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**Gender and legal language:
inclusive drafting or divisive issue?
An old debate, new developments and
a review of “Gender in legislative languages:
From EU to national law in English, French,
German, Italian and Spanish”**

**by Stefania Cavagnoli and Laura Mori (eds.).
Berlin, Frank & Timme 2019.**

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1 Introduction

1.1 Preliminary remark

< 1 >

The book on “gender and legislative language” under review, published in 2019, is the second volume completed in the framework of the Eurolect Observatory Project¹ after the publication of “Observing Eurolects” (MORI 2018b) which I reviewed earlier (HEINEMANN 2019). It focuses on gender in legislative language on the basis of a corpus-based quantitative and qualitative analysis; the corpora used are approximately 660 EU directives adopted between 1999 and 2008 which were still in force in 2014, when the corpora were constituted (corpus A), and the corresponding national transposition measures adopted by the United Kingdom, France, Germany, Italy and Spain (corpus B).² Ireland, Austria, Belgium and Luxemburg were not considered for this phase of the project.

The present paper, initially intended as a straightforward review of the volume, quickly grew to take into account the fierce debates on gendered language currently under way, in particular in Germany, as well as recent developments in France, Spain and Italy, and to provide a second look at some aspects where the analyses presented in the volume fall short.

Overall, the book has made me think about the issues discussed from a broader, comparative perspective, it has incited me to probe further in some areas, and at times it has angered me. Occasionally, the examples reveal the limits or pitfalls of corpus studies where conclusions are drawn without a proper context analysis. And unfortunately, co-editor CAVAGNOLI has let down her co-authors in particular in her introduction which contains many annoying inaccuracies and errors as well as long unattributed quotes.

The present section 1 contains a general introduction of the volume under review and looks at the semantic field of “gender neutral language”. Multilingualism, the EU language regime and the nature of EU directives described in CAVAGNOLI's introductory chapter are discussed in section 2. Section 3 looks at guidelines for legislative drafting at national level and section 4 at EU guidelines, including some developments since the publication of the volume under review. The authors' findings on the corpora in the five languages English, French, German, Italian and Spanish are reviewed in sections 5 to 7 and supplemented with this reviewer's further research results on contexts and legislative histories of various expressions pinpointed by the authors, thus clarifying a few misconceptions and raising some methodological issues. Section 8 briefly deals with CAVAGNOLI's concluding chapter, section 9 sums up this reviewer's conclusions.

1 See <https://www.unint.eu/en/research/research-projects/33-page/490-eurolect-observatory-project.html> (access 2.11.2021).

2 The national measures transposing the EU directives (from 1999 to 2008) were obviously adopted somewhat later, roughly until 2012 (exceptionally 2015).

1.2 Gender, inclusive language and visibility

< 2 >

If anybody will get us well out of the difficulty which results from the want of a really personal pronoun in the third person singular, without gender, he [sic!] will be entitled to the thanks of all persons who love to talk.

(Anonymous, [Mercury, And Weekly Journal of Commerce](#), 31 January 1839)³

Indeed, the debate on gender in language is not new, and it is far from over. In the 1970ies, feminist linguists launched a new round in that debate which is still going on as passionately and emotionally as ever, and more recently it has taken on a new dimension with discussions around non-binary gender identity. The statement issued in January 1990 by the German Working group on legal language (Arbeitsgruppe Rechtssprache) still holds true today:

Die Diskussion ist von der Thematik her emotionalisiert und polarisiert. Sie wird auch erschwert, weil Männer und Frauen, Juristen und Juristinnen, Sprachwissenschaftler und Sprachwissenschaftlerinnen ihre jeweiligen Erkenntnisse, Erfahrungen und Wertungen einbringen und Mühe haben, sich miteinander zu verständigen.

(DEUTSCHER BUNDESTAG 1990: 10)

Legislative drafters who tend to use formalized language and to follow drafting precedents have arguably been slower to respond to the challenge of non-sexist language than other language users, so a comparative view of usage in the five languages included in the book under review is most welcome.

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The aim of the reviewed volume's authors is to examine the presence or absence of women in the legal language at the level of the European Union and at the national levels: “come le donne sono linguisticamente presenti o assenti” (MORI 2019: 41), i.e. the visibility of women through the use of gender-fair language (“doing gender”). “Scelte non discriminatorie” (MORI 2019: 49) may also be achieved by gender-neutral language (“undoing gender”). The authors test the language used in EU directives and in the corresponding national transposition measures against the relevant EU and national guidelines on non-sexist language. Generally, they find those texts lacking and conclude that the use of the generic masculine is still widespread.

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First, a brief word on terminology: gender-neutral, gender-fair, gender-sensitive, non-sexist, inclusive language – all these expressions are used in the literature, but not necessarily with the same meaning. Although “inclusive language” is defined in the Oxford English Dictionary (OED) as “designating language which seeks to avoid gender bias (such as that represented by the generic use of masculine pronouns), either by explicit reference to both sexes or by omission of inessential gender-specific terms”, it is now generally understood to cover bias-free language which avoids stereotypes of any kind (gender, sexual orientation, disabi-

3 Example found by Dennis BARON, author of *What's Your Pronoun? Beyond He and She*, Liveright. BARON includes some 60 pages with a fascinating collection of English proposals for “gender-neutral and nonbinary pronouns” from 1770 onwards (none of which caught on).

lities, age, religion, ethnic background etc.) (GENERAL SECRETARIAT OF THE COUNCIL 2018: 7). Gender-neutral may refer to terms “avoiding gendered language altogether” (SANDRELLI 2019: 110), i.e. “gender-free”⁴ drafting (SANDRELLI 2019: 138). According to the glossary of the European Institute for Gender Equality (EIGE),

gender neutral means not being associated with either women or men and may refer to various aspects such as concepts or style of language.

(EUROPEAN INSTITUTE FOR GENDER EQUALITY n.d.)

That wording is based on the UN glossary of the Statistics Division which comes with the following warning: “What is perceived to be gender neutral, however, [...] is often gender blind (a failure to recognize gender specificities)” (UN STATISTICS DIVISION n.d.). But “gender-neutral” is also used as an equivalent to gender-inclusive language⁵ or as “a generic term covering the use of non-sexist language, inclusive language or gender-fair language” (EUROPEAN PARLIAMENT 2018: 3). “Gender-sensitive language”⁶ is defined by EIGE as the

realisation of gender equality in written and spoken language attained when women and men and those who do not conform to the binary gender system are made visible and addressed in language as persons of equal value, dignity, integrity and respect.

(EUROPEAN INSTITUTE FOR GENDER EQUALITY n.d.)

The reference to non-binary persons in that definition is noteworthy. And according to a recent article by Donald L. REVELL, former Chief Legislative Counsel for Ontario (Canada), and Jessica VAPNEK, lecturer in law in San Francisco,

gender-silent is the new gender-neutral
(REVELL/VAPNEK 2020: 126) (my emphasis)

REVELL and VAPNEK coined the new phrase to describe their proposal for an “all-inclusive” legislative drafting style in order to account for non-binary genders (REVELL/VAPNEK 2020: 106). This aspect is not discussed in the book under review except for a brief reference by SANDRELLI (2019: 118), but this may also be due to the period analysed where this was not yet a wide debate the public eye⁷.

4 PROIA (2019: 217) uses the expression „geschlechtsindifferente Ausdrucksweise“ (cf. DEUTSCHER BUNDESTAG 1990: section 4.5).

5 E.g. “gender-neutral constructions combining both masculine and feminine pronouns” (SANDRELLI 2019: 138).

6 In accordance with the EIGE glossary which exists in the 24 official EU languages, “gender-sensitive language” corresponds to “langage sensible au genre” in French, to “linguaggio sensibile al genere” in Italian, to “lenguaje/uso no sexista / lenguaje inclusive” in Spanish and to “geschlechtersensible Sprache” in German.

7 “Non-binary” was added in the OED only in 2018. The first quotation in OED for non-binary as “designating a person who does not acknowledge or fit the conventional notions of male and female gender, and instead identifies as being of another or no gender, or a combination of genders” dates from 13.1.1995 in a Usenet newsgroup, with the next quotation only from 2013. It is also revealing that the European Parliament’s 2008 gender-neutral guidelines (nor the revised 2018 edition) do not contain any explicit reference to non-binary gender and refer to “both genders” whereas the Council’s General Secretariat brochure on inclusive communication, first published in 2018, contains such a reference (quoted by SANDRELLI 2019: 118).

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The EIGE glossary adds the following note to the definition of “gender-sensitive language”:

There are [a] number of different strategies that can be used to express gender relationships with accuracy, such as avoiding, to the greatest possible extent, the use of language that refers explicitly or implicitly to only one gender, and ensuring, through inclusionary alternatives and according to each language’s characteristics, the use of gender-sensitive and inclusive language.

(EUROPEAN INSTITUTE FOR GENDER EQUALITY n.d.)

Whether neutralization or feminization is the preferred strategy for avoiding androcentric language depends to some extent on the language structure (SCZESNY/FORMANOWICZ/MOSER 2016: 7). French, Spanish and Italian share many structural characteristics which seem to incite feminization, whereas German uses both feminization and neutralization. Among the languages analysed, English uses fewer gender markers and thus neutralization is generally the preferred strategy.

< 6 >

The reader of the volume under review should not expect an in-depth view of the debate on non-sexist language; that is not its purpose. PROIA (2019: 215) refers the reader in general terms to the many publications which deal with the issue from a variety of methodologies and disciplines. CAVAGNOLI places herself firmly in a feminist tradition which, in line with IRIGARAY (1985), sees language as “il prodotto di una struttura patriarcale” (2019: 14). BRACCHI calls for systematic feminization and ending the use of the “faux neutre masculine”

car, rappelons-le, en français le neutre n’existe pas. Le masculin ne peut donc pas représenter les femmes et les hommes et il n’est pas perçu de manière neutre.

(BRACCHI 2019: 101-102)

MORI (2019: 62) briefly refers to language use which not only reflects society and the socio-linguistic awareness of speakers/writers but may influence society and hinder or promote future societal changes. Which of course is exactly what opponents to the use of gender-neutral language (and there are plenty) doubt.⁸

1.3 General presentation

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The book under review is presented as a multilingual publication – a nice challenge for the reader! – with four chapters drafted in Italian (the introduction, the chapter on Italian, concluding remarks by CAVAGNOLI, and a presentation of the Eurolect Observatory Multilingual Corpus in the context of sociolinguistic corpora studies⁹ by co-editor MORI, the coordinator of the Eurolect project) – and chapters discussing the remaining four languages drafted in those languages (BRACCHI on French; SANDRELLI on English; BLINI on Spanish; and PROIA

8 See for example: “it is a fallacy to think that gender-neutral drafting is an effective cure for the disease of patriarchy” (MCLEAN 2013: 443).

9 Chapter 2: La sociolinguistica dei corpora per lo studio della lingua inclusive di genere nelle varietà legislative dell’Eurolect Observatory Multilingual Corpus”.

on German). The reader must also be prepared for the occasional use of inclusive spelling by CAVAGNOLI (e.g. *dai/dalle parlante, tuttile glille autoril/trice*, 2019: 150, 242), MORI (*giuristile comparatistile*, 2019: 42) and BRACCHI (*ils.elles, les législateurs et les législatrices français·e-s*, 2019: 100-101) which may not be to everybody's taste.

< 8 >

Detailed information on the construction of the corpora analysed by CAVAGNOLI and her fellow authors can be found in chapter 2 of "Observing Eurolects" (TOMATIS 2018: 27-45), and the reader is referred to the review of that volume for a discussion of a number of issues linked to the methodological choices made by the research teams. Suffice it to say at this point that the EU directives in corpus A correspond to three different text types: (i) directives adopted jointly by the European Parliament and the Council, (ii) Council directives and (iii) Commission directives¹⁰. Each of these three types undergo specific text production processes, with different sets of stakeholders/participants. In the case of acts adopted jointly by the European Parliament and the Council, all language versions are revised and finalised by the lawyer-linguists of the two institutions, and experts from the Member States (generally from the ministry concerned) participate directly in that process. The role of these national experts should not be underestimated, as they comment on their language version and their suggestions for changes may be taken on board if the European Parliament and the Council both agree. Thus, the boundary between the language used in EU texts and the language used in the Member State is somewhat blurred.

2 Multilingualism and the nature of EU directives

< 9 >

In the introductory chapter, CAVAGNOLI (2019: 13ff.) deals with EU guidelines on gender-neutral language (for a critical discussion of her presentation, see section 4) and two further topics: multilingualism and the language regime of the European Union, as well as the nature of EU directives. The introduction in particular would have benefited from a screening by a specialist in EU law with a view to avoiding errors and inconsistencies in the information provided. While it is unfortunately a common error to mix up the Council of the European Union with the European Council (MORI 2019: 48, SANDRELLI 2019: 115, 122; CAVAGNOLI 2019: 181), CAVAGNOLI's text contains an unusually high number of inaccuracies.

2.1 EU language regime and multilingualism

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CAVAGNOLI (2019: 19) reminds the reader that the very first regulation adopted in 1958 by the Council fixed the EU language regime with – at the time – four official languages. This is

10 Commission directives are generally not legislative acts *sensu stricto*, but implementing acts based on powers delegated to the Commission by the legislator in the basic legislative act concerned, i.e. the European Parliament and the Council or the Council alone.

well-known Regulation 1/58 – she calls it “Carta delle Lingue della Comunità”, but this is not the title of the regulation – which was amended at each enlargement and now includes 24 official and working languages. It remains an unexplained mystery why she then refers in this context to Art. 2 of Council Regulation (EC) No 920/2005 and not to Regulation 1/58 (2019: 31, fn. 22). Art. 2 of Regulation (EC) No 920/2005 concerns the temporary derogation granted to Irish from January 2007¹¹ until December 2021.

Although this is of no direct interest for the corpora studied, CAVAGNOLI (2019: 18) claims that there are two exceptions to the EU language regime: international agreements and the specific language regime of the Office for Harmonisation in the Internal Market, now called the European Union Intellectual Property Office.¹²

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On the first exception, CAVAGNOLI (2019: 18) writes that treaties of the EU with third countries or international organisations are usually authentic only in English, thus avoiding the need to translate all texts into the 24 official languages of the Union. This is not quite correct. Agreements with third countries are published in the official languages of the EU (with the exception of Irish¹³) and in the language of the third country concerned. The versions in the official EU languages are published in the *Official Journal* of the EU. Most treaties with international organisations are also translated into 23 official languages and published in the *Official Journal* of the EU as annex to the Council decision on the conclusion of the agreement concerned, even if the translated versions are not authentic versions of the agreement, unless this has been explicitly specified.¹⁴

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For her second exception, CAVAGNOLI (2019: 18) refers to the frequently quoted judgment of the European Court of Justice of 9 September 2003 in case C-361/01 P, *Kik v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*. The Court held that the limitation of the languages of the Office to English, French, German, Italian and Spanish for non-procedural documents is appropriate and proportionate. Paragraph 82 of that judgment reads (my emphasis):

11 Irish was already a treaty language since the accession of Ireland in 1973, but secondary legislation started to be published in Irish only in 2007.

12 The Office changed its name in March 2016 (Article 1(7) of Regulation (EU) 2015/2424).

13 Since 1 January 2022, such agreements are published also in Irish.

14 E.g. Agreement establishing the World Trade Organization, published in *OJ L* 336/1994, 3-10, in the pre-2004 enlargement languages (Danish, Dutch, English, French, German, Greek, Italian, Spanish, and Portuguese). The closing formula of that agreement establishes which are the authentic languages: “Done at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four, in a single copy, in the English, French and Spanish languages, each text being authentic”. To take a more recent example, see the Sustainable Fisheries Partnership Agreement between the EU and Morocco, published in *OJ L* 77/2019 in 23 EU languages. Article 24 provides that the 23 EU language versions and the Arabic version are deemed authentic (“This Agreement shall be drawn up in duplicate in the Bulgarian, Czech, Croatian, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Arabic languages, each text being equally authentic.”).

As the appellant points out, the Treaty contains several references to the use of languages in the European Union. None the less, **those references cannot be regarded as evidencing a general principle** of Community law that confers a right on every citizen to have a version of anything that might affect his interests drawn up in his language in all circumstances.

In Italian (my emphasis):

Come sottolinea la ricorrente, il Trattato contiene diversi riferimenti all'uso delle lingue nell'Unione europea. Tuttavia, questi riferimenti **non possono essere considerati come la manifestazione di un principio generale** di diritto comunitario che garantisce a ogni cittadino il diritto a che tutto quello che potrebbe incidere sui suoi interessi sia redatto nella sua lingua in ogni caso.

Unfortunately, CAVAGNOLI's quotation of that paragraph (2019: 18) is truncated in such a way that it is impossible to follow her argument. She writes:

Dal 2003, con la sentenza 9 settembre Kik c. UAMI, causa C-361/01, "un principio generale di diritto comunitario che garantisce a ogni cittadino il diritto a che tutto quello che potrebbe incidere sui suoi interessi sia redatto nella sua lingua in ogni caso." Tale sentenza rende possibile una metodologia di lavoro più snella, che si appoggia ad alcune lingue considerate "di lavoro" (di solito inglese, francese, in alcuni casi russo e tedesco).

Only by consulting the text of the judgment the reader will understand that the definition of a smaller number of working languages was accepted by the Court. Why she then claims that in some cases, Russian is such a working language is another unexplained mystery. Russian is of course not an official nor a working language within the meaning of Art. 1 of Regulation 1/58, even if it is used on the website of the EU delegation to Russia based in Moscow or on some pages of the website of the European External Action Service.

2.2 EU directives

< 13 >

CAVAGNOLI (2019: 32) writes that EU directives are adopted by the Council and the European Parliament in an ordinary or special legislative procedure. This sentence is misleading for two reasons. The corpus used for the analysis comprises directives adopted between 1999 and 2008, i.e. before the entry into force of the Lisbon treaty which introduced the concepts of "ordinary legislative procedure" (previously known as the "codecision procedure") and "special legislative procedure". Moreover, in a special legislative procedure, the Council is the only legislator, even if it has to consult the European Parliament. The sentence – which CAVAGNOLI copied from an EUR-Lex summary – is in fact misleading (and has been corrected in the meantime in EUR-Lex¹⁵). The Council, says CAVAGNOLI (2019: 31), is "il centro di approvazione formale dell'atto dell'Unione europea". Although in the period covered by the corpora, i.e. before the entry into force of the Lisbon treaty, codecision

15 The current version reads: "The directive is adopted following a legislative procedure. It is a legislative act adopted by the Council and the Parliament under the ordinary legislative procedure or only by the Council under the special legislative procedures; in that case, the Parliament should consent or be consulted." See (access 2.11.2021):

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1561991391166&uri=LEGISSUM:114527>.

applied to fewer areas, the sentence does not take into account legislative acts adopted jointly by the European Parliament and the Council for which a formal approval by the EP is required. Wisely, the Council itself says nowadays on its website that it is “**un** organo decisionale essenziale dell’UE”.¹⁶ Out of the four directives analysed in her qualitative analysis (2019: 170ff.), three were adopted jointly by the European Parliament and the Council. At least for those acts, her comments on the role of the Council (2019: 31) are misleading, as the crucial negotiations on the content of the act take place between representatives of the European Parliament and the Council. Lawyer-linguists and translators, says CAVAGNOLI (2019: 31), do not participate in the Council’s working groups where

[n]el corso delle negoziazioni possono emergere problemi interpretative non indifferenti [...] e questo può rendere ovviamente più difficile la comprensione della terminologia scelta.

Precisely for that reason, the lawyer-linguists of the European Parliament follow the political negotiations in the parliamentary committees and are present in the negotiations between Parliament and Council for all codecision procedures; Council’s lawyer-linguists have also started to follow the negotiations for some years now. All language versions of acts under the codecision procedure are revised by the lawyer-linguists of both institutions.

