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LINGUISTIC ACCESSIBILITY OF EUROPEAN UNION DISCOURSE: A CRITICAL DISCOURSE ANALYSIS APPROACH

Abstract

The present study presents a socio-cognitive analysis of a mini-corpus of specialised-legal texts from the European Union, that are seen from both a synchronic and a diachronic perspective. The research draws on previous studies (cf. Provenzano 2008), and its main tenet is to analyse texts of extremely current International relevance, which could be used by future intercultural mediators (cf. Provenzano 2015) as an instrument of legal language knowledge in contexts of specialised communication. Accessibility of the European legal texts is seen here from the perspective of a gradual tension between conventionality and creativity, because of the complex levels of knowledge required for them to be understood by a global audience. Such a dynamic process of creativity-making is analysed both in conditions of text production, and in the making of new text reformulations, aiming to convey through new rhetorical and pragmatic forms, the sense of the original text. From such a perspective, the analysis develops as a Critical Discourse Analysis (Fairclough 1995), and is hence, considered from a qualitative viewpoint, focusing on single case studies. Results of the enquiry are taken to be relevant within the specific domain of European legal discourse, and may represent an element to be investigated also in the future, if it may help understand the relations linking the European Union and its Member States.

Keywords: EU legislation; power asymmetry; simplification strategies; modality.

1. *Introduction*

The present contribution aims at presenting some case studies based on specialized textual genres of the EU, with the objective of directing the attention of intercultural mediators towards the uses of ELF in the specialized domain of the European legal discourse. In this sense, the study follows on from a previous article (Provenzano 2015), concerning

mediation and translation practices in the EU legal discourse, with the focus meant to be here on the mediation practices enacted in the field of Immigration by the EU, up to the recent *Dublin Regulation III* as of 2013, and on the following textual elements: (a) the complex textual structures found in the documents and the proposal for reformulations; (b) the aspect of modality examined within a diachronic perspective.

The interest arises from the need to reconsider specific domains in the European context, especially in the legal and in the economic fields, in which claims of normative, socio-cultural and juridical character may create conflict at the interpretative level (cf. Guido 2008; Provenzano 2008), and hence, need new processes of adaptation in relation to the context and the expectations of the assumed interlocutors, i.e. migrants and asylum seekers.

The hypothesis at the basis of the study is that of a 'power asymmetry', which is reflected in the language practices of the EU, wherein the concept of accessibility to specialised-legal concepts is allowed only through shared interpretations of the norms. However, this process may be actualised only by experts in the field, to the detriment of non-experts, who would be the potential receivers of the laws. The objective is, thus, to focus the attention on: (a) an analysis of the specialised interactions that govern, also from a sociological viewpoint, the contact between the participants in the interactions; and (b) specifically on the pragmatic modalities of the interaction, which are here only limited to the written mode.

Thus, it is relevant to analyse the role of specific deictic elements, that have the function of: a) representing the institutional relations at hand; and b) verify the accessibility of the texts to communities of migrants speaking different variations of ELF.

2. *Theoretical Background*

The aim of the present Section is to focus on the main aspects of the theoretical linguistic models, by applying them to the analysis of the European legislation concerning immigration and asylum. In particular, the focus shall be on the model of de Beaugrande and Dressler (1981), which is needed to define the parameters at the basis of the legal communication in the EU, and verify the texts' accessibility from an intercultural perspective.

In the description of the theoretical framework, the focus shall be on the textual parameters of cohesion and coherence, and on the ways the textual choices may represent the sense of the dialogic relationships between the EU institutions and the Member States.

The main assumption of the study is that the clarity of the exposition of the laws is at the basis of the success of the interactions. In this respect, the theoretical models of reference are those of Halliday (1994), which is applied to CDA (Fairclough 1995), to consider the pragmatic aspects of the analysis. To this model is added de Beaugrande and Dressler (1981), in order to focus on textual coherence, referred to the socio-cultural identity of the individual speakers; finally, the model by van Dijk (1980), which introduces rules of reformulation, aiming at a practical and functional rendering of the legal argument.

