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Lost in Translation: Language and Cross-national Comparison in Industrial Relations

Pietro Manzella *

1. Framing the Issue

Comparative research is universally regarded as a fascinating but challenging task, among others because of the relevance of the national differences stemming from distinct historical, economic, legal and cultural developments. Affording a comparative perspective might serve to identify a certain degree of correspondence among practices and processes in place in different contexts and to assess their effectiveness, particularly considering their applicability elsewhere, away from the original legal framework. Yet when engaging in comparative analysis, consideration ought to be given to those institutional changes in societies that are peculiar to each legal system. In so doing, many problems arise in terms of equivalence, as a number of authors have pointed out. Kahn-Freund¹ has posited that the variations in the organisation of power among different countries can prevent and even frustrate the transfer of legal institutions, thus affecting the effectiveness of comparison. This is because “even in very similar societies, the role played by law may be very different, owing to the tempo and the sequence of economic and political history”².

* Postdoc Research Fellow, University of Modena and Reggio Emilia (Italy). Email address: pietro.manzella@unimore.it.

¹ O. Kahn-Freund. On Uses and Misuses of Comparative Law. *The Modern Law Review*, 37(1), 1-27, 1974.

² O. Kahn-Freund. Collective Bargaining and Legislation, Complementary and Alternative Sources of Rights and Obligations. In M. Rheinstein, E. von Caemmerer, S. Mentschikoff, K.

In a similar vein, Sacco has defined comparison as the measurement of the existing differences between a multiplicity of legal models. He has also pointed out a number of issues originating from comparative research, among others the language challenge, warning that “one of the most serious problems in comparison is the translation of linguistic terms expressing legal concepts”³.

Naturally, the challenges emanating from comparative analysis have been a contentious and debated issue also in the discipline of industrial relations. Much has been written about the struggle resulting from contrasting practices pertaining to different industrial relations systems. Remarkably, comparative scholars in this domain have been mostly concerned with the implications ensuing from the lack of equivalence between IR concepts (Bamber and Lansbury, 1987⁴; Bean, 2004⁵; Blanpain and Colucci, 2002⁶; Hyman, 2007a⁷, 2007b⁸, 2009⁹; and Kaufman, 2004¹⁰, among others). The main problem is to come to terms with unfamiliar notions and compare them with local institutions, in other words “engaging in the double effort to make the strange familiar and the familiar strange”¹¹, as Hyman has argued. This complexity is also due to the resistance of distinctive national research patterns to universalization or modernization, notwithstanding “the

Zweigert (eds). In *Ius Privatum Gentium: Festschrift Für Max Rheinstein Zum 70. Geburtstag Am 5. Hamburg: Mohr Siebeck, 1024-1042, 1969, 1024.*

³ R. Sacco. Introduzione al Diritto Comparato. In R. Sacco (ed.) *Trattato di Diritto Comparato*. Torino: UTET, 28-41, 1992, 14. Original quotation “Uno dei problemi maggiori della comparazione è la traduzione delle espressioni linguistiche che esprimono i concetti giuridici”.

⁴ G.J. Bamber, R.D. Lansbury, N. Wailes (eds.). *International and Comparative Industrial Relations*. London: George Allen and Unwin, 2011.

⁵ R. Bean (ed.). *Comparative Industrial Relations: An Introduction to Cross-national Perspectives*. 2nd ed. London: Thomson, 2004.

⁶ R. Blanpain, M. Colucci. *European Labour and Social Security Law Glossary*. The Hague: Kluwer Law International, 2002.

⁷ R. Hyman. How Can Trade Unions Act Strategically? *Transfer: European Review of Labour and Research*, 13(2), 193-210, 2007a.

⁸ R. Hyman. An Anglo-European Perspective on Industrial Relations Research. *Arbetsmarknad & Arbetsliv*, 13(3-4), 29-41, 2007b.

⁹ R. Hyman. How Can We Study Industrial Relations Comparatively? In R. Blanpain (ed.) *The Modernization of Labour Law and Industrial Relations in a Comparative Perspective – The Bulletin of Comparative Labour Relations*. The Netherlands: Kluwer Law International, 3-23, 2009.

¹⁰ B. Kaufman. *Theoretical Perspectives on Work and the Employment Relationship*. Champaign IL: Industrial Relations Research Association, 2004.

¹¹ R. Hyman. Words and Things: The Problem of Particularistic Universalism. In J.C. Barbier, M.T. Letablier (eds.) *Comparaisons internationales des politiques sociales, enjeux épistémologiques et méthodologiques/Cross-national Comparison of Social Policies: Epistemological and Methodological Issues*. Brussels: Peter Lang, 191-208, 2005, 206.

increasing convergence of employment institutions and practices throughout the advanced industrialized world and despite the increasing international communication and interaction among the research communities”¹².

Yet only a limited number of academics have concerned themselves with the translation issues stemming from comparative research in industrial relations (Blanpain and Baker, 2010¹³; Bromwich, 2006¹⁴; Hyman, 2005¹⁵; Manzella, 2012¹⁶; 2007b¹⁷; Schregle, 1981¹⁸; and Singam and Koch, 1994¹⁹). The language challenge in IR deserves far more attention, because “we cannot take things, and specially institutions, at face value”²⁰, and because “serious comparative research requires the capacity at least to read the languages of the countries covered”²¹.

