

A CRITICAL DISCOURSE ANALYSIS OF CASES OF ELF REFORMULATION OF EUROPEAN AND ITALIAN LEGAL TEXTS ON MIGRATION¹

MARIAROSARIA PROVENZANO, CHIARA CAPONE
UNIVERSITY OF SALENTO

Abstract – The present chapter focuses on a parallel corpus of legal texts from the EU and the recently issued Italian legal text dealing with Migration, the so called “Decreto Sicurezza bis” (“Safety Decree”), of June 2019, and it aims to point out the textual difficulties arising from the interpretation of such legal documents. This is all the more true if we think of the technical limitations and practical difficulties that reading a legal text may pose to a layperson using English as a lingua franca (ELF). Unlike previous studies dealing with the same topic of Immigration (Provenzano 2008), here the focus is on a small corpus from the EU and an Italian text, with the aim of defining cultural similarities at the level of text production. Furthermore, the texts are also relevant to the receivers and, yet, they are often likely to cause unintelligibility. Hence, both the EU texts and the Italian one are here submitted to a process of reformulation, as preliminary to the translation stage, in order to make them more accessible to international receivers (Widdowson 1984).

Keywords: ELF; EU Legal Discourse; Italian Legal Discourse; accessibility; reformulation strategies.

1. Introduction

The present chapter introduces a cognitive-functional approach to the interpretation of a small corpus of legal texts from the EU and an Italian text, all of them dealing with Migration. The objective is to present relevant case studies in terms of the functional characteristics of such texts, as well as of their discursive shortcomings. Unlike previous studies (Provenzano 2008, 2015) on which the present one however draws, the main focus is especially on: a) the textual limitations posed by the original EU texts, and (b) the pragmatic parallelisms between them and the Italian one in focus, the so-called “Decreto Sicurezza bis”, “Safety decree” (June 2019). The main claim of the study is indeed that practically these texts are unlikely to be accessible

¹ Although the authors worked on the planning of the article, Mariarosaria Provenzano worked on sections 1, 2, 2.1, 4, 5.1.1; Chiara Capone worked on sections 3, 5.1.6.

in the way they are drafted, in that they may show spaces of unintelligibility and even fail in their communicative aims (see, for instance, the use of the passive voice in context).

Accessibility is indeed the crucial theoretical concept that justifies the study, and is based on Widdowson's (1984) interpretation of meaning in context, in the sense that the role of the reader's knowledge in making the text viable is considered crucial. This underlies the study and also justifies it in probing the actual levels of accessibility of these texts by proposing an in-depth, comparative and critical analysis. Such levels of text accessibility are, thus, to be probed through the application of a multidimensional perspective based on Critical Discourse Analysis, as will be shown in the following sections, and grounded on 'Schema Theory' (Carrell, Eisterhold 1983). Finally, the study suggests that, since this is mainly an analytical work, a further step in the empirical work could be considered in order to verify the results of the study.

2. Theoretical background

At the basis of the present section there is the need to focus on a reconsideration of the legal discourse of the EU regarding Immigration and Political Asylum, integrating such an awareness with a focus on a new Italian legal text recently issued (in 2019), the so-called 'Decreto Sicurezza bis', whose specific provisions concern limitations to the entry of immigrants, especially asylum seekers, into the Italian State. As this is the main concept, or 'gist' (van Dijk 1980) of the discourse, the aim of the analysis is to point out the strategies applied in the phase of text production, and see how they reflect the arbitrary ideological choices of the drafter.

As generally known in the context of legal discourse studies, and in particular in the domain of Western legal discourse (Bathia *et al.* 2003), recurrent and characteristic features of this language are: prevalent use of passive clauses or impersonal ones, formal Tenor in association with other written-register modes, which result in making the overall text complex and inaccessible to non-experts. Thus, the main task of the analyst is to verify such layers of inaccessibility and, as previously mentioned, make the actual receivers of the texts, in the case of the present study involving both immigrants and asylum seekers but also the original text producers, aware of the communicative gaps generated by this textual production. The nature of these gaps in communication, (for example, in the formalization and thematization of prescriptions concerning eligibility to entry), will be explored in the section of the analysis. In the following sub-sections, instead, the focus will be on aspects of the theoretical background which are considered relevant to the understanding of the context, i.e. interpretative

models justifying a cognitive-functional approach to text analysis.