2.2 Critical Discourse Analysis

Among the models at the basis of this study is Critical Discourse Analysis, which is considered from the perspective of ideological relationships between the EU, on the one hand, and the Member States, on the other, together with those of the migrant communities. This approach is meant to identify the textual strategies enacted by the European institutions, to realise a covert approach in the drafting of the legal document, and to take into account the issue of responsibility in the production of a legal text. Finally, also the possible divergences from the implied receivers' schemata are taken into account.

A functional analysis is thus relevant to the contextualization of the legal texts, and to specify competences also at the practical level of the Member States' national borders.

3. *Analysis*

In this Section the main legal texts from the EU corpus are considered from a pragmalinguistic viewpoint, that is the *Schengen Convention* (1985), the *Dublin Regulation* (2003), and the *Dublin Regulation III* (2013) as these are meant to represent some of the main European documents used to regulate migrations among the Member States. As was introduced in the previous sections, the need to focus and understand the lingua franca uses is correlated in this context to the use of English for legal purposes within the space of the EU. Mostly, the focus is on the intra-lingual, not the interlingual, process because of the need to understand specialised lexis and complex structures. A special focus is here on modality in order to evaluate the intentionality encoded in the modal verbs used in the documents, as they are meant to be an expression of their conventional uses in the EU documents.

Let us see the most relevant examples and how to analyse them.

3.1. Aspects of the Schengen Convention

Among the relevant examples of text from the *Schengen Convention* (1985), the focus is specifically on the ones that are relevant for understanding the matters of 'borders' within the EU.

> Written information provided by the requested Member State may not be used by the requesting Contracting Party.

The reference is to the implicit passive "the requested", to be translated into Italian as "lo Stato Membro a cui inoltrare la richiesta d'asilo", which represents a peculiarity within this Non-Standard variety of English used by the EU authorities. The real subject cannot be easily recovered, unless through a process of contextualization. This process of recovery is in fact representative of the so-called process of 'gatekeeping' (Roberts and Sarangi 1999), enquiring into the dynamics of institutional communication. The example previously reported, "the requested Member State", is relevant both in the interpretation, because of the intransitive sentence in the passive, and in the translation process into Italian. In this specific occurrence, the passive that is implicit may determine the inaccessibility of the information, and thus requires contextualization on the part of the reader to make sense of the laws.

3.2 The Dublin Regulation

Another legal document which is used by the EU when an application for asylum is lodged is the *Dublin Regulation* (2003). Similar to *Schengen*, also here the point is to highlight the pragmatic effects as defined on a linguistic level, through a choice of texts.

Extract from Art. 2 paragraph (c) of the *Regulation*:

> 'application for asylum' means the application made by a third-country national which can be understood as a request for international protection from a Member State, under the Geneva Convention. Any application for international protection is presumed to be an application for asylum.

The sentence "any application for international protection is presumed to be an application for asylum" is analysable as it diminishes the maxim of quality (Grice 1975), and does not present the key information until the end of the sentence.

It is therefore important to notice the depersonalization of European legal discourse in the written context and, as a consequence, to consider the use of these locutions of the passive and their pragmatic effects, also in the range of spoken discourse. A mechanism of reversibility of

phrasal construction is the basis of the nature of the relational process and can determine the vagueness in specialist discourse together with the need to identify the syntactic subject of "any application" in the role of process identifier (Halliday 1994).

