



This paper focuses on the right to court interpreting and police interpreting in Italy. The data presented about the situation in Italy are derived from the results of ImPLI (Improving Police and Legal Interpreting), a European research project funded by DG Justice which collected facts and figures about police interpreting in Belgium, Czech Republic, France, Germany, Italy and the United Kingdom.

The transposition of directive 2010/64/UE into Italian law is analysed to understand its impact on interpreting rights for people under investigation, accused persons and witnesses in Italy. The main drawbacks as well as improvements of the directive transposition are highlighted and discussed.

keywords: Police Interpreting, Directive 2010/64/UE, Right to Interpreting in Italy.

# The ImPLI project, pre-trial interpreting in Italy and the transposition of directive 2010/64/EU

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\* Sections 1 to 1.3, 3.3, 4 by G. Mack, sections 2 to 3.2 by A. Amato. Our heartfelt thanks to Guy Aston for his helpful comments. All data in this paper are updated to October 2014.

*El proyecto ImPLI, la interpretación en la etapa previa al juicio en Italia y la transposición de la directiva 2010/64/UE*

*Este artículo está dedicado a la interpretación en tribunales y en entornos policiales en Italia. Los datos que presentamos sobre la situación en Italia proceden de los resultados del proyecto de investigación europeo ImPLI (Improving Police and Legal Interpreting), financiado por la DG Justicia, para el que se recogieron datos y cifras relativos a la interpretación en entornos policiales en Bélgica, la República Checa, Francia, Alemania, Italia y el Reino Unido.*

*Se analiza la transposición de la Directiva 2010/64/UE a la legislación italiana para entender las consecuencias que tiene en el derecho a la interpretación de las personas sometidas a investigación, los acusados y los testigos en Italia. Se ponen de relieve y se debaten los problemas y las mejoras que trae consigo la transposición de la directiva.*

**PALABRAS CLAVE** *Interpretación en entornos policiales, Directiva 2010/64/UE, el derecho a la interpretación en Italia.*



## I. THE IMPLI PROJECT AND LEGAL INTERPRETING IN THE EU

Back in February 2003 the European Commission published a Green Paper on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union, followed in April 2004 by a first Proposal for a framework decision on common procedural rights in criminal proceedings which was backed by several Member states, amongst which Italy. It took considerable discussion to overcome various types of resistance, but finally a step-by-step approach was agreed on, and on 30 November 2009 the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings, for which translation and interpretation were deemed crucial.

During this process, great expectations emerged in Italy as to the effect of European legislative initiatives on the situation of legal interpreting. This was the result not so much of the optimistic evaluations expressed by Italian authorities in European surveys,<sup>1</sup> but of those

<sup>1</sup> From a European Commission questionnaire to the Member States' Ministries of Justice and Home Affairs, February 2002. «Question 6a: What provisions exist for interpretation of questions and translation of relevant documents?»

Answer from Italy: Art. 143 and 109 CCP (Code of Criminal Procedure): linguistic assistance is free and available when necessary. Provision of interpreting services shall be mandatory.

Question 6b: Is there a scheme for emergency linguistic assistance on a 24-hour basis for suspects being held for questioning at the police station? If so, what languages are covered?

Answer from Italy: No, but such assistance is nevertheless provided by calling on the services of those interpreters registered on the lists drawn up by each court office.

Question 6c: Is there a scheme for recruiting qualified translators/interpreters to work in police stations and courts? If so, how is it administered? What qualifications are required?

authorities' positive attitude to the extension of similar language rights to other categories of persons, such as victims and witnesses.<sup>2</sup> On the other hand, Italian institutional representatives made it clear that there were major problems to be tackled to fully implement the Roadmap, and that much support was expected from the European institutions.<sup>3</sup>

