

The challenges of language: re-shaping legislative discourse(s) and text(s)

by Pennisi Giulia Adriana

INTRODUCTION

Since the 1990s the discourse on the relationship between the European Union and Member States in the field of labour law has changed significantly, and it has been increasingly supplemented by framework agreements between the European institutions and the actors involved in the labour law dialogue. From this point of view, the Green Paper on modernising labour law (*Modernising labour law to meet the challenges of the 21st century* – COM/2006/0708 final) invites Member States, the social partners and other interested parties to participate in a consultation process and an open debate, in order to look at how labour law can help promote flexibility in conjunction with security, regardless of the type of employment contract.

The aim of this paper is to explore how the European Commission develops and constructs the two Green Papers in the field of labour law in order to provide a communicative response to the important economic, political and social changes affecting the European labour market. More specifically, these two texts will be presented as a combination of different discourses that, through the intentional use of lexico-grammatical resources, are strategically exploited to mould the norms and conventions typical of public documents such as Green Papers and consultation documents to promote a positive image of the European Union Institutions, while providing legislative drafters with very poor indications about the specific measures to take in order to put Commission's indications into practice.

GENERAL OVERVIEW

Labour law (henceforth LL) is a body of legislation that defines the rights and obligations of workers and employers in the workplace. At the Community level (http://ec.europa.eu/index_en.htm) labour law covers two main areas: working conditions (including working time, part-time and fixed-term work) and posting of workers, information and consultation of workers (including collective redundancies and transfer of undertakings).

For almost 50 years the European Community (henceforth EC) has supported and complemented the activities of the Member States in the area of social policy, in line with the provisions of the EC Treaty (Articles 136-139). To this aim, the European Union (henceforth EU) has adopted legislation defining minimum requirements at the European level in the fields of working and employment conditions and the information and consultation of workers. Initially, EC LL was designed with the aim of guaranteeing that the creation of a single market did not lead to a lowering of labour standards or distortions in competition. Today, EU LL also has a key role in ensuring that a high level of employment and sustained economic growth is accompanied by continuous improvement of the living and working conditions throughout the EU.

Among the EU institutions, the European Commission has the role to foster cooperation among all LL actors and it has ultimately issued two Green Papers (*Partnership for a New Organisation of Work* (1997) hereafter GP1, and "*Modernising labour law to meet the challenges of the 21st century*", hereafter GP2) that reflect in their textual and discursive construction the EU institutions' need to accommodate competing interests while promoting intervention in a field traditionally left to individual Member States and corporate rights (see G Ren, "An Overall Review of Linguistic Research on Genre", *Review of European Studies*, 2010, vol 2, no 2, 232-35). Using Bhatia's (see 2004 and 2008b) contextual approach to the analysis of the use of textual and socio-pragmatic features in the two Green Papers, the study attempts to demystify the appropriation of linguistic resources to obscure EU performances, in particular the negative outcomes of the EU intervention in the labour market field, and to highlight instead the positive outcomes of the EU institutions' involvement in order to enhance the EU's image in the eyes of European social partners and European citizens/consumers as a whole. Analysis of the two Green Papers will show interesting evidence of the mixing of legislative intentions on the one hand, and promotional and political indications on the other.

RESEARCH FINDINGS

The two GPs included in the corpus invite Member States, social partners and other interested parties to participate in the consultation process and open debate, in order to look at how labour market/labour law can help promote flexibility in conjunction with security, regardless of the type of the employment contract. Essentially, Green Papers are documents published by the European Commission which may give rise to legislative developments that are then outlined in White Papers (henceforth WPs). It is a conventionalised and standardised genre (see Bhatia 2004), the purpose of which is to stimulate discussion on given topics at the European level and invite the relevant parties (bodies or individuals) to participate in a consultation process and debate on the basis of the proposals they put forward. Generally speaking a typical GP has a number of conventional indicators:

- it has an Introduction in which the European Commission outlines the purpose of the GP;
- the main body of the document consists of a Table of Contents with different sections that could vary in their number, describing the present implications of past events and prospective future events and/or expectations;
- the Issues for Debate is the final section which starts the Consultation Process.

In terms of regularities of textual organization, a typical GP has a fairly standardised six-move structure with some scope for variation within this general discourse organization (for instance, the Introduction can be preceded by an Executive Summary):

Move 1: the aim of the GP;

Move 2: general overview of past/present years;

Move 3: identifying important/major themes;

Move 4: elaboration on important/major themes;

Move 5: looking forward;

Move 6: the consultation process.

