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EU regulations as a hybrid genre

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Introduction

This research project starts from some reflections around a socio-political phenomenon known as ‘democratic deficit’ that has been affecting European Union (EU) institutions for a long time.

The growing perception of a democratic deficit and the waning popularity of EU institutions have been generally ascribed to «the institutions’ inability to communicate their aims to the people in different Member States» (Koskinen 2008: 81) even though the ‘participatory turn’ has tried to connect Europe with its citizens (*White Paper on European Governance* 2001: 3). Since the encounters between the EU *élite* and its various constituencies are typically text-mediated rather than personal, it makes sense to look for the reasons for the perceived democratic deficit, which according to Wilson (2000) is a ‘cultural deficit’ too, in the discursive practices found in European written legal documents and in particular in EU regulations.

The focus of the study is not on the political and purely legal consequences of the actual or alleged ‘democratic deficit’ but on the textual, cognitive, and rhetorical manifestations of the phenomenon in EU regulations, as the main contention is that there exists a relationship between the way EU regulations are written and the socio-political context which they originate from. The basic methodological approach of this study derives from linguistics, with reliance on notions taken from EU law, since the European procedure to adopt new laws establishes that every act complies with a canon and follow precise steps, which involve different agents (drafters, editors, legal revisers, subject-matter lawyers, in-house translators, lawyer-linguists, citizens and economic operators, and the Directorate-General for Translation) to enhance quality in EU multilingual law-making (Strandvik 2016) and thus, facilitate reading comprehension and translatability. As research, it is exploratory, namely it is aimed at describing subjects and contexts and getting to know the research object (EU regulations) better, with particular attention to the way they are drafted and the reasons which justify such law-making process. In order to carry out that kind of research, after considering the EU hybrid legal system that is not civil law or common law or international law, but a new legal framework, EU legal texts were considered – in particular secondary legislation (regulations) – and their generic

integrity was investigated to understand whether they are hybrid or not. The analysis covered only partially issues on the plurilingual nature of the EU law and other translation-oriented reflections and concentrated mainly on monolingual texts drafted in English. This analysis concentrated on linguistic aspects, such as genre, text types, register and rhetoric, which provided elements preliminary to and on which translation usually depends (Trosborg 1997). In the light of such an analysis, it could be plausible to approach the translation of EU regulations from a new functional perspective and beyond the synoptic approach.

The phrase 'democratic deficit' is generally credited to David Marquand (1979) – who emphasised the lack of accountability of European Institutions toward the European public whose will is not reflected in sometimes unpopular policies (Mèny 2003: 8). European democratic deficit may have two interpretations: it may be the result of 'too little democracy' or it may refer to a kind of 'over-shadowed democracy' (Azman 2011: 244). The origin of this phenomenon is often political, that is, the lack of confidence in the European Institutions; but this study sets out to prove that the Founding Fathers of the European Union were well-aware of this possible aftermath – though they never officially stated that – and that – despite the well-known economic and political arguments in favour of the so-called 'Monnet Method of functional and political spillovers' – another strategy adopted to promote European integration was textual and discursive. As a matter of fact, this alternative strategy had to do with the way EU secondary legislation was written and, in other terms, with soft power, that is, with EU's commitment to certain normative principles such as democracy and human rights (Nielsen 2013). In Nye's (2004) words, soft power as a concept applied to the American context – which is also valid for the European scenario – is

(...) the ability to get what you want through attraction rather than coercion or payments. When you can get others to want what you want, you do not have to spend as much on sticks and carrots to move them in your direction. Hard power, the ability to coerce, grows out of a country's military and economic might. Soft power arises from the attractiveness of a country's culture, political ideals and policies. When our policies are seen as legitimate in the eyes of others, our soft power is enhanced" (Nye 2004: 256)

EU legal drafting is «writing for translation [... since] no single EU text stands alone» (Robertson 2010b: 159) and in this legal scenario European multilingualism finds its most complete and concrete manifestation. However, from a legal perspective, the supranational European legal system is based on primary legislation – namely the international treaties – and secondary legislation – namely regulations, directives and decisions which implement the founding principles and represent the ‘operative provisions’, the statutory dimension of EU law. In other terms, in the EU, secondary legislation refers to legal acts, and the principles which they are informed by are expressed in international treaties.

From this perspective, EU law originates from – but is not – international law and interferes with Member States’ national law on which it has priority (Judgment of the Court of 5 February 1963, Van Gend & Loos). From the law-making process perspective, the European Parliament (which is the only institutional body directly elected by EU citizens) and the Council of the European Union adopt new legislation after the European Commission has prepared a legislative proposal on its own initiative. It is on the extraordinary functions performed by the Commission that the debate on European democratic deficit and democratic legitimacy and accountability is based. From the linguistic point of view, if in the law-making process a new legal document has been adopted, that becomes temporarily the source text for the other versions of the document which has to be drafted in 24 official languages. When all the versions of the documents are ready, the previously-called source text loses its status and becomes one of the twenty-four equally valid versions of the document. In addition, when a new concept needs to be expressed, a neologism or a new term is created or borrowed from other legal or non-legal contexts and used in such a way to avoid any confusion between EU term and concepts and civil law or common law pre-existing terms and concepts (Šarčević 2013). The Commission in making legislative proposals and implementing policies created many policy networks that range from technical expert committees to administrative and diplomatic networks, NGOs and socio-economic interest groups. This is a strategy that allows the Commission (and the Council) «to convince the outside world of the strengths of the normative foundations of European foreign policy [through]

strategies of cognitive persuasion that are reminiscent of concepts and methods used within public diplomacy» (Michalski 2005: 126) and that aims at persuading internal and external audiences of European ideas and perception of world order. The normative component is important in legitimising the EU's soft power, as both normative power and soft power consider «the impact of norms and values [in] an attempt at identity construction with both a descriptive and prescriptive element to it» (Nye 2011 in Nielsen 2013).

Based on these assumptions, this study aims at investigating the peculiarities of EU regulations as a genre. In order to achieve this purpose and in an attempt to provide an answer to the questions of how EU regulations are drafted and 'why' they are drafted in the way they are, Chapter 1 and 2 present the legal and linguistic scenario which led to the EU legal and linguistic hybridity and complexity. Chapter 3 provides the theoretical framework for this study and Chapter 4 provides information about the methodological approach adopted, the research questions, and the data and corpus design. Chapter 5 examines the textual, cognitive, and generic dimension of ninety EU regulations – mainly selected from areas of European exclusive competence, namely competition, monetary policy, customs union, trade, and marine plants and animals – and the linguistic devices involved in the phenomenon called 'textual legitimacy' with the ultimate goal of demonstrating that EU regulations, originated from a hybrid legal and linguistic context, are a hybrid genre. By 'textual legitimacy' we mean here all the textual strategies adopted to draft the texts of regulations in order to present them as valid, legal and, in other words, legitimate. Every section – apart from the annexes – of the ninety EU regulations is analysed with particular attention to recitals, definitions, and the enacting terms. It was found that EU regulations are persuasive texts, which combine – according to Tiersma's (1999) taxonomy – aspects typical of operative legal documents which contain legal performatives (enacting terms) and aspects typical of expository and persuasive documents (recitals). A parallel was drawn between the cognitive structure of EU regulations and other written legal texts, like judgments and contracts, which reinforced the assumption of EU regulations as a hybrid genre.

The regulative and facilitative function of law (Danet 1980) defines and permits relationships and, in order to do that, it is necessary to create a relation between language and social order which allows equating the legal with the social. In the EU, due to its peculiar multilingualism and multiculturalism combined with a variety of different national legal frameworks, this socio-political aspect has always been subject to open criticism. Nonetheless, the contractual nature of international and supranational rule-making (Robertson 2016) and soft law (or the «contractualisation of relations» as Tulmets (2007) calls it) could limit - from a textual point of view - the negative effects of the undemocratic and illegitimate spill-over. Indeed, their ultimate goal is to find a balanced compromise which takes into account a multiplicity of international, national and regional interests.

In consideration of the above, this study provides an in-depth analysis of EU regulations from a syntactic, rhetorical, and pragmatic perspective in order to show how textual legitimacy and soft power are rhetorically and textually expressed in a corpus of ninety European regulations, representing the expression of EU internal policies from which EU foreign policy and diplomacy originate: as EU foreign policy originates from internal EU policy (Michalski 2005; Tulmets 2007; Nielsen 2013), a backward procedure was followed and some peculiar features of the former were searched (and found) in the latter. In particular, since the appeal to soft power represents a specific approach developed by the EU in order to «co-opt rather than to coerce» (Tulmets 2007: 216) its interlocutors and to «achieve coherence between policy areas and geographical regions by mainstreaming contractual relations and strategic communication and in dialogue with third countries, NGOs, EU member states and international organisations» (Michalski 2005:134), this study demonstrated the importance – not only from a linguistic perspective – of recitals, which constitute the introductory part of every EU regulation and which represent an area of study which has been neglected in juridical and academic research (Klimas and Vaiciukaite 2008; Fontaine and De Ly 2010). Although recitals use non-mandatory language (EU 2015) and must not contain operative provisions, they fulfil a pragmatic role which is coherent and consistent with the proactive policies of integration pursued by the EU.

1. The concept of 'democratic deficit' and its socio-linguistic spillovers

1.1 Premise

This research project aims at demonstrating that the phenomenon commonly known as 'democratic deficit' which has been affecting European Union (EU) institutions for a long time, is not an unpredictable side-effect brought about by purely political factors (namely by tracing it back to the oppositional visions of the relationship between the individual and the community), but an inevitable socio-political consequence of the imperfect European integration, which started as an economic manifestation and which should have led to a complete socio-political harmonisation. The origin of this phenomenon called 'democratic deficit' is political since the lack of confidence in the European Institutions is often connected to the feeling that they seem to be distant – not only physically – from EU citizens (Majone 2005; Hix 2008). Nonetheless, this study sets out to demonstrate two crucial aspects: on the one hand, the Founding Fathers of the European Union were aware of this possible aftermath – though they did not officially state that; on the other hand, despite the well-known economic and political arguments in favour of the so-called 'Monnet Method of functional and political spillovers' – of which more later – a further strategy was adopted to promote European integration. This alternative approach to the problem was neither economic nor political but textual and discursive, since it had to do with the way EU secondary legislation was written. The European Community, now the European Union, was inspired by the US federal model. It is no coincidence that Gian Domenico Majone (2005) in his comparison between the United States of America and the United States of Europe (as Winston Churchill referred to the EU on the occasion of some public speeches delivered in the years immediately after the World War II) recognizes as the main reason for the failure of the European federal project the lack of four fundamental elements – which he found instead in the U.S. scenario: 1) a common language; 2) a homogeneous system at the national level; 3) the common law system; 4) a common enemy.

In addition, it is a momentous characteristic of EU law to coordinate methods of economic production and trade rather than to regulate civil society: EU law does not fit civil law and common law concepts as it starts from entirely different positions, namely the operations of markets, competition, and international relations (Robertson 2016: 36-37) and originated – in its primary legislation – from international law. The growing perception of a democratic deficit and the waning popularity of EU institutions have been generally ascribed to «the institutions’ inability to communicate their aims to the people in different Member States» (Koskinen 2008: 81) even though the ‘participatory turn’, which is an increased usage of participatory speech in policy papers (Abels 2002, Bora and Hausendorf 2006 in Koskinen 2008), has tried to connect Europe and its citizens (*White Paper on European Governance* 2001: 3). As Koskinen (2008) argues, since the encounters between the EU *élite* and its various constituencies are typically text-mediated rather than personal, it makes sense to look for the reasons for the perceived democratic deficit, which according to Wilson (2000) is a ‘cultural deficit’ too, in the discursive practices found in European written legal documents and, in particular, in EU regulations.

1.2 Democracy in between: culturalist and non-culturalist models of democracy

If we wanted to simplify the discourse about democratic deficit in international organisations, we could start off with Robert Dahl’s seminal work on international organisations (Dahl 1999) which cannot be democratic. The approach to democracy, which the American scholar adopts, works on a basic assumption: it is difficult to define what democracy is. Other things being equal, the term ‘democracy’ is usually applied to a form of government and is intended as a system of popular control and of fundamental rights. Nonetheless, it is hard to locate the threshold between democracy and non-democracy since it «is not like the freezing point of water» (Dahl 1999: 21). For this reason, every democratic system allows for delegation of power and authority and what are called representative democracies are nothing but polyarchies. In addition, Dahl sensibly states that the smaller the democratic unit is, the greater opportunity its citizens

have to be represented. Yet, it is not just a matter of size, as the other side of the coin is that small units of citizens cannot deal with problems of universal scope, which are the reasons why international organisations are created. Ordinary citizens do not have the opportunity to be involved in the decisions of a world government to which they delegate their authority. Thus, if on the one hand international organisations are necessary to deal with matters that cannot be tackled by a single national government, on the other hand it is reasonable to infer that «international decision-making is not democratic» (Dahl 1999: 23). This political approach does not exclude a series of socio-cultural considerations, since «when a democratic unit is enlarged to include new territory and people, the ‘demos’ is likely to become more heterogeneous; diversity tends to increase the number of possible political interests and cleavages based on differences» (Dahl 1999: 26). In conclusion, Dahl estimates that the governments of international organisations are not democracies but ‘bureaucratic bargaining systems’ and takes as an example the case of the European Union (EU) and of its democratic deficit «as a likely cost of all international organisations» (Dahl 1999: 34). Given that the EU is an international organisation (Robertson 2010a) or an international community (Caliendo et al. 2005), it consists of several transnational institutions: the Commission – which has bureaucratic and administrative functions; the European Council – which, made up of the heads of government of each member state, decides by qualifying majority and whose function is mainly representative; and the European Parliament – which is the only body directly elected but which «is central to a model of political representation that has failed to build effective links between the people and the Union» (Scully, Hix and Farrell 2012). Nonetheless, some scholars argue that it is not correct to define the EU in terms of an international organisation, since it is a supranational body and thus its democracy is different from any other democracy (Azman 2011: 244).

Although the lexicographic definitions of ‘democracy’ read «A system of government by the whole population or all the eligible members of a state, typically through elected representatives. [...] A state governed under a system of democracy. [...] Control of an organisation or group by the majority of its members. [...] The practice or principles of social equality» (online OED *Lexico*) and focuses on political and

organisational aspects, 'democracy' is a value (Sen 1999) and it is possible to see its strong relationship with culture. Nevertheless, democracy is not a universal value but an adaptable one and the following paragraphs aim at demonstrating this assumption.

Assuming that it is possible to link philosophical principles or moral values to a particular historical framework, in the case of democracy, it is inevitable to go back to its philosophical and historical cornerstones, namely to Classical Greece. As is known, male citizens randomly chosen were part of assemblies that, without electing any representatives (our current members of the parliament) voted and governed by majority. This early form of direct democracy resulted so suitable and reliable that it would be developed and implemented in the Roman Republic, by paying particular attention to the matter of representing almost every social class, from plebeian tribunes to senators. From these early manifestations of democracy modern principles developed and led to the Modern Era, to the absolute monarchy and to the three-estate system, to the Age of Enlightenment and later to liberal thought that would properly define parliamentary regimes. In the meantime, great empires did not address the problem of exporting their form of government and of setting general principles in their colonies (a trend that is well expressed by the Latin motto *civis romanus sum*).

Conversely, French revolutionaries and Napoleon Bonaparte addressed for the first time the issue, which was solved (successfully or unsuccessfully, it depends on the way one interprets that historical event) in Victorian Britain. In order to combine general principles with the features of foreign peoples and faraway places, in 1830 the Geographical Society of London was founded: it was able to collect and analyse data in order to promote the advancement of geographical science¹, namely geosciences and socio-anthropological sciences. Yet, such a project implied the acceptance of something that nowadays may sound unrelated to current relativism, namely the concepts of civilising and assimilating the conquered regions. British colonizers' approach, which resulted in studying geography, customs and traditions as an integrating action, «was more conducive to democracy than that of other colonizers» (Lipset and Lakin 2004: 178), since it fostered – more than any other colonial power – forms of self-government in its

¹ From the History of the Society, available at <https://www.rgs.org/about/the-society/history-and-future/> [accessed 22 February 2021].

colonies: no matter how it happens, democracy could be established for many reasons, such as conquest, imposition, endogenous compromise (Lipset and Lakin 2004: 179), but it is quite controversial whether it can survive and be successful over the long term under certain cultural patterns or not.

In addition, other «decisive factors affecting the future consolidation and expansion of democracy will be economic development and political leadership. Economic development makes democracy possible; political leadership makes it real» (Huntington 2003: 98). If we go back to fifth-century Athens, the democratic Republic and the political project conceived by Pericles allowed city-states to triumph over Persian absolutism initially, before surrendering to Alexander, on the coasts of Anatolia. The relationship between democracy, absolutism, science, technology, and economic development is complex. Athenian democracy encouraged Arts and Technology and prevailed over the Persian; however, a significant scientific development also occurred under Alexander the Great. Several centuries later, in the eighteenth century, in France and Europe, the enlightened despotism would be fertile soil for French revolutionary seeds.

Thus, according to history lessons, scientific and cultural development can be fostered by democratic as well as by non-democratic forms of government, or as Giovanni Sartori argues «growth came with technological advancement, and [...] technology is a by-product not of democracy but of the kind of logic and rationality forged by the ancient Greeks, which eventually gave rise to the 'scientific spirit'» (1995:106). If «historical antecedents [of democracy] are two: [...] secularization, and [...] the 'taming' of politics» (Sartori 1995: 104), «culture cannot be a permanent obstacle to democracy» (Lipset and Lakin 2004: 197) as many important democratic principles are in waiting within the culture, which is not immutable at all. As culture is not a fixed concept (Mill in Lipset and Lakin 2004: 197) and as dominant beliefs and attitudes in a society are dynamic and not stagnant (Huntington 2003: 96), everyone can become democratic (Lipset and Lakin 2004: 197). What determines attitudes toward democracy is «context, country and historical experience [...] more than ideology or demographic characteristics in the abstract» (Lagos 2008: 117). Democracy is a demanding system (Sen 1999: 10), a Western invention whose

«desirability, universality, and exportability [...] as a constitutional form rest [...] on the *harm-avoidance* rule» (Sartori 1995: 101).

The different democracy paradigms originate from the different nature of the relationship between democracy and culture even though it is not easy to define the causal chains between democratic culture and democratic institutions and say which comes first. The confrontation between culturalist and non-culturalist approaches takes place on this ground. As far as the former is concerned, we may endorse a premise from Montesquieu: «democracy is a human irrational motive force [...] which reflects religions, mores and manners» (Montesquieu in Przeworsky et al. 1993: 54), rooted in «secularism, tolerance, liberal individualism, [and] respect for and obedience to the rule of law» (Lipset and Lakin 2004: 197) and liberty aspirations. As to the latter, it takes as critical factors per capita income, rate of growth, rate of turnover of heads of government, since cultural values would not be conducive to the organic development of democracy but would be at least supportive of it, once imported from outside and after. The touchstone of culturalist theory is the «postulate of oriented action: actors do not respond directly to situations but respond to them through mediating 'orientation'. Orientations to action are general dispositions of actors to act in a certain way in sets of situations» (Eckstein 1988: 790). General dispositions come from traditions, customs, religion, and culture which would generate democracy that, in turn, would entail growth or economic development (Inglehart and Welzel 2007). In recasting a theory on modernisation as a «syndrome of social changes linked with industrialization» (Inglehart and Welzel 2009: 33), it is possible to describe modernisation as a process composed of two distinct steps: the former, an industrial phase, is characterized by a hierarchical and regimented fashion; the latter, a post-industrial phase, is characterized by an increase in human autonomy, as well as in existential security. In registering a shift from materialist to post-materialist values, the second phase of modernization also influenced the function of religion that does not provide any more absolute rules of conduct but that provides a sense of the meaning of life. In this change from survival to self-expression values, people start an emancipative process from authority. In the post-industrial phase, «people become materially more secure, intellectually more autonomous, and socially more independent»

(Inglehart and Welzel 2007: 24) and new forms of spirituality and nonmaterial concerns result in traditional churches that lose members and in spiritual concerns that do not lose ground.

The central insight of modernization theory is that socioeconomic development brings systematic changes in political, social, and cultural life and that «cultural change is a major factor in the emergence and survival of democracy» (Inglehart and Welsel 2007: 47). In accordance with this approach, not only would democracy need democratic culture, but it requires citizens' awareness of «what constitutes illegitimate actions by the state» (Weingast 1997 in Przeworsky et al. 2003: 182). Although Weingast does not provide a causal explanation, that is he does not identify which values make democracy stabler than others, he points out that democratic stability and culture are different aspects of situations in which societies try to solve their co-ordination dilemma. To its detractors, this seems to be a weak point in the culturalist theory, since it would not provide any explanation about «what it is about culture that matters and how» (Przeworsky et al. 2003:1 82). As a matter of fact, aspects of culture that would influence democratic stability are: a) unconditionality, that is the fact that people value democracy per-se regardless of the outcomes it generates; b) participation, that is people see democracy as a duty to obey outcomes resulting from rules to which they agreed; c) democratic personality people may have; d) consensus, namely «unless people share basic characteristics, such as language, religion or ethnicity, they do not have enough in common to sustain democracy» (Przeworsky et al. 2003:183). These four factors are complemented by self-expression values (Inglehart and Welsel 2007) which would provide the link to democratization as they come to define effective democracy as a kind of mathematical product of formal democracy by integrity of public officials, whose scores are provided by the World Bank Institute indexes of governance. This is in stark contrast with those who perceive democracy as «a shorthand – and a misleading one at that – for an entity composed of two distinct elements: 1) freeing the people (liberalism) and 2) empowering the people (democracy) [...]; it is growth that entails democracy, not democracy that generates growth» (Sartori 1995: 107).

