

# HOW (UN)READABLE IS THE EUROPEAN CONSTITUTION? A COMPARISON OF THE ENGLISH VERSION AND THE ITALIAN VERSION

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SOMMARIO: 1. Introduction. – 2. An overview of the two versions of the text. – 3. Differences in length between the two versions. – 4. Cases of ‘legalese’ and ‘eurojargon’. – 5. Highlighting specific differences: differences in tone. – 6. Cases of ‘unnatural’ language. – 7. Cases of dubious equivalence. – 8. Conclusions.

1. In this paper<sup>1</sup> we will be analysing and comparing, essentially from a linguistic and pragmatic perspective, the English version and the Italian version of the Treaty establishing a Constitution for Europe, hereafter called the EU Constitution for the sake of convenience. As is well known, the Treaty was signed on 29 October 2004 by the Heads of State or Government of the 25 Member States<sup>2</sup>, but the people of France and the Netherlands rejected the text of the Constitution in referendums held on 29 May 2005 and 1 June 2005 respectively and since then the project of ratification by all Member States – for which the original deadline envisaged was 1 November 2006 – has been postponed, allowing for a ‘period of reflection’<sup>3</sup>.

One criticism frequently made of the EU Constitution has been that it is “unreadable”, with disparaging remarks cutting across the political spectrum, from the American ‘neoconservative’ position expressed in the first citation below to that of a Dutch researcher from the left-leaning Corporate Europe Observatory<sup>4</sup> quoted in the last of the four citations:

“an unreadable mish-mash of political correctness, micromanagement, bureaucratic jargon, artful ambiguity, deliberate obscurity, and stunning banality that somehow limps its way through some 500 pages”<sup>5</sup>;

“overall, Valéry Giscard d’Estaing had written a Monnetian constitution: unreadable,

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<sup>2</sup> Bulgaria and Romania joined the EU on 1<sup>st</sup> January 2007, bringing the total of Member States up to 27.

<sup>3</sup> The new deadline now seems to be spring 2009, in time for the next European elections.

<sup>4</sup> Corporate Europe Observatory (CEO) defines itself as “a European-based research and campaign group targeting the threats to democracy, equity, social justice and the environment posed by the economic and political power of corporations and their lobby groups.” See <http://www.corporateeurope.org/>.

<sup>5</sup> STUTTAFFORD A., *Constitutionally Indisposed*, in *National Review*, 22 February 2005, at <http://www.nationalreview.com/stuttaford/stuttaford200502220745.asp>.

technical, legalistic, and written for a handful of civil servants rather than Europe's 450 million citizens"<sup>6</sup>;

"I think the greatest mistake was to make the Constitution unreadable. I bet there's no more than a dozen people who have read every page of it and even those with a lot of suffering"<sup>7</sup>;

"a constitution should be readable and accessible to the population. It should not be a document of 480 pages, with some 400 more pages of appendixes and declarations. That's really crazy"<sup>8</sup>.

The alleged unreadability of the EU Constitution highlights an issue which has gathered momentum over the last decade, namely, how to make the language of EU officialdom – including the formulation of its laws, directives and regulations – closer to the citizen and not just the domain of specialists. In 1998 Emma Wagner at the European Commission's translation department was instrumental in setting up the 'Fight the Fog' campaign<sup>9</sup> to encourage Commission staff to write more clearly. Publications specifically devoted to the question of making EU documents more readable and user-friendly include Cutts & Wagner<sup>10</sup> and Cutts<sup>11</sup>.

Our approach to the text – in its English and Italian versions – has therefore been guided above all by the criterion of 'readability'. Can one version be said to be more (un)readable than the other? Where do the differences lie in the two versions, bearing in mind that equivalence is «influenced by a variety of linguistic and cultural factors and is therefore always relative»<sup>12</sup>?

In order to answer these questions we have carried out a detailed comparison of the two versions, taking as our corpus the Preambles (to Part I and Part II) and the 448 articles of the Treaty but leaving out all of the appendixes and declarations. According to word count devices such as the Microsoft Word word counter, *ParaConc* 1.0 or *Wordsmith Tools* 4.0 (see paragraph below), the English version contains 66,647 words, the Italian version 62,501 words<sup>13</sup>, though, as we shall see in Section 2.1., these figures need to be duly qualified because – at least as regards the Italian version – they do not exactly correspond to the real number of words in the text.

<sup>6</sup> HARI J., *The voters of Europe are demanding more democracy, not more free markets*, in *The Independent*, 3 June 2005.

<sup>7</sup> Citation by ARGENTIERI F. in PARAIS S., *They don't have that far-sightedness typical of the founding fathers*. An interview with Federico Argentieri, visiting professor from the John Cabot University in Rome, in *Reinventing Central Europe* at <http://www.talaljuk-ki.hu/index.php/article/articleview/406/1/21/>, 12 May 2005.

<sup>8</sup> Citation by WESSELIUS E. in GORGE S., WESSELIUS E., *Why French and Dutch citizens are saying NO*, in *Red Pepper*, June 2005, at <http://www.redpepper.org.uk/europe/x-jun2005-constitution2.htm>.

<sup>9</sup> [http://ec.europa.eu/translation/writing/clear\\_writing/fight\\_the\\_fog\\_en.pdf](http://ec.europa.eu/translation/writing/clear_writing/fight_the_fog_en.pdf).

<sup>10</sup> CUTTS M., WAGNER E., *Clarifying EC Regulations*, Stockport, 2002.

<sup>11</sup> CUTTS M., *Clarifying Eurolaw*, Stockport, 2005.

<sup>12</sup> BAKER M., *In Other Words: Coursebook on Translation*, London, 1992, p. 6.

<sup>13</sup> The text can be accessed in its English version at [http://europa.eu/constitution/index\\_en.htm](http://europa.eu/constitution/index_en.htm), and in its Italian version at [http://europa.eu/constitution/index\\_it.htm](http://europa.eu/constitution/index_it.htm).

