

Why multilingual contracts arise in the Basel region

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The most visible source of multilingual contracts in Basel is the life sciences industry. Roche, Novartis and the many biotechnology companies of the region license patents, know-how and compounds to and from partners in the United States, Asia and the rest of Europe, and the licence agreements, research collaborations and supply contracts that result are almost always drafted in English. A Swiss licensor may nevertheless need German or French versions of particular documents, for example when a contract must be filed with an authority, when an employee invention is concerned or when a court in a German-speaking or French-speaking jurisdiction must examine the agreement in a dispute. Part G of this book described the scale of this licensing activity.¹

Banking produces a second large body of multilingual documentation. Swiss banks that serve private clients from Germany, France and further afield issue general terms and conditions, custody regulations, account opening forms and credit agreements in several languages. These documents usually state that one language version, often German in Basel, prevails in case of discrepancy. Cross-border lending to companies in Baden and Alsace, trade finance for the chemical industry and the documentation of the Bank for International Settlements with its central bank customers add further layers, since each counterparty may expect documents in its own language or in English.²

Employment is a third field. Tens of thousands of frontier workers travel each day from Alsace and South Baden to workplaces in the cantons of Basel-Stadt and Basel-Landschaft. Their employment contracts are mostly governed by Swiss law, yet the employees live under French or German law in many other respects. Their social security, taxation and family affairs connect their contracts with the legal systems of their home states. When an employer in Basel hires a French resident, the question whether the contract must be written in French, whether a German version suffices and

which version controls is of practical importance, as later sections of this chapter show.³

Real estate is a fourth field. Investors and private persons from Basel buy houses, apartments and commercial property in Alsace and Baden, while French and German residents occasionally acquire property in the Basel cantons within the limits of the federal legislation on the acquisition of real estate by persons abroad. A purchase of land in France is concluded before a French notaire in French, a purchase in Germany before a German notary who records the deed in German or, where the conditions of the Notarisation Act are met, in another language, and a purchase in Basel before a Basel notary in German. Buyers who do not master the language of the deed rely on translations and interpreters whose role the law regulates in detail.⁴

Finally, trade and corporate transactions of every kind cross the borders of the Dreiländ. Mergers and acquisitions involving family companies in Baden, joint ventures with French partners, distribution agreements for consumer goods and logistics contracts for the Rhine ports all involve parties who think and negotiate in different languages. English has become the neutral language of many of these transactions, even where no party is a native English speaker, because it avoids the impression that one side has imposed its own language and its own legal culture on the other. That neutrality is partly an illusion, since English legal vocabulary carries the concepts of the common law into contracts governed by Swiss, German or French law, a problem that later sections examine.⁵

1 Notes

1. On licensing and collaboration agreements in the Basel life sciences cluster, see Part G of this book. On the use of English as the working language of pharma groups, see chapter III of this Part. To be verified. ↩
2. On cross-border banking from Basel, see Part E of this book. The practice of Swiss banks to designate a prevailing language version in their general terms is common but varies between institutions. To be verified. ↩
3. On frontier workers in the Basel region, see Part H, chapter II of this book. Numbers of frontier workers are published quarterly by the Federal Statistical Office in its frontier worker statistics. Figures to be verified. ↩

4. On the acquisition of real estate by persons abroad in Switzerland, see the Federal Act on the Acquisition of Real Estate by Persons Abroad (Lex Koller, SR 211.412.41). On foreign-language deeds in Germany, see §§ 5 and 16 of the Beurkundungsgesetz. To be verified. ↩
5. On English as a lingua franca in international contracts and the importation of common law concepts into civil law contracts, see the comparative literature on "contracts in English under civil law". Specific titles to be verified. ↩

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