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TRANSLATING EMPLOYMENT TERMINOLOGY IN A COMPARATIVE PERSPECTIVE

Candidata:
Martina Ori

Tutor scientifico:
Dott. Pietro Manzella

Coordinatore di indirizzo del Dottorato:
Chiar.mo Prof. Michele Tiraboschi

Direttore della Scuola di Dottorato:
Chiar.mo Prof. Giuseppe Bertagna

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Abstract

The present research analyzes the conceptualization of the individual employment relationship through a multilingual approach, drawing on Italian terminology, regulations and practices, with a view to exploring their translation and conceptualization in English. The Italian-to-English translation lies at the foundation of a comparative work, which considers both the variety of British and American English, as well as their respective underlying legal systems and cultures, extensively discussed for the purpose of language and conceptual comparison.

The research focuses on the individual employment relationship in the light of recent trends in terms of internationalization of employment, and aims at providing comparative scholars and practitioners an insight into an interdisciplinary field of study that combines language and law. It also aims at furthering research on a topic that has been so far generally overlooked in language-based comparative studies. The work, taking as a starting point the Italian legal system, discusses language differences between Italian and English, considered as the signal of significant differences in sociological, legal, and cultural terms. The study applies the language-based comparative method to the analysis of the employment relationship terminology (focusing, in chapter one, on employment, self-employment and employment through intermediaries), taking into account the differentiations existing between sociological concepts and legal concepts. Moving on, the study applies the same approach to the practice of contract drafting and translation (chapter two), combining theory and practice, as well as giving a new perspective to legal drafting and translation. Chapter three provides a detailed and annotated glossary of employment terminology, which includes the translation of Italian terms, their explanation in English and an overview of related terms that are useful to identify similar conceptualization patterns in the target-language systems. The purpose is to provide a conceptual framework on how to approach comparative analysis from the perspective of language, identify cultural and legal differences and commonalities among countries through language, and can serve as a handy guidebook for practitioners. Besides contributing to filling a gap in the interdisciplinary literature in the field, it also clearly shows the power of language as a tool to interpret different patterns of work across countries.

Introduction

Outline: 1. Foreword; 2. Purpose and Structure; 3. Methodology.

Language is a guide to “social reality”. [...] The worlds in which different societies live are distinct worlds, not merely the same world with different labels attached.

E. Sapir, 1929¹

1. Foreword

Over the past decades, the globalization wave has profoundly affected employment policies and practices across countries. A new employment relationship has emerged worldwide as a consequence of the changes in the economic and social environment. Differing legislations, practices and local cultures pose new challenges for international employment law². In today’s global economy, comparative research in this field has

¹ E. SAPIR, *The Status of Language as a Science*, Language, Vol. 5, No. 4, 1929, pp. 207-214, here p. 210.

For the sake of the argument, some references are present in the introductory part and some throughout the work, mainly providing legal and statutory definitions, which are deemed essential considering the importance of language in this work and the role played by apparently minor differences in formulations in conceptualizing, defining and translating employment terminology.

² The language chosen for the present work is American English. This affects not only orthography, but also the use of the technical language. British and European English separates “labour law” and “industrial relations”, with the first referring to the individual dimension of law, and the latter to the collective regulation of work. American English brings about a different conceptual universe, where the notions of “labour law and industrial relations” are generally expressed through “labor and employment”, with labor that refers to the “collective” dimension of work, and employment referring to the regulation of the individual work relationship. The term “labor” in the United States is generally associated with the collective, rather than individual dimension of work (See M. WEISS, *Re-inventing Labour Law?* in G. DAVIDOV, B. LANGILLE, (eds.), *The Idea of Labour Law*, Oxford, Oxford University Press, 2011 p.

become increasingly relevant. The ongoing internationalization coupled with the persistent local dimension of employment legislation and practices has generated a global-local tension that requires in-depth comparative, international and interdisciplinary analysis.

Against this backdrop, a number of factors can be identified as having a significant impact on the evolution of employment law. These include the development of Global Value Chains and Global Production Networks, the growing number of multinational companies, and ongoing migration flows, which have resulted in an increased interaction between national legal systems and increased interconnectivity³. Global Value Chains and Global Production Networks have played a major role in shaping international law and industrial relations at the transnational level. Multinational companies have acquired more power, with significant consequences on the

44 and R. BLANPAIN, S. BISOM-RAPP, W. R. CORBETT, H. K. JOSEPHS, M. J. ZIMMER, *The Global Workplace – International and Comparative Employment Law*, Cambridge, Cambridge University Press, 2007, p. 93). Also, the Legal Information Institute of the Cornell University Law School, defines labor law in the U.S. context as the laws primarily dealing with the relationship between employers and unions (definition available here: <http://www.law.cornell.edu/wex/labor>, last accessed 30 November 2014). In the general discourse, trade unions in the United States are referred to as “labor unions”, the “collective agreement” is generally called “labor contract/agreement”, the term “labor history” refers to the history of organized labor. There is therefore some degree of correspondence between “industrial relations” and “labor”, and between “labour law” with “employment law”. Yet there is no conceptual overlapping here, as language translation requires cultural adjustments. The present analysis refers mostly to the American notion of “employment” rather than labor, considering that the word employment fits particularly well with the intended focus of the present work, that is mainly the translation of terminology related to the individual employment relationship.

³ As pointed out by G. GARY, J. HUMPHREY, T. STURGEON, in *The Governance of Global Value Chains, Review of International Political Economy*, Vol. 12, No. 1, 2005, pp. 78-104, firms and workers perform a whole range of activities to bring a product from its conception to its end use and beyond. This includes design, production, marketing, distribution and support to the final consumer. The activities that make up a “value chain” can be performed by a single firm or divided among different companies, sometimes spread over wide geographical areas, hence the name “global value chain”. Over time, the concept has then evolved into Global Production Networks implying a shift in terminology from the concept of “chain” to that of “network”. The metaphor introduces a new theoretical and conceptual framework, drawing on the notion of network that exist within the “transnational space that is constituted and structured by transnational elites, institutions, and ideologies” (D. LEVY, *Political Contestation in Global Production Networks*, University of Massachusetts Boston, 2007, p. 24).

employment relationship, resulting in an increasingly “privatization” of economic relations and production. In this context, private employment relations are shaped by laws and rules that proceed from national public authorities on the one hand and international organizations on the other, all nurtured by transnational industrial relations and by the trends set by multinational companies, which, through corporate-level complementary regulations, significantly inform employment relationships across countries.

Furthermore, migration flows are contributing significantly to the development of new work patterns that shape individual employment relationships across the world. Most countries today are affected by international migration, as either origin, transit or destination countries with rising mobility of people in search of opportunities and decent work and security⁴.

However, despite the enhanced interconnection and mutual assimilation of employment practices among legal systems, policies remain mainly local and country-specific: “while the economy is becoming increasingly global, social and political institutions remain largely local, national or regional”⁵. National legal systems influence each other to a great extent, yet differences in national institutions still remain.

A possible approach for a qualitative analysis of the above-mentioned phenomena is through the study of the specialized language across different languages through translation. This ethnographic approach to comparative work is particularly effective and insightful in this field, being legislation the result of a combination of national cultural patterns and traditions that are encoded in a given language. The varieties of specialized languages existing worldwide are the consequence of the different cultural conceptualization of legal phenomena. Translation requires therefore extensive background investigation and knowledge, as it needs to take into account the legal and cultural differences of both the source and target language and legal culture. Language is consistent with the laws, the traditions, and the way of thinking of a community.

In this light, a comparative analysis based on the study of language makes it possible to identify and discuss through translation both the “local” and the “global” dimension

⁴ ILO, *Towards A Fair Deal For Migrant Workers In The Global Economy*, International Labour Conference, 92nd Session, 2004, p. 109.

⁵ ILO, *A Fair Globalization: Creating Opportunities for All*, 2004, p. 5.

of employment, as well as the challenges that this interconnection brings. The approach is novel, as interdisciplinary analyses in this field have so far seldom adopted a linguistic perspective to investigate trends in international employment.

The underlying assumption of this work draws on the theory of Linguistic Relativity formulated by E. Sapir and B. L. Whorf, according to which the differences in expressing mental categories through languages have an impact on the mindset of a cultural community, and speakers of different languages tend to develop a different way of thinking, based on the language spoken. Language and thought are considered to be inextricably interwoven, up to the point that linguistic categories may limit cognitive categories. Linguistic categories, therefore, affect how thought is developed and have an impact on the behavior of a community⁶, thus implying that different languages shape thought, mindset and culture in different ways.

Drawing on this assumption and based on the translation of employment terminology, the present comparative research aims at analyzing the challenges posed by globalization in the field of employment law and contracts by combining a legal, cultural and linguistic perspective.

The focus of this research is the study of the language relating to the individual employment relationship and its changing nature in the light of the spreading effects of internationalization of labor and production. The Italian legal system will be the system of reference and the relevant employment terminology will be translated into English, being English the language used by the international community, as well as the target language of most translations from Italian. The varieties of English that will be taken

⁶ E. SAPIR on the relationship between language and thought in *Language: An Introduction to the Study of Speech*, Cambridge, Cambridge Library Collection, 1921, p. 16: “We see this complex process of the interaction of language and thought actually taking place under our eyes. The instrument makes possible the product, the product refines the instrument. The birth of a new concept is invariably foreshadowed by a more or less strained or extended use of old linguistic material; the concept does not attain to individual and independent life until it has found a distinctive linguistic embodiment. In most cases the new symbol is but a thing wrought from linguistic material already in existence in ways mapped out by crushingly despotic precedents. As soon as the word is at hand, we instinctively feel, with something of a sigh of relief, that the concept is ours for the handling. Not until we own the symbol do we feel that we hold a key to the immediate knowledge or understanding of the concept. Would we be so ready to die for “liberty,” to struggle for “ideals,” if the words themselves were not ringing within us? And the word, as we know, is not only a key; it may also be a fetter”.

into consideration for comparative purposes will be mainly British and American (U.S.) English. In some cases, other varieties of English may also be considered, including, but not limited to, so-called “Euro-English”, i.e. the English spoken within the European Union, Australian English or Canadian English.

2. Purpose and Structure

The purpose of this work is twofold. First, it aims at investigating a topic that has so far been widely neglected. Second, it aims at providing a practical tool to labor market operators, comparative researchers and companies interested in international employment.

The research is divided into three parts. Chapter one analyzes the translation of the terminology referring to the different types of employment relationships existing in Italy as laid down in legislation, including the various types of contracts in use that shape these relationships. The chapter is structured to reflect the structure of employment law and of the way the different types of employment relationships in Italy are conceptualized, categorized and translated into English. Each translation is analyzed in the light of the target language, culture and legal system with a focus on translation challenges, potential pitfalls and ambiguities.

The second chapter analyzes a selection of contractual clauses that are particularly relevant in the international context, and the difficulties arising in cross-national translation and drafting. The chapter will also explore current trends in employment contract drafting by focusing on so-called “international contracts” as a form of “atypical” employment arrangements that result from the internationalization process.

The third chapter will provide a bilingual annotated glossary of employment and contractual terminology. This part aims at supporting researchers, contract drafters, professionals and translators in their work. Not only does the annotated glossary display definitions and translations of terms, but it also includes notes and comments to clarify the source language (Italian) context and ensure a deeper understanding of the term in the international perspective.

By focusing on translation of employment terminology, this work identifies and discusses the challenges posed by the increased interconnection between legal systems that affects the way individual employment relationships are shaped. It aims at shedding some light on cross-country differences, and raise awareness among labor market operators dealing with multiple legal systems and languages. It also presents a new approach to comparative research that draws on the analysis of language, as the “code” of a specific legal culture and system. Yet, it provides a preliminary exploration, pointing to further discussions as well as in-depth analyses that may adopt a similar perspective.

Another intended contribution of this work is the filling of a gap in comparative research studies, which have only seldom adopted the perspective of language as a tool to investigate labor-related phenomena and trends across countries. Moreover, the elaboration of an Italian-English annotated glossary could help raise awareness among operators and improve international communication. Finally, it may be of general help in contributing to boosting the internationalization process in Italy, as well as in creating a common conceptual ground for further international comparative research. It may also encourage more interdisciplinary studies in this field of research.

3. Methodology

The comparative approach has long been used in the social sciences and in cross-language analysis as effective research methodology. In recent times, comparison has become an essential tool to generate knowledge and investigate differences and commonalities between systems. Along these lines, comparative translation does not only implies the analysis of language, but also the knowledge of the “cultural environment” in which language develops, including traditions, institutions, values and economy, which underpin legislation. It also implies overcoming divisions between disciplines in order to define categories which can improve comparability. This does not necessarily require a standardization or harmonization of legal rules, although a clarification of the scientific vocabulary in use is essential. Translation as a comparative

research method gives researchers the opportunity to open up to other “worlds” by understanding the conceptual framework that underlies the different legal systems.

In the present work, concepts will be analyzed starting from their specific meaning in the Italian legal and cultural context. Then, they will be translated into English and compared with the target legal, cultural and linguistic equivalents or counterparts (where existing). Multiple levels of analysis are combined here: the study of language, the process of decoding language (i.e. “meaning” in the source culture), the process of re-encoding a concept in the target language (translation) and the analysis of meaning in the target language.

Three main challenges emerge from this multi-level investigation. The first relates to the “decoding process”, since “meaning” is the result of a combination of multiple legal sources, both at the national as well as European and international level. The second is the frequent case in which source language concepts and categories have no equivalent in the target language/culture. Here the difficulty lies in the ability to identify a formulation in the target language conveying the meaning of the Italian term in a clear and correct way. The third relates to the existence of similar, but not overlapping terms and concepts in the target language/culture. For instance, complex concepts such as the “contract of employment” encompass a whole variety of different ideas that must be understood against the source language cultural background and properly rendered in the target language. Many of these ideas, however, are the result of a specific legal tradition and they bear an implicit legal value, which the translator should be aware of. In that case, an effective translation should be able to signal the differences between the source language and its closest equivalent in the target language.

Chapter I

Definitions and Conceptualization of Employment Relationships in Italy and the Challenges of Legal Translation

Outline: 1. Introduction: A Language-based Study in the Field of Labor and Employment; 2. Translation of Employment Terminology as a Sub-genre of Legal Translation: Uniformity and Compatibility in the Absence of a Common Framework; 3. The Translation of Employment Relationship Terminology; 3.1. Employment 3.2. Self-employment; 3.3. Workers Employed by an Intermediary. 4. Conclusion.

It is widely believed that labour law is currently undergoing a “crisis” of core concepts.

S. Deakin, 2005⁷

1. Introduction: A Language-based Study in the field of Labor and Employment

In today's world, labor is one of the main factors of competition. Businesses' and workers' mobility has increased, employment law and practices regulating individual relationships between people have gone global, while remaining local. These trends are here analyzed through the study of language and translation, an uncommon approach to the research field, as shown by the limited amount of specific literature. Despite the small number of studies adopting this approach, the individual employment relationship has been significantly put under pressure by the variety of laws, cultures and languages getting in contact with each other, and is increasingly shaped by the internationalization

⁷ S. DEAKIN, *The Comparative Evolution Of The Employment Relationship*, Centre for Business Research, University of Cambridge Working Paper No. 317, 2005, p. 1.

of labor markets. In this context, a language-based comparative approach aimed at overcoming language barriers has become increasingly relevant.

The general aim of the present chapter is to provide a description of the various categories of the employment relationships existing in Italy, how they can be defined, conceptualized and translated into English in a way that can considerably reduce ambiguities, as well as increase awareness among labor market operators and scholars on the terminology to use. The proposed analysis and translations also aim at exemplifying some of the major challenges of comparative research, raising issues on the limits of cross-country comparability, on the distance between concepts, laws, policies and practices across different cultures, which could create an intricate web of potential misunderstandings, affecting both businesses and workers.

The chapter is structured in four sections: the next section (section two) provides a background overview of the international and European framework with regard to the individual employment relationships. Section three analyzes in details the various employment relationships existing in Italy. First, a description of the evolution of language will be provided, focusing on the “standard” vs. “non-standard” employment discourse in the light of the changes in the economic and social structure of the country mirrored by changes in legislation. Then, the translation of the Italian terminology of employment relationships is discussed in details, going from an analysis of the language characterizing the permanent employment contract, to self-employment arrangements, to include also the so-called “triangular” work relationships. A concluding section analyzes and discusses the findings of the chapter, with a focus on the challenges, the pitfalls and the useful insights emerged in the translation process, pointing to the following chapters.

2. Translation of Employment Terminology as a Sub-genre of Legal Translation: Uniformity and Compatibility in the Absence of a Common Framework

International organizations such as the International Labour Organization and the World Trade Organisation have developed a series of standards aimed at defining rights and duties of workers and employers. The ILO has adopted 190 Conventions, none of

which, however, specifically devoted to defining a common framework to categorize employment arrangements.

The European Union has developed an articulated system of laws with the aim to “harmonize” labor policies across Europe. However, EU Directives usually focus on specific aspects of the employment relationship, such as mobility, equality, health and safety at work, childcare, social security and pensions, business restructuring and workers’ participation, among others. The European Union purposely avoids, in accordance with the *Treaty on the Functioning of the European Union*, to provide a Europe-wide common categorization of the types of employment relationships, and refrains from regulating some of the most relevant aspects of the employment relationship (such as wage setting, collective bargaining and dismissals), because of the limited Community competence in this field. The individual employment relationship is therefore mainly regulated at the national level. There is therefore no *uniformity* at EU and international level in the regulation of individual employment relationships. Despite that, it is possible to identify recurrent patterns across countries, as there is a certain degree of *compatibility* of national legislation with other national legislations, as well as with EU and International standards, and compatibility is what makes translation possible. From the legal-linguistic viewpoint, the analysis of employment terminology can be considered a sub-genre of legal translation, as it draws on the same need to compare legal concepts in the light of different legal backgrounds. As it happens with legal translation in general, also in this specialized field, absolute equivalence is almost always impossible to find. The task of the translator is therefore that of identifying a *tertium comparationis*, i.e. a translated term that functionally expresses in the target language a concept existing in the source legal system. The purpose is not that of finding a linguistic or a conceptual equivalent – but that of identifying the best way to document and express source language terms in their national framework in another language. The purpose of the translation of employment terminology is ultimately that of informing, in a comparative perspective, target-language users about concepts existing in a different national legal system.

It is in this perspective that the following sections will analyze the various employment relationships existing in Italy and their conceptualization and translation into English.

3. The Translation of Employment Relationship Terminology

3.1. *Employment*

The purpose of the present section is to provide an overview of the translation process with particular reference to the terminology used to identify the different employment relationships existing in Italy starting from the relationship of “subordination”. Like in many European countries, Italian employment law and the individual employment relationship are built on the model of the “employment contract of indefinite duration” concluded between the employer and the employee. This contract is still today considered the basis of the “typical” (or “standard”) employment relationship in Italy.

This relationship is based on the notion of “subordination” of the employee to the employer, with the worker who operates following the directives and the organization established by the employer who, in turn, has directional and control power over the employee. The Italian Civil Code does not base the “employment relationship” on the presence of an “employment contract”, but rather on the presence of a relationship of subordination, as it emerges from the definition of “subordinate employee”. Thus, the notion of *subordinazione* constitutes the basis for conceptualizing work in Italy. It is in this legal and conceptual perspective that the “contract of indefinite duration” has traditionally served as the legal basis for the “typical” employment relationship in Italy.

The translation of the notion of *subordinazione* poses conceptual and linguistic challenges. Being the notion of “subordination” present in most European countries, the Italian concept of *subordinazione* can – at least in the European context – linguistically be rendered with the word “subordination” in English. Conceptually, the notion of *subordinazione* in Italy signals a very strong bond and a more structured hierarchical relationship than what the English term nowadays implies, as evolved from the servant-master relationship (which was at the outset in the 19th century hierarchical and based on the principle of control). The principle of subordination identifies the submission of the employee to the power of direction and control of the employer in the way the work is performed and the existence of a relationship of subordination that creates a distinction between self-employment and employment. At the European level, many

other countries also have a notion of subordination despite different conceptual nuances between countries. Yet, linguistically, this notion is only partly equivalent to the notion of “employment” in the UK. In Great Britain, there is no statutory definition of “subordination”. The Oxford Dictionary of Law, for instance, does not define the word subordination, neither the term is mentioned under “employment contract”. The employment relationship in the UK is based on the contract of employment, that is conceived, in modern terms, as a contract “of services”, distant from the master-servant relationship of the past. The existence of an employment relationship can be assessed by case law through a series of tests which are not exclusively based on control, but which take into account other factors, including integration into the business, economic reality test and the mutuality of obligation test. All this contributes to showing that the employment relationship is a broader concept and the bond that links the employer and the employee weaker.

In American English, the notion of “subordination” is generally not used in the context of employment. The word “subordination” bears a different connotation and is employed in different social contexts, such as that of civil and women rights. It is generally not conceptualized as a feature of the employment relationship. The tightest relationship between an employer and employee is expressed through the simple word “employment” (in opposition to the self-employed), and the word “employment” is not used in combination with “subordinate” such as in “subordinate employment”, and the idea that is conveyed is of a weaker bond between the parties involved in the relationship. It is true, however, that, although the use of the word “subordination” is mostly inappropriate and is usually not conceptually attributed to an “employment relationship” in the U.S., there is a common conceptual core between “subordination” and “employment”. In the U.S., a person is considered an “employee” if the employer has the right to *control* the worker’s work process, and this is consistent with the fact that U.S. employment patterns are also rooted in the master-servant relationship. Despite the absence of a statutory definition, also in American English the distinction between employee and self-employment is relevant and controversial. Much like British courts, American courts have developed a series of tests to determine the employee’s status: the common-law test, the economic realities test and a hybrid test, all of which aiming at assessing the control power that the employer exerts over the worker.

Drawing on the principle of subordination, the Italian employment legislation was built around the concept of the full-time employment contract of indefinite duration. This leads to the analysis of the Italian notion of *tempo indeterminato*, (indefinite duration), which is often rendered in English with “open-ended” or “permanent” employment, as if these words were interchangeable. However, the two terms do not always have the same meaning. In American English, in particular, an “open-ended” contract is not necessarily “permanent”. It could still refer to a contract which ends upon the completion of a project, where the final date of the conclusion of the project is not pre-determined. This is because, in the U.S. context, the distinction between permanent and fixed-term is much less relevant than in Europe, being employment most *at will*, that is, employers can terminate their employees at any time for any or no reason.

Whereas, in the Italian as well as European context, the distinction between permanent and fixed-term employment is critical. Both linguistically and conceptually, the translation of the words *tempo determinato* seems immediate, although regulatory discrepancies may exist across countries depending on the way each country regulates a specific legal notion. This means that, even when we think that a full equivalent of the term under analysis is easy to identify, one should bear in mind that the translated word may be culturally or legally associated with different patterns or rules by the target-language reader. By way of example, in Italy, a fixed-term contract cannot last more than 36 months, whereas in the United Kingdom, the maximum term is 4 years, but it could last longer, if the employer can show there is a good reason for that. This shows how an equivalent term can be conceptualized differently in the target language.

Sometimes differences exist not only at the regulatory level, but also at the linguistic and conceptual level. Linguistic discrepancies can be easy to detect, whereas conceptual differences are more insidious. The notion of *tempo determinato*, for example, does not have an exact conceptual equivalent in American English, because the juxtaposition between permanent versus fixed-term is not as relevant as in Europe. There are examples of clearly “fixed-term” contracts in the United States, such as “direct-hire temp” or “contract-to-hire/contract-to-perm”, but the conceptual focus is different, being these considered “trial” contracts concluded for a definite period of time with the aim to transiting to ordinary at-will employment at the end of that period. Moreover, fixed-term contracts in Italy, and in Europe in general, are usually based on a

relationship of subordination, but, being of limited duration, they are generally included among “non-standard” work arrangements. Conceptually, especially at the European level, everything that deviates from the permanent full-time employment relationship is considered to be “non-standard”. Over the last few decades, the “permanent contract” started giving way to a wide range of different work arrangements generally called in a variety of ways. “Non-standard work” is mainly used in Europe, and within international institutions, but also in the U.S. to a lesser extent, “atypical work”, is very common in Italy, “flexible work” is typical of continental Europe, “precarious”, is common mainly in southern Europe, as discussed below), “contingent” (mainly in the U.S.), “casual” (U.S. and UK and generally English-speaking countries) among others. This shift took place in conjunction with the decline of the model of work organization typical of the Taylorist and Fordist era, as well as with the internationalization of markets. The terms mentioned above point to similar – yet different – concepts. For instance, the notion of “non-standard” work should not be confused with the notion of “atypical” contract in Italy. Non-standard work (like “precarious work” for instance) is not a legal concept designating a specific type of contractual arrangement. It is rather a sociological category used to identify a variety of employment relationships that deviate from the standard career, based on the full-time permanent contract. Whereas, in Italy, “atypical contract” is a legal concept (see Chapter 2), referring to types of contracts that are not regulated under Italian law.

Various wordings are used to designate contractual arrangements that go beyond the open-ended, full-time employment contract, of which “non-standard work” is the most common in Europe and within international institutions. There are, however, cross-country differences, especially with reference to the United Kingdom, where the distinction between non-standard and standard work is more blurred than in more regulated labor markets. The term “non-standard” is used to indicate deviations from the “standard” in terms of employment duration and/or working-time (fixed-term or part-time work for instance) or with regards to special employment arrangements (agency work). *Lavoro atipico*, (“atypical” work), which is also sometimes used at the international level, is the term mainly used in Italy in this connection.

The concept of “precarious” work also falls within the realms of sociology rather than law, as there is no clear definition nor a commonly agreed understanding. Although,

conceptually, the international debate on the meaning of “precarious work” is very much biased towards specific contractual arrangements deemed to cause a certain degree of instability in people’s working life, no direct correlation can be established between “precariousness” and contracts, and “precarious work” is not necessarily the consequence of working under flexible arrangements: flexible contracts can also offer decent employment and working conditions, and vice versa permanent contracts can lead to insecurity, low access to training or be characterized by poor working conditions.

The word “precarious” that derives from the Latin word *prex*, meaning *prayer*, and *precarium*, meaning “something that is obtained through prayers” is very much typical of the Italian employment discourse as well as of southern European countries in general, whereas it is less typical of northern European and Anglophone countries, although it is increasingly used, especially in the international debate. This may also be related to the etymological meaning of the word, which is less bound to the cultural background of Northern and Anglo-Saxon countries. Much more used than “precarious”, is, in the Anglophone discourse, the notion of “contingent work”, which is not a legal concept either, but rather a non-technical word used to identify certain types of employment arrangements. In the UK, “contingent work” is used to refer primarily to so-called “limited duration contracts”, i.e. fixed-term contracts, casual or seasonal workers, as well as agency workers. In the United States, the notion of “contingent” work is much more used and broader than in Europe and the UK, and it includes everyone who does not have a contract for ongoing employment. A contingent worker in the United States is defined by the Bureau of Labor Statistics as a person “who does not expect their jobs to last or who reported that their jobs are temporary”. This broad definition points to the absence of consensus on the meaning of this word, and depending on the way contingent work is measured, the Bureau of Labor Statistics itself admitted that the number of contingent workers can range between 1.8 to 4.1% of total employment⁸. In this connection, it should also be noted that, in the U.S., “contingent work” and “alternative work arrangements” are two distinct concepts. As per the Bureau of Labor Statistics: “An employment arrangement may be defined as both contingent and alternative, but this is not automatically the case because contingency is defined

⁸ BLS, *Contingent and Alternative Employment Arrangements*, 2005, p.1 cited in Literature Review p. 142.

separately from the four alternative work arrangements”⁹. Looking at the use of the wording “contingent work” at the European level, we find that it is very seldom used to refer to the European context and it mainly comes up in comparative analyses including the United States. As pointed out above, in Europe, the debate is rather about “non-standard” work, which to some extent can be compared with the U.S. notion of “alternative” work, which includes the following four types of employment arrangements: independent contractors, on-call workers, temporary help agency workers and workers provided by contract firms¹⁰. Still on the notion of “contingent work”, mention should be made here of the role of the U.S. Department of Labor in advocating clarity in terminology (see Literature Review p. 141-142 for an overview).

Another word falling within the broader category of non-standard work is “temporary” work (*lavoro temporaneo*). The term can be used in its broad sense to encompass the whole array of employment relationships that are limited in duration, including fixed-term contracts. Yet, the very notion of “temporary work” can vary significantly across countries, ranging from including fixed-term contracts, as in the case of Australia, the UK and the EU, to countries that do not consider “fixed-term contracts” as temporary work. In Canadian English, for example, a difference exists between the notion of “fixed-term contract” that has a definite date of termination, and “temporary work” in general, which may still be expected to terminate at some point but where the termination date is not pre-determined. In the United States, the notion of “temporary work” is very broad and includes different types of work arrangements that go beyond the “employment” relationship in its narrow sense to include some kinds of self-employment, including independent contractors, temporary help, and contract company workers, as well as on-call workers¹¹.

Casual work also falls within the non-standard employment. The word does not have a direct correspondent in Italian, but in Europe it is used as a qualitative descriptor to identify work of definite duration. With regard to the UK, and in the European Union,

⁹ *Ibid.*

¹⁰ O. BERGSTRÖM, D. W. STORRIE, *Contingent Employment in Europe and the United States*, Cheltenham, Edward Elgar Publishing, 2003, http://www.dol.gov/_sec/media/reports/dunlop/section5.htm (Last accessed 4 October 2014), cited in Literature Review, p. 142.

¹¹ OECD, Permanent and Temporary Workers <http://www.oecd.org/employment/emp/45590204.pdf> (Last accessed 4 October 2014).

where it is mostly used, the term casual worker is not defined legally, but is used to refer to those people who work across a wide range of industries in businesses where the need for workers is not constant¹².

Besides the permanent and the fixed-term employment contract, as discussed above, the Italian law has introduced over time a series of other contractual arrangements that are based on a relationship of subordination between the employer and the employee. These include the intermittent employment contract, job sharing, apprenticeship, homework and telework.

Contratto di Lavoro Intermittente: Intermittent Employment Contract

The “intermittent employment contract” in Italian is known as *contratto di lavoro intermittente* or, in pseudo-English, as *job on call* (being the word order incorrect in English) and is expressly defined by the Legislator as the contract – even of temporary nature – by virtue of which the worker is at the disposal of the employer who can use their work within the limits laid down in legislation and collective agreements. Within the EU, these employment arrangements are usually referred to as “on-call work”.

In the United Kingdom, this type of employment relationship is called “zero hours contract”. Workers are on call to work when the employer needs them, but employers have no obligation to provide work for the employee. On the basis of these arrangements, employees agree to be available for work when required, and no minimum number of hours is specified. In this case, the language used is different, but there is a certain degree of conceptual correspondence. Regulatory differences still need to be taken into account, as in the UK employees receive compensation only for the hours worked, whereas in Italy, an allowance can be granted to the worker on call for making themselves available.

¹² See, in this connection, for a discussion on meaning and definition issues <http://worldemploymentlaw.com/UK-Employee-Status-Casual-Workers.html> (Last accessed 4 October 2014).

In the United States, this employment relationship is referred to as “intermittent employment”, but also as “on-call work” or “standby work”¹³ (with differences between on-site and off-site standby). Intermittent work is regulated at State level. By way of example, the Government Code of the State of California, Section 18522 defines intermittent work as a “position or appointment in which the employee is to work periodically or for a fluctuating portion of a full-time schedule”. On-call work is included in the four types of alternative employment arrangements listed by the Bureau of Labor Statistics: “workers who are called to work only as needed, although they can be scheduled to work for several days or weeks in a row”. Unlike in Italy, where the on-call worker should receive – proportionally – the same protection and benefits of a full-time worker in the same position, intermittent employees in the United States do not earn sick leave nor vacation time and are not generally eligible for health, life insurance, nor retirement benefits. In the U.S. context, intermittent employment should not be confused with the *furlough*, that is when employees take unpaid or partially paid time off for periods of time if the company is going through tough time. In the latter case, employees generally have either scheduled time off or call back rights.

Lavoro Ripartito: Job Sharing

Job sharing (*lavoro ripartito*, literally “shared work”) is a special form of part-time or flexible work. In Italy, this type of contract is defined by Legislative Decree No. 276/2003 and is in place when one or more employees take up together the same work obligation. Each worker is therefore personally and directly responsible for the entire work. No substantial language or conceptual differences (but there are regulatory differences) can be identified in English and the wording “job sharing” can be used safely, as it is clearly understood in Anglophone countries.

Job sharing in the U.S. is defined by the Bureau of Labor Statistics as a type of part-time work, where “two or more workers are responsible for the duties and tasks of one

¹³ See also: State of California, Department of Industrial Relations, “Call Back” and “Stand By” Time, available at <https://www.dir.ca.gov/dlse/CallBackAndStandbyTime.pdf> (Last accessed 4 October 2014).

full-time position”¹⁴. Job shares can be organized in a variety of ways, in some cases they are organized so that each person has specific duties; other cases are characterized by a less formal divisions of work.

Similarly, as reported by the Eurofound, in the UK job sharing is defined as working arrangement involving two people sharing the responsibilities and tasks of one full-time job. Sharers have their own contract of employment and share duties, pay and benefits of a full-time job proportionally.

With reference to the language, it should be noted, that *lavoro ripartito* should be rendered in English with “job sharing” rather than with “work sharing” to avoid possible ambiguity. Work sharing in the United States is an Unemployment Insurance program that allows an employer to reduce the number of hours an employee works during a week, with unemployment benefits that make up at least in part the difference in pay. A company experiencing less demand for its products and reductions in revenue can resort to work sharing programs to compensate for the reduced hours of work of its employees.

Apprendistato: Apprenticeship

The apprenticeship contract in Italy has long been regulated by Law 25/1955, being then subject to several reforms within the span of a few years until the Consolidated Apprenticeship law contained in Legislative Decree 167/2011 and more recent labor market reforms in 2011 and 2012. The notion of *apprendistato* – etymologically meaning “a state of learning” – refers to a person who learns a profession or a trade. With the same etymological origin and meaning, the notion of apprenticeship can be found also in Anglophone countries.

In Italy, this special type of employment contract provides for an employment relationship based not only on the exchange between work against remuneration, but also training. Apprenticeship in Italy is defined as the “permanent employment contract for youth training and employment” (Legislative Decree No. 167/2011). This definition highlights the twofold purpose of apprenticeship both as an educational tool as well as

¹⁴ BLS, *Glossary of Compensation Terms*, 1998. See in this connection, the literature review, p. 145.

an employment contract. The apprenticeship contract is directed to young people between 15 and 29. Yet, besides being a school-to-work transition tool and a training opportunity for youth, apprenticeship in Italy is above all a type of employment contract, which must be concluded in writing and must be accompanied by an individual training plan, defined on the basis of what is established in collective agreements or by bilateral bodies. Although the notion of apprenticeship exists in most Anglophone countries and there is linguistically a one-to-one translation (*apprendistato* – apprenticeship), translating this concept appropriately can be very challenging. First, as said, the apprenticeship contract in Italy is mainly a type of employment contract. Also in the UK, “apprenticeship” is an employment contract that combines practical training in a job with study¹⁵, which meets the requirements of a so-called apprenticeship framework.

With regard to the U.S., in line with the assumption that the notion of the “employment contract” per se is not of particular relevance as a determinant for an employment relationship (as we will see below in Chapter 2), apprenticeship is not necessarily conceived as a contract, but rather as a *program*. Yet the person taking part in the *program* is a *worker*, which means that, even if the definition is not based on the notion of contract, it nonetheless implies a work relationship.

Apprenticeship is a combination of on-the-job training and related instruction in which workers learn the practical and theoretical aspects of a highly skilled occupation. Apprenticeship programs can be sponsored by individual employers, joint employer and labor groups, and/or employer associations¹⁶.

The notion of apprenticeship in the U.S. is partly different from the concept *apprendistato*. Unlike in Italy, where – inspired by the dual apprenticeship model of German tradition – apprenticeship is considered, as stated in legislation, the main employment and contractual arrangement for youth labor market entry, in the U.S., it remains confined to specific programs, mostly in trades and manual industries. It is considered a tool for labor market inclusion of women, disadvantaged populations,

¹⁵ For a closer look on the differentiations between the various types of apprenticeships in the UK, see <https://www.gov.uk/apprenticeships-guide/applications-and-qualifications> (Last accessed 4 October 2014).

¹⁶ <http://www.dol.gov/dol/topic/training/apprenticeship.htm> (Last accessed 5 October 2014).

veterans or formerly incarcerated, and the use of word *program* to define it signals its special function.

