

ELF AND LINGUISTIC ACCESSIBILITY IN EU MIGRATION LAWS

A CRITICAL DISCOURSE ANALYSIS ON TEXT REFORMULATIONS

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Abstract – The present study examines a corpus of legal texts from the EU regarding Immigration and Political Asylum, that refer to the administrative practices and the procedures for claiming asylum, which involve immigrants and asylum seekers between the European Member States. At the core of the study, there is the awareness that these specialized text-types are mainly built on pragmatic strategies which mainly reflect Western routines. Such an issue is thus thought to be the main cause of misunderstandings between the EU and the mediators and the migrants, especially in terms of the ELF dynamics that are involved in the legal processes of discourse interpretation. Hence, the need to activate processes of hybridization in the form here of written reformulations, aimed at making the texts more accessible (Widdowson 1979) to the empirical receivers of the documents. As for the methodology, a Critical Discourse Analysis (Fairclough 1995) is applied in order to point out the possible incongruities of the original statements, and thus to propose new reformulations.

Keywords: ELF variations; power asymmetry; simplification strategies; CDA.

1. Introduction

The present contribution aims at presenting some case studies based on specialized textual genres in ELF (English as a lingua franca), with the objective of directing the attention of intercultural mediators and towards specialized uses of the language in professional domains. The interest arises from the need to reconsider specific contexts 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 (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. immigrants and asylum seekers.

The hypothesis at the basis of the study is that of a ‘power asymmetry’, that is reflected in the language practices of the EU, wherein the concept of accessibility to specialized-legal concepts is allowed only through shared interpretations of the norms. However, this process may be actualized only by

experts in the field, at 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 specialized interactions that govern also from a sociological viewpoint, the contact between the participants in the interactions; and (b) a specific focus on the pragmatic modalities of the interaction, which are here only limited to the written mode. Among the discourse fields, there is that of cohesion, in its different forms and functions, that in the specific field of the EU may help create institutional relationships, regarding, for instance, the EU – Member States' positions.

Thus, it is relevant to analyse the role of specific deictic elements, that have the function of: a) representing the institutional relations at hand; b) verify accessibility of the texts to communities of migrants speaking different variations of ELF; and c) considering translation problems of Community texts, including, where needed, equivalence. There will be examples of original texts in English, concerning the right of asylum, and of their translation into Italian, so as to consider the problem of equivalence and the actual reception of the reformulated texts.

2. Linguistic and pragmatic features in the EU legal texts

2.1. *Theoretical frame: models*

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 by de Beaugrande and Dressler (1981), that is needed to define the parameters at the basis of the legal communication in the EU, and verify the texts'accessibility in 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; another communicative aspect to be considered is that of the coincidence between the intentionality level and the perlocutionary effect of the stances. In this respect, the theoretical models of reference are: Halliday (1994), that is applied to the CDA (Fairclough 1995), to consider the pragmatic aspects of the analysis. To this model it is added de Beaugrande and Dressler (1981), in order to focus on the 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 Halliday's grammar, that is considered from the perspective of ideological relationships between the EU, on the one hand, and the Member States, on the other, and the migrant communities. This approach is meant to identify the textual strategies enacted by the European institutions, to realize a covert approach in the drafting of the legal writing, and to cover responsibility in the production of a legal text. Finally, also the possible divergences with 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.

2.3. 'Schema Theory' and ELF

In this section, the focus is placed on another theoretical model, 'Schema Theory' (Carrell *et al.* 1988), which is explained here specifically with reference to the activation of the comprehension processes enabling interactions in ELF (English as a lingua franca). The two kinds of processes are: *top-down* and *bottom-up*, and they are considered here of importance either to the analysis of the European legal texts in ELF, and to the exploration of the interpretative processes linked to the discourse level. What these processes are, their validity and application to the analysis will be the specific elements of the theoretical section. The *top-down* process concerns the personal knowledge of the reader/text receiver and his/her potentialities of understanding the text content; thus, it regards the socio-cultural background of the text interpreter, and what determines his/her personal interpretation of the world.