The corpus also contains Commission directives¹⁷ to which the adoption procedure described by CAVAGNOLI does not apply. The Commission acts under powers delegated to it by the legislator, and the Commission act is not considered a legislative act *sensu stricto*.

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EU directives do not enter into force only once they have been implemented into domestic law (“la direttiva entra in vigore solo dopo il recepimento”) (2019: 32). CAVAGNOLI confuses the date of entry into force (which is linked to the publication of the directive in the *Official Journal*) and the deadline for transposition when the directive takes full effect. The most frequently used formula reads: “This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union”.¹⁸ A quick look into any directive and its last article on entry into force could have avoided this annoying mistake. It is indeed the entry into force which activates the obligation of the Member States to transpose the directive by the deadline set down and to abstain in the meantime from any action contrary to the spirit of the directive.

16 See <https://www.consilium.europa.eu/it/council-eu/decision-making/> (access 2.11.2021).

17 E.g. Commission Directive 2006/125/EC of 5 December 2006 on processed cereal-based foods and baby foods for infants and young children (Italian version: Direttiva 2006/125/CE della Commissione, del 5 dicembre 2006, sugli alimenti a base di cereali e gli altri alimenti destinati ai lattanti e ai bambini).

18 See third subparagraph of Article 297(1) TFEU: “Legislative acts shall be published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.”

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As it turns out, CAVAGNOLI has copied the error word for word – and the same applies actually to large parts of pages 31, 32 and 33¹⁹ – from the EUR-Lex summaries of legislation which, according to EUR-Lex, are “short, easy-to-understand explanations of the main legal acts passed by the EU – intended for a general, non-specialist audience”.²⁰ The English version of the summary concerning Art. 288 TFEU and EU directives reads, correctly: “In principle, the directive only takes effect once transposed.” “Takes effect” was wrongly translated as “entra in vigore”. The summary was created in 2010 and last revised on 28 March 2019.²¹ Thanks to Google, I can see that the Italian version used by CAVAGNOLI was last revised on 30 August 2015.²² The source is only indicated in fn. 24 at the very end of the second passage quoted with an inoperative URL. As this is not a treatise on EU law, it might have been wise to restrict the information on the nature of EU directives to the essential: that a directive is “binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods” (Art. 288 TFEU) and that it is precisely because of the individual choices made by national authorities when transposing a directive into national law that the comparison of the EU text and the domestic text is of interest.

3 National guidelines

< 16 >

The reader who tackles the volume’s articles about all five languages will obtain a brief, but useful overview about the state of affairs up to 2018 in the five countries covered, as far as official drafting guidance is concerned – a fascinating subject in itself well worthy of further in-depth study in light of ongoing developments which I will refer to however briefly.

Whereas the official approach in Germany and the United Kingdom advocates gender-neutral drafting, matters are less straightforward in the three Romance languages.

3.1 United Kingdom

< 17 >

SANDRELLI refers briefly to the UK guidelines in the last paragraph of her section 2 (“Legislative English and gender-neutrality”), after presenting an overview of international guidelines (in particular those edited by Unesco) and EU guidelines, thus covering similar

19 The copy-paste starts on p. 31 with the last paragraph “La direttiva è uno degli strumenti giuridici” until “i paesi dell’UE devono recepirla adottando una legge” in the middle of p. 32, and then starts again on p. 32 with “Questa misura nazionale” and ends on the middle of p. 33 with the words “0,5% previsto dall’atto per il mercato unico di aprile 2011”.

20 <https://eur-lex.europa.eu/browse/summaries.html> (access 2.11.2021).

21 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A114527&qid=1645376220651> (access 2.11.2021).

22 http://publications.europa.eu/resource/cellar/5b4f77fd-7c73-40a3-ab5e-7a0ff2d61d7d.0010.02/DOC_3 (access 2.11.2021)

ground as CAVAGNOLI (2019: 20ff.) in the introduction and to some extent also as MORI (2019: 44ff.); this may be useful for readers who do not know Italian. As far as the UK is concerned, the use of the generic masculine in legislation had been formalised in 1850 by the Act for shortening the Language used in Acts of Parliament, better known as the Interpretation Act or Lord Brougham's Act.²³ In 1978 a new point introducing a generic female was added:

In any Act, unless the contrary intention appears, –
(a) words importing the masculine gender include the feminine;
(b) words importing the feminine gender include the masculine;
(INTERPRETATION ACT 1978: section 6)

The use of that “generic feminine”, says SANDRELLI (2019: 115), has been extremely rare; in fact, I am not sure whether it was ever used²⁴ and would have liked to see an example of such a use, even if rare.

< 18 >

It was only on 8 March 2007 – International Women's Day – that the government committed to gender-neutral drafting; not during a parliamentary debate, as SANDRELLI writes (2019: 115), but in a written ministerial statement²⁵ issued by Jack Straw and announcing that Government Bills would henceforth

take a form which achieves gender-neutral drafting so far as it is practicable, at no more than a reasonable cost to brevity or intelligibility.
(HANSARD HC Deb. 8 March 2007 vol. 457 col. 146 WS)

This is still government policy today as reflected in the Drafting Guidance issued by the Office of the Parliamentary Counsel (OPC) (OFFICE OF THE PARLIAMENTARY COUNSEL 2020: section 2.1).²⁶

< 19 >

It is true that the 2007 commitment referred explicitly to new bills and provided for a more flexible use in case of amendments to older acts, in order to avoid either inconsistencies within the text or a complete rewrite (SANDRELLI 2019: 115). However, in the December 2017 update of the OPC Drafting Guidance a clear shift towards a more widespread use of gender-neutral language can be seen:

Gender neutrality applies not only when drafting free-standing text in a Bill but also when inserting text into older Acts which are not gender-neutral. This is unlikely to cause difficulties. However, in very limited circumstances, exceptions may be made when amending an

23 A precursor for such an approach can be found in section 14 of the Criminal Law Act 1827 (UK) (7 & 8 Geo 4 c 28), quoted in CARTER (2020: 6).

24 In 1982, MP Reg Race asked “on how many occasions [...] since May 1979 [...] the feminine gender was used to denote the masculine gender.” The government could not provide an answer, as “the information is not readily available and could be discovered only at disproportionate cost.” (HANSARD HC Deb 28 October 1982 vol. 29 col. W 469).

25 Such written ministerial statements putting government information on the official record and in the public domain are printed independently in a separate section in Hansard.

26 The Office had internal guidance on gender-neutral drafting since 2008, but it was not published until 2010 (email information of 4.2.2020 from OPC to this reviewer).

older Act where it might be confusing to be gender-neutral.
(OFFICE OF THE PARLIAMENTARY COUNSEL 2017: section 2.1.2)

The wording of that section has been kept unchanged in the 2020 update of the OPC Drafting Guidance.

3.2 Germany

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In his section 2.2 on the basis for gender-fair language in German legislation, PROIA (2019: 219ff.) takes the reader from the inter-ministerial Working Group on Legal Language set up in 1987 and its 39-page report issued on 17 January 1990 (DEUTSCHER BUNDESTAG 1990) to the Joint Rules of Procedure of the Federal Ministries (GGO: *Gemeinsame Geschäftsordnung der Bundesministerien*) of 1 September 2000 which specify that the language of bills should embody the equality between men and women²⁷ and to the precept announced in the Gender Equality Act of 30 November 2001 (my emphasis)²⁸:

Rechts- und Verwaltungsvorschriften des Bundes **sollen** die Gleichstellung von Frauen und Männern auch sprachlich zum Ausdruck bringen.

In accordance with the explanatory memorandum accompanying the draft submitted by the government (DEUTSCHER BUNDESTAG 2001: 18), that Act aimed at implementing the second sentence of Art. 3(2) of the Basic Law (Grundgesetz):

Der Staat fördert die tatsächliche Durchsetzung der Gleichberechtigung von Frauen und Männern und wirkt auf die Beseitigung bestehender Nachteile hin.

However, as PROIA (2019: 221) rightly points out, the use of the modal verb “sollen” implies a margin of discretion for the drafter who **should** apply gender neutrality as a rule, but the failure to do so does not entail any legal consequence.

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Practical drafting guidelines were issued by the Federal Office of Administration (Bundesverwaltungsamt) in a 30-page leaflet already in 1996²⁹ (and not only in 2001, as stated by PROIA 2019: 221). More relevant for German legislation is the Manual for Drafting Legislation (*Handbuch der Rechtsförmlichkeit*) edited by the Federal Ministry of Justice. The third edition of 2008³⁰ dedicates 24 paragraphs to the topic (PROIA 2019: 221). The section on linguistic equal

27 § 42(5), second sentence: „Gesetzentwürfe sollen die Gleichstellung von Frauen und Männern sprachlich zum Ausdruck bringen“. The amendments to the GGO of 2006, 2009 and 2011 did not affect that paragraph.

https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/ministerium/ggo.pdf?__blob=publicationFile&v=2 (access 2.11.2021)

28 See § 4(3) in the 2015 recast version (Bundesgleichstellungsgesetz) which corresponds to § 1(2) of the initial 2001 version (Gleichstellungsdurchsetzungsgesetz).

29 The 1996 edition is not available online. For the second edition, see BUNDESVERWALTUNGSAMT²2002.

30 A fourth edition is planned, but a publication date is not yet known (email information of 4.2.2020 to this reviewer).

treatment of women and men (chapter heading “Sprachliche Gleichbehandlung von Frauen und Männern”) had in fact already been introduced in 1999 in the second edition of the Manual and thus could or should have had an impact on the national transposition measures contained in the corpus analysed by PROIA.

< 22 >

These days, the discussion in Germany revolves around the issue how to accommodate linguistically non-binary gender in a non-discriminatory way. Local authorities have been experimenting with various inclusive spellings, such as Bürger*innen³¹, Bürger:innen³², or the so-called “gender gap” (Bürger_innen³³). This has triggered scorn and mockery in much of the press, in letters to the editor, and on social media. The rationale for these innovative spellings can be explained, at least in part, by the order of the Federal Constitutional Court of 10 October 2017 which held that a non-binary gender identity – i.e. a third option besides “female” or “male” – had to be provided for by the legislature. The German Civil Status Act (PStG: Personenstandsgesetz) was amended accordingly on 22 December 2018 and now allows the indication “divers”.³⁴ Nowadays, most job advertisements carry the indication “m/w/d” (männlich/weiblich/divers).

PROIA (2019: 214) briefly refers to the 2017 order of the Federal Constitutional Court in the context of the judgment of the Federal Court of Justice of 13 March 2018 concerning the use of the generic masculine in forms addressed to a female client by her bank³⁵ but without discussing the wider impact of that 2017 order which of course produced its effect only after the period covered by the research.

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Subsequently, the Rat für deutsche Rechtschreibung (German Orthography Council)³⁶ – which issues the official orthographic rules (“amtliches Regelwerk”) binding public adminis-

31 STADTVERWALTUNG HANNOVER 2019. The document includes „eine verbindliche Empfehlung” (sic! a clear oxymoron: a binding recommendation) which applies also to legal texts (Rechtstexte) issued by the Municipality.

32 HANSESTADT LÜBECK, FRAUENBÜRO 2019. The application scope of the guidelines is described as follows: “Diese Vorgabe gilt für sämtlichen Schriftverkehr der Verwaltung (E-Mails, Präsentationen, Broschüren, Presseartikel, Drucksachen, Hausmitteilungen, Flyer, Briefe – und schließt somit auch Formulare ein).”

33 The local authorities of Tempelhof-Schöneberg (Berlin) use that spelling on the website and in their documents (see BEZIRKSAMT TEMPELHOF-SCHÖNEBERG 2020).

34 PStG § 22(3) “Kann das Kind weder dem weiblichen noch dem männlichen Geschlecht zugeordnet werden, so kann der Personenstandsfall auch ohne eine solche Angabe oder mit der Angabe „divers“ in das Geburtenregister eingetragen werden.”

35 The Court dismissed the appeal which aimed at the use of the feminine form (“Kundin”) instead of or at least together with the masculine form (“Kunde”), see BGH VI ZR 143/17. The constitutional complaint filed in the meantime by the applicant was not accepted for decision due to insufficient substantiation, see Decision of the Federal Constitutional Court of 26 May 2020, 1 BvR 1074/18. For a critical discussion of the judgment, see for example MANGOLD 2018.

36 The Rat für deutsche Rechtschreibung is an intergovernmental body with members from Germany, Austria, Switzerland, Liechtenstein, the Autonomous Province of Bolzano - South Tyrol, Belgium’s German-speaking Community and (without voting rights) Luxembourg. See <https://www.rechtschreibrat.com/ueber-den-rat/> (access 2.11.2021).

tration and schools³⁷ – was repeatedly asked to address the issue. On 16 November 2018, the Rat für deutsche Rechtschreibung defined a number of criteria which should be met by a gender-neutral text, bearing in mind different text types and target audiences. It also stated that the gender gap does not meet those criteria in terms of legibility, comprehensibility and oral reproduction, and that also applies, albeit to a lesser extent, to the asterisk (“Gender-Sternchen”). According to the Rat für deutsche Rechtschreibung, the process is still in a state of flux and should not be influenced by premature recommendations or decisions of the Rat (RAT FÜR DEUTSCHE RECHTSCHREIBUNG 2018a, 2018b). On 26 March 2021, after analysing the developments in 2019 and 2020, the Rat für deutsche Rechtschreibung reconfirmed its 2018 position (RAT FÜR DEUTSCHE RECHTSCHREIBUNG 2021a, b, c).

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Neither the gender gap nor the gender asterisk have been used in federal legislation. It is also true that notwithstanding clear legal guidelines, the generic masculine continues to be defended by part of the German legal community (PROIA 2019: 216) and the third-gender issue has given a new impetus to that position (BAUMANN 2017, critical reply from NUSSBAUMER 2018, reply from BAUMANN 2019). In the words of the Rat für deutsche Rechtschreibung:

[Die] Kritik an einer Verabsolutierung geschlechtergerechter Schreibung im Sinne einer „political correctness“ oder einer Verallgemeinerung einer gendergerechten Schreibung [ist] in weiten Kreisen der Öffentlichkeit nicht verstummt.
(RAT FÜR DEUTSCHE RECHTSCHREIBUNG 2018b: 2)

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Whereas the German language, although heavily gendered, offers a number of different strategies for gender neutrality of nouns and (personal, possessive and relative) pronouns, Romance languages face in particular the issue of the grammatical concord of the predicate and past participle.

3.3 France

< 26 >

For France, BRACCHI (2019: 71ff.) sets the scene with a historical digest on the use of the feminine in the Ancien Régime. French grammarians of the 18th century not only imposed the concord rule “le masculin l’emporte sur le féminin”, but saw fit to justify it:

37 RAT FÜR DEUTSCHE RECHTSCHREIBUNG 2005/2015: par. 1: „Zur Beobachtung und Weiterentwicklung der deutschen Rechtschreibung wird ein Rat für deutsche Rechtschreibung eingerichtet. Er soll die wichtigsten wissenschaftlich und praktisch an der Sprachentwicklung beteiligten Gruppen repräsentieren. Seine Vorschläge erhalten durch Beschluss der zuständigen staatlichen Stellen Bindung für Schule und Verwaltung. Dieser Rat hat die Aufgabe, die Einheitlichkeit der Rechtschreibung im deutschen Sprachraum zu bewahren und die Rechtschreibung auf der Grundlage des orthografischen Regelwerks [...] im unerlässlichen Umfang weiterzuentwickeln.“

[un adjectif] s'accorde en genre avec celui des noms qui est du genre le plus noble. Le genre masculin est réputé plus noble que le féminin, à cause de la supériorité du mâle sur la femelle. (BEAUZÉE 1767: 358)

This also meant, at least for the time being, the end of the *accord de proximité* (adjective agreed with the gender of the nearest noun).

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The first steps with a view to relaunch the use of feminine forms were taken by Québec (BRACCHI 2019: 72), but also by Switzerland and Belgium³⁸ in a period when the Académie française still held that

le genre non marqué était préférable, lorsque l'usage ne s'y opposait pas, pour les noms de titres, de professions, de fonctions : le juge, le délégué, le docteur, le président désignent indifféremment un homme ou une femme ; **il n'y a pas lieu de créer des équivalents féminins** à ces termes.

(ACADÉMIE FRANÇAISE 1984) (my emphasis)

This was the somewhat miffed reaction to the setting up in 1984, by the French government, of the "Commission de terminologie relative au vocabulaire concernant les activités des femmes" (BRACCHI 2019: 72) without the Académie having been consulted.

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Notwithstanding the rigid position of the Académie française, instructions issued in 1986 by prime minister Laurent Fabius (circulaire du 11 mars 1986) and in 1998 by prime minister Lionel Jospin (circulaire du 6 mars 1998) provided for the use of feminine forms (BRACCHI 2019: 73). However, the official approach as reflected in the latest instructions issued in 2017 by prime minister Edouard Philippe (circulaire du 21 novembre 2017) remains very restrictive. Although the 2017 circulaire (BRACCHI 2019: 74f.) declares that the government is firmly committed to strengthen gender equality by combating stereotypes,³⁹ it imposes the generic masculine except for those cases where reference is made to a concrete office actually held by a woman and except for notices of vacancy where the double form ("le candidat ou la candidate") should be used. It also rules out the so-called "écriture inclusive" (e.g. *avocat·e·s*) which had been strongly condemned by the Académie française in October 2017 (ACADÉMIE FRANÇAISE 2017). In February 2021, MP François Jolivet (from La République en Marche), together with a number of co-signatories worried about the increasing use of inclusive spelling, tabled a proposal aimed at introducing a new article in the "code des relations entre le public et l'administration" which would ban the practice in administrative documents. The proposal was referred to the "commission des lois constitutionnelles, de la législation et de l'administration générale" and so far has not made any further progress (JOLIVET 2021).

38 For a detailed discussion of the events in France, Belgium, Switzerland and Québec see BURR (2000: 127ff.). For a view from France, see CERQUIGLINI (2018).

39 "Le Gouvernement est résolument engagé dans le renforcement de l'égalité entre les femmes et les hommes. Son action dans ce domaine passe à la fois par des mesures concrètes [...] et par une démarche éducative et culturelle à laquelle se rattache la lutte contre les stéréotypes qui freinent les progrès vers une égalité réelle."

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It was only on 28 February 2019 that the Académie française finally accepted, somewhat grudgingly, the “féminisation des noms de métiers et de fonctions” for those women who wish to use the feminine form:

[L']imposition de normes rigides en matière de féminisation méconnaît en effet le souhait exprimé par certaines femmes de conserver les appellations masculines pour désigner la profession qu'elles exercent.

(ACADÉMIE FRANÇAISE 2019: 12)

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It is also worth noting that the official French guidelines for legislative drafters – the *Guide de légistique*, first issued in 2005, now in its third edition – only contain some brief paragraphs on “féminisation” which confirm the 1998 and 2017 circulars. The *Guide* states explicitly that

[Dans] le corps du texte [normatif], lorsqu'il est question du ministre, c'est la fonction qui est en cause et non la personne qui l'exerce temporairement, de sorte qu'il y a lieu de recourir au genre masculin, qui a valeur générique.

(PREMIER MINISTRE, CONSEIL D'ETAT 2017: 293)

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However, the public debate in France has not stopped. In autumn 2021, the dictionary *Le Robert* added the pronoun “iel” to its online version:

iel, iels pronom personnel

rare. Pronom personnel sujet de la troisième personne du singulier (*iel*) et du pluriel (*iels*), employé pour évoquer une personne quel que soit son genre.

(*Le Robert* 2021, <https://dictionnaire.lerobert.com/definition/iel>)

On 16 November 2021, MP François Jolivet asked the Académie française whether the Académie – “le gardien de notre langue” – had deliberated on the matter, and accused the dictionary on twitter of “#wokisme” (an anglicism surely not approved by the Académie ...). Education minister Jean Miguel Blanquer tweeted his support “L'écriture inclusive n'est pas l'avenir de la langue française”. Brigitte Macron, asked about her position, declared:

La langue est si belle et deux pronoms, c'est bien.