In Italy, there are three main types of apprenticeship contracts. The first is the apprenticeship contract for exercising the right and duty to take part in education and training and obtain a vocational qualification (*contratto di apprendistato per la qualifica e il diploma professionale*), the second is vocational apprenticeship (*apprenticeship aimed at teaching a trade or a profession, contratto professionalizzante o di mestiere*); then, there are advanced or higher apprenticeship and research apprenticeship (*contratto di apprendistato di alta formazione e ricerca*). Translating these concepts into English may generate ambiguities, as there may not be conceptual counterparts in English-speaking countries that could serve as functional equivalent in the translation process. The first type of apprenticeship makes it possible for apprentices to obtain a diploma and complete compulsory education through apprenticeship. This possibility did not exist in the UK in the past (it exists starting from 2015), and it is still not provided in the same way in the U.S. The *contratto di apprendistato per la qualifica e il diploma professionale* has therefore no exact linguistic, conceptual nor regulatory equivalent in English and can only be translated word by word through a functional equivalent to convey the meaning of the Italian concept. The second category of apprenticeship in Italy is the apprenticeship to learn a trade or a profession and this is the one that is conceptually closer to the English term “apprenticeship”. Despite the regulatory differences, there is conceptual and linguistic equivalence. The third category of Italian apprenticeship may pose more problems when it comes to translation. The notion of *alto apprendistato* can be rendered in English with “higher” or “advanced” apprenticeship. A distinction, however, needs to be made here between British and American English. The formulation “higher/advanced apprenticeship” works as a functional equivalent in the U.S. context, where the notion of higher apprenticeship – that implies the possibility of getting a higher education degree (such as university degree or PhD) through apprenticeship – cannot be found in the same way as in Italy. In this case, the purpose of the functional translation is that of expressing with a clear formulation a concept that is typical of a system and which has no counterpart in the target language system. By contrast, with reference to British English, this formulation can generate ambiguity at the regulatory level, since, in the UK, the Advanced

Apprenticeship and Higher Apprenticeship do exist and refer to apprenticeship programs that enable apprentices to earn a degree at various levels corresponding to the British educational system¹⁷. This means that, in the case of British English, the translation is a linguistic and conceptual equivalent, but there are regulatory differences that the comparative researcher should be aware of.

Lavoro a Domicilio: Homework

Homework (*lavoro a domicilio*): A home worker is qualified as a subordinate worker when “he/she is required to work under the direction of the entrepreneur with regard to the performance, the features and the requirements of the work to be done in the processing of products for the employer”¹⁸. The notion of home worker should not be confused with that of teleworker (*telelavoratore*), although they both fall within the broader category of distance worker. Unlike homework, the words telework (and telecommuting) are of more recent origin, being used for the first time by the NASA researcher Jack Nilles in 1973. At the time, telework was defined as any form of substitution of business travel through the use information technology and telecommuting as that part of telework linked to problem of physical transfer to and from the place of employment. In Italy, the first definition of telework was given by Gino Giugni who defined it as “the work of those who work with a Video Display Unit, topographically located outside of the business to which the work activity pertains”¹⁹. From that moment onward, in Italy, the definitions of telework have been numerous, but none has so far been introduced by law to identify a specific employment relationship.

¹⁷ For more details, see <http://www.unionlearn.org.uk/campaigns/apprenticeships/for-reps/levels-apprenticeship> (Last accessed 5 October 2014). Higher Apprenticeship identifies a work-based learning programme and leads to a nationally recognised qualification at Level 4 and above, where a Level 4 and 5 is equivalent to a higher education certificate, higher education diploma or a foundation degree, a Level 6 is equivalent to a bachelor degree and a level 7 is equivalent to a master’s degree. Source: <http://www.apprenticeships.org.uk/employers/higher-apprenticeships.aspx> (Last accessed 25 September 2014).

¹⁸ Law No. 877/1973.

¹⁹ F. LUCAFÒ, *Il rapporto di telelavoro. Regole giuridiche e prassi contrattuali*, Milan, Giuffrè, p. 34.

The Agreement of 9 June 2004²⁰ postulates a comprehensive definition, identifying telework as a form of organizing or performing work through the use of information technology under a contract or employment relationship, in which the work, which could also be carried out at the company premises, is regularly carried out outside of them. The parties to the agreement have therefore not provided a specific definition, but they have identified a number of distinctive elements: a) relocation of activities; b) use of computer and IT tools in the performance of work; c) work systematically carried out from a distance. Telework is therefore not a specific type of employment contract but a way to perform work that can be carried out in the form of employment or self-employment. *Lavoro a domicilio* (homework) and *telelavoro* (telework) can be rendered in English with (industrial) homework and telework respectively without ambiguities neither in the UK nor in the U.S., being conceptually and linguistically (but not from the regulatory point of view) similar.

In the UK, a homeworker is anyone who only works from home. Many homeworkers in the UK are employed in manufacturing, mainly in the production of a wide range of items. The main difference between “homeworking” and “teleworking” in the UK is that teleworkers, who may work full time from home, are usually doing office work rather than manual work and frequently make use of computers and other electronic devices to do their work and communicate directly with their office base. Some teleworkers spend part of their week working in the office and part working at home. In the absence of a legal or binding and collectively agreed definition of telework in the UK, the Telework Guidance published in August 2003 by the Department of Industry and Trade builds on the definition of telework laid down in the 2002 European framework agreement on telework²¹:

Telework is a form of organizing and/or performing work, using information technology, in the context of an employment contract/ relationship, where work, which could also be performed at the employers premises, is carried out away from those premises on a regular basis.

²⁰ Interconfederal Agreement available here: http://www.esptorisponde.ilsole24ore.com/Documenti/ProblemaDellaSettimana/2012/062012/20120618/ACCORDO_INTERCONFEDERALE/ACC_INT_09_06_2004.pdf (Last accessed 4 October 2014).

²¹ Available at <http://www.etuc.org/framework-agreement-telework> (Last accessed 4 October 2014).

The UK Telework Guidance was published on behalf of the Confederation of British Industry (CBI), the Trades Union Congress (TUC) and the employer organization for local Government – the UK section of the Centre of Enterprises with Public Participation and Enterprises of General Economic Interest (CEEP UK).

The U.S. Federal Government, however, has adopted the word “telework” in its materials to refer to regular remote work. The Telework Enhancement Act of 2010 defines telework as follows:

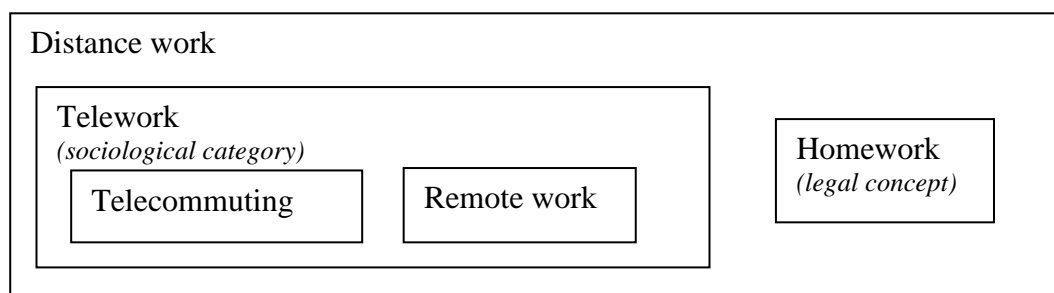
The term “telework” or “teleworking” refers to a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee’s position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work.

In the United States, therefore, telework is a legal concept, as it is laid down in legislation. In addition to the word “telework”, in the U.S. there are many other words used in the realm of distance work, and not all of them are legal concepts. “Telecommuters”, which is no legal concept, are sometimes conceptually distinct from “remote workers” depending on the amount of time they spend working outside of the corporate office and also because telecommuters generally work from their home, whereas remote workers not necessarily: they may work from anywhere they want, apart from the workplace.

Although the concepts of “telecommuting” and “telework” are closely related, there is still a difference between the two, as telecommuting can be considered a type of telework. All types of technology-assisted work that take place outside workspace is telework. Whereas, telecommuters often maintain an office and usually work from an alternative location only a few days a week to reduce commuting time.

The notion of “telework” is conceptually equivalent with the notion of *telelavoro* in Italian as they both imply work that can be performed anywhere outside of the workplace through the use of information and communication technologies; and which can be performed through a variety of employment relationships, ranging from self-employment, contract work to traditional full-time employment.

Overview of the Conceptual Connections of Distance-work Terminology



Source: own elaboration on cited literature and legal sources.

The present section provided an insight into the various types of employment relationships based on the notion of subordination existing in Italy and an analysis of the way they can be conceptualized and translated into English taking into account the cultural and legal background of the target language. The study suggests the need to adopt a three-dimensional approach to comparative translation analyzing the linguistic, conceptual and regulatory level in the translation process.

3.2. Self-employment

This section looks at self-employment and analyzes, through a comparative approach, the way the different types of self-employment arrangements are conceptualized in Italy and how they can be translated into English.

The Italian Civil Code draws on the notion of subordination to make a distinction between employment and self-employment. Art. 2222 of the Italian Civil Code defines the term self-employed (*lavoratore autonomo*) as the person who undertakes to perform a work or a service in exchange for remuneration, mainly by means of their own labor and without a relationship of subordination. The distinguishing feature of self-employment is therefore the absence of the bond of subordination (which implies, that there is no power of control on the part of the employer and no full economic dependency of the employee). The notion of self-employment, in Italy, is broad enough to include a series of different forms of work and workers' statuses, ranging from farming to trading, from registered professions to the most recent occupations that have

emerged in the light of the latest technological changes. It is also a very controversial concept, as we will see later on in this chapter. Besides *lavoro autonomo*, which is a legal notion, another word has emerged in the last few years in the public debate: *autoimpiego*. Etymologically, this word has the same meaning of *lavoro autonomo*. However, the term has entered the public debate with a precise meaning, as it is used specifically to refer not only and not so much to the “traditional” self-employed workers, but rather to the ability to overcome the problem of unemployment (particularly of young people) by creating/inventing one own job through creativity.

International institutions use different words to refer to the self-employed. The ILO uses the terms “self-employed worker” or “own-account worker”, although there is no single definition that can be applied to all Member States. The EU uses the term “self-employed person” defined in Directive 2010/41/UE as “all persons pursuing a gainful activity *for their own account*, under the conditions laid down by national law” (emphasis added). The OECD in *Entrepreneurship at a Glance* 2011 defines self-employed workers as “those who work in their own business, professional practice or farm for the purpose of earning a profit”.

Sometimes, at the EU level, the term “independent worker” is also used to underline the difference with “dependent worker” (hence the name *European Forum of Independent Professionals*), i.e. employees who are dependent on their employer both in organizational as well as in economic terms. In the same vein, the idea of “independence” emerges also from the word “freelancer” or “freelance worker” which is not generally used in legal texts, being less inclusive and more vague, and which was used for the first time by Sir Walter Scott in the novel *Ivanhoe* in relation to mercenary soldiers (free-lance). The word is also used in Italian, where *freelance* is used as a noun rather than as an adjective.

Conceptually similar to Italian, the definition of self-employed in the UK is that of a person who runs their business for themselves and takes responsibility for its success or failure. Tax withholding procedures do not apply to the self-employed, who also do not have the same employment rights and the responsibilities of employees²². Although the legal concept is not postulated on the notion of subordination, there are no significant conceptual differences between Italian and English (yet they remain at the regulatory

²² See <https://www.gov.uk/employment-status/selfemployed-contractor> (Last accessed 5 October 2014).

level). Under self-employment, the UK Government also defines the term “contractor”, as somebody who can be “self-employed, a worker or an employee if they work for a client and are employed by an agency”. The notion of contractor is very interesting in a comparative perspective. There is no conceptually correspondence between Italian and English. In Italy, quasi-subordinate work (see below) is a condition in-between employment and self-employment, though formally self-employment. The notion of contractor is close to it, although not equivalent. Drawing on the juxtaposition between contract for services (self-employment) and contract of services (employment), the notion of contractor is a broader category than that of quasi-subordinate worker in Italy, and, for instance, as pointed out above, in the UK under certain conditions, a contractor can also be an employee. The same holds true in the United States, where the word “contractor” is often used to identify a broad category, that ranges from self-employment to employment. Generally, the term is used in combination with the word “independent” as in the chunk “independent contractor”, i.e. a person who is commissioned by another to do a job. However, like in the UK, also in the U.S. this relationship may take the form of employment (a difference exist from the legal viewpoint between “incorporated” and “unincorporated” contractors). According to the Internal Revenue Service (IRS), self-employed individuals can work for someone else as an “independent contractor” or can sell products or services to others. Independent contractors are a category of self-employed workers, as not all self-employed are independent contractors. However, while self-employed have the freedom to define their own work objectives and how to reach them, independent contractors answer to their clients and do not have complete control. This makes the status of independent contractors sometimes difficult to define in the United States, despite the reference to this notion in common law principles, in the Fair Labor Standards Act, by the States, and finally in the decisions of some courts. The existing rules focus primarily on the level of control an employer/client has over a service or product, to see whether or not the employer actually defines what is being done and how it will be accomplished²³.

²³ PLANMATICS, Inc., *Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs*, U.S. Department of Labor Employment and Training Administration, 2000 underlines the following distinction, which has conceptually no equivalent in Italian: “*U.S. Independent contractors: self-employed* (emphasis added) – Workers identified in the basic CPS as self-employed who

Several different tests exist to distinguish employees from independent contractors; the ultimate outcome can vary depending on the test used, the particular employment law in question, and State law. The Bureau of Labor Statistics gathers data on two types of self-employed persons, those who are unincorporated and those who are incorporated²⁴. The official BLS definition of “self-employment” only includes those who are unincorporated, since technically those who have incorporated appear as employees, not contractors. As pointed out above, however, the notion of independent contractor has no direct equivalent in the Italian system.

“Contractor” as a Word/Concept Typical of the U.S. and the UK, not Frequently Used in Europe (Regional Interest)



Source: Google trends, 28 September 2014.

answer affirmatively to the question in the CPS supplement, “Are you self-employed as an independent contractor, independent consultant, freelance worker or something else (such as a shop or restaurant owner)?”

Independent contractors: wage-and-salary (emphasis added) – Workers identified as wage and salary workers in the basic CPS who answered affirmatively to the question in the CPS supplement, “Last week, were you working as an independent contractor, an independent consultant, or a free-lance worker? That is, someone who obtains customers of their own to provide a product or service.”
http://www.bls.gov/news.release/history/conemp_082595.txt (Last accessed 5 October 2014)

²⁴ S. HIPPLE, *Self-employment in the United States*, Bureau of Labor Statistics, 2010: <http://www.bls.gov/opub/mlr/2010/09/art2full.pdf> (Last accessed 5 October 2014).

As mentioned above, from the legal viewpoint, the category of self-employment in Italy also includes those employment relationships known as quasi-subordinate/semi-subordinate employment, called in Italian *collaborazione coordinata e continuativa*, and functionally translated with “continuous and coordinated collaborations”, mainly concerned with personal services provided by individual to another party. This type of employment relationship was originally identified by Art. 409, No. 3 Code of Civil Procedure, and later by Art. 61 and ff. of Legislative Decree No. 276/2003. These employment relationships, although classified as self-employment, feature elements, such as the coordination with the client, and continuity over time (hence the name), which, to a significant extent, bring them closer to subordinate employment. In recent years, quasi-subordinate contracts have undergone a huge expansion. Since these positions are classified as self-employment, quasi-subordinate workers are not subject to the specific legal provisions that regulate subordinate employment. This type of arrangements are placed midway between employment and self-employment, giving rise to questions as regards the substantial safeguards provided to quasi-subordinate workers, who mostly work for just one “client”, often at the client’s premises, with working hours and under working conditions very similar to those of subordinate employees. In this connection, the concept of economically dependent workers has emerged over time within the EU, a category that falls between employment and self-employment. It identifies workers who do not correspond to the traditional definition of employee because they do not have an employment contract as (subordinate) employees. However, although formally “self-employed”, they are economically dependent on a single employer for their income. Like employees, they may work under the organization of the employer, at the employer’s premises and/or using the employer’s equipment. They may perform similar tasks to those performed by existing employees. Their “services” generally fall outside the traditional registered “professions”. Economically dependent self-employed workers respond to the recent economic and social trends that led to the development of new forms of self-employment that is no longer fully independent. However, only some European countries have legally recognized this category of workers, in-between employees and the self-employed. The wording “economically dependent self-employed”²⁵ was created at the EU level (Euro-

²⁵ EUROPEAN UNION, *Opinion of the European Economic and Social Committee on “New Trends in*

jargon) and, in the context of the Directive, it is rendered in Italian with *lavoratori economicamente dipendenti*. Applied to the Italian context, this formulation is very broad and not frequently used. In Italy, there is no specific national legislation directed to this category of workers, but only a public debate on so-called *false partite IVA* (literally bogus self-employment), referring to the kind of self-employment that is considered to be “bogus” because the worker generally works most of the time for one client only (and should consequently be classified as an employee). A similar category exists also in the U.S., sometimes called “dependent contractors”. However, in the U.S., the concept of “dependent contractor” would capture workers who are true independent contractors, but where the economic terms and conditions related to the work to be performed are not fully under the worker’s control. The notion of dependent contractor is not legally defined in the U.S., yet, in this context, mention should be made of the definition existing in Canadian legislation (Ontario):

The person, whether or not employed under a contract of employment, and whether or not furnishing tools, vehicles, equipment, machinery, material or any other thing owned by the dependent contractor, who performs work or services for another person for compensation or reward on such terms and conditions that the dependent contractor is in a position of economic dependence upon, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor²⁶.

Self-Employed Work: The Specific Case of Economically Dependent Self-Employed Work” (own-initiative opinion), European Economic and Social Committee, 2010.

²⁶ LEGISLATIVE ASSEMBLY OF ONTARIO, *Bill 165, Employment Standards Amendment Act (Protection for Artists)*, 2009.

The Concepts of Self-employed and Contractor in Italian and in the Different Varieties of English.

Italian	Functional Equivalent	British English	American English	European English
Lavoratore autonomo	Self-employed	Self-employed	Self-employed	Self-employed
Lavoratore parasubordinato	Quasi-subordinate worker	(under some circumstances) Contractor	Independent contractor	
EU: Lavoro autonomo economicamente dipendente	Economically dependent self-employed		Dependent contractor	Economically dependent self-employed

Source: Own elaboration based on the cited relevant literature and legal sources.

Collaborazioni Coordinate e Continuative: Coordinated and Continued Collaborations

Coordinated and continued collaborations are an Italian category of quasi-subordinate work. Legally, coordinated and continued collaborators are self-employed, but their work arrangements share two important features with subordinate employment: the employment relationship is ongoing (continuous) and a significant degree of coordination with the employer is implied. The formulation does not refer to a specific employment contract but to a series of employment relationships that share these characteristics. There is no fully correspondent concept in English. This is why the translation does not “sound” idiomatic in English. Yet, the nature of the difficulty is not so much at the level of language but rather at the conceptual level. Being the bond of subordination weaker, also the distinction between these categories is more blurred.

Lavoro Occasionale: Occasional Work

Legislative Decree No. 276/2003 has introduced a definition of the concept of occasional work (so called *collaborazione occasionale* “occasional collaboration”). The

notion has no conceptual nor regulatory equivalent in English-speaking countries and the translation must therefore aim at expressing an Italian notion in the clearest possible way. The notion of “occasional work” is conceptually not too distant from “casual work”, although the wording “occasional work” in Italy is a legal concept with a specific statutory meaning, referring to an employment relationship of less than thirty days in the year with the same client. Next to this time constraint, no occasional work can be performed for the same client if the work gives rise to a total compensation of more than five thousand euro in the year. As it emerges, it is a very country-specific legal notion. It should be noted, however, that the InterActive Terminology for Europe (IATE) that attempts to develop a standardized legal language within the EU does translate *lavoro occasionale* with “casual work”. In this particular case, an excessive standardization may be misleading, confusing a concept that has a specific legal meaning with the more general and broader sociological category of “casual work”.

Lavoro occasionale in the Interactive Terminology for Europe Dictionary

lavoro occasionale Ricerca

it > en (Dominio: Qualsiasi dominio, Tipo di ricerca: Tutti)

Risultato 1- 3 Di 3 Per lavoro occasionale

Occupazione [CdT]		Voce completa
IT	lavoro occasionale	★★★★ *@
EN	occasional work	★★★★ *@

OCCUPAZIONE E LAVORO, DIRITTO [COM]		Voce completa
IT	lavoro occasionale	★★★★ *@
EN	casual work	★★★★ *@

Vita sociale, Occupazione [Council]		Voce completa
IT	lavoro occasionale	★★★★ *@
EN	casual work	★★★★ *@

Source: *InterActive Terminology for Europe*, online search 24 September 2014.

In the United States, the term exists with a different meaning. Reference is sometimes made to the notion of *occasional or sporadic employment*, a term that can be

found in the FLSA with regard to civil servants who work occasionally on a part-time basis for the same public agency in a different capacity from their regular employment.

Project-based Work

With the Biagi Reform of 2003, in Italy, a clear distinction between subordinate and quasi-subordinate work was made with the aim to introduce some protection for the latter category. The law, however, does not extend the protection granted to subordinate workers to quasi-subordinate workers, but it strengthens the idea that continuous and coordinated collaborations, in the form of project-based work, must be considered as self-employment. In particular, quasi-subordinate employment contracts can be stipulated for the purposes of carrying out a “project”, which consists of an easily identifiable productive activity functionally connected to a final result. Projects are defined by the employer and managed by the worker. The focus is on the result, in coordination with the the employer, but no reference should be made to the time required for the execution of the project. There is no exact conceptual or regulatory equivalent in British or American English and therefore to avoid assimilation and misunderstandings, the suggested translation is a functional equivalent, aimed at explaining in the target language a concept typical of the Italian system.

Contratto di Agenzia: Self-employed Commercial Agent

The agency agreement is the contract (which can be of definite or indefinite duration) whereby one party (the agent) takes on the task of promoting on behalf of the other (the principal) the conclusion of contracts in a given geographical area (see Art. 1,742 ff. of the Italian Civil Code). The agent does not conclude the contract with the customer (this element distinguishes the agent from the “representative”, who is in charge to conclude contracts on behalf of the other party in a given area). An essential condition for the establishment of the agency relationship is the systematic and continuous nature of the activities carried out by the agent on behalf of the principal. The remuneration (or

commission) is normally a percentage of the value of each deal concluded in favor of the principal. Despite the continuous coordination with the employer, the agent is a self-employed person. In view of this fundamental ambiguity of the position of agents, halfway between employment and self-employment, the regulation of the agency contract does show in Italy many similarities with that of employment especially with regard to the termination of the relationship between the parties. Yet the work of the agent takes the form of an organized economic activities, aimed at achieving a specific result and the principal's control over the work of the agent is very limited. Linguistically, thanks to presence of Directive 86/653/ECC at the European level, there are no significant terminological and conceptual differences. The equivalent of *agente* is agent and despite national differences at the regulatory level, both from the terminological as well as conceptual point of view, there is between these terms substantive equivalence.

Associazione in Partecipazione: Joint Venture

According to Art. 2,549 of the Civil Code, the joint venture is a contract by which a person (the entrepreneur) ascribes to another (associated) a participation in the profits of his business as a consideration for a contribution (including labor). The joint venture is therefore a contract whereby one party agrees with the other to provide a specific contribution (goods or services) in exchange for a revenue share. This type of relationship is somewhat similar to a relationship of subordination, yet the Italian Court has drawn a line to make a distinction between the two. A joint venture does not imply a subordinate relationship if the worker participates in the management of the business, and if he bears a business risk. In all other cases, ascertained the absence of such requirements, the relationship must be considered of subordinate employment. In English, the *associazione in partecipazione* can be translated with "joint venture", although to the Italian reader it may sound inappropriate, because the English word "joint venture" is used in Italian with a different meaning. The Italian Court of Cassation (Sentence No. 6757/2001), with the aim to make a distinction between "joint venture" and *associazione in partecipazione* limited the use of the word "joint venture"

to what is known at the international level as “corporate joint venture” that is “forms of temporary association of companies aimed the exercise of an economic activity in an area of mutual interest, in which the parties provide for the establishment of a corporation, with independent legal status”. This means that “non-corporate joint ventures” can, among others, take the form of *associazione in partecipazione*²⁷. This falls within the broader category of “employees ownership” and the closest concept to *associazione in partecipazione* existing in the Anglophone world is the British “employee-shareholder contract”. An employee shareholder is someone who works under an employment contract and owns at least £2,000 worth of shares in the employer’s company or parent company. Employee shareholders have most of the same employment rights as workers and employees.

The present section provided an overview of the language in use to define work relationships regulated under Italian law which do not imply a relationship of subordination. After having established cross-country differences and similarities of self-employment and independent contractor, the section proposed the analysis of the range of self-employment work relationship existing in Italy with a special focus on the translation process, because of the absence of conceptual and regulatory equivalents in the target language and cultures.

3.3. Workers Employed by an Intermediary

This section analyzes the language characterizing so-called “triangular relationships” when workers are employed by an intermediary. It focuses on the way these relationships are defined in Italian law and how they can be translated in English, taking into account the terminology in use in the target countries under investigation and at the

²⁷ The Cornell University defines a joint venture as follows: A joint venture is a legal organization that takes the form of a short term partnership in which the persons jointly undertake a transaction for mutual profit. Generally each person contributes assets and share risks. Like a partnership, joint ventures can involve any type of business transaction and the “persons” involved can be individuals, groups of individuals, companies, or corporations. Available at: http://www.law.cornell.edu/wex/joint_venture (Last accessed 5 October 2014).

international level, as well as the potential pitfalls that translation poses. These kinds of relationships have become particularly relevant over the last years, if we consider that among the fundamental economic transformations of our time there is the vertical disintegration of the company. Over time, a shift took place from the tendency to integrate and internalize functions, to an increased focus on the core business and a tendency to outsource what is not considered to be “core” (buy or make).

The law and the relevant literature make an important distinction between two types of outsourcing:

- Subcontracting of activities: this takes place when functions previously carried out inside the company are contracted out to another company. Here, a contractor is the company that provides the goods or services being subcontracted, and a contracting company is the company that contracts out the function. In Italy these include so-called *appalto* or *contratto d’opera/di servizi*.

- Subcontracting of labor: the direct employer of the worker is the contractor company (agency), and the job is mostly performed at the premises of the user company. In Italy this is known as *somministrazione di lavoro*.

Appalto: Contract for Works and Services

The contract of *appalto* refers to a type of outsourcing contract typical of the Italian legal system. The concept has in English no direct equivalent, although it is, to a certain extent, similar to the “construction contract” in the UK. It is defined, pursuant to Art. 1655 of the Italian Civil Code, as the contract under which one of the party undertakes, by autonomously organizing the necessary means of production (or of service provision) and taking on entrepreneurial risk, to provide works or services in exchange for a sum of money. Since an equivalent does not exist in English, a possible functional translation could be “contract for works and services” as a clear way to describe the meaning of the term by referring back to the source of law.

The fundamental characteristic of this type of contract is to achieve a specific result, entirely at the risk of the contractor who operates through a business organization. The difference between agency work (see below) and contracts for works and services is in

theory very clear, being based on the fact that, in the latter case, the contractor takes on entrepreneurial risk and can exert the power to direct and organize the workers engaged in the activity. However, this must be verified case by case on the basis of the specific features of the activity required. Before going into the details of a translation, mention should also be made here of the differences existing between *appalto* and so-called *contratto d'opera*, with the first that applies to medium-sized and large business organizations and the latter to small- and micro-sized enterprises.

In English, there is no special classification for this type of contracts – as they can be rendered with the very notion of “contract”, “contracting out”, “outsourcing” or “subcontracting”. However, these notions are broader and more vague than the legal concept of *appalto*. The translation of the term *appalto* into English poses many problems, since in no common law country there exists a direct equivalent²⁸.

Furthermore, the Italian word *appalto* refers both to public contracts for works and services as well as to public procurements, whereas in other countries there is no risk of confusing the two, as in common law countries, this type of contracts in the private sector are simply referred to as “contracts”, such as construction or building contracts, vs. “public procurements” in the public sector. With regard to the United States, additional obstacles to finding translation equivalents are posed by the different regulation of contracts in the various States. Each State can establish its own rules as there are no constraints in this respect. The formulation “contract for works and services” is therefore a functional equivalent that serves the purpose without running the risk of creating confusion with country-specific American concepts. Generally, these contracts are subject to very different regulations in civil law and common law countries, the only exception being international construction agreements that do not differ much from country to country.

²⁸ F. ZICCARDI, *L'appalto internazionale*, Turin, UTET, 2002, p. 7 states “La unicità dell'appalto è concetto del tutto ignoto al *common law*” (the uniqueness of *appalto* is a concept totally unknown to common law).

Somministrazione di Lavoro: Agency Work

The three-way relationship between a user firm, a worker and an agency can be found in many countries around the world. The essential feature of agency work is to allow work not through employment law (i.e. the contract of employment), but rather by means of a contract for services under commercial law. How this relationship is regulated, and how this type of employment arrangement is named and defined differs greatly from country to country.

Within the European Union, until the entry into force of the European Directive 2008/104/EC of 19 November 2008, there was no standard definition at Community level²⁹. As discussed in the literature review, scholars have criticized the fact that in the official Italian version of the Directive, the terms temporary-work agency and temporary agency workers have been translated with “agenzia interinale” and “lavoratore tramite agenzia interinale” (“temporary agency” and “workers employed through temporary agency” respectively: etymologically the term *interinale* derives from the Latin word “interim” meaning “temporary”). They argue that the recourse to the word *interinale* does not reflect the legal terminology used in Italy to refer to agency work. The term is never mentioned in the relevant legislation, and is mostly used in everyday language in non-technical contexts. Although the word *interinale* seems to be unable to encompass permanent agency work (as opposed to temporary), it is common practice in Europe to adopt *ad hoc* vocabulary and formulations purposely differing from the legal concepts and wording in use at the national level and defined in national legislation. The reason being that they should not be related to a country in particular. In other words, the translation of the Directive into Italian does not correspond to the *Italian* notion, but rather to the *European* notion, which functions as “umbrella” concept for all the different legal notions of agency work existing at the national level. Therefore, although the word *interinale* may seem inappropriate, one could argue that it is still an

²⁹ EUROPEAN COMMISSION, *Proposal for a Directive of the European Parliament and the Council on working conditions for temporary workers*, COM(2002)149, Brussels, 20 March 2002, –European Commission – *Amended proposal for a Directive of the European Parliament and the Council on working conditions for temporary workers*, COM(2002)701, 28 November, available at www.csmb.unimore.it, A-Z Index, under *Somministrazione*.

attempt to ensure some degree of differentiation between national and European terminology.

The language used to refer to agency work is one of the more varied across countries, and it differs significantly in the different varieties of English. In the United States, agency work is called in a number of different ways, mostly differing from EU terminology. These include temporary help services, contract staffing (and staffing agency), temporary work:

Workers in the temporary help service industry, also referred to as contingent, contractual, seasonal, freelance, just-in-time or “temp” employees are those whose salaries are paid by a temporary help services that supplies them, upon request, to employers looking to fill a temporary full- or part-time staffing need³⁰.

According to U.S. law³¹ a temporary work agency employee is exclusive employee of the agency and not of the user firm. The firm is the legally responsible employer and maintains that relationship during the time its employees are assigned to a client. It is the agency that is in charge of recruiting, testing, hiring, training, assigning, paying, providing benefits, addressing problems and terminating its employees. Agencies are generally also called temp agencies, employment services provider, temporary help agencies, or Professional Employer Organizations, which lease workers. In American English the concept of “leasing worker” implies a long-term relationship between the agency and the worker, which is not limited to a single assignment. Hence, the correct use, in Italian, of the English formulation “staff leasing” to refer to agency work based on an employment relationship of indefinite duration. More in details, with regard to the U.S., a professional employer organization (PEO) is a company that provides a service through which employee management tasks can also be outsourced to businesses, promoting therefore also the outsourcing of highly skilled jobs, such as employee

³⁰ T. LUO, A. MANN, R. HOLDEN, *The Expanding Role of Temporary Help Services From 1990 to 2008*, Bureau of Labor Statistics’ West Regional Office for Economic Analysis and Information in San Francisco, California, Monthly Labor Review, 2010, p. 3 (see also the Literature Review, p. 149).

³¹ GOVERNMENT PRINTING OFFICE, *Use Of Private Sector Temporaries*: <http://www.gpo.gov/fdsys/granule/CFR-2011-title5-vol1/CFR-2011-title5-vol1-part300-subpartE/content-detail.html> (Last accessed 5 October 2014).

benefits and compensation management, recruiting, risk/safety management, and training and development.

With regard to international English, in Asian countries, agency work is named “labor dispatch” or “worker dispatch”. In China, according to the Labor Contract Law amended in 2013 labor dispatch may only be applied to temporary positions not exceeding 6 months, auxiliary positions (providing support to the main business activity) and to replace employees on vacations or leaves³². In Japan, the Worker Dispatch Act was amended in 2012, tightening regulation limiting the recourse to dispatched workers only to temporary staffing needs.

Distacco: Posting of Workers

Posting of workers occurs, in the Italian legal system, when an employee is sent to carry out their job at a different company, under the direction and control of a different employer. In this case, a relationship of “functional dependence” between the worker and the company is created, but it does not fall within the notion of subordination, since the employment relationship with the company sending the worker to the other firm remains intact.

Within the EU, Directive 96/71/EC of the European Parliament and of the Council, which has been implemented in Italy with Legislative Decree No. 72/2000 introduced the notion of *distacco comunitario* (posting of workers). Despite the use of the same term (*distacco*) the two notions are different. At the EU level, a worker is posted when he is employed in one EU Member State but sent by his employer on a temporary basis to carry out his work in another Member State. It is a trans-national provision of services, and although limited to the performance of cross-border services, workers’ posting at the EU level is a much broader concept than the Italian one.

In American English, from the terminological viewpoint, the word “posting” is not used to refer to this case. The word “expatriate” that is used in the U.S. to refer to

³² C. TONG, R.CA, *Labor Dispatch Under the Amended Labor Contract Law*, 2013 available online at <http://www.dwt.com/Labor-Dispatch-Under-the-Amended-Labor-Contract-Law-of-China-09-04-2013/> (Last accessed 6 October 2014).

workers sent out to carry out activities in other countries does not exclusively refer to work performed at the premises and under the direction of another employer.

Trasferimento d'Azienda: Transfer of Undertaking

The notion of *trasferimento d'azienda* is regulated by Art. 2112, par. 5, of the Italian Civil Code, to refer to any operation, resulting from transfer or merger that leads to a change in ownership of an organized economic activity (either for profit or not). At the European level, the formulation in use is *transfer of undertaking*. The wording is a creation of the European Union and it is not easily understandable in the United States as both the word combination as well as the use of the term “undertaking” to mean “business” are not typical in Anglo-Saxon countries. The Oxford Dictionary defines the term “undertaking” in British English as a promise to do something or as a task that is taken, and dictionaries of American English report as synonyms of the term words like “task” and “promise”. In European jargon, that is a recent and artificial creation, the term is used to indicate what in Anglo-Saxon countries would be defined as *business*. This expression was introduced at the EU level and then brought back to Britain from the EU through the TUPE law which implemented Directive 2001/23/EC and the term is therefore now understandable in Britain. It is not an incorrect formulation, as said, within the European institutions, it is common to create *ad hoc* vocabulary to identify neutral terminology that is broad enough to encompass the specific legal notions existing in the various Member States as defined by national legislation. Interestingly, the Italian translation of the term “transfer of undertaking” in Directive 2001/23/EC is *trasferimento di impresa* (literally transfer of enterprise). Also the difference in terminology between the Italian version of the Directive and the Italian Civil Code, is not a mistake of the translator, but rather an ad-hoc differentiation. The legal concept that the term *trasferimento d'impresa* in the Directive identifies is not the Italian legal concept defined in the Civil Code, but rather the European notion of “transfer of undertaking” which applies to all EU Member States. In American English, this notion is referred to as “merger and acquisition” and the formulation “transfer of undertaking” is rarely used in this context.

4. Conclusion

The breadth and complexity of the phenomena under study make defining and translating Italian employment terminology a difficult task, especially considering the way legal notions are conceptualized within a specific system and what criteria are applied to define them.

This section offers a summary of the main findings that emerged in the analysis of the Italian employment relationship terminology and what these suggest in terms of translation process and comparative analysis.

The first part summarizes the rationale of the chapter starting by discussing the approach adopted in the translation process, the global-local tension, and discusses the effectiveness of translation drawing on the notion of “functional equivalence”. The second part provides some examples of how a comparative approach can help avoid misunderstandings and improve the quality of the translation output and of cross-national interactions. Finally, the analysis carried out in chapter two is here introduced in the light of the findings discussed in the present chapter.

This chapter thus far offered a comparative analysis of employment relationship terminology, drawing on the Italian case. The approach adopted here is based on the notion of “functional equivalence”, i.e. the idea that a term that performs an equivalent function in the target legal culture can express ideas and concepts typical of another cultural and linguistic system.

To perform a meaningful translation of the Italian employment relationship terminology in English, the process starts from the analysis of the Italian concept. Once the notion in the Italian legal system is analyzed, a number of possible translation solutions in the target language is identified. These translations are then compared – conceptually – with the closest concepts existing in the target-language legal culture. In this way, it is possible to assess the effectiveness and appropriateness of a translation in the light of the target legal culture, and avoid potential misunderstandings and distortion in cross-culture interactions. From the analysis of the employment relationship terminology carried out above, a discrepancy between the global and the local dimension of employment emerges. Two main features of the employment relationship can be identified in all the countries and legal systems under investigation: the

individual employment relationship is generally based on the hierarchical power of employers over employees – directional power, power of control and disciplinary power, and on the economic dependency of the employee on the employer. The combination of these two factors at various degrees generates different kinds of employment relationships. Despite conceptual differences, in all the countries under examination, similar patterns are applied in the development of the range of individual employment relationships existing between employment and self-employment.