The domain of industrial relations is particularly sensitive to developments in society, which are reflected in language and translation. Echoing Kelly and his reference to a proliferation of new terminology²², new words are coined by social actors and enter IR discourse to reflect newly established practices. Naturally, the reverse is also the case; many terms employed in the past to denote certain institutions fail to stand the test of time and their usage is discontinued, along with the realities they were meant to define.

Responsiveness to social changes and the lack of correspondence between the notions contrasted complicate the work of IR scholars, who have to go the extra mile to appreciate policies and notions in place overseas. The problem is further compounded in cross-national comparison, as terminology

¹² C. Frege. *Employment Research and State Traditions. A Comparative History of Britain, Germany and the United States*. New York: Oxford University Press, 2007, 18.

¹³ R. Blanpain, J. Baker (eds.). *Comparative Labour Law and Industrial Relations in Industrialized Market Economies*. The Hague: Kluwer, 2010.

¹⁴ W. Bromwich. Lessico negoziale, contesto culturale e processi comunicativi nello sciopero nei servizi essenziali a New York. *Diritto delle Relazioni Industriali*, (XVI)2, 414-426, 2006.

¹⁵ Hyman 2005, *op cit*.

¹⁶ P. Manzella. *Analyzing Corporate Discourse in Globalized Markets: the Case of FIAT*. Saarbrücken: LAP, 2012.

¹⁷ Hyman 2007b, *op cit*.

¹⁸ J. Schregle. Comparative Industrial Relations: Pitfalls and Potential. *The International Labour Review*, 120(1), 15-30, 1981.

¹⁹ P. Singam, K. Koch. Industrial Relations – Problems of German Concepts and Terminology for the English translator. *Lebende Sprachen*, 39(1), 158–162, 1994.

²⁰ J. Rojot. Future Directions for Labor Law Scholarship and International Collaboration, *Comparative Labour Law and Policy Journal*, 28(3), 583 – 590, 2007, 583.

²¹ R. Gumbrell-Mc Cormick, R. Hyman. *Trade Unions in Western Countries. Hard Times, Hard Choices*. Oxford: Oxford University Press, 2013, VIII.

²² E.J. Kelly, *Rethinking Industrial Relations: Mobilisation, Collectivism and Long Waves*. New York: Routledge, 1998.

and translation issues might render the meaning of the concepts under scrutiny even more obscure. This aspect further upholds the arguments made by Hyman, who stresses the need to recognize the problems that language poses in comparative research, since “institutional realities differ cross-nationally and hence cross-linguistically”²³. While necessary, reliance on official sources might at times prove misleading, as IR practices are culture-bound and their rendition can be problematic either in linguistic or conceptual terms. Therefore, IR practitioners have to deal with the complexity of national institutions and concepts, and when engaging in international and comparative research, translation issues also need to be addressed.

This is precisely the argument maintained in this paper. In an awareness of the linguistic pitfalls posed by cross-national comparison in industrial relations, the aim of the present contribution is to scrutinise a number of EU documents and their official translation to cast light on instances of ambiguous rendition of IR concepts. The findings will contribute to filling the research gap concerning the language question in comparative industrial relations, bringing to the fore the role that translation has come to play in this domain.

Methodologically, the paper will explore a number of legal texts and contrast them with their official translations made available by the European Union on the EUR-lex website.²⁴ Due to space constraints and although the EUR-lex service provides access to official documentation in 24 languages, this research will focus only on those documents produced in English and Italian.

2. Translation Pitfalls in Comparative Industrial Relations: Some Instances from EU Official Documentation

Addressing the equivalence of source and target legal texts, Wagner, Bech, and Martínez²⁵ maintain that:

The clarity of language used in Council documents leaves considerable room for improvement [...]. This [the drafting of documents] is certainly a very difficult task because compromises can very often only be achieved by using somewhat ambiguous language.

²³ Hyman 2009, *op cit.*, 4.

²⁴ EUR-lex (Search Screen), 2004. Available at <http://eur-lex.europa.eu/advanced-search-form.html?action=update&qid=1411453236913> (Accessed on 30 October 2014).

²⁵ E. Wagner, S. Bech, J. Martínez (eds.). *Translating for the European Union Institutions*. New York: Routledge, 2014, 193.

The authors made a compelling argument, in that striking a balance between languages and culture-bound concepts might prove challenging. This is especially evident in the disciplinary domain of industrial relations, and this aspect provides the backdrop for the following issues to be examined in this paper. First, and as already stressed, comparing industrial relations (IR) practices across borders often gives rise to the need for translation, adding a further level of complexity. There is room for debate about the extent to which culturally specific concepts can be rendered in another language, as words reflect national and historical experiences and a literal translation would in most cases be inadequate.

Second, IR discourse is replete with terminology adopted as the result of negotiation. This is because the battle of ideas is often carried forward through a battle of words²⁶, either in the form of collective bargaining, social dialogue or tripartite ‘concertation’, consisting of practices that differ cross-nationally and cannot be fully appreciated unless they are contextualized. This proposition leads to the third issue, the contention that not all concepts and practices can be translated, for in some cases they do not exist in other IR systems, and what may appear to be comparable processes may in fact denote something different. The rendering of similar concepts in different languages becomes especially problematic when the concepts under examination do not have a counterpart in the target system, as they are context-bound and culture-bound.

