

*Versions of the Constitution for Europe:
Linguistic, textual and pragmatic aspects*

Questo articolo si propone di evidenziare le principali tendenze di differenziazione tra versioni linguistiche (nello specifico, quella inglese e quella italiana) e cronologiche (il testo del 2003 e quello del 2004) del Trattato che adotta una Costituzione per l'Europa. Un'analisi delle differenze secondo i parametri della GFIT (General Framework of Interlinguistic Translation) condotta su un campione rappresentato dal Preambolo e dai primi tre articoli della prima parte delle varie versioni, permette di analizzare le variazioni in una prospettiva sia sincronica che diacronica. Da un esame sincronico, basato sulla bozza del 2003, si evince che una parte rilevante delle differenze sono funzionali a una 'concordanza concettuale' (Šarčević 1997) tra le due versioni, il cui fine principale è la produzione e trasmissione dello stesso effetto legale, data la natura normativa della Costituzione. Dall'esame diacronico risulta invece che una porzione significativa delle differenze tra la versione provvisoria e quella definitiva è finalizzata all' 'armonizzazione' formale (Šarčević 1997), così da creare o riprodurre nelle versioni definitive quella coerenza formale e terminologica che è alla base della chiarezza e intelligibilità di un testo normativo.

1. Introduction

This paper deals with the problems related to the linguistic transposition of the Treaty establishing a Constitution for Europe (TCE) resulting from the comparison of the English and the Italian versions of the text. By applying the general framework of interlinguistic translation (GFIT)¹ to the analysis of a sample text (the Preamble and Articles 1, 2, 3 of Part I) both from the provisional draft, dated 18/07/2003 (TCE2003), and from the final version of the TCE, dated 29/10/2004 (TCE2004), this paper highlights and discusses differences between the two linguistic versions in semantic, pragmatic and textual terms. By

¹ The concept of GFIT, originally introduced and discussed in Sala (2005b), owes much to Engberg (2004a and 2004b).

comparing the results of the two stages of analysis, it will be possible to have a diachronic perspective on the predominant trends of equivalence and of differentiation between the English and Italian TCE2003 and TCE2004.

The starting point of this study is the awareness of the contrast existing between two sets of principles:

- 1) the principle of non-coincidence:
 - of any two linguistic systems (drawn from translation theory: cf. Nida / Taber 1974, Koller 1979, 1995);
 - of any two legal systems (Šarčević 1997, Garzone 1999, 2002);
- 2) the multilingual language policy adopted by the European Union (EU), according to which:
 - regulations and official documents should be drafted in all official languages of the Member States;
 - all linguistic versions are to be considered original – thus implying a perfect equivalence between them, at least from the legal point of view.

The awareness of such contrasting principles has given rise to a lively debate as to the possibility of a ‘perfect’ translation of any legal text and particularly of the TCE (Baron 2003, Kjaer 2004, Creech 2005). The aim of this paper is not to argue for or against this possibility, but rather to analyse the methods, mechanisms and criteria adopted by the translator in order to confront translational problems and to produce a text which is equivalent to the source one. In fact, through the application of the GFIT to a contrastive analysis of the two linguistic (English vs. Italian) and chronological versions (TCE2003 vs. TCE2004) it will be possible, on the one hand, to list and discuss differences and discrepancies between them, and, on the other hand, after having quantified and qualified such instances, to see whether there are significant trends of differentiation that might eventually affect the overall meaning of one linguistic version in relation to the other.

2. *Methodology*

The EU ‘multilingual language policy’ establishes that any official document, in a legal perspective, is ‘original’ in all its linguistic ver-

sions. In an operational and procedural perspective, however, the process of creating a legal text in different languages is indeed an articulate process of translation, starting from a source model prepared and drafted in one language – usually English, or French or German in the case of EU documents (cf. DGT 2005, Willsher 2002). Naturally the translation of such texts is a complex process requiring the interaction of legislator and translator. Where legal texts are concerned:

The translation is a product of two or more cultures, or a compromise between a number of cultures. There are situations where the impetus to contact is mutual, thus resulting in jointly produced translations. Cultures A and B (and possibly more cultures and languages) come into contact due to increasing internationalisation processes. (Trosborg 1997: 147)

To specify the purpose and slant of my analysis a few issues concerning the translation of EU documents need to be addressed. In the specific case of the TCE, English may not have been the (only) working language of the original draft. In fact, since the head of Congress at the time of drafting was Valéry Giscard d'Estaing, former President of France, the basic text may have been in French. For this reason, from a strictly procedural point of view, the Italian version of the Treaty may have been based on the French version rather than on the English one. Also, and in more general terms, since the main criteria of equivalence of parallel legal texts in a multilingual context are their legal effects on the community of reference (cf. Šarčević 1997), the translation of EU documents – in an operational perspective – is not based on comparative linguistics but on legal drafting methods, which are different in the various legal cultures. In consideration of these aspects, it is necessary to stress that this paper does not deal with procedural aspects of the translation. In other words, the contrastive analysis between the English and the Italian drafts discussed here is not meant to claim a direct procedural dependence of the Italian text on a hypothetical English original, but rather to offer a comparison between the two versions on purely linguistic and pragmatic grounds aimed at highlighting similarities and discrepancies between them. For this reason, the two linguistic drafts are dealt with in translational terms, according to the analytical tools provided by the GFIT.

The general framework of interlinguistic translation introduced here provides a means to analyse the two linguistic versions according to the following parameters:

- the criteria of differentiation, accounting for the linguistic elements which differ between the two versions;
- the levels of equivalence, accounting for the (part of) meaning which is maintained and transferred as it is in the L2 version;
- the levels of difference, accounting for the (part of) meaning which is altered or completely lost in the L2 version;
- the value of differentiation, accounting for the (nuance of) meaning which is added or lost in the L2 version, and for the variations in the linguistic quality (register, style, lexical appropriateness, etc.) between the two linguistic versions.

These parameters will be discussed in greater depth in the sections below.