These two principles at the basis of the employment relationship can be either laid down in legislation or be derived from case law and procedures, or both. In Italy, these principles are identified in the Civil Code, but there is also a significant amount of case law that helps distinguish the various employment relationships built upon these two principles. In the UK, there is no legal definition of employment or self-employment, however, definitions can be identified through case law. In particular, in the UK, the main differentiation can be traced between the contract for service (employment) and the contract of service (self-employment). The distinction between the two is based on a set of criteria (common law test), used to classify the employment relationship, for each of which there is a number of indicators of the subordinate status (control, integration, economic reality, mutuality of obligation). A similar approach is adopted in the United States. The FLSA provides a very broad definition, and three tests can be applied by courts to determine the status of a worker. The first is the common law test, the second is the economic reality test, the third is a mixed test, known as the “ABS” test.

The presence of a common conceptual core built on the principles of “control” and “economic dependence” at the basis of the individual employment relationship is what makes translation possible through functional equivalents. The presence of hierarchical power and economic dependency in a working relationship, laid down in legislation or determined by case law, are the element that distinguish employment from self-employment in both languages and countries.

Even if the very concepts of “employment” and “self-employment” are different in these languages, the patterns that can be found in the evolution of the various employment relationships are similar. The global dimension – constituted by the presence of a directional power of the employer and of an economic dependence of the employee – is then combined with the local dimension – the different ways in which

these conceptual categories evolved over time and are put in practice in every legal system. This holds especially true considering that work has become less and less hierarchical, as well as in the light of global market trends leading to “work parcelization”. Translation is therefore possible even for concept that have no correspondence nor equivalent in the target language/culture through the identification of a formulation that helps describe and explain concepts as they are conceptualized in the source language and system. The main risk here lies in the choice of the “functional equivalent” – if wrong, it could convey the wrong meaning. To make sure to use an appropriate equivalent, it is important to look for all the similar terms and/or concepts in the target language.

Drawing on the above-mentioned cases, employment relationship terminology can be divided into three categories.

First, there are concepts that exist both in the source and in the target language and culture, with no significant conceptual differences between the source and the target legal system – apart from regulatory elements. In this case, there is a substantive correspondence in terms of conceptual categories (such as the case of commercial agency). The proper translation is the direct equivalent concept.

Second, there are concepts that exist in the source language and culture and when translated with what seems to be the most appropriate equivalent term, a conceptual shift takes place. These are the most frequent cases, and originate from the interaction between the global and local dimension. This is for instance the case of “subordinate employment”, “independent contractor”, “agency work”, “apprenticeship” among others. Two translation strategies can be adopted here. The first is “assimilation”: the translator uses the closest term available in the target culture minimizing differences and favoring commonalities. The second is “foreignization”, i.e. differentiate the translation of the Italian concept from its closest equivalent in the target language/culture by using a different wording that underlines the difference rather than commonalities.

Third, there are concepts that exist only in the source language and legal system, because, for various reasons, a similar conceptualization process has not taken place in the target-language country. This is for instance the case of project-based work, or work of accessory nature, among others. The only viable way here is to provide an understandable “word-by-word” translation, which is linguistically correct although it

sounds non-idiomatic. This happens because the concept does not exist and does not belong to the target culture, and the translator borrows terms that have been created to conceptualize different things.

In addition, the analysis shows trends in the way language evolves both geographically and over time. Each system is conceptually consistent within itself and in the way the language evolves. Interestingly, artificial creations such as international English and European English evolve in a different direction, as they primarily need to adapt to the specificities of the various countries they apply to. International and European law, as expression of supranational legal systems, also often introduce new concepts through *ad-hoc* vocabulary, either by creating new concepts that did not exist before, requiring a new “name”, or by shifting the meaning of existing terminology to make sure that terms are broad enough to encompass all the country-specific variations of the concept in question. In this case, the terminology in use must clarify the “common core” and at the same time be different from national concepts.

British English does conceptualize a different system than the Italian one. However, being part of the European Union, it is very receptive, making it possible to identify relatively easy solutions. As pointed out by Alain Supiot quoted in Deakin:

There is no European country in which the conception of the employment relationship has not been influenced to some degree by each of these two legal cultures, the Romanist and the Germanic³³.

Whereas, American English, although it is apparently the same language, is the expression of legal culture and system that have evolved in a very different direction, creating a bigger cultural distance, which makes the translation process from Italian more challenging.

This chapter provided an overview of the translation of employment relationship terminology and of the main types of employment contracts that exist in Italy. The next chapter will move forward by investigating the drafting and translating of contractual

³³ S. DEAKIN, *The Comparative Evolution Of The Employment Relationship*, Centre for Business Research, University of Cambridge Working Paper No. 317, 2005, p. 11.

clauses that can be found in the contracts analyzed in the present chapter. The next section will also provide an overview of so-called “international contracts” and *contratti alieni*, as well as a step-by-step analysis of strategies for clear and unambiguous contract translation.

Chapter II

Translating Employment Contract Clauses and Trends in International Contract Drafting

Outline: *1. Introduction; 2. Language Issues in Contract Drafting; 3. Translating Contractual Clauses; 4. International Contracts, New Forms of Employment and the Effects on Contract Drafting and Translation; 5. Conclusion.*

The contract of employment is the cornerstone of the edifice of labour law

O. Kahn-Freund³⁴

1. Introduction

This chapter looks at the language and terminology issues arising at the time of translating contractual clauses. Starting point is the analysis conducted in the previous chapter on Italian employment relationship terminology. Drawing on that higher-level investigation, the present chapter goes into a deeper level of detail, by analyzing specific employment contractual clauses.

In today's globalized world, there is the compelling need to understand how individual employment relationships come into being and are conceived across countries and cultures. Increasing attention needs to be devoted to the way documents are drafted and understood, both from the point of view of structure as well as of terminology.

³⁴ O. KAHN-FREUND cited in O. VOSKO, L. F. VOSKO, *Precarious Employment: Understanding Labour Market Insecurity in Canada*, Kingston, McGill-Queen's University Press, 2006, p. 228.

Two are the research questions that inspired this chapter. The first regards the transferability of the structure of Italian contracts – which has no correspondence in English-speaking countries. The second deals with the transferability of concepts resulting from syntax, lexicon and legal drafting style. A description of the structure of Italian employment contracts is provided in the following section, whereas in paragraph three, a clause-by-clause analysis is given in comparison with target-language contracts. A translation of an Italian standard employment contract template will be provided, serving as the basis for further discussions on possible solutions to overcome structural, as well as conceptual differences. Together with the translation of an Italian contract, a sample version of a typical U.S. employment agreement will be presented, with the aim of pointing out differences and commonalities that make the translation process particularly challenging. The purpose of the chapter is twofold. First, it attempts to bridge a gap in the literature, by providing an insight into employment contract clauses through the study of language, and, second, it aims at providing the reader with a series of practical tools to prevent mistranslation and miscommunication, which – in the case of contracts – may result in undesired legal effects. It may serve as a handbook to guide drafters and help multinational companies navigate the Italian labor market.

Understanding Italian contracts and legal documents poses from the outset many questions, deriving from the distance existing between the source-language and the target-language text in terms of structure, vocabulary, and phraseology. Distance exist also with regard to legal procedures, which need to be properly rendered in the target-language contract by means of unambiguous functional equivalents. In addition, their nearest equivalent may even vary from one English-speaking country to another.

Section two starts with an overview of the contract drafting standards at the international level, as well as in the countries under investigation in terms of structure and minimum required content. Then, an analysis of the structure of Italian contracts is provided, which will be compared with the typical structure of target-language contracts.

Section three provides a facing-page translation of an Italian standard employment contract. For the purpose of comparison, a sample U.S. employment agreement is also included. This helps identify the main cross-cultural differences as well as potential pitfalls of translating Italian contracts into English. A U.S. employment agreement was chosen because of the role that the United States has played over time and still plays

today in influencing contract drafting style and practices across the world. Moreover, as evidenced by the literature and as discussed in details in paragraph 4, the notion of “globalization of law” and of contract drafting practices mainly refers to the influence that the U.S. law and drafting style had on third-country rules and practices through the presence of multinational companies. Section 4 will therefore focus on new kinds of employment relationships originating from the globalization of work and their effect on language, as well as on so-called *alien contracts*, which raise drafting and translation questions. Finally the conclusion will summarize the findings of the chapter and describe what translation process needs to be followed in this particular field of study to prevent misunderstanding and communication pitfalls.

2. Language Issues in Contract Drafting

Employment contracts lie at the foundation of individual employment relationships, and their legal effects need to be preserved and communicated effectively in translation. The present section analyzes contract drafting practices, with particular reference to the structure of employment contracts in Italy and in the target-language countries (the UK and the U.S.). At the international level, limited regulation is available to standardize the structure and content of employment contracts. At the European level, the only Directive laying down framework provisions on the content of a contract of employment is *Council Directive 91/533/EEC of 14 October 1991 on an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship*, which was transposed into Italian Law through Legislative Decree No. 156 of 26 May 1997. The Directive applies “to every paid employee having a contract or employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State”. This statement underlines once more the absence of an agreed definition of “employment relationship” across EU countries, and it clearly states that what an employment relationship is and how contracts of employment are drafted should be defined at the national level. The Directive nonetheless sets some standards regarding the minimum information that

employers have to provide to employees. According to the Directive, employees should be informed in writing on the following matters:

- (a) the identities of the parties;
 - (b) the place of work; where there is no fixed or main place of work, the principle that the employee is employed at various places and the registered place of business or, where appropriate, the domicile of the employer;
 - (c) (i) the title, grade, nature or category of the work for which the employee is employed; or
(ii) a brief specification or description of the work;
 - (d) the date of commencement of the contract or employment relationship;
 - (e) in the case of a temporary contract or employment relationship, the expected duration thereof;
 - (f) the amount of paid leave to which the employee is entitled or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;
 - (g) the length of the periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated or, where this cannot be indicated when the information is given, the method for determining such periods of notice;
 - (h) the initial basic amount, the other component elements and the frequency of payment of the remuneration to which the employee is entitled;
 - (i) the length of the employee's normal working day or week;
 - (j) where appropriate;
 - (i) the collective agreements governing the employee's conditions of work;
- or
- (ii) in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of the competent body or joint institution within which the agreements were concluded³⁵.

Beside these, the only other element of the contract of employment that is fully regulated by European law is the question of the applicable law in the case of conflict of laws, for workers working in more than one country. Regulation No. 593 of 17 June 2008 applies to the entire EU, with the exception of the UK and Denmark, where the Rome Convention still applies. It reaffirms the privileged role of the parties of a contract in autonomously determining the governing law of the employment contract. Protection however is ensured by imposing that the choice made by the parties as to the

³⁵ EUROPEAN UNION, *Council Directive 91/533/EEC of 14 October 1991 on an Employer's Obligation to Inform Employees of the Conditions Applicable to the Contract or Employment Relationship*, Brussels, 1991.

applicable law cannot deprive the employee of the protection that they would receive in the absence of any specification. The employment contract is governed by the law of the country in which the employee habitually carries out the work. If this criterion does not apply, the Regulation identifies a subsidiary criterion, i.e. the country where the employee was hired. However, if it appears from the circumstances that the contract is more closely connected with a country other than the one identified by applying the criteria mentioned above, the principle of the country with the “closest connection” is applied.

Beside the above-mentioned elements, that are regulated at the European level, no other feature of the contract of employment has been standardized at supra-national level and even less at the broader international level. The absence of a common framework contributes to the persistent diversification between countries, with particular reference to non-European countries. This raises significant questions at the time of translating contractual clauses in another language, especially with regard to the structure, the conceptualization and the terminology to use.

In the light of the above, the following section provides an overview of a standard permanent employment contract as usually drafted under Italian law and its translation, bringing to the fore some of the most relevant issues in contract drafting. While this section focuses on the structure of the employment contract in Italy in comparison with target-language countries, the analysis of the language of clauses follows in the next section.

According to the Italian law, no specific form is required for the standard contract of employment, which can even be concluded orally. However, the exchange between the work performed by the employee and the pay provided by the employer should be clear to both parties of the relationship. Italian employment contracts usually take the form of offer letters³⁶, where the employer informs the worker of the terms of employment. An important distinct feature of the structure of Italian employment contracts or letters is the reference to the applicable collective agreement. Collective agreements serve as a point of reference in any employment contract and they regulate and apply to the terms

³⁶ The term “letter of employment” or “employment letter” is not the equivalent of *lettera di assunzione*, as it is used to refer to letters written by the employer to third parties (e.g. landlord, bank, etc.) as *proof* of the worker’s employment status.

of employment agreed by the party even if they are not expressly reported in the letter. The regulatory source is therefore in this case external to the contract, and contracts or letters cannot be considered fully “stand-alone” documents. In other words, the Italian employment contract is not structurally and conceptually self-sufficient, as it always refers to the applicable collective agreement, which is the document that regulates most terms of the employment relationship. This becomes particularly relevant with regard to the worker’s grade, tasks and job title, which determine pay levels. There is room of maneuver for self-regulation (“autonomy of the parties”) and mandatory rules only apply unless otherwise agreed by the parties themselves. Self-regulation (autonomy) is even greater for certain positions, e.g. senior positions or key and strategic roles in the organization. However, in the vast majority of cases, the reference to the applicable collective agreement is one of the most important elements in the contract, as it determines the rules applying to the employment relationship. This becomes especially challenging when Italian employment contracts are translated, since the meaning and the implications of many contractual clauses need to be found in a different source, external to the contract itself.

Translation from Italian is particularly difficult to deal with when the target language is English, as this structure is foreign to Anglophone cultures. The very notion of collective agreement is different, and this changes the role that collective bargaining plays in determining the framework, the structure and the effects on the individual employment relationship, making collective agreements generally less relevant than in Italy. In addition, differences exist even between English-speaking countries, such as the UK and the U.S. For example, the differences in the style and legal status of a British *collective agreement* and an American *labor contract* are significant and they affect the way the individual employment relationship is constructed. These differences are rooted in the historical tradition of these countries, as in Europe (including the UK and Italy) multi-employer bargaining (hence the collective agreement) emerged, whereas single-employer bargaining prevailed in the United States. There, the company dimension prevails over the collective one and, as a consequence, no reference is usually made to labor agreements in American employment agreements, but rather to company-level employee handbooks, which definitely play a more relevant role than in Europe (as they are conceived differently) in defining the individual employment

relationship between a worker and an employer. In general, the “self-sufficient” nature of contracts in the Anglophone tradition is a very important feature and, as we will see, it is one of the recurring themes that explains many of the differences between Italian and English-language contracts and many of the translation difficulties.

In the United Kingdom, the employment agreement usually takes the form of a “written statement of employment particulars”. This is not an employment contract but a document that includes the main conditions of employment. The employer must provide the written statement within two months of the start of employment. Collective agreements are generally not mentioned, and the written statement of employment particulars has to include a lot of information and can be made up of more than one document. If it is structured in multiple documents, one of these (called the *principal statement*) must include:

- the business’s name
- the employee’s name, job title or a description of work and start date
- if a previous job counts towards a period of continuous employment, the date the period started
- how much and how often an employee will get paid
- hours of work (and if employees will have to work Sundays, nights or overtime)
- holiday entitlement (and if that includes public holidays)
- where an employee will be working and whether they might have to relocate
- if an employee works in different places, where these will be and what the employer’s address is
- how long a temporary job is expected to last
- the end date of a fixed-term contract
- notice periods
- collective agreements
- pensions
- who to go to with a grievance
- how to complain about how a grievance is handled
- how to complain about a disciplinary or dismissal decision³⁷

The written statement of employment particulars does not necessarily cover sick pay, disciplinary, dismissal and grievance procedures, but it must indicate where this information can be found.

³⁷ Source is the UK Government website: <https://www.gov.uk/employment-contracts-and-conditions/written-statement-of-employment-particulars> (Last accessed 2 November 2014).

In the U.S., instead, *offer letters* are most common, even if there may be full employment contracts or agreements for senior or managerial positions. No reference to external regulatory sources is usually made, apart from employee handbooks, which are very important and they serve multiple purposes. They regulate many aspects of the employment relationship, and are sometimes mentioned in offer letters as to regulate certain matters. As pointed out above, being a single-employer bargaining society, where the employer has significant power, it is the employer who usually defines the structure of employment relationships. Although a company handbook is not compulsory, federal and state laws, especially in the light of the growing number of cases of litigation, strongly suggest that a *written statement of company policy* (also known, as pointed out above, as company or employee handbook) may be useful for businesses of any size.

Drawing on the above, the following section will provide an analysis of a clause-by-clause translation of a sample Italian permanent employment contract. The Italian contract and its translation will be compared with an employment agreement as it is typically drafted in the United States, with the aim to discuss the challenges posed by the structural and conceptual differences between the two.

3. Translating Contractual Clauses

The present section analyzes into details the clauses usually included in a permanent employment contract in Italy. An Italian offer letter usually starts with the personal details of the parties, followed by the reference to the relevant collective agreement, place of work, starting date, duration of the probationary period, job title (*mansione*), grade (*livello*) determined on the basis of the workers' classification system, as defined in the relevant collective agreement. From there, the job description, duties, remuneration, vacation, working time and required notice period to terminate the contract are derived. The employment contract often includes reference to the relevant social security scheme, a clause on personal data processing, as well as reference to the severance pay regulation. In addition, the contract usually indicates the workplace and working time of the production unit to which the employee is assigned.

A clause-by-clause translation of an Italian employment contract template is provided below³⁸. The translation is analyzed and compared to the structure and language typically used in employment agreements in the U.S. and the UK, with a view to addressing conceptual and terminological correspondence and discussing potential pitfalls, mistranslations and the difficulties arising from the absence of equivalents. As stated above, Italian employment contracts make reference to external sources, in particular the sectoral national collective agreement governing the employment relationship. For that reason, a word-by-word translation of the Italian contract would not be sufficiently clear in English, and additional explanations are therefore required to make the text understandable to the target audience. The following sections focus on the individual clauses, their translation and analyze how they compare with a U.S. employment agreement.

Introduction

The first part of an employment contract in Italy provides worker's and employer's details, as well as information about the job to be performed.

Italian Standard Employment Contract	Italian	[Datore di lavoro], in persona del legale rappresentante Sig. ..., nato a ..., il .../.../..., con sede legale in ..., via..., n. ... C.F. e partita IVA ...; E [Lavoratore] nato a ...il .../.../... residente in..., via..., n. ... C.F. ... (Lavoratore); CONVENGONO 1. OGGETTO, MANSIONI, INQUADRAMENTO 1.1. Il Sig. [Lavoratore] è assunto dal [Datore di lavoro] con assegnazione delle seguenti mansioni...da intendersi comprensive delle mansioni connesse ed equivalenti con inquadramento nel livello... del Ccnl ... L'assunzione decorre dal .../.../...
	English	[Name of the Employer], in the person of the legal representative

³⁸ To ensure that correct formulations are used, the Italian contract template and sample clauses are taken from M. TIRABOSCHI, *Formulario dei rapporti di lavoro*, Milan, Giuffré, 2011, chapter 1, pp. 1-44. Translations are my own. Contract templates in American English are taken from the resources made available by the Harvard Business School <http://www.hbs.edu/entrepreneurship/resources/legalissues.html> (Last accessed 5 November 2014) and compared with the relevant literature.

	<p>Translation</p> <p>Mr ..., born in, ... on ... / ... / ..., with registered office at [address], Tax Code No. ... and VAT No...; AND [Employee] born in on ... / ... / ... and resident in [address] Tax Code No. ... AGREE</p> <p>1. JOB TITLE, DUTIES, GRADE</p> <p>1.1. Mr/Mrs. ... [Employee] is employed by... [Employer] in the capacity of [job title].</p> <p>The Employee is required to perform the following duties.... inclusive of all the duties that are related and equivalent to those performed by workers placed at grade..... of the workers' classification system as laid down in the collective agreement... Start date is ... / ... / ...</p>
U.S. job offer letter	<p>DESCRIPTION OF DUTIES</p> <p>A. Name of Position The Employee shall be employed in the capacity of:</p> <p>B. Essential Job Functions and Duties The essential job functions or duties of this position are as follows:</p> <p>The employee will perform any and all duties that are reasonable and customarily performed by a person holding a similar position in the industry or business of the Employer.</p>

In accordance with the collective agreement of reference, and depending on the requirements of the job, employees in Italy are classified following the workers' classification system provided in the agreement and they are given a job title connected to the duties that the worker is to perform. Job titles and duties are usually defined in the collective agreement. Therefore, although a typical U.S. letter also indicates the job title, function and the duties of the worker, these do not necessarily correspond to those laid down in external regulatory sources, but they can be independently determined by the employer (and the employee).

The classification process works in the reverse direction. It is the Bureau of Labor Statistics, which in 2010, drawing on the various job titles existing in the labor market, created the Standard Occupational Classification (SOC) system, with a view to better organizing the variety of job titles into occupational categories for the purpose of collecting, calculating, or disseminating data.

As it emerges, starting from the very beginning, a word-by-word translation of the Italian contract is insufficient, unless the recipient of the translated version has some knowledge of how the Italian system works. Collective agreements in Italy classify

workers within each sector, and, depending on the complexity of the work and seniority/position of the worker, this is placed at a specific level of the workers' classification system. The grade attributed to the worker determines the pay he/she will receive. This background information cannot be taken for granted at the time of translating a contract of employment from Italian into English, and it requires further explanations to the English-speaking reader. A possible solution to make the translation more understandable to the target reader is to add a note to the translation, briefly describing how the Italian system functions.

Going into detail, the notion of *mansioni connesse ed equivalenti* is a legal formulation that may pose challenges in translation. The translator may be tempted to “localize” the clause, adopting the formulation that is typically used in U.S. agreements, as if they were synonyms, which reads as follows: “duties that are reasonable and customarily performed by a person holding a similar position”. The actual meaning is not very distant, yet, there may be legal implications, such as the notion of *equivalenti*, which expresses a “value” and is different from the notion of “reasonable”. Moreover, the formulation “customarily performed” is clearly a conceptualization typical of common law institutions, where custom and established patterns of behavior play a more relevant role than in civil law countries. The very notion of “reasonable” is one of the most controversial terms in legal drafting. It is extensively used in law, especially in common law, by drafters who want to avoid formulating a precise rule, leaving to courts, in case of litigation, to determine what “reasonable” means. The term is vague enough to refer to what will generally be considered necessary to be done in similar circumstances. Also the notion of *connesse ed equivalenti*, does not directly describe what the related duties are or should/could be. Unlike *connesse ed equivalenti*, however, “reasonable” has also another meaning, as it can be used, in certain cases, to have mitigating effects on the term to which it applies, as a way to accept that in some circumstances one cannot ask too much of the worker carrying out the job.

Following this introductory part, a typical Italian employment contract includes the following clauses: the probationary period, place of work and working time, which will be analyzed below.

Probationary Period

With regard to the probationary period in Italy, reference is usually made to the relevant collective agreement, which defines its standard duration. A probationary period template clause recites as follows:

Italian Standard Employment Contract	Italian	<p>PATTO DI PROVA L'assunzione è subordinata al positivo superamento di un periodo di prova di... [giorni/settimane/mesi di calendario/lavorativi] [è consigliabile fare riferimento al periodo di prova come indicato nel Ccnl di categoria] durante il quale ciascuna delle parti potrà recedere dal contratto senza obbligo di motivazione e di preavviso.</p> <p>CLAUSOLA INTEGRATIVA * Le parti si impegnano in ogni caso a consentire l'esperimento oggetto del presente patto per un periodo minimo di ... [giorni/settimane/mesi]. Dalla scadenza di tale termine e fino allo spirare del periodo di prova le parti possono esercitare la facoltà di recesso senza obbligo di preavviso e motivazione. * Si tratta dell'ipotesi in cui le parti si impegnano a non recedere, in corso di prova, prima che sia decorso un determinato termine.</p>
	English Translation	<p>PROBATIONARY PERIOD Hiring depends on the successfully completion of a probationary period of [calendar/working days/weeks/months] [it is advisable to refer to the probationary period as indicated in the sectoral collective agreement], during which either party may terminate the contract for any reason without notice or cause.</p> <p>SUPPLEMENTARY CLAUSE * The Parties commit to a minimum probationary period of ... [days/weeks/months]. From the expiry of that minimum probationary period and until the end the probationary period, the parties may exercise the right to terminate the contract for any reason without notice or cause. * In this case the parties undertake not to terminate the contract in the course of the probationary period before a certain time span has elapsed.</p>
U.S. job offer letter		<p>PROBATIONARY PERIOD Option 1</p> <p>You shall be on probation for a period of six (6) months from the date of joining the Company. The same may however be extended or the contract of employment may be terminated, if so deemed necessary by the Management. On completion of such time, based on performance, you would be considered confirmed.</p> <p>Option 2 An employee's first ninety (90) days of employment are on a trial basis and are considered a continuation of the employment selection process. The ninety (90) day probationary period provides the</p>

Company an opportunity to observe and evaluate the capacity of the employee, which includes the employee's ability to satisfactorily perform the essential functions of his or her job; and to observe and evaluate the employee's work habits and conduct, including attendance and the employee's relationship with coworkers and superiors.

During this probationary period, the Company may terminate employment immediately, with or without cause and with or without notice. Likewise, the employee may also terminate his or her employment with the Company at any time, with or without notice and with or without cause.

This 90 day probationary period is not a term of employment and is not intended, nor does it, impact the at will nature of the relationship between the Company and the employee.

The probationary period clause is very important in Italy, particularly in connection with the permanent employment contract, as it gives the employer the opportunity to terminate the employee immediately, with or without cause and with or without notice, a possibility that the employer will no longer have upon expiration of the probationary period. Likewise, the employee may also terminate his or her employment with the company at any time, with or without notice and with or without cause.

The notion of "probationary period" in Anglophone countries is, on the contrary, much less relevant as compared to Italy, especially in the U.S. In Italy, in the case of a permanent employment contract, once the probationary period is over, the employment relationship cannot be terminated without a cause or notice. Whereas, in the U.S., even if the formulation "probationary period" is sometimes used, it is mostly included by employers in employment agreements as a way to discourage employees from bringing a lawsuit against the company if dismissed, but the at will nature of the employment relationship that follows at the end of the probationary period is actually not impacted by the probationary period. In this connection, lawyers warn against the use of this terminology, as the formulation "probationary period" may be misleading, because it may lead workers to think that after the probationary period the employment relationship will not be at will and that, once they have "passed" the probationary period, they cannot be fired without a cause. Whereas in most U.S. States, the presumption is that all employment is at will, and for this reason, attorneys in the U.S. increasingly advise against using the words "probationary period" favoring less misleading

formulations such as “initial/trial/introductory period”³⁹. The two options provided above by way of example make the point very clear. The first does not make any reference to the kind of employment relationship in place between the parties, ambiguously avoiding any reference to either “at will” or any sort of “permanent” employment by using the wording “considered confirmed”. Whereas the second clearly points out the at will nature of the employment relationship, making the probationary period almost meaningless in that context.

From the structural point of view, the main difference between the Italian contract and the U.S. sample resides in the fact that, in the U.S., when provided, the terms regulating the probationary period are mostly laid down in company handbooks and have no legal value, whereas in Italy they are laid down in collective agreements.

With regard to the UK, in British law there is no such thing as a “probationary period”. However, it is common for employers to include a probationary period in the contract, even though, legally, contractual rights start from the day the worker starts working, unless the contract itself states otherwise.

Place of Work and Working Time

The present section analyzes place of work and working time clauses. As for place of work, no particular challenges emerge from the analysis of the contractual clause when compared with a standard clause in English:

Italian Standard Employment Contract	Italian	<p>LUOGO DI LAVORO</p> <p>Il Lavoratore è assegnato allo stabilimento/filiale/ufficio del Datore di lavoro sito ... in via ..., n. ... CAP ...</p> <p>Resta inteso che l'attività lavorativa potrà essere svolta temporaneamente anche in luoghi diversi da quello di assunzione.</p>
	English Translation	<p>PLACE OF WORK</p> <p>The employee's place of work is the plant/branch/office of the Employer at [address].</p> <p>Work could be temporarily carried out in places other than the one laid down in the present contract.</p>

³⁹ Source is: http://www.twc.state.tx.us/news/efte/probationary_periods.html (Last accessed 2 November 2014).

U.S. job offer letter		PLACE OF WORK The Employee's primary place of work will be at the following location. The employee may also be required to work at the following places.
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The place of work clause is therefore straightforward. Different is the case of the working time clause, which is one of the most important employment terms in a contract. The standard full-time work clause is also straightforward to translate, whereas part-time work clauses can be more challenging, as there are many concepts which do not exist in English and have neither a conceptual nor a terminology equivalent. Here is the translation of a working time clause, and a focus on part-time work clauses.

Italian Standard Employment Contract	Italian	ORARIO DI LAVORO L'orario di lavoro è quello normalmente praticato in Azienda. Resta inteso che l'orario aziendale potrà essere modificato per esigenze organizzative.
	English Translation	WORKING HOURS Working hours is the working time usually applied at the Company's premises. The Company can modify working hours for organizational needs.
U.S. job offer letter		WORKING HOURS Option 1 The Employee's normal hours of work shall be [time] to [time] from [day] to [day]. Option 2 The Employee shall work [insert] hours in every [one week/one month] as agreed with the Company, and at times agreed with the Company.

In the case of part-time work in Italy, collective bargaining can lay down provisions regulating so-called *lavoro supplementare*, i.e. a specific type of overtime work, performed beyond the working time agreed in the part-time employment contract, but below the number of hours considered standard full-time work as fixed by collective bargaining. This type of overtime work may be paid at higher hourly rates up to, but usually less than the rate paid for ordinary overtime work (i.e. hours worked beyond the standard full-time working hours). In other words, *lavoro supplementare* is the overtime work that a part-time worker does up to full-time. For instance, if full-time work amounts to 40 hours per week, and a worker has a part-time contract for 20 hours per

week, if the worker works more than 20 hours but less than 40, these hours are considered to be as *lavoro supplementare*.

Italian Standard Employment Contract	Italian	<p>LAVORO SUPPLEMENTARE NEL PART-TIME</p> <p>IPOTESI 1 Il Datore di lavoro ha la facoltà di chiedere lo svolgimento di prestazioni supplementari nell'osservanza delle disposizioni [se esistenti] del Ccnl ... Le ore di lavoro supplementare saranno retribuite con le maggiorazioni previste dal suddetto contratto collettivo.</p> <p>IPOTESI 2 L'effettuazione di prestazioni supplementari, ai sensi dell'art. 3, comma 3, d.lgs. n. 61/2000, richiede il consenso, anche orale o per fatti concludenti, del Lavoratore. Le ore di lavoro supplementare saranno retribuite come ore ordinarie. Resta inteso che in caso di superamento dell'orario normale settimanale le ore aggiuntive sono da considerarsi a tutti gli effetti ore di lavoro straordinario.</p> <p>IPOTESI 3 Il Lavoratore, con la sottoscrizione del presente contratto, esprime il consenso per l'effettuazione di lavoro supplementare. Le ore di lavoro supplementare saranno retribuite con una maggiorazione pari a ... Resta inteso che in caso di superamento dell'orario normale settimanale, le ore aggiuntive sono da considerarsi a tutti gli effetti ore di lavoro straordinario.</p>
	English Translation	<p>OVERTIME WORK UP TO FULL-TIME IN PART-TIME WORK</p> <p>CASE 1 The Employee may be required by the Employer to perform overtime work in compliance with the provisions laid down in the relevant collective agreement Where overtime work is performed, the Employee is entitled to overtime payment at a higher hourly rate as set out in the relevant collective agreement.</p> <p>CASE 2 Overtime work pursuant to Art. 3, paragraph 3, Legislative Decree No. 61/2000, requires the consent, even oral or tacit, on the part of the Employee. Overtime work will be paid at the same hourly rate as ordinary working hours. It is understood that in the case of exceeding full-time working hours, additional extra-hours will be considered in all respect as ordinary overtime work.</p> <p>CASE 3 By signing this contract, the Employee expresses his/her consent to overtime work. Where overtime work is performed, the Employee is entitled to an overtime payment equal to It is understood that in the case of exceeding full-time working hours, additional extra-hours will be</p>

	considered in all respect as ordinary overtime work.
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This type of overtime work is usually not regulated in U.S. employment agreements, which do not distinguish between different kinds of overtime work. Being a new concept for the target-language reader, a literal translation may be ambiguous. At the EU level, and in EU legislation there is no official translation of this Italian concept. The IATE dictionary has zero occurrences for that term. A general translation into English may result in “additional workload” or be related to a totally different field of regulation (U.S. copyright law defines “supplementary work” as “work prepared for publication as a secondary adjunct to a work”) which may be very misleading. It is therefore necessary to identify a functional equivalent that explains in full but concisely the meaning of this legal notion under Italian law. “Overtime work up to full-time in part-time work” may serve the purpose as it eliminates any ambiguity and conceptual confusion by describing what the clause is about.

Still on part-time work in Italy, special clauses can be added in the contract to enable changes in the organization of part-time work between employers and employees. A *clausola di flessibilità* can be included to change the worker’s working time schedule, in other words, the distribution of working hours. This means that, for example, if the employee schedule goes from 9 am to 1 pm, with this clause the employer has the right to change the schedule to 10 am to 2 pm. Another term that may be present in a part-time employment contract is the so-called *clausola di elasticità*, which enables the employer to extend (hence the notion of *elasticità*, elasticity) the working time of the part-time worker by increasing the number of hours worked, provided that the worker is notified in advance. These clauses cannot be translated literally in English and needs to be explained in full:

**Italian
Standard
Employment
Contract**

Italian

CLAUSOLA DI FLESSIBILITA’

Il Lavoratore con la sottoscrizione del presente patto dà la disponibilità, ai sensi dell’art. 3, comma 9, d.lgs. n. 61/2000, a che l’impresa modifichi la collocazione temporale della prestazione lavorativa (come individuata nel contratto) in presenza delle condizioni e secondo le modalità indicate dal Ccnl...

L’esercizio da parte dell’impresa del potere di modificare la collocazione temporale della prestazione comporta in favore del prestatore di lavoro il diritto a un preavviso di almeno 5 giorni lavorativi, nonché il diritto a una maggiorazione retributiva nella

		misura fissata dal Ccnl...
Italian Standard Employment Contract	English Translation	<p>CHANGES IN WORK SCHEDULE</p> <p>With this clause, the Employee declares to accept, pursuant to Art. 3, paragraph 9, of Legislative Decree No. 61/2000, changes in the working time schedule laid down in the present contract, under the conditions specified in the collective agreement ...</p> <p>The exercise on the part of the Company of the power to change the Employee working time schedule requires a prior notice to the Employee of at least 5 working days, and entitles the Employee to a salary increase in the amount established by the collective agreement ...</p>
	Italian	<p>CLAUSOLA DI ELASTICITA'</p> <p>Il Lavoratore con la sottoscrizione del presente patto dà la disponibilità, ai sensi dell'art. 3, comma 9, d.lgs. n. 61/2000, a che l'impresa modifichi in aumento la durata della prestazione lavorativa (dedotta nel presente contratto) in presenza delle condizioni, secondo le modalità e nei limiti indicati dal Ccnl...</p> <p>L'esercizio da parte dell'impresa del potere di variare in aumento la durata della prestazione lavorativa comporta in favore del prestatore di lavoro il diritto a un preavviso di almeno 5 giorni lavorativi, nonché il diritto a una maggiorazione retributiva nella misura fissata dal Ccnl...</p>
	English Translation	<p>WORKING TIME EXTENSION</p> <p>By signing this agreement, the Employee declares to be available, pursuant to Art. 3, paragraph 9, of Legislative Decree No. 61/2000, to accept increases in the number of working hours as laid down in the employment contract, under the conditions and within the limits specified by the collective agreement ...</p> <p>The exercise on the part of the Company of the power to increase the Employee hours of work requires a prior notice to the Employee of at least 5 working days, and entitles the Employee to a salary increase in the amount established by the collective agreement ...</p>

In addition, the employer and the employee need to determine the distribution of working hours throughout the week or the month. Working time distribution can be *orizzontale* (literally: horizontal part-time), which means that the worker goes to work every day for fewer hours a day than full time, (e.g. from Monday to Friday from 9 am to 1 pm), or *verticale* (literally: vertical part-time), where the worker works full time for fewer days of the week (e.g. Monday through Wednesday).

Compensation

The following clause in an Italian employment contract relates to remuneration. When it comes to this clause, comparative work at the level of the language is particularly difficult, due to the significant differences existing between legal systems.