(LE POINT 2021)

The outcry was such that Charles Bimbenet, managing director of “Le Robert”, published an explanatory statement on 17 November 2021:

[...] Si une majorité d'entre vous a fait part de sa satisfaction à voir apparaître ce mot dans un dictionnaire Le Robert, d'autres ont pu se montrer surpris, sinon indignés. Positivons : que la controverse autour de notre langue, de son évolution et de ses usages, puisse parfois être vive, parfois houleuse, ce n'est pas nouveau, on peut même y voir un excellent signe de sa vitalité. [...]

Depuis quelques mois, les documentalistes du Robert ont constaté un usage croissant du mot « iel ». [...] Le mot « iel » a été discuté début octobre en comité de rédaction Le Robert, au cours duquel il a été décidé de l'intégrer dans notre dictionnaire en ligne : si son usage est

encore relativement faible [...], il est en forte croissance depuis quelques mois. De surcroît, le sens du mot « iel » ne se comprend pas à sa seule lecture [...], et il nous est apparu utile de préciser son sens pour celles et ceux qui le croisent, qu'ils souhaitent l'employer ou au contraire... le rejeter.

Est-il utile de rappeler que Le Robert, comme tous les dictionnaires, inclut de nombreux mots porteurs d'idées, présentes ou passées, de tendances sociétales, etc. ? Ce qui ne vaut évidemment pas assentiment ou adhésion au sens véhiculé par ces mots. Dit plus clairement : ce n'est pas le sujet pour nos lexicographes. La mission du Robert est d'observer l'évolution d'une langue française en mouvement, diverse, et d'en rendre compte. Définir les mots qui disent le monde, c'est aider à mieux le comprendre.

(BIMBENET 2021)

Could “iel” achieve widespread usage like the new gender-neutral and non-binary pronoun “hen” in Swedish which was added to the official dictionary “Svenska Akademiens ordlista (SAOL)” in 2015 (SENDÉN/RENSTRÖM/LINDQVIST 2021: 589, 609)? It does not look very likely, at least in the near future.

3.4 Spain

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In Spain, notwithstanding the Gender Equality Law (Ley Orgánica 3/2007) of 22 March 2007 establishing “non-sexist language” as a guiding principle for public authorities (BLINI 2019: 185), the formal guidelines for legislative drafters have not been amended since 2005. The guidelines do not discuss the question of gender-neutrality, but refer in general terms to the rules issued by the Real Academia Española (RAE) (BLINI 2019: 187). However, they include an example where the generic masculine should be used as the reference is not to the person, but to the office occupied by that person:

Se habilita al Ministro (masculino genérico, al referirse al cargo, no al titular que en ese momento lo ocupa, ya que la norma tiene vocación de permanencia) [...] para desarrollar [...] lo dispuesto [...].

(CONSEJO DE MINISTROS 2005: par. 43)

This was new as compared to the previous version of 1991 (CONSEJO DE MINISTROS 1991). But unlike the practice in France, the feminine form has been in use and accepted by the RAE at least since 1817, albeit with the meaning ‘minister’s wife’: “Llámase también así la mujer del ministro” (REAL ACADEMIA ESPAÑOLA 1817: 575). In the 19th edition in 1970, the RAE broadens the definition which now includes also

la que ejerce en la gobernación del Estado las funciones correspondientes a un ministro.
(REAL ACADEMIA ESPAÑOLA 1970: 879)

Therefore, Spanish drafters had no problem referring to a female minister as “la ministra”.⁴⁰

40 See for example Real Decreto 538/1982, de 17 de marzo, por el que se crea la Comisión Intermi-nisterial para Asuntos de la Familia. The last paragraph of the preamble reads: “En su virtud, con la aprobación de la Presidencia del Gobierno, la propuesta de la Ministra de Cultura y previa deliberación del Consejo de Ministros [...]”. Minister for Culture was Soledad Becerril, the first woman minister since the end of the Franco dictatorship.

On the other hand, over the years the RAE has defended the generic masculine and argued strongly against the use of double forms. RAE member Ignacio BOSQUE (2012) took the same view in his report on linguistic sexism and the visibility of women which the RAE endorsed on 1 March 2012 (BLINI 2019: 187).

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Public debate on the issue, however, has not stopped. BLINI (2019: 184) quotes a number of examples where women did not use the generic masculine on purpose and made newspaper headlines, such as MP Irene Montero who, in 2018, referred to “*duas portavozas y un portavoz*”.⁴¹ Several authors came up with redrafting proposals for the Spanish constitution (e.g. GUERRERO MARTÍN/LLEDÓ CUNILL 2008; TORRES DEL MORAL 2017; MARRADAS et al. 2019) and in July 2018, Carmen Calvo, then vice-president of the Spanish government and “*ministra de la Presidencia, Relaciones con las Cortes e Igualdad*” had asked the RAE to look at “*the proper use of inclusive language in the Spanish constitution*” (REAL ACADEMIA ESPAÑOLA 2020: 4). The answer came only on 16 January 2020 after difficult discussions⁴² when the RAE endorsed another, quite bulky report drafted by Pedro ÁLVAREZ DE MIRANDA, Paz BATTANER, Ignacio BOSQUE and Inés FERNÁNDEZ-ORDÓÑEZ. The first part of the report deals with Calvo’s request, the second part defines the RAE position on linguistic sexism, feminine forms designating professions and the generic masculine (REAL ACADEMIA ESPAÑOLA 2020: 31ff.). It lists some changes introduced over the years in the RAE dictionary with a view to eliminating “*residuos machistas o [...] connotaciones misóginas*” (REAL ACADEMIA ESPAÑOLA 2020: 33ff.). Two annexes to the report compile a representative sample of answers given by the RAE to consultations on gender issues (REAL ACADEMIA ESPAÑOLA 2020: 63ff.). The report looks in some detail at the various linguistic strategies which can be used in order to avoid the generic masculine form (REAL ACADEMIA ESPAÑOLA 2020: 54ff.). The RAE notes that it is not within its remit to choose among the available strategies, but it is clear that their preference is for the maintenance of the generic masculine:

La tercera opción consiste en mantener los usos en masculino, tal como hace el texto actual (y con él otras constituciones escritas en español y en otras lenguas románicas), puesto que, tal como se ha explicado, las denominaciones en masculino están justificadas lingüísticamente, ya que corresponden estrictamente a las convenciones gramaticales y léxicas que el español comparte con otros muchos idiomas.

(REAL ACADEMIA ESPAÑOLA 2020: 16)

<https://www.boe.es/buscar/doc.php?id=BOE-A-1982-6455> (access 2.11.2021).

41 RAE recognizes the following forms: *el portavoz* and *la portavoz*.

42 Among numerous articles in the Spanish press, see for example *La Vanguardia*, 12.7.2018: Arturo Pérez-Reverte dejaría la RAE si apoyara el lenguaje inclusivo en la Constitución, <https://www.lavanguardia.com/cultura/20180712/45852679500/arturo-perez-reverte-lenguaje-constitucion.html> (access 2.11.2021); *El País*, 14.12.2019, La RAE aplaza al próximo Pleno el debate sobre el lenguaje inclusivo de la Constitución. La institución se divide entre partidarios y contrarios de revisar “párrafo a párrafo” el informe elaborado por cuatro académicos https://elpais.com/cultura/2019/12/13/actualidad/1576258522_446803.html (access 2.11.2021).

Concerning the constitution, the only concrete recommendations concern the use of Rey and Príncipe de Asturias which could be replaced by “Rey y Reina” and “Príncipe y Princesa de Asturias” (REAL ACADEMIA ESPAÑOLA 2020: 28).

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It comes as no surprise that the RAE is not in favour of gender-neutralizing letters as in “todes”, “tod@s” or “todxs” which aim specifically at including non-binary persons:

El uso de la @ o de las letras “e” y “x” como supuestas marcas de género inclusivo es ajeno a la morfología del español, además de innecesario, pues el masculino gramatical ya cumple esa función como término no marcado de la oposición de género.

(REAL ACADEMIA ESPAÑOLA 2020: 74)

During a visit to seven Spanish language academies in the Caribbean and Central America in February 2020, Santiago Muñoz Machado, director of the RAE and president of ASALE (Asociación de Academias de la Lengua Española), called inclusive language “una extravagancia”, but also declared, if press reports are to be believed:

Pero si algún día, todo el mundo habla de ‘todes’, las academias no tendrán más remedio que reconocer que así es.

(MILENIO 2020)

Along the same lines, the RAE answered a query on the use of inclusive language by a Chilean university in 2018, as reported by Argentinian television El Nueve:

El cambio lingüístico, esp. a nivel gramatical, no se produce nunca por decisión consciente o imposición de un colectivo; es fruto de la evolución del sistema a lo largo del tiempo. Si este cambio se integra en la lengua estándar, pasará a la norma.

(ELNUEVE.COM 2018)

On the one hand, the RAE sees itself as a mere observer. In the words of its president on his visit to Cuba in February 2020:

Nosotros somos testigos de lo que ocurre, notarios de cómo habla la gente.

(MILENIO 2020)

On the other hand, the RAE, through its linguistic service “Español al Día”, offers authoritative advice on what it considers the correct use of the language (since 2012 through its twitter account @RAEinforma)

desde la perspectiva de la **norma** que regula hoy el uso culto del español.

(REAL ACADEMIA ESPAÑOLA n.d.) (my emphasis)

This approach which requires the RAE to balance the recognition of language change against the notions of properness and correctness, is set out in its mission as defined in the RAE statutes.⁴³

43 Article 1: La Real Academia Española [...] tiene como misión principal velar porque los cambios que experimente la Lengua Española en su constante adaptación a las necesidades de sus hablantes no quiebren la esencial unidad que mantiene en todo el ámbito hispánico. Debe cuidar igualmente de que tal evolución conserve el genio propio de la lengua, tal como éste ha ido consolidándose con el correr de los siglos, así como de establecer y difundir los criterios de

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Although guidance on legislative drafting at the state level has not really moved since 2005, BLINI (2019: 186) points to the many initiatives and guidelines on non-sexist language at the level of universities, trade unions, Autonomous Communities, local authorities and other bodies.

3.5 Italy

< 36 >

CAVAGNOLI (2019: 156ff.) reports a similar phenomenon for Italy. A fundamental reference text on the issue continues to be to this day the recommendations for a non-sexist use of the Italian language drafted by Alma SABATINI in 1987 on behalf of the National Commission for Equal Opportunities, established by the Presidency of the Council of Ministers. According to CAVAGNOLI (2019: 150), the recommendations – which were based on an analysis of the language used in newspaper articles and job advertisements – met with heavy opposition at the time.

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The 1993 Style guide (CAVAGNOLI 2019: 152) deals with written communication from public administration. Section 4 on the “uso non sessista e non discriminatorio della lingua” underlines that

tutti gli atti scritti all’interno delle amministrazioni pubbliche dovranno essere concepiti in modo da evitare espressioni e usi della lingua che alludano a discriminazioni tra i sessi e nei confronti delle minoranze,

followed by a series of recommendations, one of which reads:

Limitare l’uso del genere maschile come genere *non marcato* agli atti che si riferiscono in forma astratta ad un determinato profilo professionale della pubblica amministrazione; usare sempre il genere appropriato nei casi concreti.

(PRESIDENZA DEL CONSIGLIO DEI MINISTRI, Dipartimento per la Funzione Pubblica 1993: recommendation 4)

CAVAGNOLI does not mention that section, but quotes (why?) a paragraph of Sabino Cassese’s preface (“perché il Dipartimento della funzione pubblica si interessa di questo problema, quando ve ne sono altri ben più urgenti, [...] controlli vecchi ed improduttivi”) (2019: 152) -- not very clear for the reader as the passage is not marked as a quotation.⁴⁴ In the next paragraph, she refers to section “1.7 Omogeneità terminologica” – nowhere to be found in the 1993 Style Guide. As far as I can see, that section 1.7 comes from the Circular issued on 2 May 2001 (Circolare 2 maggio 2001) containing a guide to the drafting of legislative texts.

A new Style Guide was published in 1997 (FIORITTO 1997) which contains some suggestions for non-discriminatory language (CAVAGNOLI 2019: 153).

propiedad y corrección, y de contribuir a su esplendor (cf. Real Decreto 1109/1993).

44 The paragraph in Cassese’s preface starts with the words: “Conosco l’obiezione” which CAVAGNOLI replaced with “Scontata l’obiezione”.

< 38 >

It is not always easy to follow CAVAGNOLI (2019: 144ff.) in her chronological presentation of events and documents at national level. She refers, for example, to the directive of 8 May 2002 on simplification of the language of administrative texts (Direttiva 8 maggio 2002) with a footnote 14 which refers the reader to – the unrelated – footnote 17 with a non-functioning URL. CAVAGNOLI (2019: 153) states correctly that the directive recommends, *inter alia*, using common language words (“uso de la lingua commune”):

Rispetto alle parole di un dizionario, quelle che usiamo di solito sono in numero molto contenuto. Il vocabolario di base della lingua italiana contiene meno 7000 parole e sono quelle che dobbiamo preferire se vogliamo essere capiti da chi legge.
(Direttiva 8 maggio 2002, section “Le regole di scrittura del testo”, recommendation 2)

She then criticizes that the directive does not discuss the use of feminine forms (2019: 153f.). The only exception, she writes, is “Signora Pastora”, in a list of forms of address (*Chiarissimo Maestro, Egregio, Gentile* etc.) which is in fact of little interest for legislative drafting, but where does this list come from? Not the 2002 directive.⁴⁵

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CAVAGNOLI (2019: 154) quotes the full text of Art. 1 of the 2006 legislative decree n. 198 (Codice delle pari opportunità tra uomo e donna)– but the version quoted dates from 2010 and not from 2006; paragraphs 2 to 4 were inserted by the legislative decree of 25 January 2010 n. 5 which transposed Directive 2006/54/EC into Italian law. Art. 1 of the initial 2006 Codice consisted only of the first paragraph (which was also slightly modified in 2010). The important paragraph 4 of the Codice as modified in 2010 reads:

L’obiettivo della parità di trattamento e di opportunità tra donne e uomini deve essere tenuto presente nella formulazione e attuazione, a tutti i livelli e ad opera di tutti gli attori, di leggi, regolamenti, atti amministrativi, politiche e attività.
(DECRETO LEGISLATIVO 25 gennaio 2010: Art. 1(4))

This corresponds to Art. 29 (Gender mainstreaming) of Directive 2006/54/EC:

Gli Stati membri tengono conto dell’obiettivo della parità tra gli uomini e le donne nel formulare ed attuare leggi, regolamenti, atti amministrativi, politiche e attività nei settori di cui alla presente direttiva.

45 I only found that list in Chapter V (L’uso degli appellativi nelle comunicazioni formali) of the University of Palermo Style Guide (Università degli Studi di Palermo (2011) Manuale di Stile, Scrivi bene e parla chiaro, a cura di Riccardo Riggi, Revisione a cura di Francesco Fantaci, p. 129ff.) [manuale in formato A5.pdf \(unipa.it\)](#) (access 2.11.2021). Riccardo Riggi also prepared, for Palermo University, the “Raccolta organica di testi sulla Semplificazione del linguaggio amministrativo” which also contains that list now entitled “L’utilizzo degli appellativi negli atti pubblici”, p. 51-54, https://www.unipa.it/archivio-intranet/.content/documenti_NewsFormazione_allegati/Raccolta_organica_di_testi_sulla_semplifi.pdf (access 2.11.2021) and again in “Suggerimenti per l’uso di appellativi”, a cura di Riccardo Riggi, Responsabile Relazioni Interne, Università degli Studi di Palermo, Versione 1.0 – aggiornata al 21 febbraio 2011 [Suggerimenti per l’uso degli appellativi \(stellaromagnoli.com\)](#) (access 2.11.2021).

The 2007 directive on measures to implement equality and equal opportunities for men and women in public administration (Direttiva 23 maggio 2007) recommends the use of non-discriminatory language, with an explicit reference to the Sabatini recommendations of 1987 and to the 1997 Style Guide (CAVAGNOLI 2019: 154). But motion n. 1-00107 of 31 May 2007 calling for the visibility of women in the language used by public administration was not presented by senator Alfonsi et al. (CAVAGNOLI 2019: 154), but by **senatrice** Daniela Alfonsi (sic!) and 44 other signatories. So much for the visibility of women.

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Cavagnoli could have mentioned the initiative of the ITTIG working group which, together with the Accademia della Crusca, published a “Guida alla redazione degli atti amministrativi – Regole e suggerimenti” in 2011, building on the 2002 directive and the drafting guidelines for the regions and autonomous provinces (CONFERENZA DEI PRESIDENTI DELLE ASSEMBLEE LEGISLATIVE DELLE REGIONI E DELLE PROVINCE AUTONOME 2007). Even without an explicit reference to non-discriminatory language, the following recommendations are interesting:

Nel caso di destinatari non definiti usare possibilmente formulazioni che non specificano il genere (la persona responsabile anziché il/la responsabile), nomi che fanno riferimento alla carica (la direzione anziché il direttore/la direttrice), perifrasi con chi/coloro + verbo alla terza persona singolare o plurale (chi è incaricato di..., coloro che hanno l’incarico di...). **Se il riferimento è a più persone di genere maschile e femminile si può usare soltanto la forma maschile per i riferimenti interni al fine di non appesantire il testo** (i cittadini, gli elettori). (GRUPPO DI LAVORO PROMOSSO DA ISTITUTO DI TEORIA E TECNICHE DELL’INFORMAZIONE GIURIDICA (ITTIG) E ACCADEMIA DELLA CRUSCA 2011: 29) (emphasis in original text)

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CAVAGNOLI (2019: 155) ends her chronological list with a reference to the 2018 guidelines issued by the Ministry of Education, University and Research which are targeted at MIUR staff (MINISTERO DELL’ISTRUZIONE, DELL’UNIVERSITÀ E DELLA RICERCA (MIUR) 2018). An equally limited target group is concerned with the POLITE project for textbooks (Pari Opportunità e Libri di Testo) (CAVAGNOLI 2019: 155) which MORI (2019: 47) also refers to. These are all very honourable and interesting, but with no direct impact on legislative drafting.

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As is the case for the other languages analysed, recent discussions in Italy have revolved around the question of how to address non-binary persons. Faced with the increasing number of questions on the use of the asterisk, the schwa or other “*segni che 'opacizzano' le desinenze maschili e femminili*”, the language consultancy service of the Accademia della Crusca published a comprehensive compilation of the replies given (D’ACHILLE 2021). Neither the schwa nor the asterisk are a feasible solution, says La Crusca. The compilation offers some practical, but rather limited advice, such as to omit the third-person pronoun in the subjective case, while conceding that the past participle is problematic:

Certamente l’accordo del participio passato costituisce un problema; ma non c’è, al momento, una soluzione pronta : sarà piuttosto l’uso dei parlanti, nel tempo, a trovarla.
(D’ACHILLE 2021)

Not that this is very helpful. In La Crusca's conclusion:

È senz'altro giusto, e anzi lodevole, [...] prestare attenzione alle scelte linguistiche relative al genere, evitando ogni forma di sessismo linguistico. Ma non dobbiamo cercare o pretendere di forzare la lingua – almeno nei suoi usi istituzionali, quelli propri dello standard che si insegna e si apprende a scuola – al servizio di un'ideologia, per quanto buona questa ci possa apparire.

(D'ACHILLE 2021)

The sociolinguist Vera Gheno who defends the use of the schwa, recalls its appearance in 2020, in the book “Il contrario della solitudine. Manifesto per un femminismo in comune”, the Italian translation prepared by Eloisa Del Giudice of “Feminismo em comum: Para todas, todes e todos” by the Brazilian feminist Marcia Tiburi:

L'idea di usare lo schwa, dunque, nasce in maniera ponderata per non cancellare, nella traduzione, la soluzione linguistica militante di Tiburi.