In light of the foregoing, some evidence will be given in the following pages of the problematic nature of translation in some official texts. Although the translated terms are subject to critical scrutiny, it is not the intention here to engage in *Schadenfreude*: rather, the following examples will be employed to reassert the role of language in comparative analysis, especially in industrial relations.

2.1 *Scatti di anzianità* - Automatic Seniority Increases

The first example surveyed is concerned with the notion of *scatti di anzianità*, that is the mechanism through which remuneration automatically increases according to one’s length of service. The translation of this expression into English might be problematic due to the Italian word *scatti* (“steps” in IR discourse). At times, this concept is translated as “advancement in step”²⁷.

²⁶ Hyman 2007a, *op cit.*

²⁷ Case T-496/93: Action brought on 5 August 1993 by A.-P. Allo against the Commission of the European Communities, 2, available at <http://eur-lex.europa.eu/legal->

Table 1 – Translation of *scatto di anzianità* into English in Official EU Texts (Example No. 1).

English Version	Italian Version
The applicant contests the decision of the Court of Justice which applied to him the disciplinary measure of deferment of advancement in step for a period of two years. [emphasis added]	Il ricorrente impugna la decisione della Corte di giustizia con cui gli è stata inflitta la sanzione della sospensione per la durata di due anni nell'avanzamento dello scatto di anzianità . [emphasis added]

Source: EUR-lex.

This rendering might be ambiguous in both conceptual and linguistic terms. The reference to the notion of “seniority” is missed in the English version; this might lead the reader to wonder about the object of suspension in the example under study. In addition, this expression does not appear to be idiomatic, thus a native speaker of English might have difficulty appreciating its meaning readily. In official EU publications, *scatti di anzianità* has been also rendered as “seniority in step”²⁸:

Table 2 – Translation of *scatto di anzianità* into English in Official EU Texts (Example No. 2).

English Version	Italian Version
Probationary officials - Appointment of a former member of the temporary staff - Maintenance of seniority in step - Principle of equality of treatment - Objection of illegality [emphasis added]	Dipendenti in prova – Nomina di un ex agente temporaneo – Mantenimento dello scatto di anzianità – Principio di pari trattamento – Eccezione di illegittimità [emphasis added]

Source: EUR-lex.

In this case, while the reference to one’s length of service is clear in both versions, the use of “seniority in step” is all but idiomatic, with English speakers who might be left perplexed as to the meaning of this expression.

[content/EN/TXT/?qid=1413204722368&uri=OJ:JOC_1993_272_R_0011_01](http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1413204722368&uri=OJ:JOC_1993_272_R_0011_01). (Accessed on 13 October 2014). The Italian version is available at http://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=OJ:JOC_1993_272_R_0011_01&qid=1413204722368&from=EN.

²⁸ *Judgment of the Court of First Instance of 4 March 1998 in Case T-146/96: Maria da Graça De Abreu v. Court of Justice of the European Communities (Probationary officials - Appointment of a former member of the temporary staff - Maintenance of seniority in step - Principle of equality of treatment - Objection of illegality)*, OJ C 113, 11.4.1998, 14, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=urisrv:OJ.C_1998.113.01.0014.03.ENG (Accessed on 15 October 2014). The Italian version is available at <http://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:C1998/113/36&from=IT>.

In order to maintain the original meaning and stick to the metaphorical sense provided in Italian, IR comparative scholars might consider using such expressions as “seniority step increases”, “seniority-based step increases”, or “automatic seniority increases”, which can be frequently found in IR discourse. Examples of this usage are given in a number of documents from the Organisation for Economic Co-ordination and Development (OECD):

[...] An intermediate first step could be to make the *seniority-based step increases* partially dependent on performance²⁹; (emphasis added)

[...] Remuneration of civil servants is based on a grading system with *step increases* due to seniority and promotions³⁰; (emphasis added)

They seem to better convey the idea and can be also understood by an international audience.

2.2 *Flessibilità in entrata/in uscita* – Flexibility in hiring and dismissal

Flessibilità in entrata and *flessibilità in uscita* are two expressions that are frequently found in Italian IR parlance. The former refers to flexibility at the time of hiring staff, whereas the latter is concerned with the provision of flexibility when making workers redundant. The English version of some official EU³¹ texts employs the terms “entry flexibility” and “exit flexibility” to designate these practices:

²⁹ OECD. *Economic Surveys: Luxembourg*. OECD Publishing: Paris, 2008, 92.

³⁰ OECD. *Economic Survey: France*. OECD Publishing: Paris, 1997, 57.

³¹ *Council Recommendation 2014/C 247/11 of 8 July 2014 on the National Reform Programme 2014 of Italy and delivering a Council opinion on the Stability Programme of Italy, 2014*, available at [http://eur-lex.europa.eu/legal-content/ENIT/TXT/?qid=1410443423831&uri=CELEX:32014H0729\(11\)&from=EN](http://eur-lex.europa.eu/legal-content/ENIT/TXT/?qid=1410443423831&uri=CELEX:32014H0729(11)&from=EN) (Accessed on 14 October 2014). The Italian version is available at [http://eur-lex.europa.eu/legal-content/ENIT/TXT/?qid=1410443423831&uri=CELEX:32014H0729\(11\)&from=EN](http://eur-lex.europa.eu/legal-content/ENIT/TXT/?qid=1410443423831&uri=CELEX:32014H0729(11)&from=EN).

Table 3 – Translation of *Flessibilità in entrata/in uscita* into English in Official EU Texts (Example No. 1).