ELF is here used to indicate the processes by which non-native speakers of English reflect in the language they use particular features of their first language, and how these transferred practices may be revealed through a Critical Discourse Analysis. Through this process, it will be possible to comprehend the speaker's stance (Hyland 1991), and to see the problems inherent in the linguistic contact. By '*bottom-up* process' it is here made reference to the textual structures and to the pragmatic sense of the utterances. It is thought that applying such processes enables comprehension in an ELF context, particularly in the legal context, where a text acquires the status of a specialized text to be analysed on the basis of these procedures.

From this perspective, also the standard of ‘cohesion’ will be considered in the following section, as this is instrumental to the comprehension (one focus is specifically placed on pronouns and textual referents, because these represent some empirical entities that may only be comprehended through a contextual knowledge).

2.4. Standards of textuality- de Beaugrande and Dressler

Following the preceding section, the attention is placed here on *reference* and on the parameters of specialized discourse by Gotti (2005) that are used here for the analysis. *Reference* is meant here as the extensive area of pronominal forms and substitutes, which are included in deixis (cf. de Beaugrande and Dressler 1981, pp. 48-110). One of the main limits of reference is in its textual representation, and in its effects on the socio-cultural identity of the empirical receivers, who should access the legal documents. These aspects of the reference will be deeply analysed in the following sections, by providing examples of the original sentences and of the intra-lingual process of translation (Gotti 2005). In this perspective, also the parameters of ‘acceptability’ and ‘intertextuality’ are considered in a multicultural dimension. Finally, presuppositions are also at the basis of the analysis, and are associated to Grice’s maxims (1975), in the sense of the ‘quality’; ‘manner’ and ‘relation’.

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), as these are meant to represent some of the main European textual sources used to regulate migrations among the Member States. As it 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 an interlingual process because of the need to understand specialized lexis and complex structures. Let’s 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 territory of the EU.

“Written information provided by *the requested* Member State may not be used by *the requesting* Contracting Party”.¹

The above paragraph stimulates a reflection upon the signification process of the Schengen document, in order to identify the real participants in the interaction. As previously stated, some structures in the text are pointed out to signify the specificities of the Western routines applied to this domain of the EU discourse, and which are practically taken to represent a potential cognitive gap in the interaction process with the migrants. 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, if not 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. It is possible that cases of miscommunication in this field may happen and this is not due to the socio-cultural ‘incompetence’ of the interlocutors, but rather to the lack of clarity of the illocutionary force of the message (Sperti 2014). 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. Other aspects of the Schengen text: the lexical case of ‘setting the borders’

One of the main aspects of the Schengen text is represented by the lexical issue of the common borders, and the abolition of checks at the common borders of the Member States, as it is evident from this quotation “the *gradual* abolition of checks at the Member States’ common borders”.

As for the syntactic analysis, represented by the pre-modification, also the lexical case is concerned with concepts of political rather than geographical connotation. The analysis is, thus, based on the identification of the discourse strategies that are applied and that search for the compromise between the freedom of commerce and movement among the Member States, and the implementation of security measures. The two constructs of

¹ From the official text of the Schengen Convention, art. 39 (par. 2).

‘coherence’ and ‘cohesion’ are thus investigated here, to see how the coherence is textually built, and how these texts are made accessible to non-experts. In the following sections, it is provided an example from a cognitive linguistic analysis of some of the salient concepts from the text of the Convention.

3.2.1. *Lexical Analysis of Schengen*

This is a key example connected to “borders” that is to say the distinction between “internal and external borders” as arbitrarily defined by EU lawyers in the continual semantic evolution of terminology. Below is the entire quote of article 1 of Schengen.