Remuneration in Italy depends on the sectoral collective agreement applied in the company, the job title of the worker and the grade at which the worker is classified in the workers' classification system defined in the relevant agreement. A typical remuneration clause in an Italian contract mentions the applicable collective agreement. In the UK and the U.S., there is no such structure, and the components of the remuneration vary widely and are usually fully listed in the individual employment agreement itself. This area has a very rich vocabulary, and many terms with different nuances. The suggested translation here for *trattamento economico* is “compensation”, which is the broadest term in English and the most widely used. The word compensation can also include the many components of pay, listed in the employment agreement and which, in U.S. contracts, may include: base compensation, commissions, incentive programs, expenses reimbursement, salary adjustments, stock options, bonuses, profit sharing, and retirement – all terms which may be defined in company handbooks. There may also be other benefits, such as insurance, vacation, education reimbursement that are also generally laid down in company handbooks, which in this case have a similar function as collective agreements in Italy.

Italian Standard Employment Contract	Italian	<p>TRATTAMENTO ECONOMICO</p> <p>Il trattamento economico è quello stabilito per la qualifica e la categoria di appartenenza dal Ccnl richiamato al punto 1.</p> <p>In particolare, la retribuzione mensile lorda è così composta: [specificare singolarmente gli elementi della retribuzione e il relativo ammontare].</p> <p>La retribuzione indicata sarà corrisposta per... mensilità [verificare il Ccnl di riferimento].</p> <p>La quota di retribuzione eccedente rispetto a quella tabellare individuata dal contratto collettivo, attribuita a titolo di superminimo, potrà essere assorbita, fino a concorrenza, dagli aumenti retributivi futuri derivanti da passaggi di livello o da incrementi introdotti da rinnovi contrattuali.</p>
	English Translation	<p>COMPENSATION</p> <p>Compensation is determined according to the job title and grade as laid down in the relevant Collective Agreement referred to in paragraph 1.</p>

		<p>In particular, the gross monthly salary is as follows: [specify individually all the components of compensation and their amount]. Compensation will be provided for [number] months per year [according to the relevant collective agreement].</p> <p>In the case the salary agreed is above the pay level established in the relevant collective agreement, the exceeding amount may be absorbed, up to its full amount, by future pay increases resulting from level advancements or from salary increases introduced through collective agreement's renewals.</p>
U.S. job offer letter		<p>EMPLOYEE COMPENSATION</p> <p>Compensation paid to the Employee for the services rendered by the Employee as required by this Agreement (the "Compensation") will include a wage at the rate of \$ 0.00 (USD) per hour as well as any compensation paid for Overtime Hours.</p> <p>The Compensation will be payable twice per month while this Agreement is in force. The employer is entitled to deduct from the Employee's Compensation or from any other compensation in whatever form, any applicable deductions and remittances as required by law.</p> <p>The Employee understands and agrees that any additional compensation paid to the Employee in the form of bonuses or other similar incentive compensation will rest in the sole discretion of the Employer and that the Employee will not earn or accrue any right to incentive compensation by reason of the Employee's employment.</p>

The Italian standard employment contract may or may not include (by referring back to the applicable collective agreement) the number of monthly payments that are provided to the worker every year. Depending on the sectoral collective agreement, workers may be entitled to an extra month's pay that is usually granted at Christmas (thirteenth month's pay) and in some sectors also to an additional pay given in summer and known as fourteenth month's pay. The U.S. agreement usually appears to be more complete, as it does not refer back to any other source of regulation except for the State law (and the company handbook).

In Italy, there is also the notion of *superminimo*, which has no exact equivalent in English, referring to a supplement to the minimum pay that is provided when the agreed pay is above the pay level established in the relevant collective agreement. Moreover, the contract could also include a clause relating to *anzianità convenzionale*, which means an additional seniority grant also established in collective agreements providing for pay increases and other benefits.

With reference to English concepts, the terms salary and wage have a different meaning as wages are often paid per hour or weekly, while salary refers to how much one is paid monthly or yearly.

Disciplinary Rules, Safety, Required Registrations

The following three clauses have generally no equivalent in U.S. or British contracts and agreements. They relate to the disciplinary rules that the employee has to abide by, health and safety at work, and the required contract registration procedures to ensure a better control over the company activities on the part of public authorities.

The clause laid down below requires the compliance of the worker with the rules established within the company:

Italian Standard Employment Contract	Italian	REGOLAMENTO DISCIPLINARE Il Lavoratore con la sottoscrizione del presente contratto dichiara di essere a conoscenza delle norme relative alle infrazioni disciplinari, alle procedure di contestazione, alle sanzioni contenute nel codice civile, nella l. n. 300/1970 e nel Ccnl richiamato al punto 1 del quale dichiara di prendere visione in estratto, unitamente alle norme disciplinari e al regolamento aziendale, in allegato (cfr. Allegati). Il Lavoratore si impegna ad attenersi al regolamento aziendale, come pure alle disposizioni interne e agli usi adottati in Azienda. Gli usi aziendali si intenderanno conosciuti ed accettati qualora il Lavoratore non abbia avanzato eccezioni per iscritto entro lo scadere del periodo di prova.
	English Translation	DISCIPLINARY RULES By signing this agreement, the Employee acknowledges to be aware of the rules applying to disciplinary violations, reprimands, sanctions in case of disciplinary offences laid down in the Civil Code, in Law 300/1970 and in the relevant collective agreement referred to in paragraph 1. The Employee hereby declares to have read and understood the relevant collective agreement, as well as the disciplinary rules and the company regulation provided in the annex (see Annexes). The Employee agrees to abide by the Company Regulation, as well as by Company internal practices. Company internal practices are considered as accepted by the Employee, unless a written complaint is made by the Employee before the conclusion of the probationary period.

The *regolamento aziendale* (company regulation) is not the same as the U.S. employee or company handbook. The term can be used to refer to three types of documents, that differ significantly from each other, both in the content, as well as in the nature and source of law: the disciplinary code, the company-level collective agreement, the company policy. The disciplinary code, which is the one referred to in here, is regulated by Art. 7 of Law No. 300/1970 (Workers' Statute) and is defined as the set of rules governing the behavior of the worker in the workplace. The company-

level collective agreement is the agreement – if present – which is often adopted in large enterprises to regulate in detail some terms already regulated by national collective agreements or by law. Finally, the company policy is the set of rules adopted unilaterally by the employer to regulate the conduct of its employees on specific matters such as, for example, the use of personal computers, internet browsing, emails, and so on.

The concept of company regulation, and in particular of disciplinary code that applies here, is narrower than the U.S. notion of employee or company handbook. While it often varies from company to company, an employee handbook may address the definitions of full- and part-time employment, and the benefits for each of them. In addition, it defines the “work week”, or provide information about daily breaks (for lunch and rest), employee pay and benefits (such as vacation and insurance), conduct and discipline policies. It may also include conduct policies for sexual harassment, alcohol and drug use, and attendance; plus, grounds for dismissal and grievances procedures with supervisors and/or co-workers. Guidelines for employee performance reviews, policies for promotion or demotion, rules concerning mail, telephone, company equipment, internet and email are also included. It is often required that employees keep certain business information confidential, and therefore the company handbook may include information about releasing employee records. In the U.S., if the employer is covered by the U.S. Family and Medical Leave Act of 1993 – generally if it employs 50 or more people – the handbook must contain information about FMLA.

Despite being more comprehensive and broader, a certain degree of correspondence can still be identified between the Italian company regulation and the employee handbook. However, it is not appropriate to translate the term *regolamento aziendale* with company handbook, because the latter is typical of large American corporations regulating matters, which, for historical reasons, are not regulated collectively at higher levels, but rather defined at the company-level. In this context, the very conceptualization, as well as the function of these two documents differ significantly. In some ways, the company handbook regulates in one single place, things that in Italy are regulated at the national level, at the company level (through company-level bargaining), and through disciplinary codes.

The following clause refers to health and safety at work, and is also generally not included in employment agreements in Anglophone countries. In the UK, if an employer employs five or more people, it is required by the Health and Safety at Work Act to issue a written statement of Health and Safety policy, which is not necessarily included in the employment agreement. In the United States, the law requires the implementation of health and safety rules, which are usually not included in the employment agreement, as they do not regulate a feature of the employment relationship, but are considered duties of the employer and of the employee in their respective capacity.

Italian Standard Employment Contract	Italian	SICUREZZA Il Datore di lavoro dichiara di applicare tutte le norme in vigore in materia di sicurezza sul lavoro e in particolare la disciplina di cui al d.lgs. n. 81/2008 (TU sicurezza) e successive modificazioni. Il Lavoratore si impegna a uniformarsi alle relative prescrizioni e a rendere note eventuali situazioni anormali che dovesse riscontrare in occasione dell'esercizio dell'attività lavorativa.
	English Translation	SAFETY The Employer hereby declares to apply all the rules in force concerning safety at work and in particular the provisions of Legislative Decree No. 81/2008 (Consolidated Law on Health and Safety at Work) and subsequent amendments. The Employee agrees to comply with the relevant requirements and to inform the employer of all the risks that may arise in connection with the performance of work activities.

Even if in the U.S. no health and safety clause is usually included in the individual employment contract, at the company level, a *statement* is made to ensure commitment to compliance with health and safety rules. The Occupational Safety and Health Administration (OSHA) provides a sample statement, as follows.

Safety and health in our company must be a part of every operation. Without question, it is every employee's responsibility at all levels.

We will maintain a safety and health program conforming to the best practices of organizations of this type. To be successful, such a program must embody the proper attitudes toward injury and illness prevention on the part of supervisors and employees. It also requires cooperation in all safety and health matters, not only between supervisors and employees, but also between employees and their co-workers. Only through such a cooperative effort can an effective safety and health program be established and preserved.

The safety and health of every employee is a high priority. Management accepts responsibility for providing a safe working environment and employees are expected to take responsibility for performing work in accordance with safe standards and practices. Safety and health will only be achieved through teamwork. Everyone must join together in promoting safety and health and taking every reasonable measure to assure safe working conditions in the company⁴⁰.

The statement, however, is not very different in content from the clause laid down in the Italian employment contract, apart from the fact that it is a *statement* and not an agreed-upon *clause*, but it also – as the Italian clause – splits up responsibilities between the employer and employees. In addition, the safety clause in the Italian contract is an *individual* agreement between the employer and the particular worker, whereas the U.S. statement is more inclusive in considering health and safety at work the result of “teamwork” between employer, the employees and their co-workers.

The clause that follows relates to the mandatory registration that the employer has to perform to ensure transparency in the case of control procedures from public authorities:

Italian Standard Employment Contract	Italian	REGISTRAZIONI OBBLIGATORIE Il Datore di lavoro dà atto che con l’assunzione il Lavoratore verrà iscritto nel Libro Unico del lavoro tenuto ai sensi della l. n. 133/2008.
	English Translation	REQUIRED REGISTRATIONS The Employer declares that at the time of hiring, the Employee will be included in the Employee Ledger pursuant to Law No. 133/2008.

The notion of *Libro Unico del lavoro* (employee ledger) is typical of the Italian system, as no specific registration for employment is required in the other countries under investigation. In this case, as in many others, it is important to avoid confusion and assimilation with non-overlapping concepts in the target language. The *Libro Unico del Lavoro* was introduced in 2008 with the view of streamlining and simplifying bureaucracy for employers. It includes all the data related to the workers in the company and it is broader than what is usually understood under *payroll* in English. A different translation was therefore chosen to avoid confusion and improper assimilation. It is, in some respects, equivalent to a payroll (or pay slip) but it also includes other information

⁴⁰ OSHA, https://www.osha.gov/SLTC/etools/safetyhealth/mod4_tools_policy.html (Last accessed 2 November 2014).

and details, such as records on workers' presence at work. It has two main functions: to show to every worker the status of their employment relationship, and to show supervisory bodies the overall employment structure of the company.

Covenants

Employment agreements both in Italy and in Anglophone countries can include a series of other incidental clauses, covenants such as data protection clauses, confidentiality clauses for the duration of the employment relations and beyond, and non-competition clauses. The first clause here provided regards the protection of the personal details of the worker, a clause that is usually not included in British or American employment agreements:

Italian Standard Employment Contract	Italian	PRIVACY Il Datore di lavoro dichiara che i dati relativi alla persona del Lavoratore e, se del caso, dei suoi familiari, saranno trattati ai sensi della normativa vigente ai soli fini della gestione del rapporto di lavoro da intendersi in modo generale e con l'inclusione anche dei rapporti con enti previdenziali, assistenziali e con l'amministrazione finanziaria.
	English Translation	PERSONAL DATA PROTECTION The Employer declares that all data regarding the Employee, and his/her family if provided, will be processed in accordance with the applicable law solely for the purpose of the employment relationship, included transmission to social security and financial bodies.

In the U.S., personal data protection clauses are generally not included in employment agreements, whereas in the UK employment contracts usually include a data protection clause, which gives the employer the right to process employees' personal data in connection with the employment or with their business, in compliance with the requirements laid down by the Data Protection Act of 1998. American law is among the least strict when it comes to data protection. Few U.S. federal statutes protect specific types of personal data, covering for example, health-related information, non-discrimination, credit information or identity theft, but higher importance is usually given to the protection of the confidential information of the employer, rather than the other way round.

For the performance of, during the performance of, or after the performance of an employment agreement, confidential information is shared by the parties. The employer, which originally held that information, generally prohibits the employee from divulging the information to third parties. Such a duty can be found in Italian as well as in British and U.S. employment agreements. It often expressly extends in time beyond the duration of the agreement itself.

Italian Standard Employment Contract	Italian	<p>RISERVATEZZA E OBBLIGO DI FEDELTA'</p> <p>Con la stipulazione del presente contratto il Lavoratore si impegna a seguire le più rigorose norme di riservatezza circa dati e notizie di cui potrà avere conoscenza in dipendenza, o anche solo in occasione, della esecuzione della attività lavorativa. Il Lavoratore si impegna ad utilizzare tali dati e notizie nei limiti dello scopo per cui sono conferiti. È fatto divieto al Lavoratore di utilizzare in alcun modo o tempo, sotto alcuna forma e titolo, direttamente o per interposta persona, le informazioni acquisite, né durante il rapporto, né successivamente.</p> <p>Durante il rapporto di lavoro è fatto divieto al Lavoratore di trattare affari, per conto proprio o di terzi, in concorrenza con il Datore di lavoro secondo quanto previsto dall'art. 2105 c.c. Alla cessazione, per qualsiasi causa, del presente contratto il Lavoratore si impegna a restituire ogni bene di proprietà del Datore di lavoro di cui abbia usufruito durante il rapporto di lavoro (ivi compresi, a titolo esemplificativo, elenchi telefonici, liste, manuali, materiale di addestramento, modulistica e documentazione tecnica, materiali e documentazione riservata che in qualsiasi modo riguardino il Datore di lavoro).</p>
	English Translation	<p>CONFIDENTIALITY AND DUTY OF LOYALTY</p> <p>By signing this contract, the Employee undertakes to keep absolutely confidential all the data and information which he/she has obtained for the purpose of his/her working activity or that he/she may acquire while performing his/her duties. The Employee agrees to use such data and information exclusively for the purpose for which they are provided. The Employee is not allowed to use in any way or at any time, in any form or for any reason, whether directly or indirectly through a third party, the acquired information, neither in the course of the employment relationship, nor after.</p> <p>In the course of the employment relationship, the Employee is not allowed to engage on his/her own or on behalf of third parties in economic activities in competition with the Employer pursuant to Art. 2105 of the Civil Code. Upon termination of this contract, for whatever reason, the Employee agrees to return all property belonging to the Employer that he/she may have used during the employment relationship (including, but not limited to, telephone directories, lists, handbooks, training material, technical documentation and forms, confidential documents, which in any way relate to the Employer).</p>
U.S. job offer letter		<p>DUTIES OF CONFIDENTIALITY</p> <p>Employee shall not, either during the continuance of his employment hereunder, except as required in the performance of his duties, or after termination thereof, for whatever reason, disclose, publish or communicate to any person, firm or corporation:</p>

	<p>i) any trade or business secrets or confidential information of the company or the affiliate or their clients, or of any affiliate of the company or their respective personnel;</p> <p>(ii) any information received or obtained in relation to the affairs of the company or the affiliate or their clients, or of any affiliate of the company, or their respective personnel;</p> <p>(iii) the working of any process or invention which is now or may in the future be carried on or used by the company or the affiliate or the clients, or any affiliate of the company or which the executive may make or discover why employed hereunder.</p> <p>DUTY OF LOYALTY AND BEST EFFORTS</p> <p>Employee shall devote all of his/her working time, attention, knowledge, and skills to Employer's business interests and shall do so in good faith, with best efforts, and to the reasonable satisfaction of the Employer. Employee understands that they shall only be entitled to the compensation, benefits, and profits as set forth in this Agreement. Employee agrees to refrain from any interest, of any kind whatsoever, in any business competitive to Employer's business. The Employee further acknowledges they will not engage in any form of activity that produces a "conflict of interest" with those of the Employer unless agreed to in advance and in writing.</p>
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The duty-of-loyalty clause can usually be found in employment contracts in both languages. Differences may however be identified, with regard to the role of so-called "concepts of variable scope" such as "good faith" and "best effort" (which is to a certain extent comparable with the Italian notion of *diligenza*)⁴¹. These principles underlie both contracts even if expressed in different ways and in different clauses, however, they are more common in Anglophone contracts.

The clause below focuses on severance pay and additional social security benefits that are provided to the employee under Italian law.

Italian Standard Employment Contract	Italian	PREVIDENZA COMPLEMENTARE E TFR Ai fini della destinazione del trattamento di fine rapporto, si allega informativa a norma dell'art. 8, comma 8, del d.lgs. n. 252/2005 con relativa modulistica.
	English Translation	SUPPLEMENTARY SOCIAL SECURITY PLAN AND SEVERANCE PAY For the purposes of severance pay, please find attached the information note pursuant to Art. 8, paragraph 8, of Legislative Decree No. N. 252/2005 and related forms.

⁴¹ See in the literature review, p. 159 and in particular p. 163 for an extensive analysis of M. FONTAINE, N. DE LY, *Drafting International Contracts*, Leiden, Martinus Nijhoff Publishers, 2009.

**U.S. job
offer letter**

PENSION

The Employee is not entitled to any pension scheme.

With regard to the above-mentioned clause, in Italy there may be additional social security schemes in place for standard employees, who are also generally entitled to severance pay. Their contract should define what the employee wants to do with the severance pay while it is accrued, which can be either kept by the employer and granted upon termination of the employment relationship, or deposited in a fund. In English, this aspect is conceived differently, especially in the United States. The welfare system is very different and more exclusive (as opposed to the Italian welfare system, which is more inclusive), and workers may be entitled to a health insurance or a pension, but these are generally considered as *benefits* and discussed under the “Compensation” clause. By default, however, in the U.S. no pension plan is provided, nor it is required by law, as well as no severance pay, that is usually granted through a separate agreement concluded by an employer and usually executive employees.

Final Clause

The final clause of an Italian contract is very important in that it refers once again to the collective agreement, which defines the rules applying to any terms that is not expressly regulated in the individual contract.

**Italian
Standard
Employment
Contract**

Italian

12. CLAUSOLA FINALE

12.1. Per quanto qui non espressamente previsto, il presente rapporto sarà regolato dal Ccnl applicato e richiamato al punto 1 del presente accordo e dalle norme di legge in materia di lavoro e previdenza ad esso applicabili.

CLAUSOLA ALTERNATIVA *

12.1. Relativamente alla durata delle ferie e ai termini di preavviso nonché al rispetto dell’art. 36 Cost. le parti fanno riferimento al Ccnl richiamato al punto 1 del presente accordo e che si intende 12.2. Per quanto qui non espressamente previsto, il presente rapporto sarà regolato dalle norme di legge in materia di lavoro e previdenza ad esso applicabili.

[Luogo e data]

..... [firma del Datore di lavoro]

..... [firma del Lavoratore]

	English Translation	<p>12. FINAL CLAUSE</p> <p>12.1. For all and any matters not expressly provided for in this agreement, the employment relationship will be governed by the relevant collective agreement as referred to in paragraph 1 of this contract as well as by the applicable legal provisions in the field of labour law and social security.</p> <p>ALTERNATIVE CLAUSE *</p> <p>12.1. With regard to the duration of vacation and notice period, in compliance with Art. 36 of the Constitution, the parties refer to the relevant collective agreement as provided in paragraph 1 of this Agreement and which counts as paragraph 12.2. For all and any matters not expressly provided for in this agreement, the employment relationship will be governed by the relevant labour and social security law.</p> <p>[Place and date]</p> <p>..... [Signature of the Employer]</p> <p>..... [Signature of the Employee]</p>
U.S. job offer letter		<p>IN WITNESS WHEREOF the Employer has caused this agreement to be executed by its duly authorized officers and the Employee has set his hand as of the date first above written.</p> <p>SIGNED, SEALED AND DELIVERED in the presence of:</p> <p>... [Name of employee]</p> <p>... [Signature of Employee]</p> <p>... [Name of Employer Rep]</p> <p>... [Signature of Employer Rep]</p> <p>[Title]</p>

Unlike Italian contracts, U.S. offer letters feature formulations which are typical of the American legal drafting style (e.g. “in witness whereof”), which serve as textual conventions signaling that the text is a contract.

Additional Clauses in International Contracts

The following clause refers to governing law and arbitration and is included in contracts that have international features. In this case, no significant differences can be identified in the formulation of the clause between Italian and English. Nonetheless, these clauses are very important in determining the translation strategies that need to be adopted by the translator, as they determine the applicable law and therefore the legal system underlying the clause language. A discrepancy between the way clauses are formulated, and the governing law produces so-called *alien contracts*, discussed in details in the following paragraph. In international contracts, both Italian and in English,

the governing law clause is agreed in the individual contract of employment between employer and employee. In addition, the parties may agree on arbitration methods and include in the contract an arbitration clause. Under Italian law, the arbitration clause needs to be submitted to certification procedure if required by national collective agreements or interconfederal agreements. The arbitration clause is a typical feature of common law self-sufficient agreements, which is however increasingly frequent in international contracts governed by Italian law as well.

Italian Standard Employment Contract	Italian	<p>CLAUSOLA DI SCELTA DELLA LEGGE APPLICABILE Il presente contratto è soggetto alla legge italiana.</p> <p>CLAUSOLA COMPROMISSORIA In conformità a quanto previsto dal Ccnl sopra richiamato, le parti convengono di far decidere tutte le controversie nascenti dal presente contratto—eccezion fatta per quelle relative alla cessazione del contratto di lavoro — tramite ricorso all’arbitrato ai sensi dagli artt. 412 e 412-quater c.p.c.</p>
	English Translation	<p>GOVERNING LAW This contract is governed by Italian law.</p> <p>ARBITRATION CLAUSE In accordance with the provisions laid down in the above-mentioned collective agreement, the parties agree that any controversy or claim arising out of this contract except for those relating to the termination of the employment contract will be settled by arbitration in compliance with Art. 412 and 412-quater of the Italian Code of Civil Procedure.</p>
U.S. job offer letter		<p>CHOICE OF LAW, JURISDICTION AND VENUE Employee agrees that this Agreement shall be interpreted and construed in accordance with the laws of the State of [Name] and that should any claims be brought against Employer related to terms or conditions of employment it shall be brought within a court of competent jurisdiction within the county of [Name]. Employee also consents to jurisdiction of any claims by Employer related to the terms or conditions of employment by a court of competent jurisdiction within the county of [Name].</p> <p>MEDIATION AND BINDING ARBITRATION Employer and Employee agree to first mediate and may then submit to binding arbitration any claims that they may have against each other, of any nature whatsoever, other than those prohibited by law or for workers compensation, unemployment or disability benefits, pursuant to the rules of the American Arbitration Association. Employee agrees to sign the attached Agreement to Mediate/Arbitrate claims as a conditions of employment.</p>

This section provided a clause-by-clause analysis of an Italian standard employment contract of indefinite duration. Each Italian clause was defined and accompanied by its

translation, as well as by a commentary about the typical features of equivalent clauses in U.S. and UK employment agreements, as well as advice and insights into the potential pitfalls of the translation process. The following section looks more closely at international contracts, new forms of employment derived from the introduction into the Italian system of contracts that are not typical of the Italian law (atypical contracts) and so-called alien contracts with a focus on the effects of these changes on language, contract drafting and translation.

4. International Contracts, New Forms of Employment and the Effects on Contract Drafting and Translation

In the past, multinational companies used to manage employment relations and human resources mostly at the national level. The level of coordination with the central HR department was limited. Employment contracts used in local branches were in the local language, following the employment laws of the country. Multinational companies used therefore to conclude national employment contracts with the local workforce. The progressive internationalization and globalization of businesses and economy, however, increasingly modified this pattern. The practices established by foreign-headquartered companies have started to be increasingly “exported” to the countries of destination, leading to a phenomenon known as “the globalization of law”⁴². Considering the place of the United States in the world economy, the notion of globalization of law, however, mainly takes the form of an Americanization of law, as certain American legal or corporate lawmaking practices have been diffused throughout the world by multinational companies.

The present paragraph focuses on the effects that this globalization trend has had on language, drafting and translation of contractual clauses. Effects are more complex to identify and assess, as employment is still widely regulated the national level and it is particularly resistant to changes coming from abroad. In this respect, even if the world has increasingly gone U.S.-centric, when it comes to drafting contracts, it is important

⁴² See the reference in the literature review at p. 164 to M. SHAPIRO, *The Globalization of Law*, Indiana Journal of Global Legal Studies, Vol. 1, No. 1, 1993, p. 38.

be very culturally aware, and be able to understand where the global and the local dimension meet and interact. This becomes obvious when one examines very closely how contracts are drafted in practice – especially employment contracts, being employment matters more reticent to changes as compared to other fields of law, such as commercial law. The globalization/Americanization of contracts at the global level without a global lawmaker had twofold consequences in Italy. On the one hand this process has brought into the Italian system contracts that were not regulated under Italian law (*atypical contracts*), and on the other, it brought about the phenomenon of *alien contracts*⁴³, where U.S. contracts and/or clauses are taken and used under Italian law even in those cases where the Italian law would have had an equivalent. This happens, because, as it is typical of U.S. contract drafting processes, contracts increasingly become a kind of private lawmaking, where the parties define the rules governing their employment relationship, such as arbitration methods, jurisdictions on dispute resolutions and so on. In addition, common law (as opposed to civil law) is more adaptive to legal innovation in a globalized world.

Atypical contracts in Italy are contracts which are not expressly regulated under civil law but which are created by the contracting parties and tailored according to their specific needs. Although not provided or regulated by law, they are allowed, as long as they are lawful and aimed at realizing interests worthy of protection. They can be *mixed*, i.e. made up of different elements which can be found in typical contracts, or *sui generis*, be completely independent of existing contractual models. Atypical contracts include for instance the *leasing*, by virtue of which a person grants to the other the right to use a particular object against payment of a periodic fee. At termination of the contract, the user has the option to purchase the object by paying a price. Atypical contracts also include the *franchising*, according to which an entrepreneur (franchisor) attaches to another entrepreneur (franchisee) the right to sell its products, using its trademark and commercial assistance for the duration of the contract. In return, the counterparty is required to pay an initial fee and a periodic fee. Also *factoring* is an atypical contract, where a specialized company (the factor) is committed to managing the credits that

⁴³ See in the literature review, p. 165 an analysis of G. DE NOVA, *Il contratto alieno*, Turin, Giappichelli, 2011. The author himself suggests the translation of *contratti alieni* into *alien contracts*, and it is effective, as the word *alien* in English, even better than in Italian, means “foreign”.

another company has towards its customers. All these contracts regulate commercial relationships, which imply a “work performance” in broadest terms, and are therefore relevant for the purpose of this research. In terms of language, they are all the more relevant if we consider the amount of new vocabulary and concepts that they have brought into the Italian system. In this connection, also so-called *contratti alieni* (“alien contracts”) should be mentioned, as they are of particular interest for the purpose of translation, and could even be the result of a too adaptive and excessively localizing translation process. *Contratti alieni* encompass a broader category than the category of atypical contracts. The formulation refers to contracts that are written according to a foreign law (most often U.S. law) despite the existence under Italian law of an equivalent contract or clause type, and which are nonetheless regulated by Italian law. A case in point made by De Nova in the field of employment is the *covenant not to compete*, a clause that exist also under Italian law as *patto di non concorrenza*, that we have presented in the previous section and which is sometimes drafted in Italy according to the legal norms of the United States, despite being regulated under Italian law too.

As we have seen, the consequences of globalization bring into the Italian legal system new new concepts and terms on the one hand (*contratti atipici*), and new drafting practices on the other (*contratti alieni*).

In the foregoing paragraph, we have analyzed all the features of Italian employment contracts and how they can be translated into English. It should be noted, however, in this respect, that not only some Italian contractual clauses find no correspondence in English-language contracts, but that the reverse is also true, as employment contracts in English usually contain clauses which are not found in Italian contracts. These are most often referred to as “boilerplates”. Contracts, in the Anglophone tradition, where existing, are generally longer than in Italy, as they tend to be self-sufficient and therefore include a lot of other clauses (such as Entire Agreement clauses, the Effect of Prior Agreements or Understandings clauses, Modifications clauses, Severability of Agreement clauses, Ambiguities Related to Drafting, etc.), plus a clause regulating the termination of employment, whereas in Italy individual contracts tend to focus on the main points and then the rest is regulated by law and/or collective agreements. The self-sufficiency of contracts, described by De Nova with regard to commercial contracts,

clearly applies also to the contract of employment. The translation process should therefore consider this difference and, even if the translator should by no means add boilerplate clauses not provided in the Italian contract in the translated version, it may be useful to make an effort (with footnotes for instance) to provide explanations where the contract refers to outside sources (e.g. collective agreement) to make it more understandable to the target audience.

The combination of global integration (atypical contracts) and local adaptation (alien contracts) poses many difficulties and modifies constantly the language of contracts and their clauses. In particular, the present analysis showed the discrepancy between self-sufficient contracts and contracts governed (also) by external sources, a tension that is typical of international contract drafting between civil law and common law countries.

The following paragraph will discuss the outcome of the analysis conducted in the present chapter and will provide a step-by-step description of the proper translation process to follow to reduce ambiguities and potential mistakes. This approach may serve as a background methodology for all comparative research in the field that necessarily requires considerable awareness of the relevant terminology.

5. Conclusion

This chapter provided a clause-by-clause analysis of a standard permanent employment contract and its translation into English. The present section aims at emphasizing the main difficulties encountered in the process, and the strategy to be adopted to overcome them.

Drawing on the analysis conducted in chapter one, the biggest challenges in the process of translating employment-related *legal clauses* – rather than individual words or single concepts – derive from the the absence of equivalence in the structure of contracts, from the divergence in the type of clauses typically included in contracts, as well as from the absence of correspondence and potential confusion on apparently similar legal concepts.

The very concept of “at will” employment simply does not generally apply outside of the U.S., where as a consequence the very existence of an employment agreement is

much less relevant. In addition, some clauses which may be present in both Italian as well as in Anglophone contracts may not have the same meaning, nor the same legal value and effects (e.g. the probationary period clause). Furthermore, Italian employment laws are far more protective of employees than U.S. (and UK) law, and this has a significant impact on the comparability of some contractual clauses, making it difficult to effectively compare pension, termination and social security clauses.

But the most important differentiating element is that employment contracts in English-speaking countries are self-sufficient, and they regulate every aspect of the employment relationship. Whereas in Italy, they are regulated by external sources, in line with the civil law tradition, such as the relevant collective agreement, which provides a framework to the individual employment contract in the sector. In this connection, an element that requires special attention and which may create confusion in the translated version of an Italian contract is that it is not mandatory for an employer to refer to the collective agreement of its specific sector, although this is the standard choice.

When translating employment contracts, starting point is the idea that the translation process involves two different legal languages and therefore automatically two different legal systems and cultures. However, the two legal systems involved will not be equally relevant for the translation, as there will always be one legal system that prevails, which is the one that governs the contract. This is the only binding and hierarchically superior system that underlies both the source and the target text, affecting the way equivalents are constructed and addressed in the contract translation process. In this case, *adaptation* as a strategy can be tricky and misleading, as formulations are not conceptually overlapping (by way of example, *mansioni connesse ed equivalenti* cannot be localized with “reasonable and customarily performed duties”).

In this perspective, one of the major challenges is to find equivalent terminology in an entirely different legal culture, even when it may sound awkward, inappropriate or confusing. Moreover, and especially in the context of international contracts in a globalized world, translators also have to deal with contract drafting practices increasingly based on the presence of boilerplates, that drafters sometimes include in contracts without thinking.

Furthermore, in a situation where two (or more) legal systems are involved, the process of construing equivalents is connected to the level of translatability of the source text into the target language which greatly depends on the degree of relatedness that source and target (legal) language and culture have. The translator should therefore have extensive knowledge of the legal features of both the source *and* the target legal system, as well as of the differences and commonalities between the two, even if the binding law is only that of the source system. The reason being that, only with a deep knowledge of the target system, the translator can ascertain whether the translated text is still relevant and compliant with the source legal framework by which it is governed. Moreover, only by knowing the characteristics of the target legal system it is possible to anticipate potential misunderstanding and pitfalls resulting from the distance or unrelatedness of legal cultures.

In addition to the degree of relatedness of the legal systems, it is also necessary to assess the degree of affinity of the languages, which also plays an important role at the time of identifying or creating functional equivalents. In the case of employment-related legal translations from Italian into English, the level of complexity is the highest, being the degree of relatedness of the legal systems and the degree of affinity of languages involved both very low.

Following these higher-level evaluation, the translator should analyze and consider source and target text conventions. Employment contracts, as all contracts, apply many conventions which differ from country to country and language to language. From the point of view of the macro-structure, the degree of structural affinity is also important. In this case, at the macro-structural level, the differences are significant (reference to collective agreements vs. self-sufficient contracts). Going more into the details of contract drafting practices, a relevant role is played also by the legal culture typical features of contractual texts. In Anglophone countries, and especially in the United States, contracts have specific features like boilerplate clauses, recitals, whereas-clauses, which are customary. On the contrary, Italian contracts do not have these features. The study and translation of employment contracts require therefore an extensive knowledge of textual typical features, which may be necessary by law or rather customarily applied. On the top of that comes the contract-drafting style of each culture. In English-speaking cultures, for instance, next to boilerplates which tend to be “copied and pasted” with no

significant changes from one contract to another, each contract is generally customized based on the agreement reached by individual parties, whereas in Italy, standardized texts are more often used.

Moving forward to the lexical level, word pairs and strings should also be dealt with, which are more typical of Anglophone contracts than Italian employment contracts. The translator may be tempted to use them to add an idiomatic “flavor” when translating an Italian contract into English, whereas they may not correspond in full to the same legal concepts of the source legal culture. It is also important to deal with vagueness in legal expression (e.g. good faith) and archaisms, more typical in Italian contracts, which need to be identified but not necessarily rendered into the target language. From the syntactic viewpoint, there may be relevant differences in the sentence structure of Italian vs. English contracts. The way the words are combined contributes to creating a specific meaning – but the effects of even the same word combinations changes across languages depending on what the standard pattern of word combination is (in English the Subject-Verb-Object pattern is the fixed structure of the word order, and changes affect significantly the focus of the sentence, and therefore meaning, whereas Italian is more varied in terms of structure). Also the use of the passive voice, of impersonal forms and formality are perceived differently in Italian and in English, all aspects that contribute to creating meaning.

This process, that is the outcome – from the methodological viewpoint – of the analysis conducted in this chapter, may help comparative lawyers reduce the risks of inducing conceptual misunderstandings. It may also serve as the conceptual background of further content-based comparative analysis, providing a reasoned and shared framework for conceptual transferability.

The following chapter will develop along these lines, structuring the information provided so far into a glossary which will also be implemented with the translation of additional employment-related terms and concepts. The translation process adopted will be the one described above. It will also provide a focus on the target-language style used to convey source-language concepts in translation, as the translator should also primarily be an expert in the drafting of target-language texts and be aware of the kind of legal language he/she decides to adopt. Finally, the conclusion will summarize the results of a comparative analysis of employment practices in Italy and in the

Anglophone countries under investigation, based on the insights derived from the language-based approach to comparison outlined throughout this study.

Chapter 3

A Glossary of Employment Terminology

Outline: 1. Introduction: A Glossary for the Global Scientific Community and International Practitioners; 2. An Approach to Employment Terminology; 3. The Choice of the Language and the Lingua Franca Discourse; 4. The Glossary; 5. Conclusion.

Only after having described the purpose of the single concepts as components of a national legal solution can we move on to see if there are possible connections to concepts of the other national legal systems.

P. Sandrini, 1999⁴⁴

1. Introduction: A Glossary for the Global Scientific Community and International Practitioners

As clearly emerged in the course of the previous chapter, in the current globalized world, legal systems increasingly influence each other. The growing interconnections between countries and the different forms of work, have led to a higher demand in translated legal documents and laws from one language to another. As shown, the legal language – and in particular the language of labor and employment – represents a complex system of communication, even when translation is not involved, as it is often hardly possible to establish with no ambiguities the legal effects of words even within a single system. This task becomes even more complex when different legal systems and languages are involved, as other dimensions come into play, such as the comparison with a different cultural context. In this light, the previous chapters explored these

⁴⁴ P. SANDRINI, *Comparative Analysis of Legal Terms: Equivalence Revisited*, University of Innsbruck, 1999 p. 6.

difficulties extensively outlining a methodology that helps raise awareness and ensure conceptual precision in translation. The present chapter contains a functional annotated glossary that draws on the analysis conducted and it is aimed on the one hand, at creating a ready-to-use tool for researchers and practitioners, and on the other, at sharpening the research focus to identify cultural patterns that help interpret the changing labor market and the different ways of conceiving employment across countries through language.