2.1. Theoretical model: de Beaugrande and Dressler's standards

The aim of the present section is to focus on the main aspects of the theoretical model underlying the linguistic analysis, in particular on those ones informing the communicative aspects involved in the process of interpretation of the texts. Based on this claim, the theoretical model that is described here is the one by de Beaugrande and Dressler (1981), which is functional to the understanding of the texts in that it provides some textual parameters to be applied to legal communication, which are: coherence, cohesion, informativity and intertextuality, whose role is described below.

Coherence is considered in the perspective of functional meaning, involving both semantic sense and, more extensively, the meaning potentialities underlying texts, as well as comprehension requirements. With specific reference to the present study, coherence is also to be intended as the meaning assigned to specialized concepts, such as ‘application for asylum’, which is to be considered as new and potentially incomprehensible to implied receivers. As mentioned in the previous sections, coherence in association with a passive voice still represents a limit in the text production and, eventually, will affect the translation process.

The second parameter, ‘cohesion’, is thus to be considered in association with ‘coherence’, in that by defining the syntactic organization of the elements in the passive voice, the passive form displaces the actual logical Subject that should perform the action collocating it at the end of a clause – or omitting it – to the detriment of the ‘beneficiary’ of the process (Halliday 1994). In this perspective, the two standards of textuality co-create an unfavourable textual environment, if the actual receiver of the text is taken into account. Although it is an old technical issue in legal discourse, such depersonalization of the register would represent a serious shortcoming, also limiting informativity.

Intertextuality is also a relevant textual parameter to be considered, which particularly applies to the Italian case study, insofar as this aspect affects the whole comprehension process. In details, specific examples connected to intertextuality are pointed out in the analysis, so as to show the effects that the surface structures of the paragraphs connected through intertextuality may have in terms of comprehension. Just to exemplify here, some crucial technical concepts concerning practical life are considered: not only terms as ‘application for asylum’, but also other similar ones such as ‘permit for humanitarian motives’, or paragraphs connected to ‘health issues’.

Hence, before passing to the ‘methodology’ section and pointing out the aims of the analysis, the next section will explore and illustrate the

geopolitical context in which the selection of texts has occurred, by primarily referring to the official texts of the EU and the Italian law.

3. Contextual legal background

The legal documents taken into account for analysis are representative of the International EU background, which is all the more recent in scope and actualization if we think of some specific documents such as the Dublin Regulation, which is here considered in its lastly approved version as of 2013. Such a diachronic approach to the drafting of the Regulation is relevant insofar as this may introduce the practical/procedural aims of this legal text within the space of the European Union, as well as its textually evident shortcomings despite its previous version of 2003.

The selected texts, based on the *European Charter of Fundamental Rights* (2000) as well as on the Dublin Regulation, may affect interpretation and, thus, require both a focus on (a) equivalence in translation, and (b) a whole process of text reformulation, not simply of a translation. As regards the first text, it legally recognizes and consolidates the rights of European citizenship, while the second document textualizes the rights for an asylum seeker to get his/her asylum request processed. In a few words, both texts are considered because they provide formal guarantees to an International asylum seeker asking for asylum in Europe, and such an aim is represented as opposed to the formal and textual schemata within the recently approved text in Italy, the ‘Decreto Sicurezza bis’ (in Italy the normative reference texts on immigration are Law n. 189 of 2002, that is also known as the Bossi-Fini law and the consolidated text on immigration passed with Decree n. 286 of July 25, 1998. This text has undergone constant changes, the most recent of which is ‘Decree’ of June 14, 2019, n. 53, also known as ‘Decreto Sicurezza bis’). The main problem in the ‘Decreto Sicurezza bis’ is in the reading and interpretation both as far as the formal structure of the text is concerned and in the development of the content. Analysing these aspects is the objective of the following sections.

4. Methodology

The aim of this Methodology section is to point out the processes that allow for an overall reformulation process to overcome the original conditions of text limitations. The method applied is Critical Discourse Analysis, aiming at tackling such textual gaps and discontinuities especially in the terms of specialized concepts and ‘intertextuality’ links that make legal texts more complex (de Beaugrande, Dressler 1981). This qualitative methodology is,

thus, applied in the perspective of the translation process as a means of intercultural mediation (Guido 2008), which entails a consistent renegotiation process by which some Western specialized concepts are to be translated in a functional perspective. Selected case studies from the Italian corpus of the ‘Decreto Sicurezza bis’ aim to show such a need for reformulation, for instance with words or concepts requiring a ‘simplification’ or an ‘extension’.