English Version	Italian Version
Ensuring proper implementation and careful monitoring of the effect of the labour market and wage-setting reforms adopted is key to guaranteeing that the expected benefits in terms of enhanced exit flexibility , better regulated entry flexibility , a more comprehensive system of unemployment benefits and better alignment of wages on productivity materialise. [emphasis added]	Garantire una corretta attuazione e un attento monitoraggio degli effetti delle riforme adottate in relazione al mercato del lavoro e al quadro di contrattazione salariale è fondamentale per ottenere i benefici previsti in termini di maggiore flessibilità in uscita , di una flessibilità in entrata meglio regolamentata, di un sistema più integrato di sussidi di disoccupazione e di un migliore allineamento dei salari alla produttività [emphasis added]

Source: EUR-lex.

The translator here opted for a literal rendering to refer to the original concept. Indeed, “entry” and “exit” do refer to the Italian *entrata* and *uscita*, respectively. In other words, the reference is to those widely debated measures enabling more flexibility on the part of employers and workers when entering and exiting the labour market. Nevertheless, the attempt to maintain the metaphorical sense in English might adversely affect the understanding of the concepts under scrutiny, making their meaning opaque. The transposition of metaphor is a challenging task, as “the cultural differences can be enormous because each of the concepts in the metaphor [...] can vary widely from culture to culture”³².

Flessibilità in entrata and *flessibilità in uscita* are two interesting cases for they do not have a word-for-word equivalent in English. As we have seen, a literal translation would not convey the full meaning of these notions; therefore it is recommended that a different terminology be used. In the literature³³, the flexibility available to recruit or to make staff redundant is referred to as “flexibility in hiring” and “flexibility in dismissal”, respectively. These expressions are more idiomatic and seem to convey the meaning more adequately than “entry” and “exit” flexibility.

³² G. Lakoff, M. Johnson. *Metaphors We Live By*. Chicago: Chicago University Press, 1980, 142.

³³ Blank speaks of “insufficient flexibility in hiring and shedding of labour”. See R.M. Blank. *Social Protection vs Economic Flexibility: Is there a Tradeoff?*. Chicago: The University of Chicago Press, 2009, 83. In a similar vein, Heckman and Pages refer to “the greater flexibility in hiring and firing after the reform”. See J.J. Heckman, C. Pages (eds.). *Law and Employment: Lessons from Latin America and The Caribbean*. Chicago: The University of Chicago Press, 2004, 226.

“External” and “internal” flexibility are also frequently employed in the IR literature. One might note that, although less idiomatic, these terms are rapidly making inroads in IR discourse.³⁴ By way of example, De Búrca and Scott make use of “external” and “internal” flexibility, yet placing these words in brackets and explaining that “You could use these terms to denote a reform of redundancy law, a reduction of the costs of dismissals, a reduction in the protection of the social security system, or an exclusion of some groups of workers from a given piece of legislation”³⁵.

2.3 *Distacco* - Posting

Distacco refers to workers who are temporarily sent by their employers to another country to perform their tasks. In English-speaking countries, this practice is generally known as “posting”. Clause 1, Article 2 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the Posted Workers provides the definition of a “posted worker”:

for the purposes of this Directive, “posted worker” means a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works³⁶.

However, official EU documents are not always consistent with this terminology. In some cases, the word “secondment”³⁷ can be found:

³⁴ See P. Cappelli, D. Neumark. External Churning and Internal Flexibility: Evidence on the Functional Flexibility and Core-Periphery Hypotheses. *Industrial Relations: A Journal of Economy and Society*, 43(1), 148–182, 2004.

³⁵ G. De Búrca, J. Scott. *Constitutional Change in the EU: From Uniformity to Flexibility?* Oregon: Hart Publishing, 2000, 222.

³⁶ The Italian and English version of the Directive can be found at <http://eur-lex.europa.eu/legal-content/EN-IT/TXT/?uri=CELEX:31996L0071&from=EN> (Accessed on 20 October 2014).

³⁷ *Judgment of the Court of First Instance of 10 September 2008 — Gualtieri v Commission (2008/C 272/41)* available at <http://eur-lex.europa.eu/legal-content/EN-IT/TXT/?uri=CELEX:62006TA0284&from=EN>, bilingual display (Accessed on 22 October 2014).

Table 4 – Translation of *Distacco* into English in Official EU Texts (Example 1).

English Version	Italian Version
(Seconded National Expert - Subsistence allowances - Place of residence at the time of secondment - Objection of illegality of Article 20(3)(b) of the decision on Seconded National Experts - Principle of equal treatment) [emphasis added]	(Esperto nazionale distaccato - Indennità di soggiorno - Luogo di residenza al momento del distacco - Eccezione d'illegittimità dell'art. 20, n. 3, lett. b), della decisione sugli esperti nazionali distaccati - Principio della parità di trattamento) [emphasis added]

Source: EUR-lex.

According to the online version of the *Oxford Dictionary*, this terminology is predominantly used in the UK to refer to military officers, other officials or workers who “transfer temporarily to other employment or another position”³⁸, making the use of seconded workers acceptable to refer to posted workers.