Another text that has been examined here and proposed for a reformulation is taken from art. 17 of the Regulation, and concerns the charge to process an application for asylum and also the issue of travelling between Member States. In particular, Paragraph 3 is taken into account as it deals with the request for taking charge of an asylum application. Below are the salient lines in the original version, which will be reformulated and object of the analysis in the following section:

> 3. [...] the request that charge be taken by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists mentioned in Article 18(3) and/or relevant elements from the asylum seeker's statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation. (Emphasis added)

3.2.1 Dublin Regulation – Intra-lingual translation

On the basis of the above arguments, an intra-linguistic translation process seems necessary (Gotti 2005, p. 205), which proposes a new formulation of the preceding texts, principally dealing with issues of the asylum procedure. This process of intra-lingual reformulation is considered as realizing creativity in the sense of enabling new text formats (van Dijk 1980). Below are examples from Articles of the *Dublin Regulation*.

Article 9 and Article 17 follow the key aspects of the law as they relate to the responsibilities of the Member States in screening an asylum application, together with a rewording of the paragraph, from a formal to a more informal register. Such a process of discourse change is considered fundamental in the interpretation of the complex dynamics of the legal texts comprehension, and the following paragraphs are considered as examples, or models, of ELF reformulation. As a matter of fact, reformulation appears as a good strategy for making complex or difficult text-types more accessible to a non-expert audience. The suggestions by students of a course in Intercultural Communication at the University of Salento are considered extremely helpful in achieving this. The following reformulated text is referred to Art. 9 of the *Dublin Regulation*:

> If the asylum seeker is in possession of a valid visa, the Member State which issued the visa shall be responsible, unless the State issued the document *on behalf* or on the written authorisation of another State. In that case, *this Member State* shall be responsible for examining the application for asylum. Consultation doesn't represent 'written authorisation' within the meaning of this provision. (My emphasis)

The points to be underlined with regard to the above reformulation mainly concern two aspects that are here explained: the use of the deictic phrase "this Member State" that represents the new gist of discourse (van Dijk 1980) but also pragmatically extends the viewpoint of the speaker and thus 'recreates' the original meaning ("the latter's reply") by enhancing clarity. The other point refers to an adverbial expression ("on behalf") that substitutes the original form 'when acting for', thus again reproposing the original text through an alternative Anglo-Saxon form instead of the corresponding Latinate expression, thus enhancing cohesion (de Beaugrande and Dressler 1981).

These aspects have been outlined as they represent salient elements in the current interpretation of the piece of European legislation, especially if applied from an intercultural perspective. As stated in the Introduction, these textual choices may be particularly explained in the light of the implied receiver of the European legal texts, to whom simplified versions of complex specialized texts may be more accessible.

3.2.2. Analysis: Modality

The present Section is aimed at providing an in-depth illustration of modality as has been used in the small corpus of the legal texts that have been selected. Critical Discourse Analysis as the method employed for contextualizing the data analysis is in fact aimed at pointing out the different occurrences of the modal verbs as they also come to be associated with different topics. Another point is the diachronic perspective of analysis, helping to show relevant changes in the modals or, as will emerge, a persistent application of the functional interpretation, mainly in epistemic modality and, also its vague, non-assertive definitions of prescriptions. As stated in the Introduction, the main theoretical point to be underlined is the effect of these prescriptions, from the pragmatic viewpoint, on the user's own perception.

At this level of analysis, the texts that will be taken into account involve the *Dublin Regulation* (2003) up to the *Dublin Regulation III* (2013) and an extract from the *Schengen Convention*, which is also correlated in its perspective to the field of Immigration.

Below are the extracts from the main relevant articles of the original text of the *Dublin Regulation* (Art. 9), and further extracts from the recently approved *Dublin Regulation III*, with the objective of discussing modality in its original forms, the parallel translations into Italian, if available, and the pragmatic actualizations of the modality use. The issue of modality thus represents the crucial point to analyse. The intention is to point out the varying degrees of modal verbs employed in prescriptions (some of them dealing with family procedures, others with applications). Coherently with the previous example, by applying CDA, the analysis will point out this controversial aspect of the modals in the texts of the laws.