To retrieve concordances and wordlists we have relied upon two pieces of software: *WordSmith Tools* 4.0 and *ParaConc* 1.0. Neither program is tied to a particular language and so they can be used with both English and Italian texts. *WordSmith Tools* is a powerful suite of lexical analysis tools which allows us to create word lists (in both alphabetical order and frequency order), generate concordance output, and give collocation information. *Concord* is one of the features provided by *WordSmith Tools* (together with *Keyword* and *WordList*): it allows us to identify and analyse the linguistic co-text of a word. The word under investigation, also called ‘node word’, is shown centred in standard concordance lines and a variable amount of context is given at either side. As Scott points out<sup>14</sup>, this tool allows further examination of the company a given search word keeps (its collocates), as well as a list of recurring clusters or phrases. Collocates can also be sorted on the left and on the right, in order to facilitate the data retrieval process. An example is provided below, *shall* being our node word here, and the concordances being sorted to the right first, then left and then right again (R1, L1, R2):

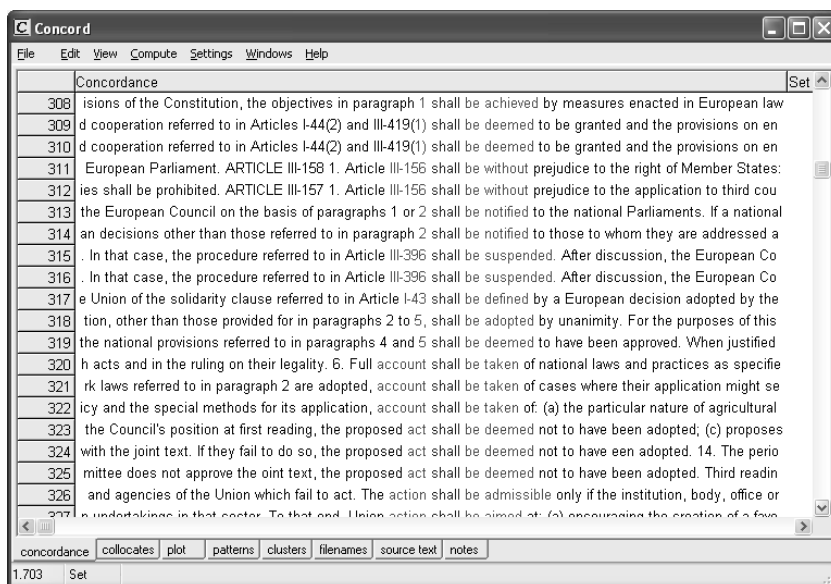


Figure 1. Concordances of *shall* (sort R1, L1, R2 *WordSmith Tools*)

The visual layout of the word or phrase under investigation is of paramount importance, and it allows us to identify patterns that sometimes go unnoticed by the tra-

<sup>14</sup> SCOTT M., *Comparing Corpora and identifying key words, collocations, frequency distributions through the WordSmith Tools suite of computer programs*, in *Small Corpus Studies and ELT. Theory and practice*, 2001, p. 47 ss.

ditional linguist, even by an expert researcher or mother-tongue speaker, in that only a very small proportion of the available linguistic information can be reliably predicted by a user<sup>15</sup>.

*ParaConc* is a tool designed for linguists and researchers who wish to work with translated texts in order to carry out contrastive language studies or to investigate the translation process itself. The result of the search is displayed in two windows rather than one: the topmost window displays numbered lines containing each instance of the search term in the first language, along with its context. The lower window displays numbered sentences in the second language which correspond to the text displayed in the first language in the upper window<sup>16</sup>.

With the help of this software we then proceeded to compare the two versions of the text.

2. The English and Italian versions of the text represent just two of the 21 language versions in which the EU Constitution is officially considered to be authentic, i.e. has legal validity<sup>17</sup>, a policy which safeguards the equal rights of all languages thereby ensuring that there should be no dominant languages or cultures in the European Union<sup>18</sup>.

The text is divided into four parts: Part I is concerned with the objectives and competences of the EU, Part II deals with the fundamental rights of the Union, Part III with the policies and functioning of the Union, and Part IV with general and final provisions. As mentioned before, Parts I and II are preceded by Preambles.

3. The first question we need to answer is why, according to the word count devices outlined above, the English version should be slightly over 4000 words longer than the Italian version, given that, stereotypically, Italian tends to be considered as being slightly more ‘verbose’ than English. There would appear to be two major rea-

<sup>15</sup> TOGNINI BONELLI E., *Corpus Linguistics at Work*, Amsterdam, 2001, p. 184.

<sup>16</sup> BARLOW M., *Analysing Parallel Texts with ParaConc*, paper presented at ALLC/ACH '96, University of Bergen, Norway, 2006.

<sup>17</sup> The Treaty is «drawn up in a single original in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, the texts in each of these languages being equally authentic» (Art. IV-448).

<sup>18</sup> However, as MATTILA H., points out in *Comparative Legal Linguistics*, Aldershot, 2005, p. 25, «some languages are more equal than others. Union officials normally work in English and French, so that documents drawn up in those languages are, *de facto*, the original versions, even though all versions are formally equal».

sons for this, both of which can be explained if we look at the 16 most frequently-occurring words in each text, namely:

English (United Kingdom)			Italian (Standard)		
Count	Pct	Word	Count	Pct	Word
7243	10.8677%	the	2652	4.2431%	di
3849	5.7752%	of	2171	3.4735%	e
2236	3.3550%	and	1240	1.9840%	il
1910	2.8658%	to	1227	1.9632%	la
1703	2.5553%	shall	913	1.4608%	del
1671	2.5072%	in	903	1.4448%	in
1164	1.7465%	a	891	1.4256%	della
1066	1.5995%	european	805	1.2880%	le
877	1.3159%	or	783	1.2528%	a
836	1.2544%	member	725	1.1600%	che
800	1.2004%	article	715	1.1440%	membri
702	1.0533%	be	712	1.1392%	o
681	1.0218%	union	682	1.0912%	consiglio
679	1.0188%	council	598	0.9568%	stati
668	1.0023%	by	578	0.9248%	delle
640	0.9603%	for	555	0.8880%	dei
558	0.8372%	states	551	0.8816%	per

**Figure 2.** Parallel word list  
(‘Count’ = number of occurrences in the text; ‘Pct’ = percentage)

As Figure 2 above illustrates, we have information in the lower left corner relating to the number of the file loaded — one parallel file in our case, English and Italian — and in the lower right corner a word count for the two corpora is provided.

As can be seen, the ten most frequently-occurring lexical items in the Italian version are all functional or grammatical words, whereas in the English version not only do we find the adjective *European* and the noun *member* (albeit used attributively in the majority of instances as the first part of ‘Member States’)<sup>19</sup>, but more importantly we find that the fifth most commonly-used word in the entire text is the modal auxiliary *shall* which occurs 1703 times. As is well-known, *shall* in legal English generally conveys prescriptive force, while the equivalent in Italian is usually the present simple, as in the following example:

<sup>19</sup> On 795 occasions it is followed by ‘State/s’, in which case ‘member’ is capitalized: ‘Member State/s’. This capitalization does not occur in Italian for the word ‘member’, but it does for *stato/i*: *Stato membro/Stati membri*. Another example of a difference in capitalization policy is ‘President’ vs *presidente*, as in *President of the Commission* as opposed to *presidente della Commissione*.

