

Lessons from multilingual legislation

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Contract drafters can learn from the experience of legislators who work in several languages. The European Union publishes its legislation in all its official languages, which are equally authentic. In the *CILFIT* judgment of 1982, the Court of Justice stated that the interpretation of a provision of Union law involves a comparison of the different language versions, that Union law uses terminology peculiar to it and that legal concepts do not necessarily have the same meaning in Union law and in the laws of the member states. Where language versions diverge, the Court interprets the provision by reference to the purpose and general scheme of the rules of which it forms part. This method resembles the approach of the Swiss Federal Supreme Court to the three language versions of federal law.¹

International treaty law provides a further model. Article 33 of the Vienna Convention on the Law of Treaties provides that a treaty authenticated in two or more languages is equally authoritative in each language unless the treaty provides otherwise. It establishes a presumption that the terms have the same meaning in each authentic text. Where a comparison reveals a difference of meaning that the ordinary rules of interpretation do not remove, the meaning that best reconciles the texts, having regard to the object and purpose of the treaty, is to be adopted. The double taxation agreements that Switzerland has concluded with Germany and France, which Part E discussed in their cross-border dimension, are examples of bilingual treaties to which these rules apply.²

The lesson for private contracts is that equally authentic versions can work within an interpretive framework that the parties accept and that a court or tribunal can apply. The Union and the international community have built such frameworks through autonomous concepts, purposive interpretation and a body of case law. Private parties seldom have that infrastructure. A contract that declares two versions equally authentic without saying what happens in case of divergence leaves the court with

the default rules of the governing law, which may or may not resemble the treaty rules. Drafters who prefer equal authenticity should therefore add a clause on the resolution of divergences, for example by reference to the purpose of the contract, to the version in which a clause was negotiated or to an agreed glossary.³

1 Notes

1. Case 283/81 CILFIT v Ministero della Sanità, judgment of 6 October 1982, [1982] ECR 3415, paras. 18 to 20. To be verified. ↩
2. Vienna Convention on the Law of Treaties of 23 May 1969, Art. 33. On the double taxation agreements between Switzerland and Germany (1971) and between Switzerland and France (1966), see the official texts in the Systematic Compilation of Federal Law. To be verified. ↩
3. On the transferability of the rules on multilingual treaties and Union law to private contracts, see the comparative literature on multilingual interpretation. To be verified. ↩

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