another case as 'flagrant denial of justice', indeed a more accurate translation. The English drafter or translators were then confronted with the dilemma of choosing between the original expression from *Soering* or the slightly different expression used in subsequent cases. See: *Ahorugeze v Sweden*, no. 37075/09, 27 October 2011, § 113, and *Othman (Abu Qatada) v the United Kingdom*, no. 8139/09, 17 January 2012, § 258 (see ECHR replies).

⁶⁸³ See for more examples, BASTARACHE, Michel, *The Law of Bilingual Interpretation*, LexisNexis Canada, Markham, Ontario, 2008.

Recommended Best Practices

1. For legislative texts, in particular translators should be trained (and allowed) to avoid translating sentence by sentence. After all, the issue is to draft 'language-specific' versions of the originals, instead of translations of them (see Italy/South-Tyrol).

2. Within international organisations, drafters should receive *ad hoc* training to gain awareness of the specificities of writing documents that will be translated. For example, they should be trained to prevent misunderstandings as much as possible (e.g. no idiomatic expressions).

3. Ambiguities in the original text should also be avoided by involving linguists in the drafting phase, and not only at the moment of translation. In general, linguists and jurists should always be involved, even informally, at a very early stage in the drafting process.

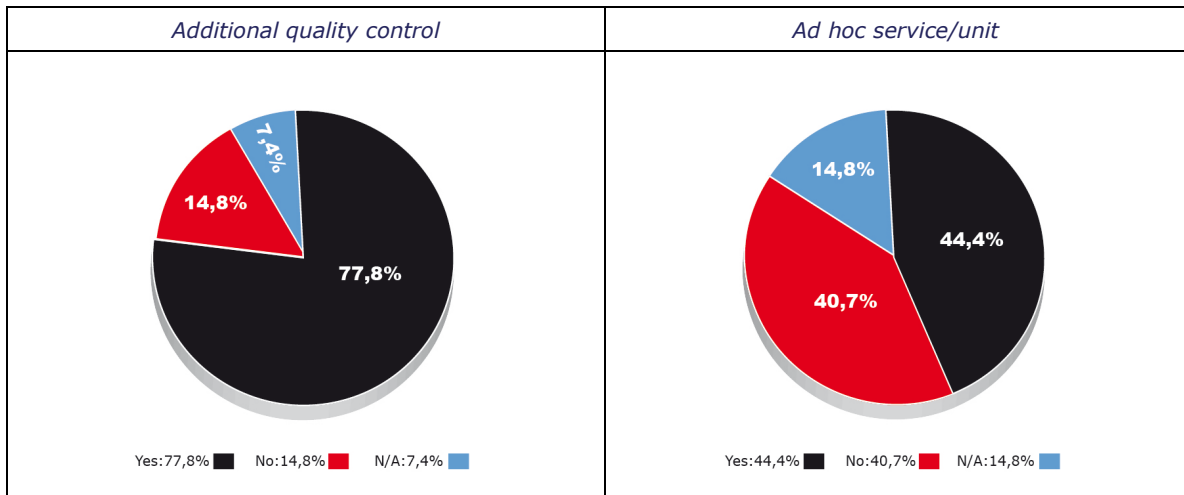
In all other cases, experienced editing of the originals (all the more if written by non-native speakers) should be included as a formal part of the document production cycle.

4. With special regard to legislative acts, although not limited to them, translators should receive, along with the source text, an annotated version, providing explanations to difficult points or any other technical concept, outlining the type of negotiation that led to any solution that might sound deliberately ambiguous, signalling any legal aspect which should be taken into consideration according to the target legal system, and providing acceptable solutions, and giving a clear idea of who the target readers will be.

5. Various amendments and further versions may also render source texts ambiguous or vague (see Spain/Catalan Parliament), and should therefore be avoided as much as possible, especially once the legislative draft has reached translation.

4. Internal revision and publication (questions 16-20)

Question 16. Is there any additional quality control before documents are published?
If so, who is involved in this phase?



According to our survey, respondents divide into two groups: the first considers revision as a sort of on-going process which starts at a relatively early stage of the procedure and where not only linguists but also lawyers are involved. In the second group, final revision takes place at the end of the procedure and is of a more formal nature. Legislative acts are in general revised in a more thorough manner than all other types of documents.

At national monolingual level a very interesting example, from a civil law system, is provided by the Swedish Government in which systematic quality control of all draft legislation and new bills to parliament is carried out by the Secretariat for Legal and Linguistic Draft Revision in the Prime Minister’s office (see Sweden).

In Sweden, the body responsible for making clear legislation and other documents is the Swedish Cabinet Office and its Director-General for Legal Affairs. This task is accomplished by language experts and lawyers working as a team, in the Division for Legal and Linguistic Draft Revision in the Ministry of Justice. There are five language experts and five legal revisers checking the quality of texts from all the ministries. This final revision, occurring one or two weeks before the Government decides on the text, is an important checkpoint. Government bills (including proposed acts), Government Ordinances or State Committee Terms of Reference cannot be sent to the printers without the division’s approval.⁶⁸⁴

The Division also produces guidelines on clear writing, organises training for legal drafters and works with legal commissions appointed to redraft legislation. Moreover, upon joining the European Union, the Swedish Government appointed linguistic experts to advise the European Commission on how to simplify European laws, or at least to make the Swedish translations of directives and regulations easier to ‘digest’ for the reader.⁶⁸⁵

⁶⁸⁴ EHRENBORG-SUNDIN, *Plain language in Sweden*, supra fn. 164.

⁶⁸⁵ Office of the Scottish Parliamentary Counsel, *Plain Language and Legislation*, February 2006.

In addition to the Division for Legal and Linguistic Draft Revision, a special committee has been set up by the Government for promoting plain language activities: the Plain Swedish Group. The group consists of judges, linguists, information managers and political scientists, nine people altogether, being commissioned to be members of the group on a voluntary basis along with their normal jobs. The participation of the judges from the Supreme Courts is of utmost importance, as their names and positions make it easier to convince other lawyers and senior officials that plain language is worthwhile.⁶⁸⁶

Building on more than twenty years of experience, the Swedish approach to revision is that while final revision is important for checking the quality of texts, it does not guarantee clarity of legislation. At the final revision stage there is little time and it is possible to deal only with sentence structure, archaic or misleading words, phrases and forms, syntax problems, unclear passive voice, nominalisation and other details. Conversely the structure and presentation of the contents are more difficult to change at such a late stage. If involved at an earlier stage of the legislative process, linguists and drafters may help to make the law well-structured and easier to navigate through. Examples of this revision are: contents lists, informative headings, short summaries at the beginning of each chapter, bullet lists where appropriate, and more information in references to say what the provision referred to is about. In short, when revision accompanies a text through the legislative process, it is possible to use the whole range of plain-language principles in the redraft.

Another interesting aspect is that, instead of following a chronological order, drafters focus on the result (i.e. the proposals or the decisions of the Government). They then have to argue for that result in a way that gives the reader a clear picture of what they have to decide or act upon. These models are now gradually spreading at all levels of government. Also the Parliament now uses this model in the reports on legislation from the standing committees. Basically this model follows two main objectives. First to make the language and structure used in legislation as clear as possible and, second, to influence the government authorities at all levels, central, regional and local, to start their own plain language activities. According to this 'top-down approach', other governmental documents such as Government Commission Reports, Government Administrative Decisions and the explanatory parts of Bills have been changed in order to become more reader-friendly.⁶⁸⁷

The Swedish drafting and revising model is based on a sound and articulate corpus of guidelines and instructions material which has been developed over a few decades of practical experience, tackling the evolution of language along with society. The first guidelines for clear language in laws appeared as early as 1967. The title is *Language in Acts and Other Statutes* and the guidelines state that 'if the language in acts and other statutes is simple and clear, this will have an impact on the language used in other official texts'. The recommendations and examples of these first guidelines ask the drafters:

- to use modern and comprehensible vocabulary and modern forms;
- to avoid 'the noun disease' and unusual prepositional phrases;
- to avoid long and complex sentences with embedded subordinate clauses;
- to avoid vagueness and unnecessary variation.

In 1979, a small supplement appeared entitled *More Guidelines for the Language of Legislation*. This supplement offers principles on, for example, how to make language gender-neutral, how to use headings and sub-headings, and how to use lists for

⁶⁸⁶ EHRENBORG-SUNDIN, *Plain language in Sweden*, *supra* fn. 164.

⁶⁸⁷ EHRENBORG-SUNDIN, *Plain language in Sweden*, *supra* fn. 164.

multiple conditions, requirements or rules. But most importantly the Government declared that drafters had to follow the guidelines, not only when drafting new acts and ordinances but also when drafting amendments. In case of substantial amendments, the language of the amended article must be modernised as well, if necessary. This means a constant modernisation in legislation. During the 1980s, more guidelines appeared, among others the so-called Black list, showing inflated, formal and difficult words and phrases alongside their more comprehensible alternatives. Central authorities too received a handbook on how to draft regulations in the mid-1980s.⁶⁸⁸

But Sweden is not the only country where systematic revision is seen as part of legislative process. In Germany, a system of linguistic and content quality management ensures an internal process of stakeholder consultation, inter service consultations and the involvement of the linguistic services as well as the secretariat of the regulatory control council (NKR); however, it should be stressed that the latter express mostly recommendations and not mandatory corrections (see Germany). In Louisiana all proposed legislation is reviewed by a committee, then by the Council of the Law Institute, and finally prepared in bill form and submitted to legislature, and then again reviewed by bi-cameral legislative committees and, ultimately, by the legislature (see US/Louisiana).

Revision can also mean working with the 'instructing officers', that is all officers and legal counsels in the departments from which the policy for the bills originates and in the departmental legal services units. In the UK, Bills are subject to thorough internal review both as to substance and accuracy of language. But they are also subject to checking by the departmental lawyers who instruct on them (see UK/OPC).

When more thorough quality control takes place, this can be performed by other specialised units which were not involved in the drafting of the statute (usually within the Ministry of Justice, see Israel⁶⁸⁹). These may be internal language advisers and legal advisers (see Spain/Catalan Parliament), or different type of experts (see Israel, and France/Juriscope where publication is authorised after the academic expert in comparative law has approved the translation). Procedures do vary according to the ministry involved. This control may also aim at harmonising the new statute with the already existing legislation (see Israel).

In Canada, linguists and legal experts are involved from the beginning in the co-drafting procedure. Legislative revisers of the Legislative Revising Office in the Legislative Services Branch of the Department of Justice provide support to drafters by revising and editing draft legislation. The Office also prepares Acts for printing and maintains consolidated versions of all federal Acts and regulations. This last revision of all co-drafted Bills occurs before printing, once the drafting is nearing completion, when both versions of the draft are reviewed by a lawyer-linguist in the Legislative Services Branch to ensure they are consistent with one another. The department sponsoring the bill may also wish to consult on drafts with other interested departments. Consultation may involve persons outside the Government. The Director of the Legislation Section, on the advice of drafters, determines when the drafting of the bill has advanced sufficiently for it to be printed.⁶⁹⁰

Another bilingual example of cooperation between drafters and linguists, in the phase of revision, comes from South-Tyrol. Here time pressure is clearly indicated as a deciding factor: jurists and linguists of the Advocacy check the texts drafted in the

⁶⁸⁸ EHRENBORG-SUNDIN, *Plain language in Sweden*, *supra* fn. 164.

⁶⁸⁹ According to our respondent in Israel, the proposed statute prepared by the experts' committee is accompanied by explanatory notes. Once the Ministry of Justice submits the official draft statute to the parliament, it is also accompanied by explanatory notes.

⁶⁹⁰ See GOVERNMENT OF CANADA PRIVY COUNCIL OFFICE, *Guide to making Federal Acts and Regulations* (2nd ed.), Part II, 'Making Acts', 2001.

departments and make their proposals on the draft, which is sent back to the department, which forwards it to the Legal Commission and to the Provincial Council, where it follows a separate process involving the commissions and the Council's translation service (in other words translators should receive all the comments from linguists and jurists). Once the document is drafted by the experts of an office in the Administration, both in Italian and German, it is sent to the Advocacy department. A jurist is charged with control, makes his or her comments and modification proposals on the document, which receives a new file name, forwards it to the Head of department, who then forwards it to the Advocacy's linguists for proofreading. However, according to urgency and 'pressure from above due to urgency', revisers can dedicate more or less time to this job. Certain drafts, such as important amendments of laws, are extremely urgent and must be checked within the same day. Others are less urgent and therefore leave much more time to revision (see Italy/South-Tyrol).

This final control sometimes consists of multiple proofreading and a formatting check (see Switzerland/FC, Italy/Parliament), although previous revision has been performed.⁶⁹¹ To this end professional proof-readers and a publication office may be involved (see US/Legislative Counsel).

Sometimes revision occurs at a more informal level, without a systematic protocol, where each Department keeps track of the series of publications in the area of its responsibility and when it detects any error, it contacts the service in charge of the Official Gazette to publish a correction of errors (see Spain/Basque Country).

Within international organisations, in general there are no specific divisions in charge of revision. The work is done by members of staff or members of drafting committees and their effectiveness depends on the skill of the individual members involved (see Unidroit). Important publications are usually edited and administrative staff check whether the original text and its translation are complete with all their chapters and annexes (see OECD). Documents that are to be published normally undergo an additional process involving copyediting and proofreading, typesetting and final proofreading (see UNOV). However it should be noted that these publications usually do not involve legislative acts.

It is worth describing the editing process implemented by the United Nations, also before documents are translated and printed.

This task is performed by the Editorial Control Section. Editors must ensure that United Nations documents comply with editorial rules, models, and other drafting guidelines. Quotations and references must be verified, documents must be clear, concise and consistent, and the language must be appropriate for the target audience.

UN editors correct factual, spelling and grammatical errors, and align the structure and style of documents with agreed formats. In particular Editors in the Editorial Control Section make sure that the UN documents in all six official languages are equally authentic.

They correct texts by hand on hard copies in an editorial process called 'concordance', in which Arabic, Chinese, English, French, Russian and Spanish editors work together

⁶⁹¹ In Switzerland, at Parliamentary level, after deliberation within the single Chambers and before final vote, the legislative acts of the Federal Assembly undergo a further examination by the Drafting Commission of the Federal Chambers, which verifies coherence, clarity and concordance of the three linguistic versions. A specific sub-commission is responsible for each official language. The German, French and Italian language Units, and the Legal Unit of the Federal Chancellery, along with the competent office, have consultative functions inside this Commission and enjoy the possibility to follow the projects, under a drafting and formal profile, until their adoption by Parliament.

See Internet Page of The Swiss Federal Chancellery:

<<http://www.bk.admin.ch/themen/lang/04921/index.html?lang=it>>, and Flowchart attached to the returned questionnaire by Switzerland/Italian Division.

in teams to bring each language version of a resolution or decision into line with a master text. In the past, editorial rules and styles were not aligned between the official languages. Since 1998, United Nations editorial practice has been consolidated and streamlined within the Editorial Control Section. Political sensitivity is paramount for editors when they suggest solutions to editorial problems.⁶⁹²

Recommended Best Practices

- 1.** Ensuring support from politicians and managing directors should be regarded as a crucial aspect for the control of legislative document quality, especially for making this control mandatory, instead of simply recommended. Authorities should have adequate resources to plan and carry out systematic plain language activities, such as training on plain language principles (see Sweden).
- 2.** There should be no fear of changing ineffective text models and creating prototypes that meet the readers' needs, or offering a better chance for clear legislation.
- 3.** Drafters and linguists should participate (even as observers) in the work of legislative commissions. When the task of a legislative commission is to redraft or consolidate/recast old and complicated legislation, one or more language experts (according to the number of languages involved) should join the legislative commission and work for it on a regular basis.⁶⁹³
- 4.** Increased recourse to external processing of translations should not be at the expense of quality. Internal revision should therefore be performed in the correct circumstances in terms of sufficient time, experience of the appointed revisers and good access to reference materials.