Another relevant analytical approach is represented by the identification of the textual ‘macrostructures’ (van Dijk 1980) – i.e., the ‘macrorules’ for text simplification enacting an overall process of reformulation, insofar as they may allow a reduction of the original text complexities and favour the comprehension process. These rules, defined as ‘Deletion’, ‘Generalization’, and ‘Construction’, are considered useful in the light of the reader’s accessibility and may lead to an ELF-based process of reformulation. In the ‘analysis’ section, case studies based on the application of these rules are qualitatively considered, so as to focus on reformulation and to propose pragmatic alternatives to the original ones. In this perspective, reformulation is meant as an intra-lingual translation (Provenzano 2008, 2015).

5. Analysis and reformulation processes

The selected texts are considered in both European and Italian texts as mostly relevant to the practical needs of the implied audience concerned, i.e. made up of immigrants and refugees travelling to Europe. An important element is represented by some cultural similarities associated with the pragmatic configurations of the texts, in the sense that preferred syntactic structures represent a pragmatic choice (see, for instance, the use of an agentless passive voice). In the following extracts, the focus is thus on a comparative analysis between the original legal texts and their reformulations, so as to highlight the relevant changes occurred and the possible advantages brought about through simplification. The texts analysed are: the Dublin Regulation III, on the one hand, and the Italian ‘Safety Decree’ so as to show the conceptual and the structural differences between them, which also are indicative of an ideological ‘stance’ (Fairclough 1995).

To start with, the ‘Dublin’ text aims to guarantee the right to transit to third-country citizens and it is particularly interesting to look at the textualization of the norms. Below is an extract from Art. 17 of the Regulation dealing with ‘taking charge’ of an application for asylum from a Member State. From the procedural point of view, the clause implies the possibility for an asylum seeker to move from a State to another one so as to get a request processed; from a linguistic viewpoint, however, the use of the non-finite verbal voice as a pragmatic marker of the norm would make the

interpretation more accessible to an expert in the field rather than to a non-expert (Gotti 2005; Widdowson 1984). In fact, the implicit Tenor and the lack of the logical subject expressing the process represent a recognized aspect of the modern discourse of the EU in the field of Immigration and Political Asylum, as shown in recent studies (Guido 2008). On the basis of these studies, it is possible to state that the lack of a subject could also imply in these contexts, serious effects on the reception and application of a norm, thereby triggering the need for a process of reformulation.

In fact, the whole co-text where the above clause from Art.17 is situated, reports that “an application for asylum *has been lodged*” and that “a MS considers that another MS is responsible”. Hence, the lack of the Subject performing the action due to the passive structures makes discourse interpretation harder, and even unacceptable from the viewpoint of the intended receiver, i.e. an asylum seeker. This ‘conventional’ usage of the passive voice in European texts is thus to be seen as a pragmatic marker of this written register, depersonalizing the speech act. What follows is a proposal of reformulation meant as a communicative strategy for simplifying discourse, which is also the essence of ELF. The reformulation could be based on the addition of an Agent and be displayed as such: “an application has been lodged *by an asylum seeker*”. This addition, which is allowed through the application of van Dijk’s (1980) macrorule of Extension may thus make the text more accessible to the receiver. Similarly, there is another text considered for analysis, which is the Italian ‘Bossi-Fini’ law (2002), that is currently still applied in the domain of immigrants’ work.

In particular, the text considers the need for the immigrant to hold a permit to stay as the legal requisite linked to the working contract (Provenzano 2008). As mentioned, it’s possible to identify some similarities in the shaping of European and Italian texts especially when talking about the *permit to stay*. Below is an example from art.5 of the BF:

«Possono soggiornare nel territorio dello Stato gli stranieri entrati regolarmente ai sensi dell’art. 4, che siano muniti di carta di soggiorno».
 (“*Foreigners can stay in Italy if they have entered* regularly and only if they have a valid *residence permit (document)*.”)

The text in brackets represents a proposal of ELF reformulation, in the sense of an extended retextualization of the original Italian text, in that informativity is rendered in a different, even more direct style than the parallel Italian text, as it is visible through the elements in italics. Thus, ELF can be perceived in the perspective of simplification, which does not mean to reduce, but in fact to extend it syntactically (“*if they have entered*”), and also through a paraphrasis (“*valid residence permit (document)*”) and a different Subject-verb order (“*Foreigners can stay*”).

In addition, the main difficulty in the Bossi-Fini concerns intertextuality. For example, in the Bossi-Fini law the articles of law have a complex structure due to intertextuality, as in the formula “ai sensi del decreto legislativo n. 186 del 1998”; “as of the decree n.186 as of 1998”), or in other cases through the insertion of a ‘Note’ to the article (‘Nota all’art.’), where the entire updated version of the article is displayed.