The culturalist view conceives human development process as made of three components: socio-economic modernization, a cultural shift from traditional (survival) values to secular-rational (self-expression) values and democratization. In other terms, the relation between democracy and culture would reflect the fact that «economic development brings socio-political changes only insofar as it changes people's behaviour [and that] economic development is conducive to democracy insofar it creates large and educated middle-class and [...] transforms people's values and motivations» (Inglehart and Welzel 2009: 39). Even if a minimalist empirical definition of democracy might provide «a limited number of features [in order to] at an empirical level, [...] permit the establishment of a threshold beneath which a regime cannot be considered democratic» (Morlino 2011: 31), it is not clear how the above mentioned four points – unconditionality, participation, democratic participation, and consensus – of a minimalist definition of democracy may be empirically assessed. For instance, could we talk about 'democracy in the European Union' or should we talk about 'democracy with European connotations'? This is the ground for the concept of 'adaptable democracy': without reaching extreme and paradoxical positions, it is reasonable to think that one democracy cannot fit all. In addition, there is not a unique concept of democracy but a wide range of definitions that can suggest using the adjective 'adaptable' – instead of 'universal' – as there are not two democracies that are perfectly equal. So, preparatory to democracy is the concept of state that, according to enlightened principles, results from three elements: one territory, one people and one authority and according to Philpott (2001) is the manifestation of «supreme authority within a territory». Taking these definitions of state and of democracy for granted, this 'authority' has to represent people and has to be elected by majority by people. When the concept of national power (nationalism) or the desire for subjecting the other prevails over the respect of freedom of opinion, the concept of democracy is ignored. This might not be the European case although something seems to be going wrong in the post-Westphalian order: in the past, military competition against foreign nations and, nowadays, economic competition fought across conference tables (Timmerman 2017 in Mody 2020: 18) may lead to neglect civil rights.

1.3 Democratic deficit in Europe: causes and consequences

The phrase 'democratic deficit' is generally credited to David Marquand (1979) – who emphasised the lack of accountability of European Institutions toward the European public whose will is not reflected in sometimes unpopular policies (Mèny 2003: 8) – and it is one of the relatively few «truly innovative EC/EU concepts» (Schübel-Pfister 2004: 116 in Šarčević 2016). European democratic deficit may have two interpretations (Jolly 2003 in Azman 2011): it may be the result of a 'too little democracy' or it may refer to an 'overshadowed democracy'. One, amongst others, solution «for the lack of accountability is to promote increased access to information—that is, greater transparency» (Nye et al. in Grigorescu 2013) although it is difficult to define what accountability is. According to Schedler et al. (1999: 14), accountability is a two-dimensional concept which «carries two basic connotations: answerability, the obligation of public officials to inform about and to explain what they are doing; and enforcement, the capacity of accounting agencies to impose sanctions on powerholders who have violated their public duties». In his presentation of what he calls informative and argumentative dimensions of accountability, Schedler emphasises the relational nature of accountability, where accountable and accounting parties are necessarily involved and any kind of monologic power is excluded. The 'etymological ambivalence' (Schedler et al. 1999: 15) of the term accountability originates from the two-fold connotative meaning of the word 'account' which basically refers to two semantic fields: the one of bookkeeping and the one of storytelling. Yet, political accountability is not just a matter of discursive activity, namely answerability, but it implies the idea that the accounting party may 'eventually punish' improper behaviour and that the accountable counterpart not only tells what it has done and why, but bears the consequences for it; in other terms, it is a matter of enforcement. In addition, since non-national institutions – like the EU – have «made use of a vast array of accountability mechanisms that were introduced and tested only relatively within the national context» (Cassese 2012: 61), it should be advisable to abandon the 'domestic analogy': «the global legal order has created unique accountability mechanisms, based mainly on information» (Cassese 2012: 172).

Many arguments about 'democratic deficit' in the European Union have to do with the nature, the function, and the goals of the Union itself, which – as a global institution – is a standard-setting and standard-using entity (Majone 2008). However, those standards proved to be inadequate as the two-fold democratic deficit in the EU depends on the fact that the executive, namely the Council and the Commission – which represent respectively the political and the bureaucratic branch – is responsible for legislation, but the latter is usually stronger than the former. What is more, the EU has «no legislature but a legislative process in which different political institutions have different parts to play» (Majone 1998: 8). This democratic deficit is a manifestation of several symptoms – technocratic decision-making, lack of transparency, insufficient public participation, excessive use of administrative discretion, inadequate mechanisms of control and accountability (Majone 1998: 14) – which may be treated successfully by re-setting the procedural and substantive standards of legitimacy. Although some scholars have an optimistic approach to the problem of legitimacy in the EU and emphasise the potentiality of the 'regulatory state' (Majone 2002, Moravcsik 2008), the Commission's monopoly of legislative initiative (Majone 2002, 1998) is identified by other scholars (Dahl 1999; Norris 2003; Hix and Follesdal 2006, Hix 2008, Azman 2011, Scully et al. 2012, Crombez and Hix 2015; Fukuyama 2018) as one among many claims of the standard version of the democratic deficit. Hix and Follesdal (2006) recognise five main claims:

1. the EU integration is a process that increases in executive power but decreases in national parliamentary control;
2. the weakness of the EU Parliament, since the member-states are still the agenda setters in the appointment of the Commission;
3. EU elections are mid-term national contests, a 'second-order national contest' (Reif and Schmitt 1980 in Hix and Follesdal 2006);
4. institutionally and psychologically, the EU is simply too distant from voters – the Commission is neither a government nor a bureaucracy and is appointed through an obscure procedure; the Council is part legislature, part executive and makes most decisions in secret and as it were an intergovernmental organisation like the United Nations, UNESCO or NATO (Norris 2003); the EU Parliament cannot be a

properly deliberative assembly because of the multi-lingual nature of debates in committees and plenary without a common political background;

5. the policies adopted by the EU are not supported by a majority of citizens. In addition, if it is reasonable to agree with the 'theory of democracy' according to which «[democracy] would emphasise difference rather than identity [and would be judged] not by its results, but by its procedural elements» (Augsberg 2010: 378), the EU democratic deficit seems to be inherently real.

Another central aspect which serves as a pre-condition to talk about European governance and its legitimacy (which only comes through the directly elected Parliament) is the existence (or the absence) of a developing political culture, which would take perhaps many generations (Dahl 1999: 29) to occur. Governance has two purposes: achieving collective benefit by co-ordinating human activity and expressing a community (Hooghe and Marks 2008: 2), but the EU is neither a market, nor an international organisation, nor a nation-state (Azman 2011). There is still no 'demos' or 'people' in the EU (Jolly 2005), thus there can be no real democracy. As a matter of fact, the Founding Fathers of the EU were well aware of this fact as:

[d]emocracy was not acknowledged as an issue at the beginning of European integration. It was believed that the participation and support of the peoples for the integration would have been ensured with the positive results of the integration in economic, political, and social life. In addition, it was widely accepted that the aggregation of the democratic member states would have automatically democratized the European Communities and the institutions [which] for many years relied on the process of indirect legitimation. (Yalçin 2014: 23-24)

Since 1957, namely the Treaty of Rome – when just six countries had joined the European 'Community' – the decision-making procedure has been subject to review: the most recent amendments are the 2009 Treaty on the Functioning of the European Union (TFEU) – where the term 'Community' is replaced with the term 'Union' and for the first time it is clarified what the powers of the newly-renamed Union are after the negative outcome of two *referenda* on the Constitutional Treaty held in 2005 – and a couple of resolutions (European Parliament resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty and

European Parliament resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union) which aimed at increasing Parliament's legislative power and establishing three fundamental democratic principles (art. 10 of the TFEU): the Union is founded on representative democracy, citizens are directly represented in the European Parliament and have the right to directly participate in the democratic life of the Union.

These normative adjustments have been necessary as not only did the thirty-year genesis of the single currency fail to become a «regulatory extension of Europe's expanding common market» (Mody 2020: 22) and thus a monetary union, but also because it failed to trigger the 'falling forward phenomenon' which should have led to the political union in Europe. As reported in the so-called Werner Report, «the incompleteness of the monetary union was actually a virtue: it would be the 'leaven', the yeast, that would cause Europe to ferment and transform into 'political union'» (Werner 1970 in Mody 2020: 63); yet, once again, the process to adopt the strategies and the changes fostered by the documents mentioned above were not but democratic: the process that had led to the approval of the Treaty establishing a Constitution for Europe (2002) had been democratic, transparent and participatory, but the Lisbon Treaty or Treaty on European Union (TEU) was the result of diplomatic negotiations, which excluded public opinion almost completely (Piris 2010). The 'falling forward theory', also known as 'Monnet Method – or permissive consensus – of functional and political spillovers' (Majone 2005: 43) did not produce the desired results and European integration became gradually more and more difficult to achieve:

[...] if the legitimacy of the basic political system remains under question, if European leaders are largely invisible to the public, and if there is little 'glue' provided by a sense of European identity to hold disparate countries together, then it becomes more difficult to resolve substantive policy conflicts. (Norris 2003: 512)

Among those who attempted to warn European *élites* about the predictable political failure of the European integration project deserves special mention Nicholas Kaldor, who in 1971 foresaw the divisive potential of the single currency, and Robert Marjolin, who expressed his telling criticism against the fact that European leaders were not ready to surrender their sovereignty to supranational European institutions and who rejected the

‘falling forward’ thesis and «the idea that monetary union would force agreement to political union» (Mody 2020: 56).

The process of European integration is still ongoing : on the one hand, it has obtained some tangible results in the economic field, such as the single market and a single currency; on the other hand, it has not achieved the desired results in the field of politics. In this context, politics means all activities which have to do with legitimacy, accountability, and sense of identity for the EU citizens. It would not be correct to state that social and cultural issues were of less importance but it seems that their solution was deemed to be an incidental by-product to the economic and monetary integration. If on the one hand, European countries (and their leaders) were not ready to give in part of their sovereignty to the EU, and if the economic integration was not much help in the process, on the other hand, the democratic (whatever it means) regime in Europe was framed in a unique supranational legal system which was neither federal nor international. The coexistence within the European borders of different national legal systems and – currently – of twenty-four official languages originates what is almost unanimously recognised as ‘multilingual law’ and which is a tool to foster European integration at institutional level. Although the phrase ‘multilingual law’ is universally accepted by most scholars in the field of linguistics and political science, the adjectives ‘multilingual’ and ‘multicultural’ are not so frequently used institutionally, since European social and linguistic policies are plurilingualism- and pluriculturalism-oriented. Multilingual is not synonymous with plurilingual as well as multiculturalism is not with plurilingualism. ‘Pluri-sms’ (pluriculturalism and plurilingualism) are among the main purposes of education in the EU (Piccardo, North and Goodier 2019) and the *Common European Framework of Reference for Languages* (2020: 30) «distinguishes between multilingualism (the coexistence of different languages at the social or individual level) and plurilingualism (the dynamic and developing linguistic repertoire of an individual user/learner)». If, from the educational point of view, multiculturalism is an ethno-social phenomenon, pluriculturalism is a political and cultural choice; multicultural societies pursue an economic enrichment; pluricultural societies pursue a philosophical one, since there it is possible to find out other perspectives, other ways of conceptualising the

reality, other life-styles (Balboni 2015: 231). In pluri- or intercultural societies there is no distinction between hosting and hosted groups and everybody is open to contamination. This is what should happen to people in the EU, but it is what does happen to legal texts in the EU: EU legal languages are not the same as the national official languages which ordinary citizens speak in their everyday life, they are 'sublanguages' (Charrow, Crandall et al. 1982; Trosborg 1995b; Kittredge & Lehrberger 1982 in Kurzon 1997; Tiersma 2006) and their style is characterised by 'hybridity', since they are «simultaneously familiar and alien [...] and culturally new» (Robertson 2010b: 157). As EU legal drafting is «writing for translation [...] and no single EU text stands alone» (Robertson 2010b: 159), the concept of 'plurilingual law' may be more adequate to describe the EU scenario, even though the totality of the reference literature for this research uses the phrase 'multilingual law'. There are three main reasons which may support the newly proposed phrase : 1. the so-called 'co-drafting procedure' – of which more later – where «all language versions become consciously 'fused' together into a single multi-stranded message» (Robertson 2010a: 150); 2) the procedure that Judges of the European Court of Justice may adopt before pronouncing their judgment: they may refer to different language versions of the same legal document if a concept is unclear or ambiguous; 3) the so-called absolute equivalence among equally authentic documents within the EU cannot be achieved in practice, although stated in the treaties, and it is «legal fiction» (Wagner 2001: 67), an illogical but functional strategy to preserve linguistic equality. Case 100/84, Commission v United Kingdom of Great Britain and Northern Ireland as quoted in Engberg (2004), shows the mechanisms behind the Court's argumentation:

Secondly, it should be noted that the phrase 'extraits de la mer' or its equivalent is employed in the Greek, French, Italian and Dutch versions of regulation no 802/68 and is capable of meaning both 'taken out of the sea' and 'separated from the sea.' Even allowing that the English version, which uses the phrase 'taken from the sea,' has the significance attributed to it by the United Kingdom ('complete removal from the water'), the German version of the regulation employs the term 'gefangen,' meaning 'caught,' as the United Kingdom itself acknowledges, claiming that 'it seems ... to be an inappropriate term to use.'

Another telling example is Case 282/81 *CILFIT and Lanificio di Gavardo v Ministry of Health* where the Court judgment perfectly recalls the principle of equal authenticity of the official languages of all Member States:

To begin with, it must be borne in mind that Community legislation is drafted in several languages and that the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions. It must also be borne in mind, even where the different language versions are entirely in accord with one another, that Community law uses terminology which is peculiar to it. Furthermore, it must be emphasized that legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States. Finally, every provision of Community law must be placed in its context and interpreted in the light of the provisions of Community law, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied.

In addition, «Article 41 of the Rules of Procedure sanctions using a single text when interpreting CJEU case law [and there are] examples of national courts falling back on the *de facto* original of CJEU judgments, letting the French version guide the interpretation» (Derlén 2016: 60). The integral multilingualism (Seracini 2020) is not always applied under all circumstances by the EU institutions as also declared in art. 6 of Regulation No 1/58 «[t]he institutions of the Community may stipulate in their rules of procedure which of the languages are to be used in specific cases». These linguistic and interpretive dynamics behind EU legal documents and EU Court's judgments seem to evoke neither textualism (or a strong language theory) – which places reliance on plain meaning and as a consequence of the application of a literal rule considers the text of a statute as freestanding (Solan 1993; Tiersma 1999; Engberg 2004; Harris and Hutton 2007) – nor strict constructionism (Harris and Hutton 2007) – which strengthens a contextual position and takes into account the legislative history of the statute at issue – although a purposive approach is usually favoured by the ECJ when laws are ambiguous and have to be applied to particular cases (Humphrey et al. 2015: 42). The European situation poses a curious paradox: on the one hand, every version of a law drafted in one of the official languages recognised by EU Regulation 1/58 is equally valid and authentic; on the other

hand, the synoptic approach (Robertson 2016) – also known as the ‘sentence rule’ which establishes that «all language versions should have the same ‘sentence boundaries’» (EC DGT 2015: 6) – adopted to draft every version of the document evokes the process of literal translation: «[w]hen published, the texts in all language versions of the Official Journal are synoptic, meaning that the same text can be found on the same page of the same OJ in all official languages» (EU 2011: 45). In so doing, «the emphasis on word-for-word translation distorts the sense and the syntax of the original» (Bassnet 2002: 87) but provides a solution: «the role of translator is to produce matching signs, but not necessarily to indicate what they mean» (Robertson 2016: 159).

Nonetheless, it is difficult to understand how the European Court may benefit from the comparison between different versions of the same document which comply with an unnatural but functional constraint (the synoptic correspondence) at the expense of naturalness and ultimately of meaning. Yet, the approach adopted by the European Court is neither literal nor constructionist, since it is impossible for the Court to consider the history of every version and the extra-linguistic factors which may have affected the drafting of the document.

In order to go beyond the dichotomy textualism/constructionism, Engberg (2004: 1153) suggests a third way, which he calls ‘connectionism’, that «may actually play the part of bridging the gap between the subjectivity of the process of understanding and the objectivity needed of legal interpretation processes in a modern society». The connectionist approach suggests that texts may be described fully along four dimensions (formal and grammatical, thematic, situational, and functional) and that ‘understanding’ is «creating a meaningful combination of connections» (Engberg 2004: 1145) thus ‘meaning construction’. In other terms, the process of integration and harmonisation within the EU takes place at different levels and under as many different procedures: textual harmonisation – which is pursued not only but especially through translation and which is the tangible proof of a deliberate attempt at legal certainty (Bratanić and Lončar 2015) – does not always serve the purpose and the function of the judiciary does not end with making judgments. In fact, they carry out two tasks: they decide cases and justify their decisions in opinions (Solan 1993) but they also «decide whether the use of a

specific word (and meaning) by a specific person in a specific situation and the consequent behaviour of the person is in accordance with the rule or regulation stated to be the basis of his action [...] Meaning thus derives from input, from text, *and* from the mental system» (Engberg 2004: 1149-1150 emphasis in the original). As every interpretation implies a decision between alternatives, in the plurilingual context of the EU, this interpretive process is dual-focused: on the one hand, it aims at bridging the gap between subjectivity in the process of understanding and objectivity as required in the field of legal judgment; on the other hand, it allows judges to avail themselves of twenty-four equally authentic originals which often compel judges to compare more than one version of the same document to adopt an adequate method of elucidation (Hart 1983: 26). Although some scholars hold that «the linguistic harmonisation of the legal language in Europe is secondary to the harmonisation of EU law» (Cortellazzo 2012 in Seracini 2020: 39), law (not only in Europe but everywhere in the world) only exists in human language (Danet 1980; Trosborg 1995a; Goźdz-Roszkowski 2011; Mattila 2013; Engberg 2016: 169) and it is reasonable to consider the textualization of harmonisation of primary importance: it is not a binary opposition (linguistic v. legal), but a scalar notion since linguistic harmonisation may be represented as an uninterrupted series of steps which may be ascended gradually through legislation but also through judgments. Thus, harmonisation at the conceptual level is a necessary premise to gain linguistic uniformity in the official languages within the EU.

Going back to the main topic of this section, namely causes and consequences of the European democratic deficit, the issues of legitimacy and accountability in the EU – which have been presented shortly above – have been identified by many scholars as the main sources of the current and actual European democratic deficit. As a consequence, it is reasonable to suppose that not only were the Founding Fathers of the then European Community of Steel and Coal (ECSC) aware of this ‘side effect’ of the integration process, but that – for this very reason – they also tried to tackle the problem even from a communicative and textual point of view, that is by establishing a totally new and original way of drafting European laws, namely European secondary legislation (in particular regulations, directives, and decisions). The values which informed the integration project

from the very beginning were inspired by the common will to create the best human defence against another war in Europe, but

the question was how best to use the space opened up by this peace parenthesis.

The task that lay ahead was to build on the liberal values that European citizens had come to cherish. To create an open society. To enable competition for ideas. To foster creativity and prosperity. (Mody 2020: 18)

The immediate answer to this question was purely economic, but it should have been transitional since it should have generated a political and social outcome: as a matter of fact, the EU Member States «have sought to shift the emphasis away from a purely economic scope towards a broader role and this shift is reflected in the deletion of the term ‘economic’ and the adoption of the sign ‘EU’» (Robertson 2010a: 146) in the Treaty of Lisbon. However, many years before the Community turned into the Union, the necessity to overcome an economy-oriented integration and a predictable democratic deficit had been recognised by resorting to what may be called ‘textual legitimacy’. This textual phenomenon is well identifiable in EU regulations, directives, and decisions, but it is not in any other legally binding Acts in western countries: textual legitimacy evokes the concept of “specialised intentionality” (Saber 2016: 4) as the driving principle in the emergence of specialized domains – and EU legal domain is one of them. A specialised domain is

the autonomous linguistic and generally written expression of a complex intentional universe. It is made of focused and durable intentional states, their related intentional networks and background abilities that combine and interact to satisfy their beliefs and desires [... it is a] set[s] of knowledge and practices which transcend their originators and are harnessed to the service of one particular purpose. (Van der Yeught 2016 - online)

As a discursive practice, textual legitimacy is «instrumental in the achievement of professional practices» (Bhatia 2017: 7), which are the actions aimed at reaching the typical objectives of a specific professional community and its linguistic and discursive analysis casts light on the teleological view of the Regulation as a hybrid genre. Textual legitimacy finds expression in a precise section of the documents listed above

(regulations, directives, and decisions), in the so-called 'recitals', which are one of the main focuses of this research.