There are numerous scientific publications across the world in the field of labor and employment, yet stand-alone specialized glossaries are not very common. The limited number of glossaries available mainly focus on labor and industrial relations, most often in their transnational dimension. Available glossaries only rarely focus on the terminology related to the individual employment relationship. Moreover, in practice, it is mainly international and European institutions that produce most of these sources, with the aim to develop a common language and ensure that their institutional jargon is understood correctly. Often, they refer to supra-national legal systems, such as the EU law or international standards. In these cases, however, even though it could be argued that these glossaries do comprise different languages, and are therefore useful for translation purposes, the legal system of reference is often a single one (e.g. European law), making comparison and translation more consistent and easier. In these cases, concepts can also be created ad-hoc for the purpose of translation. In the case of cross-national comparison, which involves different legal systems, the analysis of the language can instead serve as an interesting starting point to describe, define and understand legal rules and concepts, to grasp specific cultural and regulatory paradigms, avoid misunderstandings and raise awareness about the challenges posed by culturally-biased terminology when it comes to comparative work.

The purpose of this chapter is to provide a practical guidebook that can help scholars and practitioners effectively understand and decode Italian terminology to be able to encode it correctly into English. Starting point is not the common and unifying principles of European Law, but the Italian legal system, which at the time of translation needs necessarily to be compared to the target language, culture and laws, as the linguistic tools used to express Italian concepts were originally created and developed to express different concepts. A comparative glossary in the field will help create a

terminological framework, a “mental web” of interconnected terms across language boundaries. It can be used in conducting comparative and international research, raising awareness on the legal and cultural implications of terminology. It also aims at providing scholars and practitioners with a handy tool to be used in their everyday work. Finally, the glossary will shed some light on the different ways of conceptualizing the employment relationship across countries, through a language-based approach.

The glossary is structured as follows. The first part lists a series of sociological notions used to describe and typify the employment relationship. The second part analyzes the legal notions relating to the employment relationships in Italy, whereas the third part focuses on the terminology of contractual clauses. The glossary draws on the studies conducted in the previous chapters, and, next to the terms already analyzed and by applying the same methodology, it provides additional terms and materials. The glossary will serve as an efficient aggregate of terminology to give researchers, scientists and practitioners the means to investigate and communicate effectively and unambiguously.

The translation strategy underlying the glossary takes into account the challenges posed by the process of “assimilation”, as previously described, which may result in misleading translations, being a practice that tends to lead to alterations of the original meaning by adapting source text legal concepts and drafting practices to the language, the cultural, political and legal system of the target foreign country. The goal is therefore to raise awareness on the differences existing at the conceptual level between systems and to identify a conceptual framework that serves as the basis for employment-related research. This is all the more important in comparative research, which inevitably considers multiple languages, and especially in qualitative research. In this case, the translator performs the task of replicating through language, and in the target text, the legal rules and legal effects of the source text.

In this light, the insight provided by language also helps interpret the dynamics characterizing the process of globalization of labor. Starting point is not so much in the absence of terminological consistency between languages, but rather the presence of conceptual differences. A glossary is therefore important as a way to identify a common framework to reduce misunderstandings and to be able to express different ways of interpreting reality. In addition to that, and as pointed out above this glossary also

contains context-related definitions of the terms. The words defined in the glossary may not appear in a general dictionary with a relevant definition for this specific context of reference. Whereas, in this field, the context is crucial to properly understand and interpret the text under analysis and its legal effects, which can directly affect individual employment relationships. Conceptual systems differ from country to country and this may cause misinterpretations or communication glitches. In the ever-changing world of work, new terms are constantly coined, or new meanings are attributed to existing words, or new terms derive from existing ones. The absence of equivalents is typical when legal systems are compared, mainly because of the absence of overlapping legal concepts and labor market institutions. In this light, the glossary will delineate a conceptual system that helps create functional equivalents that convey the meaning of the terms used in the reform.

The present chapter is composed of three sections. The following section (paragraph 2) provides a methodological analysis of the approach adopted to compile the glossary, section three focuses on the varieties of English used in the glossary and on the English as a Lingua Franca discourse, section four contains the glossary itself. The final part draws some conclusions that emerge from the analysis of the glossary, through the language-based approach to comparative research adopted in the project.

2. An Approach to Employment Terminology

The present paragraph looks at the methodological approach adopted to compile the glossary. As throughout the entire research project, the starting point is the Italian employment legislation. It is therefore an Italian-English glossary (rather than a fully bidirectional glossary), as the prevailing legal system is the Italian one. The glossary is structured in four columns. The first contains the Italian term under investigation, the second its translation into English, the third provides definitions and comments relating to the Italian context, and the fourth contains a series of related terms. Considering that the conceptual framework is that of the Italian system, it should be noted that the translations provided are not fully “localized” or “assimilated” to English. The purpose is not (only) that of displaying the closest English term (a goal that is achieved through

the “related terms” column), but rather that of conveying meaning in a way that is clear, understandable and most of all unambiguous. The importance of the context is clearly displayed in the third column, that aims at explaining to a non-Italian readership the meaning of the term in the source culture, providing insightful comments to get a better understanding of the Italian system. As mentioned above, column four includes so-called “related terms” and deserves special attention. It contains those terms that in the target culture and language are conceptually related to the Italian notion under investigation. Related terms, which can be false friends, quasi-equivalents and similar terms, are usually a typical feature of monolingual thesauri, yet they are particularly important in this case too, as they contribute to create and establish in the reader’s mind the conceptual “web” or mental “cloud” that transcend geographical borders and create connections between terms in the source and target culture.

For the purpose of translation, different sources were used, including scientific and academic literature, exchanges with international scholars and researchers, specialized dictionaries and the web. If used appropriately and always in combination with scientific literature, the web provides for a most updated linguistic corpus, as it mirrors the constant changes occurring in society. It also provides a cross-sectional view of the evolutionary contamination taking place between legal systems and drafting practices.

The choice of the terms to be translated is based on two principles. First, the principle of frequency, i.e. the most common terms are included in the glossary, considering that the intent of the work was not to produce an encyclopaedia, but rather an annotated guidebook to legal-linguistic comparison and to specialized translation methodology. In order to achieve this goal, terms exemplifying the various challenges posed by the translation process were selected, (for the principle of “exemplification”). A combination of terms sharing a certain degree of commonality between the two languages and of terms which differ significantly from one language to another were selected, reflecting the national idiosyncrasies that need to be taken into account at the time of performing a cross-national comparison. Contexts and definitions and their translations have been kept as simple as possible in terms of language with the aim to focus mostly on the meaning of the terms and its translatability in the target language.

3. The Choice of the Language and the Lingua Franca Discourse

The studies on English as a lingua franca were initially considered the starting point of the present part of the research. The English language was chosen because it is the language of the international community as well as of the globalized market. It is also the language “of translation”, in the sense that English is the language into which most Italian texts are translated. However, in this particular case, an approach based on the idea that English could serve as a lingua franca to “export” the concepts of Italian employment law to the international community, appeared to be misleading from the very beginning. The lingua franca discourse, if applied here in full, would have posed structural problems in the comparative analysis and in the translation process, due to the close connection between English and common law legal systems that could not make English, although well-versed, a completely neutral language. The legal system of reference, namely the Italian system, follows the civil law, and many of the concepts of civil law, including those that look the same or are similar, have a different meaning in common law systems. Furthermore, the presence of different varieties of English poses an additional challenge in the process. This significant differentiation among countries immediately showed the limits that the English as a Lingua Franca discourse was posing for this particular research. In this case, although through English it is possible to express concepts typical of the Italian civil law system, being the analysis based on the comparative study of language and regulations at the national level (in different countries), the notion of English as a lingua franca cannot be successfully applied. A lingua franca may exist in the context of international institutions, such as within the European Union, where the English language is used to refer to a set of rules developed in that specific international context and the language developed for that purpose follows those conceptual patterns and is necessary to communicate in that environment. Whereas in this case, English – and all its cultural implications – is used to express terms typical of the Italian language. Despite that, wherever possible the English used was maintained simple, and specialized “jargon” was avoided. In those cases where no English equivalent in common usage exists, a functional equivalent was created. It should be noted here that the purpose of the translation was not to provide a term that is available in common English usage, but rather an accurate translation. Sometimes,

translations of individual terms or word pairs were rendered with a (short) sentence, used to explain the meaning of the Italian concepts. In other cases, when the English translation sounds awkward but possible (and correct), the terms are placed within inverted commas, to show that the translator is aware of the apparent language inaccuracy but believes that a literal translation may still be clear enough, and helpful to convey the right message. The English language used to translate terms and context definitions is inspired by the principles of plain language writing. This implies that everyday words were preferred over technical words, an average sentence length of 15 to 20 words is respected, expressing one single concept in one sentence and placing full stops every time the sentence was longer, active sentences over passive sentences are preferred, and verbs and adjectives are preferred over nominalizations. The present tense is preferred over the future and the use of “shall” is avoided. The structure of the glossary aims at pointing out main differences and commonalities resulting from the comparative analysis and translation pitfalls, as well as at creating a conceptual web of employment-related terminology at the global level.

The following paragraph provides the glossary of employment terminology.

4. The Glossary

The glossary starts with general sociological notions used to describe employment relationships. This part is followed by a list of legal notions relating to employment relationship terminology and finally an analysis of the terminology related specifically to contractual clauses is provided. The glossary is therefore not conceived to be read in alphabetical order, but it is structured logically following a “top-down” approach that goes from the more general and non-technical to the more specific and technical term.

As mentioned above, it is composed of four columns, the first providing the Italian term under investigation, the second its translation in English, the third a definition⁴⁵ according to the Italian context and the fourth related terms in the target language.

⁴⁵ Next to direct legal sources, the handbook of reference for definitions of Italian concepts is M. BIAGI, M. TIRABOSCHI, *Istituzioni di diritto del lavoro*, Milan, Giuffrè, 2011. Translations are my own.

Related terms aim at creating a cross-national and cross-sectional conceptual web of notions to guide the researcher and the practitioner in the international context.

Italian	English Translation	Definition	Related Terms and Comments
Sociological Notions on Employment Relationships			
Lavoro atipico	Atypical work	<p>A sociological notion used to identify all those types of work (self-employment, subordinate and <i>sui generis</i>) that deviate from the standard model of stable, full-time employment. It usually includes fixed-term work, part-time work, job sharing, temporary work through agency, “coordinated and continuous collaboration”.</p> <p>Atypical work needs to be distinguished from “atypical contracts”, which is a <i>legal</i> concept used to identify those types of contracts which are not specifically listed and defined in law.</p>	<p>EU: Non-standard work, non-standard employment</p> <p>US: Contingent work, casual work. Note that <i>Alternative work</i> in the U.S. refers to specific arrangements defined by BLS.</p> <p>The term “contingent work” typical in the U.S. was first coined by Audrey Freedman in 1985 to define the practice of employing workers only when there was an immediate need for their services. It is now applied to a wide range of employment practices.</p> <p>UK: non-standard work, casual work, irregular work.</p> <p>“Irregular work” should not be confused with “illicit” in English, as it rather refers to work performed on an irregular basis (vs. employment that is organized on a regular schedule with limited variations).</p>
Lavoro precario	Precarious work	<p>Sociological notion referring to a condition of occupational instability. The term precarious derives from the word “prayer” and is more typical of southern European countries.</p>	<p>EU: Non-standard work, non-standard employment. Sometimes precarious is also used with a negative connotation, especially in recent times, as it has entered the employment discourse at the European level due to the occupational problems and detrimental consequences posed by precarious work arrangement in southern European countries (as compared to the more</p>

			<p>“positive” notion of <i>flexibility</i> typical in continental Europe).</p> <p>U.S.: Contingent work, casual work.</p> <p>UK: non-standard work, casual work, irregular work. Sometimes precarious is also used.</p>
Lavoro temporaneo	Temporary work	Sociological concept similar to the concept of non-standard work referring to employment relationships of limited duration.	<p>The notion of “temporary work” can vary significantly across countries. It may include fixed-term contracts, as in the case of Australia, the UK and the EU, or not. In some English-speaking countries, such as Canada, “fixed-term contracts” are not considered as temporary work. The notion of “temporary” implies higher flexibility than the notion of a contract with a definite duration/fixed-term contract.</p> <p>In the United States, the notion of “temporary work” is very broad and includes different types of work arrangements that go beyond the “employment” relationship in its narrow sense and can include some kinds of self-employed workers, such as independent contractors, temporary help worker, contract company workers, as well as on-call workers.</p>

Legal Conceptualization of Employment Relationships

Lavoro subordinato	Subordinate employment	The principle of subordination identifies the submission of the employee to the power of direction and control of the employer in the way the work is performed. The existence of a relationship of subordination draws a distinction between self-	<p>EU: subordinate employment</p> <p>U.S.: employment</p> <p>UK: employment</p> <p>In English-speaking cultures the “submission” of the worker to the employer at the basis of the employment</p>
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		employment and employment.	relationship is not as strong as in Italy.
Lavoro autonomo	Self-employment	Art. 2222 of the Italian Civil Code defines the term self-employed (<i>lavoratore autonomo</i>) as the person who undertakes to perform a work or a service in exchange for remuneration, mainly by means of their own labor and without a relationship of subordination. The distinguishing feature of self-employment is therefore the absence of the bond of subordination.	EU: self-employment UK: self-employment U.S.: self-employment Related terms in Anglophone countries: - Contractor (U.S., UK) - independent worker (EU) - freelancer (not a legal notion)
Lavoro parasubordinato	Quasi-subordinate work	Work performed by a worker as laid down in Art. 409, paragraph 3, of the Italian Code of Civil Procedure, ongoing in nature and characterized by the coordination of the worker activities with the <i>client</i> even in the absence of a relationship of subordination. The use of the word <i>client</i> instead of <i>employer</i> expresses the self-employment nature of the employment relationship.	There is hardly an equivalent concept in English-speaking countries. EU: <i>Lavoro autonomo economicamente dipendente</i> : Economically-dependent self-employed work. U.S.: see in chapter I the notion of <i>independent contractor</i> and how it compares with the notion of quasi-subordinate employment. See also <i>dependent contractor</i> , which could be compared with the notion of economically dependent self-employed. <i>Falsa "partita IVA", falso lavoro autonomo</i> : bogus self-employment. The distinction is much less relevant in English-speaking countries and has a much weaker negative connotation.
Rapporto interpositorio	Work performed through an intermediary	Use of the work of others through an agency or through a contract for works and services.	Work performed through staffing agencies, recruitment agencies, employment businesses, and other. See below under <i>somministrazione</i> for more details.

			<p>In English-speaking countries, work through an intermediary is a very broad category. Workers may include:</p> <ul style="list-style-type: none"> - employee - self-employed - consultant - contractor.
Lavoro irregolare	Illicit work	Work performed without compliance with tax law and social security contributions requirements.	<ul style="list-style-type: none"> - Illicit work - Unreported employment - Under-the-table employment - Cash-in-hand work - Moonlighting (UK).
Telelavoro	Telework	<p>Organization and performance of work through ICT under an employment contract or in an employment relationship, where the work, which could also be carried out at the company premises, is carried out elsewhere on a regular basis.</p> <p>Telework is not defined in legislation in Italy and can be performed under a variety of contractual arrangements.</p> <p>The definition comes from the Interconfederal Agreement of 9 June 2004.</p>	<ul style="list-style-type: none"> - Distance work (broad non legal category) - Remote work (broad non legal category) <p>UK: Telework U.S.: Telework (legal category) telecommuting (non legal category)</p>

Types of Employment Contracts

Contratto a tempo indeterminato	Permanent employment contract	Standard full-time permanent employment contract based on a relationship of subordination.	<p>The notion of open-ended contract may not have the same meaning as <i>tempo indeterminato</i> in Italian, as it may refer to a work that is supposed to end at some point in time, but where the time is not specified yet.</p> <p>In the U.S. contracts are open-ended in nature but they are concluded at-will, so the relationship can be terminated at any time for any lawful reason.</p>
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Contratto a tempo determinato	Fixed-term employment contract	Employment contract of definite duration based on a relationship of subordination.	See: temporary work. U.S.: consider also <i>direct-hire temporaries</i> who are temporary employees employed by an organization.
Contratto di lavoro intermittente	Intermittent Employment contract	A contract by which a worker makes himself available to an employer who can call the worker at work to meet intermittent needs. It can be concluded with workers under twenty-five or over forty.	EU: On-call work UK: Zero-hour contract U.S.: Intermittent employment. In Italy, it is often referred to with a pseudo-English formulation that is “job on call”. In the U.S., intermittent employment should not be confused with the <i>furlough</i> , that is when employees take unpaid or partially paid time off for periods of time if the company is going through tough times.
Contratto di lavoro ripartito	Job sharing	Contract in which two or more workers take joint and several liability to the same obligation to work.	Not to be confused with <i>work sharing</i> , i.e. a program that allows an employer to reduce the number of hours an employee works during a week, with unemployment benefits that make up at least in part the difference in pay.
Contratto atipico di lavoro	Atypical employment contract	Type of contract that does not fall under a typical contractual type as laid down in legislation, but which is allowed in the presence of so-called “interests worthy of protection” (Art. 1322, paragraph 2, Civil Code).	The distinction is not very relevant in common law countries, as contracts are in all cases often individually negotiated case-by-case by the parties.
Contratto di apprendistato	Apprenticeship contract	Permanent employment contract aimed at training and employing young people. The training component is of limited duration. If the contract is not terminated upon termination of the training	EU: Apprenticeship U.S.: Apprenticeship UK: Apprenticeship In Anglophone countries it is not a specific or different contract of employment, but rather a work program to help

		period, the worker is considered to be a permanent employee.	<p>disadvantage workers' category enter the labor market.</p> <p>In Italy, apprentices are paid less than skilled workers through two mechanisms: the first is so-called <i>percentualizzazione</i>, i.e. the apprentice is paid a percentage of the full salary of a skilled worker. The second is <i>sottoinquadramento</i>, i.e. apprentices are classified at a lower level than a skilled worker based on the sectoral national collective agreement.</p>
Contratto di apprendistato di alta formazione e ricerca	Higher apprenticeship and research apprenticeship	Contract aimed at the acquisition of an educational qualification (diploma of higher secondary education, university degrees and advanced training, including PhDs, technical specialization) and at the practical training required to access chartered professions. Research apprenticeship is aimed to boost labor market entry of researchers.	<p>UK: Higher apprenticeship, Advanced apprenticeship.</p> <p>See chapter I for the analysis of higher/advanced apprenticeship in the UK.</p>
Contratto di apprendistato per la qualifica e per il diploma professionale	Apprenticeship to obtain a vocational qualification	<p>Contract aimed at obtaining a 3-year or 4-year vocational qualification.</p> <p>Through this type of apprenticeship, it is possible to complete compulsory education.</p>	In 2015, in the UK, it will also be possible to complete compulsory education through apprenticeship.
Contratto di apprendistato professionalizzante o contratto di mestiere	Apprenticeship to learn a trade or a profession	Contract aimed at obtaining a contractual qualification through on-the-job training and at the acquisition of basic, transferable and technical skills.	<p>UK: Apprenticeship</p> <p>U.S.: Apprenticeship</p>
Tirocinio curriculare	Work experience/ internships during	Internship that takes place during education (while students are at university or participate in an educational	<p>UK: Placement/ work experience, sandwich courses (informal)</p> <p>CA: Co-op education program</p>

	education	program) which has as main aim that of improving learning through the alternation of work and training.	U.S.: internship, traineeship.
Tirocinio di formazione e orientamento	Work experience/ internship right after education	<p>Practical experience at the end of an educational program aimed at providing guidance and work experience to young graduates within twelve months after graduation. The objective of the program are thus exclusively that of becoming familiar with the world of work by developing skills, and promote labor market entry.</p> <p>In Italy it is not a contract of employment.</p>	<p>EU: Traineeship UK: Internship U.S.: Internship and traineeship.</p> <p>In English-speaking countries, and especially in the United States, an internship is considered to be work but can be unpaid under certain conditions.</p> <p>In Italy internships are not considered work but need to be paid. The intern, however, is not paid a wage or a salary, but a so-called <i>congrua indennità</i>, i.e. adequate compensation, allowance.</p>
Tirocinio di inserimento/ reinserimento al lavoro	Internship to enter or re-enter the labor market	Internships aimed at promoting the employment of unemployed workers.	
Collaborazioni occasionali	“Occasional collaboration”	Self-employed sporadic work carried out for a client and that does not require any coordination with the client.	
Lavoro a progetto	Project-based work	Coordinated and continuous collaboration with a view to carrying out a specific project.	
Lavoro occasionale	“Occasional work”	Employment relationship not exceeding thirty days in a year with the same client and which results in a total income not exceeding five thousand euro.	
Lavoro occasionale di tipo accessorio	“Occasional work of accessory nature”	Occasional work carried out by individuals at risk of social exclusion or not yet entered the labor market.	

Subfornitura	Subcontracting	Contract by which an employer agrees to perform on behalf of another company a work on semi-finished products or raw materials supplied by the other company, or undertakes to provide the client company with products or services intended to be incorporated or used by the client or in the production of complex goods, according to samples or prototypes provided by the client.	U.S./UK: contracting, contracting out, outsourcing.
Contratto di lavoro a domicilio	Homework	A home worker is qualified as a subordinate worker when “he/she is required to work under the direction of the entrepreneur in carrying out the job, following specific requirements related to the processing of products for the employer” (Law No.877/73).	UK: homework. U.S.: industrial homework, piecework. According to the American FLSA, industrial homework means “the production by any covered person in a home, apartment, or room in a residential establishment, of goods for an employer who permits or authorizes such production, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homemaker in producing these items”.
Contratto di agenzia	Self-employed Commercial Agent	The agency agreement is the contract (which can be of definite or indefinite duration) whereby one party (the agent) takes on the task of promoting on behalf of the other (the principal) the conclusion of contracts in a given geographical area (see Art. 1,742 ff. of the Italian Civil Code). The agent does not conclude the contract with the customer (this element distinguishes the agent from the “representative”, who is	In the case of commercial agency, the compensation often includes a commission, that is a sum of money paid upon completion of a task, usually selling a certain amount of goods or services. A commission may be paid in addition to a salary or instead of a salary.

		in charge to conclude contracts on behalf of the other party in a given area).	
Associazione in partecipazione	Joint Venture	<p>The joint venture is the contract by which a person (the entrepreneur) gives to another person a share in the profit of his business or one or more deals as a consideration for a specific contribution.</p> <p>The joint venture is thus a contract with which one party agrees with the other to provide a given contribution (which can consist of goods or services) for a profit share in a deal, in a series of deals or in the entire enterprise.</p>	<p>U.S. Employees ownership</p> <p>UK: Employee-shareholder contract.</p>
Appalto Contratto d'opera	Contract for Works and Services	<p>Pursuant to Art. 1655 of the Italian Civil Code, it is the contract under which one of the party undertakes, by autonomously organizing the necessary means of production (or of service provision) and taking on entrepreneurial risk, to provide works or services in exchange for a sum of money.</p> <p>The contract for works and services is different from agency work in that the contractor organizes autonomously the necessary means to carry out the work, including the control on workers.</p> <p>The <i>contratto d'opera</i> differs from <i>appalto</i> in that the latter is concluded with a medium-sized or large organization, while the former refers to cases in which services are provided by one person, assisted only by family members, or by a limited number of collaborators.</p>	<p>UK, U.S.: contract, contracting out, contractor.</p>

		<i>Subappalto</i> : subcontracting	
Distacco	Posting	The employee is sent to carry out its work at the premises of a different employer. In this case there is a bond of functional dependence between the worker and the other company, but not a relationship of subordination, that still exists with the company sending the worker.	EU, UK: posting.
Trasferimento d'azienda	Transfer of undertaking	A transfer of undertaking changes the parties involved in an employment relationship from the seller to the buyer. The notion in Italy is very broad, and it refers to any change in ownership of an organized economic activity (business).	EU: Transfer of undertaking UK: Transfer of undertaking U.S.: Merger and acquisition. In the United States a merger or acquisition does not automatically imply that the buyer becomes the new employer.
Contratto di fornitura di prestazioni di lavoro temporaneo	Contract for the supply of temporary work	Commercial contract that binds an agency supplying temporary labor to an enterprise/ public administration that makes use of the work of the worker sent by the agency.	
Contratto di prestazione di lavoro/ contratto di somministrazione	Agency work	Employment contract that binds an employment agency to the employee. In Italy, the contract can be either a fixed-term or a permanent contract (staff leasing). If it is permanent, the worker has the right, between an assignment and the other, to an allowance for being available to work.	EU: agency work, temporary agency work, temporary work through agency. See chapter I for further details on the origin of the term. U.S.: varied terminology including temporary help services, contract staffing (and staffing agency), just-in-time workers, "temp". - Agency temporaries are the employees of a staffing company, which places them at firm, usually on a short-term basis.

			<p>- Leased employees are similar to agency temporaries, except that they are assigned to firms on a long-term basis.</p> <p>Hence the term “staff leasing” used in Italy to refer to permanent work through agency.</p> <p>With regard to international English, there are significant variations: China: labor dispatch Japan: worker dispatch.</p>
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Contractual Clauses

Arbitrato	Arbitration	<p>Dispute resolution procedure, which is alternative to court, conducted referring to one or more parties (arbitrator), who produce their decision on the case submitted.</p>	<p>To be able to resort to arbitration in Italy, an “arbitration clause” is to be included in the employment agreement, which also outlines the procedures to follow.</p> <p>Related Italian terms: <i>lodo arbitrale</i>: award.</p> <p>Both in Italy and in the U.S., there is “binding arbitration” (<i>arbitrato rituale</i>), and “non-binding arbitration” (<i>arbitrato non-rituale</i>).</p> <p><i>Clausole vessatorie</i>: U.S.: Unconscionability UK: Inequality of bargaining power</p>
Certificazione dei contratti	Certification of employment contracts	<p>Procedure that is intended to guide the contracting parties in choosing the most appropriate contract for the job to be performed.</p>	
Clausole elastiche	Working time extension	<p>A clause which enables the employer to extend (hence the notion of <i>elasticità</i>, elasticity) the working time of the part-time worker by increasing the number of hours worked, provided that</p>	

		the worker is notified in advance.	
Clausole flessibili	Changes in work schedule	A clause that enables the parties to change the worker's working time schedule, i.e. the distribution of working hours.	
Indennità di disponibilità	Standby allowance	In permanent employment through agency the standby allowance refers to the salary that is given to the employee with a permanent employment contract with an agency in the time intervals between two assignments. In these cases, the worker is paid because he/she is always immediately available in case there is the opportunity to start an assignment at an enterprise customer of the temporary work agency.	
Lavoro supplementare	Overtime work up to full-time in part-time work	A specific type of overtime work typical of part-time work arrangements, performed beyond the working time agreed in the part-time employment contract, but below the number of hours considered standard full-time work as fixed by collective bargaining.	
Part-time misto	"Mixed part-time work"	Relationship resulting from the combination of horizontal and vertical part-time work and, therefore, characterized by a reduction of the normal daily working time, but with full-time work on some days of the week, month or year	
Part-time orizzontale	"Horizontal part-time work"	Part-time work relationship in which working time is reduced through a reduction of the daily working time	

Part-time verticale	“Vertical part-time work”	Part-time work relationship in which working time is reduced through a reduction of the number of full-time days worked by the worker in a week, month or year.	
Patto di prova	Probationary period clause	The continuation of the employment contract may depend on the successful completion of a period of time, which length is normally established by collective agreements.	The probationary period clause has a different meaning in Italy and in English (especially in the U.S.). In Italy, it gives the employer the opportunity to terminate the employee for any reason, a possibility that the employer will no longer have upon expiration of the probationary period. Whereas, in the U.S., even if the formulation “probationary period” is used, it is mostly a way to discourage employees from bringing a lawsuit against the company in case of dismissal, as the employment relationship remains at will.
Codice disciplinare	Company regulation	Regulation drafted by the employer and available within the production unit, where behavior is indicated that may lead to disciplinary sanctions. This code must contain what is provided by contracts or collective agreements.	The concept of company regulation is different from the U.S. notion of <i>employee or company handbook</i> . See Chapter II.
Dovere di obbedienza	Duty of obedience	Obligation of the worker to observe the instructions given by the employer and co-workers from which the worker depends.	
Inquadramento dei lavoratori	Workers’ classification	Classification system of the different positions of workers within a company in order to determine what is specifically required to individual workers and consequently define the different compensation levels.	In U.S. English the wording “worker classification” mainly refers to the classification as employee, self-employed or contractor for the purpose of tax law. There is no system of classification as the one

			<p>outlined in Italian collective agreements.</p> <p>In 2010, the Bureau of Labor Statistics, drawing on the various job titles existing in the labor market, created the <i>Standard Occupational Classification (SOC) system</i>, to classify the variety of job titles into occupational categories for the purpose of collecting, calculating, or disseminating data.</p>
Categoria	Category	General classification of workers between laborer, employee, management and senior management provided in the Civil Code, Art. 2095.	
Mansione	Duties, Tasks	The set of multiple and specific activities (tasks) that make up the work.	<p><i>Assegnazione a diversa mansion/mutamento di mansione:</i></p> <ul style="list-style-type: none"> - reassignment (not to confuse with contract “assignment” that means <i>cessione del contratto</i>) - job reclassification
Demansionamento	Downgrading	Changing in the duties of the worker to lower-level work. Normally considered unlawful pursuant to Art. 2013 of the Civil Code, unless under specific conditions provided by law.	<p>“Deskilling” (<i>dequalificazione</i>) can be rather considered a consequence of downgrading rather than a synonym, as it takes place when a worker is required to perform a job that does not require their skills.</p>
Mansioni equivalenti	Equivalent duties/tasks	Tasks that allow the employee to use the knowledge, experiences and expertise gained in another job. The notion of “professional equivalence” is very important in this context. This is assessed not by comparing duties as they are defined in collective agreements, but rather considering the practical everyday activity performed	

		by the worker.	
Obbligo di diligenza	Duty of diligence	Obligation on the worker to use, in the performance of his/her work, all the care required by the job, in the interest of the Company and in the higher national interest.	In international contracts, there are various concepts closely related to the duty of diligence, which has over time led to different outcomes in terms of case law decisions in the case of disputes: - Due Diligence - Reasonable care - Best efforts - Best endeavors (U.S.).
Obbligo di fedeltà	Duty of loyalty	The worker is obliged to refrain from behavior that may be jeopardize the company interests.	
Obbligo di non concorrenza	Non-competition clause	Obligation of the employee not to enter into business on his/her own and on behalf of third parties, in competition with the employer.	
Obbligo di riservatezza	Non-disclosure clause	Worker's obligation not to disclose information relating to the organization and methods of production of the company, or use them in such a way as to cause damage to the company itself.	
Patto di non concorrenza	Non-competition agreement	Agreement between employer and employee with which the work activities of the employee is limited for a certain period following the termination of the employment contract; it must be set down in writing, include a consideration in favor of the employee and the limitations must be specifically referred to a specific job, time and place.	
Qualifica	Qualification	Job position that the law or collective bargaining attribute to employees. The	

		qualification defines the professional value of the tasks performed and represents a criterion (from the economic point of view) to assess the job performance.	
Retribuzione	Compensation	The main obligation of the employer, consisting in all that is due to the employee as <i>consideration</i> for his/her service.	<p><i>Elemento perequativo</i>: wage adjustment/ salary compensation to integrate pay when no productivity gains are distributed at decentralized level.</p> <p><i>Retribuzione a tempo</i>: Hourly compensation</p> <p><i>Retribuzione a cottimo</i>: Piece rate compensation.</p>
Trasferimento del lavoratore	Permanent change of place of work	Permanent change of the place of work from one production unit to another on the basis of an agreement between the parties or the exercise of the power of the employer.	
Trasferta	Temporary change of place of work	Temporary change of place of work, due to temporary business needs.	
Ferie	Vacation	Legislative Decree No. 66/2003 provides that a worker is entitled to a minimum annual paid leave of four weeks, to be taken for at least 2 consecutive weeks in the case of a (timely) request of the worker, and the remaining two weeks, in the 18 months following the end of the year in which they were accrued, unless longer deferment is allowed by collective agreements.	
Congedo	Leave	Time that a worker is entitled to abstain from work. A leave can taken for a variety of purposes (such as childbearing, training,	

		<p>etc.).</p> <p><i>Astensione obbligatoria:</i> the expression “compulsory leave” refers to the period of time – between the two months preceding the expected date of childbirth and three months following childbirth – during which the employer cannot require the worker to work.</p>	
Trattamento di fine rapporto	Severance pay	<p>Upon termination of the employment relationship, the employer is obliged to pay the worker a sum of money: it is the so-called “severance pay” i.e. for workers with a fixed-term contract, it is a bonus granted at the end of the contract. It takes the form of a monthly salary calculated in proportion to the length of service.</p>	<p>U.S.: there is no requirement in the Fair Labor Standards Act (FLSA) for severance pay. Severance pay is individually agreed between an employer and an employee.</p>
Cessione del contratto	Assignment	<p>Assignment takes place when one party to an existing contract (the “assignor”) hands off the contract’s obligations and benefits to another party.</p>	<p>UK: assignment U.S.: assignment.</p>
Proroga del contratto a termine	Extension of fixed-term contract	<p>Extension of the duration of the fixed-term contract.</p>	
Successione di contratti a termine	Sequence of fixed-term contracts	<p>Conclusion of a series of fixed-term contracts.</p>	
Responsabilità solidale	Joint and several liability/ vicarious liability	<p>Parties are jointly liable for the debts with the workforce, i.e. the salaries of employees and the related tax and social security obligations that have not been fulfilled by the contractor or subcontractor.</p>	<p>U.S.: Joint employer UK: joint liability, joint and several liability, vicarious liability.</p>

5. Conclusion

The glossary provides an overview of Italian employment-related terminology and its translation into English. The cross-disciplinary and multi-lingual cognitive web that is developed through the glossary is aimed at fostering cross-country comparability and at sharpening the focus of the investigation, providing for a new approach to interpret working patterns across countries. The connections created between concepts in different languages are the result of the analysis carried out in the foregoing chapters, collected and expanded through additions. This view helps identify the differences existing between the Italian way of conceptualizing and regulating work in opposition to the British and American way. Language is a powerful tool to learn about people's mindset and culture. Even without getting into the minutiae of legal details or through an extensive review of case law, the present in-depth study of the specialized language of employment provides a valuable insight for comparative research. The glossary shows with great clarity and consistency the typical features of each employment system at a high level, as well as the conceptual patterns that lie at the foundation and at the same time inform the regulatory structure of each country, and which ultimately play a role in determining the labor market outcome of each country.

As mentioned above, the present research is based on the study of legal notions that are built upon the employment contract in Italy. Starting point is the analysis of the Italian terminology and therefore the researcher perspective is that of the Italian context. When performing the translation, questions may arise as the translation process shows the cultural bias underlying this type of comparative research. The study of language makes it possible to clearly see, acknowledge and cope with the culturally-biased perspective of the researcher. When it comes to translate contractual terminology into English, it immediately emerges the limited relevance of contracts and contractual terminology in the target language and countries. Drawing on that, a first question may arise: would an English-speaking researcher have chosen the employment contract as a starting point for the research? Probably not. The role of the contract as “cornerstone of the edifice of labour law⁴⁶” is less relevant in Anglophone systems than in Italy.

⁴⁶ O. KAHN-FREUND cited in O. VOSKO, L. F. VOSKO, *Precarious Employment: Understanding Labour Market Insecurity in Canada*, Kingston, McGill-Queen's University Press, 2006, p. 228.

This is the first mindset shift prompted by the present analysis. It is necessary to acknowledge that the very notion of employment relationship is culturally biased in the first place, and this cannot be overlooked, as no words in the target language will ever be the “right ones” to express the real meaning of concepts in the source (con)text. Yet comparison – and translation to that end – can serve as effective tool to take some distance from the mental categories through which the biased researcher interprets the world. As it emerges, it happens that in English-speaking countries, and in particular the United States, employment relationships are often not governed by a contract. Determining if a worker is an employee or a self-employment takes place through a series of questions for tax purposes, through reality-based tests in case of litigation, and to a lesser extent through definitions laid down in legislation. In a world where the employment relationship is not necessarily based on the employment contract, many other aspects need to be conceived differently. The employment relationship is more often less regulated, it is often open-ended but at will, based on the mutual agreement between two individuals, the one providing work and the other a salary. In this context, when the work is completed, or any other circumstance occurs that prevents the employment relationship from continuing, the relationship is terminated. As a consequence, the parties involved are more often placed on a level playing field. The result is that the employee is not conceived as a fully subordinate person, under the control – yet protection – of an employer for the entire life. Hence, the concept of “precarious” – which also in some respects and in view of its etymology, strengthens the idea of subordination – does not apply in full to Anglophone countries. There can be higher *contingency*, with a less negative connotation, being every job to some extent “contingent” in its own terms (for it is at will in nature). In this same vein, we can also easily understand why the distinction between permanent and temporary or fixed-term employment is less relevant and more blurred.