Intertextuality has been identified as one of the most typical characteristics that shape the framework of western legislation and the Bossi-Fini law represents one of such examples, because it is rich in references to previous laws or other government documents, and also anaphoric references or cataphorical to other articles.

It is interesting to note that the text has two intertextual references: it recalls art. 4 of the same law, for the purpose of identifying immigrants as "regular", and to international agreements governing the procedures for the regular issue of the residence permit.

Furthermore, the complexity of the text also derives from the terms used as verbal constructs (different past and present participles with a nominalization value: *stranieri entrati; che siano muniti; Stato appartenente*) and the presence of uncommon words such as the expression "titoli equipollenti" (“equivalent titles”).

5.1. “The Italian Safety Decree”

As previously anticipated, the text of the ‘decree’ has been considered because contextually it is linked to the previous text of the Bossi-Fini, but in fact it extends it and cohesively redefines it in terms of the content and the particular legal functions. Indeed it restricts the opportunity for immigrants to enter the national State and thus represents from the normative viewpoint a limitation as compared to the International corpus taken into account. The point in the analysis is to see whether such a text may be reformulated so as to make such limitations more accessible and to avoid, where possible, spaces of misinterpretation.

5.1.1. ELF reformulation processes

In this section, the focus is placed on some extracts taken from the ‘Decree’ with a suggestion for a reformulation taking into account van Dijk’s macrorules. This model should aim to simplify discourse especially in this context, where the supposed receiver is expected to be aware of the Western frames of reference, such as ‘intertextuality’ and the specialized concepts embedded within. The first case considered is the one about ‘special permits’, as referred to in Art.1 of the decree, which restricts interpretation by disregarding monoreferentiality (Gotti 2005). Below the complete extracts

from the Italian text, the unofficial English translation and the ELF proposal are given:

- 1) “Disposizioni in materia di permessi di soggiorno per motivi umanitari e disciplina di *casì speciali di permessi di soggiorno temporanei* per esigenze di carattere umanitario.” (my italics)
- 2) “Provisions for residence permits for humanitarian protection, and regulations on *special cases* of temporary permits to stay for humanitarian protection.” (my italics)
- 3) “*Special case permits* are meant as temporary permits to stay.” (my italics)

If comparing the three versions, two elements need to be pointed out: one concerns the absence of an official translation of this text, while the other relates to the parameter of monoreferentiality attributed to the issue of ‘*special case permit*’. In essence, this adjective ‘special’ may limit interpretation as for its biased nature, i.e. its ‘speaker-oriented’ perspective. In the proposal of reformulation, the thematization of the clause may address the audience towards the main concept and propose its definition. Finally, this redefinition is also allowed through the creation of a new sentence based on the use of the relational verb ‘to be meant as’.

As concerns the second case study based on the decree, the focus is as well on a lexical and textual aspect. Specifically, the main issue is about the lexis used in the definitions of the different categories of ‘request for protection’. As they represent typical examples of ‘definitions’ and are introduced in the first part of the Decree, these lexical definitions are embedded within repetitions of almost similar concepts, such as ‘request for asylum’, ‘subsidiary protection’, ‘request for humanitarian protection’, that are finally substituted by only one category (“subsidiary protection”). This gets the effect of redundancy and is of no use for the non-expert reader of the text. Hence, the need for a different proposal which has been developed as follows:

Art. 1 (This is a) ‘permit for subsidiary protection’.

Such a reformulation proposes a reduction of the content in favour of the only category allowed within the general one of ‘protection’ and this is based also on van Dijk’s macrorule of Deletion.

There is finally a third case study that has been considered and is based mainly on intertextuality. Unlike the previous cases, this parameter makes the text hardly accessible to non-experts, as can be seen from the following statement:

“(art.1) le parole “per motivi umanitari” sono sostituite dalle seguenti: “per

cure mediche nonché' dei permessi di soggiorno di cui agli articoli 18"; (...) (art.18) "Il personale dei Corpi e servizi di polizia municipale (...) accede, (...), al Centro elaborazione dati (...) al fine di verificare eventuali provvedimenti di ricerca o di rintraccio esistenti nei confronti delle persone controllate."²

The above text should in fact provide relevant information as regards the 'permit to stay', by means of an intertextual link, but disregards either the simplicity and the Relevance parameter by Grice (1975). In fact, it ends up with a focus on a different topic from the one expected, precisely with 'people under suspect', representing in fact the immigrants. In order to avoid possible misunderstandings due to this intertextual link, a suggestion for reformulation has been advanced.