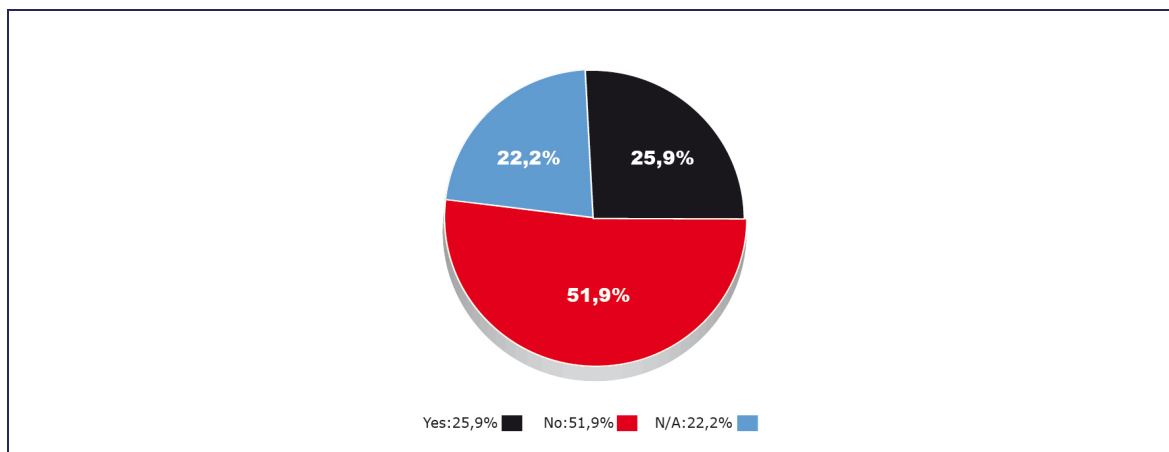
In the case of important projects, either all revisers involved should be informed and put in contact with each other or the whole revision should be given to one single reviser, to foster uniformity of terminology and style. External translators should also be able to send at least written comments to the revisers in order to highlight problems encountered during translation.

- 5.** The model according to which all drafts must be revised by a centralised body, where lawyers and linguists work in pairs (see Sweden), should be a guiding model for good quality legislation.

⁶⁹² Also for more information, *Language Outreach by the United Nations*, <http://www.unlanguage.org/Careers/Editors/default.aspx>

⁶⁹³ EHRENBERG-SUNDIN, *Plain language in Sweden*, *supra* fn. 164.

Question 17. Is there a standard checklist to guarantee document quality? If possible, please specify checklist sections.



Standard checklists

According to most respondents, standard checklists do not figure among strategic tools for quality. They seem to be considered useful (see Switzerland/FC-Italian Division, checklist attached to the questionnaire), rather than fundamental, supplementary reminders or training material (see Italy/South-Tyrol,⁶⁹⁴ Spain/Catalan Parliament).

Among those institutions availing themselves of checklists, checklists seem not to be essential, especially when an efficient system of templates is in place and formally implemented. For example, in Germany, a checklist is included in the drafting guidelines. However, according to our respondent, standard document templates, consultations and interaction with bodies such as the linguistic service and the secretariat of the regulatory Control council are reported as being much more effective than any checklist (see Germany).

There are also less formal versions, such as internal style-sheets or reminders within various services and departments (see Canada/Uni-Montréal), which emphasise spelling mistakes and typos, italics and capitals, grammar (tenses), internal consistency, consistency with other texts, cross-references, and comparisons with other language versions (see ECHR).

In 2011, the Basque Government commissioned the University of the Basque Country to proceed with a study on the quality of the regulatory framework (*JAKE Report*). From this study, a checklist on regulatory procedure was developed in 2012. This checklist has not yet received formal approval from the Council of Government and it seems that in general government officials are not aware of it. The Basque Institute for Public Administration (IVAP) has its own specific checklist to guarantee clarity of contents on its website and to look after the quality of its digital communications. The current standardisation of administrative documents and models also aims at high-quality pre-control (see Spain/Basque Country).

⁶⁹⁴ In South-Tyrol, in training seminars checklist are handed out to guarantee document quality from a linguistic point of view (see Italy/South-Tyrol, <<http://www.provincia.bz.it/avvocatura/temi/testi-normativi-asperti-linguistici.asp>>).

The Plain Swedish Group conducted an evaluation among a network of contacts in almost every government authority. Based on the results of the evaluation, a checklist was developed. This checklist has 35 questions, all crucial to the comprehensibility of the text, questions concerning the readers' needs, the message, text structure and textual cohesion, syntax and words and phrases. The checklist was developed into an interactive web test in 2002.⁶⁹⁵

Recommended Best Practices

- 1.** A standard checklist could be included in the starting-kit material for new drafters/translators. In the beginning, in particular, it would help them to acquire familiarity with the working procedures and quality standards.
- 2.** Checklists, although useful, should not replace a good system (or software) providing standard and uniform templates.

Question 18. How much time is needed on average to publish a document, once it has been drafted and translated?

If possible, distinguish according to the kinds of documents you manage and provide details about an average timeline including all phases. Please highlight possible disruptions that may occur during the process.

Time to publication

The time for publishing a document after it has been drafted and translated may vary considerably even within the same administration.

Part of our respondents either did not give any specific reply (see Germany) or referred only to their specific academic institution or body (see Romania/Uni-Bucharest, Canada/Uni-Montréal) or to a specific project (see Israel).

The time needed for publication may depend on the nature of the documents (see Italy/Parliament). For example, bills require on average more time while resolutions, motions, and institutional declarations may be published within one, two or three days (see Spain/Catalan Parliament). As far as judicial documents are concerned, judgments by the ECHR can be published online almost immediately, while printed reports are issued on a regular basis (see ECHR).

Secondly, the complexity of the particular document may affect the time needed for publication (see ILO). The timeline including all phases can vary a great deal, depending on many factors such as complexity of subject, bodies and organs involved (see Italy/South-Tyrol).

Thirdly, time spent in the correction of errors, especially in references or amendments adopted but not included (see Spain/Catalan Parliament), and other unpredictable events (see OECD) may also interfere with the desirable timeline.

⁶⁹⁵ EHRENBURG-SUNDIN, *Plain language in Sweden*, *supra* fn. 164.

Moreover, time pressure and specific urgency or prioritisation tend to influence the duration and, of course, the quality of the final control (see Switzerland/FC-Italian Division; Spain/Catalan Parliament).

Finally, in cases in which translation is required, time for translation has to be added. This time may vary, depending on the target language. Another distinction has to be drawn between official translation and 'private' translation: if the instrument is adopted together with a UN or other international organisation, official translations in all official languages are provided following the policies of the organisations (e.g. ICAO, OTIF). Other translations are left to individual initiative, funding, or the interest of publishing companies, and may take a much longer time to be published. In this case, possible disruptions are created by lack of funding, and difficulties in agreeing on contract terms for online publication of translations; sub-standard translation may also affect time if translators are not in contact with drafters (or are not drafters themselves).

Recommended Best Practices

- 1.** In the case of multiple language versions, the time needed before publication to finalise a legislative text or other official document should be carefully quantified and respected.
- 2.** To produce a timely level of service requires cooperation between the drafting (and translating) offices, the clerks of the legislature, and the publishing body if it is a separate division.

While paper publication is effective and will be required long into the future, it cannot compete with the immediacy of the Internet.⁶⁹⁶ This aspect should be kept in mind by European legislators.

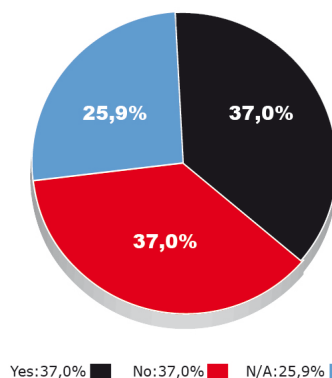
⁶⁹⁶ See ARNOLD-MOORE, Tim, *Point in time publication for legislation (xml and legislation)*. Proceedings of the 6th Conference on Computerisation of Law via the Internet (Paris, 2004).

Question 19. Do you have an organisational chart of the various services or units in charge of drafting/translating/revision in your organisation?

Who is in charge of coordination of the overall process?

Which service or unit approves the final version of the document and authorises publication?

Organisational chart



Organisational charts

At national level, common law and civil law jurisdictions present two rather different organisations.

In English-speaking jurisdictions, most significant legislation is drafted in a centralised legislative drafting office. In the UK, the First Parliamentary Counsel is in charge of the drafting output of the Office of the Parliamentary Council (OPC), and is assisted by four senior drafters each of whom is responsible for a team of drafters with responsibility for the work of a particular group of government departments. Publication of a bill occurs after it has been authorised by the Cabinet's Legislation Committee and by the relevant Cabinet policy committees. (see UK/OPC)

On the other side of the Atlantic, in the Washington DC Office of Legislative Counsel, there are 47 attorneys who draft legislation and a support staff of 16 (clerical, paralegal, and information technology). Only the work of newer attorneys is reviewed by their mentors; otherwise each attorney is responsible for his or her work product. There is a Legislative Counsel (head of the office) and a Deputy Legislative Counsel. Publication only occurs if the Member of Congress for whom the bill is drafted decides to introduce the legislation in the House of Representatives (see US/Legislative Counsel).

In Canada, the Department of Justice Legislative Services Bureau provides the primary government drafting service and also manages the publication of legislation.⁶⁹⁷

It is less common in civil law jurisdictions to have a centralised pool of professional drafters. Legislation is normally drafted in government departments (see Spain/Basque Country) or by a commission appointed to the task (see Sweden) or a

⁶⁹⁷ See ARNOLD-MOORE, *Point in time publication for legislation (xml and legislation)*, supra fn. 696.

mixture of both (see France, Spain/Catalan Parliament). Typically, a centralised judicial body will review and refine the proposed legislation (see France's *Conseil d'Etat*, or the Swedish Law Council, but also Italy⁶⁹⁸ and South-Tyrol).⁶⁹⁹

In Switzerland the Italian Division of the Central Language Services ensures not only coordination for Italian, but it is also responsible for the Italian version of all texts that are published in the official journals of the Federation (Switzerland/FC-Italian Division).

As far as international organisations are concerned, usually the different departments are in charge for the drafting of their documents, while the coordination of editing, translation and revision is usually centralised within a separate service or department (see OECD, UNOV, Unidroit, but also the UN).

In the case of international jurisdictions, the coordination for judicial texts is ensured by 'senior case lawyers', who also approve the final version (see ECHR).

Question 20. Are additional explanatory notes sometimes published along with official documents? In your view, how effective is this methodology? Is there a risk of producing conflicting messages?

National public administrations

In the German Federal Chancellery all legal drafts of the Federal Government contain explanatory notes. This appears to be most effective as the explanatory notes have to be summarised in a two page cover sheet, which always follows the same structure.

In the UK, according to information provided by the Office of the Parliamentary Counsel, the government department responsible for a particular piece of legislation may wish to publish its own explanatory material relating to the legislation, in addition to the explanatory notes that are required to be published alongside the legislation. Having a number of different documents, each of which has the purpose of explaining the effect of the legislation, does of course carry the risk of conveying conflicting messages. But in order to avoid this risk it is generally accepted (at least, within the legal community) that one has to look at the legislation itself to see what its intended effect is, rather than at accompanying material.

Likewise, the Bolzano Province has, for modifications of legislative provisions and laws, additional explanatory notes, where each article is explained in language usually easier to understand than the article itself: these notes are considered very useful. The explanatory notes are checked in order to verify if they contain conflicting messages and, if necessary, corrected. In the case of new legislation, new regulations (passed to provide details on the legislative structure) are explained by circular letters of the Director General.

In Switzerland as well, additional explanatory notes are considered very useful. For example, sometimes an explanatory report, that clarifies particularly technical features, is published as instrumental for the application of specific ordinances.

⁶⁹⁸ In Italy the *Servizio per i testi normativi* is headed by a *Capo Servizio*: the final version is submitted to the proponent (Government or Member of Parliament), signed by this person, forwarded either to the other Chamber or to the Government under the responsibility of the President of the Chamber.

⁶⁹⁹ ARNOLD-MOORE, *Point in time publication for legislation (xml and legislation)*, *supra* fn. 696.

Finally, in the Basque Government, references to the case-law, with the function of explaining legislative provisions, can be found alongside legislative acts or legislative decrees. Informal notes are not used.

International organisations

It should be noted that explanatory notes and even more detailed commentaries are usually published by Unidroit, together with those texts which provide for shorter black-letter, code-type rules. They are perceived to be extremely helpful in understanding the extent of application as well as the meaning of the rules.

According to Unidroit, explanatory notes should have two characteristics: first, they should be drafted simultaneously with the rules by the same group who drafted the rules and be translated into all the languages in which the rules are translated; second, they should not be too long or complex to read.

Alternatively, a detailed commentary by someone heavily involved in the original drafting is separately published at a later time by an external publishing house. This commentary has the advantage of being more easily revised by its author(s) taking into account later developments as regards for example interpretation or case-law.

Finally, the OECD seldom supplies additional explanatory notes, while it is more common that a glossary mentioning specific terms or expressions with their explanation are attached to documents or publications. This practice is deemed very effective because it prevents misunderstandings and makes the text clearer to readers.

National public administrations and international organisations that do not publish explanatory notes

Among institutions and organisations that do not publish additional explanatory notes along with official documents, we found national public administrations (Canada,⁷⁰⁰ Catalan Parliament and Italian Parliament), associations (ACA), and international organisations (ECHR, and UNOV in Vienna). The European Court of Human Rights states that this method is not really applicable to judicial activity. However, case-law guides are published online, but they are not binding.⁷⁰¹

If we look at national experiences, it should be noted that in the Canadian experience, this practice seems to be discouraged. Indeed, the respondent says:

'As too many taxes kill taxes, too much information kills ... This is the "gloss" problem (annotations precede and cover the original!), which must be avoided as much as possible... Therefore one should limit these notes to a minimum, because *concision* is the key word here'.

In Europe, the Catalan Parliament follows this practice only for the annexes specifying details of the rules provided by the legislation or containing a specific definition of a

⁷⁰⁰ When the purpose of a bill is to amend an existing Act, the drafters will insert notes to explain the amendments made by the bill. Among other things, these notes reproduce the original text of the provisions affected by the bill. They are not considered to be part of the bill, and they disappear from subsequent reprints. Members have in the past opposed a bill where the explanatory notes appeared to be insufficient. Speaker Lamoureux rejected the objection, stating that the Standing Orders do not require that an explanatory note accompany a bill (*Debates*, March 29, 1972, pp. 1267-8). See: <<http://www.parl.gc.ca/procedure-book-livre/document.aspx?sbid=da2ac62f-bb39-4e5f-9f7d-90ba3496d0a6&sbpid=5>>.

⁷⁰¹ More details about the translation experience of the ECHR at: <<http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Case-law+analysis/Guide+on+case-law/>>.

territory, as in the case of legislation creating natural conservation areas. The respondent notes that the document should not appear along with explanatory notes as it is intended to be sufficiently clear and easily understandable. However, this happens more often in consolidated texts, where explanatory notes provide useful information (such as background, location of mentioned legislation, and explanations on references), and also in the collection of books, *Textos legislatius*, which include the legislative acts adopted by the Parliament of Catalonia, often with a brief overview of the act by the legal adviser who was in charge of it. This comment can explain the reasons for the regulation or specific details of the legislative process.

Finally, in Italy, the Parliament's offices cannot add explanatory notes because it is considered inconsistent with the kind of documents they provide. However, according to Art. 10 of D.P.R. 1092/1985, additional and explanatory notes, drawn up by the Government's offices, can be published alongside the official text in the *Gazzetta Ufficiale* (Official Journal).

Recommended Best Practices

1. Explanatory notes can be a useful tool in order to clarify the scope and the meaning of provisions. These notes should be drafted at the same time as the related provisions and possibly by the same group of drafters (see UK/OPC). This practice should also be adopted in case of modification of existing provisions, explaining each modification article by article (see Province of Bolzano, Italy).

Additional explanatory notes can also be a useful tool for translators, specifically when drafters and translators do not share much information or do not communicate during the drafting phase.

2. These notes could also consist of a glossary of specific terms or expressions with their explanation. A glossary can be attached to documents or publications.