(GHENO 2020)

So the schwa was used for a very specific purpose in a non-legal text. The circumstances of the next example are rather different: In August 2021, the “Commissione nazionale per l'Abilitazione Scientifica Nazionale alle funzioni di professore universitario di prima e seconda fascia” – after all an official body appointed by “decreto direttoriale” of the Ministero dell'Università e della Ricerca – used a schwa in its minutes, e.g. “professorə associatə” instead of “professore associato” and the plural “autor3” instead of “autori”; it did so again in December 2021 and January 2022, ignoring the advice of La Crusca (ARCANGELI 2022a). Massimo Arcangeli, who teaches Italian linguistics at Cagliari University, started the online petition “Lo schwa (ə)? No, grazie. Pro lingua nostra”, in protest against

una pericolosa deriva, spacciata per anelito d'inclusività da incompetenti in materia linguistica (Arcangeli 2022b).

Within two months, the petition which is addressed to the Ministero dell'Università e della Ricerca and to the Ministero dell'Istruzione, collected over 20 000 signatures, including from Claudio Marazzini, president of the Accademia della Crusca (ARCANGELI 2022b).

4 EU guidelines

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When presenting their results, the authors (BRACCHI 2019: 103; SANDRELLI 2019: 138; CAVAGNOLI 2019: 169; BLINI 2019: 209; PROIA 2019: 237) issue the reservation that the corpora used are somewhat dated and would need to be updated with more recent data. Indeed, the guidelines on gender neutrality at EU level are fairly recent. In her introduction, CAVAGNOLI (2019: 20ff.) presents a series of such guidelines, including also texts from the UN and from the Council of Europe as well as a hotchpot of texts from different EU institutions and bodies.

4.1 Resolutions and guides issued by EU institutions

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Concerning EU texts, the 1995 Council resolution – erroneously attributed to the Council of Europe by CAVAGNOLI (2019: 22) – focuses on sexual stereotyping in advertising and in the media, and as such is not directly relevant for legislation (COUNCIL 1995). The first practical guidelines on gender neutral language concerning directly EU texts seem to have been introduced in the third edition (1993) or the fourth edition (1998)⁴⁶ of the English Style Guide of the European Commission which serves as a “handbook for authors and translators in the European Commission” and is now at its eighth edition (2016, last updated March 2022). The guidelines have of course evolved over the years; the current version contains a section on “Inclusive language” and comes with a warning:

These are general guidelines. Please be aware that this is an evolving and sensitive area of language.

(EUROPEAN COMMISSION 2016: 67ff.)

However, this is an internal – albeit publicly available – Commission document and therefore not necessarily consulted by drafters and staff in the other EU institutions, in particular the lawyer-linguists of the European Parliament and the Council.

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Lawyer-linguists of those two institutions who finalise all texts adopted under the codecision procedure (now, under the treaty of Lisbon, the ordinary legislative procedure) tend to consult in particular the *Joint Practical Guide* which was first edited by the Legal Services of the European Parliament, the Council and the Commission in 2000 and which is based on the Interinstitutional Agreement between the European Parliament; the Council and the Commission of 22 December 1998 on common guidelines for the quality of drafting of Community legislation – neither of which contains anything on gender neutral or inclusive language.

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The European Parliament came up with practical guidelines for all the official languages in 2008 (EUROPEAN PARLIAMENT 2008b) which were drawn up under the authority of Parliament’s High Level Group on Gender Equality and Diversity (HLG) and approved by the HGL on 13 February 2008.⁴⁷ A thoroughly revised edition was published in all official languages in 2018 (EUROPEAN PARLIAMENT 2018).⁴⁸ The text was “welcomed” by the EP Bureau

46 Email communication from the Deputy Chair of the Style Guide Committee to this reviewer on 10.9.2019.

47 The High-Level Group (HLG) was established by Parliament’s Bureau in 2004 as a follow-up to Parliament’s resolution of 13 March 2003 on gender mainstreaming and renamed in 2007 to include “diversity” in its remit. It is chaired by a vice-president of the European Parliament and is composed of four MEPs and additionally four permanently invited MEPs. Not to be confused with the High-Level Group on gender mainstreaming composed of national experts and chaired by the European Commission which assists the Commission in relation to the implementation of existing Union legislation, programmes and policies.

48 All language versions are accessible on the website of the Parliament’s Committee on Women’s Rights and Gender Equality, under the heading “gender mainstreaming”,

on 19 May 2008 as guidelines “both internally and in external communication and information material about the institution”.⁴⁹ In view of the outcry of the press⁵⁰ and some MEPs,⁵¹ the 2018 revised edition clarified the role of the guidelines drafted by Parliament’s services, i.e. at the administrative (and not political) level:

the purpose of these guidelines is not to constrain authors in the European Parliament to follow a mandatory set of rules but rather to encourage the administrative services to give due consideration to the issue of gender sensitivity in language whenever writing, translating or interpreting.

(EUROPEAN PARLIAMENT 2018: 4)

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Two remarks: these guidelines – quoted in some detail by CAVAGNOLI (2019: 24ff.), MORI (2019: 46ff.), SANDRELLI (2019: 113ff.) and PROIA (2019: 223ff.) – cover only the last year of the period analysed in the book under review, and it is therefore not surprising that they did not have any real impact on the texts analysed. Moreover, as stated in the preface, they were to be used in “parliamentary publications and written communications”. On 15 January 2019, the European Parliament plenary welcomed

the revised guidelines on gender-neutral language in the European Parliament, published in July 2018, which now better reflect linguistic and cultural developments and provide practical advice in all official EU languages on the use of gender-fair and inclusive language [...] and [invited] all Members of the European Parliament, as well as officials, to promote and apply these guidelines consistently in their work.

(EUROPEAN PARLIAMENT 2019: par. 15) (my emphasis)

Secondly, although since the 2018 revision, the guidelines do refer to Parliament’s role as legislator,⁵² they do not bind the Council nor the Commission. The final wording of any legislative act to be adopted jointly by the European Parliament and the Council under the ordinary legislative procedure must be agreed jointly by both institutions; and the Council explicitly excludes legislation in its 2018 guidance (GENERAL SECRETARIAT OF THE COUNCIL 2018: 5).

<https://www.europarl.europa.eu/committees/en/gender-mainstreaming/product-details/20160602CDT00721> (access 2.11.2021).

49 Point 11 of the minutes of the Bureau meeting of 19.5.2008.

50 One example of many: *Daily Mail*, 16.3.2009, EU bans use of ‘Miss’ and ‘Mrs’ (and sportsmen and statesmen) because it claims they are sexist, <https://www.dailymail.co.uk/news/article-1162384/EU-bans-use-Miss-Mrs-sportsmen-statesmen-claims-sexist.html> (access 2.11.2021).

51 E.g. Scottish Conservative MEP Struan Stevenson: “political correctness gone mad” (Source: *Catholic Exchange*, 19.3.2009, EU to Eliminate “Mrs.” and “Miss” in Favor of “Gender Neutral” Language, <https://catholicexchange.com/eu-to-eliminate-mrs-and-miss-in-favor-of-gender-neutral-language> (access 2.11.2021); German MEP Markus Pieper (CDU): “Wir brauchen diese Bevormundung nicht. Hört auf mit dem Schwachsinn” (Source: *Welt*, 31.3.2009, Die EU spricht jetzt geschlechtsgerecht, <https://www.welt.de/politik/article3477032/Die-EU-spricht-jetzt-geschlechtsgerecht.html> (access 2.11.2021).

52 “While respecting the need for clarity, the use of a language that is not gender inclusive, in particular the generic masculine, should be avoided as far as possible in legislative acts.” (EUROPEAN PARLIAMENT 2018: 6).

The European Commission has the right to initiate legislation and thus stands at the beginning of the legislative procedure. Of the three key actors in the legislative procedure – Commission, Council and European Parliament – the Commission was the last one to issue, in late October 2021 and under the responsibility of Helena Dalli, the Commissioner for Equality, a new 30-pages internal document entitled “Guidelines for Inclusive Communication” with key messages and a series of “DOs and DON’Ts” on a number of topics such as: gender; LGBTIQ; racial and ethnic background; cultures, lifestyles or beliefs; disabilities; and age (EUROPEAN COMMISSION 2021a). It was not a success. On 28 November 2021, the Italian newspaper *Il Giornale* went on the attack with the headline “In Europa vietato dire ‘Natale’ e perfino chiamarsi Maria”⁵³, and accused the Commission of

una volontà di cancellazione del genere maschile e femminile che raggiunge livelli paradossali (GIUBILEI 2021).

This led to a public outcry on social media (DE LA BAUME 2021), French MEP Nadine Morano called for the resignation of Helena Dalli (MORANO 2021) and in a debate in the EP on 15 December 2021, comments ranged from “political correctness and gender madness” (Hungarian MEP Balázs Hidvéghi), “assurdo linguaggio proposto dalla Commissione” (Italian MEP Antonio Tajani), “chef d’œuvre de bêtise bureaucratique” (French MEP Jordan Bardella) to “Kreuzzug gegen unsere Traditionen” (German MEP Joachim Kuhs), with a few interventions defending the Commission:

[...] el lenguaje inclusivo es importante porque lo que no se nombra no existe, o porque la diversidad se construye también a través de lo que se visibiliza.
(EUROPEAN PARLIAMENT 2021: Spanish MEP Sira Rego)

In fact, the debate in the EP was rather pointless as the Commissioner had hastily withdrawn the guidelines already on 30 November 2021. Helena Dalli tweeted a statement that the version published was “not a mature document” and that “the guidelines clearly need more work”.⁵⁴ So far, no new version is available, and it remains to be seen if the Commission is willing to get its fingers burnt once more.

This means that as far as Commission guidelines are concerned, inclusive language is discussed in three pages of the English Style Guide edited by the Commission’s Directorate-General for Translation (cf. paragraph 42), and in two pages of the “Commission Style Guide” launched in March 2019 by the Secretariat-General of the Commission and updated in April 2021. The “Commission Style Guide” is “tailored to the Commission’s needs and contains rules for drafting in English”, and it applies to “internal documents, drafts and communication (both external and internal) in the Commission” (EUROPEAN COMMISSION 2021b: 6).

53 The guidelines recommended to “avoid assuming that everyone is Christian” and to “be sensitive about the fact that people have different religious traditions and calendars”. As a practical example, it suggested to say “holiday times” instead of “Christmas time”.

54 <https://twitter.com/helenadalli/status/1465639346103533573?s=20> (access 10.1.2022)

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Last but not least there is the Interinstitutional Style Guide prepared by interinstitutional linguistic groups (one for each language) and edited by the Publication Office of the European Union: a section on gender-neutral language was included in the English version (EUROPEAN UNION 2011: section 10.6) only in 2015.⁵⁵ So far, there is no corresponding section in the French, German, Italian and Spanish versions of the Interinstitutional Style Guide.

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That's it as far as practical guidance is concerned. All the other texts quoted by CAVAGNOLI are either practical guidelines from other international institutions (for use in particular by those institutions) or political wishlists.

When referring to EU documents, CAVAGNOLI (2019: 21ff.) lumps together documents of a very different nature, from (non-binding) Council resolutions and European Parliament resolutions to a report from an EP committee to Commission communications and to guidelines drafted by the EP administration and by the General Secretariat of the Council to legislative acts. The standing and impact of these documents differ,⁵⁶ and titles and references are not always sufficiently precise to allow easy access to the texts referred to where one might wish to go further and consult the originals quoted.

4.2 The role of translators

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Both CAVAGNOLI (2019: 26) and MORI (2019: 47) take issue with the stance taken by the European Parliament guidelines that

55 Email communication of 5.9.2019 of the Publications Office, Coordination 'Interinstitutional Style Guide' to this reviewer.

56 For example, the first part of the EP text quoted by CAVAGNOLI (2019: 22f.) "il sessismo che si riflette [...] parità tra uomo e donna" was not supported by the full Parliament. The sentence comes from the EP Committee's on Women's Rights and Equal Opportunities opinion concerning the Commission's communication (not the Union's!) on an information and communication strategy for the European Union (COM(2002) 350), but it never made it to plenary, as the lead committee, the EP's Committee on Culture, Youth, Education, the Media and Sport, did not take it on board in its report A5-0053/2003 which it submitted for the plenary vote. Accordingly, the resolution adopted by the full Parliament on 10.4.2003 only contains the paragraph "noting that the [Commission] communication does not incorporate these recommendations and, consequently, does not sufficiently and adequately reflect the true circumstances of half the population, thus overlooking half of the people to whom the messages of future European Union information and communication campaigns would be addressed and ignoring the need to direct the messages to all members of the public" (see *OJ C 64 E/2004*, 591-599, paragraph P). Paragraphs 54-59 of that resolution concern European Union information on the role of women, but there is no reference to "linguaggio facendo predominare il maschile rispetto al femminile" (translated as 'male-biased language' in the English version of the opinion). Moreover, in footnote 15, CAVAGNOLI (2019: 23), quoting NARDONE (2018), draws the attention to the use of the collective noun "Bürgerschaft" in German where the Italian version uses "cittadini". In German, a gender neutral word is indeed used, but it is "Bevölkerung"; "Bürgerschaft" does not appear anywhere in the text (French has "population", English "all members of the public", and Spanish "ciudadanía").

translators are required to render texts faithfully and accurately in their own language. If an author intentionally uses gender-specific language, the translation will respect that intention. (EUROPEAN PARLIAMENT 2008: 10 and EUROPEAN PARLIAMENT 2018: 4)

Not acceptable, says CAVAGNOLI. She argues that the language choice at the level of the institution should correspond “alla realtà comunicativa e rappresentativa. Deve, insomma, usare in modo adeguato e coerente le regole grammaticali”. But this is not about grammar. MORI criticises the approach taken in the guidelines which focuses on the source language

senza considerare quanto le scelte rispetto all’uso di una lingua inclusiva siano radicate socialmente e culturalmente nella comunità della lingua d’arrivo.
(MORI 2019: 47)

On the one hand, it is obviously the grammatical typology of each language which has the effect that “the principle of gender neutrality cannot be applied in the same way in all languages” (EUROPEAN PARLIAMENT 2008b: 3).⁵⁷ On the other hand, the decision on the language to be used raises the issue of fidelity in translation, of loyalty to source and to the intended audience. When translating from a non-gendered to a gendered language, translators cannot avoid making choices, but caution must be exercised by the translator. To take a hypothetical, but certainly possible example: imagine a text tabled by MEPs from a political group such as the German AfD which explicitly rejects gendered language. Translators would be expected to respect the authors’ intentions and refrain from using gendered language in the translated versions, as far as that is possible within the structure of the target languages, whatever the guidelines, their personal opinions and preferences. Indeed, texts produced in the European Parliament cover a wide variety of type and register which may require different strategies for authors and translators.

4.3 The Treaties and non-sexist language

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Concerning the evolution at EU level and following WILLIAMS (2008: 144), SANDRELLI maintains that the European Union “adopted gender-neutral drafting at the end of the nineties, but only in major documents” (2019: 113). However, the Treaty of Lisbon (signed in 2007) which she quotes as example, is not particularly gender sensitive – most articles use the generic masculine “he” and “his”. The English version uses “he or she” only three times: in Art. 228(1) and Art. 234 TFEU and once in Declaration No 12 (annexed to the Treaty) on Art. 18 of the Treaty on European Union; “his or her” appears in Art. 246 TFEU, “him, her or it” in Art. 227 TFEU and “sportsmen and sportswomen” in Art. 165(2) TFEU. A singular “them” is found in Art. 16(1) TFEU⁵⁸, and that is it (cf. ROBINSON 2020: 26f.). Gender-neutral drafting

57 This is rather better expressed in the 2018 version: “the principles of gender neutrality in language and gender-inclusive language require the use of different strategies in the various official languages, depending on the grammatical typology of each language” (EUROPEAN PARLIAMENT 2018: 5).

58 “Everyone has the right to the protection of personal data concerning them.” Although the antecedent (“everyone”) is grammatically singular, this anaphoric reference is described in the OED as referring collectively to the members of a group, or having universal reference. Interestingly,

was used more systematically in the Treaty establishing a Constitution for Europe (signed in 2004) which never entered into force. That Treaty had been drafted from scratch, whereas the Treaty of Lisbon is only an amending treaty in which much of the previous wording was kept unchanged; this may well explain the different approach. The Charter of Fundamental Rights of the European Union on the other hand uses systematically “he or she” (and “his or her”) in the English version. The Charter was indeed drafted in 1999/2000. It was then incorporated into the failed constitutional treaty and attained full legal effect only with the Treaty of Lisbon which entered into force in December 2009. This means that, as far as the EU treaties currently in force are concerned, it is the Charter which contains more gender-neutral language, at least in English. This is also true for the German version of the Charter which uses for example “Arbeitnehmerinnen und Arbeitnehmer” (Art. 27-31), “Unionsbürgerinnen und Unionsbürger” (Art. 39-46) (but masculine “Jeder Angeklagte” in Art. 48), but not for the French (“travailleurs”, “citoyen”), Italian (“lavoratori”, “cittadino”) or Spanish (“trabajadores”, “ciudadano”) versions.

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In the 2008 European Parliament guidelines, CAVAGNOLI (2019: 28) was particularly incensed by the following statement:

Posto che la lingua italiana non dispone di un genere neutro e che quindi **inevitabilmente** al maschile è riconosciuta una valenza generica [...].
(EUROPEAN PARLIAMENT 2008b: 9) (my emphasis)

She will have been pleased to learn that the 2018 revised Italian version (accessible to the general public only since early 2019) replaced that sentence with a new, more nuanced paragraph:

Se, fino a qualche anno fa, era prassi abituale ricorrere quasi esclusivamente [...] al genere maschile con valenza per così dire “neutra” o “inclusiva”, ora, per rispecchiare l’evoluzione della società e conseguentemente della lingua, è auspicabile porre in atto strategie intese ad assicurare una maggiore “visibilità di genere” [...].
(EUROPEAN PARLIAMENT 2018: 10)

5 The English corpora

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SANDRELLI is the only one who tried to introduce a degree of diachrony in her research by splitting the English corpora into two subsets, one from 1999 to 2003 – the year when the European Parliament called for gender-neutral language – and the other from 2004 to 2008 (2019: 120). However, the resolution of 13 March 2003 on gender-mainstreaming in the European Parliament, also discussed by PROIA (2019: 223), was targeted exclusively at its own texts:

Article 8 (Protection of personal data) of the Charter of Fundamental Rights uses “concerning him or her”.

[The European Parliament] urges that guidelines for gender-neutral language in EP texts be drafted and that the terminology and **language used in EP documents** be reviewed; considers that this will require training of all staff involved in administrative drafting and of the translation service;
(EUROPEAN PARLIAMENT 2003b: par. 11) (my emphasis)

On 10 April 2003, the European Parliament adopted a resolution stating its position on a communication from the European Commission on an information and communication strategy for the European Union. That resolution, also discussed by CAVAGNOLI (2019: 22f.), called

for the use in information and communication campaigns of gender-neutral, non-discriminatory language that reflects the presence, status and role of women in society in the same way as it does for men, as is required for legal and administrative texts;
(EUROPEAN PARLIAMENT 2003c: par. 55)

but the reference to legal and administrative texts seems to be an afterthought in a context dealing mainly with information campaigns. The resolution of 13 March 2003 was the kick-off which eventually led to the 2008 EP guidelines, but it is doubtful whether that resolution or the resolution of 10 April 2003 had any noticeable impact on legislative drafting, in particular on legislation adopted by the Council as sole legislator (even if the EP may have been consulted on the proposed legislation), or on Commission directives in which the EP is not involved at all.

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SANDRELLI (2019: 137f.) finds that attention to gender neutral drafting overall is higher in EU directives than in the UK transposition measures when looking at the whole period from 1999 to 2008. Looking at the subsets, she sees a clear evolution in UK drafting in the later period 2004-2008 where UK transposition measures become more gender-neutral, overtaking in some cases the percentages of EU directives. This may of course be a direct result of the UK government's decision of March 2007.