2.1. Criteria of differentiation

Differences between the two linguistic versions may be found in the following areas:

- the noun area: in the choice of the noun, in the number (singular vs. plural), or in specific phraseological choices: for instance, when noun (or noun-verb) clusters are expressed in the L2 version by single nouns;
- the verb area: in the choice of verb, voice, tense, modality, or in specific syntactic choices (for instance, when English gerundial forms are expressed in the Italian version by a relative clause);
- the modifying elements area: in the choice of articles, adjectives, adverbs and prepositions;
- the concepts area: when differences depend on different conceptualization, that is, when verbs or nouns belonging to different semantic areas are used in the Italian version to convey the same meaning as in the English text.

2.2. Levels of equivalence

The levels of equivalence are taken from Koller's (1979, 1995) theory of equivalence in translation, according to which translation is a two-

stage process: first, the translator must recognize where the salience of the source text lies; then, he /she must transfer these salient aspects to the target text, in order to produce a translated text which is equivalent to the original. Koller lists five levels at which this salience can be found:

1. the denotative level, or dictionary level, relevant to the referent of a word;
2. the connotative level, relevant to the nuance of meaning attached to a word;
3. the text-normative level, relevant to the linguistic and textual norms which are most appropriate to a specific text type;
4. the pragmatic level, relevant to the effect produced or to be produced on the receiver;
5. the formal level, relevant to the aesthetic quality of a text, its appearance, text layout, visual organization, etc.

2.3. *Levels of difference*

As regards the levels of differentiation, the five criteria listed above will be adopted. It is indeed necessary to see what aspects are more easily and frequently altered within these levels, in order to evaluate the effectiveness and functionality of a linguistic transposition. To these criteria, a sixth parameter needs to be added, concerning those cases where the level of differentiation is non-relevant, in that it depends on linguistic choices justified on language-specific grounds; that is, when the translator uses phrases and sentences in a way that, though dissimilar from the source, is the only one or the most appropriate one allowed by the linguistic system of the target language.

2.4. *Value of the difference*

Differences between the two linguistic versions can be grouped according to their level of specificity, emphasis, and linguistic quality:

- Specificity may be of time, space, object, goal, domain or language, when the differing elements between the two texts (i.e., nouns, verbs, modifying elements or concepts, cf. 2.1) convey references to a specific time or space frame, or convey indirect reference to the quality / quantity of an object, to a goal, or are instead justified as being domain- or language-specific choices;

- Emphasis may be on the process (i.e., on the dynamic aspect of the action described) or on the product (i.e., on the outcome of the action described), on the agent (i.e., in relation to the use of a passive form), on the effort (i.e., when references are made to the difficulty involved in an action), or on necessity (i.e., when emphasis is laid on the links between actions or objects);
- The linguistic quality between the two linguistic versions may vary according to their different level of accuracy / clarity (vs. vagueness), formality / rhetorical care (vs. informality), and figurativeness (vs. directness).

3. *The Treaty establishing a Constitution for Europe*

The TCE (in both the 2003 and 2004 versions) is divided into four parts, concerning respectively the objectives and the competences of the EU (Part I), the fundamental rights (Part II), the policies and functioning of the EU (Part III), and final and general provisions (Part IV). Both Part I and Part II are prefaced by a short preamble, whose textual nature is different from that of the main body of the text, in that it hinges on different linguistic, rhetorical and textual features. As a matter of fact, the two preambles, serving as a general introduction to the respective sections by laying down general objectives, are less normative and more descriptive, whereas the text of the four parts – further divided into titles, articles and sub-articles – has a marked prescriptive and performative character, and represents the eminently normative part of the TCE. Given this difference, for a proper discussion of the linguistic and translational aspects and for a broad overview of the problems related to the transfer of meaning from one language to another, this article analyses sample texts taken both from the introductory sections and from the most typically normative part of the text, discussing respectively the Preamble to Part I and the first three articles of Part I according to the parameters provided by the GFIT.

The Joint Practical Guide (JPG) of the European Parliament (European Commission 2003), meant to provide guidelines to those in charge of drafting EU documents, states that legislative acts must be primarily “clear, easy to understand and unambiguous” (European Commission

2003: 10), that “clarity of expression should take precedence over felicity of style” (European Commission 2003: 11) and that the use of standard presentation and standard formulas are instrumental to the same purpose. The same principles apply to their translation (cf. European Commission 2003: 19). In consideration of these points, as a general introduction to the analysis, it is possible to say that, given the overall statutory character of the TCE despite the distinct textual and rhetorical characters of the two sample texts, the discrepancies between the different linguistic versions are not likely to concern the legal effect, that is, the meaning and the performative force of the source (cf. Beaupré 1986, Šarčević 1997, Garzone 2002). In other words, in the terms of the GFIT, the L2 version will most probably focus on the precise transmission of what is at the denotative and pragmatic level of the text and, consequently, differences will only be either non-relevant or relevant to the connotative, text-normative or formal level. When this is not the case, the L2 version might be semantically and pragmatically problematic (cf. 4.1.3, 4.2.1).

The discussion presented in the next sections will be organized in two main parts, providing respectively a synchronic and a diachronic perspective to this study. The first part (Section 4) will discuss the results of the comparison between the English and the Italian versions of the Preamble to Part I (4.1) and of the first three articles of TCE2003 (4.2), focussing extensively on the linguistic features and the pragmatic aspects of each text. This stage will enable us to highlight the criteria of equivalence and the most relevant instances or patterns of differentiation between the two versions, and will also provide the basis for the determination of possible problematic cases. The second part of the analysis (Sections 5 and 6), by comparing the different chronological versions of the TCE (the 2003 and the 2004 drafts), will deal exclusively with the linguistic aspects which differ significantly from those observed in TCE2003. The purpose is two-fold: on the one hand, it offers grounds to determine the criteria and trends which are typical of each linguistic version of TCE2004; on the other hand, it will enable us to see whether and how the problematic cases noted in TCE2003 are dealt with and/or resolved.