3. It would be advisable to limit the length of these notes, keeping them as concise as possible (see the UK/OPC).

5. Feedback, ex-post controls and correction (questions 21-24)

Question 21. Is there an established feedback form on document quality that is available for citizens or any other recipient?

Overview

According to our survey, only a few national public administrations and international organisations have an established feedback form on document quality, although this was deemed by many respondents a useful idea in view of higher quality of services. There may be various means of evaluation. For example, in Louisiana, there is not an established form on document quality for bills drafted at the Louisiana State Law Institute, but during legislative hearings legislators and the public respond critically to bills and reports. Responses, however, are usually related to the substance of the bill or report. At the federal level, in Congress, citizens may contact their representatives (not through a specific channel).

National public administrations where feedback is provided

With respect to national administrations, in Finland, drafters of legislation may give feedback to translators within the government via an electronic feedback form and a more comprehensive customer satisfaction survey is conducted at the end of each electoral period. A similar tool is used in Switzerland, where on the official documents website there is a link, which allows users to send comments and observations. Generally, the comments concern mainly translation mistakes or contradictions between the different language versions.

In the Basque Government experience, citizens may participate in the consultation phase of the drafting process. Beyond that point, they will have to wait until publication and only then can they take any action before the courts or make any comments about the regulation to be addressed to the Administration.

International organisations

At UNOV, a questionnaire circulates for participants at meetings, to obtain feedback about working procedures. At the OECD, questionnaires about quality are periodically written and distributed to delegates (members of working groups and committees) for feedback on translation of documents and interpretation services. The questionnaires are also sent to in-house staff to obtain their opinion concerning the quality of various services, including translation (and interpretation).

Recommended Best Practices

- 1.** All institutions and organisations should provide a special page on their official websites, allowing users (citizens or other addressees) to send comments and observations regarding document quality.

Such forms and questionnaires (perhaps in the form of a customer satisfaction survey) on document quality should be electronically retrievable.

Question 22. Once the document is published, what kind of corrections and amendments are allowed? Could a document be revised because of lack of language clarity alone?

National public administrations

While there is some agreement on correction during the process of legislation, the situation is more fragmented after the final version has been published.

We note that in Switzerland, after the publication of federal legislation, the Committee that has drawn up the legislative act can order corrections of obvious errors, as well as corrections concerning the legislative technique. Those corrections must be clearly indicated as such (Art. 58, 2, Law 13 December 2002). As regards government regulations, correction is based on simplified procedures, but must also be pointed out as such.

If we look at Member States of the European Union, in Finland, once an act is adopted by Parliament, only typographical errors and errors in numbers can be corrected by publishing them in the Statute Book of Finland. In Sweden, the Ministry of Justice may be asked to update 'old and complicated legislation with archaic language and a complicated structure'. No specific information is offered on problems of typing errors, cross-references etc.

For the UK's OPC, during a bill's passage through Parliament there are a number of stages at which it can be amended. Amendments may relate to language clarity as well as to the substance of the policy. Straightforward printing errors may be corrected at the discretion of the Parliamentary authorities without the need for a formal amendment.

In the Italian Parliament, substantial corrections regarding content may be done only through amendments following Parliamentary Rules. In case of dissimilarities between the text approved by one Chamber (Camera dei Deputati) and the one addressed to the other Chamber (Senato), correction is possible before the bill is enacted, by means of a formal notice addressed from the President of the Chamber where the error occurred. More specifically in the Province of Bolzano in Italy, only in cases of substantive errors is an *errata corrige* allowed, but this is very rare. 'Lack of clarity is not a reason for having a document revised (unfortunately)'.

With respect to Spain, in the Catalan Parliament, once a text is adopted and published, only obvious errors arising from the adoption of the text can be amended, for example, not taking into account the adoption of an amendment or errors in the numbering of the articles, errors in the designation of an agency or body throughout the law, incorrect references, or duplicate fragments due to the adoption of amendments with nearly identical texts. No revisions for lack of clarity or amendments to enhance the clarity and readability of the text may be effected, unless they are clearly meant to amend grammatical errors. In the Basque Government, clear errors in publication are regularly corrected by means of the publication of corrections on the Official Journal.

International organisations

In the United Nations once a document is finalised for publication, only a serious factual error would be corrected or one with political connotations, such as for example an error that a delegation strongly feels needs to be corrected to set the record straight. According to the OECD, once a publication is released, it is very difficult to make further corrections or amendments. It is much easier to correct or

amend documents that may be accessed by Member States (and in-house staff) through *OLIS*. An amended version can be produced and quickly posted on *OLIS* with the same reference, but as REV1, REV2, etc. (REV stays for REVISED version). As to Unidroit, *corrigenda* may be issued if relating to spelling mistakes, omitted text which was originally present in the approved instrument or other formal issues. Other changes must follow a specific revision procedure (more cumbersome of course for Conventions). This is also true for comments, if they are published as part of the instrument.

Finally, in the European Court of Human Rights there is a procedure for correcting mistakes in judgments which is provided for in Rule 81 of Rules of Court (Rectification of errors in decisions and judgments):

'Without prejudice to the provisions on revision of judgments and on restoration to the list of applications, the Court may, of its own motion or at the request of a party made within one month of the delivery of a decision or a judgment, rectify clerical errors, errors in calculation or obvious mistakes'.

This procedure has been used for example to correct spelling of a name, capacity of a party appearing in a hearing, or a sentence from a template that should have been deleted. After that term of one month, there is still a note on the cover page saying that the judgment is 'subject to editorial revision', basically to allow for any correction that may be spotted downstream by linguists or publications unit proof-readers. It is possible to rectify language clarity but only where a judgment has been earmarked for published reports and has not been processed bilingually upstream (before delivery). This means that it will have to be translated downstream and on occasion there will have been no upstream language check in the drafting language, for whatever reason – the language check will have to be done downstream and lack of clarity may then be corrected. If a judgment is simply published online, such correction is unlikely. When a judgment is processed to appear in print, the final printed version also replaces the version already posted online.

Recommended Best Practices

- 1.** For reasons of certainty, corrections and amendments should be allowed as *extrema ratio*, but only within a specific and detailed procedure.
- 2.** Once the act is adopted and published, only evident errors should be corrected.

Question 23. Is your institution or organisation interested in consulting experts in order to improve document quality control?

National public administrations

The question has prompted different reactions according to the kind of 'expert' each respondent had in mind, from communication experts to scientific experts competent in a specific technical field to people specialized in the analysis of the workflow, and in possible improvements in the process of adoption of documents. While only few institutions or organisations have experts, the possibility to obtain advice from external experts is deemed by a number of respondents useful to improve the quality control over their production.

To mention just some of the reactions we received, in Louisiana experts are members of its various legislative/administrative committees. The 'Reporter' or 'Chair' of the committee is generally an expert in the area of study assigned. Therefore external advice is not perceived as urgent or necessary.

In Canada experts are often consulted. 'This country has gained a solid reputation in the field of quality control in all walks of life, education'. Notably in the field of plain language simplification of messages has a solid history.

In Switzerland (Federal Chancellery, Italian Division) there is some consulting of experts when text complexity requires this activity. Consulting experts however requires time, resources and does not always help in finding answers to all problems. In some cases it is, however, deemed necessary.

The Office of the Parliamentary Counsel (United Kingdom) is in principle interested in exploring any external input that helps to improve its product. But, currently, it does not use external advisers.

In Finland, the Government Translation Unit has regular cooperation with the legislative inspectors of the Ministry of Justice, Swedish Parliament's revisers and, through the Swedish Language Board, with language experts at the Institute for the National Languages of Finland. There is also daily cooperation with, for example, law revisers, and the language institute's specialists are often contacted for advice on terminological questions.

The Basque Government is interested in consulting experts from the perspective of bilingual writing, language clarity and the impact assessment of provisions.

Juriscope's activity in the field of legislative translation in France is directly linked to the cooperation of scientific experts and intended to foster academic debate. They organise seminars and meetings to continuously improve quality control.

The Province of Bolzano in Italy said it would be interesting to exchange information and opinions on quality control with experts. Furthermore, it would be interesting to be given some indication of how to improve workflow and implement an improved version of it, and 'how to integrate the (separate!) workflow of the provincial parliament'.

International organisations

According to the UNOV (but on the basis of a personal feeling of the respondent) 'outside experts' in the past have provided 'solutions of a general nature with an

unclear path to implementation'. More could be done 'in asking workers how to make their workplaces more efficient – which seems to be the prevailing mood [...] at the moment'. The impression is that 'past experience has been underwhelming'.

Finally, the OECD generally relies on external trainers to hold drafting seminars. Editing staff are also used in editing documents, which consists in checking content and style and improving drafting of important publications.

Recommended Best Practices

1. Training and updating of drafters and translators should be completed with the input of external experts.

These experts should be hired under a focused and concrete mandate, that would allow them to identify practical solutions and processes, rather than abstract recipes. (see OECD)

A regular external evaluation of processes could also improve the efficiency of the overall document cycle and the quality of output.

Question 24. Is there an established document quality assessment procedure? How dynamic and open to change are the procedure, instructions, and tools? Please provide examples, if possible, of significant changes made in the procedure and instructions in the last 10 years.

National public administrations

The questionnaires responses indicate that several institutions such as the French Senate, the Basque Government, the Catalan Parliament, the ECHR, the OECD, Romania (Academic institution), the Office of the Parliamentary Counsel (United Kingdom), and Unidroit do not have an established document quality assessment procedure.

On the contrary, in Canada there are 'many such documents all over the country, in public or private sectors, and each institution has developed its own procedures to that end.'⁷⁰² The same applies to Louisiana State Law Institute. The US Congress has no established feedback system, but the respondent says: '[o]ur XMetal program has been increasingly refined over time so that we are quite robust in flagging formatting errors'. He says the US Congress is developing additional software tools to check the accuracy of the drafting with respect to laws being amended by legislation.

In the Swiss Federal Chancellery there are established procedures only for recurring publications, whereas, in general, there are procedures providing for reciprocal exchange of information between translators and revisers (see the official documents attached with the questionnaire by the respondents). For regulatory texts, a second reading by different persons is provided before publication, because those in charge of a text for too long find it difficult to identify mistakes.

Particular attention should be dedicated in this respect to the experience of the Basque and the Catalan Governments. In the first institution, even though there are no established procedures, several working groups and seminars have been created for quality improvement, while IVAP-IZO (professional government translators) have organised seminars on translation by translators and terminology specialists as well as a bilingual drafting seminar (with translators, terminologists and bilingual lawyers). Within IVAP-IZO a specialised committee has been created to deal with document standardisation. All of these activities, however, do not enjoy the support of a formal rule and the officers involved in them undertake them in conjunction and in addition to other tasks.

The respondent has illustrated how the system has changed over the last ten years:

- Legal writing guidelines were adopted in 1993.
- In 1997, the Institute of Public Administration-IVAP published *Argiro idazteko proposamenak eta arriketak*. Vitoria-Gasteiz: HAEE-IVAP, 1997 and a new way of working of text clarity opened.
- 2000 the Basque language academy approved the Full Basque dictionary.
- In 2003, Law 8/2003, which governs the procedure for processing, was passed by Parliament.

⁷⁰² Among many possible instances, see, in education: <<http://www.cicic.ca/658/quality-assurance.canada>> See also at: <<http://www.erudit.org/revue/meta/1998/v43/n2/003410ar.pdf>>.

- In 2008, the Governing Council approved criteria for the use of the official languages of the Basque Government and the bilingual writing techniques and among them including the co-drafting technique.
- In 2010, the Governing Council requires the digitisation of the drafting process governed by Law 8/2003 and formally opens the door to bilingual drafting.
- Between 2010 and 2012 a series of decrees are written in a bilingual programme.
- Between 2010 and 2012, the models for the electronic processing of administrative procedures are approved, taking into account the criteria of communicability and clarity.
- In 2010 Bilingual Seminar on Writing and Translation is organised within IVAP.
- In 2012 the Governing Council approved the application *Tramitagune*.
- Translation services are centralised in 2012, by the means of Government Decree 3 April, 48/2012.

In 2012 the public standardisation committee was been created within the Office of Administration documentation.

Moving to the Catalan Parliament, there is no specific quality assessment procedure. As regards institutional change, the procedures laid down in the Rules of Procedure are rarely modified. Since the entry into force of the Rules in 1980, there has been only one overall reform in 2005. In the last ten years,

‘the most significant change has been the emergence of new technologies, the creation of the Parliament’s website and the tools that have contributed to disseminate the texts adopted and to make publication immediate (the digital version is published at the same time as the paper version). This has also facilitated participation by citizens, who can write to the departments of the Parliament of Catalonia, start petitions electronically by sending a message to the Petitions Committee, or write directly to the MPs through their personal blogs’.

Interestingly, there has also been an increasing demand for translation of laws and other texts of the Parliament of Catalonia into non-official languages, especially English. Some important laws, such as the Statute of Autonomy of Catalonia, have also been translated into the other languages of the Spanish State (Basque and Galician), alongside Catalan, Occitan and Spanish, which are the official languages in Catalonia, and also to other non-official languages, including English, French, Italian and German. There is also an increasing demand for translation into Catalan of texts of other parliaments in the European Union. The treaties of the European Union have been translated into Catalan.

To complete the picture, the respondent of the Office of the Parliamentary Counsel (United Kingdom) has confirmed that there is no established procedure to assess quality of documents processed by the office, though there have been a number of initiatives in recent years that might point towards such a procedure existing in the future. For example, a recent bill of the Government has had a ‘public reading stage’, whereby anyone wishing to comment on the bill could do so by posting a comment on a website. There are plans for other bills to have a similar stage. Other developments might relate to post-legislative scrutiny of bills, though such scrutiny is often more

concerned with whether a piece of legislation has achieved its substantive purpose rather than with its drafting.⁷⁰³

Finally, in the Italian Parliament the procedures and revision standards are constantly adapted, according to experience and practical needs. The implementation of possible supplementary standards is informally arranged between supervisors themselves, if it is necessary.

The Province of Bolzano in Italy follows a specific procedure for the approval of correctly drafted documents, which has been implemented for some 15 years now. In the last five years, the procedure has become stricter. However, there are still cases in which the Procedure is not followed at all, such as urgent drafts. The officers working in this administration would very much appreciate 'an established document quality assessment procedure that is binding for everybody, without any exception'.

International organisations

In the United Nations publication department (UNOV) a new editorial manual published section by section is retrievable online. The main change highlighted by respondents there is that most resources are now available online.⁷⁰⁴ In the OECD instructions on drafting (*Style Guide*) are periodically updated and completed. Finally, at the ECHR there is regular updating of templates and the style manual, but no changes in quality assessment, except for more widespread 'language checking' introduced in 2006.

Recommended Best Practices

1. In view of improving document quality, adopting a fixed document quality assessment procedure should allow a basis of harmonisation, at least in the fundamentals.

However, bottom-up communication and exchange, where it applies, among drafters and translators should not be squeezed out of a more rigid procedure. The human factor and the attitude of management both play a substantial role in allowing an open environment which gives incentive to perform to a high level.

2. For more complex structures, this procedure should be stricter and also binding for everybody in the institution or organisation, in order to facilitate supervision and optimum coordination within the structure.

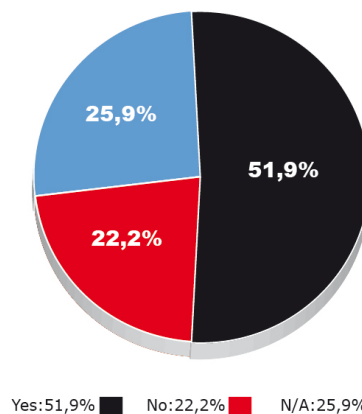
For less complex structures this procedure should be more adaptable to practical needs and experience.

⁷⁰³ In France, the organisation Juriscope has adopted the CAT - Computer Assisted Translation, a set of tools are used to check terminological consistency.

⁷⁰⁴ For further detail see: <http://www.unodc.org/intranet_ecu/en/frequently_asked_questions.html>.

6. Specific issues (questions 25-30)

Question 25. Has your institution or organisation redefined its policy for the drafting of documents, translation work, or any other forms of communication as part of administrative reform, or a political initiative? Please provide brief details stating dates and objectives.