Article I-8  
*The symbols of the Union*

The flag of the Union shall be a circle of twelve golden stars on a blue background.

The anthem of the Union shall be based on the “Ode to Joy” from the Ninth Symphony by Ludwig van Beethoven.

The motto of the Union shall be: “United in diversity”.

The currency of the Union shall be the euro. Europe day shall be celebrated on 9 May throughout the Union.

Articolo I-8  
*I simboli dell’Unione*

La bandiera dell’Unione rappresenta un cerchio di dodici stelle dorate su sfondo blu.

L’inno dell’Unione è tratto dall’“Inno alla gioia” della Nona sinfonia di Ludwig van Beethoven.

Il motto dell’Unione è: “Unita nella diversità”.

La moneta dell’Unione è l’euro.

La giornata dell’Europa è celebrata il 9 maggio in tutta l’Unione.

The English version of this article contains 75 words while the Italian version has – according to the word counters cited above – only 55, partly as a result of the repeated use of *shall* in the English followed by the main verb while the indicative forms are used in Italian, which means that verbal constructions such as *shall be*, containing two words, are conveyed in Italian with single word constructions such as *rappresenta* or *è*.

As for the second reason, we may note that in the Italian list of most frequently occurring words, *del* and *della* occupy respectively fifth and seventh place, each of which would normally be conveyed using two words – *of the* – in English. Article I-8 above contains five instances of *dell’Unione* (plus one occurrence of *dell’Europa*) in the Italian version, where such phrases are generally considered by automatic word count devices as constituting a single word because of the apostrophe, whereas the equivalent expression in English – *of the Union* – consists of a three-word cluster. Indeed, *dell’Unione* is the 18<sup>th</sup> most frequently used expression in the Italian version of the European Constitution, occurring 533 times. In the same way the Italian *l’inno* counts as just one word whereas *the anthem* counts as two. If we count cases such as *dell’Unione* or *l’inno* as each being constituted by two words – and it would seem incongruous to count *la moneta* as two words and *dell’Unione* as one – then the Italian version of Article I-8 contains 65 words as opposed to 55, and the overall difference in word count between the English version and the Italian version of the EU Constitution is considerably narrowed<sup>20</sup>.

<sup>20</sup> Moreover, as is the norm in prescriptive English texts, and in contrast with less formal registers of English, there are relatively few cases of the Anglo-Saxon genitive: the longer form using *of the* is far more common (e.g. *The currency of the Union* rather than *The Union’s currency*). See SALA M., op. cit., p. 151, footnote 2.

4. ‘Legalese’ refers to lexical items, phraseology and syntactic structures that not only typify legal language but above all tend to make it abstruse and alien to ‘outsiders’ in the legal discourse community. The two versions of the text abound with examples of legalese, as can be illustrated below:

TITLE III. UNION COMPETENCES  
Article I-11

(...) 3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

TITOLO III. COMPETENZE DELL’UNIONE  
Articolo I-11

(...) 3. In virtù del principio di sussidiarietà, nei settori che non sono di sua competenza esclusiva, l’Unione interviene soltanto se e nella misura in cui gli obiettivi dell’azione prevista non possono essere sufficientemente raggiunti dagli Stati membri, né a livello centrale né a livello regionale e locale, ma possono, a motivo della portata o degli effetti dell’azione in questione, essere meglio raggiunti a livello di Unione.

Both versions contain typical legal phraseology such as *only if and insofar as/soltanto se e nella misura in cui* as well as a case of syntactic discontinuity by detaching the modal auxiliary from the main verb in *can rather, by reason of the scale or effects of the proposed action, be better achieved/possono, a motivo della portata o degli effetti dell’azione in questione, essere meglio raggiunti*. Although syntactic discontinuities are recognized as being one of the characteristics of legal language<sup>21</sup>, exponents of the Plain Language Movement<sup>22</sup> generally suggest avoiding their use wherever possible because of their stylistic awkwardness. However, it should be pointed out that, on the whole, syntactic discontinuities are far more frequent in UK legislation than they are in EU legislation, occurring more than twice as often in the former with respect to the latter<sup>23</sup>.

There are also a few legalese clusters, made up of two, three, four, and five words, which occur frequently in the English version, and whose Italian rendering is probably clearer also to non-experts, while still satisfying the text-normative requirements for formality in texts of a statutory kind:

<sup>21</sup> See for example BHATIA V. K., *Analyzing Genre: Language in Use in Professional Settings*, London, 1993; WILLIAMS C., *Legal English and Plain Language: an introduction*, in *ESP Across Cultures*, n. 1, 2004, p. 111 ss.

<sup>22</sup> E.g. NIENABER A., *A Search for Clarity in South Africa’s new equality legislation*, in *Clarity*, n. 46, 2001, p. 11 ss.

<sup>23</sup> 0.36 occurrences per sentence in UK legislation as opposed to 0.17 in EU legislation, according to data compiled by MACKINLAY J., 2002.

pursuant to  
without prejudice to  
in conformity with (the procedure)  
by way of derogation from

conformemente a  
fatto salvo/fatti salvi/fatta salva/fatte salve  
secondo (le procedure)  
in deroga a

Both versions of the above clause from Article I-11 contain a case of what has often been defined as ‘Eurojargon’ (e.g. Office of the Scottish Parliamentary Counsel 2006: 28) or ‘Eurospeak’<sup>24</sup> in adopting the term *subsidiarity/sussidiarietà* (each term recurs 10 times in the respective versions of the text), now a fundamental principle of EU law, first established in 1992 with the Maastricht Treaty, but a concept that probably only a minority of EU citizens fully comprehend.

Another case of ‘Eurojargon’ in the EU Constitution is the inclusion in both versions of the French term *acquis* which occurs three times each in the two versions:

#### Preamble

DETERMINED to continue the work accomplished within the framework of the Treaties establishing the European Communities and the Treaty on European Union, by ensuring the continuity of the Community acquis,

#### Preambolo

RISOLUTI a proseguire l’opera compiuta nel quadro dei trattati che istituiscono le Comunità europee e del trattato sull’Unione europea, assicurando la continuità dell’acquis comunitario,

#### Article I-44

4. Acts adopted in the framework of enhanced cooperation shall bind only participating Member States. They shall not be regarded as part of the acquis which has to be accepted by candidate States for accession to the Union.

#### Articolo I-44

4. Gli atti adottati nel quadro di una cooperazione rafforzata vincolano solo gli Stati membri partecipanti. Non sono considerati un acquis che deve essere accettato dagli Stati candidati all’adesione all’Unione.