### 1.1. Directive 2010/64/EU on interpretation and translation in criminal proceedings

The long awaited breakthrough occurred with directive 2010/64/EU on the right to interpretation and translation in criminal proceedings. The directive was a major achievement in many respects: it was the first directive under the Lisbon Treaty in the field of Justice, as well as the first to deal with translation and interpretation. It was recognised as being crucial both for mutual trust between Member states and for the right of accused persons and suspects to a fair trial. But although the 28 Member states had three years – instead of the usual two – to transpose the directive into national law, when the deadline expired on 27 October 2013, only eight Member states had reported their national transposition provisions, and one had reported

Answer from Italy: No professional register of court and legal interpreters. Each court office draws up a list of appropriate interpreters/ translators, *possessing the necessary university qualification.*» (Spronken and Attinger, 2005: 39; our italics).

<sup>2</sup> «Beyond the rights of those who have been arrested, we need to look at the rights of witnesses and all parties in criminal proceedings (and especially the most vulnerable).» (Salazar in Impact assessment, 2009 Annex 2: 50).

<sup>3</sup> «The skills and costs [of interpretation and translation] are the main points for a future proposal; (...) care is needed with the issue of regulating a profession with high costs. If it does go in this direction, the Commission must pinpoint its role in terms of financial support. The Commission has a role to play in the training of interpreters.» (Salazar in Impact assessment, 2009 Annex 2: 62).

that it saw no need for any such provisions.<sup>4</sup> Italy was not among these. The transposition process has now been completed or is under way in a number of other countries, but a clear picture will be available only when the Commission's report due to be published by 27 October 2014 is submitted. By 1 October 2014 «16 Member States failed to transpose and/or notify within the set deadline their implementing rules under the Directive on the right to interpretation and translation in criminal proceedings» (COM2014 612 final).

### 1.2. *Taking stock*

In order to pave the way for directive 2010/64/EU, from the mid-90s a number of research projects aimed at shedding light on aspects of interpreting and translating in the legal sector were funded by the Criminal Justice Programme of the Directorate-General Justice, Freedom, Security of the European Union. The momentum in bringing legal interpreting into the spotlight was further reinforced in November 2009 with the foundation of EULITA, the European Legal Interpreters and Translators Association.<sup>5</sup> Complementary initiatives came from the DG Interpreting, with the Reflection Forum on Multilingualism and Interpreter Training (Reflection Forum, 2009) and the Special Interest Group on Translation and Interpreting for Public Services (SIGTIPS, 2011). Italian researchers took part in most of these initiatives.

From the 1990s onwards, locally focused studies and accounts concerning legal and

court interpreting also started to bloom. In Italy these mainly covered three crucial areas: reflections by jurists and linguists on language rights and foreign language use in the Italian legal system (e.g. Bellucci, 2002; Curtotti-Nappi, 2002); interpreters' accounts of their experiences in this field (e.g. Amodeo-Perillo, 1989; Beek-hui-zen, 1995; Alimenti Rietti, 1999), and academic research including conferences and MA/PhD theses<sup>6</sup> (e.g. Schena, 1997; Ballardini, 2000; Ballardini, 2012; Williams and Tessuto, 2013; Garwood and Preziosi, 2013; Falbo and Viezzi 2014).<sup>7</sup> The general picture of legal interpreting in Italy which emerges from this literature is rather bleak – an impression reinforced by the many media reports of real or presumed miscarriages of justice caused by the absence of qualified interpreting services not only where so-called 'rare' languages are involved.<sup>8</sup>

### 1.3. *Improving Police and Legal Interpreting*

With the aim of contributing to the implementation of directive 2010/64/EU, six interpreter training university institutes from Belgium, the Czech Republic, France, Germany, Italy and the United Kingdom chose to carry out research on interpreting during investigations by law enforcement agencies, since this is the very first stage of criminal proceedings and has a decisive impact on the following ones. ImPLI, an 18-month research project co-funded by DG-Justice and concluded in December

<sup>4</sup> Information taken from the EULITA website <<http://www.eulita.eu/deadline-transposition-eu-directive-201064-expired>>.