National public administrations

Among the countries that replied to our questionnaire, Canada is very probably best equipped with legal and administrative tools. Provisions on translation and drafting of administrative and legislative documents are contained in a number of laws and regulations, many of them going back to the last century. For example, the adoption of a first set of rules for legislative drafting by the Uniform Law Conference in Canada goes back to 1919. The Drafting Convention Act, still used today for English, was adopted in 1976.

Legislative action has also supported initiatives on translation and drafting in Switzerland, where a programme was launched in 1991 to use Italian in Government and Parliament texts as frequently as German and French. In 2010 the law on languages of 5 October 2007 and the decree on languages of 4 July 2010 entered into force. They aim to regulate the use of official languages by Federation authorities. Finally, on the 1st January 2013 the new decree on the linguistic services of the Federal Administration entered into force.

Other national institutions mostly use administrative tools for their drafting purposes, such as the German Federal Chancellery, which provides ministries with numerous guidelines covering different aspects of drafting laws. The following guidelines are *de facto* binding for all proposals: *Manual on Legal Drafting* issued by the Federal Ministry of Justice, *Guidelines of the Federal Ministry of Finances for the estimation of financial impacts on public households*, and *Guidelines of the Federal Government on the Identification and Presentation of Compliance Costs in legislative proposals* by the Federal Government. Furthermore, the *Manual on Legal Drafting* of the Federal Ministry of Justice also contains a chapter on linguistic requirements. Apart from these binding guidelines, we can also find other guidelines, which provide recommendations rather than rules. They are all published in the Intranet of the Federal Government

and are subject to training programmes for civil servants. The Federal Academy of Public Administration (BAKÖV) offers comprehensive training seminars on legislation for all drafters.

Similarly, in 1997 and in 2001, the Italian Parliament adopted new internal administrative acts called *Circolari* (Ministerial circular letters) as regards the drafting of legal acts; in 1997, it established the Comitato per la legislazione, a committee charged with legislative issues. The Province of Bolzano, together with all other national institutions and authorities, has been subject to the National General Reforms of Administrative Policy from the 1990s, with a law (No 241/1990) and some administrative acts on the clarity of documents produced by public administrations and the drafting and quality of legislative acts.

The Catalan Parliament has not experienced a similar legislative or administrative activism: its Rules of Procedure, adopted in 2005, which incorporated the role of language consulting services in the legislative process, in reality recognise existing procedure. However, Law 35/2010, on Occitan, provided that all laws passed by Parliament must also be translated into Occitan.

Finland experienced organisational reform by the Government Translation Unit, in 2006-2007, which resulted in the setting up of a revision team led by lawyer-linguists with senior translators as its members. The Translation Unit is charged with both quality control tasks and training new translators, while in Sweden there have been Swedish language experts working full-time since the late 1970s to make legislation as clear and comprehensible as possible. In the US, the Offices of the Legislative Counsel of both the House of Representatives and the Senate use a uniform legislative drafting style.

International organisations

As regards international organisations, the European Court of Human Rights reported that its efforts have gone toward a reduction in the quantity of case-law translated, to reduce the backlog and improve the efficiency of case-law dissemination. It is also believed that translation of some cases into non-official languages can provide better dissemination of ECHR case-law, allowing national courts to directly apply the laws and subsequently diminishing the number of cases going before the ECHR, in line with the on-going law reform.

Similarly, measures to improve quality and reduce costs have been introduced by the OECD and the United Nation Office in Vienna. Within the UN, the UNOV respondents have emphasised that because of budgetary tightening, greater rigor is applied in deciding whether a document should be edited and/or translated; for example following the proliferation of working groups for various commissions, it was decided that working group documents would not be edited or translated. At Unidroit there has been no formal decision to revise drafting or translation policies, but changes have been introduced in relation to a variety of practical factors such as the linguistic knowledge of participants, financial constraints and time constraints.

Recommended Best Practices

Regulations on drafting and translation of documents can be useful to reduce uncertainties and costs while guaranteeing uniformity and efficiency. The process of drawing up guidelines and provisions on drafting and translation should follow a bottom-up approach, taking advantage of the know-how of practitioners in the field.

Question 26. If European legislation is concerned, is there an institution or procedure to assess its quality and clarify uncertainties? Please give a short description.

Almost all national European governments and parliaments which responded to our questionnaire are equipped with units or processes aimed at assessing European legislation and clarifying uncertainties.

The Basque Government included such procedures in the Modernisation of Public Administration Project and developed the same within the Administrative procedures' digitisation programme. A similar approach is adopted by the German Federal Chancellery, that provides guidelines for the implementation of European legislation. Some of them are mandatory, such as the Manual on Legal Drafting issued by the Federal Ministry of Justice, Guidelines of the Federal Ministry of Finances for the estimation of financial impacts on public households, Guidelines of the Federal Government on the identification and presentation of compliance costs in legislative proposals by the Federal Government); other sources of models and guidance are not binding.⁷⁰⁵

Some countries have established special institutions aimed at pursuing the implementation of European legislation. The Finnish Government in 2009 established, at the initiative of the Finnish language department, a network for the translation of EU legislation (ESKO), coordinated by the Government Translation Unit. The purpose of the network is to facilitate cooperation between Finnish translators at EU institutions and national officials, especially in the drafting and translation phases of the EU's legislative work, and to contribute to the terminology selected for the Finnish translations of EU legislation, which are often be used in national legislation. This network system was inspired by the service established by the Swedish Government in 2000.

In the Italian Parliament a special body, named Commissione XIV, Politiche dell'Unione Europea, in the lower house (Camera dei Deputati), has the task of evaluating the coherence of national legislative drafting with European provisions. A similar body with the same duties exists in the Senato, the other Chamber of the Parliament.

The UK Civil Service has Units responsible for matters relating to the transposition into UK law of European legislation, while the House of Lords hosts a European Union Committee, whose task is to consider EU documents and other EU-related matters, scrutinise proposals, conduct inquiries, and prepare reports. These tasks are performed with the help of sub-committees, dealing with different policy areas.

Finally, some administrative units of the Swiss Police and Justice Department, Foreign Affairs Department and Economy Department are charged with the task of monitoring European legislation evolution and implementation, even if they are more focused on content rather than formal issues. Formal issues on EU legislation transposition are nonetheless the object of Directives of legislative technique that can be found on the Swiss Confederation website at : http://www.bk.admin.ch/themen/gesetz/00050/index.html?lang=it#sprungmarke_2_48.

In the Catalan Parliament there is no institution or procedure to assess quality or to clarify uncertainties on European legislation.

⁷⁰⁵ Even so, they are very important in orienting practice.

Even though the national respondents for France did not specifically answer the question, the French Government has established a system to monitor the transposition of European directives. The Circular of 27 September 2004⁷⁰⁶ issued by the Prime minister and addressed to ministries transposing EU law into domestic legislation, states that the responsibility for the transposition process lies with the individual ministry acting alone or lead ministries when a directive covers more than one policy area. The SGAE (General Secretariat for European Affairs) monitors transposition in coordination with the contacts appointed in each ministry. Coordination is also established with the European Commission, although focus of this mechanism is mainly on reducing delays and then on the quality of transposition. Therefore, the Conseil d'État generally also performs in these cases its traditional duties, such as the technical improvement of drafts, clarification of the legislative objectives and their integration with other objectives, the checking of compliance with fundamental values and the administrative workability of the legislation.

Furthermore, some countries (see also Question 14) have provided guidelines and handbooks in order to facilitate the transposition into national legislation of the EU directives. For example, a special guide book (*The Legal Drafter's Guide to the European Union*) for implementing European Union Directives was published by the Finnish Ministry of Justice in 1997. The guide indicates, among other things, the same requirements in both Finnish statutes based on Community Law Directives and statutes arising from purely domestic processes.⁷⁰⁷

The Finnish authorities also recommend as guidance the Inter-institutional Style Guide of the EU, and the publication issued by the Swedish language departments and translation units within the EU institutions on how to translate EU regulations *Att översätta EU-rättsakter*⁷⁰⁸ (see Finland). This cooperation among Swedish translators at the EU and national level should be considered with attention and if possible replicated. In this area Finland has followed the model of Sweden.

In Switzerland an auxiliary drafting tool has also been provided, based on an Internet platform, addressing all those that within the federal administration deal with the transposition of EU legislation into Swiss law. This tool offers drafting solutions, legislative methodology and techniques.⁷⁰⁹

An organisational structure often has a special unit in charge of the management and updating of tools (especially terminological databases). In Switzerland, this unit facilitates exchange between linguists and experts from other offices, providing and updating an online collaborative platform which allows for online registration and sharing of results. The same unit organises also *ad hoc* training.⁷¹⁰

⁷⁰⁶ Circular of 27 September 2004 from the Prime Minister on the procedure for transposing into domestic law the directives and framework decisions negotiated within the framework of the European institutions. <<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000256457>>.

⁷⁰⁷ See PIEHL Aino, 'Implementing the Better Regulation Programme in Finland', *supra* fn. 480.

⁷⁰⁸ It should be noted that these guidelines must be followed, but there are no sanctions other than that the legislative inspector at the Ministry of Justice may refuse to revise a legal text that does not meet the requirements for legislation technique set out in the guidelines and handbooks. In addition the amendments and proposals put forward by the legislative inspector are only recommendations which the drafter may choose to ignore. The drafter is, therefore, responsible as rapporteur for the legislation that he/she is to present. (See Finland).

⁷⁰⁹ Also for more information, see Swiss Federal Chancellery website: <<http://www.bk.admin.ch/themen/lang/05225/index.html?lang=it>>.

⁷¹⁰ Also for more information, see Swiss Federal Chancellery website: <<http://www.bk.admin.ch/themen/lang/04929/index.html?lang=it>>.

Recommended Best Practices

Greater consistency between European and national legislation should be reached using systems that guarantee mutual and constant exchange between European and national bodies charged with the implementation of European legislation.

When transposing European Union law, it is particularly important for national functions and services to be able to cooperate directly with drafters and translators within the European institutions (see Swedish and Finnish examples).

Questions 27-30

27. 'Easification' (Bhatia V. K., 1983) is aimed at achieving a higher degree of explicitation of structure and coherence in texts without losing information. What is your view of attempts to simplify legal language?

28. Can you provide examples of failure of existing procedures? In such cases, why were drafting directions forgotten or disregarded? Which factor for correct implementation was missing? How was the process improved afterwards?

29. With which of the following statements do you agree more: (a) 'Irrespective of the time available, there are cases in which a document cannot be written in a way that makes it clear'; (b) 'all shortcomings in document quality are simply due to lack of time and not to inherently complex linguistic problems'?

30. In your view, is there an institution or organisation, other than yours, that has proved successful in dealing with document quality control?

Easification

Views on 'easification'⁷¹¹ and on attempts to simplify legal language vary, depending on both the type of institution and the type of texts dealt with.

Among national public administrations, a cluster of very favorable positions comprises countries in which plain language movements have an established tradition. The UK OPC is wholly in favor of simplifying legal language and using ordinary, everyday language in its place, in order to make legislation more accessible. In addition, the use of navigational aids (such as signposts and overviews) in legislation is recommended to assist users in making sense of what the legislation is doing and how it works.

In Spain, both the Basque and Catalan Parliaments strongly believe that easification is a necessary aspect of legislation. Citizens must first be able to understand the language used to express the law and legal language must be simplified in accordance with the principles of clarity, precision, conciseness, formality, neutrality and validity.

⁷¹¹ BHATIA, Vijay K., *Applied Discourse Analysis of English Legislative Writing*, a Language Studies Unit Research Report, University of Aston, Birmingham, 1983.

In Catalonia, in particular, the task of simplification and modernisation has been actively pursued since the 1980s, although it is recognised that it is often difficult to find a balance between the effort to simplify legal language on one hand, and the will of the legislator and the consensus of all political forces on the other hand.

The same view is shared in Germany, where easification is a target, even if difficult to reach. In South Tyrol Italy too, the view is that the language of law should not be 'a secret language only for a restricted target' and that there is no reason at all why a rule or concept should be expressed in a complicated way, provided no information is lost. In fact, complicated texts are seen as not only a source for shortcomings, but also as a waste of time: structure and coherence are seen as very important aspects to be considered in drafting.

The Swiss Federal Chancellery also strongly advocates easification, although often meeting resistance from the legal experts who feel that content is 'toned down' by this; here the limits of simplification are seen in the need for precision in legal terminology, where 'no synonyms exist'.

The situation is more complex in Finland. While the Finnish authorities have only recently come to realise that the language used by the Finnish-speaking authorities is not automatically clear and unambiguous⁷¹² and the Finnish source texts do not always follow the ideals of clear language, work on the clarity and modernisation of the Swedish legal language in Finland has been underway for a considerable time now, inspired by the work done by Swedish authorities in Sweden. For the past 50 years, the Prime Minister's Office has hosted the Swedish Language Board to foster clarity and comprehensibility in the legal and administrative Swedish used in Finland.⁷¹³

A more critical attitude on easification is expressed in the US and Canada (Uni Montréal). In Canada, the differing views polarise around two opposite positions, depending on legal background (common law vs civil law lawyers). In one view, the more one says in order to make message of the (legal) text explicit, the more interpretation problems and difficulties are created.⁷¹⁴ The 'simplify the law' movement in the US is seen as having shown the limits of 'legal baby talk'. *Juriscope* in France is more radically opposed to easification as the simplification of legal language is seen as making the legal norm not clear enough. An alternative method suggested to make legal texts more accessible is that of accompanying explanatory notes.

The issue of easification is less relevant at the Court level. In ACA Europe the issue is perceived as not relevant because the target public consists mainly of judges, law students, law professors, and legal services. At the ECHR, easification is considered necessary to some extent, especially as the reader will probably not be a native speaker of the language; it is certainly a question for consideration at the Court, yet difficult to achieve, as there is much linguistic precedent that has to be followed. Generally, the use of plain English is not always considered appropriate for judicial texts.

As far as international organisations are concerned, the view expressed by the OECD is that the structure of sentences must be as simple as possible to avoid misunderstandings, but also that it is important to use the right terms and expressions

⁷¹² Cp. the Administrative Procedure Act adopted in 2003, according to which an authority must use appropriate, clear and comprehensible language.

⁷¹³ The Board may initiate measures to improve the authorities' language use. The members of the Board represent the various bodies involved in the legislative translation process: the Government Translation Unit, the Unit of Legislative Inspection at the Ministry of Justice, the Swedish Office of Parliament, and language revisers. The most important result of the Board's work is the handbook on Swedish legal language *Svenskt lagspråk i Finland*.

⁷¹⁴ Reference is made in the questionnaire, among others, to L.H. Hart and C. Perelman.

in order to be clearly understood, and that explanatory notes may be useful and helpful in this respect. At Unidroit attempts towards easification are seen as useful, but as requiring great attention to the aims and intended addressees and users. Moreover, drafters should be realistic as to who will read and interpret the final instrument (irrespective of its final beneficiaries) since beneficiaries and readers or users do not always overlap (UNOV not familiar with the term 'easification', but editors try to simplify and clarify the language).

Failures

Failures of existing procedures are mainly attributed to: time factors (Canada Uni Montréal: 'quality requires time', Finland, Switzerland); communication gaps between the various drafting agents and committees (Spain Cat. Parl., South Tyrol Italy); and lack of quality control or linguistic revision (Spain Cat. Parl., Finland, Switzerland).

For instance, in Spain Cat. Parl. it has occurred that texts adopted by the parliamentary bodies have been published without being revised by the Parliament's Language Consulting Services, due to a communication gap or because the importance of the work performed by these Language Consulting Services was not understood, while the Legal Services were consulted for legal advice. Some attempts have been made to improve the procedure and in this regard, the Rules of Procedure of the Parliament of Catalonia, adopted in 2005, do recognise the role of language consultancy, together with legal advice.⁷¹⁵ It would be most appropriate for language advisers to be represented on the parliamentary committees, especially in the case of the so-called joint special committees, in charge of drafting legal texts.