#### Article IV-438

The other components of the acquis of the Community and of the Union existing at the time of the entry into force of this Treaty, in particular the interinstitutional agreements, decisions and agreements arrived at by the Representatives of the Governments of the Member States, meeting within the Council.

#### Articolo IV-438

Gli altri elementi dell’acquis comunitario e dell’Unione esistenti al momento dell’entrata in vigore del presente trattato, in particolare gli accordi interistituzionali, le decisioni e gli accordi adottati dai rappresentanti dei governi degli Stati membri riuniti in sede di Consiglio.

<sup>24</sup> WAGNER E., *Eurospeak – fighting the disease*, in *Cultivate Interactive*, n. 4, 2001, at [www.cultivate-int.org/issue4/eurospeak/](http://www.cultivate-int.org/issue4/eurospeak/).



Here the English version reflects a centuries-old tradition of allowing untranslated French terms into its legal lexicon, an indication of how much legal English owes to Norman French and of the prestige that French still enjoys in legal English: it is almost unimaginable that a lexical item from any other major European language except Latin could find acceptance in an English legal text<sup>25</sup>. As far as Latinisms are concerned, the evidence of the data seems to suggest that the English version makes use of Latinisms in approximately the same measure as Italian. Here are a few examples:

mutatis mutandis (1 instance)	praesidium (2 )
praesidium	a porte chiuse
in camera (1 )	tra l'altro
inter alia (1)	numero legale
quorum (2)	de jure o de facto
in law or in fact (1)	
mutatis mutandis	

It is also worth noting the inclusion in Art. I-44 of another piece of 'Eurojargon', i.e. *enhanced cooperation / cooperazione rafforzata*, which recurs in the text a total of 33 times in its English rendering and 26 times in its Italian rendering.

One especially noteworthy case of 'Eurojargon' is the repeated use of *framework law/legge quadro* which occurs 130 times in the English version (35 times in the singular and 95 times in the plural), and 123 times in the Italian version (101 cases of *legge quadro*, 22 cases of the plural *leggi quadro*)<sup>26</sup>. In this particular instance it is

<sup>25</sup> *Ombudsman* is perhaps the only word not taken directly from either Latin or French, but from Swedish. The word was first used in Sweden in 1809 and it literally means 'a person who acts as an intermediary'. The Italian version is rendered by the phrase *mediatore europeo*.

<sup>26</sup> The plural *framework laws* is much more frequently used in the English version with respect to *leggi quadro* of the Italian version, where the singular *legge quadro* seems to be preferred, as the following examples show:

Art. 33: in accordance with Part III, European laws, European *framework laws*, European regulations, European

Art. 33: conformemente alla parte III, la legge europea, la *legge quadro* europea, il regolamento europeo, la decisione

Art. 51: European laws or *framework laws* shall lay down the rules relating to the protection of individuals with

Art. 51: La legge o *legge quadro* europea stabilisce le norme relative alla protezione delle persone fisiche con

Art. 123: European laws or *framework laws* may lay down rules to prohibit discrimination on grounds of nationality

Art. 123: La legge o *legge quadro* europea può disciplinare il divieto delle discriminazioni in base alla nazionalità

the English expression that stands out as a case of ‘Eurospeak’ since the concept of *framework law* does not traditionally play a part in British (or Irish) legal culture, whereas the concept of *legge quadro* is an inherent part of Italian legal culture.

Another ‘Eurospeak’ term that recurs in the text is *cohesion/coesione*, occurring 13 times in the English version and 14 times in the Italian version: the slight discrepancy (14 vs 13) is due to the fact that in Art. III-294, in conveying the English version there is a shift from noun to adjective to express the same concept:

the interests of the Union or likely to impair its effectiveness as a *cohesive* force in international relations.

dell’Unione o tale da comprometterne l’efficacia come elemento di *coesione* nelle relazioni internazionali.

*Harmonisation* – another term frequently used in official EU documents – occurs 32 times, whereas *armonizzazione* occurs 30 times, the slight discrepancy in frequency between English and Italian being partly due to the fact that on one occasion the anaphoric repetition of *harmonisation* in the English version is substituted in the Italian with the pronoun *la* in Art. I-18:

3. Measures based on this Article shall not entail harmonisation of Member States’ laws or regulations in cases where the Constitution excludes such *harmonisation*.

3. Le misure fondate sul presente articolo non possono comportare un’armonizzazione delle disposizioni legislative e regolamentari degli Stati membri nei casi in cui la Costituzione *la* esclude.

In English using the pronoun *it* could have been problematic because of the theoretical possibility that it could be construed as referring to *this Article*, whereas in Italian the use of the singular female pronoun can only refer to *armonizzazione*. In Art. III-209 the two instances of *harmonisation* are missing in the Italian counterpart altogether: the first occurrence is rendered with *parificazione* and in the second there is a shift from noun to verb to express the same concept:

[...] improved living and working conditions, so as to make possible their *harmonisation* while the improvement is being maintained [...]

[...] il miglioramento delle condizioni di vita e di lavoro, che consenta la loro *parificazione* nel progresso [...]

[...] only from the functioning of the internal market, which will favour the *harmonisation* of social systems, but also [...]

[...] sia dal funzionamento del mercato interno, che favorirà *l’armonizzarsi* dei sistemi sociali, sia dalle procedure [...]

Conversely, in Art. III-247 the noun is rendered differently in the English version, with *armonizzazione* being rendered in English as *standardisation*:

(b) shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical *standardisation*;

b) intraprende ogni azione che si riveli necessaria per garantire l'interoperabilità delle reti, in particolare nel campo dell'*armonizzazione* delle norme tecniche;

An example of the highly formulaic nature of the text can be seen if we consider the expression *laws and regulations*, occurring on 20 occasions (twice in the form of *laws or regulations*), and its Italian equivalent *disposizioni legislative e regolamentari*. A close look at the left and the right context of *laws and regulations* will show that the phrase extends further and is in most cases a ten-word cluster – *harmonisation of the laws and regulations of the Member States* – or indeed a twelve-word cluster, if we consider *excluding any*, occurring repeatedly, as the following examples show:

#### Concordance

1 n laws and framework laws intended, where necessary, to approximate laws and regulations of the Member States in the areas referred to in Pa  
2 consent of the European Parliament. 2. If the approximation of criminal laws and regulations of the Member States proves essential to ensure t  
3 on the date set by the Court in its judgment. ARTICLE III-363 European laws and regulations of the Council may give the Court of Justice of the  
4 tion may include the adoption of measures for the approximation of the laws and regulations of the Member States. 2. For the purposes of para  
5 ments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in pa  
6 oaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States; (b) in the fields referred to in  
7 European laws or framework laws shall not include harmonisation of the laws and regulations of the Member States. ARTICLE III-208 The Council  
8 jectives referred to in paragraph 1, excluding any harmonisation of their laws and regulations. ARTICLE III-125 1. If action by the Union should pr  
9 ates in the field of crime prevention, excluding any harmonisation of the laws and regulations of the Member States. ARTICLE III-273 1. Eurojust'  
10 g tobacco and the abuse of alcohol, excluding any harmonisation of the laws and regulations of the Member States. They shall be adopted after  
11 ls residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States. 5. This Article shall not affe  
12 shall establish incentive measures, excluding any harmonisation of the laws and regulations of the Member States. They shall be adopted after  
13 e objectives set out in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States. They shall be adopted after  
14 bjectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States. SECTION 5 EDUCATION,  
15 bjectives referred to in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States. SECTION 7 ADMINISTRATI  
16 establish the necessary measures, excluding any harmonisation of the laws and regulations of the Member States. They shall be adopted after  
17 shall establish incentive measures, excluding any harmonisation of the laws and regulations of the Member States. They shall be adopted after  
18 e necessary measures to this end, excluding any harmonisation of the laws and regulations of the Member States. 3. This Article shall be with

#### Concordance

1 elating to these areas shall not entail harmonisation of Member States' laws or regulations. 6. The scope of and arrangements for exercising th  
2 based on this Article shall not entail harmonisation of Member States' laws or regulations in cases where the Constitution excludes such har

It is interesting to note that the Italian version does not render the English word *laws* with *leggi*<sup>27</sup>, as the concordances below illustrate:

<sup>27</sup> The word *legge/i* does appear in the Italian version of the European Constitution (275 times in its singular form and 49 times in its plural form), but always in company with *europaica/e*.

## Concordance

1	i di cui al presente articolo, ad esclusione di qualsiasi armonizzazione delle disposizioni legislative e regolamentari degli Stati membri. SEZIONE 5 ISTR
2	giornanti nel loro territorio, ad esclusione di qualsiasi armonizzazione delle disposizioni legislative e regolamentari degli Stati membri. 5. Il presente art
3	ce azioni di incentivazione, ad esclusione di qualsiasi armonizzazione delle disposizioni legislative e regolamentari degli Stati membri. È adottata previa
4	evnzione della criminalità, ad esclusione di qualsiasi armonizzazione delle disposizioni legislative e regolamentari degli Stati membri. Articolo III-273
5	bietivi di cui al paragrafo 1, ad esclusione di qualsiasi armonizzazione delle disposizioni legislative e regolamentari degli Stati membri. SEZIONE 7 COO
6	isure necessarie a tal fine, ad esclusione di qualsiasi armonizzazione delle disposizioni legislative e regolamentari degli Stati membri. 3. Il presente ar
7	llisce le misure necessarie, ad esclusione di qualsiasi armonizzazione delle disposizioni legislative e regolamentari degli Stati membri. È adottata previa
8	abacco e all'abuso di alcol, ad esclusione di qualsiasi armonizzazione delle disposizioni legislative e regolamentari degli Stati membri. Essa è adottata p
9	valutare le esperienze fatte, ad esclusione di qualsiasi armonizzazione delle disposizioni legislative e regolamentari degli Stati membri; b) nei settori di
10	ce azioni di incentivazione, ad esclusione di qualsiasi armonizzazione delle disposizioni legislative e regolamentari degli Stati membri. Essa è adottata p
11	ietivi di cui al paragrafo 1, ad esclusione di qualsiasi armonizzazione delle disposizioni legislative e regolamentari degli Stati membri. Essa è adottata p
12	ciale. La legge o legge quadro europea non comporta l'armonizzazione delle disposizioni legislative e regolamentari degli Stati membri. Articolo III-208
13	delle sentenze e delle decisioni giudiziarie e include il ravvicinamento delle disposizioni legislative e regolamentari degli Stati membri nei settori di cui a
14	via approvazione del Parlamento europeo. 2. Allorché il ravvicinamento delle disposizioni legislative e regolamentari degli Stati membri in materia penale
15	dato sul presente articolo non possono comportare un'armonizzazione delle disposizioni legislative e regolamentari degli Stati membri nei casi in cui la C
16	re III relative a tali settori non possono comportare un'armonizzazione delle disposizioni legislative e regolamentari degli Stati membri. 6. La portata e le
17	Tale cooperazione può includere l'adozione di misure intese a ravvicinare le disposizioni legislative e regolamentari degli Stati membri. 2. Ai fini del par
18	zione di leggi e leggi quadro europee intese, se necessario, a ravvicinare le disposizioni legislative e regolamentari degli Stati membri nei settori di cui a
19	ivi di cui al paragrafo 1, ad esclusione di qualsiasi armonizzazione delle loro disposizioni legislative e regolamentari. Articolo III-125 1. Se un'azione d
20	b) di adottare le misure indispensabili per impedire le violazioni delle loro disposizioni legislative e regolamentari, in particolare nel settore fiscale e i

However, taken as a whole, while the text contains numerous instances of ‘legalese’ and is permeated by the impersonal, technical and highly repetitive and formulaic phraseology that characterizes legal documents in general, it cannot be said that the EU Constitution suffers unduly from “the disease of Eurospeak”<sup>28</sup>. In other words, the type of jargon (which in several cases is linked to the particular place where an important decision or policy was first taken) often typifying official meetings or draft documents of the EU – such as *Copenhagen criteria*, *democratic deficit*, *Euroland*, *Lisbon strategy*, *Schengen* – is largely absent, in keeping with the recommendation contained in the European Council of Ministers’ resolution of 8 June 1993 on the quality of drafting of Community legislation that “Community jargon” should be avoided (European Council of Ministers 1993).

5. The English version as a whole has a more overtly prescriptive, legalistic flavour with respect to the Italian thanks to the widespread use of the modal auxiliary *shall*<sup>29</sup>. Moreover, the ubiquitous presence of *shall* not only gives the English version a «more marked performative force»<sup>30</sup> but also tends to make it appear slightly more antiquated in style with respect to the Italian with its widespread use of the present indicative<sup>31</sup>. The *English Style Guide* issued by the European Commission Directorate-

<sup>28</sup> WAGNER E., op cit.

<sup>29</sup> See WILLIAMS C. *Pragmatic and cross-cultural considerations in translating verbal constructions in prescriptive legal texts in English and In Italian*, in *Textus*, Vol. XVII, no. 1, 2004, p. 232 ss.