“(from Art. 1) “internal borders: shall mean the common land borders of the Contracting Parties, their airports for internal flights and their sea ports for regular ferry connections exclusively from or to other ports within the territories of the Contracting Parties and not calling at any ports outside those territories;

external borders: shall mean the Contracting Parties land and sea borders and their airports and sea ports, provided that they are not internal borders; (...)

internal flight: shall mean any flight exclusively to or from the territories of the Contracting Parties and not landing in the territory of a third State;

border crossing point: shall mean any crossing point authorised by the competent authorities for crossing external borders;

border check: shall mean a check carried out at a border in response exclusively to an intention to cross that border, regardless of any other consideration.” [my emphasis]

The main issue to consider is to what extent are these basics accessible to potential recipients of the texts i.e. the immigrants as well as legal advisors, in identifying the crucial role of the two States involved in the negotiation process of a document (for example a resident permit). As revealed above the idea is to evaluate the value of linguistic signals for example the illocutionary function within the communicative context. The identifying markers found in the Preamble of the Convention are prevalently deictic (as in the example *those* territories) and in applying the CDA, require an effort from the point of view of identifying the coherence and cohesion, which will be addressed later, during the process of receiving the document. Instead of favouring the legal and political relevance in the definition of borders, the authors of the law opt for references which are both vague and extensive as demonstrated in the example of the definition of external borders. For ‘external borders’ it is understood that “land and sea borders of the contracting States, as well as airports and land ports with the exclusion of internal borders.”

In the following paragraphs, when selecting extracts relevant to requests for asylum other key aspects come to light in their vagueness

regarding the subject of Schengen. The example is taken from art.25 examining the case of a foreigner, called alien (foreign/extraneous) in the law, and refused entry to European territory on the part of European authorities.

Also article 30, paragraph 1 point d), demonstrates the same ambiguity in relation to the concept of “external borders.”

In the extract above, negotiation takes place on the basis of geopolitical markers, with pre -modified categories, which distinguishes the category of borders, as geographical and political areas in the representation of occurrences: in this case, the pre-modifier external becomes the key marker in the assigning of responsibility in the matter of requesting asylum.

A reformulation of the key paragraphs of the Convention is repeated in one of the following sections, with particular reference to the definition of “external borders” finalizing the analysis with a re-fulfillment of the Convention, in respect to the cognitive and socio cultural parameters of the interlocutors. It is in fact here that van Dijk’s model (1980) is applied in order to make the text more accessible and then tested out on migrants in order to verify its accessibility as in the following example:

“d) If the Schengen States exempt the asylum seeker from the visa requirement, it is responsible the Schengen State across whose external borders the seeker entered the territory. External borders are the Schengen State frontiers bordering a non-Schengen State.

Until harmonisation of visa policies is fully achieved, and if only some Schengen States exempt the asylum seeker from the visa requirement, comma d) shall apply. Provisions a), b) and c) shall hold as well.” [my emphasis]

3.3. 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, in the following section key parts shall be considered in order to make “visible” (Giddens 1981), certain discourse practices or socio pragmatic routines of the Regulation, such as discourse manipulation of legal terms. Furthermore the hypothesis behind the basis of the analysis is through the realization of institutionalized language, in other words an interlocution between the EU on the one side and the Member States on the other. The aim therefore, is to highlight the pragmatic effects as defined on a linguistic level, through a choice of texts and then to underline the results of the fieldwork.

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” unless a third-country national explicitly requests another kind of protection that can be applied for separately”. [my emphasis]

The sentence “any application for international protection is presumed to be an application for asylum” is also analyzable as it diminishes the maxim of quality (Grice 1975), and does not present the key information until the end of the sentence. An equivalent translation in Italian could be “può essere considerata”. The choice of the passive is a symptomatic choice of the speaker, and is enriched by related processes (Halliday 1994). The noun phrase “is presumed to be” can be analyzed in the form of closure/ elision of the information as can also be seen in the perspective of Appraisal Framework (Martin and White 2005). Pragmatic choices of this type can be also relevant because written texts are analyzed here, thus revealing a sense of manipulation of the perception of the recipient, that is important from two points of view. The first is connected to the translation itself of the noun phrase is presumed to be, into the equivalent Italian register, in which the passive can be rendered as “può essere considerata”, therefore moderating the phrase in the interlocutory range by means of a possibility modal, typically found in conventional legal discourse. The equivalence, nevertheless, is pragmatic not semantic in that in the original the vagueness is emphasized in the asserting sharpness of the idiomatic phrase is presumed to be. In a second instance the entire paragraph is contextually vague, also for the concurrence of the indefinites *any* or *a* and the absence of the agent in the process principle. On this basis, the ideological nature of the information is defined, and left unexplained, if not analysed.