4. *A sample analysis of TCE2003*

4.1. *The 2003 Preamble*

This section will focus primarily on the discussion of the dominant levels of equivalence and of the most frequent and/or noticeable instances or patterns of differentiation between the English and Italian versions of the Preamble, whereas a synthesis of all other less relevant cases of discrepancies is provided at the end of the section. The Preamble is a short text of 299 words (298 in the Italian version), consisting of the title, a Greek quotation and its translation, and seven short paragraphs (the third being the longest with 69 words, whereas the others consist of fewer than 50 words). Fifty instances of differentiation are found by comparing the English and the Italian versions.

Within the four discourse areas outlined in 2.1, discrepancies are found mainly in the noun area, in the verb area and in the modifying elements area. Differences in conceptualization are very few, and are justified as instances of figurative or metaphorical language, since different systems of images are used to convey the same meaning.

Among all the differing instances resulting from a comparison of the English and the Italian versions of the Preamble, most are cases where the equivalence is at the denotative and/or pragmatic level (cf. 4.1.1) and the difference is non-relevant or affecting the connotative level. Less frequent are the instances where the differentiation is at the text-normative and pragmatic level (cf. 4.1.2). Very few but extremely noticeable and problematic are those instances where discrepancies affect the denotative level (cf. 4.1.3).

4.1.1. *Denotative and pragmatic equivalence*

Within the number of differing instances justified by an equivalence at the denotative and/or pragmatic level, there are numerous cases where the differentiation is either non-relevant or relevant at the connotative level. Below, some examples for either case will be presented and discussed. For the sake of clarity, each example will include the English text (indicated as ETCE2003), the Italian text (ITCE2003) and, in square brackets, the literal translation of the Italian version. The differing parts will be underlined in all the texts. Consider the following examples:

- (1a) Drawing inspiration from the cultural, religious and humanist inheritance
- (1b) Ispirandosi alle eredità culturali, religiose e umanistiche [Inspired by the cultural, religious and humanist inheritance]
- (2a) While remaining proud of their own national identities [...], the peoples of Europe are determined to transcend their ancient divisions
- (2b) I popoli dell'Europa, pur restando fieri della loro identità [...] nazionale, sono decisi a superare le antiche divisioni [The peoples of Europe, while remaining proud of their national identities, are determined to overcome their ancient divisions]

In the examples above, the wording adopted in Italian is eminently language-specific. In fact, though etymologically and phraseologically different from the one in the English text, it is the most appropriate allowed by the Italian linguistic system to convey the same reference as in the source. In semantic and pragmatic terms, such differences are non-relevant in that they do not alter or affect the meaning of the text.

Instances where the denotative and/or pragmatic equivalence entails differences at the connotative level are also quite frequent. Consider the following examples:

- (3a) Conscious that Europe is a continent that has brought forth civilisation; that its inhabitants, arriving in successive waves [...], have gradually developed the values [...]
- (3b) Consapevoli che l'Europa è un continente portatore di civiltà; che i suoi abitanti, giunti in ondate successive [...], vi hanno progressivamente sviluppato i valori [...] [Conscious that Europe is a continent that is a bringer of civilisation; that its inhabitants, arriving in successive waves [...], have progressively developed there the values]
- (4a) Believing that reunited Europe intends to continue along the path of civilisation
- (4b) Convinti che l'Europa, ormai riunita, intende proseguire questo percorso di civiltà [Believing that Europe, by now reunited, intends to continue the path of civilisation]

In (3b) the choices in the Italian version add some semantic nuance or affect the meaning of the English version: the noun *portatore* (bringer) lacks any reference to a chronological framework, whereas the English expression “that has brought” has a clear reference to a specific past time frame; the presence of the adverb *vi* (there) contextualizes and localizes the scope of the action expressed by the verb within the boundaries of the European territory, whereas in the English version there is no spatial limitation; the adverb *progressivamente* (progressively) has a goal-oriented connotation, whereas the English adverb “gradually” conveys the idea of a process taking place by a series of small changes over a period of time, regardless of its orientation or finality. Similarly, in (4b) the adverb *ormai* (by now) adds a specific reference to a process within a time frame, realized after a long time span, which is missing in the English version. All these different connotations are relevant in that they add semantic nuances to the same referent in the two linguistic versions, but they are not problematic as they do not alter the denotative and pragmatic level.

4.1.2. Text-normative and pragmatic differences

Among the differing instances between the two linguistic versions, there are a few cases where the denotative and/or pragmatic equivalence combines with differences at the text-normative level. Consider the following examples:

(5a) From earliest times

(5b) Fin dagli albori dell'umanità [Since the dawn(ing) of humanity]

(6a) This Constitution

(6b) La presente Costituzione [The present Constitution]

The Italian expression *dagli albori dell'umanità* in (5b) – rhetorically marked and belonging to a high register – and the adjective *presente* (present) in (6b) referring to the text in point are both the most appropriate choices to the text-normative requirements of formal texts in general, whereas the English expression “from earliest times” in (5a) and the adjective “this” in (6a) are both from a lower register and have no

rhetorical embellishment. Differences like those in (5) and (6) do not constitute problematic translational choices, on the basis that the two linguistic versions, while exploiting different text-normative features, are semantically equivalent.

Instances of discrepancy in the pragmatic force of the verbs are also found in the text. Consider the following examples:

- (7a) [Europe] wishes to remain a continent open to culture, learning and social progress
- (7b) [L'Europa] vuole restare un continente aperto alla cultura, al sapere e al progresso sociale [Europe wants to remain a continent open to culture, learning and social progress]
- (8a) [Europe] wishes to [...] strive for peace, justice and solidarity throughout the world
- (8b) [L'Europa] desidera [...] operare a favore della pace, della giustizia e della solidarietà nel mondo [Europe wishes to [...] operate for peace, justice and solidarity throughout the world]

The verb *vuole* in (7b) connotes a firm will and determination, whereas the English verb *wish* stresses desire. Despite the pragmatic difference, this case is not problematic, in that the differentiation between the English and the Italian verbs lies in their performative force, not in their scope (cf. Searle / Vanderveken 1985). In other words, discrepancies at the pragmatic level do not represent a translation problem when the difference between the verbs depends entirely on the degree of strength implied by the verbs, and not on their propositional content or point. In (8b), the Italian expression *operare a favore* stresses the process and the goal of the activity described, while in “strive for” a specific emphasis is placed on the effort involved in the process, but the reference of both verbs remains unaltered.