Even though European law is written for translation, this is not the core focus of this research. Among the 32,000 permanent and contract employees working in the Commission, there are translators but also policy officers, researchers, and lawyers² who are from the Member States and whose discursive performances not only contribute to the drafting of EU legal documents but also contribute to the uniformity of EU terminology. As a matter of fact,

[t]ranslation is not the first step in legal harmonization. The first step is the drafting of the originals. Translators have no possibility to redraft the originals and limited leeway to adapt the texts to the conventions of the TL. Therefore, the importance of the authors' awareness of the implications of translation cannot be overestimated. The better the quality of the ST, the easier it is to translate, the better the result and the higher the probability of identical legal effect in all language versions. (Strandvik 2012: 49)

Translation cannot be ignored but its role here is considered instrumental, as the research focuses on the texts and on their drafting procedure as well, which includes translation as an instrument at some intermediate stages and before the ultimate stage of proper translation which is followed by the publication of the document at issue in the *Official Journal*. Nonetheless, «the general 'transparency and accountability' package» (Wagner 2004: 7) is a criterion to satisfy not only from a political perspective – as said before – but also from a purely linguistic one and many have been the attempts (institutionally and academically, thus from inside and from outside EU institutions) to draw the attention to the way EU documents have been drafted. What deserves to be mentioned institutionally are the so called 'Fight the Fog Campaign' launched by the Directorate-General for Translation (DGT) in 1998 and the 'Clear Writing Campaign' carried out by the European Commission in 2010. Both initiatives aimed at bridging the gap between EU institutions in Brussels and European lay citizens, which seemed to show more and more dissatisfaction

² https://ec.europa.eu/info/about-european-commission/organisational-structure/commission-staff_en
[accessed 25.02.21]

with the jargon and the excessive frequency of acronyms and neologisms with which only the Eurocrats in Brussels were familiar.

From an academic point of view, who deserves a mention is Martin Cutts (2002, 2001) who demonstrated that EU regulation and directive drafting may be textually and linguistically improved in the light of the 'plain language' principles. His findings provoked a hostile reaction from the European Commission Legal Service: they admitted and justified legalese and archaic language in EU legal documents and, against the 'anti-lawyer tone' of Cutts's argumentation, they did state that «it is contrary to the principle of cooperation between the institutions for any department within the Commission to criticise the work of another institution» (Cutts 2002: 28). It does not seem to be an acceptable reason as the above-mentioned 'institutions' are entitled to legislate, thus to give permissions, impose obligations, grant rights and charge European citizens with duties, in other terms to order human relations and restore social order when it breaks down (Danet 1980).

For these reasons, the onset of the research moves from a preliminary analysis of the European law-making process, not only from a procedural point of view but also from a linguistic one, to combine the already mentioned aspects: the political perspective and the communicative function of EU legal documents. In so doing, the focus is on legislative – and not court – texts, though the latter – in particular judgments – are used as terms of comparison and as telling examples of legal *genres* which are crucial to this analysis. The European Union historical and political peculiarities inevitably result in EU legal texts, which are peculiar too, from a twofold perspective: legislative and linguistic. In particular, among the EU legislative texts, attention is turned to regulations, whose textual and generic features make them a hybrid discursive phenomenon which presents peculiarities typical of different kinds of legal documents: as operative legal documents – like pleadings, petitions, contracts, wills, statutes, and orders – they contain legal performatives, use a formal and formulaic language and adhere a fixed canon; as expository documents – like judicial opinions – and as persuasive documents – like briefs – they use formal standards but a less rigid structure and a less legalistic language (Tiersma 1999). This double nature of EU regulations – operative and

expository/persuasive – is clearly revealed in precise sections of the documents and fulfils different communicative and legal functions. The main functions of law are regulative, facilitative and ordering (Danet 1980): as a matter of fact, a) law defines and permits relationships; b) law creates relationships where none existed; c) law restores social order when it breaks down. When we talk about EU regulations another function has to be added, namely a political one: not only do EU regulations harmonise the European supranational legal framework, but they also legitimise the ‘perpetual, mandatory or discretionary and general’ nature of EU legislation (Maley 1987) which is drafted by means of a peculiar procedure. The next chapter will present the most relevant linguistic and legal aspects of the EU law-making procedure.

2. The legal and linguistic context: ‘episodes in the history’ of EU regulations

This chapter presents the legal framework and the linguistic context of EU regulations. The former originates EU regulations as legislative instruments; the latter generates peculiar multilingual legislation.

2.1 The EU law-making process: a complex procedure

From the legislative point of view, EU law is a unique system of law which is created by international treaty (primary legislation) and by virtue of that foundation, it is different from other systems of law (Robertson 2010a: 148). From international treaties, which provide the general principles and objectives of the European Union, stems the secondary legislation, that is regulations, directives, decisions, recommendations, and opinions. The phrases ‘primary and secondary legislation’ are also used in the UK but there the Acts of Parliament, which establish the main principles of a new law, are known as primary legislation and the finer details set out by government ministers are known as secondary or delegated legislation³. Thus, from the formal point of view, the expressions are common in the EU and in the UK but from the substantive one they differ considerably.

In the EU, secondary legislation refers to a variety of legal acts which differ in binding force and field of application, and the principles which they are informed by are expressed in international treaties negotiated by the member-states representatives outside the EU Parliament. As stated by Art. 288 of the TFEU:

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be 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.

A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

³ <https://www.parliament.uk/about/how/laws/> [accessed 25.02.21]

Recommendations and opinions shall have no binding force.

The adjectives 'primary' and 'secondary' recall an idea of hierarchy: not only do they refer to the shift from international treaties to EU legal acts, but they also make clear the move from international law to EU law. In addition, secondary legislation aims at «harmonizing rules with a view to guaranteeing equal rights to all EU citizens» (Pozzo 2016: 77). Thus, EU legal texts are intended to create meaning (Robertson 2012a: 3) – in a supranational legal context – and to convey messages whose principal purpose is to prescribe action (Robertson 2010a: 157) with which EU citizens have to comply. From this perspective, on the one hand, EU law originates from – but is not – international law; on the other hand, it interferes with Member States' national law on which it has priority (Judgment of the Court of 5 February 1963, *Van Gend & Loos*). From the law-making process perspective, pursuant to the ordinary legislative procedure (formerly known as co-decision) under the TFEU, the European Parliament and the Council of the European Union (EU Council) adopt a new legislation after the European Commission (the Commission) has prepared a legislative proposal on its own initiative – or at the request of other EU institutions or countries, or following a citizens' initiative – and have forwarded it simultaneously to the European Parliament, the EU Council and national parliaments (in some cases, to other stakeholders directly involved, too)⁴. The Commission is a social, professional and institutional establishment, which may be viewed «'technically' in terms of its efficiency and inefficiency as an intentionally organized system of activity for the achievement of pre-defined objectives [...] 'politically' in terms of the actions which each participant (or class of participants) can demand of other participants [...] 'structurally' in terms of the horizontal and vertical status divisions and the kinds of social relations which relate the several groupings to one another [...] and 'culturally', in terms of the moral values which influence activity in the establishment» (Goffman 1956: 153-154).

From the operational point of view, once the Commission has prepared an implementation plan, has undertaken an impact assessment, has adapted public consultation strategies, and has replied to them, it drafts a proposal and submits it to the bodies involved (the European Parliament and/or the Council). This preliminary draft

⁴ <https://www.europarl.europa.eu/about-parliament/en/powers-and-procedures/legislative-powers>
[accessed 25.02.21]

«may be produced in one language, or different parts in different languages, or it may be first drafted in one language, then translated into other languages and one of those other languages be chosen as the one to base subsequent negotiations» (Robertson 2010a: 149). Then, the Commission proposal for new EU legislation is submitted to the EU Parliament, where the EU Parliament President refers the proposal to a parliamentary committee, which appoints a *Rapporteur* or Chair who is responsible for drawing up a draft report containing proposed amendments to the proposed text. As this draft report serves as a starting point for further discussions and negotiations, which involve technical and political experts, «it is convenient to take one language version on which to work, review and redraft [...] [t]he other language versions are subsequently adapted in line with the base language version worked on, which may also be adapted to deal with 'problems' that arise in expressing the message multilingually» (Robertson 2010a: 149). The parliamentary committee votes on the draft report, which – after its approval – is discussed and voted by the EU Parliament (in plenary). When Parliament first reading has ended, the EU Council – which works simultaneously – can adopt its position. If it approves the proposal without amendments, the proposal can be adopted by qualified majority. This is the best-case scenario, because the legislative procedure allows for a maximum of three readings. Without going into further details, after the EU Parliament and the EU Council have reached an agreement, finalisation process of the text is undertaken by lawyer-linguists who prepare the text for adoption by the representatives of the member states in the Committee of Permanent Representatives (Coreper) and publication in the Official Journal of the European Union in all official languages (Robertson 2010a: 149). It is apparent from this concise presentation that EU law has its personality, that each EU legal text has its history (Robertson 2016: 48) and its creation is affected by the interplay of many factors. In the EU legislative procedure each text is perceived as a way to fix the result of political negotiations (Ioriatti Ferrari in Felici 2016: 128) carried out by participants who are mostly non-native English speakers. It is a site of engagements (Swales 1993; Scollon 1998; Bhatia 2014; Robertson 2016) for a multitude of forces and pressures which influence its formal structure, its contents and language, namely its textual, cognitive, and social dimensions (Witte 1992: 241-242 in Swales 1993:

690). Due to this myriad of phenomena, EU legal English has not evolved into a uniform drafting style (Felici 2016: 129) and is characterized by a peculiar flexibility inevitably dependent on the political, cultural, and educational background of the individuals involved in the drafting procedure itself. In fact, each EU legal text «invisibly reflects a whole mass of background legal rules and philosophy (and facts) that are present and influence the contents of the text but are not made explicit from the face of the text» (Robertson 2011: 54). Not only is flexibility due to the multicultural background which characterises people involved in drafting EU legal documents, but it also results in flexible types of legal provisions since «the idea of community plays an important role in shaping the features of legislative texts within the European Union [... and] the message of obligation cannot be standardized [but] modulated to different receivers by means of linguistic aspects» (Caliendo et al. 2005: 402). EU legal documents, despite the common label ‘secondary legislation’, present variable degrees of applicability and thus the way they address different receivers inevitably influences their cognitive structure (Bhatia 1993). This research focuses on EU regulations, which – like decisions – are constitutive rules (Kurzon 1986; Carcaterra 1994 in Caliendo et al. 2005); they are a self-performative in nature and cannot be rejected (Caliendo et al. 2005). Although regulations and decisions share a common regulatory and prescriptive language, they differ markedly on their potential receivers: regulations are legally binding on all Member States; decisions on a selected group of receivers which may change every time. For this reason, regulations seem to better serve a function as an ecumenical site of engagement «against the background of so many different legal systems» (Caliendo et al. 2005: 402).

2.2 A hybrid linguistic context

If from the legislative point of view, the procedure is standardized in law, though complex in clarity, and can be defined in terms of ‘ritual’ (Robertson 2010a: 159), from the linguistic point view, the scenario is less precise and neat. As said before, the most striking feature of EU law is its multilingualism (Robertson 2010a: 147, 2018; Felici 2016; Pozzo 2016: 76), which is the logical consequence of the above-mentioned law-making process. As stated in art. 342 TFEU, «the rules governing the languages of the institutions

of the Union shall [...] be determined by the Council, acting unanimously by means of regulations». In particular, the language regime, within which EU legislative texts are created, is established pursuant to art. 1 of Regulation No 1 /58 determining the languages to be used by the European Union (as amended in 2013 after the accession of Croatia):

The official languages and the working languages of the institutions of the Union shall be Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish.

It is possible to define a language regime as «the language policy of an organisation, [...] as a set of official and working languages along with rules concerning their use for the communication within and outside the organisation, and the extent of translation and interpreting to be provided in such languages» (Gazzola 2016: 549), but a definition of an ‘official language’ as distinct from a ‘working language’ is not as easy. The absence of a definition of official and working language notwithstanding (Felici 2016: 125), European multilingualism is one of the EU’s founding principles (Caliendo et al. 2005) which is anchored in the EU’s Charter of Fundamental Rights, since – as stated in art. 22 – «[t]he Union shall respect cultural, religious and linguistic diversity». For this very reason and in order to respect such diversity, art. 4 and 5 of Regulation No 1 state that regulations and other documents of general application and the Official Journal of the EU shall be drafted and published in the EU official languages. EU institutions follow a prescriptive approach as regards legislative acts (Greco and Vicentini 2015) both from the procedural and textual points of view, as European integration is founded on those legal texts whose ultimate aim is legal and linguistic harmonisation. If by convention genre features are the rhetorical sections identifiable in a given text and whose validity is recognised by text-users (Biber 2012: 193), in the case of EU legal texts the rhetorical sections are officially established and standardised in dedicated documents⁵ and show evidence of what below

⁵ In particular, the legislative procedure is well-established in the Treaty of Lisbon; matters of language and style are tackled in *Joint Handbook for the Presentation and Drafting of Acts Subject to the Ordinary Legislative Procedure* (2018), *Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making* (2016), *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European*

is referred to as 'hybridity'. The method to show the manifestation of hybridity, namely on the one hand the simultaneous presence of stylistic elements typical of common law and civil law legal systems in EU legal discourse, and on the other hand the contamination which EU legal texts are subject to from other legal *genres* (such as judgments, contracts and statutes) is based on the concept of cognitive structuring (Bhatia 1993, 2014), on the different styles of drafting (Crystal and Davy 1969; Tiersma 1999; Engberg 2004; Gotti 2014; Caliendo et al. 2005; Hyland 2019), on the theory of speech acts (Austin 1962; Searle 1975), and on the theory of *genre* colonisation (Bhatia 2014). The purpose is to demonstrate how the stylistic hybridity showed by many scholars is also a generic hybridity or hybridisation (Fairclough 1992, 1993; Bhatia 1995, 2014): «the term hybridity (or mixing) has also been used in relation to intertextuality and interdiscursivity [...] a hybrid genre is construed through the mixing of voices, intertextuality, and the mixing of two [or more] practices» (Mäntynen and Shore 2014). In addition, a further scope is to identify the sources of this mixing. As stated above, the textual manifestation of generic hybridity is influenced by historical and political factors, which find expression in the abovementioned democratic deficit.

As far as stylistic hybridity is concerned, the comparison which Robertson (2012b) carried out between the *Code de l'environnement*, the UK *Environment Act 1995* and Articles 191, 192, and 193 TFEU, confirms that two very different legal systems (common law and civil law) result in two very different styles of writing. Common law reasoning is inductive while civil law reasoning is deductive. Common law language is court-oriented while civil law is code-based, which implies a higher level of abstraction in civil law documents in contrast with the functional predictability and social stability pursued by common law whose main urgency is to inform in advance people about their rights and duties (Maley 1987). From a linguistic point of view, common law is characterised by the specialist lexis of the court whose solutions to specific and concrete cases become «past precedents and future predictions of how courts will solve similar cases» (Robertson 2012b: 1221), thus, binding in all subsequent cases (Bhatia 1993: 139). Civil law relies on broad principles and formulation, expressed in a more general and less detailed language

Union legislation (2015) and others. The documents above-mentioned are available at: <https://op.europa.eu/en/home> [accessed 25.02.21]

to «cover and foresee every possibility that can arise» (Robertson 21012b: 1223). Therefore, in common law certainty of expression is the most valued quality, while in civil law simplicity of expression is endorsed at the cost of certainty (Bhatia 1993: 139). In EU law, legal texts are the product of interstate negotiations and interpretations (Robertson 2010b: 163) and, as far as secondary legislation is concerned, they cannot conform to a common law drafting style as they come from the principles and objectives of the treaties, which are characterized by «broadness in approach and a certain abstract linguistic style» (Robertson 2012b: 1232). They have a civil law style of language although they are drafted in English, which is a language «traditionally shaped on the common law» (Felici 2016: 124). This final remark is strictly connected to another aspect of EU law-making process: though mainly drafted in English (or French)⁶ – also known as supranational core, tool languages (Dollerup, 2004) or working languages – EU legislative texts are multilingual discursive products of negotiations (Halliday 1985) carried out mostly by non-native English speakers. Due to their nature, these texts can be defined in terms of «interdiscursive performance through professional practice» (Bhatia 2015: 18) carried out by the participants in the ‘complex participatory mechanism’ (Ibidem) of EU law-making process. EU multilingualism (and multiculturalism), which characterises EU legal texts, can be scrutinised from two opposite perspectives. On the one hand, multilingualism is apparent in the final drafts (which I would call *ex-post* multilingualism), which may be translations (from English or French) but which have the same status, namely they are declared to be original and authentic (Graziadei 2016: 19) and are intended to carry the same message (Robertson 2010a). On the other hand, multilingualism and multiculturalism characterise the context where negotiations are carried out (which I would call *ex-ante* multilingualism). *Ex-post* multilingualism is disciplined and organized according to the so-called «synoptic approach» (Robertson 2011: 58, 2012: 9, 2013: 21; 2016: 12), it is inevitably influenced by the «synchronous publication» (Dollerup 2002: 21) which is peculiar to all EU legal texts and aims at a «surface-level similarity [between translated texts] which is assumed to guarantee that readers of the various translations all get the same message» (Koskinen 2000: 54).

⁶ For more detail and figures see <https://op.europa.eu/en/publication-detail/-/publication/e0770e72-afa1-4971-8824-6190512537dc/language-en/format-PDF/source-search> [accessed 25.02.21]

Ex-ante multilingualism is unpredictable – as the actors involved in negotiations are not fixed or rigidly pre-determined – and more directly influenced by participants' cultural and legal background. *Ex-post* multilingualism is EU multilingualism proper which refers to EU law, namely to EU concepts and terms. These two concepts of *ex-post* and *ex-ante* multilingualism recall Goffman's theatrical performance perspective employed in his report on social life as organised within the physical confines of a building or plant (1956). In order to better describe the relationships between *ex-post* and *ex-ante* multilingualism and the link between legislative procedure and language(s) at work, it is useful to resort to a table in Dollerup (2001) and to his concept of «translation-cum-creation» in EU policymaking. The scholar presents a table which refers to directives but that is valid for regulations, too.

1. There is an initiative (at the Commission), for instance, concerning a directive on methods of transport for toxic fluids.
2. This leads to preparatory studies in the Commission (experts, Commission)
3. which conclude with a green or a white paper used for discussions etc. with the member states.
4. There are follow-up discussions in the member states (in ministries, government bodies, etc.).
5. Subsequently, national delegates attend expert meetings, usually at the Commission.
6. Documents for decision by the Council of Ministers and the Parliament.
7. This concludes with debates and
8. the publication of the directive. Finally there are
9. reports on its implementation.
10. New initiatives incorporating this directive. (Dollerup 2001)

Activities under 1 and 2 are carried out in a core language by non-native speakers and the text at this stage is just a preliminary first draft. Activities under 3 imply that the green/white paper is translated into the EU official languages. Discussions under 4 are held in national languages but are followed up by oral reports at the Commission with the collaboration of interpreters. Once the Commission has revised or amended the previous draft, the newly drafted version has to be translated into the official languages and sent to the Council of EU and to the EU Parliament. Council and parliamentary debates are

generally held in the official languages and interpreted (stage 7) and once the document has been approved it is published on the Official Journal in all official languages simultaneously (stage 8). The final reports on the directive implementation are translated into the official languages and under 10 procedures for new initiatives connected to the approved directive can start. The complex procedure above-described makes clear to what extent it is relevant to talk of *ex-ante* multilingualism and the crucial role played by translation in the phases that precede the approval of a legal document. Nonetheless, the term 'translation' is avoided in EU treaties and regulations which refer to the legislative procedure in the EU using expression like 'drafting' and 'drawn up':

Documents which an institution of the Community sends to a Member State or to a person subject to the jurisdiction of a Member State shall be drafted in the language of such State. (art. 3 Regulation 1/58)

Regulations and other documents of general application shall be drafted in the four official languages. (art. 4 Regulation 1/58)

This Treaty, drawn up in a single original in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States. (art. 55 TEU)

Since legal concepts are «inherently language-based» and since there cannot be law without language, EU English legal language – due to its multilingual and multicultural nature – may present terms and syntax that do not match exactly native usage (Robertson 2011; Biel 2014a). The result is conceptual, terminological, and textual hybridity (Robertson 2010a, 2011, 2012b; Mattila 2013; Cacchiani 2015; Felici 2016; Biel and Engberg 2013) whose inevitable linguistic consequence is the use of English as a Lingua Franca (ELF) (Kjaer 2004) and the creation of new genres (Robertson 2012b). In fact, as Felici (2016) points out, ELF is the dominant administrative language of Europe because it is the language of a different legal tradition, namely common law, it is a deculturalised and unmarked form of English devoid of cultural specificity but extremely

effective as a diplomatic tool. The morphological flexibility of English language, which «made it more suitable for the expression of any kind of subject» (Gotti 2011: 122) in the seventeenth and eighteenth centuries, and its neutrality allow for the creation of «a new ‘acultural’ EU language» but do not guarantee «Plain Language in terms of easy and clear drafting» (Felici 2016: 131). The relation between hybridity and English as a Lingua Franca (ELF) may not be immediately evident and may require further explanation. According to the Oxford English Dictionary, hybrid(ity) refers to «a thing made by combining two different elements» (OED, see HYBRID) and, as a matter of fact, EU legislative texts (secondary legislation texts) present textual features of common law and civil law texts (Bhatia 1993; Foley 2001; Robertson 2012; Šarčević 2016;). Thus, it is possible to identify three different kinds of hybridity: at a macro level, hybridity is generic; at a meso level, hybridity is textual; at a micro level, hybridity is hermeneutic.

