MULTILINGUAL LEGISLATIVE DRAFTING IN SWISS CANTONS: BURDEN OR BLESSING?
Felix Uhlmann / Stefan Höfler

CALC Conference 2017

Melbourne, March 30, 2017
## Language Groups

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<th>Italian</th>
<th>Romansh</th>
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**Figure 1:** Inhabitants (15 years and older) and Main Languages, Federal Statistical Office, 2015
Constitutional Background

English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.

Federal Constitution of the Swiss Confederation

of 18 April 1999 (Status as of 1 January 2016)

Art. 4 National languages
The National Languages are German, French, Italian, and Romansh.

Art. 70 Languages
1 The official languages of the Confederation are German, French and Italian. Romansh is also an official language of the Confederation when communicating with persons who speak Romansh.
Definitions

Co-drafting: Translation at the stage of conceptualization and composition

Co-revision: Translation during the revision of the texts

Co-editing: Translation for the final editing
Quantitative Effects?

Figure 2: Number of characters used in cantonal legislative texts (mio.), LÜCHINGER/ROTH/SCHENKER/UHLMANN, 2015
MULTILINGUAL LEGISLATIVE DRAFTING IN SWISS CANTONS: BURDEN OR BLESSING?

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1. Introduction

It is quite well known that, on the federal (national) level, Switzerland has three official languages: German, French and Italian. A fourth language, Romansh, is considered a national language but does not have the status of an official language. All three languages are equally authentic, i.e. all legislation is produced in German, French and Italian and each language version of a legislative text has the same legal force. What is less commonly known is that multilingual legal systems also exist on the cantonal (state) level: three cantons (Berne, Fribourg, Valais) use German and French as official languages and one canton (Grisons) uses German, Italian as well as Romansh.

The models of legislative drafting employed in multilingual systems may be distinguished by the stage at which the second (and third) language comes into play: It may happen at the stages of conceptualization and composition (co-drafting), during the revision of the texts (co-revision) or only for the final editing (co-editing).

This paper will discuss the different models implemented by the Swiss Confederation and in the aforementioned cantons, identify their advantages and shortcomings and compare them to legislative drafting in cantons with only one official language. It will explore the impact of multilingualism on the quality and the amount of legislation.

2. Background

One should start out with some statistical background. Switzerland is small, and the cantons (states) of Switzerland are obviously even smaller. Switzerland has roughly 8.5 million inhabitants, the cantons with more than one official language around one million (Berne) and around 200'000 to 300'000 inhabitants (Fribourg, Grisons, Va-
lais), respectively. German is the main language spoken in the Confederation, it has roughly three times as many speakers as French and between seven and eight times as many as Italian. In the cantons of Berne and Grisons, German is even more dominant (compared to French in Berne and to Romansh and Italian in Grisons). In the remaining two multilingual cantons (Fribourg and Valais), French is the dominant language: it is spoken by approximately twice as many inhabitants as German (cf. Fig. 1).

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From a legal point, it is undisputed and usually granted by the respective constitution that all official languages are equal. Courts often turn to the second or third language in case of ambiguous wording. It should also be noted that the question of official languages in the legislative process is not a politically charged issue. While there have been numerous decisions by the Swiss Supreme Court on the use of languages in schools, on billboards and in corresponding to authorities, to our knowledge, so far there has been no Supreme Court case that concerned the process of legislation.

Swiss legislation is predominantly prepared by the administration as part of the executive branch. The civil servants are not professional legislative drafters but governmental lawyers with some special knowledge and practice in legislative drafting. Draft laws are transmitted to Parliament in all official languages, which means that

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1 For the legal status of Romansh cf …

2 cf. LÖTSCHER, Multilingual Law Drafting in Switzerland.
the process of translation mainly takes place during the preparatory work within the administration.