<sup>5</sup> For an overview of European projects in this field see <<http://www.eulita.eu/fr/european-projects>>; Amato and Mack, 2015 (forthcoming).

<sup>6</sup> The main Italian universities active in this field of research are Rome, Trieste and Bologna (Forlì campus). For MA theses by graduates in Forlì and Bologna see <<http://home.sslmit.unibo.it/biblioteca/catalogo.php>> and <<http://amslaurea.unibo.it/>>.

<sup>7</sup> For an extensive discussion and bibliography see Falbo, 2013.

<sup>8</sup> See e.g. Garwood, 2012.





2012,<sup>9</sup> had a twofold objective: a) to improve interpreter training by gaining a better understanding of the interviewing techniques used by law enforcement agencies and prosecution services, and b) to facilitate the cooperation of law enforcement agencies and prosecution services with interpreters by informing them about interpreting techniques.

To gather up-to-date information, the project organised a series of national round tables during which police and judicial authorities, professional interpreters and trainers discussed the subject from their specific points of view. The data acquired concerned crucial aspects such as interpreter recruitment and status, working conditions, interview formats and interpreting modes, the roles of interpreters and their perception in police settings, professional codes of conduct, quality monitoring, training, and the use of technology. The ImPLI Final Report (2012: 54ff.) highlighted aspects recognised as of common interest for all stakeholders, such as interpreter qualifications and certification, recruitment and working conditions. A set of recommendations was drafted with the aim of disseminating and encouraging best practices and joint training to comply with the directive's objective of guaranteeing the right to a fair trial. In section 3 some of the salient aspects of these recommendations are discussed in the light of the directive's transposition into Italian law, also as reminders of what still remains to be done.

## 2. THE LEGAL BACKGROUND FOR PRE-TRIAL INTERPRETING IN ITALY

Italy is a party to the International Covenant on Civil and Political Rights (ICCPR) and to the European Convention on Human Rights

<sup>9</sup> Developing best practices in interpreter-mediated investigative interviews with suspects, victims and experts (Grant agreement JUST/2010/JPEN/1562/AG). Project website in Italian: <<http://impli.sitlec.unibo.it/>>.

(ECHR)<sup>10</sup> and makes reference to the latter as one of the legal sources of the right to be assisted by an interpreter in legal proceedings, specifically to arts. 5 and 6.

National legal grounds are to be found in art. 111 of the Italian Constitution, which mentions the right to an interpreter for defendants «who do not *understand* or *speak* the language used in the [criminal] proceeding» (our translation).<sup>11</sup> Two important rulings of the Italian Constitutional Court (no. 10/1993 and no. 341/1999) have recognised that the interpreter is part of the defendant's right of defence, and not an instrument of the judge.

The Italian Code of Criminal Procedure (CCP), which came into force in 1989, under the heading *Traduzione degli atti* (Translation of documents), now changed into *Diritto all'interprete e alla traduzione di atti fondamentali* (Right to an interpreter and to the translation of fundamental documents), contains five articles that refer specifically to interpreters in criminal proceedings (arts. 143-147). Together with the implementation provisions (*disposizioni di attuazione*), these have been recently amended in order to transpose directive 2010/64/EU, as discussed in greater detail in section 3 below.

Art. 143 of the Italian CCP now states that the interpreter's task is to enable the accused person (and, in accordance with art. 104 section 4 and after transposition also section 4bis, any persons investigated) «who does not *know* the Italian language (...) to understand the accusations made against him and follow the actions

<sup>10</sup> These norms guarantee free assistance of an interpreter not only for the defendant, but for anyone who cannot understand or speak the language used in court.

<sup>11</sup> «Nel processo penale, la legge assicura che la persona accusata di un reato sia (...) assistita da un interprete se non comprende o non parla la lingua impiegata nel processo».

in which he participates» (translation by Gialuz et al., 2014, our italics).