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In her analysis, SANDRELLI looks at gender-specific nouns (such as *man* and compounds containing *-man* like *seaman*, *fishermen* etc., *master*, *woman*) and at gender-neutral nouns (such as *chair*, *person*, *human beings*), as well as at pronouns (*he*, *she*, *he or she*) and corresponding possessives, and presents her quantitative results in two sections: first on EU directives (2019: 120ff.), then on the UK transposition measures (2019: 130ff.).

5.1 *Chairman, chairperson, chair*

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SANDRELLI finds that “‘chair’ is not a popular option in EU English” (2019: 124). However, for the period 2004-2008 she notes a drop in frequency of “chairman” both in EU directives (2019: 125) and more sharply in UK transposition measures (2019: 133). It is worth noting

that the 2008 EP guidelines recommend the use of “chair” instead of “chairman”, with the additional comment

‘Chairperson’ should be avoided, as the tendency has been to use it only when referring to women. ‘Chair’ should be used consistently for both sexes [...].

(EUROPEAN PARLIAMENT 2008b: 10 / EUROPEAN PARLIAMENT 2018: 11)

The impact on EU legislative drafting is not yet fully clear. A search in EUR-Lex for directives and regulations published between 1 January 2009 and 31 December 2021 – i.e. the period following the one analysed by SANDRELLI – allows to check the number of documents⁵⁹ in which the expression searched appears at least once.⁶⁰ The table below shows the total number of documents for each word as well as the number of legislative acts adopted jointly by the European Parliament and the Council, the number of acts adopted by the Council and the number of acts adopted by the Commission. The high use of “chairman” in Council and Commission acts is due to the fact that out of 112 Council documents, 94 concern regulations on restrictive measures (i.e. sanctions) against concrete (male) persons,⁶¹ and out of 143 Commission acts only four do not concern concrete persons. In legislative acts adopted jointly by the European Parliament and the Council, “chairman” was last used in two texts adopted in 2018.

type	Number of documents			
	Total	EP and Council	Council	Commission
chair	406	105	49	252
chairman	276	21	112	143
chairperson	86	40	34	12

For a clearer picture, the number of occurrences in each text, the precise context as well as the date of adoption would have to be analysed.

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Among the compounds with *-man*, the European Parliament used “draftsman” (and “drafts-woman”) for the author of a committee opinion.⁶² By late 2008, this was replaced with “rapporteur” which is gender neutral in English (around the same time, the female form “rapporteure” was introduced in French for women MEPs).

59 Regulations were included in the search by this reviewer in order to give a fuller picture of drafting practices. Only 56 out of the total of 768 documents identified are directives (including implementing directives and delegated directives).

60 The expression “to take the chair”, the verb “chair” and the noun “chair” meaning a piece of furniture were excluded in the search. Search effected on 3.1.2022.

61 Different expressions are sometimes used in the same text. For example, the Annex to Council Implementing Regulation (EU) No 1017/2012 listing 243 natural persons covered by restrictive measures in respect of Belarus uses “chairman” for men, but also “chair” (twice). “Chairperson” is used twice: once for a man, the second time for a woman. “Chairwoman” is used once.

62 The opinion adopted by a parliamentary committee is submitted to a vote in the main parliamentary committee which takes the lead on a given topic and adopts a report.

5.2 Pronouns: *he or she* / singular *they*

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SANDRELLI (2019: 127) finds that the masculine (*he, his*) prevails in EU directives, apart from the occasional repetition of nouns. *He or she* has the disadvantage of excluding non-binary gender (2019: 118), and also suffers from “male firstness” (WILLIS/JOZKOWSKI 2017: 137). Where the double form *he or she* is used, the slash “he/she” is more frequent than “he or she” (2019: 128). The trend may have changed recently: a search in EUR-Lex for regulations and directives (all years included) finds 164 documents for “he/she” and 253 documents for “he or she”. Incidentally, the first use of “he or she” in a directive dates from May 1973.⁶³ In the UK corpus, the masculine form prevails, but “he or she” seems to gain some ground in the period 2004-2008 as compared to the previous period (2019: 135f.).

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As an example of a (relatively) recent use of the masculine rule, SANDRELLI quotes Art. 74 of Directive 2006/112/EC which refers to a taxable person or “**his**” successors (2019: 127). However, a taxable person may well be a legal person.⁶⁴ The same applies to the words “tied agent” (2019: 128) which are defined in Art. 4(25) of Directive 2004/39/EC:

“tied agent” means a natural or legal person who [...] receives and transmits instructions or orders from the client [...].

This adds an additional difficulty for the drafter. The UK drafting guidance as reported by SANDRELLI (2019: 119) addresses the issue, but does not provide an easy alternative:

Note that while “he” was sometimes used to include legal persons other than individuals, “**he or she**” tends to suggest more strongly that only individuals are envisaged. “He, she or it” is also possible where individuals and other legal persons are in view. Frequent repetition of “he or she” or “he, she or it” can be awkward.

(OFFICE OF THE PARLIAMENTARY COUNSEL 2020: sections 2.1.13ff.)⁶⁵ (my emphasis)

So what is the poor drafter to do other than repeat the noun? Could singular *they* be a solution as it “could refer to a person of either sex” (OFFICE OF THE PARLIAMENTARY COUNSEL 2020: section 2.1.16) and, why not, to a legal person? The jury seems to be still out on this, at least as far as legislation is concerned. The issue arises also for the other four languages analysed (see paragraphs 67 and 76f.).

63 See Article 6(a) of Council Directive 73/148/EEC: “the identity card or passport with which he or she entered its territory;”. The French and German versions use the masculine pronoun (“il”; “er”). The previous Council Directive 64/220/EEC of 25 February 1964 had used the same wording, but the English version of that Directive was translated only as part of the *acquis* with a view to the UK accession.

64 See third subparagraph of Article 13(1) of Directive 2006/112/EC: “[...] bodies governed by public law shall be regarded as taxable persons [...]”.

65 The 2010 edition of the drafting guidance only said: “gender-neutral drafting means [...] avoiding gender-specific pronouns (such as “he”) for a person who may be either male or female or, in the case of a legal person who is not an individual, neither” (OFFICE OF THE PARLIAMENTARY COUNSEL 2010: 18).

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SANDRELLI reads the UK drafting guidance to mean that singular *they* must be avoided in legislative texts, because it is confusing (2019: 119). The guidance indeed warns that care must be taken “to ensure that the plural does not create an ambiguity that would be avoided if the singular were used” (OFFICE OF THE PARLIAMENTARY COUNSEL 2020: section 2.1.20). But the guidance also points to the precedents “in respectable literature over several centuries” (OFFICE OF THE PARLIAMENTARY COUNSEL 2020: section 2.1.17) and concedes that

It may be that “they” as a singular pronoun seems more natural in some contexts (for example, where the antecedent is “any person” or “a person”) than in others.
(OFFICE OF THE PARLIAMENTARY COUNSEL 2020: section 2.1.18)

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In the 2018 revised edition of the EP guidelines a new paragraph on “the generic use of *they*” was inserted:

There is an increasing tendency to use ‘they’ and its derivatives in certain contexts for a singular subject, thus not specifying the person’s gender [...]. This may be considered acceptable, though caution should be exercised when it comes to the reflexive/emphatic form: should one accept ‘Someone may unintentionally cause harm to themselves’? In such cases ‘themselves’ is a possible neologism, but does not appear to be established as yet, although this may evolve. For the moment and if there is no alternative, use ‘themselves’.
(EUROPEAN PARLIAMENT 2018: 11)

In academic writing and newspapers, singular *they* seems now well established, and it has never disappeared from spoken language (CURZAN 2014: 118) or, as the UK drafting guidance puts it, from “common parlance” (OFFICE OF THE PARLIAMENTARY COUNSEL 2020: section 2.1.17). “Generic *he*” in written language was only pushed by grammarians in the 18th century and “became firmly entrenched over the next 150 years as ‘correct grammar’” (CURZAN 2014: 118).

< 63 >

The question put in the House of Lords on 25 June 2018 is worth reading. Lord Lucas asked

Her Majesty’s Government whether they will adopt the use of “they” as the singular pronoun in all future legislation in preference to gendered pronouns. [...] We still permit repeated use of the “Secretary of State” and the phrase “he or she”, which is a binary rather than a unitary gender expression. In view of the forthcoming review of the Gender Recognition Act, and the expectation that that will further ease the ability of people to change gender, should we not be reviewing the whole aspect of gender in legislation and in public practice?

Lord Young answered that

the Government are committed to gender-neutral drafting in legislation. There are a number of ways to avoid gender-specific pronouns, and the use of “they” in the singular is certainly one of them. [...] My noble friend highlights the tension between etymological orthodoxy on the one hand and political correctness on the other. I was brought up to believe that “they” was a nominative plural pronoun and “he” or “she” was the singular. But that was a long time ago; popular usage has moved on, and so have the grammar guides. Indeed, the singular “they” is now used in legislation. It was used in the Terrorism Act. But, to go as far as my

noble friend has suggested and use “they” in all circumstances would, I think, be a step too far. In many cases, the use of “a person” would do just as well.
(HANSARD HL Deb 25 June 2018 vol. 792 col. 7-8)

The Terrorism Act is not the only UK example of singular *they* in legislation. In the Universal Credit Regulations 2013 for example, it has been used several times, e.g. in section 4A(2):

a person has parental responsibility if **they** are not a foster parent and [...] **they** have parental responsibility within the meaning of section 3 of the Children Act 1989.

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In UK acts which have been frequently amended this has led to a merry juxtaposition of generic *he, he or she*, and singular *they*, as in the Housing Benefit Regulations 2006. Section 2 (Interpretation) contains a long list of definitions such as:

“reckonable rent” means payments which **a person** is liable to make in respect of the dwelling which **he** occupies as **his** home, [...] (wording as amended in 2007)

“child who cannot share a bedroom” means **a child** [...] who the relevant authority is satisfied is, by virtue of **his or her** disability, not reasonably able to share a bedroom with another child; (wording as amended in 2013)

“member of the armed forces away on operations” means **a member** of the regular forces or the reserve forces [...] who is absent, while on operations, from the dwelling usually occupied as **their** home (wording as amended in 2013) (my emphasis and comments)

As far as I am aware, singular *they* has not yet been used in EU legislation – except for the example of Art. 16(1) TFEU quoted above –, but this is surely something to watch for.

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In her concluding remarks, SANDRELLI (2019: 138) warns that a number of gender-neutral drafting strategies were not the object of her study. The legislative drafter will always have to use a combination of all strategies on a case-by-case basis. However, the passive voice or an impersonal construction for example is only appropriate if there is no need to specify the agent; similarly, it is obviously not always possible in a legal text to use the plural instead of the singular without changing the legal scope of a provision.

6 The German corpora

< 66 >

PROIA presents the quantitative results in two sections: first on the language of EU directives (2019: 225ff.), then on the language of the German transposition measures (2019: 229ff.). He finds a predominance of the masculine forms in both corpora. However, feminine forms seem to appear with a somewhat higher frequency in the German transposition measures as compared to the EU directives (2019: 234). Apart from searching for feminine and masculine forms, PROIA looks in both corpora for neutral words such as *Mensch*, *Person* or compounds with *-leute* or *-kraft*. In both corpora, the neutral terms appear with a higher frequency than

compounds with *-mann* or *-frau* (2019: 227, 231). He also analyses other strategies used in German, such as the plural form of participles or adjectives used as nouns (2019: 228, 233).

6.1 Feminine, double and combined forms

< 67 >

In PROIA'S list of terms referring to persons (Personenbezeichnungen) (2019: 226, 230), the few feminine forms are interesting.

“Eigentümerin” (PROIA 2019: 226, Tab. 1A) is used in Council Directive 2008/7/EC:

Als Umstrukturierung gilt auch die Übertragung aller Forderungen und Verbindlichkeiten einer Kapitalgesellschaft auf eine andere Kapitalgesellschaft, wenn letztere hundertprozentige Eigentümerin der ersteren ist. (Art. 4(2))

The feminine was used as it refers back to “Kapitalgesellschaft” which is (grammatically) feminine. Natural gender is irrelevant in this context as only legal persons are implied. This example shows the pitfalls of corpus analysis, but does, of course, not invalidate PROIA'S general conclusions on the prevalence of the generic masculine.

The example of the feminine “die Minderjährige” (PROIA 2019: 228, Tab. 5A) should also be disregarded as it is a typographical error which results in a grammatically incorrect sentence in Art. 10(2) of Directive 2008/115/EC (singular subject + verb in the plural, plural would be *die Minderjährigen*)

- (1) [...] *dass die Minderjährige [...] übergeben werden*
 that the minor.SG.F [...] returned are.3.PL

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In the case of “die Vorsitzende” (PROIA 2019: 228, Tab. 5A), the two EU examples refer to specific persons, in both cases a woman. Recital 33 of Directive 2004/109/EC mentions a letter addressed to the chair of the EP Committee on Economic and Monetary Affairs, but without indicating a name. At the time, the chair was held by German MEP Ms Christa Randzio-Plath, which explains the use of “die Vorsitzende”. But the comparison of the language versions is interesting:

- (2) Recital 33 of Directive 2004/109/EC (my emphasis)

German	English	French	Spanish	Italian
[Schreiben ...] an die Vorsitzende des Ausschusses des Parlaments für Wirtschaft und Währung	letter [...] addressed [...] to the Chairman of the Parliament's Committee on Economic and Monetary Affairs	la lettre adressée [...] au président de la commission économique et monétaire du Parlement	la carta [...] al Presidente de la Comisión de Asuntos Económicos y Monetarios del Parlamento	lettera inviata [...] al presidente della commissione parlamentare per i problemi economici e monetari

So German was the only language to correctly use the feminine form. In hindsight, it is difficult to establish whether the other four languages (as well as Portuguese) used the masculine

form because the drafters were simply not aware of Ms Randzio-Plath and took it for granted that the chair was a man; or whether the feminine form was still not considered acceptable. As French “la présidente”, Spanish “la presidenta” and Italian “la presidente” had already been used in other EU acts, I suspect it was the former. The second example of the feminine “Vorsitzende” comes from Council Directive 2000/79/EC where one of the signatories mentioned in the Annex was Betty Lecouturier, Vorsitzende, Ausschuss “Kabinenpersonal” (President, Cabin Crew Committee). The Spanish version used “presidente”, so did the Italian version without adding the article; and the French kept the untranslated English. Contrary to the EU directives, PROIA (2019: 232) found a number of examples of “die oder der Vorsitzende” (and of “der oder die Vorsitzende”) in the German transposition measures.

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Where the double form (*Mitarbeiter und/oder Mitarbeiterinnen* or *Mitarbeiterinnen und/oder Mitarbeiter*) is used in the national transposition measures, the feminine often precedes the masculine form, as PROIA notes (2019: 230f., Tab. 2B), thus making women even more visible. However, it is not clear whether the drafters made a conscious effort to avoid male firstness. Interestingly, in the examples shown in the *Handbuch der Rechtsförmlichkeit*, the masculine precedes the feminine in three out of five examples⁶⁶.

< 70 >

PROIA finds that EU directives, contrary to German transposition measures, sometimes use brackets or slashes for an abbreviated double form, the so-called “Sparschreibung” (‘economic spelling’), such as <Pfleger(in)> (2019: 234). Annex II of Directive 2005/36/EC for example contains indeed a number of such “Sparschreibungen” (e.g. <Orthoptist(in)>, <Diätassistent(in)> etc.). These examples are more problematic when combined with an adjective such as “medizinisch-technische(r) Laboratoriums-Assistent(in)” where the first bracket contains the masculine ending of the adjective and the second bracket the feminine ending of the noun. This may well have been one of the reasons why the EP gender neutral guidelines already in 2008 advised against such constructions, as they cannot be read out:

Diese [verkürzten Paarformen] sind nicht präzise mündlich zitierbar.
(EUROPEAN PARLIAMENT 2008b: 11)

Such forms are a problem for interpreters, and loud-reading – also machine-reading – tends to become more and more important as a form of text accessibility. The Rat für deutsche Rechtschreibung defined readability as one of its six criteria which form the basis for its recommendations:

[Geschlechtergerechte Texte sollen ...] vorlesbar sein (mit Blick auf die Altersentwicklung der Bevölkerung und die Tendenz in den Medien, Texte in vorlesbarer Form zur Verfügung zu stellen).
(RAT FÜR DEUTSCHE RECHTSCHREIBUNG 2018b: 8)

66 „Bürger und Bürgerinnen; Soldaten und Soldatinnen“ (par. 113), „Beamte und Beamtinnen“, (BUNDESMINISTERIUM DER JUSTIZ 2008: par. 113f.); but: „die Präsidentin oder der Präsident“, „die Bundesministerin oder der Bundesminister“ (BUNDESMINISTERIUM DER JUSTIZ 2008: par. 118).

The same argument is used in the *Handbuch der Rechtsförmlichkeit*:

Die Sparschreibung von Paarformen ist für Vorschriftentexte nicht erlaubt. Schreibungen mit großem „I“ inmitten eines Wortes, mit Schrägstrich oder mit Klammer können nicht mündlich vorgetragen werden.

(BUNDESMINISTERIUM DER JUSTIZ 2008: par. 115)

Feminists have also criticised the Sparschreibung as a form of “male firstness”:

Nicht geschlechtergerecht ist die Schreibweise mit Klammern wie Student(in). Diese Schreibweise transportiert schon rein optisch die weibliche Form als geringer bedeutsam, da sie wie ein Anhängsel wirkt.

(HOCHSCHULE EMDEN-LEER 2016: 7)

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I would expect such spellings to have nearly disappeared in the meantime (or to have at least become very rare and relegated to annexes) in EU legislation as well. I still found an example in an EU text of 2019: Commission Delegated Decision (EU) 2019/608. In a table listing the “evidence of formal qualifications of nurses responsible for general care”, the entry for Belgium reads, in the three official languages of that country:

(3) Commission Delegated Decision (EU) 2019/608

formal qualifications	professional title
diploma gegradueerde verpleger / verpleegster / Diplôme d’infirmier(ère) gradué(e) / Diplom eines(einer) graduierten Krankenpflegers (-pflegerin)	Hospitalier(ère) / Verpleegassistent(e)

The entry for Germany reads:

(4) Commission Delegated Decision (EU) 2019/608

formal qualifications	professional title
Zeugnis über die staatliche Prüfung in der Krankenpflege	Gesundheits- und Krankenpflegerin / Gesundheits- und Krankenpfleger

In this particular case, the EU text quotes the national legislation *verbatim*; thus, although the wording is contained in a EU text, it uses the national vocabulary.

6.2 Attributive adjectives

< 72 >

Another strategy consists in avoiding a noun (and its inherent gender) by using an attributive adjective (devoid of inherent gender), such as “ärztliche Ausbildung” instead of “Ausbildung des Arztes”, which PROIA (2019: 229, 233) finds more frequently in the national transposition measures than in the EU directives. Concerning PROIA’s table 6A (2019: 229), I decided to dig a bit further for the expression “Anweisung/en des Arztes”. In Directives 2002/60/EC and 2005/94/EC for example, the expression used reads “Anweisungen des amt-

lichen Tierarztes“ (‘instructions of the official veterinarian’). Both directives include a definition of “amtlicher Tierarzt”:

“amtlicher Tierarzt“: von der zuständigen Behörde des Mitgliedstaats bezeichneter Tierarzt; (Art. 2(n) of Directive 2002/60/EC; Art. 2(19) of Directive 2005/94/EC)⁶⁷

In accordance with the guidelines for legislative drafters of EU acts,

Definitions must be respected throughout the act. Defined terms must be used in a **uniform manner** [...].

(EUROPEAN PARLIAMENT, COUNCIL, COMMISSION 2015: 21) (my emphasis)

Would there have been a way round it, viz. “amtstierärztliche Anweisung”? The word “amtstierärztlich” is used in German, including some other EU texts,⁶⁸ and in many German and Austrian towns there is an “amtstierärztlicher Dienst” which delivers “amtstierärztliche Bescheinigungen”. Would the use of such an adjective still be in line with the definition in the two EU directives concerned? This is doubtful, although the final say would have to be the Court of Justice’s interpretation.