<sup>30</sup> SALA M., *Equivalence and discrepancies between different versions of the EU Constitution*, in *Linguistica e Filologia*, n. 21, 2005, p. 174; ID., *Versions of the Constitution for Europe, textual and pragmatic aspects*, in *Linguistica e Filologia*, n. 22, 2006, p. 154.

<sup>31</sup> On the much debated issue of whether or not to abolish shall from legal texts in English - a proposal widely advocated by exponents of the Plain Language Movement – see, *inter alia*, WILLIAMS C., op. cit.; ID.,

General for Translation goes as far as acknowledging that «(t)he use of verbs, in particular the modal verb *shall*, in legislation often gives rise to problems, since such uses are rarely encountered in everyday speech» but it nevertheless advocates using *shall* «for a positive command»<sup>32</sup>, though it suggests not using *shall* «in non-enacting terms, for example recitals or points in annexes” and also avoiding “the archaic use of *shall* in subordinate clauses to express contingency: use instead the present tense»<sup>33</sup>.

The 1703 occurrences of *shall* in the English version of the EU Constitution – i.e. once every 39 words – stand in stark contrast to the total exclusion of this modal auxiliary from another constitutional text, namely the English version of the South Africa Constitution 1996 where the presence of a “task team”<sup>34</sup> of Plain Language experts in the Constituent Assembly was of vital importance in terms of transforming the Interim Constitution of 1994 into a much more user-friendly text that could be more readily understood by ordinary citizens<sup>35</sup>.

While on the subject of modal auxiliaries, one interesting cultural/political difference between the two texts can be seen in Article I-16 on ‘The common foreign and security policy’ where we read:

1. The Union’s competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union’s security, including the progressive framing of a common defence policy that might lead to a common defence.

1. La competenza dell’Unione in materia di politica estera e di sicurezza comune riguarda tutti i settori della politica estera e tutte le questioni relative alla sicurezza dell’Unione, compresa la definizione progressiva di una politica di difesa comune che può condurre a una difesa comune.

*Tradition and Change in Legal English: verbal Constructions in Prescriptive Texts*, Bern, 2005, p. 216; ID., *Vagueness in legal texts: is there a future for shall?*, in *Vagueness in Normative Texts*, Bern, 2005, p. 201 ss.; ID., *Uno sguardo comparato al linguaggio giuridico prescrittivo in lingua inglese: il caso delle costruzioni verbali*, in *Dir. pubbl. comp. eur.*, 2005, vol. I, p. 17 ss.; ID., *Fuzziness in legal English: what shall we do with shall?* in *Legal Language and the Search for Clarity*, Bern, 2006, p. 237 ss.; ID., *Legal English and the ‘modal revolution’*, in *Proceedings of the Second International Conference on Modality in English*, Berlin, forthcoming.

<sup>32</sup> WILLIAMS C., *Fuzziness ... cit.*, p. 43.

<sup>33</sup> WILLIAMS C., *Fuzziness ... cit.*, p. 44. This archaic use of *shall* in subordinate clauses is still quite common, for example, in American legislation, such as the phrase in italics here from the US *Patriot Act* of 24 October 2001: «Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, *unless such holding shall be one of utter invalidity or unenforceability*, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances». See *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, Title I, Section 2*. Pub. L. No. 107-56, 115 Stat. 272 (2001).

<sup>34</sup> VILJOEN F., *Baring the nation’s soul through plain language*, in *Clarity* 46, p. 15.

<sup>35</sup> On the drafting of the South Africa Constitution in general, see EBRAHIM H., *The Soul of a Nation*, Oxford, 1998. Specifically on the attempts to produce a user-friendly text of the South Africa Constitution see, *inter alia*, VILJOEN F., *Baring the nation’s soul through plain language*, in *Clarity*, n. 46, 2001, p. 15 ss.; WILLIAMS C., *Tradition and Change in Legal English ... cit.*, p. 189 ss.

The English version states that the progressive framing of a common defence policy “*might*” lead to a common defence, where the more dubitative, hypothetical modal auxiliary is used (it only occurs twice throughout the entire English version) instead of *may* or *can*, while in the Italian version *può* rather than the more dubitative, hypothetical *potrebbe* is used. Given that *may* in prescriptive legal texts normally has deontic force expressing discretionality in the affirmative form and prohibition in the negative form, one might be led to suppose that *might* was used to avoid any possible ambiguity as to the non-deontic nature of the expression. The Italian equivalent of deontic *may* is *può* or *possono*, and yet the Italian text contains *può* and not *potrebbe*. The discrepancy here in the choice of auxiliaries seems to reflect, rather, (perhaps unconsciously) a difference in political stance between the UK<sup>36</sup> and Italy: the former generally displays greater scepticism than the latter towards attempts at political or military integration. Hence the choice of *might* instead of *may* makes the hypothesis of creating a common European defence slightly more remote.

The slightly archaic quality of the English version is further enhanced by the inclusion of a number of terms which, according to the Office of the Scottish Parliamentary Counsel<sup>37</sup>, are «generally considered to have served their time» in legal texts, namely, *foregoing* (1 instance), *hereinafter* (6), *hereafter* (1), *notwithstanding* (6), *said* (6), *therein* (4), and *whatsoever* (1). Their equivalents in Italian sound highly formal, but not noticeably archaic, e.g.:

hereinafter/hereafter  
notwithstanding  
said

in appresso  
in deroga a  
detto, stesso

The following extract in its English version contains two lexical items – *foregoing* and *therein* – which typify the more traditional style of ‘legalese’. Both terms are omitted altogether in the Italian rendering, as well as the term *whatsoever* in Art. II-167, which is completely lost in the process of translation<sup>38</sup>. It is also worth noting

<sup>36</sup> We are fully aware that the Republic of Ireland is also a predominantly English-speaking country (less than ten per cent of people resident in Ireland use Gaelic as their first language on a daily basis), and is, moreover, a nation with a long-standing history of military neutrality where in recent years the implications of a common European defence policy on Ireland’s neutrality have been widely debated. The hypothetical ‘might’ as opposed to ‘may’ would therefore be perfectly in keeping with a widespread Irish sentiment about any proposed military integration by EU Member States.

<sup>37</sup> Office of the Scottish Parliamentary Counsel 2006. *Plain language and legislation*, at [www.scotland.gov.uk/Resource/Doc/93488/0022476.pdf](http://www.scotland.gov.uk/Resource/Doc/93488/0022476.pdf), p. 31.