In this regard, the collaboration of the legal advisers of the Parliament is essential. Politicians should make sure that the language adviser is present from the first meeting of the committee, as is already the case with legal advisers. All initiatives arising from the parliamentary groups (such as questions, motions, motions for resolutions, and draft laws presented by MPs) should be subject to linguistic revision before they are processed. This linguistic revision would avoid problems such as comprehensibility, consistency of terminology, inter-textual coherence, inappropriate language register, wording problems, and misspellings. Good communication is also essential with the departments of the Government of Catalonia (the Administration of the Generalitat of Catalonia), which are responsible for drafting the draft laws presented by the Government in the Parliament of Catalonia.

The view in Finland is that, in addition to haste and tight timetables, problems in legal drafting are most often caused by the fact that time is taken out from the translation process, which means that there is no time for thorough terminological work and quality control in the form of revising the Swedish translation, or even the Finnish original.

In South Tyrol, a text containing modifications on the Skiing Areas Legislation had already been passed on to the Legal commission (on the order of the responsible political representative) before the legal and linguistic revision had been completed. Normally in such cases proposals can no longer be considered, except through a very complicated and costly procedure.

In OECD, where drafters are often external experts (academics, scientists), non-compliance with the recommendations or instructions contained in the Style Guide on

⁷¹⁵ Art. 41.4 of the Rules of Procedure of the Parliament of Catalonia: 'The board of the committee is assisted by a legal adviser of the Parliament, in charge of advising on all legal initiatives and procedures, and of coordinating the assistance provided to the committee by the Parliament's services, and for language services in the preparation of resolutions and agreements'; Art. 109.2 of the Rules of Procedure of the Parliament of Catalonia: 'It is incumbent upon the special committee, advised by the legal and language services, to bring to the committee proposals on legislative technique and adequacy to the formal and linguistic rules and usage of Parliament regarding draft laws presented by Government or by MPs.'

many aspects such as capitalisation, footnotes, endnotes, and punctuation, was also signalled as a factor responsible for failures.

International organisations such as Unidroit or UNOV report specific additional problems, related for instance to the number of participants involved in actual drafting and degree of compatibility among them, the possibility of creating a small drafting group which enjoys the trust of the wider group, consensus on substantive issues (bad, inconsistent or generic drafting can be purposely used to hide disagreement). Soft law instruments tend to achieve a higher degree of success than hard law ones. Continual influx of new staff in substantive office and new delegates means that there are always people who need to be made aware of documentation standards (UNOV).

Time and clarity

With regard to whether 'irrespective of the time available, there are cases in which a document cannot be written in a way that makes it clear' or whether 'all shortcomings in document quality are simply due to lack of time and not to inherently complex linguistic problems', the majority agreed with the latter statement (Spain Basque Parl., South Tyrol, Finland, Switzerland, UNOV), and a minority with the former (Canada Uni Montréal, ECHR, Italy/ISS, US/Louisiana).

Some respondents did not agree with either statement (Spain Cat. Parl., Germany, UK/OPC), and highlighted other considerations. According to the Spanish Cat. Parl. texts can always be clear, unless drafters have no clear ideas about what they are meant to convey, or when there is a political interest in producing an ambiguous text, with little or no definition of the concepts. Besides time constraints, shortcomings may be due to the lack of will or lack of cooperation between agents involved in the drafting of the text, and also to the lack of language training and of skills on regulatory technique of the agents who draft texts or to the lack of language advice in the first phase of drafting. For the German Fed. Chanc. the quality of legal drafts is essential, and linguistic problems can be solved with appropriate support and expertise.

In the bilingual Province of South Tyrol, there is an inherent linguistic problem which may lead to shortcomings; too literal translations (out of 'fear' of differing from the source text) which maintain the sentence structure of the source language, which often leads to shortcomings such as differences in meaning. OECD agrees that tight deadlines cause pressure which obviously impacts the document quality (both original text and translated version) but other factors are listed that may cause shortcomings such as that many drafters lack drafting capacities and often write in a language which is not their native language. Also, many documents are drafted by several different authors, often resulting in a lack of style and consistency in terminology and many documents are amended by successive stakeholders along the production process. All these amendments may damage the document quality, even if they are justified. The Swiss Fed. Chanc. also lists the lack of consideration of the reader's perspective as a hindering factor

Successful experiences

As for institutions or organisations that have proved successful in dealing with document quality control, most agree on Sweden (Cat. Parl., Fin.) and Canada (Basque), with mention also of the Swiss Fed. Chanc., Germany, Italy, Catalonia and the EU.

The Swedish model is considered by many to be ideal. Since the 1970s, Sweden has invested a great deal on the clarity of the language used by authorities on all levels of administration, and this has resulted in better texts. The quality work by the Swedish language departments and translation units within the EU institutions has resulted in a publication on how to translate EU regulations *Att översätta EU-rättsakter*. Draft laws

are revised by experts, both lawyers and linguists, before being presented in Parliament. This cooperation is compulsory. And it continues during the parliamentary process, as the text is further revised by lawyers and linguists to ensure that it is well written, understandable and thus effective. Public authorities also have experts in drafting; there is even a university degree combining linguistics, communication techniques and textual analysis. Justice Canada is also considered an example in the legislative sector, with remarkable progress achieved in the production, via co-drafting, of bilingual legislation over a few decades (1970-2012). Also, in the judicial field, there has been a spectacular betterment of judgments written in either language delivered by Canadian trial judges, as well as Canada's Translation Bureau. Switzerland, Germany and Catalonia are also regarded as models. Both Unidroit and UNOV consider they have a high degree of document quality control, although in the former no formal guidelines exist and all is left to individual initiative or capacity and coordination by the Secretariat. Many respondents indicated their interest in learning about other organisations' experiences (limited knowledge about what happens elsewhere is evidenced).

Conclusions

The research offers insights on issues that can be considered of general relevance for any institution producing documents. We have seen how legal documents require special care: as has often been said '[t]he only tool of the lawyer is words'.⁷¹⁶ In law, words do not only possess a descriptive role, but also a performative power: they change the reality of people involved. The common thread running through the whole research is the tension between the flexibility of language, a constantly changing instrument, depending on effective usage, and the need for certainty and predictability that is strongly felt by citizens when dealing with the public administration and especially legal provisions.

The overview provided by this study must be seen as a first general reconnaissance of the field, to identify areas that deserve deeper investigation. A number of issues emerged from analysis of national experiences and of responses to the questionnaire. As a conclusion, a few points may be stated at a general level that could help to bind together the great amount of information surveyed in the present study and some reference may be made to experiences that were not included in the analysis.

A contextual and dynamic approach

Documents, even those that are seemingly simple, embody a bundle of cultural assumptions, legal styles and principles. Law, by its very nature, has a documental character. Krygier observes that

'Like all complex traditions, law records and preserves a composite of (frequently inconsistent) beliefs, opinions, values, decisions, myths, rituals, deposited over generations. The stuff of legal doctrine – statutes, judgements, interpretation, rules, principles, conventions, customs – has been so deposited, in and by legal institutions where doctrine has been proclaimed, applied, recorded and passed down by officials specifically entrusted with these functions.'⁷¹⁷

A variety of models and overlapping distinctions exist in different contexts. They are historically rooted. A point to be highlighted is that to understand these differences one should not limit to the distinction between monolingual and multilingual, which is still broad from an analytical point of view. In fact, different kinds of monolingualism and multilingualism exist. In addition, as we saw in analysing responses by States using more than one language in their administrative or legislative tasks, a distinction between bi-jural and bilingual experiences should be borne in mind.

This distinction runs between situations where two or more languages are used but the legal concepts behind the words at least belong to the same tradition, and cases where the legal concepts also differ. In the latter case we shall speak of a 'bi-jural' rather than bilingual system. The references are to two systems, as happens paradigmatically in Canada.⁷¹⁸ The distinction, that seems rather obvious in theory, becomes somewhat more blurred in practice, as we meet situations where classifying a national experience as 'mixed jurisdiction' becomes a matter of degree (depending on the level of integration between the legal formants).⁷¹⁹ Issues of translation

⁷¹⁶ WRIGHT, Charles A., 'Foreword', in GARNER, Brian A., *The Elements of Legal Style*, Oxford University Press, Oxford, 1991.

⁷¹⁷ KRYGIER, Martin, 'Law as Tradition', *Law & Philosophy*, Vol. 5, 1986, pp. 237-262.

⁷¹⁸ WELLINGTON, *Bijuralism in Canada*, *supra* fn. 646; CUERRIER, Marc, *Drafting against a Background of Differing Legal Systems: Canadian Bijuralism*, available at: http://www.opc.gov.au/calc/docs/Loophole_papers/Cuerrier_Jul2007.pdf.

⁷¹⁹ The class of 'mixed legal systems', where Common law and civil law elements concur to frame the structure of the legal system, traditionally includes Louisiana, Québec, Israel, St. Lucia, Puerto Rico, South Africa, Zimbabwe (formerly Southern Rhodesia), Botswana, Lesotho, Swaziland, Namibia, the Philippines,

become even more complicated where the meaning to be conveyed has no equivalent in the target language, or where only a core element of the message has some correspondence, but a whole set of differentiating elements accompanies that central coincident area. The maxim governing this area may well be summarised in J. Vanderlinden's words:⁷²⁰

'Face au multilinguisme, il n'y a jamais obligation de résultat, mais seulement de moyen. Qu'il s'agisse de traduction ou de co-redaction, les textes sont présumés avoir le même sens dans l'une et l'autre de leurs versions.'

The opposition of legal cultures and the consequent communication problems are dramatically evident when very different cultures are involved: examples are available about the extreme complexity of conveying western legal notions in Japan and China. As recalled in the historical introduction, the translation of both the French and German civil codes in Japan was very challenging. An artificial adaptation of pre-existing terminology had to be done to adapt the language to new contents. Under these circumstances it is also evident how a fracture line between the population and the legal language occurs: at first, citizens can hardly be expected to understand the neologisms, or the new application of pre-existing words to concepts previously ignored. A strenuous process of training will enable lawyers to become familiar with imported models. In this case two languages are actually working in parallel: the traditional one that still refers to notions surviving the legal transplant, and the new one, rich in neologisms to address imported notions. In some instances of legal transplants between cultures very far apart the one from the other, the competence of anthropologists will be required, rather than that of ordinary lawyers.⁷²¹

Other experiences are also telling, though less extreme. We saw that Canada offers interesting insights: the civil law and common law traditions there have to come to terms.⁷²² We can enlarge the discourse to 'mixed legal systems (or jurisdictions)', but what is relevant from the linguistic point of view (in comparison for instance with Scotland), is that in Canada both an Anglo-Saxon and a Neo-Latin (or Romance) language are used in parallel. As we saw, in Scotland as well, civil law notions are expressed with a specific terminology of Roman origin, but the legislation is not drafted in French (or Dutch, a possible alternative because of historical roots). Drafting now takes place primarily in English, with Scots and Gaelic added, generally as translations. So that old terminology, or expressions derived from the past, may

Sri Lanka (formerly Ceylon), and Scotland. 'It goes without saying that some mixed jurisdictions are also derived partly from non-occidental legal traditions: the North African countries, Iran, Egypt, Syria, Iraq and Indonesia, for instance', see TETLEY, William, 'Mixed Jurisdictions: Common Law vs Civil Law (Codified and Uncodified)', *Uniform Law Review*, 1999, pp. 591-618, available at:

<<http://www.unidroit.org/english/publications/review/articles/1999-3-tetley1-e.pdf>>.

Less obvious inquiries concern Vanuatu (with 3 languages: Bislama, French, English), Suriname (Dutch, Suriname Javanese), New Zealand (English, Maori), Macao (Chinese Cantonese and Portuguese). On the issue of mixed system consult the World Society of Mixed Jurisdiction Jurists (WSMJJ) and ÖRÜCÜ, Esin, ATTWOOLL, Elspeth & COYLE, Sean (eds.), *Studies in Legal Systems: Mixed and Mixing*, Kluwer Law International, The Hague/London/Boston, 1996.

⁷¹⁹ VANDERLINDEN, Jacques, 'Exercice comparatif au départ d'un sujet convenu. Le droit sud-africain entre principe et réalisme', in SACCO, Rodolfo (ed.), *L'interprétation des textes rédigés dans plus d'une langue*, L'Harmattan Italia, Turin, 2002, pp. 295 ff, at p. 303.

⁷²¹ See SACCO, Rodolfo, *Anthropologie juridique, Apport à une macro-histoire du droit*, Dalloz, Paris, 2008; ZIMMERMANN, Reinhard, VISSER, D. Daniel P. (eds.), *Southern Cross: Civil Law and Common Law in South Africa*, Juta, Kenwyn, 1996.

⁷²² WELLINGTON, *Bijuralism in Canada*, supra fn. 646; CUERRIER, *Drafting against a background of differing legal systems*, supra fn. 718.

still linger in Scotland, and occasionally emerge in case-law, but new notions tend to give in to the prevailing English model.⁷²³ We shall therefore consider the Scottish experience rather under the profile of protecting 'minority languages'.

A situation that could better be compared with Canada is that of the Republic of South Africa as there the *jus commune* tradition imported by the Dutch colonisation faces the later imports from the common law and this combination of legal concepts must be expressed in several languages.⁷²⁴ In this context however the notion of 'three-juralism' (*trisystémisme*) may seem even more appropriate as: 1) the tradition based on the doctrinal sources of the civil law (*jus commune*) has been enriched by 2) the case-law drawing remedies from the common law experience, lately also adding 3) the customary law of African ancestral sources, accessible through the local languages added in the 1996 Constitution.⁷²⁵

We may consider how communication may be difficult even where the legal background of the interested State is not as deeply fractured as in the cases mentioned above. In multilingual countries one language tends to be dominant in drafting. Defining a country as monolingual might be not appropriate at a deeper level of analysis and considering linguistic minorities. The use of several languages in the UK can be considered in one class, under the general heading of preserving 'minority languages'. Some distinctions are however necessary. Scotland deserves a special consideration as the linguistic issue in law is not simply expressing the need to enable Scots speakers to be informed, but is rooted in the historical origins of private law in the Roman tradition. As mentioned above, this brings the Scottish experience closer to 'bi-jural' situations.

Drafting and translation issues are particularly conspicuous in organisations working across national borders and legal cultures. As is well known, the EU faces a unique challenge in providing 24 versions (after accession by Croatia) of legal texts all having the same official status. The situation is unusual because not only do a limited number – (five or six as in the UN system) – of languages have authority to state the binding rules, but almost as many languages as the Member States are to be consulted.

Profiting from results of previous studies done within the framework of the DG Translation,⁷²⁶ we shall just mention that the case-law of the ECJ has many times confirmed that the meaning of a directive or regulation is not exclusively contained in the linguistic version familiar to the interpreter, but on the contrary a judge may not rely on one version only.⁷²⁷

⁷²³ The same considerations apply to Louisiana and Puerto Rico (a background of civil law faces common law models, with a prevalent English-drafted legislation). In the report by academics in Louisiana an issue of translation (the word *solidarité*) has attracted some attention: see LEVASSEUR, Alain & FELIU, Vivien, 'The English Fox in the Louisiana Civil Law Chausse-Trappe: Civil Law Concepts in the English Language; Comparativists Beware!', 69:4 *Louisiana Law Review* 715-747 (2009), available at: <http://digitalcommons.lsu.edu/cgi/viewcontent.cgi?article=6289&context=lalrev>, at p. 726.

⁷²⁴ ZIMMERMANN, & VISSER, *Southern Cross: Civil and Common Law in South Africa*, *supra* fn. 721, especially GIRVIN, Stephen D., 'The Architects of the Mixed Legal System', *ibidem*, pp. 95-139.

⁷²⁵ VANDERLINDEN, 'Exercice comparatif au départ d'un sujet convenu. Le droit sud-africain en principe et réalisme', *supra* fn. 719, at p. 301; ID., *Anthropologie juridique*, Dalloz, Paris, 1996. A special institution has been appointed to monitor and encourage the use of the various languages: the Pan South African Language Board.

⁷²⁶ *Study on Lawmaking in the EU Multilingual Environment*, *supra* fn. 150, at p. 70.