In addition, EU ELF is the pragmatic compromise to satisfy the need for an adequate language to express *ad hoc* EU concepts. EU law originates from international treaties (primary legislation) – but it cannot be classified as international law – where general principles, to which adhere in drafting EU legal acts, are established. EU legal acts are legally binding on EU Member States; thus, they do not refer univocally to either common law or civil law concepts, but have to comply with the principle of harmonisation as introduced in the Treaty of Rome – which identified harmonious development of economic activities (pursuant to art. 2) as a precondition to «favour the harmonisation of social systems» (art. 117) – and rely on EU law concepts.

The EU system of law (and each legal message it relays) is expressed in a diversity of languages (Robertson 2010a: 148) through a variety of legal documents which inevitably evoke the European Union motto «united in diversity». Deriving from the Latin phrase *in varietate concordia* (Curti Gialdino 2005: 130), the harmonious union is the premise that allows the diversity to be promoted and protected: the linguistic democracy is ensured by the translation of all institutional documents (Caliendo et al. 2005) since «if no wording of one of the versions has the capacity of overruling the others and if meanings are inherently dynamic and sensible to communication, we may actually reach a really multilingual legal system» (Engberg 2004: 1162). Nonetheless, this inspiring

principle, which is aimed at legal harmonisation, too (Seracini 2020), casts light on a double paradox that characterises EU legislative texts. EU authentic texts are neither 'original' source texts dependent on a particular author, nor are they addressed to a specific target text reader or legal community, although some scholars declare that «EU legal texts are primarily written for specialists [as t]his is part of EU culture» (Robertson 2016: 36). Even if EU law is multilingual and written for translation (Robertson 2016: 45), the concepts of source and target texts are dismissed from the very beginning (Felici 2016: 129) and give room for the concepts of pseudo-source text and pseudo-translation (Robinson 1998; Rambelli 2009). In addition, the pseudo-source texts are usually drafted in EU English, which is a *lingua franca*, a kind of deculturalized language used to support the goal of establishing a new European culture (Pozzo 2013). The situation from the cultural point of view may be summed up in terms of a European legal culture that is conveyed in legal texts by a deculturalized working language which aims at promoting cultural diversity. The point is quite thorny as the pseudo-target texts, that is the versions of the documents translated into the official languages of the Member States, are deculturalized, too, and «translators have the task of deculturalizing their national languages to create a common EU legal terminology to express uniform concepts Union-wide» (Šarčević 2016: 2). Therefore, the point «is not only unity in diversity, but also maintaining diversity through unity» (Robertson 2012b: 1237) as all language versions merge into a single document.

2.3 'Episodes in the history' of EU Regulations

The heading of this section evokes Swales's descriptive section on research articles whose aim was to present «a necessarily brief and episodic account of the history of the research article» (Swales 1990: 110). Thus, the purpose of this section is to provide the research with a preliminary analysis of EU Regulations to reveal its historical, social, and functional links within the institutional context of European legislative texts.

The term 'regulations' in the EU context refer to legal documents, which «have general, binding and direct applicability in all member states, meaning that they cannot be varied or amended by national legislation» (Tessuto 2021: 7) and which along with

directives and decisions are comprised in the so-called secondary legislation. The same term but in a different context – namely in the British legal system – refers to a type of UK Statutory Instrument which belongs to secondary legislation: « (also called 'subordinate legislation') [which] is delegated legislation made by a person or body under authority contained in primary legislation. Typically, powers to make secondary legislation may be conferred on ministers, on the Crown, or on public bodies. (legislation.gov.uk)

Regulation as a term is an example of a common law term which has been adopted by the EU legal system with a slightly different meaning. As described in 'the legislative context' above, at the EU the Commission has the right of initiative «to propose new laws on the matters contained in the treaties, either because the treaties explicitly provide for it or because the Commission considers it necessary»⁷. The European Parliament (EP), which is one of the largest democratic assemblies in the world⁸, has the power of deliberation, the power of control and the power of appointment:

The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties. It shall elect the President of the Commission. (art. 14 (1) TEU)

The European Parliament, acting by means of regulations on its own initiative in accordance with a special legislative procedure after seeking an opinion from the Commission and with the consent of the Council, shall lay down the regulations and general conditions governing the performance of the duties of its Members. (art. 223(2) TFEU)

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, by means of regulations, shall lay down the regulations governing political parties at European level referred to in Article 10(4) of the Treaty on European Union and in particular the rules regarding their funding. (art. 224 TFEU)

A European Ombudsman, elected by the European Parliament, shall be empowered to receive complaints from any citizen of the Union [...] (art. 228(1) TFEU)

⁷ https://eur-lex.europa.eu/summary/glossary/initiative_right.html [accessed 25.03.21]

⁸ https://eur-lex.europa.eu/summary/glossary/european_parliament.html [accessed 25.03.21]

If a motion of censure on the activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote. (art. 234 TFEU)

Although the EP is the only institution which has the sovereign power to legislate, it is an 'initial performer' (Kurzon 1986: 32) which empowers the Commission to make regulation proposals which, once drafted and submitted under the ordinary procedure, are read and could be adopted by the EP. In this way the Commission plays a double role: 1) it is a 'preliminary performer' since it drafts the preliminary text of the regulation; 2) it is a 'secondary performer' (Kurzon 1986: 32) if the EP – after examining the Commission's proposal in parallel with the Council accepts⁹ – with or without amendments – the proposed regulation. To paraphrase Kurzon, the European initial performer (EP) gives permission to the secondary performer (Commission) to act in a specified way, as stated in the TEU and in the TFEU. In other terms, the EP is the addresser – or 'official author' (Kurzon 1986) or the 'principal' (Goffman 1981 in Bhatia 2010), the Commission (and the community of draftsmen who work there) is the 'instantial author' (Kurzon 1986), namely the body which composes the texts, and the treaties play the role of 'implied author', as they provide the regulations with the «values and concepts that are found in the text» (Kurzon 1986: 27). Although it is possible to adopt Kurzon's categories to describe the relationship between three different kinds of addresser of EU regulations and their potential addressees – identifiable in three groups: public, lawyers and judges –

who takes editorial responsibility for this piece of Eurolaw and any mistakes, inconsistencies, or imperfect wording? The answer is nobody: after adoption, the law becomes an orphan. The Commission blames the Parliament and Council, the Parliament blames the Council and Commission. If problems ensue, the European Court of Justice will try to untangle the confusion and work out what the legislators really intended. (Cutts 2002: 7)

Cutts's critical understanding casts light on the fact that Eurolaw is to have an instancial author, but that author is impossible to identify; in addition, despite the phrase 'EU law is written for translation' the author is a drafter, not a translator. As far as the addressees are concerned, it is possible to distinguish between direct receivers – competent national

⁹ <https://www.europarl.europa.eu/olp/en/ordinary-legislative-procedure/overview> [accessed 25.03.21]

authorities – and indirect receivers – the European Court of Justice, national drafters and courts, and European citizens (Rasmussen and Engberg 1999: 115). The relationship between sender and receiver provides the situational context where the communicative act takes place and allows the communicative purpose of a text to be understood (Bhatia 1993) by analysing the move-structure of the text and the rhetorical strategies adopted to exert a particular illocutionary force.

EU regulations contain legal provisions and according to Werlich's (1976) text types they apparently should belong to the type of 'instruction without option' which, like every typology, is based on cognitive properties of text types:

Differentiation and interrelation of perceptions in space (description), differentiation and interrelation of perceptions in time (narration), comprehension of general concepts through differentiation by analysis and/or synthesis (exposition), judging, i.e. evaluation of relations between and among concepts through the extraction of similarities, contrasts, and transformations (argumentation), planning of future behaviour (instruction). (Trosborg 1997: 15-16)

Although Werlich's types are not rigid classificatory tools and juxtaposition is inherent in any text, at a macro level the dominant function of EU regulations is to create a future world through obligations and rights which the European citizens have to comply with. Yet, at a micro level, it is possible to identify smaller texts «incorporated into a larger text with a different overall purpose [whose] performative impact of the incorporated text may be changed by its incorporation» (Trosborg 1997: 16). Through the process of textualisation determined by the drafter's strategy (Puchała 2011: 361), EU regulations combine elements which are typical of 'instruction without option', but also elements which evoke 'exposition' and 'argumentation'. In addition, as EU regulations are a form of delegated legislation, a significant section within each regulation is devoted to uphold and to construct regulation textual legitimacy.

In conclusion, at a macro level, EU legal discourse – which results from the juxtaposition of a complex legal context and composite multilingualism (Mańko 2017) – proves to be hybrid: autonomous concepts – as EU legal concepts are – are expressed in 24 official languages – which are inevitably influenced by their national legal culture(s) (see also Pym 2013 in Biel 2014 fn 37). This peculiar linguistic regime often leads to

controversies and ambiguities that only judges at the Court of Justice of the European Union (CJEU) can remove. As EU concepts are autonomous, they turn to apparently «‘neutral’ terms [which] are usually broader in meaning than technical terms» (Bajčić 2018: 16) but which are also frequently the cause of judicial litigations. On the one hand, although English is the language of common law, it provides EU supranational legal order with neutral terms which onomasiologically refer to autonomous EU legal concepts; on the other hand, each EU official version of a given neutral legal term has to look at both the supranational source and at the national target context within which the document has been created and then translated (or co-drafted). At a micro level, EU terminological hybridity, which characterises source and target texts (though this distinction between source and target text is not completely valid for EU legal texts as we have seen in section 2.2), is directly connected to the legal hybridity, as described above: as law only exists in human language, a hybrid legal framework needs hybrid tools to fulfil its prescriptive and communicative functions, thus a hybrid language. EU law «as a hybrid legal order *sui generis* or *tertium comparationis* juxtaposing and combining very different legal systems, cultures and styles» (Jopek-Bosiacka 2011:26) originates a «hybrid pan-European culture grounded in EU law and *ius commune* of Europe [and makes possible] the coexistence of national and EU legal culture» (Bajčić 2016: 12). This study places itself at the point of contact of these two levels – which are the two extremes of a continuum – where law and culture meet terminology, or in other terms, where legal and cultural principles get textualised. At this level, which we may call ‘meso level’ and which is generic, this research aims at demonstrating that it is possible to recognise generic hybridity, too. To this study – and to the chapters to come – this is a crucial point, since generic considerations and reflections connected to EU legal texts have always been conceived as ancillary to European multilingual translation and for this reason, they have often been considered from an *ex-post* perspective, namely after drafting the English version of a legal document and before translating the document into one of the official languages. The approach adopted in this study aims at overturning the perspective, namely at concentrating on generic aspects of EU legal texts – in particular, on EU regulations – from an *ex-ante* point of view. It means that the research is carried out on the English

versions of EU regulations and that the selected regulations are examined to understand how generic hybridity takes form and why EU legal texts are drafted the way they are. Every academic and professional community has its own tools, strategies and conventions to perform its task: so has EU discourse community, which through regulations comply with its regulatory function. As already said, regulations differ from other secondary legislation instruments since after they have been ratified, they immediately become part of the national legal framework of the Member States, without any transposition (as it happens to directives) or other adaptation. For this reason, the performative effect of regulations is immediate and direct, if compared for example to directives, which once adopted have to fit into the pre-existing national norms and statutes and whose aim is to set a series of goals which every State can pursue according to the social, cultural, and political instruments at its disposal. Given the importance of EU regulations as peculiar expression of EU legal discourse, after considering some preliminary aspects connected to the legal and linguistic context of the regulations which make up the corpus of analysis of this study, and after elaborating on the meaning of the concept of 'hybridity' when applied to the EU legal, cultural, and linguistic scenario, the next chapter will provide some insights into the objectives and the methodological approach adopted operatively in this study.

3. The concepts of genre and speech act in the EU legal domain

This chapter focuses on some theoretical aspects and methodological considerations, which will be dealt with in detail in Chapter 4. The first part of the chapter presents the theoretical framework of the study with reference to EU legal language and English for Specific Purposes (ESP); the second part concentrates on genre analysis and speech act theory applied to EU legal domain.

3.1 Legal language in the EU: multilingualism and language policy

The study and the analysis of legal documents is based on the basic assumption – which has already been made – that law does not exist without language. In modern study of law and language there are two main schools of thought (Bajčić 2018): the rhetorical-humanistic school and the linguistic school. While the former has «no foundations in linguistics» (Bajčić 2018: 11), the latter is based on linguistics and on the premise that «law and any legal activity presuppose the existence of a sophisticated system of communication [...] since language is an essential tool in carrying out the business of law» (Tiersma 2008: 10-11). As an interdisciplinary field of study, it is 'fractured' (Tiersma 2008: 23) and at least seven subfields can be identified: 1) law and literature, 2) law and semiotics, 3) law and rhetoric, 4) discourse analysis, sociolinguistics, and law, 5) multilingualism and legal translation, 6) philosophy of language and law and, 7) forensic linguistics. Given its interdisciplinarity, research in this field combines concepts and principles from Law and from Linguistics, which have a semiotically common object of study, that is a code, as stated by Goodrich (1997):

[o]f the plethora of concepts of code produced within the last three decades, two in particular are of relevance to the elaboration of the linguistic assumptions underlying positivist legal theory: correlational and institutional codes. Both connote 'systems' and there is considerable overlap between the two categories although only the former is properly speaking a 'closed system' [...] a set of synonyms, of expressions for expressions or of expressions for content [which] constitutes a lexicon [...]. The institutional code [...] is canonically defined as a system of rules or grammar of norms

which, while it may include correlations [and ...] is a set of social conventions governing and instructing behaviour, issuing imperatives or offering generalised instructions as to how to act. (Goodrich 1997: 66)

In both cases, the term 'code' refers to a system of norms or rules which states the way people communicate and behave, respectively. As a system, the combination of its variables does not result in a simple sum, but in a composite relation or function (in mathematical terms). If the variables of the system at issue are law and language, the function – namely the relation between the variables – is the substance – also called 'policy' (Robertson 2016: 63) – which originates from legal texts and turns into 'law in action': thus, legal texts are both sites of actions (Robertson 2016; Bajčić 2018) and sites of engagement, which generate systems of genre that «interact with each other in specific settings» (Bazerman 1992: 21 in Swales 1993: 693).

Research in law and language grounded on linguistic theories – as argued by Solan (1993) and Tiersma (1999, 2008) – assumes that legal language is a «bond of union that serves lawyers to remind them of that common interest by which they are made friends to one another, enemies to the rest of mankind» (Bentham in Tiersma 1999: 51). The conservative, formulaic, and ritualistic nature of English legal language results from the 'abnormal frequency of certain linguistic devices' (Gotti 2011) – that do not occur so regularly in general language – and from a lexicon that is mostly inaccessible to the majority of laypeople. On the one hand, passive voices, double negatives, nominalisation, hypotaxis, a nearly total absence of personal pronouns, and deontic modality make sentences extremely complex and dense; on the other hand, legal terminology contributes to the obscurity of legal language: solemn archaisms and frequent abbreviations have their roots in a magical function and their fortune in the «natural need of human beings to maintain rituals» (Mattila 2016: 108). These syntactic and lexical peculiarities which characterise English legal language make it a sublanguage (Tiefenbrun 1986; Trosborg 1995;) which has «nine chief characteristics of universal application to the profession» (Mellinkoff 1963:24): 1) frequent use of common words with uncommon meanings, 2) frequent use of Old English and Middle English words once in common use, now rare, 3) frequent use of Latin words and phrases, 4) use of Old French and Anglo-Norman words, 5) use of terms of art, 6) use of argot, 7) frequent use of formal words, 8)

deliberate use of words and expressions with flexible meanings, and 9) attempt at extreme precision of expressions.

The language of the law, which «has a strong tendency to be wordy, unclear – or plain muddy –, pompous and dull» (Mellinkoff 1963: 24), is more formal and conservative than everyday language due to a series of factors: authoritative texts are as venerated as their interpretations and antiquated terminology sounds majestic and serves to justify the profession's monopoly (Tiersma 1999). Trosborg (1995) identifies five sublanguages which are ascribable to legal language: 1) language of the law (legal documents, both legislation and common law); 2) language of the courtroom; 3) language in textbooks; 4) lawyers' speech (to other lawyers or to laypeople); 5) people talking about the law. Nonetheless, there is no unanimous agreement on the distinction between 'legal language' and 'the language of the law' and on whether legal language is a sublanguage of general language or not (Kurzon 1997). Though legal language is not a language in the sense that national languages like English or Italian are, it contains words that are not used in ordinary speech, but also common words used with an uncommon meaning (Mellinkoff 1963). Legal language is not a dialect, a concept which is generally associated with diatopic or diastratic variation and critics – like Mellinkoff (1963) – refer to this kind of vocabulary as argot or jargon (in a derogatory way to refer to the concept of diastratic variation). The concept of argot, or specialised language (Mellinkoff 1963; Tiersma 1999) as a means of communication within a group – whether intended to exclude outsiders or not – is in contrast with technical terminology, which is much more precise. Argot is considered a synonym of secret language whose origin lies in the clandestine language of seventeenth-century French beggars and street merchants (Tiersma 1999) and that came to refer to a set of special words used by people belonging to a particular professional or social class. In certain respects, legal English in general may be considered an argot which aims at obscuring communication, compelling clients to hire lawyers as translators (Solán 1993) or interpreters (O'Barr in Danet 1980: 27) but it seems excessive to assume that legal professionals deliberately use legal language primarily to make their conversations unintelligible to outsiders (Tiersma 2006). A very important point is that legal language and in particular legal terms can arise, or change over time, not through usage – or

necessity, as happens with scientific terminology (Gotti 2011; Anthony 2018; Garzone 2020) – but by authoritative pronouncements of courts or legislatures which can muddy the waters by deviating from accepted legal usage or even from ordinary usage. A telling example of the consequences of judicial interpretation is the case of the connectors ‘and’ and ‘or’, since American judges have been known to interpret ‘and’ as ‘or’ and vice versa. In fact, interpreting ‘and’ and ‘or’ is so demanding that there is a special rule – in federal and state law – which neutralises the difference between the two conjunctions: «generally, the words ‘or’ and ‘and’ in a statute may be construed as interchangeable when necessary to effectuate legislative intent» (Solan 1993:45).

Going back to the issue connected to the adequate way to refer to legal language, some scholars, who rejected the term ‘sublanguage(s)’, make a distinction between legal language and the language of the law as «legal language is in fact a metalanguage used to talk about the law in a broad sense, and the language of the law is literally just that the language in which the law is written» (Kurzon 1997: 121) and consider legal language as a register or a variety of use and a function of situation (Bolinger 1975) or as a form of diglossia, namely «a linguistic situation in which one variety is ‘superposed’ on another; the former, which typically enjoys higher prestige, is not the primary native variety for speakers but may be learned as an additional form» (Ferguson 1964 in Danet 1980: 473).

The reflection on legal language as a dialect or as a form of diglossia leads to similar issues relating to the peculiarities of the language used to draft European legal documents, in particular secondary legislation texts. The term Euro-English was first used by Carstensen (1986 in Forche 2012) following his research on German anglicisms

to denote the Europe-wide adoption of English loanwords and pseudo-loanwords.

This definition of ‘Euro-English’ is counter-intuitional since the use of Anglicisms does not constitute a variety of English, which the term would suggest in analogy to other terms such as ‘British English’ or ‘Indian English’. Euro-English is generally understood, [...] to denote, broadly, ‘a European variety of English’. (Mollin 2006: 5)

However, Mollin’s (2006) study and further research carried out by Forche (2012), on a limited quantity of data, though, demonstrated that within EU academics and Erasmus students a new concept of English was forming – as also suggested by Modiano (2001, 2007) and Jenkins (2001) – but they did not see an endonormative standard

evolving (Görlach 2002a in Mollin 2006) and did not conceive Euro-English as an independent variety (Forche 2012), yet. As a matter of fact,

[t]he concept of a 'European English' is little more than a catchphrase, and this is not because the data have not been properly analysed. It is only in very specialised contexts that recurrent features are, or in due course, may be well frequent and homogeneous enough to justify the assumption of a transnational variety. (Görlach 2002a: 151 in Mollin 2006: 6)

Although the distinction between Euro-English and English as a *lingua franca* is not always clear cut (Jenkins 2001, 2002; Seidlhofer 2001; Mollin 2006 in Mauranen 2003), the common focus of the research above mentioned was teaching-oriented: the descriptive (Mollin 2006) and prescriptive (Modiano 2001; Seidlhofer 2001; Jenkins 2002; Mauranen 2003) approaches concentrated on (a variety of) English language, spoken by non-native speakers with other non-native speakers in everyday situations and drew comparisons between standard English (specifically British English) and the linguistic phenomena observed. Nonetheless, there exists another direction that the research on Eurolanguage took and precisely the one which considers Eurolanguage (Trosborg 1997, Caliendo et al. 2005) or Euroenglish (Castorina 2010) as a variety of English which characterises the legal written texts issued by the European institutions and which is defined as *lingua franca* or *Bruxellish* (Lopez 2010 in Cacchiani 2015) or *Euro-speak* (Robinson 2005) or *Eurolect* (Mori 2018):

In the European legal environment [...] — where every language is *de jure* given the same status — intensive multilingual contact may result in a *de facto* translation-induced convergence among the EU legal varieties of the official languages, evident in the spread of specific features (Eurolectal features). (Mori 2018: 10)

This approach does not concentrate on the 'form of English' (Forche 2012) — namely lexis, phonology, morphosyntax — used in everyday spoken or written communication but on terminology, rhetorical and morphosyntactic aspects of a variety of language used in a specific domain, the European legal domain, and that appears mainly in written form. It also concentrates on issues connected to the 'textual fit' (Biel 2014) of legal texts translated into the 24 official languages of the EU and on the influence of the EU legal language on the national legal languages, which through

translation, adopt and adapt to the newly coined European terms and concepts: «most scholars agree that EU texts have adopted a specific language or style departing from certain conventions of national languages [...] being a product of ‘the process of interlingual assimilation’» (Wilss 1999 in Biel 2014) and that «EU legal instruments [...] have developed their own textual formats» (Biel 2014: 77).