The concept of ‘knowledge’ of the Italian language has been challenged on several occasions as too vague and more restrictive than the provisions of the ECHR and the ICCPR. The Constitutional Court Ruling no. 254/2007 has extended the concept of knowledge of the [Italian] language of the proceedings to the broader concept of ability to ‘communicate’ and ‘participate fully in the hearing’.<sup>12</sup> This principle has been reiterated by Italy’s highest courts on various occasions. Moreover, according to art. 143 (5) of the new Italian CCP, an interpreter must be appointed even when the judge, the public prosecutor or the judicial police know the language or dialect of the defendant. This means that the services of an interpreter must also be provided during the investigative phase, including when a person under investigation makes an unsolicited statement.

In Italy the term used for (and so also the status of) persons under investigation changes according to the phase of the proceedings: first the person is a ‘suspect’ (*sospettato*), then s/he becomes a ‘person investigated’ (*indagato*); when the public prosecutor puts his/her name in a register s/he becomes a person ‘accused’ (*accusato*), and finally a ‘defendant’ (*imputato*) during a trial before the judge in court. The right to interpreting for persons in one of these conditions applies both in the pre-trial and trial phase. Even now art. 143 of the CCP does not explicitly mention victims and witnesses, but it applies to them as well on the basis of the right of defence for any accused persons who need to

understand the statements and charges brought against them.

As with persons under investigation, different terms are used to refer to interpreters on the basis of who appoints them and according to the stage of the proceedings. When working for the judicial police, an interpreter is termed a ‘judicial police auxiliary’ (*ausiliario di polizia giudiziaria*), i.e. a person appointed by the police and acting as a legal officer; when appointed by the public prosecutor s/he is termed a ‘technical consultant/expert’ (*perito*), and when nominated by the court, an interpreter is termed a ‘court-appointed expert’ (*consulente tecnico d’ufficio*). While not clearly stated in the CCP, it has been suggested by various courts that an interpreter working for the judicial police or the public prosecutor should not also work for the defendant or her/his lawyer, insofar as Italian criminal proceedings have an adversarial character and this would mean working for the opposite parties in a trial. Interpreters who have translated during investigations can be called during trial as witnesses concerning their own work, while when they are called to assess a colleague’s performance they act as court-appointed experts.

### 2.1. *Status, qualifications and tasks of interpreters working for law enforcement agencies*

Generally speaking, two categories of people may act as interpreters: in-house and freelance interpreters. In-house interpreters are permanent staff of the Ministry of the Interior (which is responsible for the police) and often also act as translators. Freelance interpreters are used whenever no in-house interpreter is available, and in court they are usually called upon more frequently than in-house interpreters.

<sup>12</sup> Until this ruling was issued, Italian legislation only mentioned knowledge of the language and the ability to understand charges by a defendant, with no mention made of the possibility for defendants to fully participate in the proceedings.





### 2.1.1. *In-house interpreters and translators*

In-house interpreters and translators working for the Ministry of the Interior are called 'linguistic experts' (*funzionari linguistici*). Most were selected by public competitions held in the 1980s. The test procedures were primarily written: a composition in Italian on a general topic, and translations of a given Italian text into the two foreign languages the candidate was applying for.<sup>13</sup> Those candidates who passed this written test were shortlisted and briefly interviewed - hardly an ideal procedure to select specialised interpreters.

The overall number of these linguistic experts is currently around 250. They work either at the headquarters of the Ministry of the Interior in Rome (about 25% of the total), or at local police headquarters, police stations and other offices throughout Italy. They cover 11 languages, the majority working in English, French, German and Spanish, while a very small number also cover Albanian, Arabic, Chinese, Portuguese, Russian, Slovenian and Turkish.

