

Article 18 CO and the interpretation of multilingual contracts

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The interpretation of contracts under Swiss law begins with Art. 18(1) CO. Its Italian text reads: "Per giudicare di un contratto, sia per la forma che per il contenuto, si deve indagare quale sia stata la vera e concorde volontà dei contraenti, anziché stare alla denominazione od alle parole inesatte adoperate per errore, o allo scopo di nascondere la vera natura del contratto." (In assessing a contract, both as to form and content, the true and common intention of the parties must be ascertained, without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement.)¹ The Federal Supreme Court applies this provision in two steps. It first seeks the actual common intention of the parties (subjective interpretation). If that cannot be established, it interprets the declarations as each party could and should have understood them in good faith in the circumstances (objective interpretation under the principle of reliance).² In a multilingual contract the language versions are part of the circumstances. A court may conclude that the parties shared the meaning of one version, or that one party could reasonably understand the text only through the version in its own language.

Italian law follows a similar method. Article 1362 c.c. requires the judge to "indagare quale sia stata la comune intenzione delle parti e non limitarsi al senso letterale delle parole" and to take into account the overall conduct of the parties, including conduct after the conclusion of the contract.³ Article 1370 c.c. adds that clauses in standard forms prepared by one party are interpreted, in case of doubt, in favour of the other party. Swiss law reaches a similar result through the ambiguity rule (*regola dell'ambiguità, in dubio contra stipulatorem*), which the Federal Supreme Court applies to general terms and conditions.⁴ In both legal orders an ambiguous translation prepared by a bank or a professional party is therefore

construed against that party. This is the main reason why banks in Lugano invest in careful Italian versions of their documentation.

1 Discrepancies in federal legislation and the Federal Supreme Court

Discrepancies arise in statutes as well as in contracts. Because the three language versions of federal enactments are equally binding under Art. 14(1) of the Publications Act, no version prevails automatically. The Federal Supreme Court interprets divergent versions by examining all of them together with the history, the system and the purpose of the provision. It gives preference to the version that best expresses the true meaning of the rule.⁵ For the Italian-speaking practitioner this method has a double consequence. He may invoke the Italian version as binding law, but he cannot rely on it alone when the German and French versions point in another direction, because the court will look for the meaning common to all three.

The Financial Services Act offers a recent example of a discrepancy relevant to Lugano's banks. Article 9(2) FinSA provides in German that *Finanzdienstleister* (financial service providers) shall make the key information document available free of charge to their retail clients before subscription or the conclusion of the contract. The Italian version, both in the official publication of 2019 and in the current text, names the *fornitori di strumenti finanziari* (providers of financial instruments), an expression that the Act does not define. Its own definitions in Art. 3 speak of *fornitori di servizi finanziari* (letter d) and of *produttori*, the persons who create financial instruments (letter i).⁶ Read in isolation, the Italian text could be taken to place the obligation on whoever supplies the instrument, which brings the producer or the offeror to mind, while the German text places it on the provider of the financial service. The system of the Act, which assigns the duty to prepare the document to the producer in Art. 58(1) and the duty to deliver it to the provider in Art. 9(2), supports the German reading. A Ticinese practitioner who advises on the Italian version alone could thus mislead a client about who must hand over the document.

2 Notes

1. CO, Art. 18(1), Italian text at <https://www.droit-bilingue.ch/en-it/2/22/220-18-22.html>; the English rendering follows the unofficial English translation of the Federal Chancellery reproduced on the same page. ↩

2. Consistent case law of the Federal Supreme Court since BGE 132 III 268, consid. 2.3.2, and BGE 138 III 659, consid. 4.2.1. ↩
3. Brocardi.it, "Art. 1362 Codice civile – Intenzione dei contraenti", <https://www.brocardi.it/codice-civile/libro-quarto/titolo-ii/capo-iv/art1362.html>. ↩
4. Codice civile, Art. 1370 ("Le clausole inserite nelle condizioni generali di contratto o in moduli o formulari predisposti da uno dei contraenti s'interpretano, nel dubbio, a favore dell'altro"), Brocardi.it, <https://www.brocardi.it/codice-civile/libro-quarto/titolo-ii/capo-iv/art1370.html>. Swiss ambiguity rule: case law on Art. 18 CO. ↩
5. Publications Act, Art. 14(1) (above). On the method of interpreting divergent language versions see Ernst A. Kramer, *Juristische Methodenlehre*, 6th ed. (Bern 2019), chapter on grammatical interpretation, and the consistent practice of the Federal Supreme Court. ↩
6. Federal Act of 15 June 2018 on Financial Services (Financial Services Act, FinSA), SR 950.1, Art. 9(2), German and Italian texts at <https://www.droit-bilingue.ch/de-it/9/95/950.1-9-12.html> ("Die Finanzdienstleister stellen ihren Privatkundinnen und -kunden das Basisinformationsblatt [...] zur Verfügung"; "I fornitori di strumenti finanziari mettono il foglio informativo di base gratuitamente a disposizione dei clienti privati"); the Italian wording already appears in the original publication in the Official Compilation, <https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/oc/2019/758/it/pdf-a/fedlex-data-admin-ch-eli-oc-2019-758-it-pdf-a.pdf>, which defines fornitori di servizi finanziari in Art. 3(d) and produttori in Art. 3(i) and places the duty to prepare the document on the produttore in Art. 58(1). English text at <https://www.droit-bilingue.ch/en-it/9/95/950.1-9-12.html>. ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/lugano-article-18-co-and-the-interpretation-of-multilingual-contracts