In synthesis, 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 subject “any application” in the role of process identifier. (Halliday 1994).

More technically, reversibility is linked to the choice of the active/passive voice in the text (Guido 2004, p. 211) and has ideological implications. Indeed, the effect of the contextual use of the passive is also a disclaimer. It is then worth to point out here some implications of the choice of the passive in the legal writing of the EU in the perception of ELF: mainly, it is taken to be a possible drawback to the interpretation of the prescription, if it’s uttered in the context of contact between the European drafters and non-Western receivers such as asylum seekers and immigrants.

The vagueness of the discourse is also determined by adverbial choices that codify the statement on the withdrawal of an asylum application, and they therefore propose exclusive choices as in the following paragraph:

“withdrawal of asylum application means the actions by which the applicant for asylum terminates the procedures initiated by the submission of his application for asylum, in accordance with national law, either *explicitly* or *tacitly*”.

This final extract is concerned with a legal argument which is of crucial importance when entering Community territory – the residence document/resident permit – and it is interesting to analyze both for the content type and for the paragraph structure and finally for the open ended interest of the interlocutors, namely, the asylum applicants. In fact, the Regulation, in contrast to the Schengen Agreement, addresses political asylum seekers and not economic migrants. Therefore, in terms of speech analysis, two sources can be compiled, and their similarity or difference may be evident. The extract is built on the basis of arbitrary terminology, as defined by the construction “any authorization”, “temporary protection arrangements”, as well as consistent repetition of actions as stressed by the Member States, also emphasized with the use of non finite verb forms (authorizing).

3.3.1. Dublin Regulation – Reformulation

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 paragraphs based on specific rules of reformulation. Article 9 follows 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 version 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. Thus, 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 from the University of Salento are considered of extreme help towards this achievement.

“If the asylum seeker is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for asylum. 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.”

Among the main changes made to the original document is that of emphasizing the transition from a formal conjunction where to if, and a

different representation of the relationship between Member States in the form of two divided paragraphs. In the relationship between translation and reformulation, there are different degrees of variation, the proportion of which can change depending on the interests and the culture of the recipients that determine the changes. Therefore, one cannot think of a homogeneity in the representation of the final version – and in addition, the ideal version proposed at the end is screened based on the responses provided by migrant subjects.

At the base of the transformation there is also the passage of the passive *was issued* to the active voice, in order to determine the actor responsible for the process. Moreover, the formal and distant deictic pronoun is modified in the demonstrative “this Member State” in order to promote a higher degree of cohesion in paragraph 2 of the article, where the relationship between the two Member States is most involved and the recipient's interest, because it is inherent in decision-making responsibility. Using the same perspective, there is the choice to reformulate the phrase “Consultation does not constitute a written authorization within the meaning of this provision” as a simplification strategy for the asylum seeker in support of his right to apply for asylum.

4. Ethnomethodological survey – Results

The text below illustrates some of the results of an ethno methodological investigation conducted with a group of migrants residing in the Lecce area, who were asked for feedback on the main issues covered by the law. The subjects interviewed are non-native speakers and use ELF to evaluate the accessibility (informativity) of the text. In fact, the analysis of these protocols is intended to favor the process of ‘linearization’ (Brown and Yule 1983) desired by migrants in speech, while the very analysis of ‘conversational moves’ or moves (Goffman 1981), aims to analyze the interaction process with migrants. The concept of ‘linearization’ is understood in the sense of representing an order of perception, but also re-actualizing the meaning of Schengen’s discourse on the basis of socio-cultural parameters and the conventions of the cultures in arrival.