All linguistic experts carry out both police interpreting and legal translations. These activities are requested almost exclusively by local law enforcement agencies and in particular police headquarters, where linguistic experts mainly work with mobile squads, D.I.G.O.S. (Police Branch for General Investigations and Special Operations), U.P.G.S.P. (Office for General Prevention and Public Rescue), Aliens/Immigration Offices and the Crime Prevention Division. The other local offices at a provincial level which use linguistic experts are the so-called special police agencies: Traffic Police, Mail and Communications Police,

Border Police (Air/Sea/Land) and Railway Police.<sup>14</sup>

### 2.1.2. *Free-lance and ad hoc interpreters*

The second category, free-lance interpreters, is more difficult to describe in terms of recruitment and qualifications. The ImPLI project confirmed that in many countries, including Italy, anybody can call themselves and work as an interpreter, regardless of their training, qualifications, or membership of an association. Since there are no general binding requirements for police interpreters in Italy, in urgent cases (which are common) practically anybody may be recruited without checking their qualifications. In the pre-trial phase, interpreters have been recruited from lists of court-accredited interpreters, through agencies, or simply by calling in a person who the law enforcement agency or prosecutor may have worked with before. Especially for less widely known languages, cultural mediators (who have a different job description)<sup>15</sup> or bilinguals without formal qualifications are very often recruited as interpreters. In this respect the transposition of directive 2010/64/EU was eagerly awaited in Italy in the hope that it would impose stricter qualification requirements. Under the heading «Quality of the interpretation and translation», the directive recommends the establishment of a register or registers of interpreters and translators who must be «independent», «appropriately qualified» (art. 5 (2)), and can be trusted to «observe confidentiality» (art. 5 (3)). Unfortunately, the transposition of the directive has failed to deliver what law

<sup>13</sup> See the report by a linguistic expert who contributed to the ImPLI project (ImPLI Minutes of round tables, 2012: 55-62).

<sup>14</sup> For further details, see ImPLI Minutes of round tables, 2012 and Cocchi, 2005.

<sup>15</sup> For references on cultural mediation in Italy, see Amato and Garwood, 2011; CNEL, 2009; Falbo, 2013.

enforcement agencies and professional interpreters had hoped for, as will be seen in the following sections.

## 2.2. *When law enforcement agencies need interpreting*

When working for the police, or any other law enforcement agency, interpreters may be asked to perform a number of different tasks that involve both interpreting and translation skills. During the ImPLI round table organised in Italy, much information was collected from representatives of the judiciary, various law enforcement agencies, in-house interpreters of the Ministry of the Interior and free-lance interpreters. In particular it was possible to identify the most frequent situations where interpreting is required in the pre-trial stage:

1. Reports and private prosecutions involving foreigners who have suffered theft, physical abuse, damage to property, and so on. This is the case of people reporting offences to the police.

2. Minutes of appointment of a defence counsel and choice of domicile by a person investigated. In Italy all persons who have allegedly committed a crime or are caught red-handed must appoint a defence counsel for the police interview, choose a postal address and inform the judicial authorities of it.

3. Summary information interviews. Very often foreign citizens are heard as witnesses reporting the events and circumstances of a crime, according to art. 351 CCP. In this case interpreters (in-house, free-lance and ad hoc) translate during the interview and then perform a sight translation of the minutes of the interview (written in Italian), so that the interviewed person can understand their content and sign them.

4. Summary information interviews with persons investigated with the presence of a

defence counsel. This activity can also be carried out by the judicial police on their own initiative and without delegation by the judicial authority (art. 350 CCP).

5. Police interviews with persons investigated following delegation by the public prosecutor.

6. Voluntary statements by persons investigated (art. 374 CCP). This is the case when a person under investigation spontaneously goes to the police office and reports events related to the offence or crime.

7. Service of deportation orders on foreigners who cross Italian borders irregularly or overstay visas or residence permits. This is now a very frequent job for interpreters, following the passing of a law making irregular migration a criminal offence (no. 94 of 15 July 2009).

The subjects termed interpreters and called upon to carry out these activities can come from a wide range of backgrounds and have very varied qualifications.