The following are other extracts containing texts with the modal verbs. The first extract is from the *Schengen Convention* (1985):

> Written information provided by the requested Member State *may* not be used by the requesting Contracting Party.

Another example is taken from the *Dublin Regulation III*:

> The Member State responsible *may* request another Member State to let it know on what grounds the applicant bases his or her application.

At the basis of this analysis, is the need to qualify the pragmatic requisite of the modal 'may' in the example, in order to define the illocutionary force of the statement, i.e. the specific deontic value of the statement here, and to make visible the idea that a functional interpretation, rather than a literal one, is mostly to be expected in the translation of this EU corpus. Also in the preceding case, "*may* not be used", which has been applied in a different context, the value of the deontic modal should be made clear. The example in fact expresses prohibition in this specific legal context, and further provides contextualization to the topic of 'information exchange'.

Another interesting example from the small legal corpus selected is taken again from the *Dublin Regulation III*, and deals with 'family procedure', in the sense of connecting the epistemic modal to this legal concern. Here is the example where the information in brackets is my emphasis:

> Where several family members and/or minor unmarried *siblings* (brother or sister) submit applications, where the application of the criteria set out in this Regulation *would* lead to their being separated.

If, in the previous examples, the deontic modal 'may' has been used, in this last example with 'would' the epistemic modal conveys the idea of conjecture and, thus, renders the legal discourse ambiguous. From a CDA perspective of analysis, such ambiguity places discourse at the advantage of the locutor, and from a diachronic line of enquiry, it defines the idea of conjecture, and not assertivity. Such a trait of non-assertivity in the original EU discourse is worth pointing out, in that it characterises the conventional profile of EU legal discourse.

3.2.3. Reformulation

The following Section is aimed at providing some guidelines for reformulating the previous paragraphs of the legal texts on the basis of the main provisions that regard both the structures and the modals. From *Dublin III* reformulation:

> 1. EU Countries shall examine any application for international protection by a migrant who applies on the territory, the border or the transit zones of any EU Country. A single Country shall examine the application, according to the criteria in Chapter III.
> 2. If it is impossible to designate a EU Country, the first State where the migrant applied for international protection shall be responsible for the application.
> If it is impossible to transfer a migrant to the responsible EU State, because there are risks of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the EU Country shall continue to examine the criteria in Chapter III, in order to establish if another State can be responsible.

In the above paragraph, the focus is on some structures such as the 'first State', that influences the perception of the audience in that it directs the attention of the interlocutor towards a left to right order of perception and thus influences the interpretation. What is thus relevant is to see whether such perception can also have a practical realization, and hence represents a point to be tested in future with communities of migrants.

At the same level of interpretation, and since interpretation here involves the identification of responsibilities, also point 2 represents an interesting paragraph in the perception of the modality. The focus is on the modal 'shall' in connection with the 'EU Country', that links such responsibility to a specific referent, and finally the modal 'can', which is intertextually linked to the source text, but changes register. In fact, the comparative analysis points out the application of the 'Deletion' macro rule in 'can be responsible', avoiding 'designated' as in the pre-

vious version. Such an application of van Dijk's macrorule can allow for the straight identification of the enacting process and, thus, aims to facilitate interpretation.

4. Conclusion

The study began with the awareness of how the issue of intercultural communication has become of crucial importance in recent years in southern Italy. Among the main findings, is the need to reconsider EU and the processes of new text reformulations, thus focusing on the role and features that reformulations may have in providing alternative pragmatic solutions to the original legal texts of the EU.

This model of cognitive-functional analysis should be further implemented to provide adequate solutions and be more in line with the 'schemata' of potential recipients in terms of expectations and other cultural ideas. Correlation between text structure and solicited responses in fieldwork can provide useful suggestions for (a) understanding legal procedures in migrant states and (b) soliciting further changes in the original text structure, so as to prevent communicative failures, or 'non-valid' solicitations in the application of the law.

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