7 The French, Italian and Spanish corpora

< 73 >

The Romance languages French, Italian and Spanish share a number of characteristics and will be dealt with here under one heading. BLINI organises the quantitative results of the Spanish corpora into a series of sections where he looks at “persona”, “hombre”, “mujer” (2019: 193ff.), the use of masculine and feminine forms as well as epicene forms (2019: 195ff.), social categories, i.e. professions, functions and other (2019: 199ff.), and inclusive forms, including phrasemes with “persona”, double forms, collective nouns and metonymic references (2019: 202ff.). He finds that the masculine form is generally preferred, with the exception of “persona”. Taking into account the context, BLINI attributes the occasional inclusive wording mostly to established drafting routines rather than to a deliberate application of non-sexist language (2019: 208). In the chapters on French and Italian, BRACCHI (2019: 77ff.) and CAVAGNOLI (2019: 161ff.) organise the presentation of their results analysis along similar lines to each other. They test their corpora of EU directives and the Italian and French trans-

67 „Anweisungen des amtlichen Tierarztes“ was also used in Annex II to Council Directive 2001/89/EC, as well as the expression „Anweisungen des Herstellers“. In that expression which is used frequently in other EU texts, the noun cannot be replaced by an attributive adjective. In Council Directive 2003/43/EC, the expression used is „Anweisungen des Stationstierarztes“.

68 For example in Germany in § 11(1) of the Bienenseuchen-Verordnung § 11(1): „Alle Bienenvölker und Bienenstände im Sperrbezirk sind [...] amtstierärztlich zu untersuchen“, or in § 6 of the Viehverkehrsverordnung: „Amtstierärztliche Untersuchung“. It appears also in some EU texts, such as Council Directive 2003/85/EC of 29 September 2003 on Community measures for the control of foot-and-mouth disease, Article 46(2): “(2) Im Falle der Regionalisierung tragen die Mitgliedstaaten dafür Sorge, dass [...] die betreffenden Tiere unter amtstierärztlicher Kontrolle isoliert werden [...]” However, that Directive also uses the expression “Anweisungen des amtlichen Tierarztes” in Article 10(1)(d) and in Annex IV.

position measures against a list⁶⁹ of trades and professions and also find, not surprisingly, that the masculine form prevails. Whereas BRACCHI (2019: 78) relegates to a fn. 25 professions which do not appear in the corpora (out of her initial list of 143 expressions), CAVAGNOLI (2019: 162ff., Tab. 1) regales the reader with a number of professions which surely nobody would expect to come across in the texts analysed, such as “arrotino” (‘knife-grinder’), “calzolaio” (‘shoemaker’), “lattaio” (‘milkman’) etc. Her list is in fact pretty pointless: only two out of the 74 entries appear in EU directives, but with a different meaning and used as adjectives (*idraulica; informatico*). Thankfully, CAVAGNOLI (2019: 164ff.) also looks at some further professions such as architect, lawyer, pharmacist, which appear in both corpora,⁷⁰ in which the masculine form prevails. She also looks at expressions such as “bambini” and “cittadini” used as generic masculines in both corpora (2019: 165), although she found three examples for the use of the feminine “cittadine” in the national transposition measures. It would have been helpful to be given the context in which the female form was used in corpus B – I have not been able to replicate her findings⁷¹.

7.1 Speed of language evolution

< 74 >

CAVAGNOLI (2019: 169) concludes – although she admits that it is on the basis of very few examples – that Italian transposition measures have a slightly stronger tendency to take into account the feminine. This may be due, she thinks, to the fact that “l’italiano nazionale” is constantly evolving whereas

l’italiano utilizzato nelle traduzioni dei documenti europei risulta essere **statico**, non è in continuo divenire come l’italiano nazionale (2019: 169). (my emphasis)

With all due respect, this is nonsense. The Italian used in and by the EU institutions, in the diaspora, may well evolve at a slower rhythm than in Italy, but it is certainly not static. Since the Rome Treaties in 1957, generation upon generation of Italian staff – authors, translators, lawyer-linguists, MEPs – brought with them their own version of the language from Italy. That said, it is certainly true that legal language – both at EU and national level – is characterised by “un altro grado di conservatorismo linguistico” (MORI 2019: 41). Whether legal

69 BRACCHI started with an initial list of 143 entries covering the policy areas of EU directives, doublechecking the feminine form of those entries on the basis of the Belgian guidelines published in 2005 by Nathalie Marchal for the Ministère de la Communauté française de Belgique. The guidelines have been updated in 2014 with an extensive list (60 pages) of female forms (MOREAU/DISTER 2014: 30ff.). CAVAGNOLI’s list contains 74 entries chosen from Italian dictionaries “considerando le parole rappresentative soprattutto delle professioni più diffuse” (2019: 161).

70 The exceptions in her lists which appear only in national transposition measures are “commissario” (Tab. 6), “sindaco”, “ingegnere” (although in fact “ingegnere” appears in annexes to directives) and “procuratore” (Tab. 9). The expression “pilota” in table 9 should have been disregarded as it is used as an adjective with a different meaning (“progetto pilota” ‘pilot project’) in the EU directives.

71 E.g. in Decreto legislativo 21 Novembre 2007, n. 231 which implements Directives 2005/60/EC and 2006/70/EC, the feminine “cittadine” is used to qualify “persone” (Art. 1(2)(o): “persone fisiche cittadine di altri Stati comunitari”).

Italian as used by the EU evolves more slowly is still another question. CAVAGNOLI herself seems to acknowledge the non-static character of EU-Italian a couple of pages further on where she refers to the

euroletto italiano, [...] risultato di una **costante** compenetrazione di altre lingue europee, a partire da quella inglese, predominante nella comunicazione orale e nei testi originali dei documenti unionali (2019: 180). (my emphasis)

Working on the same corpora, MORI earlier came to the conclusion that EU “directives are potentially more accessible to citizens, if compared to the more bureaucratised variety of national legislative texts”, an evolution which MORI also attributes to language contact in the multilingual drafting environment of the EU (MORI 2018a: 258). However, contrary to what CAVAGNOLI says (2019: 180), English has not always been the predominant language; it has become so particularly after the 2004 enlargement of the EU. Many of the pre-2004 directives – including those in the corpora analysed – may well have been drafted and negotiated in French.

7.2 Qualitative analysis of some French and Italian acts

< 75 >

Both BRACCHI and CAVAGNOLI supplement their quantitative analysis with a “qualitative” analysis where they look at a limited number of EU directives and their national transposition measures with a view to

mettre en avant les éléments de comparaison et les difficultés rencontrés dans l'étude du langage des directives et des textes de transposition, et ceci, afin de montrer si la langue “agit” de la même façon selon le contexte (européen ou national) dans lequel elle est utilisée. (BRACCHI 2019: 68)

In principle a good idea, as

la ricerca quantitativa non può essere considerata un elemento astratto e chiuso in se stesso. (CAVAGNOLI 2019: 160)

The qualitative analyses presented by BRACCHI and CAVAGNOLI have the advantage of identifying the text concerned, thus facilitating access to its context. However, whether the analyses measure up to the objectives is more doubtful.

BRACCHI has chosen six directives adopted between June 1999 and November 2000 (2019: 85ff.), CAVAGNOLI four directives adopted between November 2000 and December 2008 (2019: 170ff.). It is of course always debatable whether their choice was the best possible one – it might have been interesting if both had looked at the same directives with a view to comparing the French and the Italian approach to transposition. That said, two out of BRACCHI’s six directives are rather atypical as their purpose is to put into effect an agreement concluded by organisations representing management and labour in the sectors concerned; the text of those agreements is contained in an annex to the directives (Council Directives 1999/63/EC and 1999/70/EC).

Among CAVAGNOLI'S four directives, Directive 2002/73/EC⁷² may not have been the best choice either as it merely amends the earlier Council Directive 76/207/EEC; the corresponding Italian transposition act (Decreto Legislativo 30 maggio 2005, n. 145) also amends two earlier texts: one from 1991 (Legge 10 aprile 1991, n. 125) and the other from 1977 (Legge 9 dicembre 1977, n. 903). The Italian Decreto Legislativo is much shorter than the EC Directive for two reasons: the preamble of the Directive contains recitals; the Decreto Legislativo does not. The other reason is due to the different amending technique: the Directive replaces entire articles, the Decreto Legislativo replaces individual paragraphs of an article or replaces and adds some words in other paragraphs. In both cases, the vocabulary is linked to a large extent to the initial, much older acts. According to CAVAGNOLI (2019: 171), some words (e.g. "datori di lavoro", "dipendenti" etc.) appear only in the Directive and not in the Decreto Legislativo. However, those words did in fact appear in the 1991 Legge (Art. 1(2)(c) and Art. 1(3)). It could be questioned whether a comparison of these two – differently constructed – texts renders any valid result.

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BRACCHI'S analysis consists mainly in listing the masculine terms she found in the texts, indicating the existing feminine form and asking each time why the latter was not used as well. She quotes for example the sentence "le juge formera sa conviction" and goes on to ask "qu'en est-il de la juge" (2019: 97) – and so on and so forth, to a somewhat tiresome effect on the reader. The use of the masculine form in French legislation is of course not surprising in view of the official guidelines still in force today (PREMIER MINISTRE, CONSEIL D'ETAT 2017: 293) which follow the argument advanced in 1998 by the general commission for terminology and neology⁷³ in favour of the generic masculine:

Un texte de droit désigne un être générique, c'est-à-dire tout titulaire d'une fonction, d'un grade ou d'un titre, et non une personne physique sexuée. [...] le sujet de droit est une personne, non un individu.

(COMMISSION GÉNÉRALE DE TERMINOLOGIE ET DE NÉOLOGIE 1998: 43)

It is not always easy to check BRACCHI'S sources, although for amending acts she indicates the article references both of the amending act and of the amended act. She lists, for example, some words in Loi n° 2005-843 such as "habitants", "assurés", "intéressés" (2019: 94) – however, these words do not appear in that law at all, but only in the acts amended by it. Or to take another example: the sentence quoted from Art. 18 of the Code du travail maritime ("le marin n'est pas tenu [...] il est engagé", BRACCHI 2019: 90) does not appear in Art. 8 of Ordonnance 2004-691; it comes from the initial version of Art. 18 as adopted in 1926, was not modified by the 2004 ordonnance (which modified other parts of the sentence, not quoted by BRACCHI) and was repealed in 2010. If the basis for the study is

il confronto tra direttive e relative leggi nazionali di attuazione [che] ci consente di osservare, sia dal confronto qualitativo 1:1 che dalle tendenze quantitative, le dinamiche di variazione

72 The directive was repealed in 2006 with effect from 16 August 2009 and replaced by Directive 2006/54/EC.

73 The commission was set up by Décret n° 96-602 du 3 juillet 1996 and is attached directly to the prime minister's office.

sociolinguistica in atto in testi strettamente connessi
(MORI 2019: 50)

then using versions of the national law from rather different periods – whether significantly earlier or later – introduces an additional factor into the equation.

Words like “marin” (BRACCHI 2019: 88) or “médecin” (BRACCHI 2019: 97) present a particular problem as the feminine forms (*la marine, la médecine*) have a different meaning. BRACCHI advocates the use of “une/la marin”, and of “la médecine” even when referring to a person. “La médecine” (person) is documented in the 16th century⁷⁴ and, according to BRACCHI (2019: 72, fn. 9) has resurfaced in 2018 “sur des ordonnances délivrées par des docteurs”, i.e. referring to a specific person. According to the 1999 French feminisation guide

L’adjonction du -e est facultative pour les mots dont le féminin est attesté : une camelot(e), une mannequin(e), une marin(e), une matelot(e), une médecin(e).
(INSTITUT NATIONAL DE LA LANGUE FRANÇAISE 1999: 24)

whereas other guides use the epicene “une médecin” (MOREAU/DISTER 2014: 29; ACADEMIE FRANÇAISE 2019: 8; OFFICE QUÉBÉCOIS DE LA LANGUE FRANÇAISE 2019).

Occasionally, BRACCHI looks more closely at the text, as for example the use of “mères et pères de trois enfants et plus” instead of the more idiomatic “pères et mères” in Art. 8 of Loi n° 75-3 du 3 janvier 1975 as amended by Loi n° 2005-843. She wonders whether the legislator wanted to

mettre l’accent sur la possibilité pour la “femme” d’accéder aux emplois publics, malgré d’être “mère”?
(BRACCHI 2019: 93)

Instead of speculating about the drafters’ intention, it might have been a good idea to consult the legislative procedure⁷⁵ which resulted in the adoption of Loi n° 2005-843: the European Commission had launched an infringement procedure against France as the text only exempted mothers, and not fathers, from the age limit for entry to a competitive examination in violation of Art. 3 of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. For that reason, “mères de famille d’au moins trois enfants” in Art. 2 of Loi n° 80-490 du 1 juillet 1980 was amended by Art. 4 of Loi n° 2005-843, replacing “de famille” by “et pères”. Thus, the addition of “pères” was an afterthought of the legislator with a view to putting an end to the discrimination of men on grounds of sex. The explanatory memorandum of the bill states

Il est donc nécessaire d’adapter notre législation en étendant ces mesures dérogatoires aux hommes se trouvant dans la même situation que les femmes concernées.
(SÉNAT 2005: Exposé des motifs)

74 E.g. « [...] cuisinières, médecines et chirurgiennes [...] » in *L’Institution de la femme chrestienne* by Juan Luis Vives, translated from Latin into French by Pierre de Changy in 1542 (quoted from INSTITUT NATIONAL DE LA LANGUE FRANÇAISE 1999: 14).

75 The “Légifrance” website is exemplary in providing easy access to French legislation including links to the full legislative files of the Assemblée nationale and the Sénat.

Concerning expressions such as “datore di lavoro” (CAVAGNOLI 2019: 174), “employeur” (BRACCHI 2019: 92), “propriétaire” (BRACCHI 2019: 88), “armateur” or “affréteur” (“Pourquoi on n’a pas aussi recours aux termes “armatrice” ou “affréteuse”[...]?”, BRACCHI 2019: 89), or “el emisor” (BLINI 2019: 193), it is worth remembering that these may cover also or exclusively legal persons. Such terms are often defined in EU legislation, such as in Art. 2(1)(h) of Directive 2003/71/EC:

h) emisor: toda **persona jurídica** que emita o se proponga emitir cualquier valor;

or, to take an example from French, in Art. 2(7) of Directive 2007/23/EC:

“importateur”: toute **personne physique ou morale** établie dans la Communauté, qui met un article pyrotechnique provenant d’un pays tiers pour la première fois à disposition sur le marché communautaire dans le cadre de son activité économique; (my emphasis)

It would seem rather pointless to change that definition into “importateur ou importatrice”. Neither BRACCHI nor CAVAGNOLI deal with this aspect. BLINI excludes the expression “persona jurídica” (as well as “persona física” and “persona natural”⁷⁶) from his quantitative tables, but does not go further than that (2019: 193).

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A look over the borders to Switzerland, although not directly relevant, is nonetheless illuminating in this respect. Similarly to the drafting guidance of the UK Office of the Parliamentary Counsel, the official Swiss guidelines for gender-neutral language issued by the Federal Chancellery for the German language take the view that the use of double forms – such as “importateur et importatrice” – would mislead the reader, as such wording implies that natural persons are meant:

Zur Bezeichnung juristischer Personen eignen sich Paarformen nicht, denn damit würde suggeriert, dass es sich um natürliche Personen handelt. Diese Konkretheit würde störend wirken.

(SCHWEIZERISCHE BUNDESKANZLEI 2009: 125)

For German, the Swiss guidelines suggest to use either the masculine or the feminine form, on a case-by-case basis:

Daher sollte für juristische Personen entweder eine weibliche oder eine männliche Form verwendet werden:

- die Anbieterin von Fernmeldedienstleistungen
- der Anbieter von Fernmeldedienstleistungen

(SCHWEIZERISCHE BUNDESKANZLEI 2009: 125)

Already in 1993, the jurist Marianne GRABRUCKER (1993: 230) had advocated the use of the feminine form in German as many legal persons are grammatically feminine (*die Aktiengesellschaft, die Gemeinde, die Kirche* etc.).

76 In legislative and legal drafting, “persona física” rather than “persona natural” is the preferred expression.

Interestingly, the much less voluminous Swiss guidelines for the French language (25 pages against 191 pages of the German guidelines) do not tackle this issue at all (CHANCELLERIE FEDERALE 2000). Neither does the Italian version of 2003 which consists in a three-page-section on the “*Uso non discriminatorio della lingua*” within the general drafting guidelines for Swiss texts in the Italian language (CANCELLERIA FEDERALE 2003) nor the slightly longer 2012 guidelines for the “*pari trattamento linguistico di donna e uomo nei testi ufficiali della Confederazione*” (60 pages) (CANCELLERIA FEDERALE 2012).

7.3 Drafter intention – the example of *personne/persona*

Given the specific characteristics of legislative texts, it is not surprising that BRACCHI finds and lists also a series of gender-neutral terms such as “*toute personne*” (2019: 90, 93, 99, 102), “*personnel*” (2019: 90, 93), and so do CAVAGNOLI (2019: 171f.) and BLINI (2019: 193, 202ff.). BLINI looks in some more detail at the different constructions using “*persona*” (+ adjective; + noun; + verb) and rightly points out that the use of the neutral word “*persona*” does not necessarily imply that the drafter has chosen deliberately a gender-neutral wording. In fact, he found many cases – although he does not quantify them – where “*persona*” is juxtaposed to a generic masculine (e.g. “*el empresario o la persona responsable*”). A minor quibble: the source of his examples (2019: 199) is not indicated. As far as I can see, they come from domestic Spanish law, but BLINI’S remark is of course also true for EU acts and corresponding examples can certainly be found, such as “*el fabricante o el propietario del vehículo o la persona que les represente*” (Art. 24(4) of Directive 2007/46/EC). But BLINI reminds us commendably of the importance of context.

7.4 Maternity, paternity and gender identity

It is a truism that the feminine form is used more generally in texts concerning maternity (CAVAGNOLI 2019: 172; BLINI 2019: 194). That said, it is worth remembering the story told during a parliamentary debate on gender-neutral language in 1987 by Rita Süßmuth, then Federal Minister for Youth, Family, Women and Health⁷⁷ in Germany. When asked to sign a draft text which read:

Wenn der Arzt (sic!) im Praktikum schwanger wird, hat er (sic!) Urlaub nach den Regelungen des Mutterschutzgesetzes; nach Inanspruchnahme des Erziehungsurlaubs kann er (sic!) seine Ausbildung fortsetzen.

⁷⁷ Referred to in the minutes of the plenary proceedings as “*Bundesminister (sic) für Jugend, Familie, Frauen und Gesundheit*”. The use of the female form “*Bundesministerin*” in the minutes seems to have started in April 1991. However, when Süßmuth was elected President of the Bundestag in November 1988, the minutes already used the female form “*Präsidentin*”, whereas Annemarie Renger, President of the Bundestag from 1972 to 1976, was still referred to in the minutes as “*Präsident*”.

Süssmuth refused and insisted on the use of the feminine form (DEUTSCHER BUNDESTAG 1987: 2510 D).