The data reported and the analysis are crucial in order to: (a) contribute to the explanation and congruity of the contents of the critical analysis results of the speech presented in the previous sections and (b) consider important issues related to the validity of the two legal documents: the Schengen Convention and the Dublin Regulation. For a document to be considered ‘valid’, it is necessary for its potential recipients to recognize it, including the difficulties encountered in access to the asylum procedure. This depends on

the contextual requirements of the migrant's 'situation'.

The following are the results of the ethnographic survey, with reference to field interview data with Kenyan migrant subjects, who were also asked for an assessment of the degree of accessibility of legal excerpts.

To characterize the content of the interview is to reflect mainly on the language of an epistemologically oriented attitude, that is, expressing a sense of speculation on the contents of the law. It is a perspective supported by the subsequent conversational moves, particularly in the reaction of the second Kenyan subject, whose words are relieved, precisely by the issue of the Schengen visa. In the co-text of this question, doubt is expressed by requests for further clarification ("Is it a Schengen State, Greece? Is it appropriate?") and by the addition of a 'critical' move and an acknowledge move. The following paragraph explains the interpretation of the Kenyan migrant interviewed:

KM1: Personally, I think that most of the immigrants around don't get the information they wish to have. There is something quite various. (...) You just don't know where to get information from. No contact exchange. There are things that you wish to get clear. Then, you have a residence permit in Italy and then maybe you have another one for Greece, a visa that allows you to stay. Is it a Schengen state, Greece? Is it appropriate? To those limits you simply get to know what you are expected to know and under what circumstances. I imagine some African countries, they may not consent to it.

I: Yes, perhaps also because the system changes. (further elicitation)

KM2: If I get a visa from a Schengen state and then I come to Italy, is there a norm saying that the country where you enter is the one that provides you (...) the residential permit? We need to target the people who live in a certain area, at a certain time. Then you evaluate.

KM1: the residential permit. no, the permit of stay.

I: May I ask you if you have ever had any difficulty with institutions here in Italy due to language, or any other reason?

KM1: It is just lack of information.

KM2: In Africa, this to us is a problem. An immigrant is not as an asylum seeker. The limit of that variation is important. It is important. It actually depends on the country you come from. They don't want to reveal their personal concept.

I: May I ask you now to indicate how clear the text is?

KM2: It is not a matter of saying how clear it is. It is just a possibility to get to know what you need.

The use of questions and tag-questions is interpreted as an attempt to solicit further information from the interviewer, and thus becomes part of an indirect speech act (Searle 1969).

Equally interesting is the analysis of the second protocol, partially reported below, with reference to the Dublin extracts relevant to the interlocutor; here the subjects are from Eritrea:

"First of all, I've been in Germany. (...) no, in Norway and I first heard about the Dublin when I entered the fingerprinting. If I know about fingerprinting, I could decide for another place. I didn't have any idea about this Convention and this fingerprinting."

This reaction is representative of the appropriateness of European law based on the experience of the fingerprint system, unknown to the interlocutor. However, the reaction defined through a challenge move is indicative of law authentication (Guido 2008) through epistemic markers – i.e., could decide - that they make a viable choice alternative, and hence a possible solution to non-knowledge of European routines.

5. Conclusions

The study had began due to 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 not only the need to reconsider the cognitive availability of legal concepts as fundamental to the success of a specialist interaction, but also the possibility of a new text reformulation so that the specialized text is accessible to groups of migrants present in the territory. The crucial point was represented by the comparative analysis of the legal system in the European Union, and the limits on its adaptation to a supranational system of the various European national states. The reference to migrant legal systems has revealed a need for change in European legal writing that may be more in line with the pragmatic expectations of the refugee group. 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 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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