3. **Co-drafting, Co-revision, Co-editing**

In the drafting of multilingual legislation, translation may come into play at different stages of the process, i.e. during the stage of conceptualization and composition (co-drafting), during the revision of the texts (co-revision) or only for the final editing (co-editing). All three forms of drafting multilingual legislation are found in Switzerland, although co-revision is most common.

*Co-revision* means that the first draft is written in the working language of the individual or group responsible for this task but that the draft is translated into the other language(s) early so that the process of revision can be carried out for all language versions together.

Co-revision allows for the first draft to be handed over to a specialized translator who will then discuss any ambiguities with the original drafter. The translator may be part of the drafter's administrative unit or belong to a specialized unit; rarely private entities are used. Often, the translators have a legal background. Because it happens early on in the process, translation serves the quality of drafting as it can still have an impact on the wording of the original text.

The process of translation may be followed up by further reviews and revisions. On the federal level, an Internal Drafting Committee ("Verwaltungsinterne Redaktionskommission") reviews and revises the original draft as well as its translation into the other main language, i.e. German or French, respectively. For each draft, the Committee will be composed by a German speaking and a French speaking linguist from the Federal Chancellery and a German speaking and a French speaking lawyer from the Federal Office of Justice. In this bilingual setting, the Committee reviews all propositions for constitutional amendments, acts of Parliament and important secondary legislation. Its suggestions for the German and the French versions of the text are drafted in parallel within the commission, which means that from this point on, one can no longer call one of the language versions the "original" and the other the "translation".

*Co-drafting* from the very start is less common in Switzerland but some cantons and the Confederation have repeatedly applied it. The canton of Berne has tested two

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3 Bratschi/Nüssbaumer, Mehrsprachige Gesetzgebung; Höfler/Nüssbaumer/Xanthaki, Legislative Drafting, p. 159 ff.
different forms. In some cases, laws were jointly drafted in both languages by a
group composed of one German and one French speaking civil servant (or one bi-
lingual civil servant) – which would be the typical form of co-drafting. In another
case, the revision of the cantonal constitution, two independent drafts were written in
German and French, translated and then compared to each other.

**Co-editing** means that a draft is prepared in one language and only translated for
final editing. This process is found for translation into Italian (federal level) and Ita-
lian and Romansh (Grisons) but otherwise, it is not typical for Switzerland because a
draft law usually must first pass an internal review by other administrative units (or at
least the units concerned) and must then be published for consultation by the public.
Internal and external consultations require translation, which means that a draft go-
ing to Parliament will have passed the translators’ office already three times. This
gives ample room for correction based on the feedback of translators. There are
fewer safeguards in the Parliamentarian phase but at least on the federal level the
bicameral system ensures some time for proper translation (and the benefits that
may come from it).

It is interesting to see that the majority language tends to be overrepresented as the
language of first drafts. In the canton of Berne, for instance, one would expect that
roughly one tenth of first drafts are written in French but it seems that almost
99 percent are in fact prepared in German.\(^4\) On the federal level, the data are less
conclusive but a recent study shows that less than ten percent of first drafts were
written in French and none in Italian – simple proportionality would suggest these
numbers to be much higher. Yet, a substantial number of first drafts were composed
in more than one language (one sixth), which might lead to a more balanced result if
taken into account.\(^5\)

One may assume that the dominance of the majority language is explained by fac-
tors outside the sphere of drafting, such as the composition of the work force of civil
servants. Still, one should keep in mind that the formally equal treatment of lan-
guages in the process of co-revision may easily lead to a first drafts in only one lan-
guage in practice.

\(^4\) CAUSSINIA, 2006.
\(^5\) GRÜTER, 2015
4. Effects on Quality

It is interesting to see that the need for translation is widely regarded as a benefit in Switzerland. Articles in law reviews may be somewhat biased in this point and not properly represent the burdens of the daily work with translations but it is noticeable that there is hardly any critique towards translation. It is safe to assume that a lot of drafting flaws are detected during translation.