One might also note that the increasingly use of Continental English on the one hand, and some ambiguous translations of official documents into English on the other hand, have provided this term with additional meanings. For instance in the Netherlands, the expressions “secondment contracts” or “secondment agreements” are adopted to refer to employment contracts concluded with temporary employment agencies. Clause 6, Article 7 of the Dutch Civil Code³⁹ sets forth that “The provisions of paragraph 1 up to and including 5 do not apply to an employment agency agreement (secondment agreement) as meant in Article 7: 690”. In the same vein, “The contractual relationship between the employer and the temporary worker is based on an employment contract or a secondment contract”⁴⁰.

The same can be said of another expression utilized in official EU documentation that is as recurrent as misleading, namely “detached workers”⁴¹:

³⁸ *The Oxford Dictionary* (Search Screen). Available at <http://www.oxforddictionaries.com/definition/english/second> (Entry: Secondment, accessed on 15 October 2014).

³⁹ The official English version of the Dutch Civil Code is available at <http://www.dutchcivillaw.com/legislation/dccitle771010.htm> (Accessed on 5 September 2014).

⁴⁰ Center for International Legal Studies. *The Comparative Law Yearbook of International Business*. London: Graham & Trotman/Martinus Nijhoff, 2011, 13.

⁴¹ *Common Position (EC) No 34/2003 of 20 March 2003 adopted by the Council, acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community, with a view to adopting a directive of the European Parliament and of the Council coordinating the procurement*

Table 5 – Translation of *Distacco* into English in Official EU Texts (Example 2).

English Version	Italian Version
Review procedures for alleged infringements of the procedural rules are already provided for in Directive 92/13/EEC and review procedures concerning detached workers are provided for under Directive 96/71/EC [emphasis added]	Tali procedure per presunte violazioni delle norme procedurali sono già contemplate dalla direttiva 92/13/CEE e le procedure di ricorso concernenti i lavoratori distaccati sono contemplate dalla direttiva 96/71/CE [emphasis added]

Source: EUR-lex.

“Detached worker” has now entered IR discourse and at times is used synonymously with “posted worker”⁴². By way of example, the Official Website of the U.S. Social Security Administration provides a definition of detached worker as “an employee who is sent by his or her employer in one country to work temporarily in the other country for the same employer or an affiliate of that employer”⁴³. Importantly, “detached worker” does not always refer to “posted worker”, as this expression is also employed in youth work to refer to “workers placed in the environment of a gang to provide input geared toward more acceptable activities for the gang”⁴⁴. While the context might help us determine the meaning given to this wording, a literal translation might still compromise the reader’s understanding. Accordingly, it is advisable to make use of posted workers to indicate employees sent to work abroad or, alternatively, workers on secondment. These expressions are

procedures of entities operating in the water, energy, transport and postal services sectors, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52003AG0034> (Bilingual display, accessed on 12 October 2014).

⁴² Neal also makes use of this expression: “Fair competition and the promotion of efficiency is an objective which must be attained by the eradication of “social dumping” and by guaranteed equal treatment to detached workers”. A. Neal. *European Labour Law and Social Policy, Cases and Materials Volume 2: Dignity, Equality and Security at Work*. The Hague: Kluwer Law International, 2002, 142. An alternative to detached workers is “secondees”. Morris and Estreicher posit that “Most of the US totalisation agreements have provisions dealing with ‘detached’ workers (“secondees”), that is employees assigned from an employer in the United States to an employer in another country”. A.P. Morris, S. Estreicher (eds.) *Cross-Border Human Resources, Labor and Employment Issues: Proceedings of the New York University 54th Annual Conference on Labor Law*. The Hague, Kluwer Law International, 2005, 26.

⁴³ The Official Website of the U.S. Social Security Administration, available at <https://secure.ssa.gov/poms.nsf/lnx/0302001815> (Accessed on 21 October 2014).

⁴⁴ F. Lawrence, I. Travis, B.D. Edwards. *Introduction to Criminal Justice*. Waltham: Anderson Publishing, 2015, 529.

more frequently found in the relevant literature and are certainly more understandable in an international context.

2.4 *Lavoro sommerso/Lavoro nero* – Undeclared Work

Both *lavoro sommerso* and *lavoro nero* broadly refer to English “undeclared work”. In official EU documentation, this concept is often translated as “moonlighting”.

Table 6 – Translation of *Lavoro Sommerso* and *Lavoro Nero* into English in Official EU Texts (Example 1).

English Version ⁴⁵	Italian Version
Le Vif/Le Express of 7 June 1996 and Le Soir of 3-4 August 1996 reported on an apparently common practice at the Commission of the European Communities involving moonlighting . [emphasis added]	L'edizione del 7 giugno 1996 dei periodici «Vif» e «L'Express», nonché il quotidiano «Le Soir» del 3/4 agosto 1996, fanno riferimento ad una prassi, apparentemente corrente presso la Commissione delle Comunità europee, relativa al lavoro nero . [emphasis added]

Source: EUR-lex.

The origins of this word are interesting; according to the *Online Etymology Dictionary*, moonlighting means: “to hold a second job, especially at night (implied in *moonlighting*); from *moonlighter* (1954), from the notion of working by the light of the moon”⁴⁶. Interestingly, a document from the EU provides the definition of moonlighting, which is employed as a synonym for “undeclared work”:

⁴⁵ *Written Question E-2914/96 by Giuseppe Rauti (NI) to the Commission* (8 November 1996), available in English and Italian at <http://eur-lex.europa.eu/legal-content/EN-IT/TXT/?qid=1410441883214&uri=CELEX:91996E002914&from=EN> (Accessed on 28 October 2014).