4.1.3. Problematic cases

Besides the cases listed above, where translational problems are solved according to the most relevant levels of equivalence, there are also a few cases where the Italian version alters or affects the denotative level in significant ways. Consider the following examples:

- (9a) The values underlying humanism: equality of persons, freedom, respect for reason
- (9b) I valori che sono alla base dell'umanesimo: uguaglianza degli esseri umani, libertà, rispetto della ragione [the values at the basis of Humanism / humanism: equality of persons, freedom, respect for reason]
- (10a) Europe offers them the best chance of pursuing [...] the great venture which makes of it a special area of human hope
- (10b) L'Europa offre loro le migliori possibilità di proseguire [...] la grande avventura che fa di essa uno spazio privilegiato della speranza umana [Europe offers them the best chance of pursuing [...] the great adventure which makes of it a special area of human hope]

Example (9b) is problematic in that it is highly ambiguous: the Italian version introduces semantic possibilities which alter the meaning of the English text considerably. As a matter of fact, despite the same etymological root, 'humanism' and *umanesimo* have a different semantic value. The English noun *humanism*, non-capitalized, refers primarily to a system of beliefs focussed on common human needs and based on reason. The Italian noun *umanesimo*, instead, is mainly and commonly used to refer to a specific historical and cultural period of the fifteenth century in Italy, characterized by its focus on the possibilities of human reason, and only seldom does it convey the same meaning as in English. Thus, if in the English version values like equality of person, freedom and respect for reason are undoubtedly related to the humanist spirit of the peoples of Europe, in the Italian version they might also be related to the Humanist movement, thus connotating such ethical values as a direct inheritance of the Italian culture. This reading necessarily implies the fundamental role played by Italy as a source of civilization and its (almost parental) role for the birth of the modern EU.

Example (10b) is problematic in that the Italian lexical choice is inappropriate. In fact, the English noun *venture* conveys the meaning of a process involving some risk and effort, and combines the meaning of both 'enterprise' and 'adventure'. The Italian noun *avventura* privileges the latter, and such a lexical choice is noticeable for the vague-

ness of its referent and its lexematic inappropriateness within a statutory text.

4.1.4. *Value of the difference*

Synthesizing all the differing instances between the two linguistic versions of the Preamble, even those not discussed in the examples above because less frequent, more dispersed throughout the text or too varied to constitute recognizable patterns, it is possible to see how the differences, especially in connotation and text-normativeness, affect the meaning and the linguistic quality of the Italian version compared to the English model. At the level of specificity, the Italian version contains goal-, space- and object-specific references (cf. (3b), (4b) and (6b) respectively) which are missing or are less noticeable in the English text. Also, the Italian Preamble places more emphasis on processes and their outcome and on the necessary and binding relation between them (cf. (4b) (7b)), whereas at the level of linguistic quality, while the English text displays a more formal register and appropriate lexis (cf. (9a) (10a)), in Italian there are a few ambiguous or inappropriate lexical choices which might affect the interpretation of the text (cf. (9b) (10b)). Given the lack of emphasis on the normative character of the Preamble, such hermeneutic problems do not concern prescriptive and performative aspects of the text, but are limited to the interpretation of European history.

4.2. *Articles 1, 2, 3 of TCE2003*

This section discusses the occurrence of the trends noted in the Preamble and the possible emergence of new ones within the opening three articles of the TCE. These articles belong to the most typically prescriptive part of the TCE. The text represented by these articles is constituted by approximately 400 words (410 in English, 396 in Italian), and is organised as follows:²

² The smaller number of words in Italian is due to the combinatory rules applying to clusters of prepositions and definite articles. For example, the two words of the English cluster *in the* correspond in Italian to the single word *nel* (or to one of its variants – *nella*, *negli*, *nelle* – according to the gender and number of the noun which follows).

ETCE2003	ITCE2003
Title: 6 words	Titolo: 5 words
Art. I-1: 92 words	Art. I-1: 80 words
Art. I-2: 47 words	Art. I-2: 50 words
Art. I-3: 265 words	Art. I-3: 261 words

Table 1. Distribution of the text within the TCE2003 Articles.

The instances of differentiation encountered between the two versions are 59. Within the four discourse areas (cf. 2.1) the occurrences concerning nouns, modifying elements and conceptualizations reflect the trends already noted in the Preamble, whereas a noticeable feature is the higher number of occurrences in the verb area. This is directly related to the use of the modal *shall* in the English text, which is typical of English legal lexis and register (Gotti / Dossena 2001, Gotti 2003, Williams 2005), and which does not have an equivalent form in Italian, where it is rendered by the present simple.

Similarly to the case of the Preamble, most of the differing instances between the English and the Italian versions of the articles are justified on the basis of a denotative and/or pragmatic equivalence and the level of the differentiation is either non-relevant or relevant at the connotative level. Differences in connotation affect the Italian version, which loses much of the specificity (especially on goal and orientation) and emphasis (especially on necessity) typical of the English text – both trends are a direct consequence of the frequent use of the modal *shall*. Another peculiarity of the English version, missing in the Italian version, is represented by the indirect references made to (chronological, ontological or causal) sources / origins of objects or states, creating ideal patterns of coherence and continuity between different portions of time and place, on the one hand, and between causes and effects, on the other. See, for instance, the use of words like *heritage* (Art. I-3.3) and *eradication* (Art. I-3.4), both containing an implicit reference to the source / origin of a state of affairs, translated in Italian as *patrimonio* (property) and as *eliminazione* (elimination), stressing respectively the object and the process, with no reference to sources / origins (cf. Sala 2005b).