## 3. THE TRANSPOSITION OF DIRECTIVE 2010/64/EU INTO ITALIAN LEGISLATION – DAWN OF A NEW ERA?

According to art. 9 of directive 2010/64, «Member states shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 27 October 2013». In Italy a decree to this effect was issued on 4 March 2014 and came into force on 2 April 2014. The issue had been debated by the two Houses of Parliament on the basis of documents drawn up by the Government and the relevant committees.<sup>16</sup> The committee

<sup>16</sup> See Camera dei Deputati – Servizio Studi, 2013; Attuazione della direttiva 2010/UE (2013) and Corte di Cassazione, 2014.





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stage also involved hearings of experts,<sup>17</sup> but no amendments were introduced with respect to the first draft, which was based on a decidedly optimistic view of the current situation. This also emerged from some of the comments on the transposition (e.g. Gialuz, 2014).

Among the expectations for an improvement in the rules on interpreting in criminal proceedings there was first and foremost the hope that the possibility to overcome language barriers and improve the guarantee of a fair trial for citizens who do not speak the language of the proceedings would increase. Three areas are worth discussing here: i) the choice of the language known, understood and spoken by the person suspected/accused (recital 22 of the directive); ii) the extension of the right to an interpreter for persons suspected/accused and their legal counsel (art.2 (2) of the directive); iii) the quality of interpretation (arts. 2(8), 3(9) and 5 of the directive).

### 3.1. *Choice of the language to be interpreted in a legal proceeding*

According to recital 22 of the directive, «Interpretation and translation (...) should be provided in the native language of the suspected or accused persons or in any other language that they speak or understand in order to allow them fully to exercise their right of defence, and in order to safeguard the fairness of the proceedings». Under the new text of art. 143(4) and (5) of the CCP, the judicial authorities must «ascertain the knowledge of Italian» of the foreigner involved, but nothing is specified as to the degree of knowledge below which interpretation must be provided.<sup>18</sup> So far, the language

used during investigations involving a foreign citizen/national whose native tongue is one of those less widely spoken (and taught) in Italy has traditionally been a vehicular language such as English, Spanish or French. This approach has been extensively adopted in immigration procedures, and also transferred to criminal proceedings. The justification is that to guarantee the right to speak one's mother tongue in legal proceedings may result in endless searches for interpreters of less widely spoken languages.<sup>19</sup> Already in 2009 the Final Report of the Reflection Forum on Multilingualism and Interpreter Training recognised this as a risk,<sup>20</sup> and made a number of recommendations about interpreter training and the use of videoconference or remote interpreting. Recital 22 of directive 2010/64 specifically mentions the native language of persons suspected or accused, or «any other language that they speak or understand in order to allow them *fully* to exercise their right of defence» (our italics), similarly to what is stated in the Italian Constitution (art. III). Nothing in the new wording of art. 143 of the CCP regulates or limits the use of vehicular languages only to those cases in which the person suspected or accused has sufficient knowledge of the vehicular language<sup>21</sup>

della lingua italiana è presunta fino a prova contraria per chi sia cittadino italiano.

5. L'interprete e il traduttore sono nominati anche quando il giudice, il pubblico ministero o l'ufficiale di polizia giudiziaria ha personale conoscenza della lingua o del dialetto da interpretare.»

<sup>19</sup> See Gialuz, 2013: 7-9 and Gialuz, 2014.

<sup>20</sup> «When translation and interpreting are provided, if at all, by untrained people or family members, even children, or through vehicular languages, communication may be seriously impaired or even impossible. The effects are potentially devastating for the health, the personal freedom, even the life of the people involved.» (Reflection Forum, 2009: 14).

<sup>21</sup> This obviously still leaves the issue of proper assessment of knowledge of a language open to debate.

<sup>17</sup> See in particular Camera dei Deputati – II Commissione permanente, 2013: 25-35.

<sup>18</sup> «4. L'accertamento sulla conoscenza della lingua italiana è compiuto dall'autorità giudiziaria. La conoscenza

to permit full participation in the proceedings. This represents a missed opportunity and leaves the door open to interpreting becoming a formality - as long as an interpreter is provided the proceeding is lawful - which fails to effectively safeguard the right of defence.