⁴⁶ The *Online Etymology Dictionary*, available at http://www.etymonline.com/index.php?allowed_in_frame=0&search=moonlight&searchmode=none (Accessed on 29 October 2014).

Table 7 – Translation of *Lavoro Sommerso* and *Lavoro Nero* into English in Official EU Texts (Example 2).

English Version ⁴⁷	Italian Version
[...] The Committee took the view that the definition of undeclared work as ‘any paid activities that are lawful as regards their nature but not declared to the public authorities’ was acceptable in view of the need to establish a common definition for all Member States. The Committee endorses this approach [...] Illegal immigrants do not have access to the regular labour market nor to social security. They are therefore obliged to make a living somewhere else, and, more often than not, they turn to the moonlighting sector . [emphasis added]	[...] In tale occasione il Comitato, data la necessità di adottare una definizione comune a tutti gli Stati membri, ritenne accettabile la definizione del lavoro sommerso come qualsiasi attività retribuita lecita di per sé, ma non dichiarata alle autorità pubbliche: questo è tuttora il suo punto di vista [...] Non potendo accedere né al mercato del lavoro ufficiale né al sistema di previdenza sociale, il migrante clandestino è costretto a provvedere al proprio sostentamento in altro modo, ricorrendo, nella maggioranza dei casi, al mercato del lavoro nero [emphasis added]

Source: EUR-lex.

Evidently, moonlighting does not always take on a negative connotation in English – i.e. to refer to work not declared to public authorities – nor does it always indicate undeclared work. Moonlighters are individuals who work longer hours, usually at night, to make extra income and supplement remuneration earned from their regular employment. Moonlighters are also called “multiple-job holders” and do not necessarily operate in undeclared work. A 2003 document published by the US Bureau of Labor Statistics, *Moonlighting across the USA*, affords a definition of “multiple-job holders”:

Multiple jobholders are employed persons who had either two or more jobs as a wage and salary worker, were self-employed and also held a wage and salary job, or worked as an unpaid family worker and also held a wage and salary job.⁴⁸

Both *Lavoro sommerso* and *lavoro nero* convey a negative connotation, for they mean undeclared work. Accordingly, translating one of these terms into English as moonlighting might be ambiguous, since as we have seen

⁴⁷ *Opinion of the European Economic and Social Committee on the role of civil society in helping to prevent undeclared work* (bilingual display), available at <http://eur-lex.europa.eu/legal-content/EN-IT/TXT/?qid=1410509866519&uri=CELEX:52005IE0385&from=EN> (Accessed on 29 October 2014).

⁴⁸ Bureau of Labor Statistics, U.S. Department of Labor. *The Economics Daily, Moonlighting across the U.S.*, 2003. Available at <http://www.bls.gov/opub/ted/2003/jan/wk3/art03.htm> (Accessed on 30 October 2014).

moonlighting might also refer to being legally and simultaneously employed in different occupations.

2.5. *Formazione sociale* – Social Groups

Formazione sociale broadly means “social group” and refers to “the institutional context which provides the conditions of existence of the mode of production”⁴⁹.

Formazione sociale is a fundamental concept of Italian legislation and also appears in Article 2 of the Italian Constitution⁵⁰:

Table 8 – Reference to *formazione sociale* in the Italian Constitution (English and Italian version).

English Version	Italian Version
The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled (emphasis added).	La Repubblica riconosce e garantisce i diritti inviolabili dell'uomo, sia come singolo sia nelle formazioni sociali ove si svolge la sua personalità, e richiede l'adempimento dei doveri inderogabili di solidarietà politica, economica e sociale. (emphasis added).

Source: www.senato.it

Formazione sociale has been recently given fresh momentum in Italian IR discourse, as it was included in a proposal for a *Codice Semplificato del lavoro* (Simplified Labour Code)⁵¹ put forward to streamline national labour practices and encourage foreign entrepreneurs to invest in Italy.

Translating *formazione sociale* into English might be problematic in that *formazione* might refer to either English “formation” or “training”. The challenges posed by the rendition of this term in English are evident in some EU official documentation⁵²:

⁴⁹ Oxford Reference, at <http://www.oxfordreference.com/view/10.1093/oi/authority.20110803100515161> (Accessed on 3 August 2014).

⁵⁰ The English version of the Italian Constitution is available at https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf (Accessed on 20 October 2014).

⁵¹ *Il Codice Semplificato del lavoro 3.0*, available at <http://www.pietroichino.it/?p=30409> (Accessed on 3 November 2014).

⁵² *Commission communication concerning Article 4(3) of Directive 2009/22/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interests, which codifies Directive*

Table 9 – Translation of *Formazione sociale* into English in Official EU Texts (Example 1).

English Version	Italian Version
Facilitates independent and democratic social training , without profit-making aims. (emphasis added)	È una formazione sociale indipendente a base democratica, senza scopo di lucro. (emphasis added)

Source: EUR-lex.

The meaning of social training provided in the English version is as opaque as misleading. Not only is this expression meaningless in English, but this translation does not do justice to the Italian version. As seen, *formazione* means “formation” or “group”, yet here it is translated as “training”.

One alternative is that of translating *formazione sociale* as “social group”, as was the case with the English version of the Italian Constitution, or “social formation”. Albeit a literal rendition, the latter seems to better convey the idea of a group of people or things in a particular arrangement.

