

Language, Terminology and Trust: Swiss Italian and Italian Legal Language — overview and summary

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A Milanese lawyer who reads a Swiss contract written in Italian recognizes every word and still misreads a good part of it. The document speaks of a *società anonima* where she would expect a *società per azioni*, of *gerenti* where Italian law knows only *amministratori*, of a *precetto esecutivo* that has nothing to do with the *atto di precetto* of the Italian Code of Civil Procedure, and of a *Ministero pubblico* that turns out to be the cantonal prosecution service. The grammar is Italian, the spelling is Italian and most of the vocabulary is Italian. The legal concepts behind the words, however, belong to the Swiss Civil Code, the Swiss Code of Obligations and the Federal Act on Debt Enforcement and Bankruptcy, which were drafted in German and French and translated into Italian for a small minority of the Confederation. The Ticinese reader of an Italian contract meets the same problem in reverse. For the financial centre of Lugano, whose business consists largely of Italian clients, Italian counterparties and Italian assets administered under Swiss law, this double vocabulary is a daily working condition and a recurring source of error.

This chapter asks how far the Italian language actually unites Lugano with Milan in legal matters, and where it divides them while appearing to unite them. Its argument is that Swiss Italian legal language is a separate technical language, which shares its grammar with the language of the Italian Republic but takes its concepts from Swiss federal law. Identical words often carry different meanings. Different words often carry the same meaning, while some Swiss institutions have no Italian counterpart at all. A practitioner who treats the two as interchangeable creates documents that are ambiguous in Switzerland, unenforceable in Italy or both. One who masters the differences turns the language into an asset, because the Italian-speaking lawyer, notary, fiduciary and relationship manager in Lugano is the professional best placed to translate concepts as well as words between the two legal orders.

The chapter begins with the origins and the status of Swiss Italian legal language and then presents a comparative table of false friends. Three sections examine the most important divergences in detail: company and commercial law; debt enforcement, courts and prosecutors; and property, security, succession and public law. Further sections treat translation risk in contracts, wills, powers of attorney and corporate documents, the technique of bilingual and trilingual drafting, notarial instruments, apostilles and certified translations, and the place of language in banking documentation and in the daily work of Lugano's banks and law firms. A section on terminology resources with a drafting checklist closes the substantive part. Chapter J.I has described Italian as a national and official language of the Confederation, and Chapter J.II the federal and cantonal courts that judge in Italian. The present chapter builds on both and concludes Part J.

1 Conclusion

Swiss Italian and the Italian of the Italian Republic are one language and two legal languages. The Swiss vocabulary arose from the translation of federal codes drafted in German and French and has been shaped by the cantonal institutions of Ticino. Because the three language versions of federal law are equally binding, the Swiss Italian terms carry the full authority of the statute in Switzerland. Many of them coincide in form with terms of Italian law and differ in content. The *società anonima* and the *società a garanzia limitata*, the *gerente* and the *procuratore*, the *precetto esecutivo* and the *pretore*, the *Ministero pubblico*, the *fideiussione*, the *diritto di compera*, the *porzione legittima* and the *contratto successorio* all have Italian look-alikes or counterparts that lead the unwary reader into another legal order. Other institutions, such as the *patriziato*, the *imposizione secondo il dispendio* or the *atto di carenza di beni*, have no counterpart at all.

The practical consequences are concrete. Suretyships drafted on the Italian model may be void under Swiss law, and contracts of succession valid in Ticino may be void in Italy. Powers of attorney may confer more or less authority than intended, and corporate documents may describe organs that the company does not have. The remedies are equally concrete. Drafters should decide which legal order governs a document and use its terminology consistently, explain foreign terms where they must appear, and add language clauses that fix a prevailing version and tie the legal terms to the statutes of the governing law. Notarial deeds circulate between the two countries through the apostille, which both have applied for decades, but Italian courts and Swiss register offices require translations and may examine the equivalence of foreign deeds. Banking documentation is safest

when it speaks the client's language, even where Swiss law does not require it.