Despite this complex scenario, it is nonetheless possible to state that like legal language, EU legal language too, is a ‘metaphysical and social phenomenon’, created by humans (Mattila 2016) who make use of words and terms as verbal expressions of concepts, which characterise both academic and professional domains of law.

The concept of domain – together with the concepts of genre, discourse community (DC), and specialized corpora – is one of the epistemological pillars of LSP, namely «a kind of language use associated with highly specialised communication in a wide variety of subject areas» (Fuertes Olivera 2005: 41). As a subject field, ESP concentrates on words through words (Saber 2016: 1) and makes use of tenets from Genre and Discourse Analysis, Corpus Analysis and Second Language Acquisition (Hyland 2019; Anthony 2018; Bhatia 2008; Dudley-Evans 2000) but as an approach to language teaching it

targets the current and/or future academic or occupational needs of learners, focuses on the necessary language, genres, and skills to address these needs, and assists learners in meeting these needs using general and/or discipline-specific teaching materials and methods. (Anthony 2018:10).

What these approaches applied to ESP have in common is their focus on text: «in the same way that teaching procedures of ESP are linked to a view of language and learning, all ESP activity should be linked to a view of text» (Fuertes Olivera 2005: 49) with particular attention to different kinds of text types. The next section will concentrate on the relationship between ESP and genre in the domain of law.

3.2 Genre and speech acts in the legal domain

As a field of study, ESP took its first steps in the early 1960s as a response to the rapid and changing demands of the globalisation that had been underway since the end of World War II. At that time, English was developing as a global *lingua franca*, due to its

connection with growth in trade and commerce, and later in technology, industry, and academic communication (Anthony 2018: 35-36). In this increasingly mutable situation, there were also consequences for language teachers who had to teach technical English to non-native students and needed adequate tools to undertake their task (Swales 2009). This challenging scenario combined the core concept of learner needs with a widespread interest in what particular groups are seeking to do with language (Hyland and Jiang 2021).

Although the epistemological perspective of this study is not teaching-oriented, it is necessary to consider some aspects highlighted in Anthony's abovementioned definition, namely the fact that in order to learn how to use a language in a given domain, learners need to gain linguistic (language) and generic (genre) expertise: learning a language implies learning how to use and how to do things with it. From this perspective, genre is a decisive point, «an absolute characteristic» (Dudley-Evans and St. John 1998) of ESP which

has in its brief history adopted various approaches to text analysis from the early register analysis associated with the identification of key grammatical elements of scientific communication [...] to rhetorical analysis [...] through the functional/notional approach [...] through to the dominant approach of today, genre analysis. (Dudley-Evans 2000:4)

Although genre analysis originates from the work in register and rhetorical studies (Anthony 2018) and «its findings bring together the insights of these earlier approaches to text analysis» (Dudley-Evans 2000:4), there is no single agreed upon definition of genre in specialist communication (Garzone 2020: 130). Genre, as a term, comes from the area of literary studies where it refers to the description of a literary construct according to stylistic criteria, also known as canons: this shift from literary to non-literary discourse (as it is the case of law) brings about a growing awareness of the «inherently generic nature of language style [since] all of our utterances are cast in definite generic forms» (Bakhtin 1986: 62). Therefore, genre in a non-literary domain is a «popular framework to analyse the form and function of non-literary discourse» (Hyon 1996: 693), a text category readily distinguished by mature speakers of a language (Trosborg 1997: 6) and can be viewed «as a prototypical-stereotypical category [...] that can be defined as a trend or typicality

gradient, by converging sets of regular traits rather than by very strict criteria» (Adam 1999 in Saber 2016: 1). Due to the variety of approaches to genre and, consequently, to genre analysis, it is possible to recognise three main different lines or traditions (Hyon 1996; Bhatia 2002, 2000) that ESP research has been following.

The New Rhetoric Studies, which focus on the situational contexts in which genres occur, are based on an ethnographic method for analysing texts – which involves thick descriptions of contexts surrounding genres and the actions performed by texts (Hyon 2018) – and aim at the typification of rhetorical action (Miller 1984). According to this approach genre is

[...] centred not on the substance or the form of discourse but on the action, it is [...] a point of connection between intention and effect, an aspect of social action [, a] typified rhetorical action based in recurrent situations (Miller 1984: 151).

Thus, genre knowledge is an individual's repertoire of situationally appropriate responses to recurrent situations (Berkenkotter and Huckin 1995) and this top-down approach links language form and language function with the goal of rising learners/users' 'rhetorical awareness' (Anthony 2018: 86).

The second tradition that deserves attention is the Sydney School, also known as the Australian Genre Theories, which conceives genre as

a staged, goal-oriented social process. Social because we participate in genres with other people; goal-oriented because we use genres to get things done; staged because it usually takes us a few steps to reach our goals. (Martin and Rose 2007: 8)

The Australian school focuses primarily on school genres and has launched a pedagogical and political project (Kress 1993 in Hyon 1996) aimed at helping non-native students understand the relationship between language and its functions in given social settings. According to this approach, inspired by Halliday's systemic functional linguistics, language is used to represent reality based on experience and to interrelate with others, so that texts basically convey experiential meaning. Consequently, language is used in different spheres of communication, through different texts which realise speech genres, since «[e]very text participates in one or several genres, there is no 'genreless' text» (Derrida and Ronell 1980: 65). Genre is not simply a structure or a textual phenomenon, but it is a meaningful and cultural entity: in other terms, every text belongs at least to a genre,

which is socio-culturally situated and which is the «‘cultural purpose’ of text» itself (Eggins 2004: 54). Thus, understanding the consistency of communicative purposes within a text involves being familiar with the genre and being able to recognise it. This point connects the second to the third line of research, namely to ESP Analyses (Hyon 2018).

Swales and Bhatia, as the two leading figures of the third tradition, provide two definitions of genre which emphasise the nature of genre as an analytic tool (Orlikowski and Yates 1994): genre is «a class of communicative events, the members of which share some set of communicative purposes» (Swales 1990) and «a recognisable communicative event characterised by a set of communicative purpose(s) identified and mutually understood by the members of the professional or academic community where it regularly occurs» (Bhatia 1993:13). Genre analysis applied to ESP focuses on conventions and innovations (Bhatia 2002), as genres are stable but not static. They are structured communicative events which share formal properties and communicative purposes within a given social context and genre analysis is «the study of situated linguistic behaviour in institutionalised academic or professional settings» (Bhatia 2014: 26).

A genre-based perspective on ESP can explore the textual as well as the social space, as professional and academic communities are not simply bundles of conventions but ways of being in the world (Hyland 2000). The study of the internal correlation between form and function within a genre – which considers the disciplinary culture and the discursive procedures and practices, namely the text-external factors – leads to the identification of rhetorical moves or strategies – which are common to texts that belong to the same genre (Swales 1993, 1990; Bhatia 1993, 2002) – and to a greater sophistication in text analysis (Fuertes 2004). In particular, Swales (1990) distinguishes between steps and moves in his analysis of research article introductions, which as a genre, comply with the so-called CARS model: ‘moves’ are discriminative elements of generic structure (Bhatia 1993: 21) as they are «discoursal or rhetorical units that perform a coherent communicative function in a written or spoken discourse» (Swales 2004: 228-229). Within each move, it is possible to recognise smaller units, called ‘steps’, which fulfil the communicative function(s) of the move they belong to. Thus, on the move- and step-structure depends the cognitive structuring of a genre, intended as a conventionalised

and standardised organisation used by almost all members of the professional community and that is a «typical cognitive structure to serve a communicative intention subservient to the overall communicative purpose of the genre» (Swales 1981 in Bhatia 1993). Since the way moves and steps within a text are organised depends on the communicative function that a text serves, it is reasonable to assume that each genre is characterised by its own cognitive structure, by a peculiar sequence of moves and steps, and by a specific communicative function. Not only do moves and steps provide the rhetorical structure of the text at issue, but they also affect the style and the choice of the linguistic devices which prove most suitable – from the lexico-grammatical point of view – to the specialised context. The relationship between communicative purpose, move/step-structure and lexico-grammatical aspects has been investigated in different domains: the academic writing – in particular, abstracts, research article introductions, and other sections across different disciplines (Bazerman 1988; Swales 1990, 1993; Bhatia 1993, 2002; Anderson & Maclean 1997; Holmes 1997; Hyland 2000, 2002; Huckin 2001); promotional texts – in particular advertising (Bhatia 1993, 1995, 2014, 2017), contracts (Alcaraz Varó and Hughes 2002), consumer-loans forms (Danet 1980), legislative provisions (Swales and Bhatia 1983; Bhatia 1993, 1998, 2014; Rasmussen and Engberg 1999; Engberg 2004), and judgments (Vázquez Ortega 2010). Although it is possible to recognise for each genre peculiar moves and a peculiar cognitive structure, genres are flexible though stable and when two genres serve the same communicative purpose, they are members of the same colony (Bhatia 2014: 67). This concept implies the appropriation or colonisation of generic resources which may lead to the mixing, embedding or even bending of genres (Bhatia and Salmani Nodoushan 2015: 124), to larger hierarchical and non-hierarchical clusters (Biel 2018), to what Bazerman calls systems of interdependent genres (1994), or constellations of genres (Swales 2004), or genre colonies (Bhatia 2014), and to the creation of generic conflicts and hybrid genres in professional contexts (Bhatia 2000, 2002, 2014). As pointed out by Bhatia (2014: 102), informative functions are more likely to be colonised by promotional functions, though different degrees of invasion may be detected: telling examples of a colony of promotional genres are blurbs, job offers and application letters, among other things. This

is an essential point to the present study: EU regulations, as a genre, present a stable rhetorical structure characterised by conventional moves and steps and fulfil a unique regulative communicative purpose within the EU legislative framework. Nonetheless, it is possible to identify complementary «conflicting intentions» (Bhatia 2014: 120): on the one hand, EU legislative provisions fulfil regulative and constitutive functions, provide solutions to future disputes, order human relations, and restore social order when broken down; on the other hand, EU legislative provisions serve a persuasive function to overcome the ‘actual or alleged’ democratic deficit – which European institutions have been suffering from since their establishment (see Chapter 1) – from a textual, rhetorical, and generic perspective. For these reasons, the analysis carried out on EU regulations took into consideration syntactic, lexical and pragmatic aspects which demonstrated the initial assumption, that is, that EU regulations fulfil a highly persuasive function. This is also connected to the nature of EU law, whose power of persuasion is «an existential requirement for the EU’s popular legitimacy and credibility» (Michalski 2005) both within and beyond its legal framework and its geopolitical borders.

In order to investigate functional persuasion (Cockcroft and Cockcroft 1992) in EU regulations, genre analysis as a method has to be integrated with some principles from the Austinian speech act theory (Austin 1962) and its revised version (Searle 1975) since the findings of such a method applied to legal texts, such as statutes (Sinclair 1985; Kurzon 1986; Trosborg 1995, 1997), contracts (Trosborg 1991; Bloom and Trosborg 1992), and judgments (Danet 1980; Maley 1985, 1987) showed how pragmatic studies of legal discourse are complementary to the analysis of the various domains of legal language in terms of communicative function and rhetorical techniques (Trosborg 1991). The key point from Searle’s theory (1975) is the ‘direction of fit’, the way in which utterances relates to factors in the extralinguistic world, or «the difference in propositional content» (Searle 1979: 80) within the concept of illocutionary force: words are the propositional content of the illocution and the illocutionary force determines the way that content is supposed to relate to the world (Searle 1975). Therefore, the direction of fit between words and world is always a consequence of the illocutionary point or purpose of the type of act. EU regulations are speech acts or rather master speech acts, which according to

Fortion's definitions are «speech acts which control other speech acts» (Fortion 1971: 234). They have at least two illocutionary forces: one built into the formula, the other into the content. In addition, as master speech acts, EU regulations generate – or intend to generate – other speech acts which depend on the formula and on the content of the regulation at issue.

It is in the legal domain and in the legal formulas where Austin recognises that «the whole point of having such procedure[s] is precisely to make certain subsequent conduct in order and other conduct out of order» (Austin 1962: 44). Legal formulas are performative statements within texts and documents which have to comply with typographic, textual and, generic criteria to maintain their regulatory value and prescriptive function: along with legal terminology, legal professionals master generic and rhetorical competence on which their professional outcome depends.

From the perspective of genre analysis, legal writing (Bhatia 1984, 1993, 1998, 2010, 2014a, 2014b; Rasmussen and Engberg 1999; Engberg 2004) – has been investigated to understand the dynamics which characterise the internal organisation of moves and steps within legal texts – be they legislative or judicial – and to identify the link between communicative function and form. Swales and Bhatia (1983) focused their attention on the linguistic devices which characterise legal texts from a didactic point of view: their experience as English teachers in India and Sudan respectively made them observe non-native students of law facing legal texts and thus reflect on students' learning needs. Consequently, they worked on different types of legal texts, since students, as practitioners to be, needed to be able to understand statutory documents but also to write other kinds of legal documents, such as contracts and deeds. This preliminary research experience led both scholars to develop genre analysis by applying its principles to different text types: Swales concentrated mainly on academic writing (Swales 1993, 2009), Bhatia on legal documents in professional settings. Not only did Bhatia consider standard British documents to carry out his generic analysis, but he also took account of the peculiar cultural and political relationship between China and Hong Kong and its influence on legal documents, in particular on the Hong Kong Basic Law which is Hong Kong Constitution and which is the living emblem of the adage 'one

country, two systems'. The constitution of Hong Kong is 'constructed' on common law principles but is 'construed' according to socialist civil law and this paradox highlights how the interpretation of a legal document is «prompted by the emerging socio-political context rather than the words used» (Bhatia and Bhatia 2011: 485).

Thus, going back to EU regulations as expressions of EU legal institutions, it is possible to say that in the EU there are 'twenty-seven countries' and 'one system' which is supranational and hybrid, namely it is not totally original because its peculiarities derive from the legal systems of the Member States which belong to the EU and to international law (see Chapter 2 above). This juridical hybridity (Mattila 2013; Cacchiani 2015; Felici 2016; Robertson 2016) has generic and textual consequences as this thesis has demonstrated.

EU legal language and thus, EU legal documents – mainly secondary legislation – have been the object of study of a wealth of scholars who concentrated on the multilingual and multicultural nature of EU legislation. In particular, most of them have devoted their attention to aspects connected to the influence of EU legal language and terminology of regulations and directives on national legal languages, namely on aspects of foreignization and domestication (Sosoni 2012; Biel 2014a; Sosoni and Biel 2018; Bajčić and Basaneže 2020), being also involved in the operation of titanic proportions for translating the European *acquis communautaire* into the language of countries which had become members of the EU. Some other have focused their research on EU hybrid terminology (Jopek-Bosiacka 2010, 2011; Mattila 2013; Šarčević 2013, 2016; Bratanić and Lončar 2016; Engberg 2016), on textual aspects, such as deontic modality (Matulewska 2013; Biel 2014b; Serracini 2020), textual-cohering devices (Caliendo et al. 2005), and binomials (Basaneže 2018), and on cultural implications of EU legal translations, by providing insights from inside as legal linguists or translators at the EU Commission or other EU institutions (Wagner 2001; Robinson 2005; Koskinen 2008; Strandvik 2016). For these reasons, this study aims at being a complement to the translational studies carried out on EU secondary legislation texts mentioned above.

4. Research questions, methodology and data

4.1 Research questions and aims

In the light of the observations made in Chapter 2 and Chapter 3 and considering the multifaceted nature of the field of study together with the theoretical framework above provided, the research question(s) could be formulated as follows: How are EU regulations written? Why are they written the way they are? In order to answer these questions, the generic integrity and the generic construction/creation of EU regulations is scrutinised through a thick account (Geertz 1973) of «why most professionals construct, interpret, use and exploit genre conventions the way they do» (Bhatia 2014).

This research is concerned with the analysis of the language used in EU binding legal documents, in particular with: 1) the linguistic analysis of EU regulations; 2) the analysis of the linguistic devices which characterise recitals and the construction of the so-called 'textual legitimacy'; 3) the generic analysis of 'recitals' and 'enacting terms' in EU regulations in comparison with other operative, expository and persuasive legal documents (Tiersma 1999). The ultimate goal is to demonstrate that EU regulations as a genre are hybrid, not only because of the jurisprudential reasons already discussed by many scholars (see Chapter 2) but also because of the cognitive structure and the generic values (Bhatia 1995) on which regulations are established. In other terms, the ultimate aim of this study is to demonstrate that EU regulations as a genre are hybrid due to the juridical premises on which they are based, through a synthesis of textual, cognitive, and social perspectives (Witte in Swales 1993: 690). In particular, the cognitive structure of EU regulations will be considered and moves and steps analysed in order to understand the rhetorical and pragmatic relationship between imposition (of rights and obligations) and persuasion (which in EU regulations is functional to legitimise the enacting terms of documents issued by supranational institutions through a procedure which allegedly would suffer from democratic deficit – see section 1.3).

4.2 Research methodology

The quantitative analysis was conducted with the corpus analysis software *AntConc* version 3.5.8 developed by Laurence Anthony and described in detail in Anthony (2006). Operatively, the analysis was carried out on specific sections and moves of EU regulations, namely on recitals and enacting terms. The preliminary consideration which gives the research its basic assumption is that EU regulations are 'speech acts'. In particular, the pragmatic analysis carried out on a corpus (REGI) of ninety EU regulations casts light on the pragmatic peculiarities which characterise the texts at issue as speech acts and concentrates on the use of representatives (Searle 1975) in EU recitals (for more details on the selection criteria used to create this corpus see par. 4.3). The analysis of the syntactic, rhetorical, and pragmatic peculiarities of the cognitive structure of representative speech acts was carried out and the 'moves theory' (Swales 1990; Bhatia 1993, 2014a; Rasmussen and Engberg 1999) applied. These aspects were considered in order to classify recitals according to common lexico-grammatical and rhetorical features and to identify three main categories of recitals: prefatory, argumentative, and procedural. In a broader sense, it was possible to assume that there are three types of recitals which correspond to as many steps which give their contribution to develop and reinforce the so-called 'textual legitimacy' which characterises recitals and, to a lesser extent, the enacting terms. A structural interpretation of 'textual legitimacy' was made and its lexico-grammatical and text-patterning peculiarities were highlighted.

Therefore, the same kind of analysis – of pragmatic and rhetorical aspects as carried out on recitals – was also conducted on the enacting term section of EU regulations which presents precise subsections: definitions, provisions relating to delegated and implementing acts and measures relating to implementation, and transitional and final provisions. Despite its linguistic functions for distributing rights and obligations and the expected preponderance of directive and commissive speech acts (Trosborg 1995), the use of representatives in enacting terms of EU regulations was examined with the aim of observing how facts were represented and how persuasion was used to contribute to the process of legitimisation started in recitals.

This approach showed the common features of the cognitive structure of the texts at issue and combined reflections on the textual space (discourse as a text) and on the socio-pragmatic space (discourse as a genre). This multiperspectival model, which is partially based on a critical genre-based analysis (Bhatia 2017) assumed that law is a ‘textual phenomenon’ (Augsberg 2010). In particular, the expression ‘cognitive structure’ refers to «the interpretative cognitive structuring of a genre which, in a way, represents the typical regularities of organisation in it» (Bhatia 1993: 21) and displays a peculiar interplay of the steps within the move-structure of the text.

Within the theoretical framework above-presented it was possible to create a research space for this study: what other scholars had already done as far as hybridity in EU legal texts is concerned (Robertson 2012, 2016; Biel 2014a; Šarčević 2016; Bajčić 2018; Sasoni and Biel 2018 and section 2.2) insisted on jurisprudential, terminological, and translational aspects (see section 3.2). Previous research focused on the European hybrid legal system and demonstrated that it generated a hybrid form of legal communication – Eurolanguage or Euro-English (see section 3.1) – which is «deliberately detached from any local-based reality» (Caliendo et al. 2005: 382) but which has its morphosyntactic origin in the official languages of Member States and which is aimed at harmonising EU terminology (Strandvik 2012; Bratanić and Lončar 2016) as a means of integration. The textual turn provided the tools to carry out the analysis on EU documents, but also on other legal documents. The speech act theory was functional to create a link between textual features, communicative purposes and the ‘ideology’ which informed the documents. Here, the term ‘ideology’ is to be intended as follows, that is:

[... not] to imply the notion of false consciousness or the wilful distortion of reality in the service of political or economic advantage. Rather, [...as] a shared world-view, in the sense suggested by Mikhail Bakhtin in *Speech Genres* and used [...] by economist Robert Heilbroner [who] refers [to ideology as] to the frameworks of perception by which all societies organize and interpret their experience’. (Smart, 1998: 118)

As the ideology behind EU principles of integration and harmonisation seems to be compromised by more and more frequent manifestations of Euroscepticism triggered by a feeling of ‘democratic deficit’, this study focused on the conventionalised, ritualistic, and ceremonial aspects of the legal language in the texts examined and, on their

functionality, since «legislative texts are prepared according to standardised procedures (rituals) to arrive at an established meaning for everyone» (Robertson 2010a: 159). As the main questions of this study investigated the reasons why EU legal documents are written the way they are, ethnographic factors were ignored: in particular, the textual legitimacy, which EU legislative texts ask for, serves a highly persuasive function which the study proved to be as crucial as the referential and regulative ones. In particular, given the cognitive structure of EU regulations and the persuasive function performed in particular - but not only - by EU recitals, the textual and pragmatic analysis aimed at 1) clarifying which linguistic devices and rhetorical strategies were adopted to textualise legitimacy in EU recitals; 2) demonstrating that EU regulations were hybrid texts not only from a jurisprudential and terminological point of view but also from a pragmatic and generic perspective. EU law and language are «part of society, not separate from society» (Vázquez Orta 2012: 265) whose social practices result in texts: the analysis of such texts showed how those social practices developed and provided a new perspective to interpret and understand social processes.