<sup>38</sup> It may be argued that this word is ‘added’ in the English version rather than ‘lost’ in the Italian version: it all depends, in the final analysis, on the language in which the treaty was first drafted. In the specific case of the European Constitution, English may not have been the (only) working language of the original draft. In addition, since the drafting was overseen by Valéry Giscard D’Estaing, former President of France, the basic text may have been in French, and the Italian version of the Treaty may have been

the greater “performative force” of the English version with respect to the Italian where the “positive command” function of *shall* in *the primary objective of both of which shall be to maintain price stability* is rendered by using the less forceful subjunctive in Italian – *che abbiano l’obiettivo principale di mantenere la stabilità dei prezzi*:

## Article III-177

(...) Concurrently with the foregoing, and as provided in the Constitution and in accordance with the procedures set out therein, these activities shall include a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy, the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support general economic policies in the Union, in accordance with the principle of an open market economy with free competition.

## Articolo III-177

(...) Parallelamente, alle condizioni e secondo le procedure previste dalla Costituzione, questa azione comprende una moneta unica, l’euro, e la definizione e conduzione di una politica monetaria e di una politica del cambio uniche, che abbiano l’obiettivo principale di mantenere la stabilità dei prezzi e, fatto salvo questo obiettivo, di sostenere le politiche economiche generali nell’Unione, conformemente al principio di un’economia di mercato aperta e in libera concorrenza.

But if the English version sometimes sounds a little more antiquated and forcefully prescriptive in style than the Italian version, there are some cases where the latter sounds more formalistic than the former, such as the 58 cases in the text where *qualora* is used followed by a subjunctive while in the English equivalent we normally find *qualora* rendered as either *if* or *where* and followed by the indicative rather than the subjunctive, as in this example from Article I-41, para. 7:

7. If a Member State is the victim of armed aggression on its territory [...]

7. Qualora uno Stato membro subisca un’aggressione armata nel suo territorio [...]

6. One of the basic tenets of translation theory is that of Nida’s «dynamic equivalence»<sup>39</sup>, i.e. the recognition that while there cannot always be perfect equivalence between two language versions there should at least be equal effect, and that drafters of each version should aim at «complete naturalness of expression»<sup>40</sup>. Inevitably, however, even in a document which does not have an original version in a given language

based on the French version rather than on the English one (see SALA M., *Versions of the Constitution ...* cit., p. 141)

<sup>39</sup> NIDA E., *Towards a science of Translating, with Special Reference to Principles and Procedures Involved in Bible Translating*, Brill, 1964.

<sup>40</sup> NIDA E., op. cit.

but is the product of a multilingual constituent assembly and of drafting procedures which ensure that each version is equally authentic, there would seem to be cases of ‘translationese’, i.e. of words or phrases that sound as if they have been translated from another language but do not somehow fit ‘naturally’ into the language in question.

One striking case in English comes in the Preamble, with the expression *it wishes to deepen the democratic and transparent nature of its public life*:

BELIEVING that Europe, reunited after bitter experiences, intends to continue along the path of civilisation, progress and prosperity, for the good of all its inhabitants, including the weakest and most deprived; that it wishes to remain a continent open to culture, learning and social progress; and that it wishes to deepen the democratic and transparent nature of its public life, and to strive for peace, justice and solidarity throughout the world

CONVINTI che l’Europa, ormai riunita dopo esperienze dolorose, intende avanzare sulla via della civiltà, del progresso e della prosperità per il bene di tutti i suoi abitanti, compresi i più deboli e bisognosi; che vuole restare un continente aperto alla cultura, al sapere e al progresso sociale; che desidera approfondire il carattere democratico e trasparente della vita pubblica e operare a favore della pace, della giustizia e della solidarietà nel mondo

The Italian equivalent – *desidera approfondire il carattere democratico e trasparente della vita pubblica* – sounds relatively natural and would seem to fit comfortably within the typically rhetorical style of Italian national politics, and perhaps of ‘continental’ European politics in general. On the contrary, in the English version the idea of ‘deepening the nature’ of something would seem to be rather alien to the more pragmatic British way of thinking, even in the Preamble to a Treaty, which is practically the only context where grandiloquence is permissible in a legal text. Similarly, terms such as *trasparente* and *vita pubblica* seem to possess a greater sense of naturalness as part of the everyday lexicon of Italian political and institutional life than their English equivalents, namely, *transparent* and *public life*. It may be no coincidence that the term *transparency* is included among the terms deemed as constituting ‘Eurojargon’, and thus requiring further explanation, at the EU’s official website: «The term ‘transparency’ is often used to mean openness in the way the EU institutions work. The EU institutions are committed to greater openness»<sup>41</sup>.

Another case of ‘unnatural’ language use can be found in Article I-22, para. 2, concerning the European Council:

2. The President of the European Council:  
a) shall chair it and drive forward its work

2. Il presidente del Consiglio europeo:  
a) presiede e anima i lavori del Consiglio europeo

In this case neither the English phrase *drive forward its work* with its machinery-based metaphor (President as driver/activator) nor the Italian equivalent *anima i la-*

<sup>41</sup> Europa: the Gateway to the European Union 2006.



*vori* with its life-enhancing metaphor (President as inspirer/bringer of life) seems characteristic of legal English or legal Italian.

7. Besides these cases of ‘unnatural’ language, terms are sometimes used which may not necessarily sound unnatural but which do not correspond exactly to the same concept in another version, as is the case with the expression *la grande avventura* in the Preamble, as is highlighted by Sala<sup>42</sup>:

CONVINCED that, thus “United in diversity”, Europe offers them the best chance of pursuing, with due regard for the rights of each individual and in awareness of their responsibilities towards future generations and the Earth, the great venture which makes of it a special area of human hope

CERTI che, “Unita nella diversità”, l’Europa offre ai suoi popoli le migliori possibilità di proseguire, nel rispetto dei diritti di ciascuno e nella consapevolezza delle loro responsabilità nei confronti delle generazioni future e della Terra, la grande avventura che fa di essa uno spazio privilegiato della speranza umana

*Venture* implies the idea of ‘enterprise’, of something requiring effort, whereas *avventura* downplays the idea of effort while stressing the idea of something new and exciting, as does the English term *adventure*. *Impresa* would probably have been a more appropriate rendering of *venture* here. Perhaps the drafters of the Italian version were eager to avoid any residuum of the commercial connotations that the term *impresa* usually tends to have in most legal contexts. It is worth noting, en passant, that the French version is rendered as *grande aventure* and the Spanish version is similarly rendered as *gran aventura*. It has been suggested that the translational choice in Italian (and in other neo-Latin languages) would be more appropriate within a literary or narrative context<sup>43</sup> rather than in a prescriptive legal text.

It is interesting to note the preference of *child/children* (occurring respectively seven and six times) to *minor* (0 occurrences) in the English version, whereas in the Italian version *minore/minori* (occurring respectively in five and four instances) is used rather than *bambino/bambini*. The adjective *minorile* is used in Art. II-92, as we read below:

Prohibition of child labour and protection of young people at work. The employment of *children* is prohibited.

