

Letter of the law

Danaë Hosek-Ugolini reports from an event at the Institute of Advanced Legal Studies that explored the complex nature of legal language



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On Wednesday 29 June, various lawyers and linguists met at the Institute of Advanced Legal Studies (IALS) in Russell Square, London, to attend the fourth annual workshop on legislative drafting and linguistics organised by the IALS and the University of Palermo. The subject of this year's workshop was why laws are so complicated and how linguistics can help the legislative drafters.

Hayley Rogers, from the Office of the Parliamentary Counsel in London, compared the process of drafting legislation to the challenge of fixing a leaking roof. The cause of the leak is detected and repairs are carried out until another leak occurs, which requires further repairs. This can continue until the whole roof collapses. While the aim of the legislative drafters is to achieve effective and coherent language, there are three main factors that prevent them from achieving this.

The first is that acts of law are subject to frequent amendments. These amendments disrupt the original structure of an act and make it increasingly complicated. Sometimes, instead of repealing an existing act (which could be bad press), policymakers decide to amend it to the extent that drafters are asked to delete most previous sections, create new ones with complicated numbering and even change the name of the act.

The second difficulty is that laws are often the result of political context. Priority may not be given to areas of law that do need maintenance. And thirdly, there are complex policies at stake and there are insufficient resources at the disposal of legislative drafters.

Particularly complex

William Robinson, associate fellow at IALS and former legal reviser at the European Commission, explored the reasons as to why EU legislation is particularly complex. To begin with, he described how most EU laws are drafted in 24 languages to create 24 equally authentic texts. Translation is required at various stages of the drafting process and it is the lawyer-linguists who must ensure that the texts have the same legal effect in the various member states. This can prove difficult in the light of different practices, traditions and interests.

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To make things more complicated, fuzzy drafting is encouraged so that only general principles are set out, and it is then up to each member state to adapt the general aims into their own system. Derogations to the general rules are often requested from member states. For example, the EU legislation on the traceability of animals and meat products led to derogations for Spain (bullfights), Nordic countries (show-farm tradition) and countries allowing wild to semi-wild cattle.

Maria de Benedetto from Roma Tre University in Italy looked at the

Italian legal system and offered some ideas on how to reduce the complexity of laws, which could lead to better enforcement and a reduction in litigation created by misinterpretation. Her proposed tools were: improving the drafting by using simpler language (active voice, present tense, avoiding redundancies); increased transparency in the legislative process (such as the EU legislative footprint); maintenance of legislation to ensure continuous adequacy; strengthening the 'nomofilachia' (uniform application of the law); reducing administrative burdens; and mediation in enforcement proceedings.

Academic approach

The other three speakers approached the question from a more academic standpoint. James Hadley, from IALS, presented the early stages of his research on equivalence and legal translation. He sought to demonstrate that if relationships between people are reproduced in different countries, equivalence could be reached in legal translation despite the differences in legal systems and concepts.

Stephen Neale from the Graduate Center of the City University of New York looked at various types of determination (constitutive, epistemic, aetiological and stipulative) to show that greater simplicity can produce considerably greater precision and, to this end, legal language can and should be made less complex in order to achieve more predictable behaviour. The final speaker, Jerome Tessuto from the University of Naples Federico II, Italy, looked at arbitration laws in Singapore, where eastern and western traditions meet.

All these discussions emphasised the complexity of legal texts and the problems faced by legal translators, who not only need to translate words and meaning but also to transpose legal concepts that may not exist in the target language. Hence why it is of the utmost importance to approach legal translation carefully and to gain the required training and knowledge.