One important prerequisite for translation to have such positive effects is that there is sufficient feedback from the translators. This means not only that in case of doubt the translator should come back to the drafter but also that the drafter should read the translation to make sure that his or her draft was properly understood. Any mis-translation might provide important pointers to passages in the original draft that need revision: if the translator got it wrong, other readers may too. Similar discrepancies may also be detected during public consultation, when it turns out that the participants have understood a governmental proposition differently.

However, at the federal level, this form of check and double-check mainly works for the two major languages, i.e. German and French. Translations into Italian usually come very late in the process and tend to be somewhat neglected. It is maybe telling that the benefit of translations is generally praised and that the only ones that have earned some concerns stem from the canton Grisons. This trilingual canton has traditionally secured high drafting standards – but it seems that translations come very late in its legislative process and that they pose rather a problem than a benefit. Of course, to be fair, one should also keep in mind that it is quite a burden for a small canton to translate every legal norm into two further languages, which, moreover, are only spoken by roughly 50'000 inhabitants (in total, not each).

It may also be added that all reports from proper co-drafting univocally describe positive experiences. Co-drafting is officially recommended by the federal drafting manual ("Gesetzgebungsleitfaden"). Even if one presumes that usually only very experienced drafters have taken part in such projects and hence the good results may also be explained by a positive selection process, the necessity to think of a problem in more than one language is a distinctive benefit. Unfortunately, in times of more limited administrative resources and increasing as well as fugitive production of norms, these benefits tend to get neglected.

There is another external development posing a possible threat to the positive effects of co-revision. Traditionally, Swiss students learn at least one other national language, meaning that the German speaking students learn French and that the
French speaking students learn German, often as their first foreign language. Not surprisingly, this tradition has come under pressure as employers (and students) fare English much higher than French or German. Still, Swiss civil servants are quite knowledgeable of a second language (and may even consider a bilingual working place as distinctively attractive) which ensures that there is sufficient exchange between drafters and translators and between drafters speaking different languages. If the level of knowledge of a second national language will drop, so will the benefits from co-revision.

5. Quantitative Effects?

There is little study of whether the "burden" of translation influences the quantity of new norms produced. In 2015, an study conducted for the canton of Grisons found an impressive disparity between the amounts of legislation produced by the Swiss cantons. The study looked not only at the absolute amount of norms in a canton but also at stability of the legislation over time. For this purpose, all norms were classified as belonging to the constitutional, the legislative (Parliament) and sub-legislative level (Government).

If one looks at the number of characters that make up the corpus of laws of each canton, one can easily see that the canton of Geneva has roughly four times as many norms as some rural cantons (cf. Fig. 2). Disparities are most plausibly explained by size of the canton (the bigger the more) and its legislative tradition (once many laws, always many laws). It is also evident that French speaking cantons have a larger bulk of legislation than the rest of Switzerland. (The factor that French and Italian texts are somewhat longer due to linguistic reasons does not play a major role; at the federal level it counts for under 5 %).
The data are inconclusive on the question whether the need for translation reduces the number of norms. One might say that the large canton of Berne has fewer norms than Zurich, maybe because of the need for translation. Also, Valais and Fribourg seem to have fewer norms than Geneva, Vaud and Neuchâtel but this may as well be explained by their proximity to the German speaking part of Switzerland. Grisons, the largest canton area-wise but lightly populated, is reluctant to produce norms but this again might be due to tradition and the population size. Hence, it must remain speculation whether translation has fostered (or hindered) the production of norms in Switzerland. It is certainly not a decisive factor.

There are, unfortunately, no studies on the duration of the legislative process if a text has to be translated. Experience und manuals on the legislative process suggest that it indeed influences the time line of a project but is probably not a decisive factor. Translation often goes hand in hand with other necessary checks. It should also be noted that the legislative process is still comparatively slow (but accelerating) in Switzerland, so that the time for translation is hardly felt.

*In conclusion, translations are a benefit to the legislative process but only if properly embedded in the process and if there is a real exchange between translators and drafters.*