2.6. Part-time Verticale/Orizzontale – Working Part-time on Alternate Periods/on a Daily basis

Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work defines a “part-time worker” as “an employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time worker”⁵³. In Italian legislation, a difference exists between two part-time working schemes, namely *part-time orizzontale* and *part-time verticale*. *Part-time orizzontale* refers to a reduction in working hours that involves daily working time, and which is the most traditional form of part-time work. On the contrary, *part-time verticale* refers to work carried out on a full-time basis but limited to pre-arranged periods of the week, month or the year. A word-for-word translation of this

⁵² 98/27/EC, concerning the entities qualified to bring an action under Article 2 of this Directive, available in English and Italian at [http://eur-lex.europa.eu/legal-content/EN-IT/TXT/?qid=1410182355890&uri=CELEX:52014XC0415\(04\)&from=EN](http://eur-lex.europa.eu/legal-content/EN-IT/TXT/?qid=1410182355890&uri=CELEX:52014XC0415(04)&from=EN) (Accessed on 10 November 2014).

⁵³ Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC - Annex : Framework agreement on part-time work, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31997L0081> (Accessed on 10 October 2014).

notion might perplex those who have no familiarity with the Italian industrial relations system. Some EU official documents make use of a verbatim translation placed in brackets⁵⁴:

Table 10 – Translation of *Part-time orizzontale* into English in Official EU Texts (Example 1).

English Version	Italian Version
3. Can Clause 4 [of the Framework Agreement] on the principle of non-discrimination also be extended to various kinds of part-time contract, in view of the fact that, in the case of 'horizontal' part-time work , where the total number of hours worked and for which remuneration is paid in the calendar year is equal, all the weeks of the calendar year are taken into account under national legislation, whereas they are not in the case of 'vertical' part-time work ?	3) se la clausola 4 sul principio di non discriminazione possa estendersi anche nell'ambito delle varie tipologie di contratto part-time, atteso che nell'ipotesi di lavoro a tempo parziale orizzontale , a parità di un monte ore lavorato e retribuito nell'anno solare, sulla base della legislazione nazionale, vengono considerate utili tutte le settimane dell'anno solare, differentemente dal part-time verticale .

Source: EUR-lex.

Regrettably, both “vertical” and “horizontal” part-time work would be meaningless to an English reader. As is often the case in translation, the use of a periphrasis might help clarify the concept in the target language. As Campbell⁵⁵ recalls:

When the original wording seems to make it impossible to express the intended meaning in the target language, periphrasis or explanation may be a useful solution. Experience shows that periphrasis is a very useful approach to idiomatic and functional re-expression, since it represents the seeds of what I call ‘creativity’.

As an option, “working part-time on a daily basis” might be suited to refer to *part-time verticale*. Conversely, “working part-time on alternate periods” might convey the meaning of *part-time orizzontale*.

⁵⁴ Reference for a preliminary ruling from the Corte d'Appello di Roma (Italy) lodged on 12 September 2008 — Istituto nazionale della previdenza sociale (INPS) v Daniela Lotti and Clara Mattencci, (Case C-396/08), available in both English and Italian at <http://eur-lex.europa.eu/legal-content/EN-IT/TXT/?uri=CELEX:62008CN0396&from=EN> (Accessed 7 November 2011).

⁵⁵ S. Campbell. Critical Structures in the Evaluation of Translations from Arabic into English as a Second Language. In C. Maier (ed.). *Evaluation and Translation: Special Issue of “the Translator”*. New York: Routledge, 150 – 180, 2004, 238.

2.7. *Caporali* – Gangmasters

Generally, the word *caporali* is employed in Italy to refer to people acting as unauthorized intermediaries for the recruitment of casual workers to operate in the agricultural sector. This notion is translated into English in different ways in official EU documents. One option is “black hiring”:⁵⁶

Table 11 – Translation of *caporali* into English in Official EU Texts (Example 1).

English Version	Italian Version
One practice which has become widespread in Rome in particular is ' black hiring ' (i.e. without regard to the law or union rules), a system of labour exploitation based not least on tribal forms of religious obedience. (Emphasis added)	In Italia, e a Roma in particolare, per esempio si è diffuso il fenomeno del «caporalato» , un sistema di sfruttamento nel mondo del lavoro basato anche su vincoli religiosi legati a strutture tribali. (Emphasis added)

Source: EUR-lex.

The choice to translate *caporali* as black hiring might be questioned for at least two main reasons. First, “black hiring” appears to be an attempt to provide a literal translation of Italian *lavoro nero* (undeclared work, literally “black labour”). However, the translation does not take on the same meaning as the original one and would be meaningless in English. Secondly, the reference to illegal recruitment is too a generic one and fails to convey the nuances of meaning expressed by *caporalato* (e.g. abuse, exploitation, and so on). Alternatively, “gangmasters”⁵⁷ is often found as a translation of *caporali*:

Table 12 – Translation of *caporali* into English in Official EU texts (Example 2).

English Version	Italian Version
[...] to prevent the exploitation of vulnerable workers by gangmasters and to sign and ratify, if they have not yet done so, the Convention [...] (Emphasis added)	[...] al fine di prevenire lo sfruttamento dei lavoratori vulnerabili da parte di «caporali» e, ove non lo abbiano ancora fatto, a firmare e ratificare la [...] (Emphasis added)

Source: EUR-lex.