⁷²⁷ See, out of many cases, ECJ, *CILFIT srl. and Lanificio di Gavardo Spa v Ministry of Health*, C- 283/81, ECR, 1982, par. 20 ('every provision of Community law must be placed in its context and interpreted in the light of community law as a whole'); judgment of 14 March 2002, C-132/99 (a Dutch version of a regulation was different from the other language versions of the same provision: it contained an easily recognisable mistake that should have been noted by the Dutch government, therefore they could not plead their own wrong reading of the European legislation); similarly in the *Océano case* (case C-240/98) the ECJ found the full meaning of the provision on unfair clauses in consumer contracts ('not binding on the consumer') by comparing the various linguistic versions. Judges were granted the power to take judicial notice of the non-binding character of such clauses by an exercise of comparative analysis of texts. On the issue of

Other institutions face similar challenges, on a smaller scale: as an instance we may reflect that at the European Court of Human Rights documents are drafted mainly 'in English and/or French, even though intended for 47 member States with a total of about 38 other languages.'⁷²⁸ Discussions during a case however do not require such a vast task of translation.

In general terms the dominance of English seems to be a common feature. If in the past French held primacy, a decline in its use is now noticeable: new Member States have to face the peculiar situation of adapting to an *acquis* that has changed in part its imprint from a mixed presence of both source languages to a dominance of English as source language.⁷²⁹ The same is true for OECD, UNOV, Unidroit. Actually financial constraint may further increase the use of English: by not providing simultaneous translation from French, for instance.

Starting from different premises and issues, different institutions and organisations develop procedure and tools to deal with quality of documents. A variety of models exists, as we saw in detail during the analysis. Some of them tend to be imitated. In order to ensure a constant level of quality, respondents often suggest a centralised control. By way of example, in Germany the procedure to approve legislation envisages monitoring by the Unit for Legal Drafting Support, to review linguistic accuracy and comprehensibility. The regulatory control council (NKR) provides a revision that is meant to standardise results. Certainty in the workflow is also necessary to be sure that all drafts follow the same track: to this end the Joint Rules of Procedure of the Federal Ministries provide a model workflow for Ministries.

In Finland as well the Unit of Legislative Inspection at the Ministry of Justice has supervision of all drafts. All the Bills 'drafted in the Ministries are scrutinised by the Council of State in general session prior to their submission to Parliament.'⁷³⁰ In France, the Conseil d'Etat 'est le conseiller du Gouvernement pour la préparation des projets de loi, d'ordonnance et de certains décrets'⁷³¹. The centralised French system has been a model for several other countries. In Switzerland a tight process for the bill's approval exists, divided into two parts:⁷³² administrative and parliamentary.

In the UK we find a centralised service offered by the Office of Parliamentary Counsel (OPC). The cooperation between different units is also crucial: several replies emphasise how relations between separate parts of an administration may cause problems, especially where the well-conceived product of a service, highly sensitive to linguistic issues, is taken over by a more political body that disregards efforts done in the previous stages and meddles with the difficult balance reached between precision and clarity.

In conclusion we may summarise by emphasising how a centralised authority to oversee the standard of legislation is considered a necessary precaution. Where drafting involves more than one language a great advantage lies in the opportunity to consult a special unit that will be able to advise on previous translations of similar

multilingual interpretation by the ECJ, see recently POMMER, Sieglinde, 'Interpreting Multilingual EU Law: What Role for Legal Translation?', *European Review of Private Law*, Vol. 20, Iss. 5/6, 2012, pp. 1241-1254, case-law at pp. 1243 ff.

⁷²⁸ Reply by officer at ECHR, to introductory questions.

⁷²⁹ ŠARČEVIĆ, Susan, *Legal Translation: Preparation for Accession to the European Union*, *supra* fn. 71, at p. 253.

⁷³⁰ <<http://lainvalmistelu.finlex.fi/en/>>.

⁷³¹ "Depuis la réforme constitutionnelle du 23 juillet 2008, le Conseil d'Etat peut également être saisi par le président de l'Assemblée nationale ou du Sénat d'une proposition de loi élaborée par les parlementaires". <<http://www.conseil-etat.fr/fr/conseiller/>>.

⁷³² A graphic representing the whole process has been attached to the replies conveyed by the Drafting commission of the Federal Chancellery: it is included in the materials that may be accessed at the link indicated at the end of this report.

phrases, on frequent mistakes,⁷³³ on adaptation to EU sources by countries sharing the same language, as in the case of France with Belgium, or of Austria with Germany and South Tyrol, or of Finland with Sweden for the Swedish version of legislative acts.

As already mentioned, the harmonisation of different linguistic versions is not effected everywhere with the same instruments: if Finland and Sweden have reached a good level of cooperation, the same does not apply necessarily for other experiences.

A genre and two masters?

A specific question underlies the entire analysis. How far one can go in simplifying the language of the law? Renkema observed that:⁷³⁴

'If one tries to reformulate a law in order to communicate with a layman audience then the "generic integrity" of a law is violated, because the genre of laws or legal documents is a special form for a special occasion. So, a law cannot be waterproof and communicative at the same time, or in other words, a genre cannot serve two masters.'

How can a sufficient level of accuracy be reached? There is no general recipe or universal panacea.

In order to reach the quality standard in law, great care must be devoted to the selection of terms and also of accompanying expressions used in this '*discours de spécialité*'⁷³⁵. This is especially true where legislation is approved, or private documents are drafted, but it holds true also when the law is explained and made accessible to the general public by reports, articles, or summaries. An accurate account of the effects of a new provision is a pre-requisite for certainty and compliance. As Lord Brightman said in 2002 'we have simply no right to legislate in a manner that is incomprehensible to those to whom legislation is addressed and who are primarily concerned.'⁷³⁶

Most replies indicate the need for a process of deliberation that is certain, where all the steps in the process are clearly laid down, where a fluent exchange of information between the party holding the information and the person(s) entrusted with the task of drafting documents is provided: if the drafter is not a lawyer, legal revision should be provided for, at some stage of the approval procedure. Tightly structured procedures cause rigidity, and may make special cases harder to cope with: predictability however has great value when legal issues are at stake.

In legislative drafting real improvement is detectable: not everywhere with the same level of effectiveness, but with noticeable results. Of course, style also depends on the subject-matter: taxation tends to be particularly resistant to simplification. The meaning of 'simplification' changes also according to the tradition prevailing in the area one is considering: in the common law area it implies less detailed, pedantic

⁷³³ A 'table of common errors' (ECHR) is useful to highlight common traps.

⁷³⁴ RENKEMA, Jan, *Introduction to Discourse Studies*, John Benjamins Publishing, Amsterdam/Philadelphia, 2004, at p. 261.

⁷³⁵ DARBELNET, Jean, 'Niveaux et réalisations du discours juridique', in GÉMAR, Jean-Claude (ed.), *Langage du droit et traduction*, Linguatex, Montréal, 1982, pp. 51-60, available at:

[http://www.cslf.gouv.qc.ca/bibliotheque-virtuelle/publication-html/?tx_iggcplusplus_pi4\[file\]=publications/pubf104/f104p1ch2.html#1](http://www.cslf.gouv.qc.ca/bibliotheque-virtuelle/publication-html/?tx_iggcplusplus_pi4[file]=publications/pubf104/f104p1ch2.html#1), 'Il faut bien connaître la nomenclature du sujet et être capable de tirer pleinement parti, dans un certain registre, des ressources langagières propres à mettre en valeur les éléments de la nomenclature'.

⁷³⁶ Lord BRIGHTMAN, 'Drafting Quagmires', *Statute Law Review*, Vol. 23, No 1, 2002 pp. 1-11 at p. 1.

drafting, while in the civil law tradition it may rather concern the length of sentences and their syntactic structure.

Some bureaucratic tones tend to linger at levels of administration subordinate to Parliamentary level: training is taking longer to reach civil servants working in executive offices. This may be due to the fact that specialisation in one field tends to consolidate habits, as people tend to relax into a repetitive style. Concerns about consistency, very valuable in providing certainty, can limit innovation. This is the reason why regular periodic seminars and working group activities are recommended: to keep drafters alert to new techniques, and to motivate them to explore new ways of expressing rules.

Scientific progress is being made in understanding the inner functioning of our experience of the world as well. Cognitive studies offer insights that can explain how to reach the reader's understanding more easily. A multidisciplinary perspective seems necessary to enhance our understanding of document quality control. Linguistic analysis runs the risk of being self-referring if it is not understood in the broader pragmatic context of discourse practices, emotions, aims, and the limits of human brain.

Paying attention to the audience addressed seems the most obvious of precautions to be taken: adopting the reader's point of view is the constant 'refrain' of drafting manuals. The problem, of course, is when a document addresses a great variety of readers.⁷³⁷ Legislative drafters and drafters of models to be incorporated in international conventions have pointed out that in some circumstances it is impossible to reach the final users of a provision in a form that is really accessible for them. A chain of distribution of knowledge should then be put in place, rather than simplifying the language to the point of making it vague and uncertain.⁷³⁸ Communication science could cover the last part of the path of information. One can envisage a continuum through several steps: expert drafting – plain language – communication experts. Feedback from communication experts can help to fine-tune practices during previous steps. In this sense, this continuum could be read in reversed order.

When considering issues of multilingual drafting, the recommendation that stands out most clearly is the 'co-drafting' procedure: writing the provisions in parallel at the same time makes work slower, but sounder. Difficulties of comparison between concepts that do not perfectly correspond are faced gradually, and terminology is defined while the process of setting the rules is ongoing. By proceeding in this way the final texts will not look translated, as is often the case when an original text is processed to be put into another language.

Given such unanimous agreement on the benefits of co-drafting, it may be surprising that the practice is in actual fact so limited: only Canada and Switzerland seem to consistently apply this technique, and in Switzerland it is not always applied for all four languages, depending on available resources for the different linguistic versions.

When real co-drafting is not possible, the alternative remedy is to involve translators in the early stages of conceiving a text: overconfidence of drafters in their linguistic skills may be a real obstacle to satisfactory final results. There is evidence of cases where drafters who are experts in the field, being focused on the content of the document they were writing, underestimated the linguistic issues: they may often be

⁷³⁷ 'Legislation differs from many other types of formal writing in that it has a very disparate potential audience'. The Office of the Scottish Parliamentary Counsel, available at: <http://www.scotland.gov.uk/Resource/Doc/93488/0022476.pdf>.

⁷³⁸ The example concerns the difficulty for instance of directly reaching 'underprivileged farmers' with very limited education in poor countries: the mediation of other institutions (such as FAO or IFAD) is felt to be necessary; the legal instrument would work as a basis to develop information for this type of audience, using specific communication tools such as information booklets with images.

writing in English with an unjustified belief in their full control of the language, where unwanted results may slip in, through words chosen with a degree of superficiality.

An unexpected, but significant point has been raised by linguistic experts working frequently with 'technical experts' from different fields (economic, legal, scientific): quotations from internet websites are not always enclosed in quotations marks, and some episodes of plagiarism have been detected. This occurs more often than one would expect in an academic or highly professional context. This general problem that affects the public with access to information through the web has also struck readers who are supposed to be the most alert to the problem of unauthorised quotation. The issue has been investigated by studies on cognitive processes in the area of perception of 'goods'. Information available online is not seen as being someone else's 'property', but as an information resource that is at the disposal of anyone interested in the subject.⁷³⁹ This leads to the belief that what is accessible is the same as what can freely be appropriated.⁷⁴⁰ A curious circle is generated: those who should most cherish ideas are the ones who are willing to use other people's intellectual products without acknowledging their source.

Budgetary cuts are negatively affecting quality. From the complex of replies gathered we observed a threefold trend in which costs reduction impacts on the offered range of language versions (e.g. UNOV, ECHR), a higher resort to outsourcing and freelance work (e.g. Unidroit), and a more intensive use of tools (such as CAT memories, see OECD). The effect of restrictions in spending for high quality translations is especially worrying as many replies highlighted that the revision of drafts by a translator may work as a 'safety net' for quality: a double check of documents often identifies mistakes, contradictions, and ambiguities, and sometimes translations improve the original text.⁷⁴¹

In previous research by DG Translation in 2012 a similar issue was highlighted in relation to 'quantifying quality costs and the cost of poor quality in translation'⁷⁴²: the policy of limiting budget resources assigned to translation costs may in the long run show serious effects. Limited time allotted to revision, and pressure for immediate results may cause bypassing of some step in the procedure meant to check quality, with adverse effects. Respondents insist that the procedure conceived to guarantee satisfying levels of quality should always be followed, with no exceptions.⁷⁴³

Finally, it is worth highlighting that the present phase seems to be crucial in defining new standards for document quality. The institutionalisation of good practices is a means to consolidate institutional change and diffusion to different context. However, clearly this process cannot be crystallised. As R. Sullivan remarked: 'if effective communication is the goal, there are no universals and endless adaptation is unavoidable.'⁷⁴⁴

⁷³⁹ GOODENOUGH, Oliver R. & DECKER, Gregory, 'Why Do Good People Steal Intellectual Property?', in FREEMAN, Michael & GOODENOUGH, Oliver R. (eds.), *Law, Mind and Brain*, Ashgate, London, 2009.

⁷⁴⁰ The issue is causing real concern for writers, as has been recently voiced by Scott Turow, acting as the president of the Authors Guild: one of the most contested initiatives is Google's agreement with five major libraries 'to scan and digitize millions of in-copyright books, without permission from authors', making consultation and copying extremely easy, so that copyright is easily infringed (TUROW, Scott, 'The Impoverished Author', *The New York Times*, 8 April 2013, p. 9).

⁷⁴¹ See replies by OECD, p. 5.

⁷⁴² A study representing 'Quality efforts and the consequences of poor quality in the European Commission's Directorate-General for Translation', the publication is available in pdf at: http://bookshop.europa.eu/is-bin/INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en_GB/-/EUR/ViewPublication-Start?PublicationKey=HC3112463.

⁷⁴³ See: South Tyrol responses.

⁷⁴⁴ SULLIVAN, Ruth, 'The Promise of Plain Language Drafting', in 47 *McGill Law Journal* 97-128 (2001), at p. 126.

Annex - Summary of replies⁷⁴⁵

Question 1

1. Is drafting regarded as a general function, performed by people who perform other tasks as well? If so, what training are they given?

	General function	Training given
ACA-Europe	yes	no
Belgium	yes	yes
Canada/Uni-Montréal	no	yes
ECHR	yes	yes
Finland	n/a	n/a
France/Independent	no	n/a
France/Juriscope	n/a	n/a
France/Ministry of Finance	n/a	n/a
France/Senate	yes	no
Germany	yes	yes
ILO	yes	n/a
Israel/Uni-Jerusalem	n/a	n/a
Italy/ISS	n/a	n/a
Italy/Parliament	no	no
Italy/South-Tyrol	yes	no
OECD	yes	yes
Romania/Uni-Bucharest	yes	no

⁷⁴⁵ This is a simplified exposition of replies to offer an image summarising opinions. For the list of respondents, refer to Part III, Chap. II, para 1. The respondents received the following instructions: 'We are interested in learning about current procedures and methodologies at your institution or organisation. We also welcome any general comments and personal opinions in order to reach a better understanding of the views of the community of professionals engaged in document drafting and of researchers working on this topic. We very much appreciate your contribution and hope that the study will lead to a significant step forward in analysing and improving drafting practices affecting the lives of citizens and democracy. When completing the questionnaire, please highlight problem areas that in your view require better understanding and implementation in drafting procedure. If you can, please provide us with examples. The questionnaire is structured according to the various phases involved in the document-drafting process. Some questions relate to more than one phase and may therefore be repeated. If you think a specific question is not applicable to your institution or organisation, please write N/A. However you are welcome to provide general observations on the topic, if you wish. You do not need to complete all sections of the questionnaire.'

Spain/Basque Country	yes	yes
Spain/Catalan Parliament	yes	no
Sweden	no	yes
Switzerland/FC-Italian Division	n/a	n/a
Switzerland/FC-Terminology	no	n/a
UK	no	no
Unidroit	yes	no
UNOV	yes	yes
US/Legislative Counsel	no	yes
US/Louisiana	no	yes

Question 2

2. Is drafting regarded as an activity to be performed by professionals who specialise in drafting? If so, how are they recruited? What type of qualifications must they have (e.g. in communication, in law)? What training are they given?