BRACCHI (2019: 96) discusses in particular Art. 1 and 2 of the French antidiscrimination law Loi n° 2008-496 du 27 mai 2008 which completed the transposition of Directives 2000/43/EC and 2000/78/EC into French law, after an infringement procedure for non-conformity of the initial transposition measures had been launched against France and ten other Member States in February 2006 by the European Commission (EUROPEAN COMMISSION 2007: section 2.3.4). Art. 1 was amended six times (the last time in 2017), Art. 2 four times (the last time in 2016), and BRACCHI refers to the latest amended version instead of the initial 2008 version. Thus BRACCHI again compares texts from different periods, and the later amendments to the French 2008 text are not related to the transposition of EU law.⁷⁸

Art. 2(4) – corresponding to Art. 2(3) in the initial 2008 version – prohibits all direct or indirect discrimination on grounds of pregnancy or maternity, including maternity leave. In that context, BRACCHI (2019: 96) underlines the absence of a reference to paternity leave. Although paternity leave was already introduced in France in 2002, by Art. 55 of Loi n° 2001-1246 du 21 décembre 2001 which inserted a corresponding article in the Code du travail and the Code de la sécurité sociale, it was introduced at EU level only very recently, after difficult inter-institutional negotiations, by Directive (EU) 2019/1158 with a transposition deadline of 2 August 2022. The Directive defines paternity leave in Art. 3(1)(a):

‘paternity leave’ means leave from work for fathers or, where and insofar as recognised by national law, for equivalent second parents, on the occasion of the birth of a child for the purposes of providing care;

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As for Art. 1 of Loi n° 2008-496 du 27 mai 2008, BRACCHI picks “sex”, “pregnancy”, “handicap” and “gender identity” from the catalogue of protected characteristics and notes:

Il nous semble important de souligner que la notion de discrimination en raison de l’identité de genre ne sera pas définie dans la directive [2000/78/EC].
(BRACCHI 2019: 96)

She gives no explanation why this is deemed important. Actually, gender identity was not included in the initial wording of Art. 1 of the French law either. The protected characteristics listed in the 2008 version of Art. 1 match exactly those of Art. 1 in Directives 2000/43/EC and 2000/78/EC which together replicate the list in the Directives’ legal base, Art. 13 of the EC Treaty (now Art. 19 TFEU; my emphasis):

Sans préjudice des autres dispositions du présent traité et dans les limites des compétences que celui-ci confère à la Communauté, le Conseil, statuant à l’unanimité sur proposition de la Commission et après consultation du Parlement européen, peut prendre les mesures nécessaires en vue de combattre toute discrimination fondée **sur le sexe, la race ou l’origine ethnique, la religion ou les convictions, un handicap, l’âge ou l’orientation sexuelle.**

⁷⁸ E.g. amendments introduced by Loi n° 2012-954 du 6 août 2012 relative au harcèlement sexuel; that law was issued after decision n° 2012-240 QPC of the Conseil constitutionnel of 4 May 2012. The amendments introduced by Loi n° 2016-1547 du 18 novembre 2016 de modernisation de la justice du XXI^e siècle were part of a wide-ranging reform project.

It is only the order of the protected characteristics which is slightly different in the French law:

Constitue une discrimination directe la situation dans laquelle, sur le fondement de son appartenance ou de sa non-appartenance, vraie ou supposée, **à une ethnie ou une race, sa religion, ses convictions, son âge, son handicap, son orientation sexuelle ou son sexe**, une personne est traitée de manière moins favorable qu'une autre ne l'est, ne l'a été ou ne l'aura été dans une situation comparable.

(Loi n° 2008-496, first paragraph of Art. 1 as issued on 27 May 2008)

Again, a look into the legislative history and the debates in parliament is instructive. In the French Sénat, Annie David had tabled an amendment to replace "sexe" with "genre":

Cet amendement, qui pourrait paraître à un certain nombre d'entre vous comme étant de pure forme, est toutefois très important sur le fond. [...] Effectivement, le sexe est un facteur discriminant. Mais l'utilisation de cette seule notion dans les textes de loi tend à faire croire que la discrimination fondée sur le sexe renvoie systématiquement à la sexualité. Or tel n'est pas le cas: dans une part non négligeable des cas, les discriminations des femmes par rapport aux hommes ne sont pas construites à partir d'une approche sexuée de la personne mais, au contraire, à partir d'une approche sociétale. [...] Le mot "sexe" est ici mal venu et il serait préférable d'utiliser le mot "genre", comme dans les expressions "genre masculin" et "genre féminin".

(SÉNAT 2008: 1594, Annie David)

The representative of the government was opposed to the change, and so was the rapporteur for the "commission des affaires sociales":

Le mot "genre" n'est pas très utilisé dans notre société latine, qui lui préfère le mot "sexe", à la différence de ce que l'on constate assez fréquemment dans le nord de l'Europe et dans les pays anglo-saxons. De surcroît, le droit communautaire comme le droit national recourent de préférence à cette notion de sexe, mais rarement, voire pas du tout, au mot "genre".

(SÉNAT 2008: 1594, Muguette Denis)

The amendment was rejected. At the time, there was no discussion on gender identity in the Sénat nor in the Assemblée nationale.

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Four years later, "identité sexuelle" was added to the list of protected characteristics in August 2012 by Art. 4(VIII) of Loi n° 2012-954, thus aligning it to Art. 225-1 of the Penal Code which was being amended at the same time. There were long and passionate discussions in the Sénat as well as in the Assemblée nationale whether to use the expression "identité sexuelle" or rather "identité de genre" as proposed by a number of NGOs at hearings organised by the Sénat. On the one hand, there were those who argued that the two expressions were not synonym:

[L']expression "identité sexuelle" [...] semble protéger les personnes ayant changé de sexe, elle ne couvre en revanche pas les individus pour qui le processus de changement n'est pas fini, sachant que l'"entre-deux", si je puis m'exprimer ainsi, dure en moyenne de six ans à neuf ans. C'est pourquoi nous avons [...] préféré l'expression "identité de genre".

(SÉNAT 2012: 2125, Annie David)

But even those in favour of "identité de genre" did not necessarily highlight the same points:

Sans vouloir faire de la sémantique, parler d'identité sexuelle et d'identité de genre n'est pas exactement la même chose. [...] D'après la Commission nationale consultative des droits de l'homme [...], le terme "genre" renvoie davantage aux attributs et au rôle de la femme et de l'homme, tels qu'ils sont définis par la société, ce qui engendre des discriminations sexistes. (SÉNAT 2012: 2127, Michèle Meunier)

Then there were those who thought the whole debate was premature, such as Pierre Gosselin in the lead committee of the Assemblée nationale:

Si je me réjouis de voir renforcer la lutte contre le harcèlement sexuel et contre l'homophobie avec l'ajout de la référence à "l'orientation sexuelle" à l'article 2-6 du code pénal, je m'interroge toutefois sur l'introduction de la théorie du genre, dans l'article 2 bis, puisque aux premier et second alinéas de l'article 225-1 du code pénal, les mots: "orientation sexuelle" sont remplacés par les mots: "orientation ou identité sexuelle". Il convient de s'interroger sur cette nouveauté, la théorie du genre étant très contestée. En provenance des États-Unis, elle a été popularisée en France au travers du débat sur le contenu des programmes scolaires ouvert sous le précédent ministre de l'Éducation nationale, Luc Chatel. Je regrette l'introduction en catimini de l'identité sexuelle dans la loi [...]. Le débat sur la théorie du genre mérite mieux que ce détour : revenons-y à un autre moment. (ASSEMBLÉE NATIONALE 2012: 81)

In the Sénat, the French government explained its preference for "identité sexuelle":

Sur la distinction entre "identité sexuelle" et "identité de genre", j'entends bien la demande qui est formulée, mais je ne suis pas persuadée que l'identité de genre soit forcément juridiquement plus précise ou mieux comprise par les magistrats que l'identité sexuelle. [...]. Aujourd'hui, à ma connaissance, cela pourra vous être reprécisé, la notion de genre n'est pas reconnue en droit pénal. Par conséquent, introduire une notion qui pourrait faire l'objet d'interprétations divergentes en fonction des juridictions me semble un peu problématique. Je préfère donc que l'on en reste à la notion d'identité sexuelle. (SÉNAT 2012: 2128, Najat Vallaud-Belkacem)

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It was only in November 2016 that "identité sexuelle" was replaced with "identité du genre" by Art. 86(I) of Loi n° 2016-1547. The new wording was proposed by the French parliament in order to align the text to that of another bill which was being discussed at the time and which was eventually adopted as Loi n° 2017-86. The reasons for replacing "identité sexuelle" with "identité de genre" were indicated in the amendment tabled in parliament:

Le présent amendement est conforme à la recommandation du Défenseur des droits prônant le remplacement de l'expression "identité sexuelle", imprécise et mal adaptée, par "identité de genre". Les comportements discriminatoires se fondent, en effet, soit sur l'orientation sexuelle des personnes, soit sur le genre auquel elles s'identifient. Il convient que ces deux motifs apparaissent distinctement. (ASSEMBLÉE NATIONALE 2016: amendment 892)

Jacques Toubon, the French Ombudsman (Défenseur des droits) at the time, had been heard by the parliamentary committee and issued his opinion on 1 June 2016:

La mention du "sexe" dans l'expression "identité sexuelle" de la législation actuelle semble ramener la transidentité à une question morphologique, le terme "sexe" et son dérivé "sexuel" faisant en effet référence aux caractères sexuels de la personne, alors même que la transidentité renvoie à une expérience intime et personnelle indépendante de la morphologie des

personnes [...]. Pour protéger l'ensemble des personnes trans contre les actes et propos dont elles peuvent être victimes, qu'elles aient ou non entamé une démarche médicale de transition sexuelle, l'expression "identité de genre" devrait prévaloir.
(DÉFENSEUR DES DROITS 2016: 19)

If anything, this goes to show how society had changed since 2008.

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Concepts such as "gender identity" or "gender role" had been coined around the 1960s by American psychiatrists such as John MONEY (who helped founding the John Hopkins Gender Identity Clinic in 1965) and Robert STOLLER (who worked at the Gender Identity Research and Treatment Clinic established in 1962 at UCLA Medical Center) (CORTEZ/GAUDENZI/MAKSUD 2019). These and other gender identity clinics provided healthcare for transsexuals and in some cases also gender reassignment.

It was only much later that the publications of Judith BUTLER were instrumental in firmly establishing the concept in wider circles outside psychiatry. Her seminal work "Gender trouble: Feminism and the Subversion of Identity" was published in 1990, but translated into German only in 2003⁷⁹, into French in 2005⁸⁰, into Spanish in 2007⁸¹ and into Italian in 2013⁸².

But gender non-conformity was still considered a mental disease, classified as "gender identity disorder"⁸³ in the chapter "Mental and behavioural disorders" until 31 December 2021 in the WHO International Statistical Classification of Diseases (ICD-10). The 11th revision (ICD-11), which came into effect on 1 January 2022, now uses the terms "gender incongruence"⁸⁴ and moved the concept to a new chapter entitled "Conditions related to sexual health" as

the stigma associated with the intersection of transgender status and mental disorders contributes to precarious legal status, human rights violations, and barriers to appropriate health care for this population.
(DRESCHER 2016: par. 5)

The influential American Psychiatric Association had replaced "gender identity disorder" – as classified in its Diagnostic and Statistical Manual of Mental Disorders (DSM) – by "gender dysphoria" in 2012, thus shifting

clinical emphasis from cross-gender identification itself to a focus on the possible distress arising from a sense of mismatch, or incongruence, that one may have about one's expe-

79 *Das Unbehagen der Geschlechter*. Frankfurt a. M., Suhrkamp, 2003.

80 *Trouble dans le genre. Pour un féminisme de la subversion*. Paris, La Découverte, 2005.

81 *El género en disputa. El feminismo y la subversión de la identidad*. Barcelona, Paidós 2007.

82 *Questione di genere. Il femminismo e la sovversione dell'identità*. Roma-Bari, Laterza, 2013.

83 Defined as "A disorder characterized by a strong and persistent cross-gender identification (such as stating a desire to be the other sex or frequently passing as the other sex) coupled with persistent discomfort with his or her sex (manifested in adults, for example, as a preoccupation with altering primary and secondary sex characteristics through hormonal manipulation or surgery)".

84 Defined as "Gender incongruence is characterized by a marked and persistent incongruence between an individual's experienced gender and the assigned sex. Gender variant behaviour and preferences alone are not a basis for assigning the diagnoses in this group".

rienced gender versus one's assigned gender.
(AMERICAN PSYCHIATRIC ASSOCIATION n.d.: 2f.)

In France, following the promise made by Health Minister Roselyne Bachelot on 16 May 2009, on the eve of the International Day Against Homophobia, Transphobia and Biphobia, Décret n° 2010-125 had already removed in February 2010 “troubles précoces de l'identité de genre” from the catalogue of long-term psychiatric conditions in the Social Security Code where it had been listed next to anorexia, paranoid, schizoid or borderline personality disorder and other neurotic disorders.

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At EU level, the words “gender identity” seem to have been used for the first time in an amendment adopted on 25 April 2002 by the European Parliament to proposal COM(2001) 181 submitted by the European Commission for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States. The amendment aimed at inserting “gender identity” in the non-discrimination list proposed by the Commission (EUROPEAN PARLIAMENT 2002: 137, amendment 108). It did not make it into the final act as adopted by the Council (Council Directive 2003/9/EC)⁸⁵ - indeed, the Council deleted the entire article on non-discrimination which the Commission had proposed.

The European Parliament tried again in 2003 when it adopted, on 11 February, its position on proposal COM(2001) 257 submitted by the European Commission for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. The EP text again inserted “gender identity” in the non-discrimination clause (EUROPEAN PARLIAMENT 2003a: 47, Art. 4). The Council decided to discard the EP amendment “which makes the prohibition of discrimination more specific by adding gender identity to the definition” and instead to follow “the exact wording of Art. 21 of the Charter of Fundamental Rights”⁸⁶ (COUNCIL 2003: 28, amendment 21), and that is the version retained in the final text of Directive 2004/38/EC.

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The Yogyakarta principles on the application of international human rights law in relation to sexual orientation and gender identity⁸⁷ drafted by a group of human rights experts in November 2006 and adopted in 2007 may have constituted a turning point as references to those principles became more frequent over time. The first EU reference to those principles dates from 8 May 2008 in a resolution of the European Parliament (2008a: par. 142).

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As far as EU legislation is concerned, the Council gave in only in 2011 during the negotiations which led to the joint adoption of Directive 2011/95/EU by the European Parliament

85 Council Directive 2003/9/EC was replaced, with effect from 20 July 2015, by Directive 2013/33/EU which does not contain any provisions on non-discrimination either.

86 Article 21(1): “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.”

87 http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf (access 2.11.2021).

and the Council. The words “gender identity” appear in that directive for the first time in an EU legislative act, based on the European Parliament’s amendments (EUROPEAN PARLIAMENT 2011: recital 29 and Art. 10(1) 2nd subparagraph) to the original proposal COM(2009) 551 submitted by the Commission in October 2009.

Since then, the words “gender identity” have been used in two more directives⁸⁸ and in five regulations⁸⁹ as well as in the 2017 Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on the New European Consensus on Development.⁹⁰

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In 2011, the Council of Europe noted that even in those Member States where non-discrimination legislation explicitly includes discrimination on grounds of gender identity,

no standard wording is followed [...]. In addition to “gender identity”, the legislation may refer to “gender expression”, “gender identification”, “transgender identity”, “gender change”, “gender reassignment” or “sexual identity”. There may be significant differences as to the legal scope of these terms.

(COUNCIL OF EUROPE 2011: 166, fn. 980)

According to the 2018 Handbook on European non-discrimination law, there is still no consistent approach of legislation across Europe,

with states largely divided between those that address ‘gender identity’ as part of ‘sexual orientation’, and those that address it as part of ‘sex discrimination’.

(EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS AND COUNCIL OF EUROPE 2018: 172)

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Concerning the Italian version of Directive 2002/73/EC, CAVAGNOLI (2019: 172) also criticises the use of “sesso” instead of “genere”. Again, the wording of the directive follows that of the legal basis, Art. 141 of the EC Treaty. So does the Italian transposition measure, Decreto legislativo 30 maggio 2005, n. 145. Interestingly, Art. 17 of Legge 31 ottobre 2003, n. 306 which the Decreto legislativo refers to in its third citation, uses “genere” in par. 1 lit. a:

a) garantire l’effettiva applicazione del principio di parità di trattamento tra uomini e donne in materia di lavoro, assicurando che le **differenze di genere** non siano causa di discriminazione diretta o indiretta [...]. (my emphasis)

This illustrates a relatively early use of “genere” as compared to the discussions in France. However, in lit. b and c of the same Article, “sesso” is used six times, e.g.

c) prevedere l’applicazione del principio di parità di trattamento **senza distinzione di sesso** in tutti i settori di lavoro [...] (lit. c). (my emphasis)

88 Directives 2012/29/EU and 2013/32/EU.

89 Regulations (EU) No 1381/2013, No 233/2014, No 235/2014, 2021/691 and 2021/692.

90 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A42017Y0630%2801%29&qid=1644502861784> (access 2.11.2021), OJ C 210, 30.6.2017, 1–24.

Despite this example as well as later examples⁹¹ for the use of “genere” in Italian legislation, there is still controversy over the expression, as shown by recent events concerning the bill⁹² aimed at adding “atti di discriminazione fondati sul sesso, sul genere, sull’orientamento sessuale o sull’identità di genere” to the list of Art. 604-bis of the Penal Code which currently refers only to “atti di discriminazione per motivi razziali, etnici, nazionali o religiosi” (SENATO 2020⁹³). Although approved on 4 November 2020 by the Camera dei deputati⁹⁴, it was blocked in the Senato on 27 October 2021, after fierce debates and a number of procedural twists – including a *note verbale* from the Vatican to the Italian authorities⁹⁵ –, in a secret vote by 154 against 131 votes (with two abstentions) at the request tabled by the Lega and the Fratelli d’Italia “di non passare all’esame degli articoli” (SENATO 2021b: 58, 101). Giovanni Maria Flick, the former President of the Italian Corte costituzionale, criticised, in an interview with *La Repubblica*, the “terminologia difficilmente comprensibile o non conosciuta” (MILELLA 2021). Flick’s criticism was taken up by the opponents of the bill in the Senato:

La nostra Costituzione, cari colleghi, parla di tutela della persona in base al sesso che è una condizione oggettiva. Invece, nel disegno di legge Zan troviamo scritto che accanto al sesso [...] vengono date altre caratterizzazioni della persona che sono genere, orientamento sessuale e identità di genere. Queste definizioni non sono giuridiche, non hanno una qualità giuridicamente riconoscibile, sono definizioni date sulla base di teorie filosofiche o antropologiche che nulla hanno di reale, di oggettivo.
(SENATO 2021a: 18, Simone Pillon)

7.5 Human rights (*droits de l’homme/diritti dell’uomo*); Spanish *hombre*

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Concerning the controversial issue of the use of “diritti dell’uomo”, CAVAGNOLI discusses the example of the first and second recital of Directive 2002/73/EC:

(1) A norma dell’articolo 6 del trattato dell’Unione europea, l’Unione europea si fonda sui principi di libertà, democrazia, rispetto dei **diritti dell’uomo** e delle libertà fondamentali e dello stato di diritto, [...] e rispetta i diritti fondamentali quali sono garantiti dalla convenzione europea per la salvaguardia dei **diritti dell’uomo** e delle libertà fondamentali [...].

(2) Il diritto all’eguaglianza dinanzi alla legge ed alla tutela contro la discriminazione per tutti gli individui costituisce un diritto universale riconosciuto dalla dichiarazione universale dei **diritti dell’uomo**, dalla convenzione delle Nazioni Unite sull’eliminazione di ogni forma di discriminazione nei confronti della donna, [...] dai patti delle Nazioni Unite relative ai diritti civili e politici e ai diritti economici, sociali e culturali, nonché dalla convenzione per la salvaguardia dei **diritti dell’uomo** e delle libertà fondamentali, di cui tutti gli Stati membri sono firmatari.

(CAVAGNOLI 2019: 174, emphasis in original)

91 E.g. Legge 23 Novembre 2012, n. 215; Legge 15 ottobre 2013, n. 119 etc.

92 Often referred to as “Ddl (disegno di legge) Zan” after one of its sponsors, Alessandro Zan, rapporteur in the Camera.