The analysis of GP1 and GP2 has shown an interesting six-move structure. Both texts begin with present implications of past events and go towards future events and/or expectations. The amount of engagement with past events depends on how well the European institutions have performed in the preceding years. If European institutions have performed well, we are more likely to find an elaborate account of the achievements; otherwise, a GP is less likely to include

a lengthy mention of past events. In such cases, however, often we find adequate compensation for this lack of discussion about past events in having a detailed and elaborate engagement with future and expected events. The analysis of GP1 and GP2 has revealed that not only is this structure present in both texts, but also they show an interesting use of lexico-grammatical features that indicate movement between various ‘rhetorical moves’:

Move 1: the aim of the GP (present tense + few occurrences of prescriptions marked by exhortation or strong urging);

Move 2: general overview of past/present years (adverbial of time);

Move 3: identifying important/major themes (nominalised forms);

Move 4: elaboration on important/major themes (perfect tense);

Move 5: looking forward (the participants + (yes/no) future tense + verbs such as achieve, ensure, facilitate, improve, stimulate, mobilise, etc);

Move 6: the consultation process (present and future tense, nominalised forms, adverbial of time);

The corresponding results in GP1 and GP2 are listed as follows [my emphasis here and there].

Move 1 begins with clear indications of the aim(s) of the GP, such as “*The purpose of this Green Paper is...*” (GP1+GP2), or “*This Green Paper is about the scope for...*” (GP1). In this case, verbs are used in present tense with some occurrences of hortatory prescriptions with a covert prescriptive intent aimed at getting EU institutions, Member States and social partners to act in certain ways, such as “*the content and level of such a framework has to be clarified through discussion...*” (GP1). When used, the passive can refer to the commonality of LL interactants acting as the agent in a particular situation, as in the case of “*considerations needs to be given to the problems faced especially by SMEs in dealing with the administrative costs imposed by both Community and national legislation*” (GP2).

Adverbials of time are particularly present in move 2, where we have a general overview of the circumstances and things that happened at a particular time and in a given place, such as “*More recently, the European Council in Dublin emphasized the importance of...*” (GP1) and “*Since the early 1990s, reform of national employment protection legislation has focused on easing existing regulation to facilitate more contractual diversity. Reforms tended to increase flexibility “on the margins”, ie introducing more flexible forms of employment...*” (GP2).

In move 3 the description of major themes is detailed

with a high occurrence of nominalised forms such as *adequate benchmarking*, *short-term cost-cutting measures* (GP1) or *Lisbon's strategy objective*, *just-in-time management*, *adaptable workforce* and *flexibility "on the margins"* (GP2). In this context, most of the actors involved in the performance of specific actions and/or the realization of given results are non-human participants which, according to Bhatia et al (2008b: 171), "give the appearance of 'objectivity' by suggesting a strong but subtle impression of a factual situation caused by circumstances not attributable to any person or persons who might otherwise be thought responsible."

Similarly, in move 4 perfect tense is the most common tense used to refer to the achievements of the European institutions and the actors involved in LL discourse in the past years, as in these following passages: "*the traditional organization of work... has been questioned more and more; a new technological revolution has begun...*" (GP1) and "*the drive for flexibility in the labour market has given rise to increasingly diverse contractual forms...*" (GP2). In this case, the analysis has revealed a detailed/positive description of the actors that have contributed to the successful results on the one hand, such as "*it is important to recognize that European companies and public services have already introduced a great number of organizational innovations, which are in tune with European conditions...*" (GP1), and a detailed/negative description of external factors that have been considered responsible for failures or poor results on the other hand, such as "*the drive for flexibility in the labour market has given rise to increasingly diverse contractual forms...; the phenomenon of disguised employment, often developed in collaboration with the social partners, has ranged from...; however, it has been argued that such rules may serve to restrain subcontracting...*" (GP2).

In move 5 ("looking forward"), we have a positive and forward-looking image of the achievements, as in the case of: "*it is in line with the calls by the European Council to mobilise all appropriate national and Community resources to promote a skilled and adaptable workforce and labour markets responsive to the challenges stemming from the combined impact of globalisation...*" and "*the evolving relationship between law and collective agreements is reflected in the ways in which such agreements cover new issues...*" (GP2). The analysis of GP1 and GP2 has revealed that expectations and promises are signalled by expressions such as a combination of the pronoun "it" or inanimate subjects and verbs such as "*achieve, ensure, facilitate, improve, stimulate and mobilize*." Additionally, positive nominals such as "*challenge(s), integrated approach, innovation, and modernization*" are quite common, as in the case of "*the European employment strategy calls for an integrated approach...*" (GP1) or "*it is in line with the calls by the European Council to mobilise all appropriate national and Community resources to promote a skilled and adaptable workforce and labour markets responsive to the challenges stemming from the combined impact of globalisation...*" (GP2).