The same applies also to the notion of self-employment. Much like in Italy, also in English there are different degrees of “autonomy” in the way a work is performed by a worker for a client. That is obvious considering the varied nature of works and services, especially nowadays, which may require some degree of coordination with a customer. Also in this case, and for the same reason, the various categories of self-employment are less detailed than in Italy. All this points to a way of conceiving employment that is

more inclined to assess *results* instead of so-called *efforts* (see literature review for a distinction between *obligation the résultats* vs. *obligation de moyens*). This perspective makes the employment relationship conceptually closer to a commercial relationship. As a consequence, the individual, case-by-case negotiation and bargaining power becomes increasingly relevant, fostering competition between market players. Hence, we find a set of laws that does not impose many legal or economic obligations on employers in terms of severance pay, contributions and social security, the bargaining power is individually – rather than collectively – determined. It is within this framework that employee handbooks become relevant to regulate aspects pertaining to individual relationships of small groups of workers. Consequently, to go back to the employment agreement – that was the starting point of the analysis – contracts are conceived as a self-sufficient document in English-speaking countries, and the very existence of an employment contract signals the high bargaining power that the individual worker has and the contract – much like in a commercial negotiation – is constructed so as to regulate every aspect of the relationship.

It is in this perspective that the glossary can serve as a valuable tool for comparative research. Across the world, and in particular in Italy, there are thousands of potential users of the present glossary. Institutions and scholars, but also practitioners and policy makers. It could be a useful tool for trade unionists, as well as for multinational companies finally investing in Italy. The need for clarity has become increasingly important and the glossary could also be part of the toolkit of translators, editors, publishers and specialized journalists. All these stakeholders experience on a daily basis the need to communicate internationally and express in English notions, concepts and ideas on a whole range of employment-related matters.

Conclusions

Outline: 1. Summary; 2. Findings; 2.1. Chapter One; 2.2. Chapter Two; 2.3. Chapter Three; 3. Future Prospects.

1. Summary

This work has looked at the Italian terminology regarding employment relationships and provided an analysis of the way the individual employment relationship is conceptualized in Italy through a multilingual approach. The translation process took account of the respective underlying legal systems and cultures. The purpose is to give scholars and practitioners a point of reference to discuss without ambiguities employment patterns in different countries, in such a way to be able to underline the differences between systems in terms of work and employment patterns.

As mentioned, the research focuses specifically on the individual employment relationship given the importance that this topic has acquired in the light of recent trends in terms of internationalization of work. It draws on the consideration that language analysis in this field, focusing on the individual dimension of work, has been so far generally overlooked in comparative research. The work considers both sociological notions, as well as legal concepts. The sociological and legal dimension of work are here combined to discuss the effects on language, contracts and employment practices of the process of globalization of labor, also in the light of the increasingly important role of multinational companies in shaping the employment relationship, and of the presence of a diverse, multi-cultural and multi-linguistic workforce. As a starting point and through an extensive literature review, the meaning of the basic terms surrounding the notion of employment relationship were analyzed. These include the notion of “worker”, “employee”, “employment vs. self-employment”, “contract” among the many. Building on those, the translation of the various types of employment relationships existing in Italy were discussed. Moving on, the multilingual comparative method was applied to the practice of contract drafting, with a focus on contractual clauses and

finally a glossary was created summarizing and expanding the terminology under analysis. In this connection, unlike most of the comparative research conducted in the social sciences, no standardized definitions of the concepts under investigation were introduced. The purpose of the research was not that of finding a common core or a “supra-national” standardized language, but rather that of emphasizing the differences among countries and the challenges posed by the attempt to conduct unbiased research. The focus is rather the absence of standard definitions that could facilitate cross-country comparison, and the present work provides a novel approach to overcome the difficulties emerging in this respect.

Chapter one described the way the employment relationship is conceptualized in Italy and how this conceptualization can be translated into English. After an introductory paragraph aimed at presenting the challenges deriving from the absence of a common framework at the international level defining and regulating the individual employment relationship, an analysis of the translation employment terminology is provided. The chapter separates the terminology related to employment, self-employment and employment through an intermediary and ended with a summary of the main conclusions that can be drawn from the analysis mainly in terms of translation strategies to be adopted.

Chapter two looked at contractual clauses. It provided a facing page translation of an Italian standard permanent-employment contract accompanied by the corresponding sample clauses in a standard English-language employment agreement, to reconstruct the patterns of contract drafting in the respective cultural systems and languages. The comparison identified significant similarities as well as relevant differences, both in the way the employment relationship is conceived and structured as well as in contract drafting practices. The chapter also suggests some of the cultural, historical, regulatory and institutional reasons that may explain the similarities and the differences between the countries. Chapter three contains an annotated glossary of Italian employment terms, their translation and explanation in English, and a summary of related terms that are useful to find similar conceptualizations in the target-language systems. The glossary clearly shows the power of language as an ethnographic methodology to learn about different legal systems and as a way to organize knowledge effectively.

2. Findings

The present section summarizes the main findings of each of the three chapters, which should not be considered on their own but as complementary to each other.

2.1. Chapter One

Chapter one shows how the notion of “functional equivalence” in translation can help categorize and understand similarities and differences between legal systems. From the analysis of employment relationship terminology, it emerged that despite the differences, all the countries, languages and legal systems under investigation have a notion of “employment relationship” that is based on the hierarchical power of employers and on the economic dependence of the employee. Similar patterns can therefore be identified behind the development of a range of individual employment relationships, which despite variations share a common core (see, among the many, the notion of dependent/independent contractor in the United States vs. the quasi-subordinate worker in Italy and the economically dependent self-employed in Europe). The analysis also shows similarities in the historical and geographical evolution of the various employment relationships and concepts. At the same time, it points to the significant differences in conceptualizing the employment relationship existing between these countries, which need to be tackled in translation with different strategies, through direct equivalents when there is substantive conceptual correspondence, or through assimilation / foreignization in the case there is no overlapping term in the target language and system. If the term exists only in the source language, a word-for-word translation or a periphrasis can be used to convey meaning.

2.2. Chapter Two

Trends showing a combination of global and local clearly emerge from the analysis conducted in chapter two. If on the one hand, atypical contracts (as a legal concept in

Italy) seem to be closely related with globalizing trends taking place across the world, alien contracts (in the notion created by De Nova) emerge, on the other, as a signal of persistent localizing trends. This tension poses many difficulties as it is characterized by the constant changes to both the structure and the language of contracts. In addition, important conclusions emerges from the clause-by-clause analysis of a contract, such as the difference between self-sufficient contracts in English-speaking countries and contracts governed (also) by external sources, (e.g. collective agreements), in Italy, the way covenant and boilerplates are used in English-language contracts, the role of employee handbook and so on.

Chapter two also provides a summary of the translation process that the specialized translator needs to follow to perform proper translations in this field. First, it is necessary to assess case by case which legal system is more relevant – it depends on the purpose of the translation. In this case, the Italian legal system prevails also in the target translated text, and it is here the hierarchically superior system. Being the source language system the prevailing one, adaptation and localization must therefore be avoided. Moreover, the translator should have extensive knowledge of the legal features of both the source and the target legal system, to be able to assess the degree of relatedness of the systems involved. After that, it is necessary to consider the degree of affinity of the languages involved. In the case of Italian and English, the affinity between languages and the degree of relatedness are both very low, making the translation process particularly demanding.

2.3. Chapter Three

The glossary of employment-related terminology provided in chapter three, which is one of the few existing glossaries focusing specifically on the conceptualization, regulation and translation of the individual employment relationship, makes it is easy to identify, understand and consistently classify many of the features characterizing the employment relationship across countries. It creates a multidisciplinary and multilinguistic conceptual “web” that can help researchers and practitioners navigate international employment and conduct unbiased comparative research. The glossary

shows the internal consistency of each system. If, in the Italian case, the employment relationship is founded on the contract of employment and based on the principle of subordination, in the target-language culture, the employment relationship is rather based on the mutual agreement and the willingness of the two parties, and the notion of “subordination” finds no correspondence here. Also being the relationship based on the *will* of two individuals bargaining on a level playing field, the distinction between self-employment and employment is much less relevant, as well as the notion of fixed-term work as opposed to permanent work. It is in this light that the chapter provides translations of Italian terminology that attempt to be clear and raise awareness on an approach that helps avoid ambiguities and misleading conceptual assimilation.

However, given the informational and methodological limitations of qualitative comparative research, these findings are not to be deemed as conclusive. It is reasonable to say that this work opens up to further language-based research on employment-related phenomena.

3. Future Prospects

The comparative researcher and the multinational employer who recognize that many concepts are hard to translate internationally will be well-positioned to conduct unbiased comparative research or effectively manage international employment relationships. Many of the problems associated with comparative analysis relate to the difficulties of establishing conceptual equivalence when operationalizing comparative research. The present study showed that the comparison between unmatched countries – which differ in terms of language, legal structure, legal system, institutions and cultural context – is particularly demanding because of the significant gap between phenomenal and conceptual equivalence, especially at a time characterized by frequent exchanges between countries and languages, both in person and online. The study of the translation of employment-related terminology in Italy opens up to a world built on a different cultural and conceptual structure. The comparison that emerges through the study of specialized languages not only shows lawyers, practitioners and comparative researchers the important role that languages play in determining and forging the

individual employment relationship of many workers all over the world and in Italy in particular, but also provides an insight into a different way of thinking and a different approach to employment regulation.

The present research has a focus on the Italian system, and describes how work, and in particular the individual employment relationship is conceived and constructed in our country. The analysis of the Italian system through translation into English, however, provides the opportunity to go below the surface and understand how legal rules originated and developed over time from the different ways of conceptualizing and regulating work. Translation and language analysis are a window on the world that gives readers the possibility to discover a completely different approach to work regulation – which draws on different cultural and evolutionary patterns.

In this connection, a study on language and translation of employment terminology comes at the right time, and both in its origins and in the making, it has certainly been influenced by the ongoing debate that has characterized the recent employment reform process in Italy.

It is no coincidence that this work comes at a time in which prominent scholars⁴⁷ have advocated the translatability into English of Italian norms, not only because it may help foreign investors better understand the Italian employment legislation, but also because translatability would imply a formulation effort towards clarity and simplicity. It is true in fact, and the present work proves that, that Italian employment legislation, in the way it is conceived, constructed and linguistically defined, is a complex web of intricate concepts that is very difficult to convey in a language that is by no means prone to simplicity and clarity, like English.

The translatability of Italian norms in English has also been for a long time the *forte* of Prime Minister Matteo Renzi, who already in 2012 was advocating for a labor reform

⁴⁷ Senator P. Ichino writes (translation my own): “It is possible and absolutely necessary, to help open the Italian system to foreign investment, reduce (by repealing hundreds of rules that have stratified over time) national legislation into a Labor Code, integrating it into the Civil Code, consisting of 59 articles, readable and immediately understandable for millions of people interested in its enforcement, and translatable into English, according to the guidelines laid down by the European Union with the Decalogue for Smart Regulation (Stockholm, November 12, 2009)”, available at: http://www.pietroichino.it/?page_id=15 (Last accessed 15 December 2014).

composed of 50-60 paragraphs translatable in English⁴⁸. His attempt to give Italian employment law an international “flavor” was demonstrated by the English – or rather American – name that his Government gave to the recent law No. 183 of 2014. Prime Minister Renzi’s “Job Act” as it was originally called, or “Jobs Act” as it has evolved more recently, and which was been bandied about for months in the public debate is named, by no coincidence, after the famous American JOBS Act⁴⁹. This testifies the increased tendency to look at English translatability as a sign of clarity and of simplicity – in opposition to the convoluted Italian regulation. But it also shows renewed interest in looking at how English-speaking countries, and in particular the United States, conceive and regulate employment. The purpose is to learn from what the U.S. does, “get inspired” and find a new way for Italy, by thinking outside the “box” of our own regulatory tradition.

In this process, the present work may play a role in providing a valuable contribution by showing that a language shift can have – and should have – profound implications. Wearing the shoes of others can teach a valuable lesson, on which we can draw to trigger change.

⁴⁸ Prime Minister of Italy Renzi when visiting Prime Minister of the UK David Cameron on 1 April 2014 reaffirms his intention to reform employment law and replace the existing 2,100 norms regulating employment with 50-60 articles that can easily be translated in English. See among the many sources, http://www.repubblica.it/esteri/2014/04/01/news/conferenza_cameron_renzi-82470587/ (Last accessed 15 December 2014).

⁴⁹ As I wrote on 13 January 2013 on the online newspaper *Linkiesta* (in Italian the article was published with the title *Il job Act di Renzi, cos'è come funziona*) “The American Jobs Act was a 447 billion \$ plan including a reduction of the high cost of labor, tax holidays in exchange for new hirings or wage increases, incentives for hiring certain categories of workers, such as the long-term unemployed, the *Bridge to Work* program to foster workers’ re-integration, and an extension of unemployment benefits. Yet, the American Jobs Act never passed. President Obama tried to split it into different acts, but his attempts have not yet succeeded. Maybe this was too much for a country like the U.S., or maybe this vision was too limited, if we compare it with the 2012 *JOBS Act*, passed with bipartisan consensus, and which was very innovative. JOBS Act stands for *Jumpstart Our Business Startups Act*, but it is no coincidence that it forms the word JOBS. This bill is aimed at fostering the development of start-up businesses by streamlining procedures and facilitating fundraising and crowdfunding. It offers several reliefs to the so-called emerging growth companies, defined as those businesses whose gross turnover was less than a billion \$ within the last fiscal year. Apparently, employment is no key focus of this reform; yet it is the act’s main goal.” (Translation is my own).

In this light, a mere attempt to improve translatability is doomed to fail if one does not understand that a different and distant language is most of all the expression of a different mindset, which produces completely different conceptualizations, approaches, and ultimately laws and their effects. Changing language can represent an opportunity to understand how work is conceived and regulated elsewhere and can be a trigger for innovative reforms that create a simplified, consistent and competitive system.

Yet, it also shows how much work remains to be done and how distant we are, in cultural as well as in regulatory terms to get closer to that “model” of inspiration.

As discussed in the present work, Italian employment law is based on the employment contract and, quite consequently from this perspective, all the reforms that have been introduced, at least over the last four years in our country take the employment contract and its regulation as the starting point. The employment reforms recently introduced in Italy essentially modify in one direction or the other some features of employment contracts. A modernizing approach that aims at changing perspective by changing language would rather require a change of mindset that has so far still not taken place. Working on the translation of Italian terms into English immediately shows that it is possible to conceive an employment law less focused on the formal regulation of contracts. It gives the researcher the opportunity to get in touch with a different system in which the contract *per se* is less relevant, being rather based on a mutual, personal, less formal, agreement between two parties with (almost) equal power. In this perspective, the present research aims to shed some light on the model taken, in some respect, as a point of reference, to show the way ahead for a cultural shift in this direction.

It is therefore in this light that the present work hopes to provide food for thought and contribute to the current debate at the national level. It does not purport to deal with all the conceptual problems nor involve all the legal issues that may originate from language. However, it is hoped that it will contribute to raising awareness within the scientific community, pave the way for further interdisciplinary and integrated language-based and multilingual studies, as well as provide an insightful contribution to practitioners and policy makers.

Literature Review

Summary:

Over the past decades, with the intensification of international relations between countries, legal translation studies have proliferated. However, scholars have seldom focused on legal translation in the field of labor and employment, and even less have they approached employment relationships and contracts from the legal-linguistic viewpoint. The relevant literature in the field will here be reviewed for the purpose. Since the number of studies combining language with labor studies is limited, the present review will mainly aim at providing an overview of those studies that can serve as a theoretical framework for a work specifically devoted to the specialized language of labor and employment – an area that has so far remained largely unexplored. The present review will therefore discuss those difficulties and strategies of legal translation that can be purposefully applied to the translation of employment terminology and contractual clauses. Each chapter of the review reflects the focus of a chapter in the research work, and serves as the theoretical background for its analysis. In details, chapter one will first provide an introductory overview of the limited number of existing language studies focusing on labor and employment, and provide an insight into the so-called “Linguistics of Labour Law and Industrial Relations” a branch that aims at combining these two disciplines, namely languages and labor studies, for comparative purposes. It follows the analysis of the notion of “employment relationship” and of its cross-country variations, with difficulties and strategies of legal translation that will be analyzed and classified. Chapter two will focus on contract drafting and translation, and will be specifically devoted to the existing research regarding the translation of contractual clauses as well as on so-called “international contracts” and the language challenges they pose. Chapter three will provide an extensive review of terminology databases and glossaries existing in the field.

Outline:

Chapter One: 1. Introduction: A Language-based Study in the Field of Labor and Employment; 2. Translation of Employment Terminology as a Sub-genre of Legal Translation: Uniformity and Compatibility in the Absence of a Common Framework; 3. The Translation of Employment Relationship Terminology; 3.1. Employment 3.2. Self-employment; 3.3. Workers Employed by an Intermediary. 4. Conclusion.

Chapter Two: 1. Introduction; 2. Language Issues in Contract Drafting; 3. Translating Contractual Clauses; 4. International Contracts, New Forms of Employment and the Effects on Contract Drafting and Translation; 5. Conclusion.

Chapter Three: 1. Introduction: A Glossary for the Global Scientific Community and International Practitioners; 2. An Approach to Employment Terminology; 3. The Choice of the Language and the Lingua Franca Discourse; 4. Review of Existing Glossaries and Databases in the field of Labor and Employment; 5. Conclusion.

Chapter One

1. Introduction: A Language-based Study in the field of Labor and Employment

Available research has seldom focused specifically on the study of language in comparative labour law. P. MANZELLA in his paper *The Linguistics of Labour Law and Industrial Relations: A Modest Proposal*, Social Science research Network, 2012, p. 2 (see P. MANZELLA, *Analysing Corporate Discourse in Globalised Markets: The Case of FIAT*, Lambert Academic Publishing, 2012), proposes a new strand of research drawing on the interconnection between language and concepts. In providing a comprehensive review of the relevant literature he points out that:

Except in a small number of cases, this investigation has been carried out *en passant*, with Comparative Labour Law and Industrial Relations monographs and textbooks dedicating a limited amount of attention – a few sentences, a paragraph, sometimes a chapter – to what appears to be an extremely rich field of research.

Despite not being their primary research focus, some prominent comparative scholars have dwelt on definitions of concepts in their work. J.-C. BARBIER, in *La logica del Workfare in Europa e negli Stati Uniti: i limiti delle analisi globali*, Assistenza Sociale, No. 3-4, 2003, p. 209-217, for instance, analyzes the concept of *workfare* in the U.S. by comparing it to the concept of *insertion* in France, and advocates the development of a comparative research method that is not only based on the identification of “functional

equivalents” (see below), but rather on the in-depth analysis of the specific features of national legal systems. As he points out in *À propos des difficultés de traduction des catégories d’analyse des marchés du travail et des politiques de l’emploi en contexte comparatif européen*, Centre d’études de l’emploi et Université Paris VII-Denis Diderot, Document de travail, No. 3, 2000, p.4, the idea “that labour markets behave homogeneously across the world is too often taken for granted” and comparative researchers as well as translators and drafters must take into account the differences in national systems.

Also R. HYMAN in *An Anglo-European Perspective on Industrial Relations Research*, Arbetsmarknad & Arbetsliv 13, No. 3-4, 2007, p. 29-37, by asking the question *What Do We Mean by “Industrial Relations”?* addresses the issue of definitions and highlights the difficulties in defining concepts that change over time as well as cross-nationally. In his paper *Words and Things: the Problem of Particularistic Universalism*, in J.-C. Barbier, M.-T. Letablier, (eds.) *Comparaisons internationales des politiques sociales, enjeux épistémologiques et méthodologiques*, Brussels, Peter Lang, 2005, pp. 191-208 he clearly shows the intertwined nature of legal notions and language, and the problems that this may pose at the time of translating legal effects – rather than words – into different national systems:

There is no accurate French translation of the English “shop steward”, for there is no equivalent French reality: a trade union representative, selected (often informally) by the members in the workplace, and recognised as an important bargaining agent by the employer. [...] Or again, it is highly misleading to translate comité d’entreprise as “works council”, though this is often done: it implies that the comité is an equivalent of the German Betriebsrat (which does translate literally as “works council”), which is not at all the case given the variations in composition, functions and capacities.

In the same vein, a similar analysis was carried out by P. SINGAM, K. KOCH in *Industrial Relations Problems of German Concepts and Terminology for the English Translator*, Lebende Sprachen No. 4, 1994, p. 158-161, who analyzes a number of German concepts in the field of industrial relations in a comparative perspective.

However, as pointed out above, scholarly interest in this area has been limited. Some authors have discussed the meaning of what only appear to be the simplest terms, such

as “worker” or “employee”. According to C. ROSSINI, in *English as a Legal Language*, Martinus Nijhoff Publishers, 1998, p. 77 for instance, “worker” can have two different meanings. In its narrow sense, it indicates a manual (skilled or unskilled) *laborer*, whereas in its broad sense, it can be applied to any working person, in particular when it is not clear whether an employee-employer relationship exists. With reference to the term “worker” the ILO Thesaurus, 2012, suggests, for the sake of clarity, to “use a more specific descriptor, where possible”⁵⁰ and the Eurofound, *Industrial Relations Dictionary* 2012⁵¹ acknowledges that there is a certain degree of ambiguity in the definition of “worker” in within EU regulations, because both the narrow and the broad definition of “worker” have been used interchangeably.

In this connection, the European Court of Justice in *R. v. Immigration Appeal Tribunal, ex parte Antonissen*, Case C-292/89 explicitly stated that the notion of “worker” includes all persons engaged in economic activity, not only those with a contract of employment, but also those who are seeking work⁵². An “in-between” definition is provided in the Council Directive 89/391/EEC, *Framework Directive on Health and Safety*, where “worker” is defined as “any person *employed by an employer*, including trainees and apprentices but excluding domestic servants” (emphasis added), thus excluding all the people without a contract of employment. The terms “worker” and “employee” are used in the different Directives with different meanings without being defined.

As argued by B. BURCHELL, S. DEAKIN, S. HONEY, in *The Employment Status of Individuals in Non-standard Employment*, Department of Trade and Industry EMAR publications, No. 6, 1999, pp. 1-4, in consideration of the changing nature of the employment relationship, it would be necessary to extend employment protection legislation to an increased number of individuals engaged in economic activities, although they do not have a traditional employer-employee relationship. This could be

⁵⁰ ILO Thesaurus, Bureau of Library and Information Services.

<http://www.vocabularyserver.com/ilo/index.php?tema=5747&/worker> (Last accessed 31 October 2012).

⁵¹ Eurofound

<http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/WORKER.htm> (Last accessed 31 October 2012).

⁵² Consistently, the Italian Law 276/2003 provided a definition of *lavoratore* (worker) as “every person who works or is looking for a job”.

achieved by making use of the word “worker” rather than “employee” in legislation to include also those who do not have a contract of employment, but who nevertheless provide their own personal services to an employer. In this connection, however, difficulties may arise in identifying the criteria to apply in determining the “worker” status. A comprehensive explanation of the notion of “worker” can be found in the *Byrne Brothers (Formwork) Ltd v Baird* [2002] IRLR 96 where the Employment Appeal Tribunal indicated some rules for the interpretation of the term “worker”, by saying that courts must apply the same criteria used to define “employees”. In this sense, the sentence of the *Byrne Brothers* follows the concept developed by M. FREEDLAND in *The Personal Employment Contract*, Oxford University Press, Oxford, 2003, full book, according to whom the term “worker” is used to designate a “semi-dependent” work relationship, drawing on the assumption that “employees” are dependent upon their employers, and that workers must present the exact same characteristics of employees only to a lesser extent. In this context, G. DAVIDOV in *Who is a Worker?*, *Industrial law Journal*, Vol. 34, No. 1, 2005, pp. 57-61, developed an analysis of the concept by describing the intermediate categories of “workers”, combining the notions “subordination” (i.e. social condition of being under the control of another) and “economic dependency” (single source of income).

With reference to the term “employee”, mention should be made of the study conducted by C. ENGELS in *Subordinate Employees or Self-employed Workers* in R. BLANPAIN, *Comparative Labour Law and Industrial Relations Systems in Industrialized Economies*, The Hague, Kluwer Law International, 2001, pp. 275-291 as well as the analysis provided by R. REBHahn in *Varianti del termine “employee” nel contesto europeo: le implicazioni sulla nozione giuridica sottostante di lavoro subordinato*, *Diritto delle Relazioni Industriali*, No. 1, 2010, pp. 295-303. Both authors analyze the variations in meaning across Europe and the legal implications. The concept of “employee” has been changing greatly over the last few years, mainly due to an increase in the number of so-called atypical employment relationships. New employment arrangements were introduced in legislation and the “grey zone” between “dependent” and “independent” work has expanded in many countries. The term “employee” varies greatly from country to country affecting employment relationships and types of contractual arrangements.

2. Translation of Employment Terminology as a Sub-genre of Legal Translation: Uniformity and Compatibility in the Absence of a Common Framework

One of the most important factors to take into account when performing a translation of employment terminology is the differences in the legal systems involved in the process. In a globalized world, this becomes of particular significance, especially in the absence of uniform international procedures and practices. The literature has extensively analyzed the role of international ILO standards and EU laws in shaping national labor systems. See among others H. VOOGSGERD, *Rethinking Scope and Purpose of National Labour Law because of Developments in EU Labour Law?* Business and Labour Law University of Groningen, LLRN conference on Labour Law at Barcelona, 2013, pp. 1-12, who discusses the challenges and problems posed by one-size-fits-all social and labor legislation.

International and European institutions have attempted to develop a common legal framework with regard to labor regulation valid cross-nationally, but have encountered significant difficulties at the time of identifying and defining concepts – as well as legal provisions – that can apply to different legal systems.

At the European level, this topic has been investigated extensively by linguists as well as by comparative scholars, although very limited attention has so far been devoted specifically to the field of labor and employment. F. PALERMO in *Lingua, Diritto e Comparazione nel contesto europeo, profili metodologici tra opportunità e rischi*, Intralinea Special Issue: Specialised Translation II, 2011, online at: http://www.intralinea.org/specials/article/lingua_diritto_e_comparazione_nel_contesto_europeo (Last accessed 8 October 2014), under “Introduzione”, shows how European integration policies have only recently overcome the tendency to create a *uniform* legal system to focus primarily on the development of *compatible* policies and a consequently compatible language:

L'ordinamento comunitario ha ormai cessato di imporre l'uniformità delle discipline, assestandosi piuttosto sulla ricerca di formule compatibili, e presupponendo pertanto un certo grado di compatibilità tra le regole operative e le tradizioni costituzionali degli Stati membri.

According to the author, at the EU level, with 28 legal systems and 24 official languages, there is sometimes a tendency to oversimplify the language and therefore concepts, leading to theoretical and practical difficulties. Three factors must be combined to analyze the emergence and development of legal concepts within the EU: the role of Member States in developing their own legal language, the development of a specific language and language policies at the Community level, and the comparative approach. As some commentators have argued (V. HEUTGER, *Legal Language and the Process of Drafting the Principles on a European Law of Sales*, Electronic Journal of Comparative Law, No. 12.2, 2008, *passim*, available here: <http://www.ejcl.org/122/art122-3.pdf>, last accessed 8 October 2014, V. HEUTGER, *A more Coherent European Wide Legal Language*, European Integration online Papers (EIoP), Vol. 8 No. 2, 2004, *passim*, available here: <http://www.cisg.law.pace.edu/cisg/biblio/heutger.html>, last accessed 8 October 2014; B. POZZO, *Harmonisation Of European Contract Law And The Need Of Creating A Common Terminology*, in European Review for Private Law, Vol. 11, No. 6, 2003, pp. 754-767), the EU has so far attempted to develop an independent language, different from national languages and far from national terminology, without, as according to F. PALERMO, *op. cit.*, par. 2, however relying enough on the comparative approach.

S. ŠARČEVIĆ, *Die Übersetzung von mehrsprachigen EU-Rechtsvorschriften: Der Kampf gegen Sprachdivergenzen*, in M. GOTTI and S. ŠARČEVIĆ (eds.), *Insights into Specialised Translation*, Bern, Lang, 2006, pp. 121-150, underlines also that the EU law is a legal system in continuous evolution and still without a fully developed conceptual system, where the terms used in legislation are often merely taken from national legal systems on the basis of the language spoken by the authors of the law. In this particular case, the task of the translator is therefore that of verifying the existence of an equivalent concept in the target language and then assessing whether the term is appropriate in the EU context. A demanding task, as the translator must also verify whether the term is used with its original meaning, i.e. the same meaning it bears at the national level, or whether a new and different meaning is given to adapt to the EU context, in accordance with what has been established, for instance, by the European Court of Justice.

The research carried out in 2011 by the European Commission, *Quantifying Quality Costs and the Cost of Poor Quality in Translation*, available at <http://bookshop.europa.eu/en/quantifying-quality-costs-and-the-cost-of-poor-quality-in-translation-pbHC3112463/>, pp. 13-49, focuses on the use of a correct terminology in legal translation. Every time a mistake in translation is made, this may cost time and hundreds of thousands of euros to rectify. Within the European Union, many cases are brought every year before the Court of Justice due to translation errors at a very high price. Also the *Study on Language and Translation in International and EU Law* published by the EUROPEAN COMMISSION in 2012 and available at <http://bookshop.europa.eu/it/study-on-language-and-translation-in-international-law-and-eu-law-pbHC3012627/>, pp. 13-150 focuses on law in a multilingual context with particular reference to the consequences of diverging linguistic versions. It aims at demonstrating the importance of languages by providing an overview of language regimes at the time of drafting bilateral or multilateral treaties, it analyzes the translation of labels and patents and emphasises the role of unofficial translation.

More broadly, at the international level, institutions constantly struggle with language and translation, for the difficulties arising at the time of finding terms that can adapt and apply equally to each of the signatory countries. A case in point is provided by INTERNATIONAL LABOUR ORGANIZATION, *Report of the Meeting of Expert on Workers in Situation Needing Protection*, 2000, pp. 5-7, that overtly discusses the challenges posed by the conceptual ambiguity and misleading wording of the notion of “contract labour”. On that occasion, the committee decided to overcome the ambiguity by deleting the terms “contract labour” and “contract worker” from the entire text of the proposed Convention and resorted to the image of “workers who found themselves in a grey area”, to indicate that despite cross-national differences, a common core could still be identified across countries. More recently, on the same concept, A.-M. GREENE conducted a comparative study for EIRO on *Economically Dependent Workers*, pp. 2-10, focusing on the difficulties encountered in defining those working arrangements which are “mid-way” between self-employment and dependent arrangements.

In the light of the above, translation scholars have developed different theories and approaches to classify legal translation processes. A first classification was developed by E. WIESMANN in *La traduzione giuridica tra Teoria e Pratica*, Intralinea Special

Issue: Specialised Translation II, 2011, par. 2.1.1. who distinguishes three different types of translation processes. She defines *rechtssystemübergreifende Übersetzung* the so-called “intercultural legal translation” that must take account of the different legal systems involved, *rechtssysteminterne Übersetzung* a translation process involving different languages but one single legal system (such as Italy, Switzerland or Belgium) and *beschränkt rechtssysteminterne Übersetzung*, i.e. intra-cultural translation in a broad sense, referring to a translation that involves both a national as well as a supra-national level (e.g. European Union legislation). The underlying idea here is that the language is closely intertwined with the cultural system it refers to, and is significantly affected by it. Also A. FIORITTO, in *Il linguaggio delle amministrazioni pubbliche*, published in G. FIORENTINO, *Scrittura e società, Storia, Cultura e Professioni*, Rome, Aracne, 2007, pp. 289-310 underlines the special nature of legal language by stating that the language of the law, unlike all the other specialised jargons, does not merely *describe*, but rather *modifies* reality, and translation must therefore take into account the shift that takes place from one legal system to another.

D. CAO in *Translating Law*, Clevedon, Multilingual Matters, 2007, pp. 10 and ff. proposes a different approach to translation, based on the function of the translated text, distinguishing between “legal translation for normative purpose”, “legal translation for informative purpose” and “legal translation for general legal or judicial purpose”. This is particularly relevant in consideration of the legal effects that legal texts and their official translations produce. CAO, *op. cit.*, pp. 25-28, provides an extensive analysis of the differences between common law and civil law countries as well as of the role of cultural differences.

Legal language derives from the legal culture of a country, with each concept that can only be fully explained and understood in the light of the legal culture it has produced it (P. ROSSI in *Ontologie applicate e comparazione giuridica: alcune premesse*, Rivista critica del diritto privato, No. 2, 2001, pp. 315-349). A similar concept is elaborated by N. RALLI in *Terminografia e comparazione giuridica: metodo, applicazione e problematiche chiave*, Intralinea Special Issue: Specialised Translation I, 2009, Introduction, available online at: http://www.intralinea.org/specials/article/Terminografia_e_comparazione_giuridica_metodo_applicazioni_e_problematifiche, last accessed 8 October 2014, who points out how

looking for an equivalent term in a different language/legal system is not a mere effort to find a linguistic label but a shift from a legal system to another (G.-R. DE GROOT, *Das Übersetzen juristischer Texte*, in G.-R. de GROOT, R. SCHULZE, (eds.), *Recht und Übersetzen*, 1999, p. 18).

As underlined by R. LOIACONO in *Il trattamento dei nomi propri nella traduzione di documenti giuridici tra l'italiano e l'inglese*, *Intralinea Special Issue: Specialised Translation* II, 2011, available at: http://www.intralinea.org/specials/article/il_trattamento_dei_nomi_propri_nella_traduzione_di_documenti_giuridici, last accessed 8 October 2014, par. 3 and G. GARZONE, in *Tradurre la convenzione internazionale: aspetti testuali e pragmatici*, in L. SCHENA, R. D. SNEL TRAMPUS (eds.), *Traduttori e giuristi a confronto. Interpretazione traduce e comparazione del discorso giuridico*, Vol. II, Bologna, CLUEB, 2002, p. 47 legal translators are required to produce texts in a target language that have the same purpose and effects of the source text, by ensuring at the same time inter-linguistic equivalence.

Conceptual differences posing difficulties in identifying linguistic equivalents is one of the issues mostly investigated by legal translation scholars. As pointed out by S. ŠARČEVIĆ, *Legal Translation in Encyclopedia of Language and Linguistics*, Oxford, Oxford Elsevier, Vol. 7, 2006, p. 27 “the conceptual incongruity of legal systems poses the greatest challenge to legal translators”.

Drawing on the analysis of the relevant literature, the following section provides an overview of the main issues of legal translation:

1. *Legal terms refer to concepts developed by national legal systems.* For instance, as underlined by E. WIESMANN, *op. cit.*, par. 2.1. a “Regolamento” issued by the Italian Government is different from a “Regolamento” at the EU level.

2. *The terminology used in legal texts mixes up with everyday language.* As indicated by E. WIESMANN, *op. cit.*, par. 2.1. the collocation “risolvere un contratto” cannot legally be replaced by “disdire un contratto”, as it often happens in everyday language,

since the two have different meanings, the former indicating the end of a contract due to a fault e.g. breach of the contract, and the latter preventing the renewal of a contract with fixed duration.

3. *Legal terminology is related to both external reality as well as to legal reality, understood as a self-referential system that sometimes has no connection with the external reality* (A. BELVEDERE, *Linguaggio giuridico* (item), in R. SACCO, (ed.) *Digesto delle discipline privatistiche. Sezione civile, aggiornamento I*, Turin, UTET, 2000, p. 556, N. LUHMANN, *Sistemi Sociali. Fondamenti di una teoria generale*, Bologna, Il Mulino, 2011, *passim*).

4. *Some terms are strictly defined, whereas others are vague and indeterminate and are subject to frequent changes over time* (A. BELVEDERE, *op. cit.*, 557). See by way of an example C. LUZZATI, *La vaghezza delle norme. Un'analisi del linguaggio giuridico*, Milan, Giuffr , 1990, pp. 303 and ff. who analyses expressions such as “buona fede”, “ordinaria diligenza”, “buon costume” among others as examples of vague language. See also P. BRUGNOLI, *La lingua giuridica va riformata? Alcune osservazioni linguistiche sul dibattito in corso*, *Revista de Llengua i Dret*, No. 37, September 2002, pp. 9-35.

5. *Polysemy: legal terms can look similar in different languages but have different meanings and produce different legal effects* (A. BELVEDERE, *op. cit.* 555-567).

Scholars have investigated possible strategies to overcome these difficulties, mostly based on the comparative approach. For instance, E. WIESMANN, *Rechts bersetzung und Hilfsmittel zur Translation. Wissenschaftliche Grundlagen und computergest tzte Umsetzung eines lexikographischen Konzepts*, T bingen, Narr, 2004, pp. 76, 111 and ff. suggests four possible approaches to legal translation: a) *verfremdende  bersetzung* (distancing translation) b) *einb rgernde  bersetzung*, (“naturalising” translation) c) *Bearbeitung*, (adaptation, re-elaboration) d) *Koredaktion* (codrafting) all based on the comparative method.

As also pointed out by F. PALERMO, *op. cit.*, par. 2.3., comparison is probably the most effective way to understand different legal systems and consequently different legal languages, especially in the international context. There is the increasing need to investigate the relationship between language (specialized language, translation and terminology) and law. According to the author, it is no longer *the language*, but rather *languages* the main tool of legal experts.