4.2.1. The text-normative level

Besides the predictably high number of occurrences at the denotative and pragmatic level, due to the normative nature of the text, the most remarkable piece of evidence is the higher number of differing instances at the text-normative level than that contained in the Preamble. This relates to the fact that all legal systems and cultures have ways considered the most appropriate – a specific style, syntax, register and lexis (cf. Newmark 1981), standardized forms, codified or traditional routines (cf. Garzone 1999, 2002) – to convey specific meanings and performative force; indeed, the choice of such textual and linguistic forms is crucial to facilitate understanding and interpretation. Thus, the text-normative aspects of a legal text, being instrumental to its prescriptive and performative function, are of primary importance in legal translation (cf. DGT 2005).

Most of the text-normative choices are not problematic, as their meaning and/or pragmatic force in either version remains unaltered. If we consider the repeated use of the word *tutela* to translate the English *protection* – especially in expressions like *tutela dei diritti* (protection of the rights, Art. I-3.3, Art. I-3.4) and *tutela dell'ambiente* (protection of the environment, Art. I-3.3) it is clear that the two words have the same referent, but the Italian choice is more accurate in text-normative terms, being more formal and typical of legal register.

There are also a few cases where text-normative choices in translation entail some significant variation at the semantic level, as in the following examples:

(11a) [The Union] shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights

(11b) [L'Unione] promuove la giustizia e la protezione sociali, la parità tra donne e uomini, la solidarietà tra le generazioni e la tutela dei diritti dei minori (Art. I-3.3) [The Union promotes social justice and protection, equality / parity between women and men, solidarity between generations and protection of the rights of minors]

The noun *parità* (parity, equivalence) is appropriate to a legal register and is most commonly used precisely to indicate equality between

men and women, but the concept expressed by this noun does not correspond to the English 'equality'. In fact, the Italian noun does not exclude the idea of difference between two objects or states, as 'equality' does, but rather stresses the significant similarity between them. In this case, the difference between the English and the Italian, being primarily connotative, is not problematic. The cluster *diritti dei minori*, affecting the denotative level, is more significant. The Italian noun *minori* is not only lexically accurate and more formal than the English noun *children*, but is also more specific in scope, having as referent people up to the age of eighteen, whereas the noun *children* has a more opaque meaning, at least as to the duration of such a state. However, such a translational choice is justified on the basis of the principle stated in the JPG, according to which "the terminology used in a given act shall be consistent [...] with acts already in force, especially in the same field" (European Commission 2003: 21). As a matter of fact the expression *diritti dei minori* represents a standard form in Italian legal lexis, whereas its literal transposition as *diritti dei bambini* would sound highly inappropriate and ambiguous within a normative text.

4.2.2. Value of the differentiation

Synthesizing all instances of differentiation between the two linguistic versions of Articles 1, 2 and 3, the most noticeable difference resides in the fact that the English text places more emphasis on goal, orientation and necessity – mainly due to the frequent use of the modal *shall*. For this reason the English text has a more marked performative force. The different connotations added by the Italian version are varied and dispersed but noticeable enough to conclude that the text is especially concerned with formality, precision and appropriateness of language, and, more generally, with the transmission of information as consistently as possible as far as the referent is concerned. Due to the need for clarity and specificity, in some cases the choice of legal lexis alters the referent by adding extra information about its quality, quantity and relevance even at a risk of altering the reference used in the English text (cf. (11b)). Unlike the English text, which privileges references to virtual links through time, space and logic, the Italian one tends to privilege more concrete references to processes, objects and orientation.

5. *A sample analysis of TCE2004*

On October 29 2004, representatives of the EU Member States signed the final version of the TCE. A closer look at this version reveals some significant variations when compared with TCE2003, both on a semantic and on a formal level. These modifications are meant to create clarity and completeness, and are aimed at minimizing vagueness and ambiguity. For instance, considering the 2004 Preamble and the first three articles, there are sections (like the complete list of delegated plenipotentiaries) or pieces of information which were missing in TCE2003; this is the case, for instance, of explicit mention of the ‘bitter’ experiences in European history before reunification (TCE2004, Preamble), the mention of the determination of the peoples of Europe to work for the achievement of the objectives of the EU (in the fifth paragraph of the Preamble – completely missing in the 2003 draft), or the direct references to minority groups and their rights (TCE2004 Art I-2). Instead, parts of TCE2003 containing ambiguous or misleading pieces of information are omitted: for instance, the whole first paragraph containing the reference to ‘humanism’ (cf. 4.1.3). On a formal/structural level, the final version operates a few text-normative choices so as to make the usual appearance of the text more typical and recognizable;³ the most significant case is the omission of the Greek epigraph in the Preamble, which, from a strictly structural and visual point of view, would have been quite unusual in a Constitutional treaty. After discussing in broad terms the variations between TCE2003 and TCE2004 of the same linguistic version, the next section will focus on the differences emerging from a contrastive analysis of the English and Italian versions.

5.1. *English TCE2004 vs. Italian TCE2004*

Given the limited number of differences observed in the two linguistic versions of the 2004 Preamble, in the present section they will be discussed together with those observed in the first three Articles of the English and the Italian versions. The sample text analysed here consists of 683 words (679 in the Italian text) and is organised as follows:

³ On the relationship between the organization of the text and the mechanisms of its interpretation see Sala (2005a).

ETCE2004	ITCE2004
Preamble: 264 words	Preambolo: 255 words
Art. I-1: 92 words	Art. I-1: 84 words
Art. I-2: 62 words	Art. I-2: 67 words
Art. I-3: 265 words	Art. I-3: 273 words

Table 2. Distribution of the text within the TCE2004 samples.

