

Equality in practice: three tests

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The equality of Italian can be measured by three tests that the practitioner can apply. The first is simultaneity, meaning that the Italian versions of new federal legislation appear at the same time as the German and French versions. The Publications Act and the Languages Act require this, and in the publication of enactments the Confederation generally meets the requirement. The second is quality, meaning that the Italian version expresses the same rule as the other versions in correct Swiss Italian legal terminology. Here the record is good but not perfect, as the case law on divergences and the reports submitted to the *Sportello* of the Forum per l'italiano in Svizzera show.¹ The third is presence, meaning the use of Italian in the preparation of policy, in consultation processes, in explanatory materials and in the supervisory practice of agencies such as FINMA. Here the evidence on the federal administration's working languages shows the greatest gap.²

The three tests produce a mixed result. The Italian-speaking citizen has the law in his language and can litigate in his language before the federal courts. He is less certain to find the explanatory reports, guidance notes and supervisory communications that accompany the law in his language, and he is less likely than his German-speaking compatriot to find an official in a federal office who conceived the rule in his language. For the financial centre of Lugano, which depends on federal regulation, this last gap means that the practical interpretation of new rules is often shaped in German and French discussions before it reaches Italian-speaking practitioners.

1 The financial centre's interest in language equality

The financial centre of Lugano has a direct interest in the equality of Italian. Its competitive position, analysed in Parts E and K, rests partly on its ability to serve Italian clients in their language under Swiss law. That ability presupposes that Swiss law exists in good Italian, that the courts decide in

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Italian and that the supervisory authority communicates in Italian. Every step towards a federal practice that treats Italian as a translation language weakens that position. Every step that strengthens Italian, from the raised target for Italian speakers in the federal administration to the promotion of Italian outside Ticino, supports it.

The Geneva volume has shown how the French language made Geneva the natural financial centre for French-speaking clients from France, Belgium, Africa and the Middle East. The comparison has limits. French is the language of a quarter of the Swiss population and of a strong international community, while Italian is spoken by about one Swiss resident in twelve and has a smaller international reach. The comparison nevertheless shows the same mechanism. A financial centre that can offer clients the law, the courts and professional advice in their own language, within a stable legal order, has an advantage that cannot easily be replicated by competitors who offer only English. For Lugano, the equality of Italian in federal law is the legal foundation of that advantage.

For the practitioner. - Use the Italian version of federal law as an authentic text, and compare it with the German and French versions in any matter where the wording is decisive. - Check whether supervisory documents, circulars and guidance are available in a current Italian version before relying on them, and cite the version actually consulted. - In contracts with Italian-speaking clients, provide an Italian version and include a clause on the prevailing language when several versions exist. - Consider the language consequences of a choice of forum: the language of proceedings follows the official language of the court. - Report errors in Italian versions of federal texts to the competent language service or to the *Sportello* of the Forum per l'italiano in Svizzera, since uncorrected divergences become questions of litigation.

2 Notes

1. Devinat and Pichonnaz (above), on BGE 127 III 548; Forum per l'italiano in Svizzera, home page (above), on the Sportello for translation problems in federal and cantonal documents. ↩
2. laRegione, 17 November 2020 (above). ↩

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