Move 6 revisits the themes from move 5 to promise significant gains on the future performance of the participants involved in LL dialogue. Recommendation aimed at the realization of an LL common core are mainly conveyed through the modal "*should*" (*should be/should not be perceived, should be dealt with*), and the distribution of auxiliaries is quite similar in both GPs, with some of them being more present in GP1. More specifically, the analysis has shown few occurrences of "*would*" (9 occurrences in GP1 plus 5 occurrences in GP2), "*could*" (20 occurrences in GP1 and 7 occurrences in GP2); "*can*" (46 occurrences in GP1 and 21 in GP2) and "*may*" (14 occurrences in both GPs). From this point of view, GP1 and GP2 show interesting instances of the modal may, such as "*as may be necessary*", "*open and flexible legal frame-works may pave the way for a new balance of regulatory powers between the State and...*" "*Adopting a lifecycle approach to work may require shifting from the concern to protect particular jobs to a framework...*" where, as Cortese observes (2005: 274): "such flexible language is another manifestation of the attitudinal stance of milder or mitigated expectations of fulfillment."

Then, the participation in LL decision-making is guaranteed through open questions directly addressed to the social partners, Member States' authorities and other interested parties, and a call for their immediate and participative involvement and contribution in order to make concrete proposals for action. The following extracts illustrate this point: "*Do you share the views expressed above on the organization of work and the main driving forces behind this new developments? Are there other factors that should be included?*" (GP1). "*Can the adaptation of labour law and collective agreements contribute to improved flexibility and employment security and a reduction in labour market segmentation?*" (GP2). Similarly, we find the pronoun "*you*" which involves a more direct participation of the social partners, Member States' authorities and other interested parties, such as: "*What would you consider to be the priorities for a meaningful labour law reform agenda?*" or "*Do you think it is necessary to reinforce administrative co-operation between the relevant authorities to boost their effectiveness in enforcing Community labour law?*" (GP2).

The present analysis demonstrates that among the lexicogrammatical features characterising GP1 and GP2, the high occurrence of nominals and the use of perfect and future tense forms indicate that both documents are embedded in a socio-political and economic context projecting a positive, forward-looking and encouraging representation/image of the outcomes/results coming from the cooperation between the participants in the LL consultation process. Notwithstanding the fact that the two GPs show similarities in the organization of the text and the use of lexico-grammar to signal movement within the rhetorical moves reported above, the analysis has revealed a slight difference between GP1 and GP2 in the number of occurrences of "specialised nominal" and perfect

and future tense forms. More specifically, nominals like “Lisbon strategy’s objective; skill, trained and adaptable workforce; an innovation-driven economy; knowledge-based economy; the flexicurity approach; just-in-time management; on-call contracts, zero-hour contracts; temporary employment agencies; outsourcing, subcontracting and project based work”, are particularly present in GP2, with some of them occurring in GP2 text only. Furthermore, the expression ‘labour law’ (the name given to the legal field concerning the rights and duties of workers) has one occurrence in GP1, whereas it occurs 38 times in GP2. Likewise, in the case of the verb forms the analysis has revealed that GP2 has a relatively higher number of occurrences of perfect tense. These variations might be explained by the difference in the time span between the two GPs, and the European Commission’s intention to play a more significant role in LL issues.

CONTEXTUAL ANALYSIS

The contextual investigation of textual and discursive findings has been conducted in order to understand the rationale for writing GP1 and GP2 the way they are written. As the analysis demonstrates, a possible reason for writing the two GPs in such a positive and encouraging tone is that the EU institutions, and more specifically the European Commission, strive to reach a large consensus at the European level on delicate and controversial issues involving all the Member States. In this regard, a remarkable aspect of the European public discourse, which has been particularly evident in the recent years, is the concern on the part of the EU institutions to assure social partners and European citizens that the transition to “the social aquis” is going to be smooth and free of any conflict and it supports the action of the Member States. In this case, a significant indication of the European institutions’ good intention can be seen in GP1 and GP2 that came to be known as the first and most important EU attempt to regulate employment rights and work organisation.