Divieto del lavoro minorile e protezione dei giovani sul luogo di lavoro. Il lavoro *minorile* è vietato.

<sup>42</sup> SALA M., *Equivalence and discrepancies ... cit.*, p. 154; ID., *Versions of the Constitution for Europe ... cit.*, p. 150 ss.

<sup>43</sup> SALA M., *Equivalence and discrepancies ... cit.*, p. 165.

The words *child/children*<sup>44</sup> occur 13 times in English vs 11 times for *minore/minori/minorile* in Italian, the numerical discrepancy being because art. 74 and art. 93 refer respectively to the adoption of a child and to the education and teaching of children, which in Italian is rendered as *figlio/figli*. It has been argued<sup>45</sup> that the noun *minori* is more lexically and semantically accurate than the English noun ‘children’, having as referent people up to the age of eighteen, whereas ‘children’ has a more opaque meaning, at least as to the duration of such a state. Furthermore, the cluster *diritti dei minori* is a standard form in Italian legal lexis, whereas its literal transposition as *diritti dei bambini* might sound inappropriate and ambiguous within a normative text (*ibid.*). However, it should be borne in mind that *child/children* (rather than *minor*) tend to be the most commonly used terms in legal texts both in international law (e.g. the 1989 UN *Convention on the Rights of the Child*) and in national law (e.g. the UK’s *Children Act 2004*)<sup>46</sup>.

8. After this comparative analysis of the two versions of the EU Constitution we can confirm that, even if the text is largely free of ‘Eurojargon’ and of cases of ‘translationese’, it is essentially unreadable to anyone except a legal expert, with the English version coming over as being rather more archaic and more overtly prescriptive in tone than the Italian version. We can hardly affirm, then, as was said of the American Constitution during the ratification debates in 1787-88, that «It is an excellency of this Constitution that it is expressed with brevity, and in the plain, common language of mankind»<sup>47</sup>.

Referring to the participatory public meetings held while the final draft version of the South Africa Constitution was being drafted, Hassen Ebrahim, Executive Director of the Constitutional Assembly, observes that «constitutions are about basic values affecting society and should be understood by even the least educated. It was a humbling experience to realise that constitutional debates and issues are not only the domain of the intellectual elite, but that they belong to

<sup>44</sup> Less ‘technical’ terms are also preferred in the French and Spanish versions, where, respectively, *enfant/s* and *niño/s* are used.

<sup>45</sup> SALA M., *Equivalence and discrepancies ...* cit., p. 171; ID., *Versions of the Constitution for Europe ...* cit., p. 154.

<sup>46</sup> The problem of how to render the term in Italian was raised with the 1989 UN *Convention on the Rights of the Child* which was ratified by Italy on 27 May 1991 with law no. 176 (*Convenzione sui diritti dell’infanzia*). The Italian translation for *child* in the text is the rather old-fashioned *fanciullo*, a term that UNICEF-Italia is evidently unhappy with: «*Secondo la definizione della Convenzione sono ‘bambini’ (il termine inglese ‘children’, in realtà, andrebbe tradotto in ‘bambini e adolescenti’) gli individui di età inferiore ai 18 anni (...)*» («According to the definition of the Convention ‘bambini’ (the English term ‘children’ should in fact be translated as ‘bambini e adolescenti’) are persons of below 18 years of age (...)» See <http://www.unicef.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/51>.

<sup>47</sup> Said by ELLSWORTH O., one of the framers of the Constitution who later became Lord Chief Justice of the United States. See [http://www.lexrex.com/enlightened/AmericanIdeal/aspects/limited\\_gov\\_sc.htm](http://www.lexrex.com/enlightened/AmericanIdeal/aspects/limited_gov_sc.htm).

everyone»<sup>48</sup>. One must naturally bear in mind the context in which the South Africa Constitution was written, following decades of apartheid and violence imposed by a ruling class on a society lacerated by racial discrimination. Certain parallels can be made with the climate in which Italy's Constitution was drafted: the pressing need was felt to start afresh and draw a line with respect to the Fascist period which had not only led to war and destruction but had profoundly divided the nation. Fortunately, the citizens of the European Union have experienced a long period of democracy, peace and prosperity following two self-inflicted World Wars. But there can be no denying that the drafting of the EU Constitution took place without actively involving the vast majority of its citizens in whose name it was supposedly written, and without making any tangible effort to produce a user-friendly document. Simply to read through the text from start to finish – even without the 400 pages of appendixes and protocols – requires a great deal of time, patience and a good working knowledge of legal language and of EU institutions. And while no legal document is ever read for pleasure, undoubtedly more effort could have been taken to draft a more concise and readable text if the aim of EU leaders was to persuade people that a European Constitution was worth having by producing a text that would «end up in their readers' brains rather than their bins»<sup>49</sup>.

That said, we are of course aware that the task of the Constituent Assembly is in many ways a thankless one insofar as the final draft must necessarily be a rather bland text that will not arouse fierce disagreement among the various political factions and interest groups of the 25 (now 27) Member States. As it stands there has been widespread protest in certain quarters about the absence of any explicit reference to Christianity, with only a generic mention in the opening recital of the Preamble of the *cultural, religious and humanist inheritance of Europe/eredità culturali, religiose e umanistiche dell'Europa*, a far cry from the 'fundamentalist' opening recital of the Preamble of Ireland's Constitution of 1937 still in force today:

In the name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred, We, the people of Ireland, humbly acknowledging all our obligations to our Divine Lord, Jesus Christ [...] Do hereby adopt, enact, and give to ourselves this Constitution<sup>50</sup>.

It should also be recognized that, even if the EU Constitution were rewritten and made concise and readable, it would still be ignored and unread by the vast majority of the EU's citizens.

<sup>48</sup> EBRAHIM H., op. cit. This passage is also highlighted in MBEKI T., *Our Constitution reflects the values of the people* at <http://www.anc.org.za/ancdocs/anctoday/2004/at10.htm>.

<sup>49</sup> WAGNER E., op. cit.

<sup>50</sup> The text can be found at [http://www.oefre.unibe.ch/law/icl/ei00000\\_.html](http://www.oefre.unibe.ch/law/icl/ei00000_.html).

Nevertheless, we can conclude by surmising that the drafting of the EU Constitution, in retrospect, was perhaps a missed opportunity for involving the citizens of the Member States more directly in the law-making process. If the end result of the current 'period of reflection' is to redraft a Constitution along the principles of Plain language, thereby genuinely enabling the citizens of the EU to "forge a common destiny", then not all will have been lost.