93 Version forwarded to the Senato on 5 November 2020 after approval by the Camera.

94 The text was approved in a secret vote (requested by Fratelli d’Italia) by 265 votes in favour, 193 against and one abstention (CAMERA DEI DEPUTATI 2020: 38).

95 The *note verbale* to the Italian authorities of 17 June 2021 claimed that some aspects of the bill would breach the Lateran Treaty that defines the relationship between Italy and the Vatican (VATICAN 2021).

CAVAGNOLI highlights the “errato utilizzo del maschile inclusive usato erroneamente come forma neutral” (2019: 176). This (rather clumsy) criticism fails to take account of the fact that each token of “diritti dell’uomo” corresponds to a *verbatim* quotation which obviously sticks to the original wording quoted. BRACCHI (2019: 95), discussing an identical passage in Directive 2000/43/EC, takes a more balanced approach: while conceding the reference to the original title, she outlines the critical position of French feminists on the original titles.

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Unlike French or Italian, Spanish has used “derechos humanos” in the EU treaty as well as in the titles of the Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. BLINI (2019: 194) looks into the frequency of “hombre” mostly used in the obvious double form (*hombres y mujeres*) in the context of equal treatment. The cases where “hombre” is used in other contexts might be of even greater interest. Such an example can be found in Art. 1(2) of Directive 2001/83/EC:

se considerarán asimismo medicamentos todas las sustancias o combinación de sustancias que puedan administrarse **al hombre** con el fin de establecer un diagnóstico médico o de restablecer, corregir o modificar las funciones fisiológicas **del hombre**. (my emphasis)

The French and the Italian versions use “l’homme”⁹⁶ and “l’uomo”⁹⁷ whereas English has “human beings”⁹⁸. The wording (*hombre / homme / uomo*) comes from a much older text from 1965 (Council Directive 65/65/EEC) for which an English version was produced considerably later, in the course of the translation of the *acquis* with a view to the accession of the United Kingdom in 1973. It is highly likely that the initial wording of 1965 and even that of 2001 was drafted in French.⁹⁹

In 2004, Directive 2001/83/EC was amended by Directive 2004/27/EC and “hombre” was replaced by “ser humano”:

toda sustancia o combinación de sustancias que pueda usarse en, o administrarse a **seres humanos** con el fin de restaurar, corregir o modificar las funciones fisiológicas ejerciendo una acción farmacológica, inmunológica o metabólica, o de establecer un diagnóstico médico. (my emphasis)

whereas French and Italian maintained “homme” and “uomo”. This is anecdotal evidence, to be sure. And “hombre” is still used in the current version of the Directive (which has been amended 15 times until now), in the long and highly technical Annex I to the Directive which deals with the analytical, pharmacotoxicological and clinical standards and protocols in

96 “Toute substance ou composition pouvant être administrée à **l’homme** en vue d’établir un diagnostic médical ou de restaurer, corriger ou modifier des fonctions physiologiques chez **l’homme** est également considérée comme médicament”.

97 “Ogni sostanza o composizione da somministrare **all’uomo** allo scopo di stabilire una diagnosi medica o di ripristinare, correggere o modificare funzioni fisiologiche **dell’uomo** è altresì considerata medicinale”.

98 “Any substance or combination of substances which may be administered to **human beings** with a view to making a medical diagnosis or to restoring, correcting or modifying physiological functions in **human beings** is likewise considered a medicinal product”.

99 The 2001 Directive is a codification and replaces Directive 65/65/EEC and subsequent amending acts by a single text without any substantive change.

respect of the testing of medicinal products¹⁰⁰ where the English version also uses “man”.¹⁰¹ Annex I was drafted and adopted by the Commission (Commission Directive 2003/63/EC) on the basis of the powers delegated to it by the legislator. This also means that a different set of drafters and translators were involved in the finalisation of all language versions of Annex I, instead of the legislative drafters and the lawyer-linguists of the European Parliament and the Council. As this example illustrates, the history behind a specific wording used may be quite complex.

“Hombre” is still to be found in EU acts nowadays, in particular in idiomatic expressions such as “hombre/máquina”¹⁰², whereas “horas hombre”¹⁰³ can be found alongside “horas persona”¹⁰⁴.

7.6 *Il Presidente or la Presidente?*

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In her qualitative analysis, CAVAGNOLI (2019: 181) also looks at the signatories of her four EU directives, three of which were signed by a woman on behalf of the Council (and not on behalf of the European Council, as she erroneously writes): Directive 2002/73/EC by Danish minister Mariann Fischer Boel (indicated as “il Presidente”; all languages versions use the masculine form), Directive 2000/78/EC by French minister Elisabeth Guigou (indicated as “il Presidente”, again all language versions use the masculine). The feminine form appears only in her third example, in 2006, in Directive 2006/54/EC signed by Finnish minister Paula Lehtomäki (indicated as “Die Präsidentin”, “la Presidente”, “La présidente”, and Spanish “La presidenta”). “Un segnale significativo”, says CAVAGNOLI (2019: 181), but no, it is not. Judging on the meagre basis of three texts is misleading.

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From 1999 to 2008, 93 directives use “la Presidente” in Italian when signed by a woman (82 of which by EP President Nicole Fontaine). On 23 September 2002, Mariann Fischer Boel

100 “Si se sabe que el metabolismo de un medicamento en determinada especie es similar al del **hombre**, es deseable incluir esa especie” and “Deberán describirse los aspectos significativos desde el punto de vista clínico, incluyendo la implicación de los datos cinéticos para el régimen de dosificación, especialmente para los pacientes de riesgo, y las diferencias entre el **hombre** y las especies animales utilizadas en los estudios preclínicos”.

101 “If the metabolism of a medicinal product in particular species is known to be similar to that in **man**, it is desirable to include this species” and “Clinically significant features including the implication of the kinetic data for the dosage regimen especially for patients at risk, and differences between **man** and animal species used in the preclinical studies, shall be described”.

102 E.g. Annex II point 2.7 of Directive (EU) 2016/797: Spanish “las interfaces hombre/máquina (conductor, personal a bordo del tren y viajeros, incluidas sus características de accesibilidad para personas con discapacidades y personas con movilidad reducida)”, English: “man/machine interfaces (driver, on-board staff and passengers, including accessibility features for persons with disabilities and persons with reduced mobility)”.

103 E.g. in Annex II, Section 145.A.30 point (d) of Commission Regulation (EU) No 1321/2014. Spanish: “plan de horas/hombre de mantenimiento”, English: “a maintenance man-hour plan”.

104 E.g. in recital 9 of Commission Implementing Regulation (EU) 2015/171. The English version uses “person hours”.

signed not only Directive 2002/73/EC (“il Presidente”), but also Directive 2002/65/EC (“la Presidente”); on 16 December 2002 she signed Directives 2002/87/EC and 2002/99/EC, both using in Italian “la Presidente”. During the French presidency of the Council in 2000, Elisabeth Guigou signed a total of eight legislative acts,¹⁰⁵ and in all of them the masculine form is used, even in German where this is clearly an error deviating from usual practice of that period. So what had happened?

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When legislative acts are prepared for signature, the masculine is used in all languages at the date when the text is approved by the Council; at that moment, it is generally not yet known who will sign on behalf of the Council. Acts are signed by the minister available on the date scheduled, irrespective of the content of the act. For the European Parliament, this is different, as only the EP President may sign and he or she is in office for two and a half years. Once the act is signed, the Publications Office of the European Union instructs its proof-readers to insert the name of the signatories and indicates whether it was a male or a female minister.¹⁰⁶ In the case of minister Guigou the Publications Office got it wrong each time; in the case of minister Fischer Boel, it got it right two times out of a total of three. As this is a last minute intervention, and as only the initial of the first name is indicated, the procedure is prone to errors. If it proves anything, then that women are still a minority in governments. And errors occur also the other way round: in 2003, Altero Matteoli signed a total of 40 acts. In three texts,¹⁰⁷ the Italian version prefixes his signature with “la presidente” (the German, French and Spanish version use the correct masculine form in all three texts).

However, doublechecking the data by confronting different language versions, we can see that the regular use of “la presidente” in Italian starts precisely in 1999 when Nicole Fontaine was elected President of the European Parliament and signed legislative acts on behalf of that institution.¹⁰⁸ The acts signed by Simone Veil, President of the European Parliament from 1979 to 1982, still use “il Presidente”.¹⁰⁹

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In December 1981, the Commission had used (in Italian) “presidentessa” in its Decision 82/43/EEC which is a rare early attempt at inclusive language. Art. 6 of that decision reads:

Il comitato è presieduto da un presidente (una presidentessa) eletto (eletta) [...].

It is interesting to compare some other language versions of Art. 6 (my emphasis):

The Committee shall elect a **chairperson** [...].

105 Council Directive 2000/78/EC; Council Directive 2000/79/EC; Council Decision 2000/642/JHA; Council Decision 2000/641/JHA; Council Decision 2001/51/EC; Council Decision 2000/821/EC; Council Decision 2000/750/EC; Council Decision 2000/645/EC.

106 Email communication from the Publications Office staff to this reviewer on 25 April 2019.

107 Council Regulation (EC) No 2228/2003, Council Common Position 2003/906/CFSP, Council Decision 2003/902/EC.

108 E.g. Directive 1999/94/EC.

109 E.g. 2/49/ECSC, EEC, Euratom: Final Adoption of the general budget of the European Communities for the financial year 1982.

Der (die) Vorsitzende des Ausschusses wird von den Ausschussmitgliedern [...] gewählt.

Le comité est présidé par **un(e) président(e) élu(e)** [...].

El Comité estará presidido por **un presidente (o por una presidenta), elegido (o elegida)** [...].

“Presidentessa” has become rare, but survives in an annex to Council decision 2012/642/CFSP listing persons banned from entering EU territory, among them the ‘chair-woman of the Central Election Commission of Belarus’ (“Presidentessa della Commissione elettorale centrale della Bielorussia”).¹¹⁰

7.7 Collective nouns and metonymic references

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BRACCHI and CAVAGNOLI note the use of collective nouns such as (French) “personnel” (2019: 90, 93), “gens de mer” (2019: 87) or (Italian) “questura” (2019: 179). BLINI dedicates a section to this topic (2019: 206ff.) and points out that collective nouns (such as “alumnado”, “clientela” etc.) and metonymic references (such as “presidencia”) are

los recursos más simples y de menor impacto para evitar el masculino genérico.
(BLINI 2019: 206)

Indeed, many guidelines include lists of examples contrasting collective nouns and the words to be replaced. The Québécois French language office notes that, compared with the double form (“tous les employés et toutes les employées”)

Le recours à des noms collectifs permet entre autres d’obtenir un texte plus court.
(OFFICE QUÉBÉCOIS DE LA LANGUE FRANÇAISE 2021)

The European Parliament guidelines for French say, for example:

La référence à un collectif d’individus ou à une notion abstraite permet de ne pas occulter l’un des sexes.
(EUROPEAN PARLIAMENT 2018: 11)

The EP guidelines list various examples, such as “corps enseignant” for “les enseignants”, “personnel” for “les employés” etc.; so do the Spanish and Italian versions. This strategy does not make women more visible, but conceals both sexes by undoing gender.

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The Spanish RAE however is not convinced and touts the generic masculine:

Aunque la propuesta pueda ofrecer flexibilidad estilística al discurso (si se hace combinada con otras formas de referenciar al elemento genérico), no parece aportar ventajas hacia el fin que se persigue. En primer lugar, porque la medida no es necesaria, pues el masculino genérico no oculta con mayor intensidad a la mujer que al varón. En segundo lugar, porque no se gana nada.
(REAL ACADEMIA ESPAÑOLA 2020: 60)

¹¹⁰She was included in the list of banned persons for the first time by Council Common Position 2004/848/CFSP to which a corrigendum was published some three weeks later replacing “chair-person” with “chairwoman” and “president” in the Italian version with “presidentessa” (see *OJ L* 5, 7.1.2005, p. 26).

The RAE authors do not explain why “nothing is to be gained”...

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It is interesting to compare the use of collective nouns across the Romance languages. As far as EU acts¹¹¹ are concerned, a search in EUR-Lex for “clientèle” / “clientela” for the period from January 1990 to December 2021 finds 657 French documents where “clientèle” is used at least once; 527 Italian documents and 273 Spanish documents with “clientela”.¹¹² Despite Spanish showing a smaller number of documents, there are examples to the contrary: in Directive 2006/48/EC as amended by Directive 2009/111/EC, the Spanish version refers to “clientela”¹¹³, the French to “clients”¹¹⁴ and the Italian to “clientes”¹¹⁵. Not surprisingly, English “clientele” appears only in 49 acts, German “Kundschaft” in 57 acts.

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However, the use of collective nouns is not unproblematic, in particular in legal texts. The EP guidelines in the French version include a warning:

Toutefois, il convient d’être prudent. Le recours à des noms collectifs peut induire un effet de dépersonnalisation. En outre, il n’y a pas toujours synonymie parfaite entre les deux types de formulation.

(EUROPEAN PARLIAMENT 2018: 11)

The Swiss guidelines (French) illustrate the point with an example:

le collectif “direction” peut avoir une signification plus étendue et désigner plus d’une personne.

(CHANCELLERIE FEDERALE 2000: 10)

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In BLINI’S list (2019: 206), the word “ciudadanía” is problematic. In the 16 EU directives from 1993 to 2019 in which the word appears in the Spanish version, I found only two cases where it is used as a collective noun. Recital 138 of Directive (EU) 2018/1972 refers to “uso general

111 All types included (i.e. regulations, directives, decisions etc.), but excluding acts no longer in force.

112 Search undertaken on 5.1.2022.

113 “En caso de las operaciones de pago, incluida la ejecución de servicios de pago, compensación y liquidación en cualquier divisa y corresponsalía bancaria, o servicios de compensación, liquidación y custodia de instrumentos financieros a la **clientela**, la recepción con retraso de fondos y otras exposiciones derivadas de la actividad con la clientela que no se prolonguen más allá del siguiente día hábil”.

114 « Dans le cas des transferts monétaires, y compris l’exécution de services de paiement, de compensation et de règlement dans toutes les monnaies et de correspondant bancaire ou des services de compensation, de règlement et de dépositaire fournis aux **clients**, les réceptions en retard de fonds et les autres expositions associées aux activités des clients, qui ont pour échéance maximale le jour ouvrable suivant ».

115 “Nel caso di prestazione di servizi di trasferimento didenaro, tra cui l’esecuzione di servizi di pagamento, di compensazione e di regolamento in qualsiasi valuta e di banca corrispondente o di servizi di compensazione, regolamento e custodia di strumenti finanziari ai **clienti**, il ricevimento ritardato di fondi e altre esposizioni che derivano da tali servizi o attività, che non perdurano oltre il successivo giorno lavorativo”.

por parte de la ciudadanía” (“general use by citizens” in the English version of that Directive) and recital 21 of Directive 2014/89/EU refers to “los grupos de interés, las autoridades y la ciudadanía” (“stakeholders, authorities and the public” in the English version of that Directive). In all other cases, the meaning of “ciudadanía” corresponds to “citizenship”. The 2012 Swiss guidelines for the Italian language address this point:

Anche il termine «cittadinanza» può creare qualche problema poiché può significare sia il “vincolo di appartenenza a uno Stato”, sia “l’insieme degli abitanti di una città” (nei testi normativi è per lo più utilizzato nella prima accezione). Occorre quindi prestare la massima attenzione soprattutto nei testi vincolanti, in particolare in quelli normativi, in cui la designazione dei soggetti deve essere precisa.

(CANCELLERIA FEDERALE 2012: 24)

Polysemy is usually avoided by legislative drafters whenever possible.

However, in Spanish domestic law, a quick search – far from exhaustive – reveals “ciudadanía” being used with both meanings: as “citizenship”,¹¹⁶ but also as “citizens” in particular in the preamble (exposición de motivos),¹¹⁷ but also in the enacting articles.¹¹⁸ It could be interesting to look a bit deeper into this issue.

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BLINI (2019: 206) is careful to point out that an analysis of the context would be necessary in order to properly assess the interest of metonymic references. His lists include a larger number of such references in the Spanish transposition measures than in EU directives. One of the reasons might be the fact that EU terminology has to cover the realities in all EU Member States while words such as “alcaldía”, “consellería” or “subsecretaría” depict specific Spanish matters. This applies also to Italian “questura” or “prefettura” indicated by CAVAGNOLI (2019: 179).

8 A brief remark on Cavagnoli’s concluding chapter

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CAVAGNOLI sums up her co-author’s findings in the concluding chapter. This is what she writes on French (2019: 242):

116 E.g. Ley 40/2006, de 14 de diciembre, del Estatuto de la ciudadanía española en el exterior. For another example see: Exposición de motivos, 2nd paragraph of section VI, Ley Orgánica 1/2002.

“Resulta patente que las asociaciones desempeñan un papel fundamental en los diversos ámbitos de la actividad social, contribuyendo a un ejercicio activo de la ciudadanía y a la consolidación de una democracia avanzada, representando los intereses de los ciudadanos ante los poderes públicos [...]”.

117 E.g. in the first paragraph of the exposición de motivos, Ley 27/2003. The second sentence reads: “La situación que originan estas formas de violencia trasciende el ámbito meramente doméstico para convertirse en una lacra que afecta e involucra a toda la ciudadanía”.

118 E.g. Article 2(g), Ley 10/2007: “Biblioteca: [...], se entiende por biblioteca la estructura organizativa que, mediante los procesos y servicios técnicamente apropiados, tiene como misión facilitar el acceso en igualdad de oportunidades de toda la ciudadanía a documentos publicados o difundidos en cualquier soporte”.

Il capitolo sulla lingua francese di Enrica Bracchi [...] arriva a dimostrare che **esistono differenze notevoli**, dal punto di vista terminologico, fra i testi unionali e quelli nazionali, nonostante esistano raccomandazioni nazionali che mirano all'uniformità fra europeo e nazionale. [...] (my emphasis)

But this is what BRACCHI (2019: 101) writes:

[...] nous n'avons en effet remarqué **aucun écart notable** sur le plan terminologique, et ceci malgré les recommandations nationales que nous avons mentionnées. (my emphasis)

After that, I gave up on "considerazioni conclusive".

9 Conclusion

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In a nutshell: the book under review is a mixed bag indeed. The undeniable interest of the corpus research undertaken and presented by the individual authors is severely undermined by a large part of the introduction. My advice would be to skip the introduction from CAVAGNOLI and start reading with chapter 2. The presentation of the different guidelines at national level provides an interesting comparative view on the strategies recommended for the languages discussed which are dependent, on one hand, on the language structure itself, and on the other, on the formal positions taken by governments and/or by language regulators. The data – both on EU directives and on the corresponding national transition measures – are based on a somewhat aged corpus, and it would be highly interesting to look at the evolution in the last decade.

As has been shown, the debate on how to address gender in language has not abated. The (non-)visibility of women in language is still hotly disputed, but the controversy has gained in complexity with the recognition of non-binary identities. This has led to linguistic innovations seeking to represent a changing reality, vigorously defended by some and fiercely resisted by others.

10 Abbreviations

3.PL	3rd person plural
Art.	Article
BGH	Bundesgerichtshof
BverfG	Bundesverfassungsgericht
CFSP	Common Foreign and Security Policy
col.	column
Deb	Debates
EC	European Community
EEC	European Economic Community
EIGE	European Institute for Gender Equality
EP	European Parliament
EU	European Union
F	feminine
HC	House of Commons
HL	House of Lords
HLG	High Level Group on Gender Equality and Diversity
ICD	International Statistical Classification of Diseases
JHA	Justice and Home Affairs
MEP	Member of the European Parliament
MP	Member of Parliament (of a Member State)
OED	Oxford English Dictionary
OJ	Official Journal of the European Union
OPC	Office of the Parliamentary Counsel
PRS	present tense
RAE	Real Academia Española
SG	singular
TFEU	Treaty on the Functioning of the European Union
UCLA	University of California, Los Angeles
UK	United Kingdom
UN	United Nations
vol.	volume
WHO	World Health Organisation

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