4.3 Data and Corpus Design

The main *corpus* (LEGI) is made up of ninety EU Regulations (which are currently in force mainly in the fields of competition, monetary union, trade, and single market – areas in which the EU alone is able to legislate and adopt binding acts – and which were drafted in English as a working language). Before 2009 and the entry into force of the *Lisbon Treaty* these areas of the law belonged to the so-called First Pillar of European Communities (EC), whose legislation was supranational and where unanimity was not required to adopt a new legal act. EC legislation served as a model which was extended to the Second and to the Third Pillar legislation, which was intergovernmental and where unanimity was required. In Second and Third Pillar legislation, there was no need nor legal obligation to include recitals: it was a policy rather than a legal requirement, since unanimity – and the fact that those legal acts addressed mainly governments – made recitals superfluous (Klimas and Vaiciukaide 2008). The size of the *corpus* (LEGI) is about

one million words (Pearson 1998 in Biel 2014a). From LEGI¹⁰ three sub-corpora were created: RECI was made up of ‘recitals’, ENTE was made up ‘enacting terms’, and DEFS was made up of ‘definitions’.

Table 1 Features of corpora used in the study

	Texts	Types	Tokens
Regulations (LEGI)	90	11592	1018713
Recitals (RECI)	90	6783	238981
Enacting terms (ENTE)	90	8967	691172
Definitions (DEFS)	58	3290	47090

As far as the qualitative analysis is concerned, it focuses on the so-called textual space – or discourse as text – and on its structure, its function and intertextuality, namely on the construction of the textual product – and avoids any sort of critical interpretation (Bhatia 2014: 23). Not only did this analysis take into account EU regulations and their communicative purpose(s), but it also focused on the physical and non-physical constraints – namely on the institutional and conceptual frameworks – from which these texts originated, the nature of their content (what is included and what is excluded), the participants, the medium, the style and how and whether other genres and other generic values, which could be interdiscursively meaningful, contributed to the drafting (Bhatia 2017: 69), namely the socio-pragmatic space – or discourse as genre.

In particular, it was of paramount importance to take into account the nature of the legal genre here analysed, whether or not it expresses voluntary obligations or the relationship between the parties involved is symmetrical or asymmetrical. To serve the purpose, the use and the distribution of representative and regulative speech acts (Searle 1975, Trosborg 1995) in regulations was analysed.

¹⁰ <https://eur-lex.europa.eu/homepage.html> [accessed 19.06.21]

5. EU regulations as a genre

This chapter focuses on the textual and pragmatic analysis of ninety EU regulations in order to investigate how EU regulations are drafted and the reasons why they are drafted in a certain way .

5.1 The structure of EU regulations

EU regulations have a canonical structure: there is a title, a preamble made of adopting institutions/bodies, citations and recitals, the enacting formula, the enacting terms, and the annexes, which are excluded from the present study as their language is not legal (Robertson 2011) and because their complementary function (and their structure, too) varies according to the application field established in the regulation. Therefore, this analysis will focus mainly on two sections, namely on recitals and enacting terms, and on their relationship. The former act as a marker (Robertson 2016), since they provide reasons and justifications, and their function is ancillary to the articles: they are an aid to the interpretation of the articles and the regulation in general, but they are also «capable of creating so-called ‘legitimate expectations’ such as would defeat an operative provision» (Klimas and Vaiciukaite 2008: 66 emphasis in the original). The latter are made of articles – central elements also called ‘units of information’ (Robertson 2011: 62) – which make up the body of norms conferring rights and duties to the social actors. The relationship between recitals and enacting terms – linked through the enacting formula HAVE/HAS ADOPTED – mirrors the correspondence between functional persuasion and regulatory power which is made, on the one hand, of commands and other linguistic devices typical of legal obligation but also, on the other hand, of cognitive structures which evoke the scientific reasoning as an instrument to foster persuasion. In other terms, this study will analyse the textual features of what has been called ‘textual legitimacy’ (see Chapter 3 above) in order to understand how persuasion is textualised in EU regulations, why EU regulations are drafted the way they are, and how persuasive recitals are connected to regulatory enacting terms.

5.2 EU regulations as speech acts

This paragraph aims at investigating EU regulations sections and their communicative functions to understand what kind of speech acts EU regulations are. What many scholars – Kurzon (1986, 1997), Maley (1987), Trosborg (1991, 1995a) and Engberg (2004) just to mention a few of them – wrote on statutes, their language, and their pragmatic function – namely on statutes as speech acts – is only partially ascribable to EU regulations. Like statutes, EU regulations are parliamentary acts, «constitutive rules [...] characterised by a very straightforward procedure [and] performative language» (Caliendo et al. 2005: 383) and as a whole they are speech acts, too. Nonetheless, unlike statutes, EU regulations have a cognitive and textual structure that fulfils a dual communicative function: regulative and persuasive. In order to show the established structure of EU regulations, the chart below represents the structure of a legal act and its basic elements:

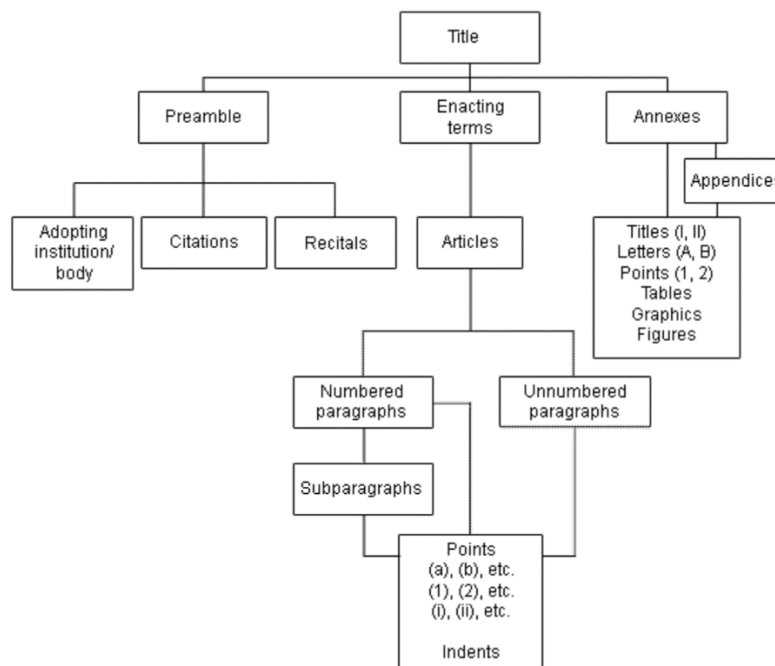


Figure 1 Structure of an EU legal act¹¹

¹¹ <http://publications.europa.eu/code/en/en-120000.htm> [accessed 21.04.21]

5.2.1 EU regulation title

After January 2015, the title of EU regulations follows a standardised pattern (domain) YYYY/N where the domain refers to the field concerned (for example EU, EURATOM), YYYY is the year of publication and N stands for the serial number of the document (EU 2021). Two examples are provided below to show the difference between titles before and after January 2015:

- (1) Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (example of title before January 2015)
- (2) COMMISSION IMPLEMENTING REGULATION (EU) 2021/414 of 8 March 2021 on technical arrangements for developing, maintaining and employing electronic systems for the exchange and storage of information under Regulation (EU) No 952/2013 of the European Parliament and of the Council (example of title after January 2015)

The numbering system introduced in January 2015 does not apply retroactively and regulations issued before maintain their previous denomination. The new standardised pattern is intended «to harmonise and simplif[y] the previous divergent practices, [so that] EU legal acts will bear unique, sequential numbers. This will facilitate access to EU law and also make it easier to identify and refer to legal acts»¹². It improves the numbering but not the naming of regulations, that still have not clear, short, and speakable titles (Cutts 2002: 9).

5.2.2 EU regulation preamble

The preamble, which follows the title, has a tripartite structure: 1) *opening text* that is a line in capitals that identifies the institution and ends with a comma; 2) *citations* that state the legal basis and the procedural steps of the act; they are listed statements starting with 'Having regard to' and ending with a comma; 3) *recitals* that state the ground on which the act is based; they are enumerated, start with 'Whereas' and end with a full stop, apart from the last one that ends with a comma. The preamble closes

¹² <https://eur-lex.europa.eu/content/tools/elaw/OA0614022END.pdf> [accessed 12.08.21]

with a line in capitals called ‘enacting formula’: HAS/HAVE ADOPTED THIS REGULATION/DIRECTIVE/DECISION.

The enacting terms, which follow the preamble, have to include only provisions of normative nature: they may open with the statement of the subject matter and the scope of the regulation (if it does not imply the repetition of the title), or with a definition section where the meaning of potentially ambiguous terms used throughout the act is limited to the one intended by the act itself. Definitions cannot contain autonomous normative provisions, though they sometimes did, as in the example below in the underlined part:

(3) 12. "exporter" means any natural or legal person by whom or on whose behalf a notification is made, [...]. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the power to determine that the GMO is to be sent out of the customs territory of the Community shall be decisive;
(32003R1946)

The final article in the enacting terms of regulations always states the entry into force of the act and is followed by the formula ‘This Regulation shall be binding in its entirety and directly applicable in all Member States’.

Where necessary, the last part of EU regulations consists of annexes, which «are used to present material separately from the body of the enacting terms, because it is voluminous or technical or both» (EU 2015) and which are not written in legal English (Robertson 2011).

Table 2 below compares the canon of EU regulations and that of common law statutes:

Table 2 EU regulation and Statutes textual structure compared.

Canon of EU Regulations (EU law)	Canon of Statutes (common law)
1. title	1. short title
2. citations	2. long title
3. recitals } preamble	3. very brief citations or preamble
4. enacting terms	4. enacting terms
5. annexes	5. schedules (appendices)

5.2.3 EU regulation recitals

The most important aspect of *Table 2* that comes from the comparison between the canon of EU regulations and the canon of common law statutes is that in the latter,

recitals are omitted, probably because the institutional bodies which issue the act(s) do not feel the need to justify their decisions, despite both regulations and statutes are «unilateral decisions taken by public authorities» (Fontaine and De Ly 2010: 86):

[r]ecitals also appear in legislation, although not all legislation contains recitals; indeed, recitals are ‘against’ the precepts of certain styles of legislation. When, however, there are recitals, parties will argue over their proper relationship to the operative provisions, or that they have or don't have, other legal repercussions. Thus, in a particular case they may be even more important than the operative provisions. (Klimas and Vaiciukaite 2008: 64-65)

The absence of recitals is also a feature of French and Italian legislative drafting style: this is an important clarification, since French and Italian legal systems are two examples of continental civil law. Nonetheless, although in common law system recitals are excluded from statutes, they are not from contracts and deeds as shown in *Table 3* below.

Table 3 Contracts and deeds canon (adapted from Alcaraz Varó and Hughes 2014)

Canon of contracts	Canon of deeds and indentures
1. premises	1. recitals
2. recitals or preambles	2. operative parts
3. operative provisions	3. witnessing part (<i>testatum</i>)
4. definitions	4. premises
5. considerations	5. parcels
6. representation and warranties	6. <i>testimonium</i>
7. applicable law	7. locus sigilli
8. severability	
9. <i>testimonium</i>	
10. signatures	
11. schedules	

In contracts, and so in deeds and indentures, recitals are particularly frequent since the parties feel the need to give some explanation, notably because the pre-contractual negotiations have been long and difficult or because the contract relates to an original and complex transaction, especially if the transaction is to be implemented over a certain length of time. (Fontaine and De Ly 2010)

The study carried out by Fontaine and De Ly (2010) on 200 recitals from international contracts identified some topics which are frequently dealt with in recitals: 1) attributes of the parties and, when necessary, strategic flattering appreciation; 2) the parties' objectives in entering into the contract to provide an aid to interpretation in case of subsequent disputes or to set the contract within the regulation of foreign investment; 3) the spirit in which the parties have entered into the contract; 4) circumstances preceding and surrounding the contract in particular when the purpose of the contract is to amend a pre-existing contract; 5) links with other contracts which clarify the significance of the contract in which they are contained; 6) stages of the negotiation leading up to the contract where a chronological account of the steps is set out; 7) acknowledgements and statements by the parties, in order «to avoid any subsequent dispute based on alleged ignorance of the circumstances described in the recitals or to provide a basis for litigation or enforcement in the event that one of the acknowledgements proves to be inaccurate or is not adhered to» (Fontaine and De Ly 2010: 75); 8) statements of parties' undertakings that sometimes may create true substantive obligations, blurring the dividing line between recitals and the body of the contract. In international contracts, definitions are often part of the recitals. Although the inclusion of recitals at the beginning of contracts does not seem to have a clear rationale, if we exclude the «desire to conform to established practice» (Fontaine and De Ly 2010: 79), recitals are very carefully drafted because their objectives are different according to the intended reader or depending on the pragmatic function they are going to fulfil: recitals can serve the purpose of providing a short summary of the contract, or an authoritative aid to the interpretation of the contract or helping non-lawyers set the contract in its context (though the latter is not the most frequent case). Nonetheless, their function in international contracts – though ambiguous – is not questionable even if the legal effects of recitals have received little attention in most legal systems by both legal and academic scholars (Fontaine and De Ly 2010: 87). As said before, in general terms, contracts are agreements between two or more parties, while statutes and regulations are unilateral decisions taken by public authorities: for this reason, the rationale of recitals to EU

regulations has to be investigated in order to identify their pragmatic and textual peculiarities.

5.2.4 EU regulation enacting terms

The enacting terms constitute the normative part of the act and are divided into articles. In case of simple enacting terms, they may be set out in a 'Sole Article'. Where an act contains more than one article, the articles are numbered consecutively throughout (Article 1, Article 2, Article 3, etc.). The numbering must be continuous from the beginning to the end of the enacting terms. Articles may be grouped in 'parts', 'titles', 'chapters' and 'sections' and may be subdivided into paragraphs, subparagraphs, points, indents and sentences. Paragraphs may be unnumbered or numbered with Arabic numerals and may contain points or indents, which may be preceded by a dash¹³ (see *Figure 1*).

5.2.5 EU regulation annexes

Despite an annex is by its very nature an integral part of the act, it is used to present material separately from the body of the enacting terms, because it is voluminous and technical (EU 2015: 74). Annexes, which «may contain encyclopaedic information, untypical for national legislative genre» (Biel 2014: 78) are written in a non-legal language (Robertson 2011) and their structure varies considerably according to their application field and to their communicative purpose: they have tables, charts, list of products, drawings and often consist of forms to be used by citizens, companies, and other institutions to comply with the duties established by law. For these reasons, it is difficult to identify meaningful common features which can contribute to the analysis of the genre, since although there are no specific rules governing the presentation of annexes, they must nonetheless have a uniform structure and their content must be organised as clearly as possible, in spite of their technical nature. In addition, their presence in EU regulations is not an original trait of EU legal texts and their main function is that to give operative details to information (rights and obligations) stated in the enacting terms.

¹³ <https://publications.europa.eu/code/en/en-120400.htm> [accessed 13.04.22]

5.3 Representative and directive speech acts in EU regulations

Recitals in EU regulations set out the reasons for the contents of the enacting terms of an act¹⁴ – as a matter of fact, an equivalent substitute for the word ‘recital’ in the *Joint Practical Guide* (EU 2015: 32) is ‘genuine statement of reasons’ – but they also fulfil a reassuring function, which Klimas and Vaiciukaite (2008: 71) argue that «may be the reason for the existence of recitals in EC law». From the stylistic and textual point of view, recitals are described as follows:

Recitals. Next [after the *opening text* and the *citations*] come the recitals (FR: *considérants*), stating the grounds on which the act is based. The block of recitals begins with a single *Whereas* followed by a colon and a new paragraph. The recitals which follow are numbered sequentially using Arabic numerals within round brackets. Each recital, including the first, begins with a leading capital and ends with a full stop, except for the last (or a sole) recital, which ends in a comma. Sentences within a given recital are separated by full stops. (EU 2021: 82).

Although «it is not clear why recital[s are] written in a single extreme left-branching sentence structure, with a large number of subordinate clauses preceding the main clause» (Strandvik 2016: 149), not only does the presence of recitals in the structure EU regulations make the contractual nature of EU law (Robertson 2016: 44) even more textually grounded, but it also makes possible to distinguish between a normative part of the act (the enacting terms) and the rest «which merely ‘recites’ the circumstances in which the transaction is to be effected» (Austin 1962: 7). What connects the two parts of the document – title and preamble on the one hand, and enacting terms and annexes on the other – is the enacting formula: «[p]reambles close with a line in capitals continuing the enacting formula, ending with a colon: HAS/HAVE ADOPTED THIS REGULATION/DIRECTIVE/DECISION:[...]» (EU 2021: 83). The performative effect of the formula is reinforced by a graphetic device, which also characterises the agent of the enacting formula, at the very beginning of the regulation, before the preamble, in what is called ‘opening text’ or adopting institution/body (see *Figure 1*): this visual arrangement reveals the structure, the content, and the logical progression (Crystal and Davy 1969:

¹⁴ <http://publications.europa.eu/code/en/en-120200.htm> [accessed 21.04.21]

198) of the document. The following example is from Regulation (EU) 2018/1672 (emphasis in the original):

**REGULATION (EU) 2018/1672 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of
23 October 2018 on controls on cash entering or leaving the Union and repealing
Regulation (EC) No 1889/2005**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the [...]

Whereas:

(1) [...]

(41) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001,

HAVE ADOPTED THIS REGULATION:

Article 1 [...]

Every EU regulation as a whole is a regulative act (Habermas 1970 in Trosborg 1991) which combines two components: on the one hand, it is a representative act – aimed at committing the speaker to something’s being the case, to the truth of the expressed proposition, whose sincerity condition is ‘belief’ (Searle 1975: 354). Words are adjusted to match the world (words-to-world) (Trosborg 1995) and to express textual legitimacy in the recitals: «recitals are necessary in EC law because of their reassuring effect to the players» (Klimas and Vaiciukaite 2008: 66). On the other hand, it is either a directive act – aimed at expressing an attempt by the speaker to get the hearer to do something and whose sincerity condition is ‘want’ – and a commissive act – aimed at committing the speaker to some future course of action and whose sincerity condition is ‘intention’ – or both and it expresses the speaker’s intention to regulate the world (world-to-words). This linguistic function for «distributing rights and obligations» (Trosborg 1995: 33) is fulfilled by the second part of EU regulations, namely by the operative provisions, also known as ‘enacting terms’ in Euro-English, which are concerned with ‘laying down the law’

(Trosborg 1991: 72). If we resorted to Searle’s taxonomy and terminology of illocutionary acts (Searle 1975), we would be able to represent EU regulations as follows:

Table 4 EU regulations and Searle taxonomy of illocutionary acts.

Section of EU regulation	direction of fit	sincerity conditions
recitals	get the words to match the world	belief
HAS/HAVE ADOPTED THIS REGULATION	correspondence between content and reality	∅
enacting terms	get the world to match the words	want/intention

In particular, through Searle’s symbols (Searle 1975) EU regulations may be represented graphically as follows:

Table 5 EU regulations through Searle’s symbols.

Section of EU regulation	direction of fit	speech acts
recitals	$F \downarrow B (p)$	representative acts
HAS/HAVE ADOPTED THIS REGULATION	$D \updownarrow \emptyset (p)$	declaration
enacting terms	$! \uparrow W (H \text{ does } A)$ $C \uparrow I (S \text{ does } A)$	directive acts commissive acts

The *poiesis* speech-act (Conte 1985 in Visconti 2009: 396) performed by the enacting formula serves as a hinge between two opposite ‘directions of fit’. In recitals, words fit the actions, namely the world, which is represented through a series of sequentially numbered assertions. In enacting terms, actions fit the words which express promises and/or requests. Recitals and enacting terms, as ‘meso-performative illocutionary acts’ within a macro-performative illocutionary act or master speech act (Fortion 1971) – the regulation – have opposite ‘directions of fit’, which implies that they have opposite ‘illocutionary points’. Nonetheless, in recitals, words match the world through an intratextual dialogue: recitals present real facts to which (a) new norm(s) as adopted in the regulation will apply but in order to do that, they also have to refer to other texts (documents from Committees or previously adopted regulations and directives) which make the dialogue interdiscursive. In particular, the intratextual dialogue between recitals and facts implies a process of assimilation, namely facts are assigned legal value through a procedure of intralingual translation (Jakobson 2013) or interpretation which exploits some peculiar linguistic devices, such as reported speech,

nominalisation, or semantic assessment (more details in section 5.2.1) and which is not «a straightforward process with one-to-one relationships between the two discourses» (Vázquez 2012: 275). In other terms, recitals are a link between facts as they occur or occurred in real world and the enacting terms, namely facts as they will have to occur in the future real world. Thus, recitals provide a link between a problem and its potential solution, that is a link between the discourse of real facts and legal discourse.