### 3.2. *The right to an interpreter between suspected or accused persons and their legal counsel*

Considering former provisions on interpreting in Italian legal proceedings, art. 2(2) of directive 2010/64 introduces a particularly innovative measure: the right to interpreting is no longer confined to interactions between persons suspected or accused and legal authorities, but is extended to communication «between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications». In this respect the transposition into Italian law introduced a specific provision into the CCP, which in this case is not a disappointing one. A paragraph added to art. 104 now recognises the right to free interpretation also for meetings between the persons suspected or accused and their counsel. No specific cases or situations are identified to limit this right, or to restrict interpretation rights for persons suspected or accused and their counsels. But can such an approach really be applied, regardless of cost? We shall return to this question in section 4 below.

### 3.3. *Quality of interpreting*

When dealt with in official documents, the quality of interpreting in the Italian legal sector does not seem to be a problem (see note 2 above). This view is confirmed by the preparatory report for the transposition of

directive 64/2010/EU: every time the quality of interpretation and/or translation is mentioned, the Italian regulations are deemed to be already compliant with the directive, and therefore not requiring changes.<sup>22</sup>

However even a superficial look at literature (see section 1.2) shows that unfortunately this is not always the case. Also the results of the ImPLI project show that the quality of interpreting during investigations is not always ensured, in particular for ad hoc interpreters of less widely spoken languages (see section 2.1.2). The latter are often recruited under pressure, and drawn from informal lists kept at the local courts of justice, where no specific qualification is required and the only legal requirement for inclusion is the absence of a criminal record. Besides, the fees paid to interpreters are far below European standards. This often leads to the recruitment of unskilled bilinguals, or persons who are fluent in a foreign language but have a poor knowledge of Italian. In the past this has brought considerable discredit to the administration of justice: Garwood (2012) describes a serious case of human rights violation due to unqualified interpreting. No common code of conduct or institutional practice is available, not even for the interpreters who work as full time staff of the Ministry of the Interior.<sup>23</sup> This situation places the suspected or accused persons in a position where there is no guarantee that they will receive the «adequacy of interpretation and translation and efficient



<sup>22</sup> «La nostra normativa è conforme alle disposizioni della direttiva per cui non sono necessari interventi normativi di recepimento» (Attuazione della direttiva 2010/64/UE – Tabella di concordanza).

<sup>23</sup> See ImPLI Minutes of round tables, 2012. The association of linguistic experts of the Ministry of the Interior, ANTIMI - also a member of EULITA - is trying to introduce a code of conduct.



access thereto» specified in art. 5(2) of the directive.

Establishing «a register or registers of independent interpreters and translators who are appropriately qualified» (art. 5(2)) in all Member states is thus a crucial part of the directive's approach to the problem both of access to and quality of interpreting. Ideally, the transposition could have set up a procedure to establish such register(s), asking for common registration criteria to be established. This could have been the basis for agreed quality standards in all languages. A national register could take the form of a centralised database accessible to all law enforcement agencies and courts, which would make it much easier to find qualified interpreters for less widely spoken languages. It also would be the only possibility to participate in a EU database of legal interpreters and translators which is already in preparation.<sup>24</sup> A process of certification, as successfully implemented in many other countries, could also have been initiated on this basis. But again this opportunity was missed by the Italian transposition decree, which simply rules that from now on the local register (*albo*) of court-appointed experts must also have a section for interpreters and translators, like those already existing for psychiatrists or graphologists. Not a word is spent on common selection criteria, minimum qualifications or quality standards,<sup>25</sup> nor on ethical issues. Probably there will simply be a migration of the personal details of interpreters contained in the previous informal lists to the new section of court-appointed experts. Moreover there is no

obligation on judges to hire interpreters from this new register.