The work across different legal systems and legal languages requires a polysemic approach and both researchers and drafters have to be aware of possible conceptual pitfalls. F. PALERMO, par. 2.3., provides a number of examples, such as the term “doctrine”, that especially in the U.S. mainly refers to case law, whereas what in continental Europe is called “dottrina” or “Lehre” in the U.S. is called “jurisprudence”, consistent with the common law tradition.

Many authors have come to the conclusion (see EUROPEAN COMMISSION, *Study on Language and Translation in International and EU Law*, Brussels, European Union, 2012, pp. 17-34) that it would be necessary to have translators and lawyer linguists participating in the drafting process of legal texts. However, today, comparison still plays a secondary role, especially because the attitude of the Court of Justice, according to PALERMO, *op. cit.* par. 3.2. has so far been that of ignoring the comparative approach by working only with so-called “pivot languages” and by translating – rather than co-drafting – documents in the other official languages. The approach has therefore so far been mainly top-down, with new concepts and terms introduced at the EU level that only subsequently were imposed to the Member states. As pointed out by the EUROPEAN COMMISSION in 2012, many scholars have criticized the current process of translating international agreements and laws and many proposals have been put forward to ensure that the translation phase is not completely separated from the drafting phase. An interesting example is provided by the ILO, which uses a unique translation procedure. Following the adoption of a convention, a “translation conference” is held among the countries where the official ILO languages are spoken, with a view to comparing the different draft versions and end up with a uniform text.

N. RALLI, *op. cit.*, par. 3 by quoting A. BELVEDERE, *Il linguaggio del codice civile: alcune osservazioni*, in U. SCAPELLI, P. DI LUCIA (eds.), *Il linguaggio del diritto*, 1994 discusses comparison with everyday language, and also distinguishes

between macro-comparison, i.e. the study of a number of legal systems and micro-comparison, i.e. the analysis of one or more legal concept(s).

Despite the comparative work, concepts are however only seldom overlapping. According to R. SACCO in *Introduzione al diritto comparato*, Turin, UTET, 1992, chapter 1, full uniformity of legal concepts can be achieved only artificially, i.e. in the case an authority imposes a perfect correspondence between concepts in different languages. This can be achieved therefore only in bilingual countries, like Canada or Switzerland.

3. The Translation of Employment Relationship Terminology

The construction of a theoretical framework underlying the empirical analysis of employment terminology should start with the analysis of the legal notion of employment relationship as well as of the regulation of the various types of employment relationships existing in Italy as background knowledge.

With reference to the notion of employment relationship, the International Labour Conference, 91st Session 2003, Report V, in *The Scope of Employment Relationship*, p. 22 states that “the employment relationship, as a legal concept, exists in the 39 countries studied by the ILO and most others, with certain similarities which a certain profile emerges”. This conceptual core has been studied extensively by M. FREEDLAND, in *The Personal Employment Contract* who develops the definitional category of the “personal employment contract” as going beyond the traditional vision of the work as a relation of subordination, towards a single inclusive category.

FREEDLAND develops throughout the book an analytical framework for the understanding of personal employment relations and of the contractual aspects of those relations on a European comparative basis. The author introduces the concept of *family of personal work contracts* in order to provide for a broad category of personal work relations. Such category is much broader than that of the contract of employment, even if it is still limited to contracts to be performed by the worker *personally*, distinguishing contract *of* services (i.e. of employment) from contract *for* services (commercial and other types of non-personal agreements). The second concept he introduces is the

personal work nexus: contractual analysis does not only need to be wider in its scope including different types of personal employment relations other than the traditional contract of employment, but requires the investigation of a whole series of complex legal ramifications. From the combination of these two new concepts, he identifies six leading types of personal work relations: (1) the “standard employee” work relations; (2) the personal work relations of “public officials”; (3) the personal work relations of those engaged in “liberal professions”; (4) the personal work relations of individual entrepreneurial workers, such as “freelance workers” and “consultants”; (5) the personal work relations of marginal workers such as “casual”, “temporary”, “part-time” workers and “volunteers”; and (6) the personal work relations of labour market entrants, such as “trainees” or “apprentices”. The classification is not meant to be comprehensive as other types of employment relations could always be included in more than one of the above-mentioned categories and be therefore appropriately defined within the framework of this classification (e.g. the personal work relations of “agency workers”, meaning workers employed through employment agencies and “contract workers”, meaning workers employed on a “contracted-out” basis through sub-contractors could be included within categories (3) to (6) of the system).

A clear categorization of the evolution of the employment relationship in Britain over time is provided in S. DEAKIN, *The Contract of Employment: A Study in Legal Evolution*, Centre for Business Research – Working Paper No. 203, 2001. At the end of the paper (p. 50) the following table is reported:

Legal Classifications of Work Relationships from the Eighteenth Century to the Mid-twentieth Century

Period to 1800	
Servant	Worker (typically unmarried) engaged in service under a yearly hiring, entitled to payment in cash or in kind whether or not there was work during the period of the hiring, and with a right to a poor law settlement after the hiring ended.
Labourer	Daily or casual manual worker in agriculture or the unregulated trades.
Master, journeyman, apprentice	Worker in trades protected by guild regulation.
Period from 1800 to 1875	
Servant	Manual worker in industry or agriculture under the disciplinary regime of the master and servant legislation, with little security or wages or employment.
Employee	Clerical, managerial or professional worker outside the master-servant regime, with a degree of contractual income and employment security.
Independent contractor	Independent artisan outside the scope of master and servant legislation.
Period from 1875 to 1950	
Workman	Manual worker subject to the semi-disciplinary provisions of the Employers and Workmen Act 1875, increasingly protected as the period went on by collective bargaining, workmen's compensation and social insurance legislation.
Employee	At the beginning of the period, a non-manual worker with managerial or professional status; by the end of the period, a wage or salary-dependent worker, either manual or non-manual.
Self-employed	Independent worker not employed under a contract of employment.

Drawing on the evolutionary development outlined above, the following sections will focus on the relevant literature specifically devoted to the regulation of employment arrangement, self-employment and employment through an intermediary.

3.1. Employment

To perform an accurate translation of employment-related terminology, it is necessary to acquire extensive and detailed knowledge of the legal regulation in the source country, as well as an insight into the regulation of target-language countries. To this end, the notion of employment, and the regulation of employment arrangements is here analyzed in a comparative perspective. According to the EUROFOUND in the *Industrial Relations Dictionary*, 2012 (available at

<http://eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary>, last accessed 7 October 2014), at the European level, the concept of individual employment relationship in EU labour regulation goes beyond the narrow scope of the “contract of employment” based on the criterion of subordination of the employee to the employer. The concept of “employment relationship” is therefore distinct from the relationship exclusively founded on a contract of employment. A case in point is Council Directive 91/533/EEC on the *employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship*. Art. 1 par. 1 of the Directive defines its scope as follows: “This Directive shall apply to every paid employee having a contract or employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State”. The Directive makes a clear distinction between employment contracts and other employment relationships to include also workers who do not have a contract of employment, but who nonetheless are in a relationship of employment. As stated above, however, this raises a question of what criteria constitute an employment relationship, which is not based on a contract of employment. A category could be that of independent contractors or self-employed workers, who are normally considered as having not a contract of employment, but a contract for services. They are paid workers with a relationship of employment, which is not regulated through an employment contract. Interestingly the COUNCIL Directive 91/533 in Italian translates “The Directive applies to all *paid* employees with a contract of employment or employment relationship” with: “La presente direttiva si applica a qualsiasi lavoratore *subordinato* che abbia un contratto o un rapporto di lavoro” (emphasis added), with the term *subordinato* being much narrower than *paid*, and generally referring to the traditional notion of subordinate employment.

In a comparative perspective, and with a focus on the United States, G. L. L. LESTER, S. L. WILLBORN, S. J. SCHWAB, J. F. BURTON, *Employment Law Cases and Materials*, Newark, LexisNexis, 2012, p. 26, speak of a “Myriad of definitions of Employee” in overseas legislation and case law. They start by mentioning the “right to control” test (p. 21) used to understand who ought to be responsible for injuries occurred in the course of work. This test assumes that the person who controls the work is generally the “cheapest cost avoider” (p. 27) of the accident meaning that is in the best position to determine the costs and benefits of steps that might be taken to reduce

the risk of accidents. The “right to control” test assumes that the person who controls and is in the best position to make all the necessary evaluation is the employer. The FLSA (Fair Labor Standards Act), the main piece of legislation regulating employment in the United States, defines “employee” briefly and vaguely to include “any individual employed by an employer”. In this light, according to the authors, it might be necessary to look for more detailed definitions in other statutes. They mention, for instance, the report prepared by the Commission on the Future of Worker Management Relations, which recommended that all laws adopt an “economic realities” approach in defining concepts. The report (Dunlop Commission on the Future of Worker Management Relations – *Final Report*, U.S. Commission on the Future of Worker-Management Relations, Commission on the Future of Worker-Management Relations, Cornell University, ILR School, 1994, p. 63), points out that:

The definition of employee in labor, employment and tax law should be modernized, simplified, and standardized. Instead of the control test borrowed from the old common law of master and servant, the definition should be based on the economic realities underlying the relationship between the worker and the party benefiting from the worker’s services.

This approach prompts to rethink the notion of “employee” on a case-by-case basis, considering a series of specific factors, such as the presence of an “entrepreneurial control”, for instance, or the difference between employees and “independent contractors” or “partners”, thus encompassing a wider range work relationships, raising questions on the genuine nature of some independent-contractor relationships.

By contrast, they also provide some evidence on how courts have interpreted the very broad definition of the FLSA as a way to “stretch...the meaning of *employee*” (*Nationwide Mut. Ins. Co., v Darden*, 503 U.S. 318, 326, 1992) to include within this category people who would not be included in a narrower definition. In the same vein, particularly relevant in the U.S. context is the role played by the Bureau of Labor Statistics in providing definitions and discussing terminology issues (see in this connection BLS, *Contingent and Alternative Employment Arrangements*, 2005, in particular p. 1; as well as BLS, *Glossary of Compensation Terms*, 1998, *passim*. See also O. BERGSTRÖM, D. W. STORRIE, *Contingent Employment in Europe and the United States*, Cheltenham, Edward Elgar Publishing, 2003,

http://www.dol.gov/_sec/media/reports/dunlop/section5.htm, last accessed 4 October 2014).

R. HYMAN in *An Anglo-European Perspective on Industrial Relations Research*, *op. cit.*, p. 33, points out cross-national differences with reference to the concept of “employment relationship”, which, in Anglophone countries, is generally a *bilateral* exchange between employer and employee, whereas, the concept is “typically much more diffuse and wider-ranging in continental Europe”. The French equivalent *rapport salarial*, implies a relationship that is not limited to employers and employees but it involves other actors, in particular the State; and is not merely an economic exchange but a complex of rights, responsibilities and obligations. B. GRANDI, in *La ricerca di categorie definitorie del rapporto di lavoro subordinato: tratti condivisi dalla tradizione di common law e civil law*, *Diritto delle Relazioni Industriali*, No. 2, 2010, p. 571, also points out that the term “employment relationship” generally defines, in common law jurisdictions, a relation of subordination or dependence, but it can be easily applied to non-standard employment arrangements. On the contrary, in civil law systems, a similar semantic transformation cannot occur, since the terminology used is usually strictly defined in the codes. For a comprehensive overview of Italian legislation regulating employment arrangements, including, the relationship of subordination, the permanent and the fixed-term employment, intermittent work, job sharing, apprenticeship, and homework, among others, point of reference of the present analysis was constituted by M. TIRABOSCHI, *Formulario dei rapporti di Lavoro*, Milan, Giuffr , 2011, in particular from p. 4 to p. 236 for the regulation of employment relationships; M. BIAGI, M. TIRABOSCHI, *Istituzioni di diritto del lavoro*, and in particular from p. 1 to p. 162, Milan, Giuffr , 2011. For a comparison with British English, see D. BRODIE, *The Employment Contract: Legal Principles, Drafting, and Interpretation*, Oxford, Oxford University Press, Inc, 2005, especially chapter 1 “Identifying the Contract of Employment”, Chapter 2 “Continuity of Employment: The Common Law” and Chapter 12 “Analysis Applied: Drafting of Employment Contracts”.

For a focus on intermittent work, job sharing and accessory work, see F. BACCHINI, *Lavoro intermittente, ripartito e accessorio. Subordinazione e nuova flessibilit *, Milan, IPSOA, 2009 *passim*, but especially p. 297, where the author explains the origin of the notion of “job sharing”. It is no coincidence that also in Italian, it is common practice to

use the English word, as the concept was originally introduced in the 1960s in the United States and Great Britain to extend some protections to part-time workers.

An analysis of apprenticeship and internships, on the way they are conceived and regulated in Italy from the legal perspective is provided on M. TIRABOSCHI, *Il testo unico dell'apprendistato e le nuove regole sui tirocini*, Milan, Giuffrè, 2011, p. 187 to p. 451, L. CAROLLO, *Il contratto di apprendistato professionalizzante o contratto di mestiere*, Milan, Giuffrè, Collana ADAPT, vol. 10, pp. 29-68. In an international and comparative perspective, see U. BURATTI, C. PIOVESAN, M. TIRABOSCHI (eds.), *Apprendistato: quadro comparato e buone prassi*, ADAPT LABOUR STUDIES E-BOOK SERIES, No. 24, especially p. 31 and ff. for an overview on the notion of “advanced” and “higher” apprenticeship in Great Britain and the conceptual differences with the Italian “alto apprendistato”.

3.2. Self-employment

The regulation of self-employed work in Italy is more varied than in the target-language countries, as the law classifies self-employed workers in different ways depending on the degree of coordination with the client and the duration of the service provided by the worker. The point of reference for the analysis of self-employment, on the notion of “coordinated and continuous collaborations”, project-based contracts, work of accessory nature and joint-ventures, is provided in M. TIRABOSCHI, *Formulario dei rapporti di Lavoro*, Milan, Giuffrè, 2011, in particular from p. 375 to p. 569; M. BIAGI, M. TIRABOSCHI, *Istituzioni di diritto del lavoro*, Milan, Giuffrè, 2011 in particular from p. 167 to p. 220. Also the Government website *Cliclavoro.gov.it* under the section “Contratti” provided a particularly valuable point of reference serving as an updated database of the main types of employment contract existing in Italy in a period characterized by many labor reforms.

An overview of atypical employment arrangements at the EU level is provided in C. LANG, I. SCHOEMANN, S. CLAUWAERT, *Atypical Forms of Employment Contracts in Times of Crisis*, Brussels, ETUI, 2013, *passim*. It provides a comparative overview of fixed-term and part-time work, with a focus on “new types of contracts” as

well as apprenticeship and internships. For a conceptual analysis not limited to Europe by including also the U.S. and Japan, K. OGURA, *International Comparison of Atypical Employment: Differing Concepts and Reality in Industrialized Countries*, Japan Labour Review, Vol. 2, No. 6, 2005, in full from p. 5 to 28. For an overview on workers' posting see D. VENTURI, *Il distacco dei lavoratori nell'Unione Europea*, Italian Ministry of Labor, 2010, pp. 13-17.

For a comparison with U.S. employment terminology, see K. BAKER, K. CHRISTENSEN *Contingent Work*, Cornell University, 1998, pp. 1-144, for an analysis of the notion of contingent work, as well as A. E. POLIVKA *Contingent and Alternative Work Arrangements, Defined*, Monthly Labor Review, 1996, in full from p. 1 to 9. Still on the U.S. case, point of reference for the definition of non-standard work arrangements is A. POLIVKA, T. NARDONE, *On the Definition of 'Contingent' Work*, Monthly Labor Review 1989, pp. 9-14, which sets the stage for the definition and understanding the notion of Contingent Work from the U.S. perspective as well as the implications of definitions for the purpose of data collection. Generally, however, as mentioned above, in the U.S., definitions are mostly provided by the Bureau of Labor Statistics and by case law.

With regard to commercial agency, many scholars have analyzed the development of the agency contract in Italy. See in particular F. TOFFOLETTO, *Il contratto di agenzia*, Milan, Giuffr , 2012, pp. 1-34. The agency contract in Italy is regulated by the Civil Code, Art. 1742 ff. and by collective agreements, followed by Legislative Decree 303/91, 65/99 and Law 422/2000 that transposed the European Directive. Particular attention has been devoted to the changes introduced following the European Directive in relation to the compensation granted to the agent upon termination of the contract (see L. PERINA, G. M. BELLIGOLI, *Manuale del rapporto di agenzia*, Sole24Ore, Milan, 2006, *passim*). With reference to the status of the agent who falls between employment and self-employment, as well as to the notion of "quasi-subordination" in Italy in a European perspective, see A. PERULLI, *Economically Dependent/Quasi-subordinate (Parasubordinate) Employment: Legal, Social and Economic Aspects*, Brussels, European Union, 2003, pp. 6-119; R. BLANPAIN, *Comparative Labour Law and Industrial Relations in Industrialized Market Economies*, The Hague, Kluwer, 2010, pp. 360 ff. In the same vein, for a distinction between commercial agency and project-

based work see V. FILIPPO, *Contratto di agenzia o contratto a progetto? Una scelta in equilibrio – imperfetto – tra autonomia e subordinazione*, Bollettino Commissione di certificazione, Università degli Studi di Modena e Reggio Emilia Centro Studi Marco Biagi, No. 1, 2013 who qualifies agency as a relation of quasi-subordination, similar to project-based work. For instance, as pointed out by M. PERSIANI, G. PROIA, *Contratto e rapporto di lavoro*, Padua, CEDAM, 2009 cited in FILIPPO *op. cit.*, p. 3, the agent undertakes to engage personally to achieve the goal set out by the principal, whereas a project-based worker only undertakes to carry out the activity laid down in the contract. FILIPPO, *op. cit.* also analyses in details differences and commonalities between agency and project-based work, self-employment, subordinate employment.

3.3. Workers Employed by an Intermediary

With reference to outsourcing at international level, see M. LACITY, R. HIRSCHHEIM, in *Information Systems Outsourcing*, New York, John Wiley, 1993, p. 132 and ff. who have defined outsourcing as the use of external contractors to perform one or more activities of an organization. This definition provides a broad description of outsourcing, and refers to the notion of assigning an activity to an external company rather than making it internally. Already in the 60s the issue was brought to the fore by P. Y. BARREYRE, *The Concept of Impartition Policies: A Different Approach to Vertical Integration Strategies*, Strategic Management Journal, Vol. 9, 1988, pp. 507-520 who addressed the topic of “making or buying” as companies are constantly faced with the choice of making things internally or resorting to partner companies to buy goods or services. In particular, businesses tend to take these decisions by focusing on comparative costs. O. E. WILLIAMSON in a number of studies, but in particular in *Market and Hierarchies: Analysis and Antitrust Implications*, Free Press, 1975, p. 13, developed the theory of transaction costs (the decision is taken on the basis of production costs as well as transaction costs, i.e. controlling and managing transactions) as well as the theory of resources (i.e. outsourcing is used to access resources and skills difficult to develop internally). Scholars have also extensively focused on the organisational changes that outsourcing implies. In this connection, mention should be

made of the groundbreaking work by R. H. COASE, *The Nature of the Firm*, *Economica*, Vol. 4, No. 16, 1937, pp. 386-495, developing and discussing the theory of vertical disintegration, with the production process that is broken into separate processes and distributed to different companies, each of them performing only a part of the overall production.

For a thorough analysis of the notion of “agency work” in Italy, see M. TIRABOSCHI, *Lavoro temporaneo e somministrazione di manodopera*, Turin, Giappichelli, Diritto del lavoro, 1999, especially pp. 1-33 for conceptual definitions. The first chapter provides an insightful perspective on the notion of agency work and its connection with the concept of “temporary work”. It shows in an evolutionary and comparative perspective how the idea of “temporary work” has become the symbol of the distance between the legal rule and the social and economic reality.

For an analysis of the notion of agency work in the European context, see S. SPATTINI, *Agency Work: a Comparative Analysis*, *E-Journal of International and Comparative Labour Studies*, Vol. 1, No. 3, 2012, pp. 171-172. S. SPATTINI points out that after a number of revisions, the formulation “temporary worker” used in the European Directive 2008/104/EC of 19 November 2008 was changed into “temporary agency workers”, with the aim to qualify as temporary the nature of assignments rather than the employment relationship itself, still maintaining the idea of “temporariness”, which has not disappeared. This makes it possible to include into this category also permanent employment relationships between workers and agencies that are allowed in some European countries, including Italy.

Many scholars have emphasized differences and commonalities existing between “appalto” (a special case of “contracting out” translated in the present research with regard to the Italian system as “contract for works and services”) and agency work. For an analysis of this distinction see M. TIRABOSCHI (ed.), *Le esternalizzazioni dopo la riforma Biagi. Somministrazione, appalto, distacco e trasferimento di azienda*, Milan, Giuffré, 2006, and in particular the contribution by R. ROMEI therein, *La distinzione fra interposizione e appalto e le prospettive della certificazione*, pp. 287-306. The difference between agency work and “appalto” is in theory very clear, being based on the fact that, in the latter case, the contractor takes on entrepreneurial risk and can exert the power to direct and organise the workers engaged in the activity. However, this

must be verified case by case taking account of the specific features of the activity required. With reference to simple or labour intensive work activities, as well as activities requiring a specific know-how to be performed at the premises of the company contracting out the service (i.e. cleaning service), the difference between this type of contract and agency works relies exactly on the power to direct and organize workers. P. ICHINO cited in ISFOL at p. 98, *Il fenomeno delle esternalizzazioni in Italia. Indagine sull'impatto dell'outsourcing sull'organizzazione aziendale, sulle relazioni industriali e sulle condizioni di tutela dei lavoratori*, 2011 elaborates on the concept of “contractor as entrepreneur” whose functions are not limited to mere administrative tasks. He states that:

L'elemento decisivo sta nel fatto che per l'attività di organizzazione e direzione dei propri dipendenti l'appaltatore utilizzi in piena autonomia un proprio rilevante patrimonio di conoscenze, esperienza e professionalità specifica, trasferendolo nell'attività svolta dai propri dipendenti operanti al servizio dell'impresa committente. In questa professionalità specifica sembra dunque doversi individuare oggi quella che è stata indicata come la “soglia minima di imprenditorialità” superata la quale può parlarsi di appalto legittimo.

The report also provides a detailed overview of the legal development of this type of contract in Italy from an historical perspective as well as an analysis of case law of recent years. It also provides an analysis of health and safety issues and make a few remarks on subcontracting, giving an insight into the risks run by small-sized companies working almost exclusively, as part of their supply chain, for a single larger enterprise. For an overview of the protection of workers under a contract of *appalto* see M. BIAGI, M. TIRABOSCHI *op. cit.*, 299-347, and with reference to the issue of joint and several liability see L. CORAZZA, “*Contractual integration*” e rapporti di lavoro, Padua, Cedam, 2004, pp. 109-147, and D. VENTURI, *Responsabilità solidale e regolazione nei processi di esternalizzazione*, Diritto delle Relazioni Industriali, No. 3, Milan, Giuffré, 2010, p. 836, who provides an overview of legal developments as well as an analysis of the reasons in favour of a joint and several liability in contract chains that is aimed at increasing the responsibility on the part of the company contracting out works or services to properly select reliable contractors (liability is extended to subcontractors

too). VENTURI also lists a series of specific clauses to be added to the contract to protect companies from possible problems arising from contractors' misbehavior.

For an overview of the historical evolution of agency work in the United States, see T. LUO, A. MANN, R. HOLDEN, *The Expanding Role of Temporary Help Services From 1990 to 2008*, Bureau of Labor Statistics' West Regional Office for Economic Analysis and Information in San Francisco, California, Monthly Labor Review, August 2010, p. 3-13. The paper shows the various terminology used to refer to agency work and workers in the U.S. and focuses on the growth from 1.1 million and 2.3 million of worker in a 20-year period and on the "volatile" nature of agency work.

4. Conclusion

When translating employment relationship terminology, a number of strategies can be adopted. These strategies have been extensively discussed in the literature review and were applied in the reasearch on a case-by-case basis. The following section provides a summary of the main strategies identified in the literature:

Overlapping and addition: when each term adds something to the meaning of the other term although they share the same common core, see N. RALLI, I. STANIZZI, *Il dietro le quinte della normazione*, in E. CHIOCCHETTI, L. VOLTMER (eds.), *Normazione, armonizzazione e pianificazione linguistica*, Bozen, EURAC, 2008, p. 63-76, J. P. VINAY, J. DARBELNET, *A Methodology for Translation*, in L. VENUTI, (ed.), *The Translation Studies Reader*, New York, Routledge, 2004, pp. 84-93.

Inclusion: when one of the terms is broader than the corresponding term in another language or adds something to the meaning of the other, see N. RALLI, *op. cit.*, par. 3.1.

Functional equivalent: as full equivalences rarely exist, a number of scholars have investigated the strategies to be adopted when translating legal texts (see E. NIDA, *Principles of Correspondence*, in L. VENUTI, *op. cit.*, pp. 96-140). One of the most important contribution to legal translation functionalist theories was provided by H.

VERMEER, *Übersetzung als kultureller Transfer*, vinat, pp. 30-53, who was among the first scholars calling for the adoption of a *functionalist approach* in the translation of legal texts. In this connection, another important innovation in the field of legal translation was introduced by M. BEAUPRÉ, *Interpreting Bilingual Legislation*, Toronto, Carswell, 1986, pp. 736-744, who developed the concept of *legal equivalence*. His translation strategy was based on the principle that a translated text must have – in the target culture – the same legal effects that it has in the source culture, with the idea of *identity of meaning* that can be interpreted as *identity of content* and therefore *identity of legal effect* (see J. SAGER, *Language Engineering and Translation. Consequences of Automation*, Philadelphia, Benjamins, 1993, pp. 1-242, and J. P. VINAY, J. DARBELNET, *op. cit.*, pp. 84-93, P. E. LEWIS, *The Measure of Translation Effects*, in L. VENUTI, *op. cit.*, 265). This approach, however, is relatively new. Historically, the complexity of legal discourse led translators to rely mainly on the source text and on the correspondence between source and target language, rarely focusing on the transposition of legal effects. However, in the last thirty years, a gradual shift towards a functionalist approach occurred, with many authors developing translation strategies based on the idea of *functional equivalence* (J.-C. GÉMAR, *Traduire ou l'art d'interpréter*, Presses de l'Université de Québec, 1995, *passim*; S. ŠARČEVIĆ, *New Approach to Legal Translation*. The Hague: Kluwer Law International, 1997, in full), *dynamic equivalence* (E. NIDA, C.R. TABER, *The Theory and Practice of Translation*, Leiden, E.L. Brill, 1969, pp. 1-163), and *pragmatic equivalence* (W. KOLLER, *Einführung in die Übersetzungswissenschaft*, Heidelberg, Quelle and Meyer, 1992, especially from p. 159 and ff.). Some researchers, however, considered a functionalist approach as unacceptable for legal discourse, since legal texts are subject to specific and rigid rules of interpretation (G. GARZONE, *Legal Translation and Functionalist Approaches: a Contradiction in Terms?*, Bologna, University of Bologna, 2002, pp. 1-14). Nevertheless, most scholars nowadays agree that legal discourse is culturally mediated, and it requires therefore the adoption of a functionalist approach. This is particularly relevant in translations between Common Law countries and Civil Law countries, since the nature of the legal system is inevitably reflected in the language in use. The translator must therefore perform a *legal transposition* (E. DIDIER, *La Common law en français. Etude juridique et linguistique de la Common law en français*

au Canada, *Revue internationale de droit comparé*, Vol. 43, No. 1, 1991, pp. 7-56, S. ŠARČEVIĆ, 1997, *op. cit.*, in full) that requires a thorough knowledge of the legal framework that underlies the language in use. Over the decades, many linguists have investigated the functions of legal discourse on the basis of Bühler's classification (K. BÜHLER, *Sprachtheorie: Die Darstellungsfunktion der Sprache*, Jena, Fischer, 1934, *passim*) not only focusing on the descriptive and prescriptive functions of legal language, but also on its *performativity*, in the sense that legal texts have the function of *performing* legal actions, such as imposing obligations (G. GARZONE, *op. cit.* 2002, p. 1-14). This shows that the recourse to this specific type of strategy must be carefully assessed, because the communicative context and function of the text must be analysed in the light of the target legal system (see G.-R. DE GROOT, *Recht, Rechtssprache und Rechtssystem. Betrachtung über die Problematik der Übersetzung juristischer Texte*, *Terminologie et Traduction* No. 3, 1991, pp. 279-316; E. WIESMANN, *La traduzione giuridica dal punto di vista didattico. Traduttori e giuristi a confronto*, in, L. SCHENA, R. D. TRAMPUS (eds.), *Interpretazione traducete e comparazione del discorso giuridico*, Bologna, Clueb, 2002, p. 205). CAO, *op. cit.*, p. 32 also devotes a paragraph to the concept of equivalence: *Legal Translational Equivalence: Possibility and Impossibility* reaching the conclusion that translating law, irrespective of the systems involved, is possible and productive, although it may pose problems to the translator (see also H. J. VERMEER, *Skopos and Commission in Translational Action*, in L. VENUTI, *op. cit.*, p. 221).

Zero equivalent: it could happen that, as indicated by A. GAMBARO, R. SACCO, *Sistemi giuridici comparati*, Turin, UTET, 1996, pp. 10-12, due to differences in legal systems no equivalent is available. In this case, with a view to ensuring effective communication as well as mutual understanding between different legal cultures, it is necessary to adopt other strategies to fill the void (see. R. SACCO, *op. cit.* pp. 12). These include:

- Sticking to the source language: a possible strategy could be that of maintaining the same language avoiding translation, if the concept exists only in one legal system and there are no alternatives. As pointed out by R. SACCO, in N. RALLI, *op. cit.*, par. 3.2. “[n]on si traduce trustee, executor, hozrasčët, sovet, kolholz, šari‘a, etc.”.

- Paraphrase: rewording can be a second valuable strategy according to S. DAL PANE, *Gli atti processuali nella procedura di divorzio in Italia e in Germania. Saggio di traduzione e glossario terminologico*, Tesi di laurea, Università degli Studi di Bologna. Scuola Superiore di Lingue Moderne per Interpreti e Traduttori, Forlì, p. 87, i.e. a description in the target language of the concept existing only in the source culture.

- Loan words – translation: it is possible, by using the linguistic material of the word in the source language, to create a new compound word in the target language by translating literally the various parts of the word, (see M. DARDANO, *Manualetto di linguistica italiana*, Bologna, Zanichelli, 1991, p. 131), also by paying attention to the syntax of the source word.

Neologism: it is also possible to create a neologism, i.e. by applying standard procedures for word creation, to develop a new term that is easily understandable but at the same time correct from the morphological and syntactical viewpoint, so that readers of the target text will be immediately able to understand the meaning of the term also through an association of ideas (see in this connection P. NEWMARK, *About Translation*, Clevedon, Multilingual Matters, 1982, in full).

Considering legal terms as proper names: according to R. LOIACONO, *op. cit.* par. 2 legal terms can be treated as proper names as argued by D. ALLERTON, *The Linguistic and Sociolinguistic Status of Proper Names. What are They, and Who do They Belong to?* Journal of Pragmatics No. 11, 1987, pp. 61-92 and H. SÄRKKÄ, *Translation of Proper Names in Non-fiction Texts*, Translation Nuts and Bolts, No. 11, par. 3. Also R. SACCO in *La traduzione giuridica*, in U. SCAPELLI, P. DI LUCIA (eds.), *Il linguaggio del diritto*, Milan, LED, 1994, p. 475, supports the idea that legal terms can be translated as proper names, mainly in the case that the terms in question have a very specific meaning referring only to a limited social or cultural context. Conversely, some authors argued that the translation of proper names and therefore of legal terms is impossible. However, as pointed out by M. VIEZZI, *Denominazioni proprie e traduzioni*, Milan, LED, 2004, p. 65, “non è vero che sia impossibile tradurre i nomi propri; i nomi propri vengono regolarmente tradotti, come è facile notare osservando la

realtà, e quindi sono traducibili” and the strategies to be adopted vary in a continuum of meaning from a “source-oriented” approach to a “target-oriented approach”.

The present chapter offers an overview of the relevant literature combining language studies with comparative research in the field of labor and employment. The above-mentioned studies, while providing a framework to this field of research, rarely address the challenges posed by the translation of the employment relationship terminology, which – despite globalization trends – still remains largely local. The studies here identified, although related to the broad field of legal translation, served as a theoretical framework for the analysis of employment relationship terminology by providing a classification of the difficulties and strategies posed by legal translation.

Chapter Two

1. Introduction

As pointed out by the survey carried out by the ECONOMIST INTELLIGENCE UNIT, *Competing Across Borders, How Cultural and Communication Barriers Affect Business*, 2012, over the last ten years, and especially since the beginning of the current economic and financial crisis, international business has considerably increased. According to the report of the ECONOMIST, in 2010 the high-growth markets of Latin America, Asia, Eastern Europe, the Middle East and Africa together accounted for 45% of world gross domestic product (p. 5). These economies are both exporting and importing countries providing goods and services to developed economies. In addition to that the report points out at p. 3: “Meanwhile, companies from vibrant developing economies whose ambitions have outgrown their own homelands are also seeking opportunities to grow through international expansion”.

In this context, the drafting and translation of contracts and of contractual clauses increasingly play a significant role. The increasing interconnection between legal systems influences both the way in which contracts are drafted and translated, as well as the type of contractual clauses that are included in contracts, which impact on their structure, scope, aim and legal effect. The first part of the chapter is devoted to the study of the

challenges posed by contract drafting *per se*, i.e. on the language issues arising at the time of drafting contracts. The second part will focus on the translation of Italian contractual clauses into English. Finally, the third part will provide an insight into the relevant literature focusing on international contracts, “atypical” contracts under Italian law, and “alien contracts” deriving from the interconnections between legal systems.

2. Language Issues in Contract Drafting

Before diving into the analysis of the language and translation of contractual clauses, it is necessary to understand the meaning of the word “contract” from a comparative perspective – as the concept does not imply the same things across countries and it can refer to different things. According to S. FERRERI (ed.) *Falsi amici e trappole linguistiche*, Turin, Giappichelli, 2010, in full but especially pp. 1-12, and B. GRANDI, *op. cit.*, p. 571 in the Anglo-Saxon tradition the term “contract” has a much broader meaning than in civil law jurisdictions. The Italian Civil Code (Art. 1321) provides a systematic definition of the contractual relationship based on the notion of “agreement” – whereas in common law jurisdictions, no specific definition is given, and the concept can be interpreted in a variety of ways. Before narrowing down the scope of the analysis to that special type of contract that is the employment contract, we should bear in mind that the very nature of the contract of employment has also changed considerably over time. Years ago, O. KAHN-FREUND in O. VOSKO, L. F. VOSKO, *Precarious Employment: Understanding Labour Market Insecurity in Canada*, Kingston, McGill-Queen’s University Press, 2006, p. 228, described the contract of employment as the “cornerstone of the edifice of labour law” (O. KAHN-FREUND, *A Note on Status and Contract in Modern Labour Law*, *Modern Law Review*, Vol. 30, No. 1, pp. 635-644). S. DEAKIN, *The Contract of Employment: A Study in Legal Evolution*, Centre for Business Research – Working Paper No. 203, 2001, p. 32 and ff. writes: “The contract of employment has been aptly called ‘a remarkable social and economic institution, as important as the invention of the limited liability for companies’. As pointed out by DEAKIN, (p. 32), KAHN-FREUND’s definition of “employment contract” is the result of a clear analysis of the role of labor and employment law, since

the “contract”, as he conceived it, could serve as the bridge between the company and the welfare state. More recently, S. DEAKIN, in *The Many Futures of the Contract of Employment*, ESRC Centre for Business Research – Working Paper No. 191, 2000, pp. 20-21, observed that the contract of employment could become less and less relevant as a tool to regulate an employment relationships, due to recent global trends and changes in production and social organization, such as the vertical disintegration of production, the decline of the male-breadwinner family, and the rise of global regulatory competition.

In this context, particularly interesting in understanding the special nature of the contract of employment is *Johnson v Unisys Ltd* [2001] IRLR 279, cited in D. CABRELLIA, *Employment Law in Context: Text and Materials*, Oxford, Oxford University Press, 2014, p. 163 a case on the measure of damages for unfair dismissal in Britain. In the course of the judgments some important remarks on the definition of the contract of employment were made:

At common law, the contract of employment was regarded by the courts as a contract like any other. The parties were free to negotiate whatever terms they liked and no terms would be implied unless they satisfied the strict test of necessity applied to a commercial contract. [...] But over the last 30 years or so, the nature of the contract of employment has been transformed. It has been recognised that a person’s employment is usually one of the most important things in his or her life. It gives not only a livelihood but an occupation, an identity and a sense of self-esteem. The law has changed to recognise this social reality.