Having already discussed most discrepancies in the two linguistic versions of TCE2003 (cf. 4.1, 4.2), this section will consider only those differing instances recorded in the parts which have been modified – added or altered – in TCE2004. Thus, for a quantitative account of all the discrepancies between the English and the Italian 2004 versions of the Preamble and of Articles 1, 2 and 3, the instances discussed here are to be added to those already discussed in 4.1 and 4.2. Within the four discourse areas, most of the differing instances are found in the noun and verb areas, whereas few occurrences are in the area of the modifying elements and of conceptualizations. The high percentage of occurrences in the noun area, many of which are cases of different phraseological choices, are justified as being for the sake of clarity and conciseness – like the Italian expression *i loro obiettivi comuni* (their common objectives) for the English “objectives they have in common” (Art. I-1.1); the number of occurrences in the verb area is once again related to the use of the modal *shall* in English.

Similarly to what emerged from the analysis of the two linguistic drafts of TCE2003, in this case, too, most of the differing instances are cases where the equivalence is at the denotative and/or pragmatic level and the level of differentiation is either non-relevant or relevant to the connotative level. In the latter case, this depends mainly on different levels of emphasis – for instance, on effort/pain in the Italian expression *esperienze dolorose* (painful experiences) to render the more generic negative connotation of the cluster “bitter experiences” (TCE2004, Preamble) – or of specificity – for instance, of time in the expression *antiche divisioni* (ancient divisions) for the English “former divisions” (TCE2004, Preamble).

At the text-normative level differentiation is mostly non-relevant. In these cases, the lexical (and phraseological) choices are not only the most appropriate to the style and register of the text in question, but they represent the only way of conveying the same meaning of the source – like the cluster *stato di diritto* to translate “rule of law” (TCE2004, Preamble). Other instances simply add non-problematic connotations or emphasize the pragmatic force of the sentence (like the verbal construction with the modal *shall*). The only problematic instance of differentiation is represented by the expression *diritti dei minori* (rights of the minors) to translate “rights of the children” (TCE2004, Art. I-3.3 – see 4.2.1 above), which, on a purely semantic level, alters the referent of the English wording with possible consequences on the pragmatic level.

5.1.1. *The formal level*

Typical of the Italian version are those occurrences characterized, on the one hand, by a denotative and /or pragmatic equivalence and, on the other, by a level of differentiation which is purely formal, thus symptomatic of particular attention paid to the formal aspects of the text. One of these cases is represented by the Italian choice for nominalization of the referent *Unione* which is instead expressed by a pronoun (“it”) in the English text (TCE2004 Art. I-3.3): such a choice, unnecessary in strictly semantic terms, is justified both in terms of structural coherence and rhetorical style. As a matter of fact, within Article 3 all major paragraphs (commas and sections) begin with the noun *Unione*, thus establishing a recognizable structural pattern within which the repetition of the noun is formally coherent. Another piece of evidence of the trend towards formal correspondence is the attention paid to lexical coherence within the text. The choice of the translator to always use the same verb (*attribuire*) to translate the English “confer” (TCE2004, Art. I-1.1, Art. I-3.5), instead of the variety of synonyms employed in the 2003 version of the same text, is an indication of the tendency towards reproducing in Italian the same formal organization and the same patterns of lexical correspondence found in the English text. In addition to this, the tendency towards the uniformation of synonyms responds to one of the requirements presented in the JPG, according to which “the use of syn-

onyms and different expressions to convey the same idea should be avoided” (European Commission 2003: 11).

5.1.2. Resolution of problematic cases

A remarkable piece of evidence resulting from the comparison of TCE2003 and TCE2004 is that the 2004 version does not systematically resolve the problematic cases in the 2003 draft. In fact, of all the cases discussed in 4.1.3 and 4.2.1, only the reference to humanism is omitted, but the ambiguous phrasing of “venture” as *avventura* (adventure) and, most problematically, the translation of “children” as *minori* (minors) are still present. The latter case, as discussed in 4.2.1, might be due to the choice of the translator to keep the standard phrasing which is familiar and recognizable to the Italian reader.

What is interesting to note is that the only problematic cases which are dealt with and drastically resolved by the legislator, who decides for their suppression, are those containing direct or indirect reference to specific national identities, or to philosophical systems conventionally connected to specific cultures. As a matter of fact, the reference to ‘humanism’ was not only problematic for the Italian receiver (as discussed in 4.1.3). The mention of ‘humanism’ in the 2003 Preamble had been criticized on the basis that it was not the only philosophy or system of thought to have promoted the values attributed to it (equality of persons, freedom, respect for reason) (cf. Beaumont 2005). Also, the term itself had been seen as misleading in that, for some cultures, it has a long history of usage as a euphemism for anti-clericalism and militant atheism (cf. Cullinan 2003). For this reason, such a reference might sound highly devious especially for those countries protesting at the lack of references to Christianity (Poland, Ireland, Italy) as an inspiring movement for Europe and its values (cf. Cullinan 2003).

Along the same line, the omission of the Greek quotation introducing the Preamble is symptomatic in this context. In fact, a quotation on democracy by a Greek philosopher seems to establish a connection between Greek philosophy and the value of democracy and, consequently, it may imply a causal link between Greek culture and modern Europe⁴.

⁴ Cf. “The European Dream”. *The Mayo News Online*, June 30th, 2004.

On the other hand, a quotation in Greek within all the linguistic versions of the TCE is hardly justifiable on the basis of a multilingual language policy.

The reason behind such operational choices on the part of the legislator is explained on the basis that references to specific national and cultural identities within the original text of the TCE might create unbalance between European countries and be misleading especially in the light of the principle of equality between Member States established by the TCE itself (cf. Art. I.5.1), or may be ambiguously translated and cause interpretational problems in a multicultural context. A different and less problematic case is represented by instances revealing domain-specific (like the Italian expression *diritti dei minori*) or linguistic identities (like the word *avventura*) within a translated text, in that, first of all, they are limited in scope, such texts being addressed to a single Member State (or to a few of them sharing the same language), and, secondly, they do not inhibit the legal effect of the act in which they are contained.