For Lugano these differences are an opportunity. The financial centre lives from professionals who read Italian, German and English and who think in the concepts of Swiss law while understanding those of Italian law. Their linguistic and legal competence allows them to translate concepts as well as words, which is the service that Italian clients and Italian companies need when they hold assets, found companies, plan successions or litigate across the border. Those who master both vocabularies can use the common language to cross the border between the two legal orders safely.

2 In five sentences

Swiss Italian legal language is the Italian version of Swiss federal and cantonal law, binding on an equal footing with German and French under Art. 14(1) of the Publications Act, with concepts that are Swiss even where its words coincide with those of the Italian Republic. False friends such as *società anonima* and *società per azioni*, *precetto esecutivo* and *atto di precetto*, *procura* in Art. 458 CO and *procura* in Italian usage, *pretore*, *Ministero pubblico* and *fideiussione* cause void securities, misread powers and wrong procedural reactions. Translation risk is greatest in suretyships, wills and contracts of succession, powers of attorney and corporate documents, where a term of the wrong legal order can change or destroy the legal effect. Multilingual documents need language clauses with a prevailing version and a rule tying legal terms to the governing law, because Swiss and Italian courts both look for the common intention of the parties and construe ambiguous standard terms against their author. Apostilles under the Hague Convention, sworn translations for Italian courts, the language rules of the Commercial Register Ordinance and Art. 89 FinSO for key information documents form the formal framework, while the trilingual competence of Lugano's professionals turns the double vocabulary into a professional asset.

3 Conclusion of Part J

Part J has treated the Italian language as part of the infrastructure of Lugano's financial centre, the counterpart to the Geneva volume's part on the French language. Chapter J.I described Italian as a national and official language of the Confederation under Art. 4 and 70 of the Federal Constitution, the Languages Act of 2007 and its ordinance, and the equality of the three authentic language versions of federal law under Art. 14 of the Publications Act. It showed how the Italian language services of the Federal

Chancellery produce the Italian text of federal law, how the Italian-speaking minority is represented in the federal institutions, and why language is a condition of access to justice for the inhabitants of Ticino and the Italian-speaking valleys of Graubünden.

Chapter J.II turned to federal justice in Italian. It described the Federal Criminal Court in Bellinzona, operational since 2004 and complemented in 2019 by its Appeals Chamber, which judges in all three official languages the cases of money laundering, corruption and organized crime that fall under federal jurisdiction. The chapter examined the rules on the choice of the language of proceedings, the landmark cases that have shaped the law of the financial centre, the cantonal courts of Ticino and the use of Italian in arbitration. Bellinzona gives the Italian language a weight in federal criminal justice that far exceeds the demographic share of Italian speakers. It also places Ticino at the centre of the prosecution of economic crime in Switzerland.

The present chapter has shown that the shared language with Italy is a double-edged instrument. It allows Lugano to serve Italian clients in their mother tongue and to work with Italian lawyers, notaries and courts without interpreters. At the same time, it conceals the differences between two legal orders behind identical words and requires a professional class that masters both vocabularies. Taken together, the three chapters show that Italian is a working infrastructure of Lugano's financial centre: a constitutional guarantee, a language of federal justice and a technical instrument of cross-border legal practice.

Whether this infrastructure will remain an advantage in the coming decade is a question for Part K. The demographic weight of Italian in Switzerland is declining slowly, English continues to spread as the language of finance, and automated translation tools promise to make linguistic competence cheaper and more widely available. Machine translation can render words, but it reproduces the false friends of this chapter unless it is trained on the concepts of both legal orders. Part K therefore assesses Lugano's competitive position against Milan, Monaco, Zurich, Geneva, Dubai and Singapore, develops scenarios for Ticino's financial centre to 2035 and asks how far the Italian-speaking competence that has defined Lugano for more than a century can remain its distinctive asset.

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