As far as the enacting formula is concerned and according to Austin's classification of illocutionary verbs (Austin 1962) – though partially rejected by Searle – the verb 'to adopt' is listed among the verbs which express commissive speech acts. The performative nature of this expression is not explicit, as «the verb in the formula is perfect to report the fact that the legislature has [adopted]» (Kurzon 1986: 12) the regulation at issue. The verb 'to adopt' emphasises the asymmetrical relation which is usually held by the parties involved in a 'contract': the Council of the European Union or the European Parliament or the European Commission – or all of them – on behalf of the European citizens, accept the terms of the contract which are the constitutive rules as established in the enacting terms. The item 'adopted' is not exclusively used in the enacting formula as main predicator of the whole document but is quite frequent also in recitals and enacting terms, for example:

- (1) A delegated act adopted pursuant to Article 26 shall enter into force only if [...] (32011R1343)
- (2) [...] rules on the control and monitoring measures to be adopted by the flag Member State [...] (32019R1241)
- (3) [...] and forwarding the adopted multiannual strategic programme to the European Parliament [...] (32017R1001)
- (4) The conclusions of the Presidency of the Council [...] which were adopted [...] (32009R1069)
- (5) The first such implementing act shall be adopted by 15 August 2021. (32019R1239)
- (6) [...] particularly as regards the commercial policy measures that may be adopted (32014R0654)

In regulations, 'adopted' is frequently used as a postmodifier or as a reduced relative clause to qualify terms like 'act', 'decision', 'guidelines', 'measure', 'model', 'procedure',

‘programme’, ‘standard’ rather than as a premodifier. As a matter of fact, out of 1178 occurrences of the item in REGI, 609 occurrences serve as predicators, 7 occurrences as premodifiers (in two regulations only) and 562 occurrences as postmodifiers. As far as ‘adopted’ as predicator is concerned, the forms ‘has/have adopted’ occur 108 times, but the only subjects admitted (apart from the 90 occurrences in the enacting formula) are ‘the Commission’ (14 out of 18), ‘the Community’ (1 out of 18), ‘Member States’ (2 out of 18) and ‘Scientific Committee’ (1 out of 18). The passive voice of the verb ‘be adopted’ occurs 469 times, mainly combined with modal verbs (425 shall, should 23, may 12, must 3, need 4, will 1, can 1). This choice confirms two assumptions: on the one hand, it demonstrates the importance and the illocutionary effect of the enacting formula; on the other, it reinforces the role and the function of the Commission, whose functions and role seem to be comparable to the Council’s and the Parliament’s as to the adoption of legal provisions. Out of 18 occurrences, 7 occur in recitals and 11 in the enacting terms.

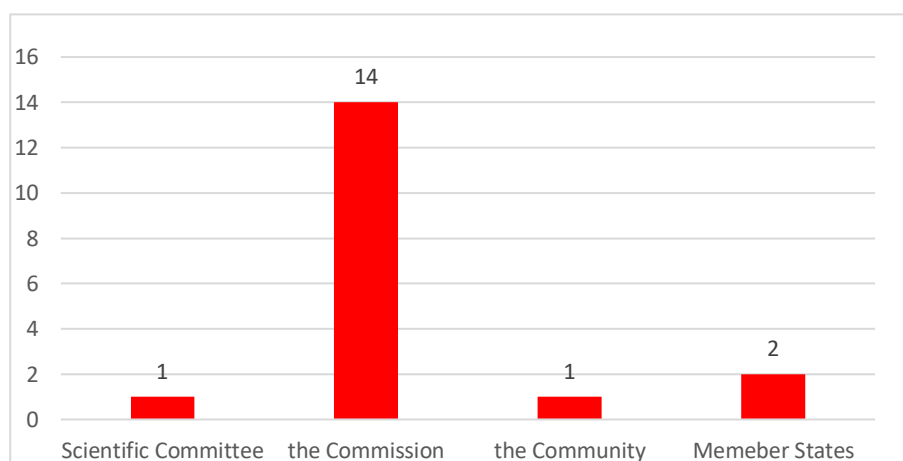


Figure 2 Subjects of has/have adopted (except for the enacting formula)

The style of recitals is consultative (Danet 1980) as consultative is the way in which strangers communicate (Joos 1961), but also the way in which a speaker explicitly provides a hearer with background information and interact with it. As law has more than one audience (Goodrich 1987: 117), and as all languages appear dialogic (Bakhtin 1981 in Vázquez Orta 2012: 267) recitals too enter into multiple dialogues: 1) with previous texts – be they impact assessments from experts, treaties or other legal documents, such as regulations or directives – intertextually; 2) with possible future texts – for example judgments and decisions of judges who will discuss cases connected to the regulation at

issue – interdiscursively; 3) with the enacting terms – which immediately follow recitals and the enacting formula in the regulation at issue, coherently. Thus, recitals are examples of extra-vocalization, as «[t]here is dialogue with other texts, where alternative meanings are attributed to external voices. There is dialogue about alternative meanings where the alternatives are inscribed in the writer’s own words, and there is dialogue about degrees of experimental and interpersonal meanings» (Vázquez Orta 2012: 268). Some examples from RECI may clarify the point:

- (7) Following the request of the European Parliament and with the aim of simplifying and accelerating the adoption of type-approval legislation, a new regulatory approach has been introduced [...] (32013R0167)
- (8) Since neither Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 [...] and Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery [...] nor this Regulation provide [...] the Commission should assess the need for harmonising the laws of the Member States [...] (32013R0167)
- (9) Consumers should also be protected against infringements covered by this Regulation that have already ceased, but the harmful effects of which may continue. (32017R2394)

Examples (7) and (8) show two cases of intertextual dialogue between recitals, external entities, and other texts, namely the European Parliament request (7) and EU directives (8). Example (8) and (9) show two cases of dialogue between recitals and enacting terms, which are referred to as ‘this Regulation’.

Any EU regulation – and its proposal, too – stems from the perception of a normative gap or of a breach of founding principles or values as stated in the treaties and this bias makes conative function predominant within recitals. EU Regulations are prepared according to a standardised discursive procedure, or legislative ritual (Robertson 2010a) – which makes explicit in enacting terms what has been described or stated in recitals – resulting in discursive practices and performance which are «instrumental in the achievement of professional practices» (Bhatia 2017: 7). EU regulations, as outcomes of a specific professional culture which influences the way institutional players and professionals perform everyday tasks through discursive behaviour, are professional practices, that is, conventional actions which are subject to text-internal and text-external semiotic constraints (Bhatia 2017: 35) and which are

characterised by intertextuality (text-internal resources) and interdiscursivity (text-external resources). As «both intertextuality and interdiscursivity can be viewed as tactical appropriations of all forms of semiotic resources across text, genres, social practices and cultures» (Bhatia 2017: 37), EU regulations appropriate generic resources from other legal genres – i.e., court judgments and contracts – resulting in a relatively original hybrid construct. If EU regulations are a variant of written legal texts (Cao 2010), they have an informative and normative legal status, which respectively serves a descriptive and prescriptive communicative purpose. Since the illocutionary point in EU regulations varies, and so do direction of fit and sincerity conditions, then this state of things has also pragmatic consequences.

The main communicative purpose of EU regulations is to regulate the future actions of the receivers (EU citizens and Member States) as EU regulations are meant to control public life, to impose obligations and to confer rights. At least two conflicting intentions in EU regulations occur: one is diplomatic and one is legislative (Bhatia 2014: 121). The diplomatic one aims at promoting and giving expression to mutual understanding and avoiding potential conflicts; its generic value is descriptive, informative, evaluative, and persuasive; the legislative one aims at providing solutions to future disputes through prescriptive and instructive rhetorical strategies. Although it may be improper to describe EU regulations as a colonised or commodified genre (Fairclough 1992 in Bhatia 2014), nonetheless EU regulation generic integrity is partially invaded and results in a hybrid form. Their communicative purposes are realised through a combination of rhetorical acts or generic values (Bhatia 2014: 71): in recitals, the dominant generic values are description and information; in enacting terms, they are instruction and provision. Even though Bhatia (2014) concentrates on advertising discourse, it is possible to compare promotional texts and recitals in EU regulations: as far as the former are concerned, the most important move is «offering a product description through the generic values of description and evaluation» (Bhatia 2014: 73) after having established the needs of potential buyers. As to the latter, in recitals the necessity of a new regulation is highlighted and described positively and before the enacting terms are introduced, a numbered list of statements justifies and legitimises the legislative

document which is going to be adopted. The degree of generic invasion varies as so does the length of recitals. Nonetheless, the informative function carried out by recitals is likely to be colonised by a promotional function which is reinforced by an introductory section called 'citations'. This section aims at establishing credentials, which are embedded in a specific formulaic format. This is how 'citations' are defined:

The opening text is followed by the citations (FR: *visas*), stating the legal basis for the act and listing the procedural steps; these begin *Having regard to ...* and also end in a comma (here for a Regulation of the Council and of the European Parliament):

Having regard to the Treaty on the Functioning of the European Union, and in particular Article [...] thereof,

Having regard to the proposal from the Commission,

Having regard to the notification to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure, (EU 2021: 82).

'Establishing credentials' is a function which is fulfilled also by recitals through a web of intertextual references to other legal documents which «serve the general function of textual coherence [and the] generic and disciplinary functions of making law clear, precise, unambiguous and all-inclusive» (Bhatia 1998: 1). The abovementioned 'generic integrity', which «may be understood in terms of a socially constructed typical constellation of form-function correlations representing a specific professional, academic or institutional communicative construct realizing a specific communicative purpose of the genre in question» (Bhatia 2014: 142), depends on text-internal and text-external indicators. Beyond the consolidated textual regularities of EU regulations, patterns of interdiscursivity are involved in the genre construction of EU regulations in the form of 'genre mixing' (Bhatia 2014: 148), as EU recitals also fulfil a promotional function. EU regulations are not the only legal documents which present this specific promotional function: the four-move model of legal cases (Bhatia 1993: 135-136; Alcaraz Varó and Hughes 2014: 113) shows some features which are common to legal cases and EU regulations. In legislative texts, as in the courtroom, «the most formal and ritualistic parts of a legal document or speech event tend to occur at the start and the finish [since] ritualistic language creates a frame around the document, marking its beginning and its

end» (Tiersma 1999: 101), but both legislative texts and judgments «must also impliedly seek to persuade compliance and observance – in a word, ‘acceptance’. They must all be structured and use language to those ends» (Robertson 2016: 109). The following example is the start and the finish of Regulation (EU) 2019/712 (emphasis in the original):

**REGULATION (EU) 2019/712 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 17 April 2019
on safeguarding competition in air transport, and repealing Regulation (EC) No 868/2004**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to [...]

Having regard to [...]

After transmission [...]

Having regard to [...]

After consulting [...]

Acting in accordance [...]

Whereas:

[...]

Article 19

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 17 April 2019.

For the European Parliament

[...]

If the purposes accomplished in the ‘province’ (Crystal and Davy 1969) of the language of the law are the creation of rights and duties and an attempt to restore a brand of justice and social order, the intents are two-fold: on the one hand, the language of the law (and EU regulations belong to this category) ‘lays down the law’ and constructs a new world

through regulative and directive speech acts, whose felicity conditions are ‘want’ and ‘intention’ (Searle 1975). On the other hand, the language of judgments delivered in the courtroom is required to justify the way judges deliver their judgment and to announce the final decision in a case: in Bhatia’s model (as presented below) it is clear how the so-called *ratio decidendi* is presented according to a conventional and ritualistic procedure:

1. identifying the case [which] has a typical formulaic realization;
2. establishing facts of the case [...] the reader must have a good idea of the facts of the case, at least the facts of the case that are considered legally significant for a particular decision;
3. arguing the case [...] it invariably begins with the name of the judge delivering judgment and may cover the history of the case in the courts including the judgment(s) delivered by earlier judges (giving the history of the case), the argument of the present judge, the evidence he or she uses in the negotiation of justice (presenting arguments), leading to the derivation of the principle of the law that the judge wants to record for use in subsequent cases (deriving *ratio decidendi*);
4. pronouncing judgment [...] signalled by the term, ‘Held’, it is very brief, formulaic, and highly standardized in character and inextricably part of the case. (Bhatia 1993: 128-136)

There exists another generic structure of judgments (appellate) as suggested by Maley (1985). His analysis identifies five elements which characterise judgments: 1) facts; 2) issue; 3) reasoning; 4) conclusion and order/finding. If ‘facts’ are optional «as a discrete narrative-like element» (Maley 1985: 167), the other three elements are not: ‘issue’ and ‘reasoning’ fulfil the legitimising or justificatory function, while ‘conclusion’ and ‘order/finding’ realise the declarative (and performative) function: «the kinds of facts selected determine the kinds of issues, and the kinds of issues determine the principle of law reached» (Maley 1985: 165).

In contracts, too, where the sincerity condition is ‘intention’ (Trosborg 1995), the propositional content refers to some future actions to be carried out by the speaker but their symbolic discursive organisation not only «involves two manifestations, namely, giving and taking» (Cao 2019: 162) but also has to provide the adequate context within which the terms of the contract are valid. A typical structure of a contract (Borja 1998 in Alcaraz Varó and Hughes 2014: 126-133) is presented below:

1. commencement or premises [or] prefatory section with descriptive phase identifying the type of undertaking;
2. recitals or preamble [...] to set out the historical, social and economic reasons that have led them to take this step;
3. operative provisions [or] terms and conditions;
4. definitions;
5. consideration [where] the mutual nature of the bargain is made explicit;
6. representation and warranties [...] in the sense of 'assurance, undertaking, declaration, guarantee';
7. applicable law [...] to govern the agreement [and] which courts are competent in the event of dispute;
8. severability (optional section);
9. testimonium (or testing clause)
10. signatures
11. schedules.

As in EU regulations, in contracts it is necessary to provide the historical, social, and economic reasons which justify the contract itself and to state explicitly the meaning of words and terms which are used in the contracts, inserting a section dedicated to definitions. As a matter of fact, in EU regulations «[t]he 'recitals' are the part of the act which contains the statement of reasons for its adoption [... whose] purpose is to enable any person concerned to ascertain the circumstances in which the enacting institution exercised its powers as regards the act in question, to give the parties to a dispute the opportunity to defend their interests and to enable the Court of Justice of the European Union to exercise its power of review» (EU 2015: 31).

Going back to the speech acts theory, EU recitals, *ratio decidendi* in judgments and preambles in contracts are representative speech acts (Searle 1975) or, to turn to Austin's terminology (1962) – which seems to be more adequate in this context – expositive and verdictive speech acts. The former «make plain how our utterances fit into the course of an argument or conversation, how we are using words or are expository [and] are used in acts of exposition involving the expounding of views, the conducting of arguments and the clarifying of usages and of references» (Austin 1962: 151-160). The latter «consist in the delivering of a finding upon evidence or reasons as to value or fact [... they are]

judicial act[s] as distinct from legislative or executive acts, which are both exercitives» (Austin 1962: 152). Expositives as well as verdictives «have obvious connexions with truth and falsity as regards soundness and unsoundness or fairness and unfairness» (*ibid.*) and «are assessable on the dimension of assessment which includes true and false [...] and the psychological state expressed is belief [...]» (Searle 1976: 354).

Thus, the combination of different kinds of speech act – with their specific illocutionary point, their direction of fit and sincerity condition(s) – makes EU regulations a genre which serves complementary purposes, where a socially recognised communicative purpose is mixed with ‘private intentions’ (Bhatia 1995: 3). The adjective ‘private’ here refers to what is ‘behind’ and ‘before’. The ‘private intention’ fostered in regulation recitals aims at legitimising, justifying, and making legally and judicially acceptable the ‘public purpose’ of the enacting terms: so, ‘private’ means ‘behind the scenes’ but also ‘before the enacting formula’, namely before the performative turning point of the document. This feature – the coexistence of different communicative purposes and communicative intents within an EU regulation – is stylistically reinforced – and thus confirmed – in the *English Style Guide* (2021) where the use of modal verbs is established precisely. Due to the relevance of modal verbs - and verbs in general - to this analysis, a separate subsection will be devoted to this aspect.

5.3.1 Verbs and modality in EU regulations

As previously stated, the use of modal verbs is established precisely in the *English Style Guide* (2016), which reads as follows:

Verbs in enacting terms. The enacting terms of EU legislation (articles) can be divided broadly into three categories: imperative, permissive, and declarative. Imperative and permissive provisions can be positive or negative. They require or oblige (imperative) or allow (permissive) someone to do or not to do something. Declarative provisions are those that are implemented directly by virtue of being declared, for example definitions or amendments. [...] *Positive imperative.* To impose an obligation or a requirement, EU legislation uses *shall*. [...] Here, *shall* means the same as *must*. In contrast with EU usage, most English-speaking countries now generally use *must* instead of *shall*. So you may do the same when translating non-EU legislation as long as you do so consistently. [...] *Negative*

imperative. To impose a prohibition, EU legislation uses *shall not*. [...] *Positive permission*. To give permission to do something, EU legislation uses *may*. [...] *Negative permission*. To give permission not to do something, EU legislation uses *need not* [...]. *Declarative provisions*. EU legislation uses the simple present for definitions and where the provision constitutes direct implementation (possibly adding ‘hereby’[...]).

Non-enacting terms, subordinate clauses and indirect quotations. Do not use *shall* in non-enacting terms such as recitals or annexes [...] or in subordinate clauses in enacting terms. The same also applies to indirect quotations or paraphrases of provisions. Use an appropriate alternative such as *must, has/have to, is/are required to*. [...] Do not use *may not* for a prohibition in non-enacting terms, as it could be taken to mean a negative possibility. Use an alternative such as *must not* instead. (EU 2021: 54-56, emphasis in the original)

If we agree on the fact that «modals play the central role in the formulation of legal norms [and that] law has a persuasive and directive function» (Biel 2014a: 158) and if we accept the fact that «modality [is] very sensitive to text type (sub-genres) and function» (Biel 2014b), calculating the frequency of the seven modal expressions in different sections or moves (Bhatia 1993) of EU regulations may be revealing. *Table 6* below shows the distribution of the seven modal expressions in recitals, enacting terms, and regulations.

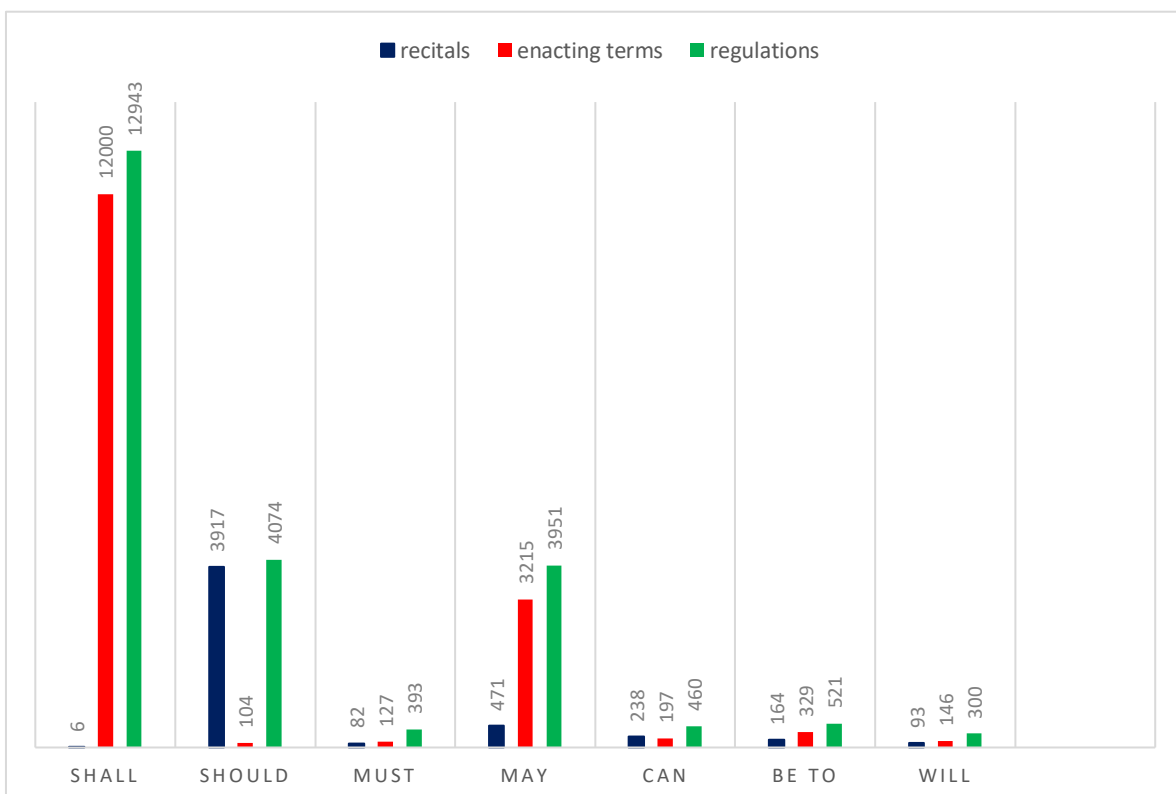


Figure 3 Distribution of modal expressions in recitals, enacting terms, regulations.