5.1.3. *Value of the difference*

Synthesizing the differing instances between the English and the Italian versions, it is possible to conclude that, at the connotative level, the Italian version is more time-specific and object-specific (cf. 5.1). At the level of emphasis it stresses effort, whereas the English version places more emphasis on necessity, orientation (due to the modal *shall*) and process. At the level of linguistic quality, the English text is more formal and rhetorically accurate (due to the use of hypotactic constructions and subordinate clauses, cf. Art. I-2, Art. I-3.3), whereas the Italian version tends to be more lexically appropriate. Another noticeable piece of evidence is the emergence of the formal level as a parameter of differentiation – due to choices of lexical coherence or to instances of nominalization over pronominalization – almost completely missing in the analysis of TCE2003. The next section will focus primarily on this trend towards formal care by comparing the discrepancies in the 2004 versions of the TCE with those emerging from the analysis of the English and the Italian TCE2003 versions.

6. *TCE2003 vs. TCE2004*

The final stage of this analysis will offer a broad perspective on all the variations between the texts of the TCE considered separately so far. As a matter of fact, after the analysis of the differences between the two linguistic versions of the two different chronological drafts (English TCE2003 vs. Italian TCE2003 – cf. 4.1, 4.2 – and English TCE2004 vs. Italian TCE2004 – cf. 5.1), this section will discuss the differences between the two different chronological drafts (TCE2003 vs. TCE2004) of the same linguistic version and then compare them to those noticed between the two drafts of the other linguistic version. In fact, not all variations existing between the English TCE2003 and TCE2004 correspond to those between the Italian TCE2003 and TCE2004. More specifically, there are modifications between the English TCE2003 and TCE2004 texts which are not found in Italian (cf. Appendix 1) and, on the other hand, the Italian translator of the final draft modifies the wording of the Italian TCE2003 where the English text of the TCE2003 and TCE2004 is unaltered (cf. Appendix 2). The present section will discuss the possibility that such discrepancies, though irrelevant at the denotative, pragmatic and connotative level, do bear some significance at the formal level.

Comparing the different chronological and linguistic versions, it is possible to count 13 cases of differentiation, and precisely: six cases between the English TCE2003 and TCE2004, whereas the text in the two Italian versions is basically unaltered; seven cases between the Italian TCE2003 and TCE2004 versions whereas the two versions of the text in English do not differ. The first significant piece of evidence here is that there is no prominence of one trend over the other. This is symptomatic of the fact that there is no indiscriminate tendency towards variation on the part of the Italian translator, but in many cases the latter opts for the retention in TCE2004 of the same wording as in TCE2003 despite the modification which occurred in English, when the meaning and pragmatic force of the Italian TCE2003 text correspond to those of the English TCE2004.

Within the four discourse areas, most differences are found in the noun area, whereas occurrences concerning verbs, modifying elements and concepts are considerably less frequent than those observed above

between the different linguistic versions of the same text. For a better discussion of the kind of equivalence and of the differences between the various versions, we will consider the two groups defined above separately.

6.1. *English TCE2003 TCE2004 vs. Italian TCE2003 = TCE2004*

Observing the linguistic gap generated by the non-reproduction in Italian of the variation existing in English, it is possible to see that there are cases where such reproduction would have been impossible:

- because it depends on the English choice between synonyms – like “liberty” (ETCE2003, Art. I-2) and “freedom” (ETCE2004, Art. I-2) – or synonymic forms missing in Italian – like the genitive expressions “children’s rights” (ETCE2003, Art I-3.3) and “rights of the child” (ETCE2004, Art I-3.3);
- because the variations adopted in the English 2004 version coincide with the wording already adopted in the Italian 2003 draft, which is thus not varied but reproduced identically in the 2004 version – like the expression *Unita nella diversità* (united in diversity, ITCE2003 and ITCE2004, Preambolo) for the English “United in its diversity” (ETCE2003, Preamble) and “United in diversity” (ETCE2004, Preambolo).

In the latter case, the equivalence that was purely denotative and/or pragmatic between the English and the Italian TCE2003 versions now encompasses the formal level. In fact, the Italian choice of non-variation is aimed at reproducing a formal correspondence with the English 2004 text (a correspondence not accounted for and missing between the English and Italian 2003 versions).

However, there are also cases where the reproduction of the variation would have been allowed by the Italian language system – like the synonymic one between the participle “attributed” (ETCE2003, Art. I-3.5) and “conferred” (ETCE2004, Art. I-3.5), where the Italian TCE2004 keeps the participle *attribuite* (attributed) already adopted in TCE2003. In such cases, non-variation is aimed at creating some sort of internal coherence even if it is missing in the English text. Such a translational choice bears a particular significance in the light of what is stated in the JPG, where the principle of formal and terminological consis-

tency (European Commission 2003: 14) is presented as one of the most salient aspects for the drafting of EU acts, establishing that “identical concepts shall be expressed in the same terms” (European Commission 2003: 21).

6.2. English TCE2003 = TCE2004 vs. Italian TCE2003 TCE2004

The trend towards formal attention is further confirmed by considering the linguistic gap between the variation in the Italian drafts and the non-variation in the English drafts. The differences observed in the Italian TCE2004 alter the text of TCE2003 only at the formal level and depend:

- on synonymic lexical choices – like the verb *attribuire* (attribute, ITCE2004, Art I-1.1) instead of *trasferire* (transfer, ITCE2003, Art. I-1.1) for the English “confer” (ETCE2003 and ETCE2004);
- on phraseological choices – like the expression *avanzare sulla via* (continue along the path, ITCE2004, Preambolo) instead of *proseguire questo percorso* (continue this path, ITCE2003, Preambolo) for the English expression “continue along the path” (ETCE2003 and ETCE2004, Preamble);
- on choices of pronominalization – like the phrases *Essa promuove il progresso scientifico* (It promotes scientific advance, ITCE2004, Art. I-3.3) instead of *L’Unione promuove il progresso scientifico* (The Union promotes scientific advance, ITCE2003, Art. I-3.3) for the English “It shall promote scientific [...] advance” (ETCE2003 and ETCE2004, Art. I-3.3);
- on choices of nominalization – like the phrase *L’Unione combatte l’esclusione sociale* (The Union combats social exclusion, ITCE2004, Art I-3.3) instead of *Combatte l’esclusione sociale* ([It] combats social exclusion, ITCE2003, Art. I-3.3) for the English “It shall combat social exclusion” (ETCE2003 and ETCE2004, Art. I-3.3).