	Professional activity	Recruiting	Qualifications	Training
ACA-Europe	no	n/a	n/a	n/a
Belgium	no	n/a	n/a	n/a
Canada/Uni-Montréal	yes	no	no	university courses in (legal) drafting/ specialised courses and seminars
ECHR	no	n/a	n/a	n/a
Finland	n/a	n/a	n/a	n/a
France/Independent	yes	n/a	law and/or economics	n/a
France/Juriscopie	n/a	n/a	n/a	n/a
France/Ministry of Finance	n/a	n/a	n/a	n/a
France/Senate	yes	public competition	master degree	learning by doing
Germany	no	n/a	n/a	n/a
ILO	n/a	n/a	n/a	n/a
Israel/Uni-Jerusalem	n/a	n/a	n/a	n/a
Italy/ISS	n/a	n/a	n/a	n/a
Italy/Parliament	yes	n/a	n/a	specialised courses
Italy/South-Tyrol	no	n/a	n/a	n/a
OECD	no	n/a	n/a	n/a
Romania/Uni-Bucharest	n/a	n/a	n/a	n/a
Spain/Basque Country	no	selection	technical knowledge and law /language knowledge	legal training language training
Spain/Catalan Parliament	no	n/a	n/a	n/a
Sweden	no	n/a	n/a	n/a
Switzerland/FC-Italian Division	yes	n/a	n/a	legal drafting courses
Switzerland/FC-Terminology	no	n/a	n/a	n/a
UK	yes	interview + short written test	strong legal background (solicitors, advocacy)	n/a
Unidroit	no	n/a	n/a	n/a

UNOV	no	n/a	n/a	n/a
US/Legislative Counsel	yes	direct recruitment	law degree, communication skills/Bar admission	two years of Intensive training in drafting registration
US/Louisiana	yes	legal background	law degree	practical seminars

Question 3

3. How many services or divisions are involved in the production of a single document? Are there different workflows for routine and special cases?

	More than one service or division involved	Workflow for special cases
ACA-Europe	n/a	n/a
Belgium	yes	no
Canada/Uni-Montréal	yes	yes
ECHR	yes	yes
Finland	n/a	n/a
France/Independent	n/a	n/a
France/Juriscopie	n/a	n/a
France/Ministry of Finance	n/a	n/a
France/Senate	no	n/a
Germany	yes	yes
ILO	yes	n/a
Israel/Uni-Jerusalem	yes	n/a
Italy/ISS	n/a	n/a
Italy/Parliament	n/a	n/a
Italy/South-Tyrol	yes	no
OECD	yes	yes
Romania/Uni-Bucharest	yes	yes
Spain/Basque Country	yes	no
Spain/Catalan Parliament	yes	no
Sweden	yes	no
Switzerland/FC-Italian Division	yes	yes
Switzerland/FC-Terminology	yes	yes
UK	no	no
Unidroit	no	yes
UNOV	yes	yes
US/Legislative Counsel	no	no
US/Louisiana	yes	n/a

Questions 4-7

4. Are documents classified according to type, subject and target audience? In your institution or organisation, are drafters explicitly instructed to adapt style to target audience (e.g. explanatory material to be read by ordinary citizens, press releases, information booklets)?

5. Which guidelines are most frequently given to drafters? Are they considered as binding in some cases? Which guidelines exist for transposing legal or other technical terms into more user-friendly or clearer/transparent wording?

6. How are guidelines brought to the attention of drafters? Are there any style manuals, or training seminars?

7. How helpful are guidelines and training in your daily work? Is there any specific area which in your view is not adequately addressed?

	4. Documents classified? Style adapted to target?	5. Which guidelines to drafters? Are they binding?	6. Are there style manuals? Training seminars?	7. How helpful are guidelines/ training? Any areas to be addressed?
ACA-Europe	no, only judicial texts are concerned	n/a	no	n/a
Belgium	n/a	guidelines in Dutch and French	cp. (5)	very helpful no, excellent guide
Canada/Uni-Montréal	yes, all texts must be adapted to target audience	many guidelines are binding	various style manuals, training seminars in both English and French	very helpful yes: criminal law and income tax area (Revenue Canada)
ECHR	no classification; adaptation to target audience	no binding guidelines but lawyers expected to follow certain principles	manuals, workshops, occasionally other kinds of texts (newsletter)	helpful drafters do not always consult such material
Finland	n/a	n/a	guidelines	n/a
France/Independent	yes	n/a	n/a	n/a
France/Juriscopie	n/a	n/a	no	n/a
France/Ministry of Finance	no	n/a	n/a	n/a
France/Senate	yes	no such guidelines except for guide drafted by <i>Service de la Séance</i>	style manuals no training	n/a
Germany	yes, very detailed classification	many detailed	manuals, training programmes for	helpful

	according to objectives /procedures	guidelines Some of them <i>de facto</i> binding	civil servants, training seminars for all drafters	
ILO	yes	n/a	n/a	n/a
Israel/Uni-Jerusalem	yes	n/a	yes	helpful
Italy/ISS	n/a	n/a	n/a	n/a
Italy/Parliament	n/a	principles, <i>regole</i> (more binding) and <i>raccomandazioni</i> (applicable when appropriate)	guidelines	very helpful
Italy/South-Tyrol	no explicit classification; adaptation to target audience	trilingual Guidelines from 1997	guidelines	very helpful
OECD	yes	most recommendations available in Style Guide (by PAC in cooperation with Translation Division, English/French, periodically updated)	Style guide and terminological data. Training seminars on drafting available to in-house staff	helpful
Romania/Uni-Bucharest	no	no	n/a	helpful to some point
Spain/Basque Country	yes: different document families/procedures and adaptation	several guidelines and published books	style books, several courses and specific training programmes for bilingual activity (offering both individual and collective training)	generally helpful. Some of them very helpful need for updating, their use not sufficiently diffused
Spain/Catalan Parliament	yes	detailed guidelines	guidelines and recommendations training	very helpful more courses needed
Sweden	n/a	n/a	n/a	very helpful
Switzerland/FC-Italian Division	yes (distinction by type of document and target audience)	guidelines and instructions (binding)	cp. (5) training courses and seminars	very helpful, essential
Switzerland/FC-Terminology	yes	guidelines for German; less so for French and Italian (but see above). English Style Guide currently in progress	specific publications, available also for general public. No specific training	helpful
UK	not classification of documents as such, but consideration of	document of drafting guidance published on OPC's	several guidance documents	very helpful

	target audience	section of the Cabinet Office website guidelines not binding, but drafters adhere to them unless good reason not to		
Unidroit	yes, attention devoted from an early stage to type, style and format of the document taking into account the target audience	no formal guidelines; informal drafting suggestions depending on type of text	no specific training	n/a
UNOV	yes	standard practice embodied in existing documents, providing good models.	guidelines, in-house and online courses	helpful to a degree
US/Legislative Counsel	not as such	use uniform drafting style (available to the public).	style manual two-year training period on all aspects of drafting	very helpful
US/Louisiana	n/a	Legislative manual of guidelines and in house drafting manual	yes	helpful

Question 8⁷⁴⁶

8. Which tools do you use in your work and how helpful are they? (a) databases/portals, b) software designed for the purpose of drafting or translation, c) thesauri, d) subject dictionaries and lexicons, e) models, f) others.

Question 9⁷⁴⁷

9. Do you have specific guidelines on issues such as gender neutrality or any other issue relating to political correctness (awareness of diversity); use of neologisms, anglicisms or false friends; words that cannot or should not be translated; use of paraphrase; ways of expressing obligation (use of verb and/or tense); punctuation?

In which cases do you find it is useful to have detailed instructions (e.g. fixed number of words, limits to paragraph length)?

⁷⁴⁶ See the analytical list of frequently used tools indicated by respondents in Part III, Chap. 2, para 2, Question 8.

⁷⁴⁷ See the analytical list of guidelines on specific issues indicated by respondents in Part III, Chap. 2, para 2, Question 9.

Question 10

10.A. The following defects are frequent: (a) lack of coherence or cohesion between paragraphs; (b) lack of agreement in gender, number or case; (c) inconsistent cross-references; (d) outdated versions surviving later corrections; (e) typos; (f) other defects you consider important or frequent.

	Lack of coherence or cohesion between paragraphs	Lack of agreement in gender, number or case	Inconsistent cross-references	Outdated versions surviving later corrections	Typos	Other defects you consider important or frequent
ACA-Europe	n/a	n/a	n/a	n/a	n/a	n/a
Belgium	yes	yes	yes	yes	yes	yes
Canada/Uni-Montréal	yes	n/a	n/a	n/a	n/a	yes
ECHR	yes	yes	yes	yes	yes	yes
Finland	yes	no	n/a	n/a	n/a	n/a
France/Independent	no	no	no	no	yes	no
France/Juriscope	n/a	n/a	n/a	n/a	n/a	n/a
France/Ministry of Finance	n/a	n/a	n/a	n/a	n/a	n/a
France/Senate	no	no	no	no	no	no
Germany	no	no	no	no	no	no
ILO	yes	yes	yes	yes	yes	yes
Israel/Uni-Jerusalem	yes	no	no	no	no	no
Italy/ISS	n/a	n/a	n/a	n/a	n/a	n/a
Italy/Parliament	no	no	no	no	no	yes
Italy/South-Tyrol	yes	no	no	no	yes	yes
OECD	yes	yes	yes	n/a	n/a	n/a
Romania/Uni-Bucharest	no	yes	no	yes	yes	n/a
Spain/Basque Country	yes	n/a	yes	n/a	n/a	yes
Spain/Catalan Parliament	yes	yes	yes	yes	yes	yes
Sweden	n/a	n/a	n/a	n/a	n/a	n/a
Switzerland/FC-Italian Division	yes	yes	yes	yes	yes	yes
Switzerland/FC-Terminology	yes	n/a	n/a	n/a	n/a	yes
UK	yes	yes	yes	yes	yes	n/a

Unidroit	yes	yes	yes	yes	yes	yes
UNOV	yes	yes	yes	no	yes	yes
US/Legislative Counsel	n/a	n/a	n/a	n/a	n/a	n/a
US/Louisiana	no	no	no	no	no	no

10.B. To avoid these defects, do you revise the text by focusing on each kind of problem separately? Are repeated readings usually done?

	Proof-reading	Repeating reading	Reading by legal service	Editing originals of
ACA-Europe	n/a	n/a	n/a	yes
Belgium	n/a	n/a	yes	n/a
Canada/Uni-Montréal	yes	yes	yes	n/a
ECHR	n/a	yes	n/a	yes
Finland	n/a	n/a	n/a	n/a
France/Independent	n/a	yes	n/a	n/a
France/Juriscope	n/a	n/a	n/a	n/a
France/Ministry of Finance	n/a	n/a	n/a	n/a
France/Senate	n/a	yes	n/a	n/a
Germany	n/a	yes	n/a	n/a
ILO	n/a	n/a	n/a	n/a
Israel/Uni-Jerusalem	n/a	n/a	n/a	n/a
Italy/ISS	n/a	n/a	n/a	n/a
Italy/Parliament	n/a	yes	n/a	yes
Italy/South-Tyrol	yes	n/a	n/a	n/a
OECD	n/a	yes	n/a	n/a
Romania/Uni-Bucharest	n/a	yes	n/a	n/a
Spain/Basque Country	n/a	yes	n/a	n/a
Spain/Catalan Parliament	n/a	yes	n/a	n/a
Sweden	n/a	n/a	n/a	n/a
Switzerland/FC-Italian Division	n/a	yes	n/a	n/a
Switzerland/FC-Terminology	yes	n/a	n/a	n/a
UK	n/a	yes	n/a	n/a

Unidroit	n/a	yes	n/a	n/a
UNOV	n/a	yes	n/a	yes
US/Legislative Counsel	yes	n/a	yes	n/a
US/Louisiana	n/a	n/a	n/a	n/a

Questions 11-12⁷⁴⁸

11-12. Does drafting in the different languages take place simultaneously (co-drafting)?

Is there interaction between drafters and translators?

	Co-drafting	Interaction drafters/translators
ACA-Europe	no	yes
Belgium	no	yes
Canada/Uni-Montréal	yes	yes
ECHR	no	yes
Finland	no	yes
France/Ministry of Finance	n/a	no, except for very few cases
ILO	no	yes, rarely
Italy/South-Tyrol	yes	yes
OECD	no	yes
Spain/Basque Country	yes (only experimental)	no
Spain/Catalan Parliament	no	yes
Switzerland/FC-Italian Division	yes	yes
Switzerland/FC-Terminology	no	yes
Unidroit	yes	yes
UNOV	no	no, seldom

⁷⁴⁸ This question applies only to a restricted group of respondents.

Question 13⁷⁴⁹

13.A.: Is there an internal translation service in your institution or organisation?

ACA-Europe	n/a
Belgium	yes (the Linguistic Service)
Canada/Uni-Montréal	yes
ECHR	yes
Finland	yes
France/Ministry of Finance	yes
ILO	yes
Italy/South-Tyrol	yes
OECD	yes
Spain/Basque Country	yes (Official translation services, IZO, of the Basque Government)
Spain/Catalan Parliament	yes (the Language Consulting Services)
Switzerland/FC-Italian Division	yes
Switzerland/FC-Terminology	yes
Unidroit	no
UNOV	yes

13.B. What is the recruitment policy of your organisation, for example in terms of translator experience requirements?

⁷⁴⁹ This question applies only to a restricted group of respondents.

13.C. Which percentage of translations is outsourced to freelance translators? In these cases, how is internal revision organised?

	Percentage of translations outsourced	Institutions and organisation with an internal revision service
ACA-Europe	n/a	n/a
Belgium	2-5% (for English and German)	yes
Canada	percentage varies	yes (in some academic institutions)
ECHR	less than 5%	yes
Finland	approximately 30%	yes
France/Juriscope	almost all translation	yes
France/Ministry of Finance	50%	n/a
ILO	percentage varies (French 60%; English, Spanish and others 100%);	n/a
Italy/ISS	all translations	no
Italy/South-Tyrol	according to a new guideline, departments must avoid any outsourcing	yes
OECD	nearly 50% for French; less than 50% for English; 100% for non-official languages (except German)	yes
Spain/Basque Country	n/a	yes
Spain/Catalan Parliament	about 37%	yes
Switzerland/FC-Italian Division	max. 2% for normative texts; max. 15% for other administrative texts	yes
Switzerland/FC-Terminology	percentage varies	yes
Unidroit	100%	no
UNOV	approximately 35%	yes

13.D. Are lawyer-linguists involved? If so, what are their tasks and when are they performed?

ACA-Europe	n/a
Belgium	no
Canada/Uni-Montréal	yes

ECHR	yes
Finland	yes
France/Juriscope	yes
France/Ministry of Finance	no
ILO	n/a
Italy/ISS	no
Italy/South-Tyrol	no
OECD	no
Spain/Basque Country	yes
Spain/Catalan Parliament	no
Switzerland/FC-Italian Division	yes
Switzerland/FC-Terminology	no
Unidroit	no
UNOV	no

Question 14⁷⁵⁰

14. How do the tasks of translators differ from those of drafters in terms of guidelines and tools?

	Common Guidelines/ Style manuals	Common Tools	Special tools for translators	Special tools for drafters
ACA-Europe	n/a	n/a	n/a	n/a
Belgium	yes	no	yes <i>SDL Trados</i> <i>Antidote</i> (Spellchecker)	n/a
Canada/Uni Montréal	no	no	n/a	n/a
ECHR	yes	yes	<i>Logiterm</i>	table of common errors
Finland	yes	no	yes Swedish legal drafting manual. Internal guidelines for translators and revisers. EU interinstitutional style guide and other EU publications for translators Guidelines for translating legal texts and revising translations. <i>SDL Trados Studio</i> and <i>MultiTerm</i> termbank. <i>IATE</i> , <i>Lagrummet.se</i> (portal for Swedish public administration); termbanks in Finland and Sweden, and electronic dictionaries.	no
ILO	no	no	n/a	n/a
Italy/South-Tyrol	yes	yes	no (but <i>Lexalp</i> for cooperation in the cross border mountains areas)	no
OECD	yes	yes	CAT-Tool (<i>Multitrans</i>) Terminological databases (OECD, IATE, JAMCATT, etc.)	n/a
Spain/Basque Country	n/a	n/a	n/a	n/a
Spain/Catalan Parliament	yes	yes	yes Real Academia Española (dictionary and website)	n/a

⁷⁵⁰ This question applies only to a restricted group of respondents.