As the excerpts reported in the previous sections demonstrate, GP1 and GP2 represent interesting examples of “a colonization of public discourse genres which have traditionally been regarded as conflicting, especially the promotional and legislative genres in the emerging political context” (Bhatia 2004: 105). Similarly, the analysis has revealed that GP2 presents instances of two somewhat conflicting intentions, that is, one more “legislative” to provide solutions in the field of labour law matters, and the other “political/diplomatic” to promote and give the impression of a mutual understanding and perhaps postpone (or even avoid if necessary) difficult decisions on contentious and unresolved issues of potential conflict so that they could be managed through further negotiations as and when necessary.

The very first introductory section of GP2 sets the tone of the document when it expressly states:

“The purpose of this Green Paper is to launch a public debate in the EU on how labour law can evolve to support the Lisbon Strategy’s objective of achieving sustainable growth with more and better jobs. The modernization of labour law constitutes a key element for the success of the adaptability of workers and enterprises. This objective needs to be pursued in the light of the Community’s objectives of full employment, labour productivity and social cohesion. It is in line with the calls by the European Council to mobilise all appropriate national and Community resources to promote a skilled, trained and adaptable workforce and labour markets responsive to the challenges stemming from the combined impact of globalisation and of the ageing of European societies. As the Commission’s 2006 Annual Progress Report on Growth and Jobs emphasises: “Increasing the responsiveness of European labour markets is crucial to promoting economic activity and high productivity” [my emphasis here and there].

At a closer analysis, it represents a political and somehow diplomatic statement with the effect of a legislative intention. It works well as a political statement, and it is interesting to note the definition of the EU Commission as “a catalyst” and the vague expression of good practice in a document which represents the second most important EU attempt to safeguard working conditions and improve the quality of work in Member States, as in the passage from GP2 reported here:

“Responsibility for safeguarding working conditions and improving the quality of work in the Member States primarily rests on national legislation and on the efficacy of enforcement and control measures at national level. At the EU level, the social aquis supports and complements the actions of the Member States in this sphere. The Commission also acts as a catalyst to support action by the Member States and the social partners to strengthen the Lisbon goals of growth and jobs through its support for a range of policy instruments including the EU Social Dialogue and financial measures such as the European Social Fund, Progress, and the proposed European Globalisation Adjustment Fund. Coordination of employment policies within the partnership for growth and jobs and the open method of co-ordination in the field of social inclusion policies also help to ensure full mobility for workers across Europe within the context of the Treaties. These combine concrete goals and policy objectives set at EU level, which are translated into national plans, the use of benchmarks and indicators to measure progress, exchange of experience and peer review so as to learn from “good practice”.

On the whole, this deliberate vagueness is introduced in the document to keep things flexible so far as future legislative actions in the field of labour law are concerned.

CONCLUSIONS

As the present study attempts to demonstrate, EU institutions shape their discourse in the field of LL in order to provide communicative response to global socio-economic and political change. In particular, the analysis of the two GPs has been presented as a combination of different discourses which are strategically exploited to mould the norms/conventions typical of public documents such as Green Papers and consultation documents to promote a positive image of the EU institutions, even in changing/challenging economic circumstances of communities and territories.

A typical GP should be accompanied by a WP which is an official set of proposals that is used as a vehicle for a GP's development into law. In fact, not only is a WP an authoritative report or guide in order to solve a problem, it is also used to educate readers and help legislators make decisions. In the case under observation, neither GP1 nor GP2 has been followed by a WP; therefore, one may argue that those involved in controversial issues such as labour rights and work organisation would need to go beyond the promotional rhetoric of intervention and interpret a more authoritative guide, or report carefully trying to find the best solutions to the problems.

Eventually, the following questions for future research may thus be posed. First of all, to what extent is EU labour law discourse constrained by political, socio-economic and cultural aspects and values of the groups and actors involved in LL matters? This raises other issues concerning the participation and involvement of EU institutions, Member States, social partners and interested parties in LL dialogue; that is, "who gets power, and who is impoverished? And how does any advantage on the part of one institution become a disadvantage for the other?" (Bhatia 2004: 140). Research in these directions would prove useful in finding possible answers to these questions that the present study allows us to ask but not to answer.

Pennisi Giulia Adriana

Tenured Researcher in English Language and Translation at the University of Palermo (Italy); Associate Fellow at the Institute of Advanced Legal Studies, Sir William Dale Visiting Fellowship.

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