Here is the text reformulated through ELF, here meant as a variation of English accessible to international non-specialized readers:

(from art.1) "terms as "humanitarian permits" are replaced by the term "permit for health care services".

The above example represents another application of van Dijk's model, specifically of the Deletion macrorule, because of deleting intertextual links, ("permessi di cui all'art.18"; "other residential permits"). Also the remaining part of the paragraph could be deleted if the implied receivers of the text are taken to be the immigrants, and not 'people under suspect', as quite arbitrarily referred to in the text. As previously anticipated, the application of van Dijk's macrorules, particularly of Deletion, could allow a reduction of the content and provide clear information. In this specific case, deleting the whole intertextual link to art.18 could be a strategy for achieving this aim, and to render the legal content more accessible interculturally. To conclude, this is also an interesting example of how to reconceptualize Western legal discourse through ELF, i.e. by adapting translation according to the readers' culturally-marked legal experience and specific aims (Provenzano 2008).

In fact, although this is quite an old issue in the Western discourse analysis, translating this kind of texts could still represent a challenge, if attention is not paid on the whole context, and not simply to the text producer's background. From this perspective, it would be possible to rethink even the standards of textuality, in particular 'coherence', and to see how to apply simplification processes for improving it. In practice, the above example of 'residence permit' is clear evidence for such a technical issue and the reformulation proposals are meant to achieve this aim. As a conclusive

² Unofficial translation: "the words 'humanitarian permits' are substituted by the following: "health care permits or other residential permits as of art.18. (...) The local police may access the computerized database so as to verify any research measure, or identify people under suspect".

remark, it would be possible to describe ELF here as a connection between language, culture and communication, in the sense of rethinking the non-standard uses of English within the domain of legal discourse as an intercultural issue.

6. Conclusions

This last section aims to point out the main results of the work of the analysis and the reformulation produced on the parallel corpora of texts from the EU and the recently approved ‘decree’ in Italy, the ‘Safety decree’ as of 2019. Starting from the rationale, based on the assumption of a culturally grounded understanding of these Western texts, CDA as a methodology has shown how difficult communication may result within these contexts, especially when dealing with normative issues concerning ‘entry’ or ‘permits to stay’ for immigrants. Besides a concern for the international legal domain of migrations, the communicative dimensions are particularly relevant within the Italian context nowadays, with this decree restricting, even textually, the accessibility of foreign nationals into the Italian State.

The awareness of this communicative issue has, thus, led to the application of an analytical and integrated model based on both Fairclough’s Critical Discourse Analysis and van Dijk’s macrorules. Through this integration, it has been possible to point out the textual limitations characterizing the shaping of the parallel corpora analysed, and then to propose a reformulation model accounting for the communicative gaps of the original texts.

From this perspective of discourse analysis, ELF has been considered as enabling a new interactional approach between the participants to the communicative act. In fact, the focus being not on an empirical context, but mainly on the stages of the analysis, this procedure has allowed visibility to the pragmatic failure of the original texts, both the European and the Italian ones, and has suggested that a parallel reformulation proposal could be carried out to enhance accessibility.

Furthermore, the use of ELF would make it possible to implement the immigration provisions of the Lisbon Treaty: to allow integration. It is added that the simplicity of English could lead to an improvement in the bureaucratic language and in the way of speaking of officials to the advantage not only of foreigners but also of European citizens.

Bionotes: Mariarosaria Provenzano holds a Ph.D. in Sociology of Migrations and Cultures from the University of Salento, with a thesis in English Applied Linguistics and Translation. Since 2011 she has worked as a Researcher and Adjunct Professor in English Language and Translation at the University of Salento. Her main research interests are:

Legal Discourse and ELF, Critical Discourse Analysis, Economic Discourse and Intercultural Pragmatics. Since 2015 she's an Associate at the Institute of Education (UCL, University College of London), where she concluded a project on hybridization processes in the language of finance in current cross-cultural contexts.

Chiara Capone holds a Ph.D, in Modern and Classical Languages, Literatures and Cultures from the University of Salento and University of Vienna. She completed the UniSalento Specialization School for Legal Professions, and was a PRIN Research Fellow at the Department of Humanities of the same University, conducting an enquiry into reformulation strategies of the Italian legal discourse through ELF. Her publications include the monograph *Processi di semplificazione del testo giuridico: Un caso di studio su una "Memoria del Pubblico Ministero"*.

Authors' addresses: mariarosaria.provenzano@unisalento.it; chiara.capone12@yahoo.it

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