			Fundeu Fondation (language advice website)	
Switzerland/FC-Italian Division	no	no	<i>Termdat</i> <i>IATE</i> Online dictionaries and glossaries < http://www.bk.admin.ch/dokumentation/sprachen/04850/05575/index.html?lang=it >	Drafting instructions and models
Switzerland/FC-Terminology	n/a	n/a	n/a	n/a
UK	n/a	n/a	n/a	n/a
Unidroit	no	no	no	no
UNOV	no	no	<i>Mercury</i> (CAT tool) online dictionaries, thesauri translation search engines terminology databases	n/a

Question 15⁷⁵¹

15. Are you aware of any case in which the source language had an impact on the translation and led to difficulties in understanding?

	Terminological problems	Structural differences	Ambiguous originals	Ambiguous translations
ACA-Europe	n/a	n/a	n/a	n/a
Belgium	yes	no	no	n/a
Canada/ Uni-Montréal	yes	yes	yes	yes
ECHR	n/a	n/a	yes	yes
Finland	no	no	no	no
ILO	n/a	n/a	yes	n/a
Italy/ South-Tyrol	yes	yes	yes	n/a
OECD	n/a	n/a	yes	n/a
Spain/Basque Country	n/a	n/a	yes	n/a
Spain/Catalan Parliament	yes	n/a	yes	n/a
Switzerland/FC- Italian Division	yes	n/a	n/a	n/a
Switzerland/FC- Terminology	n/a	yes	n/a	n/a
Unidroit	n/a	n/a	n/a	n/a
UNOV	n/a	n/a	n/a	yes

⁷⁵¹ This question applies only to a restricted group of respondents.

Question 16

16. Is there any additional quality control before documents are published?
If so, who is involved in this phase?

	Additional quality control	Ad hoc service/unit
ACA-Europe	no	no
Belgium	n/a	n/a
Canada/Uni-Montréal	yes	yes
ECHR	yes	yes
Finland	n/a	n/a
France/Independent	yes	n/a
France/Juriscopie	yes	no
France/Ministry of Finance	yes	no
France/Senate	no	no
Germany	yes	yes
ILO	yes	n/a
Israel/Uni-Jerusalem	yes	yes
Italy/ISS	yes	yes
Italy/Parliament	yes	yes
Italy/South-Tyrol	yes	yes
OECD	yes	no
Romania/Uni-Bucharest	no	no
Spain/Basque Country	no	no
Spain/Catalan Parliament	yes	yes
Sweden	yes	yes
Switzerland/FC-Italian Division	yes	yes
Switzerland/FC-Terminology	yes	no
UK	yes	no
Unidroit	yes	no
UNOV	yes	yes
US/Legislative Counsel	yes	yes
US/Louisiana	yes	no

Question 17

17. Is there a standard checklist to guarantee document quality? If possible, please specify checklist sections.

ACA-Europe	no
Belgium	n/a
Canada/Uni-Montréal	yes
ECHR	no
Finland	n/a
France/Independent	n/a
France/Juriscope	yes
France/Ministry of Finance	no
France/Senate	no
Germany	yes
ILO	no
Israel/Uni-Jerusalem	no
Italy/ISS	yes
Italy/Parliament	n/a
Italy/South-Tyrol	yes
OECD	no
Romania/Uni-Bucharest	no
Spain/Basque Country	no
Spain/Catalan Parliament	no
Switzerland/FC-Italian Division	yes
Switzerland/FC-Terminology	n/a
Sweden	n/a
UK	no
Unidroit	no
UNOV	yes
US/Legislative Counsel	no
US/Louisiana	no

Question 18

18. How much time is needed on average to publish a document, once it has been drafted and translated?

If possible, distinguish according to the kinds of documents you manage and provide details about an average timeline including all phases. Please highlight possible disruptions that may occur during the process.

Question 19

19. Do you have an organisational chart of the various services or units in charge of drafting/translating/revision in your organisation?

Who is in charge of coordination of the overall process?

Which service or unit approves the final version of the document and authorises publication?

	Organisational chart
ACA-Europe	no
Belgium	n/a
Canada/Uni-Montréal	no (not in universities but a chart exists in public institutions)
ECHR	no
Finland	n/a
France/Independent	n/a
France/Juriscope	n/a
France/Ministry of Finance	no
France/Senate	no
Germany	n/a
ILO	no (the problem is solved through informal coordination)
Israel/Uni-Jerusalem	n/a
Italy/ISS	yes (internal workflow)
Italy/Parliament	yes
Italy/South-Tyrol	yes
OECD	yes
Romania/Uni-Bucharest	no
Spain/Basque Country	no
Spain/Catalan Parliament	yes
Sweden	n/a

Switzerland/FC-Italian Division	yes
Switzerland/FC-Terminology	no
UK	yes
Unidroit	no
UNOV	yes
US/Legislative Counsel	yes
US/Louisiana	yes

Question 20

20. Are additional explanatory notes sometimes published along with official documents? In your view, how effective is this methodology? Is there a risk of producing conflicting messages?

	Additional explanatory notes
ACA-Europe	no
Belgium	n/a
Canada/Uni-Montréal	this practice should be avoided as much as possible
ECHR	no (this is not really applicable to judicial activity)
Finland	n/a
France/Independent	yes
France/Juriscopie	yes (depending on the kind of document)
France/Ministry of Finance	yes (translator's notes)
France/Senate	no
Germany	yes (all legal drafts of the federal Government contain explanatory notes)
ILO	no
Israel/Uni-Jerusalem	yes
Italy/ISS	n/a
Italy/Parliament	no (but explanatory notes can be added in the Official Journal)
Italy/South-Tyrol	yes
OECD	Seldom (glossary instead)
Romania/Uni-Bucharest	no
Spain/Basque Government	yes (but only along formal law)
Spain/Catalan Parliament	no (with some exceptions)
Sweden	n/a
Switzerland /FC-Italian Division	yes
Switzerland /FC-Terminolgy	rarely
UK	yes
Unidroit	yes
UNOV	no
US/Legislative Counsel	no
US/Louisiana	yes

Question 21

21. Is there an established feedback form on document quality that is available for citizens or any other recipient?

ACA-Europe	n/a
Belgium	n/a
Canada/Uni-Montréal	no
ECHR	no
Finland	yes
France/Independent	n/a
France/Juriscopie	n/a
France/Ministry of Finance	yes
France/Senate	no
Germany	no (no special form, however requests are answered by the leading federal ministry)
ILO	no
Israel/Uni-Jerusalem	n/a
Italy/ISS	n/a
Italy/Parliament	n/a
Italy/South-Tyrol	no
OECD	yes
Romania/Uni-Bucharest	no
Spain/Basque Government	yes
Spain/Catalan Parliament	no
Sweden	n/a
Switzerland/FC-Italian Division	yes
Switzerland/FC-Terminology	no
UK	no
Unidroit	no
UNOV	yes
US/Legislative Counsel	no (not specific)
US/Louisiana	no (not specific)

Question 22

22. Once the document is published, what kind of corrections and amendments are allowed? Could a document be revised because of lack of language clarity alone?

	Corrections allowed after publication
ACA-Europe	n/a
Belgium	no
Canada/Uni-Montréal	n/a
ECHR	yes
Finland	yes
France/Independent	yes
France/Juriscope	n/a
France/Ministry of Finance	n/a
France/Senate	no
Germany	yes
ILO	no
Israel/Uni-Jerusalem	yes
Italy/ISS	yes
Italy/Parliament	yes
Italy/South-Tyrol	yes
OECD	yes
Romania/Uni-Bucharest	n/a
Spain/Catalan Parliament	yes
Spain/Basque Government	yes
Sweden	yes
Switzerland/FC-Italian Division	yes
Switzerland/FC-Terminology	no
UK	yes
Unidroit	yes
UNOV	yes
US/Legislative Counsel	yes
US/Louisiana	no

Question 23

23. Is your institution or organisation interested in consulting experts in order to improve document quality control?

ACA-Europe	no
Belgium	n/a
Canada/Uni-Montréal	yes
ECHR	n/a (not sure for reasons of confidentiality, judicial specificity)
Finland	yes
France/Independent	n/a
France/Juriscopie	yes
France/Ministry of Finance	yes
France/Senate	no
Germany	yes
ILO	no
Israel/Uni-Jerusalem	n/a
Italy/ISS	n/a
Italy/Parliament	n/a
Italy/South-Tyrol	yes
OECD	yes
Romania/Uni-Bucharest	no
Spain/Basque Country	yes
Spain/Catalan Parliament	yes
Sweden	n/a
Switzerland/FC-Italian Division	yes
Switzerland/FC-Terminology	yes
UK	yes
Unidroit	yes (the only constraint – important – is financial)
UNOV	yes
US/Legislative Counsel	n/a
US/Louisiana	yes

Question 24

24. Is there an established document quality assessment procedure? How dynamic and open to change are the procedure, instructions, and tools? Please provide examples, if possible, of significant changes made in the procedure and instructions in the last 10 years.

	Is there an established document quality assessment procedure?
ACA-Europe	n/a
Belgium	n/a
Canada/Uni-Montréal	yes
ECHR	no
Finland	n/a
France/Independent	n/a
France/Juriscope	yes
France/Ministry of Finance	yes
France/Senate	no
Germany	yes
ILO	n/a
Israel/Uni-Jerusalem	n/a
Italy/ISS	n/a
Italy/Parliament	yes
Italy/South-Tyrol	yes
OECD	no
Romania/Uni-Bucharest	no
Spain/Basque Country	no
Spain/Catalan Parliament	no
Sweden	n/a
Switzerland/FC-Italian Division	yes (but only for recurring publications)
Switzerland/FC-Terminology	yes
UK	no
Unidroit	no
UNOV	yes
US/Legislative Counsel	yes
US/Louisiana	yes

Question 25

25. Has your institution or organisation redefined its policy for the drafting of documents, translation work, or any other forms of communication as part of administrative reform, or a political initiative? Please provide brief details stating dates and objectives.

	Policy of document drafting redefined by administrative reform or political initiative
ACA- Europe	n/a
Belgium	n/a
Canada/Uni-Montréal	yes
ECHR	yes
Finland	yes
France/Independent	n/a
France/Juriscopie	n/a
France/Ministry of Finance	n/a
France/Senat	no
Germany	yes
ILO	no
Israel/Uni-Jerusalem	n/a
Italy/ISS	yes
Italy/Parliament	yes
Italy/South-Tyrol	yes
OECD	yes
Romania/Uni-Bucharest	no
Spain/Basque Country	n/a
Spain/Catalan Parliament	yes
Sweden	yes
Switzerland/FC-Italian Division	yes
Switzerland/FC-Terminology	no
UK	no
Unidroit	no
UNOV	yes
US/Legislative Counsel	yes
US/Louisiana	yes

Question 26

26. If European legislation is concerned, is there an institution or procedure to assess its quality and clarify uncertainties? Please give a short description.

	An institute or procedure to assess quality of European legislation and clarify uncertainties
ACA-Europe	n/a
Belgium	n/a
Canada/Uni-Montréal	n/a
ECHR	n/a
Finland	yes
France/Independent	n/a
France/Jurisclope	n/a
France/Ministry of Finance	n/a
France/Senate	no
Germany	yes
ILO	n/a
Israel/Uni-Jerusalem	n/a
Italy/ISS	n/a
Italy/Parliament	yes
Italy/South Tyrol	no
OECD	no
Romania/Uni-Bucharest	n/a
Spain/Basque Country	yes
Spain/Catalan Parliament	no
Sweden	yes
Switzerland/FC-Italian Division	yes
Switzerland/FC-Terminology	n/a
UK	no (but House of Lords Committee)
Unidroit	no
UNOV	n/a
US/Legislative Counsel	n/a
US/Louisiana	no

Questions 27-30

27. 'Easification' (Bhatia V. K., 1983) is aimed at achieving a higher degree of explicitation of structure and coherence in texts without losing information. What is your view of attempts to simplify legal language?

28. Can you provide examples of failure of existing procedures? In such cases, why were drafting directions forgotten or disregarded? Which factor for correct implementation was missing? How was the process improved afterwards?

29. With which of the following statements do you agree more: (a) 'Irrespective of the time available, there are cases in which a document cannot be written in a way that makes it clear'; (b) 'all shortcomings in document quality are simply due to lack of time and not to inherently complex linguistic problems'?

30. In your view, is there an institution or organisation, other than yours, that has proved successful in dealing with document quality control?

	27. 'Easification'	28. Failures of procedures	29. Clarity unachievable irrespect. of time (A)/solely concerns (B)	30. Other DQC successful institutions
ACA Europe	not relevant (addressees: legal experts)	n/a	n/a	n/a
Belgium	n/a	n/a	n/a	n/a
Canada/Uni-Montréal	problematic	due to time	A	Justice Canada, Canada Translation Bureau
ECHR	necessary to some extent (not always appropriate for judicial texts)	misunderstood instructions; disregard of style guides	A	n/a
Finland	only recently recognised for Finnish, long ago for Swedish	lack of time for terminological revision and quality control	B	Sweden
France/Independent	necessary	n/a	B	n/a
France/Juriscope	no (better: explanatory notes)	n/a	Both elements	n/a

France/Ministry of Finance	n/a	n/a	n/a	n/a
France/Senate	very hard to implement due to complexity of law	n/a	time constraints inevitable due to legislative <i>iter</i>	n/a
Germany	a target (though difficult to reach)	n/a	neither (clarity can be achieved through appropriate expertise)	n/a
ILO	n/a	n/a	B	n/a
Israel/Uni-Jerusalem	In favour	n/a	Both elements	n/a
Italy/ISS	In favour (glossaries and other tools may help)	n/a	A	n/a
Italy/Parliament	n/a	n/a	B (with provisos)	n/a
Italy/South Tyrol	very important and a duty	due to authorities not acknowledging importance of legal/linguistic consultancy	B (also due to too literal translations)	Switzerland, Germany (Bundesjustizminist./Redaktionsstab)
OECD	yes, if not hindering precision (useful: explanatory notes)	(external) drafters not complying with <i>Style Guide</i> recommendations	neither (both time and lack of drafting capacities; or compromise solutions)	perhaps EU
Romania/Uni-Bucharest	In favour	inconsistencies	B	Romanian Ministry of Justice
Spain/Basque Country	necessary	n/a	B	Catalonia, Canada (Sweden, Italy)
Spain/Catalan Parliament	necessary (though difficult to achieve)	due to communication gaps/ lack of linguistic consultancy/revision	neither (lack of both will of cooperation and drafting skills)	Sweden
Sweden	n/a	n/a	Both (more B)	n/a
Switzerland/FC-Italian Division	yes (yet not at expenses of terminological precision)	due to lack of time, quality control and style, lack of consistency	B (also lack of addressee's perspective)	n/a
Switzerland/FC-Terminology	yes (resistance by legal experts)	n/a	B	n/a
UK	wholly in favour	n/a	neither (quality depends on many factors)	n/a
Unidroit	useful (but requires great attention to)	many factors including number and	A (with provisos)	themselves (comparatively better than)

	aims/address ees)	cooperation of drafters; soft laws more successful		others)
UNOV	not familiar with expression (but see qu. 9)	continual influx of new staff	B	interested in knowing more about others
US/Legislative Counsel	a goal, but cannot trump the main objective in legislative language, i.e. precision	due to lack of adequate time leading to lack of precision in drafting	cp. (27) – complexity of policies	n/a
US/Louisiana	in favour	model acts modified by legislative staff	A	West Publishing company

A selection of drafting manuals, useful schemes and materials, including the questionnaire, may be accessed at the following link:

<https://www.dropbox.com/sh/tgi64b5ovqk60km/NleVQT1-qc?n=7625712>

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