Drawing on that, it is clear that a contract of employment is not like all other types of contracts – such as the commercial contracts. One possible way of describing a contract of employment in modern terms is rather through the notion of *relational contract*. G. L. L. LESTER, S. L. WILLBORN, S. J. SCHWAB, J. F. BURTON. *op. cit.*, p. 3 effectively underline the importance of the relationship that is created between the employer and the employee by saying: “The law is secondary to structuring the employment relationship: individual employers and employees establish the relationship and most of its terms by agreement”, meaning that employment arrangements are becoming increasingly tailor-made and individualised that is difficult to provide patterns and one-size-fits-all definitions.

The translation and the linguistic analysis of contracts under Italian law must take stock of all the linguistic issues related to legal drafting in the target language. Before starting working on the translation process, it is important to be aware of the special features and technicalities of legal jargon in the target language, as well as of common drafting procedures and methodologies to make sure that the target text is in line with the drafting rules applied in the target legal language and culture.

For an overview on legal drafting in English see K. A. ADAMS, *A Manual of Style for Contract Drafting*, American Bar Association, 2004, in full and T. STARKS, *Negotiating and Drafting Contract Boilerplate*, Incisive Media, LLC; Pap/Dskt edition, 2002, in full, both providing a list of boilerplates in use in contracts. The first gives a look at full contracts, whereas the second refers specifically to the provisions that generally come towards the end of a contract (i.e. choice of law provision, notice provisions, *force majeure* provisions, assignment and delegation provisions, with an attempt to avoid “legalese” and to stick to plain English rules when possible (on this same topic see also C. WILLIAMS, *Legal English and Plain Language: An Introduction*, ESP Across Cultures, No. 1, 2004, pp. 111-124; C. WILLIAMS, *Legal English or Legal Englishes? Differences in Drafting Techniques in the English-speaking World*, Federalismi.it, No. 1, 2008, pp. 1-13; C. WILLIAMS, *Tradition and Change in Legal English: Verbal Construction in Prescriptive Texts*, Bern, Peter Lang, 2005, p. 172). They indicate some of the strategies to be adopted by drafters of legally binding clauses in English, including for instance the use of the present tense rather than the future, avoid the recourse to “shall” for inanimate objects (such as “this agreement shall [...]”) use of the passive form only when the actor is not mentioned, the importance of tabulation to enhance clarity. They emphasize the role of consistency and standard English. They provide some rules of thumbs (i.e. “between” is preferable to “among”, they describe the proper structure of contracts, analyze “defined terms” and what should be preferred, recitals, the use of some words such as “deem”, “here-” and “there-” words, “notwithstanding”, “provided, however, that” and others). In a similar vein, see also K. A. ADAMS, *Translating English Language Contracts*, published in ITI bulletin September-October 2004, pp. 17-19, D. CAO, *op. cit.*, pp. 7-73, who examine legal translation processes from an interdisciplinary perspective and provide a

comparative analysis of Common Law and Civil Law. Furthermore, F. OLSEN, R. A. LORZ, D. STEIN, *Translation Issues in Language and Law*, Palgrave Macmillan, 2009, pp. 113-135, and M. ANDERSON, V. WARNER, *A-Z Guide to Boilerplate and Commercial Clauses*, New York, Bloomsbury Professional, 2006, analyze contract language with a focus on boilerplates. Many boilerplate clauses are relevant in employment agreements, especially under U.S. law. OLSEN *et al.* focus more generally on the production of multilingual legal texts as well as on the pitfalls of English as a contract language and provide an extensive bibliography on legal translation. G. P. FLETSCHER in *Fair and Reasonable. A Linguistic Glimpse into the American Legal Mind* in R. SACCO, L. CASTELLANI (eds.), *Les multiples langues du droit européen uniforme*, Turin L'Harmattan, 1999, pp. 57-70 drawing on the difference between “rule of law”, “Rechtstaat” and “prééminance du droit” explains the concept of “fairness”, deemed as untranslatable by the author, and often left in English (e.g. “ein fairer Prozess” in German) or replaced by similar ideas (“fair representation” is rendered with “representación equilibrada” in Spanish and “représentation équitable” in French). He also investigates the concept of “reasonableness”, which, although it can be easily translated in many languages, is not frequently used in legal contexts in civil law countries (in a similar vein, see also M. GOTTI, *El discurso jurídico en diversas lenguas y culturas: Tendencia a la globalización e identidades locales*, Revista Signos, Vol. 41, No. 68, 2008, pp. 381-401). These texts investigate a number of technical issues with a focus on the English language, including once again among many others, the use of *shall* in contracts (see also J. KIMBLE, *The Many Misuses of “Shall”*, Scribes J. Legal Writing, No. 61, 1992, pp. 61-64; C. WILLIAMS, *Fuzziness in Legal English: What Shall We Do With Shall?*, in A. WAGNER, S. CACCIAGUIDI-FAHY (eds.), *Legal Language and the Search for Clarity*, Bern, Peter Lang, 2006, pp. 237-264), possible different meanings of “and/or”- clauses⁵³ with inclusive or exclusive function, the construction of conditional sentences in contracts, the meaning of common phrases (e.g. “by operation of law”), standard contractual clauses and many others

⁵³ See also: K. A. ADAMS, *A New Case about a Subset of “or” Ambiguity*, Koncision, 2012 <http://www.koncision.com/a-new-case-about-a-subset-of-or-ambiguity/>; K. A. ADAMS, *A, B and/or C*, Koncision, 2012 <http://www.koncision.com/a-b-and-or-c/>; T. Tjaden, *Do not Use and/or in Legal Writing* <http://www.slaw.ca/2011/07/27/grammar-legal-writing/> (Last accessed 8 October 2014).

analyzed also by S. DE PALMA in a contrastive perspective, as she provides a comparative analysis between Italy and the UK/U.S. in a number of online articles⁵⁴, as well as practical example of possible misunderstanding arising from language differences.

Language issues in contract drafting can arise also within the same language, with particular reference to the different varieties of English, existing across the globe. For a vademecum of country-specific legal terms (that include the varieties of English spoken in Australia, Canada, India, Ireland, the UK and the United States), of false friends and similar-looking or worrisome words, as well as numerous drafting tips in English see P. SMITH, *Legal Drafting in English, The Big Picture on the Small Print*, London, Eversheds, 2011, pp. 9-91.

M. FONTAINE, N. DE LY, *Drafting International Contracts*, Leiden, Martinus Nijhoff Publishers, 2009, p.8, underline that in some cases drafters are not fully aware of the consequences of their choice of terminology. Some terms look vague (with regards to the concept of vagueness see K. A. ADAMS, *A Manual of Style for Contract Drafting*, *op. cit.*, p. 85-94) and therefore apparently inoffensive, and they often represent the best solution in those cases in which negotiators have not been able to agree on a more precise formulation. However, each legal system may attach to these words different degrees of severity, with important legal consequences. Moreover, some expressions are rarely used in some countries, whereas they may be of common use in others, thus leading to possible misunderstandings.

A useful insight into some clauses in use in contracts is provided by T. STARKS, *op. cit.*, pp. 23-76, who analyzes assignment and delegation provisions in business agreements as well as by M. ANDERSON, V. WARNER (pp. 57-64) who go through the drafting process of a number of clauses, such as arbitration, (on the same topic see also U. BELOTTI, *The Language of Italian Arbitration Rules in English: Some Measurable Aspects*, *Linguistica e Filologia*, No. 15, 2002; pp. 113-141), best

⁵⁴ Series of online article by S. De Palma, *Formation of contract: elementi essenziali del contratto*, 2008; *Formation of contract: la conclusione del contratto*, 2008; *L'utilizzo delle condizioni generali di contratto nella formation of contract*, 2008; *Suggerimenti su wording e terminologia di riferimento*, 2008; *Validità e invalidità del contratto – Validity and Invalidity of Contract*, 2008, *Contenuti tipici e terminologia ricorrente delle Generali Terms and Conditions of Contract (Condizioni Generali di Contratto) – Parte 1*, 2008.

endeavours and reasonable endeavours, breach, capacity, confidentiality (pp. 96-102, M. FONTAINE, N. DE LY, *op. cit.*, pp. 203). For an example of confidentiality clause in international contracts as a standard boilerplate see M. FONTAINE, N. DE LY, *op. cit.*, pp. 201 and ff.), consequences of termination, exclusive, non-exclusive and sole agency, expiry and termination, *force majeure*, indemnity, joint and several liability, language, law and jurisdiction, sub-contracting, among the many.

It should be noted that, also within English-speaking countries, a shift towards the development of a simplified language has been taking place, giving rise to a series of initiatives promoting the clarity of the language. In this context, mention should be made of the Plain Language Movement, advocating for the use of a simplified English language, especially in relation to official government communications and laws. As pointed out by C. WILLIAMS in his book *Tradition and Change in Legal English*, *cit.*, p. 23, the language of the law is complex and resistant to changes. The ancestor of the movement was D. MELLINKOFF, who carried out a first research on legal language in 1963. His book *The Language of the Law* constitutes one of the first critiques to legal language in the U.S. (see, in particular, pp. 285-423) Another point of reference is the *Scribes Journal of Legal Writing* that promotes as its core value a “clear, succinct, and forceful style in legal writing” that reaches today a broad readership.

3. Translating Contractual Clauses

Moving forward from the main principles and features of legal drafting in English, the present section reviews the literature focusing on legal drafting in translation, i.e. when multiple languages are involved in the process. There are some features of legal language that become particularly important when a text is translated in another language. N. RALLI *op. cit.*, par. 2, and C. RUSSO, *Il contratto di leasing: formulazione di un contesto traduttivo e proposta di un repertorio terminologico italiano/spagnolo*, Tesi di laurea. Università degli Studi di Bologna, Scuola Superiore di Lingue Moderne per Interpreti e Traduttori, Forlì, 2001, *passim*, include among the typical features of legal language – that are particularly challenging in translation – the frequent recourse to conjoined words and phrases, which are only semantically similar

and not exact synonyms. L. CARVALHO, in *Translating Contracts and Agreements: A Corpus Linguistics Perspective*, *Culturas Jurídicas*, Vol. 3, No. 1, 2008, pp. 333-350, analyzes binomial expressions in common law agreements in the light of corpus linguistics. Binomial expressions are also termed binomials (V. K. BHATIA, *Analysing Genre. Language Use in Professional Settings*, London, Longman 1993, p. 108), doublets (R. MAYORAL ASENSIO, *Translating Official Documents*, Manchester and Northampton, St. Jerome, 2003, pp. 55 and ff.), and doublings (D. MELLINKOFF, *op. cit.* p. 349). These units have been studied both in relation to unspecialized (see among others Y. MALKIEL, *Essays on Linguistic Themes*, *Lingua* No. 8, 1959, chapter 12, *Studies in Irreversible Binomials*, p. 311 and ff.) and specialized language (D. MELLINKOFF, *op. cit.*, p. 33) as a distinct mark of legal discourse, extremely common in legal English, and which represent a challenge and a trap to the legal translator. According to D. MELLINKOFF, *op. cit.*, p. 33 the proliferation of binomials is also to be attributed to the fact, that lawyers in Britain used to be paid according to the number of pages they wrote, which resulted in the considerable use of superfluous words. The literature assigns various roles to binomial expressions. Among them we can find: “precision and all-inclusiveness” (V. K. BHATIA, *op. cit.*, 108); “a convenient linguistic device for adding weight to the end of the sentences” (M. GUSTAFSSON, *Some Syntactic Properties of English Law Language*, Publication No. 4. Finland, University of Turku, 1984, pp. 133) and “a distinct style marker” of legal English (M. GUSTAFSSON, *op. cit.* 133). B. GARNER, in *The Element of Legal Style*, Oxford, Oxford University Press 2002, p. 187, talks about the habit “to string out near-synonyms” deriving from the tradition of past lawyers who used to select two different words, usually one of Anglo-Saxon origin and the other of Latin origin, to make sure the audience could understand at least one of the two, or to overcome the problem of not finding the most appropriate word. GUSTAFSSON, *op. cit.*, p. 79 and ff. also classifies binomials as: synonymous (last will and testament), antonymous ([be present] in person or by proxy) or complementary (shoot and kill). Y. MALKIEL, *op. cit.*, p. 311 and ff., classifies them as near synonyms (null and void), complementary (assault and battery), opposite (assets and liabilities), subdivision (months and years) or consequence (shot and killed), whereas D. MELLINKOFF, *op. cit.*, p. 33 and ff. distinguishes them in worthless doubling (force and effect) and useful doubling (full faith and credit).

Also K. A. ADAMS, in his article on *Translating English Language Contracts*, *op. cit.*, pp. 17-19, mentions what he calls “synonym strings” suggesting that translators and drafter of contracts in English should attempt to replace those strings with single words unless they bear a different meaning.

However, these combinations of words may not always bear an interchangeable meaning, since in some cases the two words do have different meanings. An example is the expression “in nome e per conto di” where the two words actually bear two different meanings. The Italian Civil Code, for example, establishes that an agent promotes business “on behalf of” and not “in the name of” the principal.

Another lexical distinction to be taken into account by translators is the difference between applicable/governing law and jurisdiction (i.e. the competent court), as these refer to two different things: the first referring to the rules applying to the contract and the latter to the court that will resolve future disputes. Hence the importance of resorting to legal language experts (E. BETTELLA, *Guida sui contratti di agenzia nel commercio internazionale*, Camera di Commercio di Brescia, 2011, pp. 7-16) and not merely to bilingual speakers. For an insight into the meaning and the use of the term “jurisdiction” and for a sample clause in international contracts see MAYER BROWN LLP, D. HART, *Cross-border Issues and Disputes: Jurisdiction, Forum Selection and Parallel Proceeding; and Governing Law*, Lexology, 2011, pp. 1-6.

One of the most relevant issues with regards to the choice of terminology and legal consequences is the indefiniteness of legal concepts, especially of some terms that are purposely kept vague and which may be particularly difficult to interpret, to apply and to translate. As pointed out by P. SANDRINI, *Comparative Analysis of Legal Terms: Equivalence Revisited*, University of Innsbruck, 1999, p. 5, indefiniteness “does not derive from language as such; it is intrinsic to the functioning of law as a system”. One example is the so-called “dovere di diligenza”, that imposes, by virtue of Art. 1,746 of the Civil Code an indefinite series of obligations, as well as the need to act “con la diligenza del buon padre di famiglia”. The concept was extensively analyzed by a number of authors. In particular, M. FONTAINE, F. DE LY in *op. cit.*, pp. 187-296 describe the differences between “best effort” (preferred in Great Britain) and “best endeavors” (preferred in the United States) in the English and American context. To do that, they also resort to other languages, such as French (*meilleurs efforts*) and German

(“beste Kräfte”, to be compared with the widely used concept of “Sorgfalt eines ordentlichen Kaufmanns”). In addition, they analyze the idea of “reasonable” (or “raisonnable” in french) comparing common law and civil law countries (see also the German “Zumutbarkeit” in C. WITZ, T. M. BOPP, *Best Efforts, Reasonable Care: considération de droit allemand*, Revue de droit des affaires internationales, 1988, pp. 1029-1041), that is not only used to define periods of time, events and evidence, but it often appears in relation to the mode of performance of obligation, and the person who takes good decisions is the “reasonable man” similar to the French “bon père de famille” (good family man), to the Italian “con la diligenza del buon padre di famiglia” and to the German “Sorgfalt eines ordentlichen Kaufmanns” (care of the “ordinary merchant”). They point out that if on the one hand “reasonable efforts” may be more objective than “best efforts”, in U.S. case law the two terms are used as interchangeable. Also, the UK case law defines “best endeavours” as “all that reasonable persons reasonably could do”. On the same topic, K. A. ADAMS, *Understanding “Best Efforts” and its Variants (Including Drafting Recommendations)*, London, The Practical Lawyer, 2004, pp. 11-20, discusses the notion of best effort that is particularly relevant in comparative translation.

FONTAINE and DE LY, *op. cit.*, pp. 187-296 also define the concepts of “due diligence” and “all diligence”. They appear to imply no more than efforts both in French and English. The same holds true for “care” or “soins”. They come to the conclusion that “due diligence” and “reasonable efforts” go under the rubric of abstract standards, in contrast with the more subjective concept of “best efforts”. The concept of “diligence” is in English generally associated to the idea of “appropriate means” (i.e. *obbligazione di mezzi*) in opposition to the concept of *obbligazione di risultato* – which refers to the obligation to achieve a promised result. This distinction is of significant interest especially in the field of labor and employment, as it relates to the type of relationship, to the scope of the duty and to the burden of proof in the case of disputes. In the Italian context, a point of reference is the work by L. MENGONI, and in particular his *Obbligazioni “di risultato” e obbligazioni “di mezzi”*, Rivista del Diritto Commerciale, 1954, pp. 185 and ff.

4. International Contracts, New Forms of Employment and the Effects on Contract Drafting and Translation

Over time English has increasingly not only become the language mostly used in contracts, but it has also progressively come to inform the procedures of contract formation and the structure of contracts in civil law countries, by introducing some features that are typical of common law jurisdictions in contracts drafted following the legal system of a civil law country. This phenomenon has been extensively analyzed in M. SHAPIRO, *The Globalization of Law*, Indiana Journal of Global Legal Studies, Vol. 1, No. 1, 1993, 37-62, who introduces the notion of “globalization of law” to define the unifying trends in contract drafting and law making across the globe. According to the author, since contracts function as private lawmaking systems, they can easily exist and develop transnationally (p. 38). Contracts of this kind are generally referred to as “international contracts” in that they contain clauses or features that are typical of other legal systems. For an overview of the influence of the English language in determining the legal framework applicable to international contracts see U. DRAETTA, *Il diritto dei contratti internazionali. La formazione dei contratti*, Padua, Cedam, 1984, pp. 47-80; D. MEMMO, *La lingua nel diritto. Il rischio linguistico nella dichiarazione contrattuale*, *Contratto e impresa*, No. 2, 1985, p. 468 and ff. F. ZICCARDI, *Introduction aux problèmes terminologiques du traducteur de contrat selon la loi anglaise*, *Parallèles – Cahiers de l’Ecole de Traduction et d’Interprétation*, Geneva, 1998, p. 113-122. This paper argues that also the structure of contracts – and not only its clauses – can be foreign to national legal systems.

In common law countries, the contractual procedure begins with the tender to offer, a practice that is now widely used in Italy as well although it originated in the UK. The tender to offer is not binding under common law because of the presence of a “consideration”-clause that makes the contract an exchange of a mutual performance. Another important part of the pre-contractual procedure is the so-called “bid bond” that represents the guarantee of a serious request/offer on the part of the company requiring a work or a service. Mention should also be made of the “mirror rule” indicating the full correspondence between proposal and acceptance as well as of the “letter of intent”, extensively described in M. FONTAINE, F. DE LY, *op. cit.* pp. 1-56; A. BRAGGION,

Contract Proposals and Letters of Intent under Italian Law, in D. CAMPBELL, (ed.), *Structuring International Contracts*, The Hague, Kluwer, 1996, pp. 179 and ff. With respect to the difficulties in translating the “consideration”-clause in non-English contexts, see S. BALLANSAT-AEBI, *Probleme beim Übersetzen englischer Vertragstexte*, Ecole de traduction et d’interprétation de l’Université de Genève, 1998 who proposes as a translation into German of the term “Gegenleistung” (literally service/payment in return), although she points out, this term does not convey the whole complexity of the notion of “consideration” (p. 3).

A relevant contribution in the field of international contracts is the one provided by G. DE NOVA, *Il contratto alieno*, Turin, Giappichelli, 2010 (and in particular the following chapters: I. Contratto: per una voce; II. I contratti atipici e i contratti disciplinati da leggi speciali: verso una riforma?; III. ‘The Law Which Governs this Agreement is the Law of the Republic of Italy’: il contratto alieno), who introduces the notion of “contratto alieno” in Italian. DE NOVA refers to contracts that are taken unchanged and merely translated into another language (sometimes not even translated) without any adaptation to national laws, which could undermine their validity and uniformity at the international level. G. DE NOVA, in *Il contratto: dal contratto atipico al contratto alieno*, The Hague, Wolters Kluwer, 2011 pp. 31 and ff. (*The Law which governs this Agreement is the Law of the Republic of Italy: il contratto alieno*), refers to contracts designed and written on the basis of a model different from the Italian legal system, i.e. on the basis of a common law (and in particular U.S.) model, despite taking the Italian law as the governing law:

Le parti concludono un contratto pensato e scritto sulla base di un modello diverso dal diritto italiano, e cioè un modello di *common law*, in particolare un modello statunitense, pur indicando come legge applicabile il diritto italiano.

DE NOVA points out that the notion should encompass a much broader category than that of “atypical” contracts for which there are no specific provisions in the Italian legal system. The notion of “contratti alieni” refers also to types of contract that would exist under Italian law, but which are nonetheless drafted on the basis of the U.S. law, fully ignoring the Italian law on the matter (e.g. the covenant not to compete exists under Italian law as “patto di non concorrenza”). See at p. 181:

Per queste ed altre ragioni circolano in Italia con sempre maggiore frequenza contratti che di recente ho provato a chiamare “contratti alieni”, dove il termine “alieni” ha come calco “*alius*”, e quindi “altro, straniero”, ma anche “*alien*”, e quindi “extraterrestre”. Ho pensato a questo termine perchè il fenomeno considerato è più ampio della fenomeno della atipicità contrattuale.

BALLANSAT-AEBI, *op. cit.*, p. 1 refers in turn to “mixed” contracts which combine different legal cultures, thus leading to an increased uniformity. Both authors tackle the issue of the language in which the contract is drafted and of what version(s) is considered legally binding. In this respect, also the Treccani encyclopedia under the term “contratto” elaborates extensively on the linguistic issue.

Moreover, an extensive and detailed analysis of international contracts is provided by F. L. MEROLA, in *Il contratto internazionale*, Turin, Giappichelli, 2010 (Chapter I and II). The book deals with definitions (including the notion of self-regulatory contracts) drafting procedures, the applicable law, jurisdiction, and taxes applicable to the international contracts. It focuses extensively on the drafting process by summarizing negotiation techniques and procedures, definition of objectives, title of the contract, “whereas”-clauses, definitions, hardship clauses and more. With reference to the question of the applicable law, the Convention of Rome generally applies within the EU, and in the case of no other specification, the governing law is chosen on the basis of the principle of the closest connection. This is in line with the Anglo-Saxon concept of “center of gravity” and of “proper law of contract” typical of common law jurisdictions. In this perspective, see also, with particular reference to contracting out in the construction sector, P. FOUCHARD, *La responsabilité des constructeurs en droit international privé*, in *Travaux de l'Association H. Capitant*, Tome XLII, 1991, *La responsabilité des constructeurs (Journées égyptiennes)*, Paris, Litec, 1991, pp. 293 and ff.). For an analysis of the concept of *depeçage*, see A. LUMINOSO, *Codice dell'appalto privato*, Milan, Giuffré, 2010, p. 134. Many international institutions have designed contract templates that provide a basis for international transactions. One of the first organisation that developed contract models and common international rules was the International Chamber of Commerce with the INCOTERMS (International Commercial Terms), which together with the UNIDROIT principles, can be taken as a point of reference for international transactions. With regard to contracts (along the

lines of the contract for works and services in Italy) in the construction sector the EUROPEAN ENGINEERING INDUSTRIES ASSOCIATION provides contract templates based on the civil law tradition, whereas the FIDIC, the International Federation of Consulting Engineers has elaborated 5 types of construction contracts. This is considered by some scholars as a ground-breaking development as this contract models are contributing to creating a uniform contractual system at least in the construction field, to the extent that some scholars have talked about a “lex mercatoria aedificandi” (P. FOUCHARD, *op. cit.* pp. 293 and ff.), although many others have appeared to be sceptical on the matter (such as R. KNUTSON, *Fidic. An Analysis of International Construction Contracts*, The Hague, Kluwer, 2005, *passim*).

G. L. L. LESTER, S. L. WILLBORN, S. J. SCHWAB, J. F. BURTON. *op. cit.*, p. 226, analyze the “erosion” of the employment *at will* practices in the United States. They point out that “The employment *at will* doctrine is cast in contract language, but it has no basis in contract law” and that is “eroded” by practices coming mainly from Europe that introduce increased levels of protection for workers. At the same time, many studies in Europe emphasize how employment patterns are changing in the direction of an increased flexibilization, affecting also the way contracts are drafted in Europe (ILO, *Changing Patterns in the World of Work*, Report of the Director General, 2006, pp. 18-35; L. McDOWELL, S. CHRISTOPHERSON, *Transforming Work: New Forms of Employment and their Regulation*, Cambridge Journal of Region, Economy and Society, Vol. 2, No. 3, 2009, pp. 335-342). The relevant literature shows that, on the one hand, there is a trend towards the “Europeanization” of employment contracts in the U.S. through the introduction of some protections for employees, but on the other, there is also a tendency towards the Americanization of employment contracts in Europe through flexibilization. This global-local tension is very much reflected in the language of international employment contracts that are becoming increasingly atypical. The task of drafters and translators is becoming increasingly complex, as they are required to strike the right balance between reliance on forms and appropriate customization.

5. Conclusion

The chapter focused on employment contract drafting and translation. First, the relevant literature on drafting techniques is reviewed to ensure that the main challenges of legal drafting are dealt with to ensure that the target text of a translation is drafted taking into account the highest standards in legal writing. Second, the additional challenges posed by the translation of contractual clauses are analyzed through the relevant literature and finally the debate around the notion, the features and the role of “international contracts” are presented, providing a framework for a language-based analysis of employment contracts.

Chapter Three

1. Introduction: A Glossary for the Global Scientific Community and International Practitioners

In the final part of the research project, the relevant terminology analyzed in the course of the investigation was gathered in a multilingual glossary. The idea was to enhance terminological clarity to make sure that communication can take place within the framework of a uniform, succinct and unambiguous terminology. This is particularly important the field of labor and employment where the global dimension coexists with a local dimension. Glossaries, databases and termbases make it possible to increase consistency and provide a common ground that lays solid foundation for comparative work.

This chapter is divided into three parts. The first parts provides an overview of the main studies in the area of terminology and corpus linguistics. Then a focus on English as a Lingua Franca is provided followed by a review of the relevant glossaries and termbases existing in the field of labor and employment.

2. An Approach to Employment Terminology

The process to develop a multilingual glossary draws on the comparative method. This is based on the analysis of real-life texts, gathered together in databases, known as corpora. Corpus linguistics is a relatively new discipline that developed significantly in the 1980s following the progress in computer science. Previous accounts of the use of computer-based corpora date back to the 1960s when the first electronic corpus was created by H. KUCERA, W. NELSON FRANCIS at the Brown University (known as the Brown University Standard Corpus of Present-Day American English)⁵⁵. In recent times, thanks to the development in digital technologies, corpus linguistics underwent a rapid development, with corpora that have by now become sizeable sets of data useful for the investigation of various linguistic phenomena. A corpus can be defined as a machine-readable representative collection of naturally occurring language assembled for the purpose of linguistic analysis (L. BIEL, *Corpus-Based Studies of Legal Language for Translation Purposes: Methodological and Practical Potential*, in C. HEINE, J. ENGBERG, (eds.), *Reconceptualizing LSP. Online proceedings of the XVII European LSP Symposium 2009*, Aarhus University, 2010, p. 1). Thanks to the development of the Internet technology, corpus-driven research has been the focus of several disciplines such as language learning and teaching, lexicology and lexicography, the study of concordances and collocations as well as of Language for Specific Purposes. According to SINCLAIR (J. SINCLAIR, *Corpus, Concordance, Collocation*, Oxford, Oxford University Press, 1991, p. 171), “more and more people in every branch of information science are coming to realize that a corpus as a sample of the living language, accessed by sophisticated computers, opens new horizons”.

In particular, he introduced the notion of the *idiom principle* according to which language mainly consists of pre-determined chunks with their own meaning, that opened the door to further research, in the field of specialized terminology and its use in

⁵⁵ See in this connection, W. N. FRANCIS, H. KUCERA, *Brown Corpus Manual. Manual Of Information to accompany A Standard Corpus of Present-Day Edited American English, for use with Digital Computers*, Brown University, Providence, Rhode Island, Department of Linguistics, 1964, Revised 1971, Revised and Amplified 1979, *passim*, and available at: <http://www.hit.uib.no/icame/brown/bcm.html> (Last accessed 8 October 2014).

context. Scholars have extensively investigated linguistic features of legal texts by means of electronic corpora, focusing in particular on grammatical and lexical features of sales contracts or European legislation, with translations and multilingual drafting of contracts of employment that have so far been widely neglected. By way of example, J. VISCONTI, *Piccole insidie e grandi danni*, in S. FERRERI, *op. cit.*, pp. 29-50 provides an analysis of a series of prepositions, namely *in respect of*, *for the purpose*, *but*, *notwithstanding*, *subject to*, *whereas* and *without prejudice*, with possible translation solutions on the basis of concrete examples drawn from insurance, supply and sales contracts. She also carries out a brief analysis of the Italian expression “fatto salvo” drawing some examples from national collective agreements. Despite this limited investigation, no available study seems to provide an empirical comparison of employment contracts from a multinational perspective, despite the growing need on the part of many multinational enterprises to translate and draft contracts of employment in different languages. In this context, intralinguistic variations must be taken into account in the analysis of contracts of employment. Academics have extensively focused on English-speaking Common Law countries, since the different regulatory frameworks and language usages can pose serious challenges in the drafting and translation of legal texts. Particularly interesting in this connection is the contribution given by P. O’MALLEY in S. FERRERI, *op. cit.*, pp. 110 and ff. who provides an overview of the difference between American and British English in the language of sales/supply agreements. The author gives an example to show to what extent the two languages can differ from each other. The sentence: “the parties agree to hire lorries and other excavation equipment from haulers (solely those currently trading) to complete the project” should be rendered in American English with “the parties agree to rent trucks and other digging equipment from trucking companies (solely those currently doing business) to complete the project”, thus showing the great intra-linguistic variability that similar texts could have. C. ROSSINI in *English as Legal Language*, *op. cit.*, pp. 76 and ff. provides a concise glossary of general labor terminology, highlighting the differences between UK and U.S. English terms (such as labour dispute/trade dispute, redundancy/lay off, holiday pay/vacation pay, pregnancy leave/maternity leave, dismissal compensation/ severance pay) and she also specifies which words have been

created and used first at international level, being only later brought to the English-speaking community (such as *social partners* and *social costs*).

3. The Choice of the Language and the Lingua Franca Discourse

Nowadays, the majority of the world's users of English are non-native speakers and use it as a second language in interactions that cannot be conducted in their mother tongues. Historically, linguistic analysis has predominantly been focusing on English as it is spoken and written by its native speakers. Many studies focus now on international English as a language mainly used by international actors. Many attempts have been made at the international level to create a standardized legal language based on British and American English. The European Union has been developing a specific Euro-jargon broad enough to refer to European transnational laws as well as to national legislations (under Common or Civil Law jurisdictions). Many researchers have focused on the development of International English as a global and culturally neutral means of communication (C. MEIERKORD, *Englisch als Medium der interkulturellen Kommunikation: Untersuchungen zum non-native/ non-native-speakers- Diskurs*, [Europäische Hochschulschriften – Angelsächsische Sprache und Literatur 308], Frankfurt (Main) Lang, 1996, *passim*; and J. GRZEGA, *Reflections on Concepts of English for Europe. British English, American English, Euro-English, Global English*, in *Journal for EuroLinguistics*, No. 2, 2005, pp. 44-64). International English has also been the object of some corpus-driven investigations. Among the most relevant projects, mention should be made of the VOICE corpus (Vienna Oxford International Corpus of English) and of the ELFA (Corpus of English as a Lingua Franca in Academic Settings) that are the largest corpora collecting English texts produced within non-native communities. There are also some examples of corpus-driven research of legal language. The BOlonia Legal Corpus (R. ROSSINI-FAVRETTI, F. TAMBURINI, E. MARTELLI, *Words from Bononia Legal Corpus*, in W. TEUBERT (ed.) *Text Corpora and Multilingual Lexicography*, John Benjamins, 2007, pp. 11-30), for instance, was a project carried out at the University of Bologna, aimed at building multilingual corpora of European legislation to investigate the meaning, the use and collocations of specific

EU terminology. Another example is provided by the study conducted by S. GANDIN, *Functional Vocabulary in the Language of the Law. A Corpus-driven Analysis of the European Union Written Declarations*, University of Sassari, 2010, pp. 131-151, who created a corpus of EU written declarations to investigate the features of functional vocabulary, namely archaic adverbs, prepositional phrases and performative verbs, in order to identify the most successful translation strategies put in place by EU professional translators. A further research on legal language by means of specific corpora is that of G. ROVERE, *Capitoli di linguistica giuridica*, Alessandria, Edizioni dell'Orso, 2005, in full, the author explores legal language by means of a corpus consisting of a collection of texts drawn from the journal *Foro Italiano* as well as of sentences issued by the Corte di Cassazione (the Italian supreme court). He mainly focuses on syntactical and grammatical issues, such as zero article in legal texts, pronouns as well as specific features and use of verbs in the Italian legal language. In the book, he suggests the close relationship between the technical and stylistic dimensions of legal texts in the Italian language, and points to the need to resort to corpora to investigate the meaning and the use of specific language.

4. Review of Existing Glossaries and Databases in the Field of Labor and Employment

Scholars and international bodies have created glossaries of labor and employment terminology⁵⁶. Point of reference in the field are the *European Labour and Social*

⁵⁶ See among the very many, the most relevant and most widely used: European and Industrial Relations dictionary, Eurofound: <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/>. EMIRE – Eurofound: <http://www.eurofound.europa.eu/emire/emire.htm>, Education and Training Glossary – CEDEFOP: <http://europass.cedefop.europa.eu/it/education-and-training-glossary>. Glossary of labour law and industrial relations – ILO: http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@lab_admin/documents/publication/wcms_113920.pdf; Glossary available on European institutional websites: http://ec.europa.eu/translation/english/guidelines/documents/glossaries_on_europa_en.pdf; In Italian, Wikilabour: <http://www.wikilabour.it/Default.aspx?AspxAutoDetectCookieSupport=1>, Glossary of the Italian Ministry of Labour:

Security Law Glossary by R. BLANPAIN, M. COLUCCI, The Hague, Kluwer, 2002, in full, and T. TREU, *European Employment and Industrial Relations Glossary: Italy*, Luxembourg, Office for Official Publications of the European Communities, 1991, in full, that constitute the background for the glossary of employment and contractual terminology provided in this work. The *European Labour and Social Security Law Glossary* by R. BLANPAIN includes a collection of terms of European labour law and social security law in English, French, German, Spanish, and Italian. The initial classification follows the fifteen European legislative acts that cover the field. For each of these acts, all the terms and notions are listed (in alphabetical English order) with the definitions provided in the (EU) legislation and the interpretations given to them in the case law of the European Court of Justice, all in five languages. T. TREU in the *European Employment and Industrial Relations Glossary* adopts a different approach by focusing only on Italian terminology. As mentioned above, a useful termbase of Italian labor terminology is also available at Cliclavoro.gov.it. To be mentioned here is the study carried out by F. della RATTI-RINALDI, M. de LUCA *Le parole dei contratti. Quarant'anni di contrattazione in Enel*, JADT, 10th International Conference on Statistical Analysis of Textual Data, 2010, pp. 929-937, who analyze the language of Enel's collective agreements in a diachronic perspective, focusing on the Italian language. She identifies three periods in the development of employment relations at Enel: the first going from 1966 to 1973 when the language in use contributed to legitimise the actors involved in industrial relations; the second going from 1976 to 1996 when the involvement of trade unions was promoted; and the third period from 2001 to 2006, where industrial relations acquired a sectoral dimension as a consequence of the liberalisation process. She identifies the words that characterize the three periods and the related transition phases, then in the light of this periodization, she investigates semantic modifications in collective agreements. In order to do this, she extracts a number of interesting segments that could now be used in the present research as a point

<http://www.lavoro.gov.it/Lavoro/Eurolavoro/SezioneEuropaLavoro/Utilities/Glossario/>. Glossary of collective bargaining terminology in Canada: http://www.oqlf.gouv.qc.ca/ressources/bibliotheque/dictionnaires/conventioncoll_2007.pdf. On the specific topic of transportation, see Comparative study with glossary in the transport sector TransPo project: http://www.lavoro.gov.it/NR/rdonlyres/5F7F1977-BC12-4F57-87F2-4DDFA1CAE6C2/0/TRANSPOguida_it_marzo2012.pdf. (Last accessed 8 October 2014).

of reference in the definition of the vocabulary to be examined. She collects relevant terminology in the fields of work organisation, working time, incentives, allowances and pay, trade union and representation, health and safety, human resources management and career development, industrial relations actors, leisure activities.

These glossaries and termbases generally focus on the legal – rather than linguistic – dimension of the terminology under discussions and generally do not adopt a comparative approach, focusing on a single system (the Italian or the European for instance), only marginally taking into account the legal culture associated with the target language and the conceptual implications of a translated text. In other words, they often take a single system into consideration (be it national or supra-national) but do not deals with target-language conceptualizations that take place through translation.

5. Conclusion

The third chapter summarized the relevant literature in the field of terminology studies and corpus linguistics. It provides a review of specialized glossaries and termbases that served as the starting point for the creation of thr annotated comparative glossary of employment terminology provided in Chapter three of the present research project.

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