Only one change may be of interest: the local committees in charge of compiling the section including interpreters in the registers of court-appointed experts, as well as the Public Prosecutor and the President of the Bar of the local court must now also include a representative of an officially recognised national professional association. After long opposing the efforts of these associations to establish a national register, the public authorities are now asking them to participate (with questionable authority and no guiding rules) in over 130 local committees, with the task of evaluating applications for inclusion in the registers and keeping these updated. Although this may seem a bottom-up approach to interpreting quality, it in fact leaves the door open to inconsistency, lack of quality control and of accessibility, if not abuse.

#### 4. OUTLOOK

The conclusion from these considerations would seem to be that unfortunately we do not see the dawn of a new era for legal interpreting in Italy yet - and indeed, this is the opinion of many in the field.<sup>26</sup> Overall, the transposition has obeyed the letter rather than the spirit of directive 64/2010/EU: although Italian lawmakers present themselves as extremely respectful of linguistic rights and procedural guarantees, they have neither been specific enough to ensure those rights effectively by making the quality of interpreting an issue, nor wise enough to establish a national database which would at least have simplified access to

<sup>24</sup> For details, see the web page of the LIT Search pilot project. Online: <<http://eulita.eu/lit-search-project-was-launched>>.

<sup>25</sup> QUALITAS: Assessing Legal Interpreting Quality through Testing and Certification (2011-2014) is a recently completed European project in this direction; see Giambruno, 2014.

<sup>26</sup> See e.g. Gialuz, 2014; Recchione, 2014.

interpreters and translators for less widely spoken languages.

The solution of ‘local-level’ registers, which has been adopted, places a heavy responsibility on the national associations of language professionals. It is far from sure that they will be able to act as gatekeepers who ensure that only qualified interpreters are included in the new category of court-appointed experts. Yet every cloud has a silver lining. The conditions of legal interpreting have for some time become an issue for associations of interpreters and translators, particularly since a law on the so-called ‘non-organised professions’ was issued in January 2013.<sup>27</sup> Art. 6 of this law provides for the possibility for voluntary self-regulation and qualification of individuals working in these professions by means of technical standards. Consulting all major stakeholders, the main national associations have drafted a standard defining qualifications for professional translators and interpreters. Professional interpreters are classed under four specialist profiles, one of which refers to the legal sector. For each profile the document specifies tasks and activities and lists the competences, skills and knowledge associated with them.<sup>28</sup> Hopefully this document will be definitively adopted in 2015 making the certification of professionals based on its provisions possible. But again, certification will not be compulsory, nor do qualifications and training in this field seem to be a priority for Italian lawmakers, at least for the time being.

Undoubtedly one reason for these shortcomings is budgetary cuts. The implementation provisions connected with the transposition of directive 2010/64/EU provide additional funding, but only take into account the estimated

increase in workload (see section 3.2), not the higher cost of using qualified interpreters. Current levels of remuneration keep professional interpreters away from this field. In the light of the economic situation and of the ongoing cuts in public spending, it remains to be seen whether the Italian legal system is prepared and able to deliver even what it has promised in the transposition. Looking at legal interpreting only as a cost, however, fails to take into account the economic as well as the human consequences of poor language service provision. And it ignores the potential savings generated by improving and speeding up procedures, which could make up for the higher spending in quality interpreting. There is evidence of good practices and relevant research in this direction around the world.<sup>29</sup> Unfortunately, one major prerequisite in order to change things – «the development of a national policy framework for the provision of interpreting and translating services» (NCCRI, 2008: iv) – does not seem to be on the agenda of Italian policy-makers yet. There is a long way to go for the advent in Italy of a new era in legal interpreting.

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<sup>27</sup> Legge 14 gennaio 2013, n. 4 Disposizioni in materia di professioni non organizzate.

<sup>28</sup> For further details see Bertolini et al., 2014.

<sup>29</sup> E.g. Hale, 2004. For eloquent examples from the health sector, see Access Alliance, 2009; Masland et al., 2010; Blanchfield et al., 2011.





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