⁵⁶ *Written Question No. 114/96 by Antonio TAJANI to the Council*, available at <http://eur-lex.europa.eu/legal-content/EN-IT/TXT/?qid=1410181413878&uri=CELEX:91996E000114&from=EN> (Accessed on 12 November 2014).

⁵⁷ *Minutes (2008/C 282 E/04), Proceedings of the Sitting* <http://eur-lex.europa.eu/legal-content/EN-IT/TXT/?qid=1410444574834&uri=CELEX:C2008/282E/04&from=EN> (English and Italian versions), accessed on 12 November 2014.

However, a fundamental difference exists between *caporali* and gangmasters; following the Gangmaster Licensing Act 2004, the activity of gangmasters in the UK has been regulated, where Italian *caporali* are unauthorized recruiters. This aspect is further evidenced by the definition of gangmasters provided by the *Oxford Dictionary*, where no reference is made to illegal activities: “A person who organizes and oversees the work of casual manual laborers”⁵⁸. An attempt to draw a distinction between gangmasters’ legal and illegal activities can be found in another EU document⁵⁹:

Table 13 – Translation of *caporali* into English in Official EU Texts (Example 3).

English Version	Italian Version
[...] the licensing and registration of the gangmaster system in the United Kingdom (17). By means of strict checks, the government grants licenses to bonafide gangmasters who are the most important middlemen in fulfilling the demand for temporary labour in the agricultural sector. (Emphasis added)	[...] il sistema di autorizzazioni previsto nel Regno Unito per l'esercizio dell' intermediazione di manodopera (17) in taluni ambiti di attività, grazie al quale viene esercitato un controllo rigoroso sulle attività dei cosiddetti gangmaster , che nel settore agricolo sono i principali intermediari per far fronte alla domanda di manodopera temporanea. (Emphasis added)

Source: EUR-lex.

“Bonafide gangmasters” seems more appropriate to refer to the legal licensing system implemented in the UK and can be used to differentiate that from Italian *caporali* who are mainly engaged in illicit activities.

2.8. *Cassa edile* – Bilateral Funds in the Construction Sector

Cassa edile is another term that might be problematic at the time of translating it into English. *Casse edili* are joint bodies formed by representatives of workers and employers operating in the construction sector. They are established through collective bargaining and tasked with allocating funds and

⁵⁸ The *Oxford Dictionary* (Search Screen), Available at <http://www.oxforddictionaries.com/definition/english/gangmaster> (Entry: Gangmaster).

⁵⁹ *Opinion of the European Economic and Social Committee on ‘Cross-border agricultural labour’* (2008/C 120/05), bilingual display, <http://eur-lex.europa.eu/legal-content/EN-IT/TXT/?qid=1410444574834&uri=CELEX:52007IE1698&from=EN> (Accessed on 5 November 2014).

granting benefits to construction workers. EUR-lex translates *casse edili* as “building societies”:⁶⁰

Table 14 – Translation of *casse edili* into English in Official EU Texts (Example 1).

English Version	Italian Version
[...] to encourage workers’ mobility through mutual recognition of the payments made by workers to the various building societies [...] The above article provided that in the absence of such an agreement the building societies would automatically mutually recognise all rights, payments, allowances and benefits (Emphasis added).	[...] avrebbe dovuto favorire la mobilità dei lavoratori attraverso il reciproco riconoscimento dei contributi versati dai lavoratori alle diverse casse edili [...] In assenza di accordo, il citato articolo prescriveva l’automatico riconoscimento reciproco (tra le diverse casse edili) di tutti i diritti, i versamenti, le indennità e le prestazioni (Emphasis added).

Source: EUR-lex.

One might argue that the use of building societies to refer to *casse edili* is perplexing. While both institutions involve the construction sector, some differences arise in that building societies are more similar to savings and loan institutions in the UK. In this sense, they grant loans and provide other banking services to their members. Conversely, *casse edili* provide their affiliates with different forms of assistance (clothing, scholarships, medical expenses). For this reason, they are usually referred to as “joint bodies in the construction industry”. They can be equated to welfare funds, although they provide a wider range of benefits than those ensured during unemployment and sickness.

3. Conclusion

Following on from a review of the relevant literature, the aim of the present paper has been that of highlighting the relatively little attention paid to the language issue in cross-national comparison in the field of industrial relations. To contribute to filling this research gap, the Italian and the English versions of a number of EU documents have been scrutinized, in order to bring to the fore the numerous issues resulting

⁶⁰ *Written Question E-1790/00 by Mauro Nobilia (UEN) to the Commission. Mutual recognition by building societies*, bilingual display, available at <http://eur-lex.europa.eu/legal-content/ENIT/TEXT/?qid=1410358397663&uri=CELEX:92000E001790&from=EN> (Accessed on 19 November 2014).

from the translation of industrial relations terms. It has been observed that failing to convey the exact meaning of national practices and institutions in the target language/system might result in ambiguities and misinterpretations of the concepts investigated. As is often the case with translation, one-to-one equivalents lack sufficient clarity in the target language, making their meaning opaque. Things are made worse by the lack of consistent terminology in official sources, the significant amount of new words created in this field as a result of negotiations and the peculiarity of IR practices in each national context.

Making use of periphrases to explain the notions translated and comparing the terminology used in different sources to see how concepts and institutions are rendered might help to deal with the language challenge in this domain. Of course this should be accompanied by a knowledge of the industrial relations systems under investigation and a sufficient command of the language spoken in the countries surveyed.



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