As in the cases discussed in 6.1, this tendency towards formal attention is justified either:

- as an attempt to reproduce the formal presentation (i.e., lexical re-occurrences, word position, etc.) of the English text as closely as possible – which was instead altered in the Italian 2003 draft; or

- as an attempt to introduce some sort of internal coherence or organization where in English it was not so noticeable, see for instance the tendency:
 - o to minimize the use of synonyms to express the same meaning;
 - o to create some sort of symmetry in the organization of the paragraphs within the articles, for instance preferring nominalization at the beginning of the Article and pronominalization for the subsections of the Articles (by the use of the pronoun *Essa*).

7. Conclusion

By observing the data collected for this study, it is possible to outline a distinct tendency in the drafting process of the Italian versions, which is significant especially in the light of the multilingual language policy adopted by the EU. The GFIT applied to the sample text in its different linguistic and chronological versions has provided a two-fold perspective, both synchronic and diachronic, on the differences resulting from the non-coincidence of the two linguistic systems and, most problematically, of the two legal systems.

In a synchronic perspective, by considering the differences between the English and the Italian texts of the same chronological version, it is possible to see that particular care is given to the denotative and pragmatic equivalence between the texts. This is due to the eminently statutory character of the TCE – being highly representative of a specific class of texts that “do not only *describe, report, narrate and constate* facts, information and arguments, but also have the property of *imposing obligations and performing legal actions*” (Garzone 1999: 395, emphasis added). Most discrepancies found through this analysis depend on language-specificity – and have little or no semantic consequence – or on text-normative choices: in this case they depend on the gap between the linguistic, conceptual, and legal systems, with some effect at the semantic level, as they affect the L2 version mostly at the connotative level. Although variation at the level of connotation may not be problematic, as it simply adds nuances of meaning (according to the

varying levels of referential specificity, semantic emphasis and rhetorical care between the source and the target text), when it occurs at the denotative and pragmatic levels, it crucially affects the meaning and the performative force of the Italian version in relation to the English text.

In a diachronic perspective, by comparing the levels of variation between the English TCE2003 and TCE2004 with that between the Italian TCE2003 and TCE2004, it is possible to see in the case of the Italian texts a distinctive trend towards a formal approach or, rather, a switch from a concern with concordance (“the process of ensuring consistency of terminology and presentation between [...] parallel texts” Šarčević 1997: 202) to a concern with harmonization (“the process of ensuring consistency of terminology and presentation within a given text” Šarčević 1997: 202). In fact, the synchronic analysis revealed that little or no relevance was given to purely formal aspects, whereas primacy was given to the conceptual concordance between the texts, in order to bridge the gap between the English and the Italian conceptual systems and legal cultures. This is achieved by resorting to “parallel routines in the target language” (Garzone 1999: 394) which represent the most appropriate linguistic and textual means to adequately transfer the descriptive and pragmatic force of the source, and which, in the terms of the GFIT, are relevant at the text-normative level. Especially by observing the variation between the Italian 2003 and 2004 versions where the text in English is unaltered (cf. 6.2), it is possible to see instead a predominance of the concern with harmonization. In fact, most instances are aimed at inferring some sort of internal coherence even where it is absent in the English version, both at a lexical and terminological level (by the uniformation of the synonyms) and at a structural level (by privileging nominalization over pronominalization of the referent according to its position within the text). This trend may be due to the fact that wording of a legal text is crucial; in addition, such formal attention may also account for the prototypicality of the text (Swales 1990) – that is, its correspondence to the formal/structural canon represented by similar or parallel texts, such as (and most prominently in this case) the Italian Constitution. A textual feature of this nature, in terms of genre analysis, is instrumental to the recognition of the communicative purpose of the text and functional to its adequate interpretation.

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Appendix 1. Variations between the English TCE2003 and TCE2004 not reproduced in Italian.

	ETCE2003	ETCE2004	ITCE2003	ITCE2004
Preamble	'united in its diversity'	'United in diversity'	"unità nella diversità" (united in diversity)	"Unità nella diversità" (united in diversity)
Art. I-2	liberty	freedom	libertà (liberty/freedom)	libertà (liberty/freedom)
Art. I-2	children's right	rights of the child	diritti dei minori (minor, under age)	diritti del minore (minor, under age)
Art. I-3.3	The Union shall respect	It shall respect	Rispetta ([it] respects)	Essa rispetta (It respects)
Art. I-3.5	depending on the extent	commensurate with	in ragione delle (in relation to, at the rate of)	in ragione delle (in relation to, at the rate of)
Art. I-3.5	attributed	conferred	attribuite (attributed)	attribuite (attributed)

Appendix 2. *Variations between the Italian TCE2003 and TCE2004 missing between the English TCE2003 and TCE2004.*

	ETCE2003	ETCE2004	ITCE2003	ITCE2004
Preamble	continue along the path	continue along the path	proseguire questo percorso (continue this path)	avanzare sulla via (continue along the path)
Art I-1.1	confer	confer	trasferiscono (transfer)	attribuiscono (attribute)
Art I-3.2	undistorted	undistorted	non distorta (undistorted)	non è falsata (it is not distorted)
Art. I-3.3	It shall promote	It shall promote	L'Unione promuove (the Union promotes)	Essa promuove (It promotes)
Art. I-3.3	technological	technological	Tecnico (technical)	tecnologico (technological)
Art I-3.3	It shall combat	It shall combat	Combatte ([it] combats)	L'Unione combatte (the Union combats)
Art I-3.3	It shall promote	It shall promote	Promuove ([it] promotes)	Essa promuove (It promotes)