As the data show, in recitals the modal 'shall', which is the most frequent modal expression in enacting terms and regulations, is almost absent. On the contrary, 'should' is the most frequent modal in recitals but the least frequent in enacting terms. Although the data are coherent with the suggestions provided in the *English Style Guide* (2021) and mentioned above, it is necessary to interpret data in order to find a connection between the peculiar frequency of 'should' in recitals and what we have called 'textual legitimacy' (see Chapter 3 below) as the main communicative function carried out by recitals. 'Should' as a modal verb is used «to mark personal obligation/necessity» (Biber et al. 2007: 485) or to offer advice though the register of recitals is quite impersonal: this point is crucial to the interpretation of recitals since though they provide the operational – socio-economic and political – background to the enacting terms and to the regulation at issue, they combine personal or private intentions and impersonal or public purposes.

Since the *English Style Guide* (2021) is a set of instructions which is provided to authors and translators working at the European Commission, it reveals that «there are nevertheless likely to be far-reaching effects on the syntax used by anyone who has to conform to the constraints imposed by some such logical or semantic framework» (Crystal and Davy 1969: 217 note 4). The point on verb usage in EU legislation is particularly relevant as the two main functional pillars of legal language, namely giving permission and imposing obligation, are considered explicitly. So, what is noteworthy is not the accepted assumption that genres (the legal ones, too) never serve single purposes (Swales 1990; Bhatia 1993), but that since «genres are how things get done, when language is used to accomplish them» (Martin 1985: 250), what EU regulations as a genre do is to establish the rights and duties of the European citizens, publicly (in the enacting terms), and to try to achieve consensus, to inspire 'benevolence', to share responsibility, and to reassure, privately (in recitals). This implies the attempt to address different communicative needs which, in turn, characterise different receivers: on the one hand, the 'public' receivers, namely public, lawyers and judges (Kurzon 1986); on the other hand, the 'private' receivers, namely those who are involved in drafting preliminary

impact assessments – which may be social, economic, financial, medical, and environmental – and other institutional and non-institutional stakeholders¹⁵. This is perfectly understandable, since the agent of the performative act expressed by the enacting formula may be the EU Parliament, the EU Council, or the EU Commission, which have a different representative power and which have to give a textual consistency to the suggestions and the assessments which have led to drafting the regulation at issue. For this reason, if – as we stated above – the main ‘public’ purpose of EU regulations is to regulate the future actions of their receivers, the ‘private’ but not secondary purpose is to provide a reasonable framework, to expose authoritative analysis and/or synthesis which may help to comprehend them (Trosborg 1997) – and which may legitimise the enacting terms of the regulation – and to report facts. This combination of a socially recognised communicative purpose with private intentions proves to be a «tactical aspect of genre construction and use [... and] the nature and complexity of communicative purposes and the propensity of genres for embedding and mixing» (Bhatia 1995: 2).

In conclusion, the analysis above presented demonstrated that despite being quite a neglected area of juridical and academic research (Klimas and Vaiciukaite 2008; Fontaine and De Ly 2010), EU recitals play a decisive pragmatic role in the legal discourse of the EU. Starting from the studies conducted by Danet (1980), Kurzon (1986), Trosborg (1991, 1997), and Blom and Trosborg (1992) on contracts and statutes, it was possible to apply the same research method to EU regulations and to recognise them as peculiar speech acts where representative (Searle 1975) or expositive speech acts (Austin 1962) – which characterise EU recitals – combine with directives (Searle 1975), or exercitive and commissive speech acts (Austin 1962) through the enacting formula. In addition, the generic integrity of EU regulations was questioned by comparing the canon of EU recitals, EU judgments, and contracts and promotional texts (recalling Bhatia’s method in Bhatia 2014). The comparison proved that EU regulations serve complementary purposes, both political and rhetorical: on the one hand, the purposive approach of EU law is made by using express statements of purpose but also by formulating general principles (Klimas and Vaiciukaite 2008); on the other hand, the rhetorical structure of EU regulations

¹⁵ https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en [accessed 15.04.21]

combines what Bhatia (1993, 2014) called ‘private intentions’ and ‘public purposes’, since EU regulations as legal texts have a ‘public’ regulative function but recitals, as a part of EU regulations, are «necessary for determining intents» (Klimas and Vaiciukaite 2008: 76) and fulfil multiple functions: they justify and reassure about the legitimacy of the exercise in authority which is expressed in the enacting terms, they can resolve ambiguities in the related legislative provisions, and they serve a supervisory function for the court. EU supranational legislation in its transfer of power to the centre needs to demonstrate to act fairly and recitals may serve this purpose and could justify ‘legitimate expectations’, which as a corollary of the principle of legal certainty (Klimas and Vaiciukaite 2008) is a principle applied in administrative law: «expectations raised as a result of administrative conduct may have legal consequences [and as a] principle therefore [it] concerns the degree to which an individual's expectations may be safeguarded in the face of a change of policy which tends to undermine them» (Thomas 2000: 41). The next sections will concentrate on the syntactic, rhetorical, and pragmatic peculiarities of representative speech acts in EU recitals and on their use.

5.4 The use of representatives in EU recitals (regulations): syntactic, rhetorical, and pragmatic peculiarities

As demonstrated in the analysis carried out in section 5.3 above, the combination of representative, declarative, and regulative speech acts in EU regulations create a rhetorical effect in the texts which is slightly different from what we may expect from any operative legal document and strikes a balance between ‘public purposes’ and ‘private intents’. The presence of recitals – elements which usually characterise expository legal documents, such as judicial opinions (Tiersma 1999; Klimas and Vaiciukaite 2008) – in EU regulations and their rhetorical function – namely identifying facts and presenting the arguments in favour of the regulation to be adopted, that is the ‘rationale’ for the regulation, reveal the ‘private intents’ that support the official ‘public purposes’ of the document. As to the assumption on the rhetorical function of recitals, as in briefs, in regulations, too, facts have two primary functions: answering questions concerning the situation and their consequences, and ‘educate’ the reader on the legally significant and

insignificant aspects to consider (Macleod 2009). As in expository documents – like legal briefs – the language is fairly formal standard English and fulfils a highly persuasive function which is nonetheless ancillary to the regulative function performed by the enacting terms and remains seemingly in the background. The ‘private intents’ – seen as distinct from the ‘public purposes’ of the whole document – consist of painting the most favourable scenario in which the regulation can be set, justified, and thus, adopted.

For this reason, in this section, the use of representatives in recitals within EU regulations is analysed in the light of the ‘private intents’ as mentioned in the previous section. The first aspect to consider is the presence of ‘whereas’ which introduces the numbered recitals.

Ubiquitous creation [...] whereas is one of the most persistently typical and most consistently vague words in the language of the law [which] means the-fact-is, and next moment it reverses course to mean in-spite-of-the-fact (although); now it is considering-that; now it is on-the-contrary. [...] [U]sed in law writings in England from the fifteenth centuries [...] [b]ecause *whereas* so frequently introduces recitals, its effect is confused with the effect of the recital. (Mellinkoff 1963: 85, 321 ff. emphasis in the original)

Probably, due to its multifaceted nature, ‘whereas’ has been chosen to be the adverbial platform to the list of EU recitals since it serves the purpose of introducing hypotactic clauses of addition (Halliday and Matthiessen 2004: 408), but it also gives a flavour of concession to the message (Biber et al. 2007: 844). This is a meaningful point because all recitals implicitly depend on this adverb.

Moving to the numbered recitals, as they are part of legal documents, they may be considered a peculiar manifestation of legal language. As legal language is a specific domain of Language for Specific Purposes (LSP) (Trosborg 1991: 69), sentence organisation in EU recitals is analysed by taking into account the impact of nominalisation, a structural feature where «any element or group of elements is made to function as a nominal group in the clause» (Halliday and Matthiessen 2004: 69). In particular, great frequency of nominalization in a text – and in EU recitals, too – brings about a series of syntactic phenomena, as pointed out in Garzone (2020: 77-102):

1. reduction of the semantic load carried by ‘empty or existential verbs’;
2. shift of logico-semantic relations to the verb form (circumstantial verbs);

3. shift of logico-semantic relations to a nominal predicate;
4. use of nominalisation as illocutionary force indicating device (Searle 1976);
5. recourse to a fact clause.

The five phenomena listed above imply syntactic choices that «contribute to conferring textual objectivity and universality to the findings set forth» (Garzone 2020: 89), which in the case of this study are the preliminary considerations which provide legitimacy to the enacting terms. From a certain point of view, the considerations collected in recitals may be regarded as the ‘necessary findings’ which the Commission and the other stakeholders involved in the law-making process examine before discussing and establishing the legal terms of the legislative document at issue. Many scholars have recognised the prominence of nominalisation in English legal language (Crystal and Davy 1969; Charrow and Charrow 1979; Danet 1980; Bhatia and Swales 1983; Tiersma 1999, 2006; Gotti 2011) – to mention merely a few – though in EU regulations it has a peculiar syntactic form and a particular rhetorical function if compared to other domains: «in advertising, nominalisation is used to offer a positive evaluation of products and services being promoted [...]n academic research [...] it creates and develops technical concepts [and] in legislative discourse it condenses clauses for subsequent references [and...] add[s] precision and unambiguity to legislative provisions» (Bhatia 2012: 240). As far as EU recitals are concerned, the three rhetorical functions just highlighted are combined, since on the one hand EU legislation inevitably takes possession of technical concepts (for example in the area of personal data processing or food labels), but on the other hand it has to follow up the findings reported in the official impact assessments and by the appointed committees of experts.

If we go back to Garzone’s list, some examples of nominalisation from the sub-corpus RECI here analysed may clarify the point:

- (10)The effective and efficient functioning of data processing is a fundamental building block in any data value chain. (32018R1807)
- (11)The risk to the rights and freedoms of natural persons, of varying likelihood and severity, may result from personal data processing which could lead to physical, material or non-material damage [...] (32016R0679)

(12) *The absence* of a uniform legal framework at Union level requiring competent authorities to accept relevant freight transport information, [...], is considered to be the main reason for the lack of progress towards the simplification and greater efficiency of information exchanges [...] (32020R1056)

(13) Different views exist as to whether such products satisfy the specific nutritional requirements of the population group they target. (32013R0609)

(14) [...] this Regulation should explicitly refer to the fact that measures will be adopted by the Council on that legal basis. (32013R1308)

For the purposes of this study, the most noteworthy phenomenon is the recourse to fact clauses. Since «a fact may be projected impersonally, either by a relational process [...] or by an impersonal mental or verbal process» (Halliday and Matthiessen 2004: 472), this syntactic strategy is dual-focused: on the one hand it allows to what is represented to be textually true (Garzone 2020: 85); on the other hand, what is presented sounds objective, since the data and the facts mentioned are the ‘findings’ provided by impact assessments and other groups of experts that the Commission consulted before making a proposal, so that legislative proposals correspond to the needs of those most concerned and red tape is avoided¹⁶. Although the general irrelevance of truth is a striking feature of legislative discourse (Sinclair 1985: 386-387), this is not completely valid for recitals: despite being a one-side speech, the preliminary hearing, committee sessions and expert impact assessments ‘are’ part of the actual legislative utterance (recitals in EU regulations) and seem to provide (or to prevent from) fictitious responses which may occur in an ideal dialogue. If the concept of truth is not applicable to legislative enactments (Sinclair 1985: 397) and if the Gricean maxim of quantity should be formulated in terms of behavioural rather than informational limits (ibid.), recitals build up and refine factual information and the Gricean maxims of quality – which involves truth and falsity – are applicable. For this reason, it is interesting to analyse how fact clauses are constructed in recitals, which syntactic strategies are adopted and how they serve the purpose of textual legitimacy.

¹⁶ https://europa.eu/european-union/law/decision-making/procedures_en#:~:text=The%20EU's%20standard%20decision%2Dmaking,of%20the%2027%20EU%20countries). (accessed 27.04.21).

5.4.1 Textualisation of ‘textual legitimacy’: a lexico-grammatical and text-patterning analysis

This section focuses on the strategies adopted in recitals in order to make legitimacy textual, namely on its textualization, which «involves a proceeding by which something becomes a text» (De Angelis 2020: 1) or a codification, also perceived as a series of «consequences that flow from writing down the law in an authoritative way» (Tiersma 2007: 1188). As officially stated (see section 5.3), recitals fulfil the primary function of providing authoritative reasons for the regulation within which they are included: appointed committees and impact assessment reports are to be taken into account before the Commission may submit the first draft of its proposal to the Parliament. This communicative function of recitals is validated by the keyness analysis (Scott 1997) carried out on RECI: as a matter of fact, the top three most frequent items in recitals are ‘should’, ‘order’ and ‘therefore’ (Figure 3).

Keyword Types: 204		Keyword Tokens: 76897		Search Hits: 0
Rank	Freq	Keyness	Effect	Keyword
1	3917	+ 3681.84	0.0317	should
2	1020	+ 505.61	0.0084	order
3	377	+ 355.59	0.0031	therefore
4	579	+ 305.38	0.0048	certain
5	756	+ 241.43	0.0063	ensure
6	1117	+ 202.63	0.0092	data

Figure 4 Keyness in recitals (Antconc)

It is necessary to point out that keywords «are not necessarily single words: we can look at key-clusters [...] or even key-phrases» (Bondi 2010:3) and the analysis carried out on RECI adheres to this principle. As far as the first keyword is concerned, it should come as no surprise, since data collected and already showed in Table 5 proved a high frequency of the modal ‘should’ in recitals. What appears more telling is the very high occurrence of the item ‘order’. In particular, out of 1020 occurrences, 1008 appear in the lexical bundle ‘in order + (for/ (not) to/that)’ and 8 as a noun phrase, of which some examples are shown below.

(15) [...] defence and national security as well as public order and criminal law. (32016R0679)

(16) Where a judgment contains a measure or order which is not known in the law of the Member State [...]. (32012R0648)

(17) [...] an urgent need to protect internal order and security or to address a serious threat [...]. (32019R1239)

(18)[...] at the point of sale, or purchase tyres by mail order or on the internet. (32020R0740)

Patterns of purpose

As far as 'in order' as a subordinator of purpose is concerned, the occurrences are 985 'in order (adverb) to', 9 'in order not to', 11 'in order for' and 3 'in order that'. The top ten collocates one to the right of 'in order to' are reported below in *Table 7* and graphically represented in *Figure 5*.

Table 6 Top ten collocates one on the right of 'in order to'.

in order to
ensure (324)
achieve (49)
take (into) account (44)
allow (32)
enable (31)
facilitate (30)
avoid (27)
prevent (18)
improve (11)
promote (11)

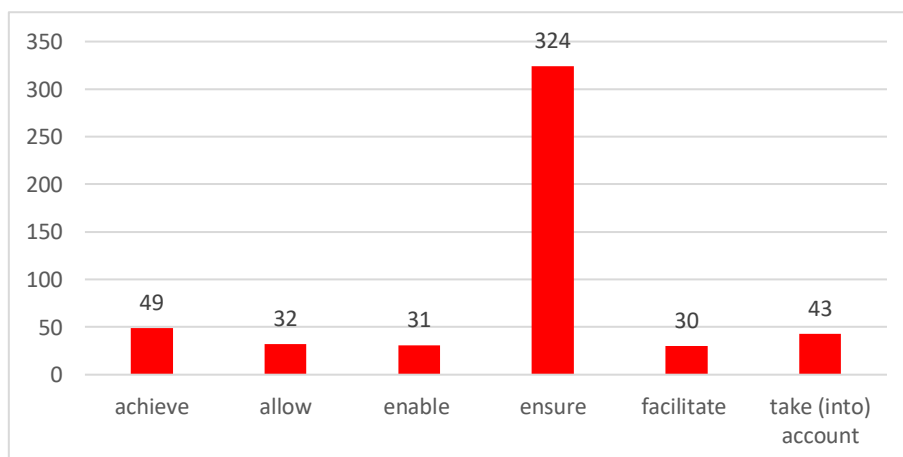


Figure 5 Most frequent verbs in the phrase 'in order to'.

The collocates are verbs which mainly convey an idea of proactivity which may be interpreted as a process along a continuum where it is possible to identify a hierarchy: ‘take into account’, ‘facilitate’, ‘improve’, ‘promote’ prepare the ground (1), ‘allow’ and ‘enable’ make the point – whatever it is – possible or viable (2), ‘ensure’, ‘avoid’, and ‘prevent’ persuade the receiver that what is at issue is guaranteed and safe (3) and ‘achieve’ is the last step which demonstrates that the provisions to adopt are aimed at a clear goal (4). The theoretically sequential order presented above is not always followed, as it is possible to modify the sequence and present the process more freely and creatively. Some examples from RECI clarify the point:

- (1) In order to take into account evolving consumer demands, technological progress, developments in the relevant international standards, the need to improve the economic conditions of production and marketing, traditional ageing processes, and the law of the importing third countries[...] the power to adopt acts in accordance with [...] should be delegated to the Commission [...] (32019R0787)
- (2) In order to facilitate and accelerate the submission of State aid notifications by Member States [...] (32008R0271)
- (3) In order to enable economic operators to provide relevant information in electronic form [...] (32020R1056)
- (4) In order to ensure a harmonised and effective implementation of the new scheme of authorisations for vine plantings [...] (32013R1308)
- (5) In order to achieve additional flexibility for economic operators and customs authorities [...] (32015R2446)

Though less frequent, there are other verbs which belong to the four categories above mentioned and which fulfil a similar communicative function. In particular, as far as the ‘preparing the ground’ function in the corpus, the following verbs occur: ‘accommodate’ (1), ‘address’ (6), ‘assess’ (8), ‘evaluate’ (1), ‘encourage’ (4), ‘demonstrate’ (2), ‘describe’ (1), ‘enhance’ (10), ‘foster’ (2), ‘support’ (6), ‘justify’ (1); as to the ‘making the point possible or viable’ function: ‘be able to’ (7); as to the ‘guarantee’ function: ascertain (3), safeguard (11), guarantee (10); as to the ‘achievement’ function: ‘attain’ (4).

Another important communicative aspect which is typical of EU recitals is the harmonising function: it is one of the main objectives of EU law, thus from the lexical

point of view, this political but also communicative function is carried out by a group of verbs which convey an idea of agreement. Some examples may serve the scope:

- (6) In order to fully harmonise reporting requirements, customs, maritime and other relevant authorities should cooperate at both national and Union level. (32019R1239)
- (7) In order to align with the innovation potential of the market and to take into account the experience [...] (32018R1807)
- (8) In order to clarify the scope of the respective empowerments, [...] (32019R1241)
- (9) It is essential that [...] in order to unify the conditions for the pursuit of the activity in the Union [...] (32017R1130)
- (10) In order to meet the international standards in this field, [...] (32014R0251)
- (11) In order to meet market needs, the methods for establishing a freight corridor [...] (32010R0913)
- (12) In order to comply with principles of good administrative practices, [...] (32009R1223)

It is reasonable to assume that the very same process of harmonisation is the implicit object of the subordinate expressions of purpose: in other terms, harmonisation has to be taken into account, facilitated, enabled, ensured, and finally achieved through the legislative tools of the EU.

- (13) [...] the promotion of the competitiveness of enterprises and SMEs should be better coordinated in order to ensure complementarity, better efficiency and visibility, as well as to achieve greater budgetary synergies. (32013R1287)
- (14) This Regulation comprehensively harmonises the rules in the Community in order to achieve an internal market for cosmetic products [...] (32009R1223)
- (15) In order to take account of the specific characteristics of trade between the Union and certain third countries [...] (32013R1308)
- (16) In order to ensure a harmonised approach across the Union [...] (32018R0848)

There are other moderately frequent structures which are used in EU recitals to introduce secondary clauses of purpose. *Table 8* below show those devices and their frequency in RECI:

Table 7 Frequency of subordinators of purpose in RECI.

subordinator	Frequency
<i>for (this/that/the) purpose(s)</i>	172
<i>aim* to/at (predicator)</i>	90
<i>so as to</i>	42
<i>aim* (noun)</i>	29

<i>for # reasons</i>	22
<i>the scope of (subject)</i>	17
<i>to this end</i>	10
<i>with the aim</i>	10
<i>to that effect</i>	5
<i>in view of the scope of</i>	2

(17) Accordingly, the scope of the Directive should cover both the application of Articles 101 and 102 TFEU [...] (32019R0001)

(18) In order to ensure consistency of policies and aim at maximising [...] (32018R1999)

(19) [...] the competition authorities of the Member States should form together a network of public authorities applying the Community competition rules in close cooperation. For that purpose it is necessary to [...] (32003R0001)

(20) The list of dual-use items [...] needs to be updated regularly so as to ensure full compliance with [...] (32014R0599)

Other purpose clauses are introduced simply by ‘to + infinitive’ or ‘for + ing form, but their frequency has been calculated manually and it results respectively in 45 and 294 occurrences.

In conclusion, the high frequency of the lexical bundle ‘in order to’ in recitals to introduce a purpose or an aim – if compared with the other purpose patterns identified in the analysis carried out above – demonstrates that the three-part item fulfils a double function: on the one hand, it allows the text to maintain a high degree of formality; on the other hand, the word ‘order’ evokes «[a] state in which the laws and rules regulating public behaviour are observed and authority is obeyed» and «an authoritative command or instruction» (OED). It creates an ideal bridge between recitals and enacting terms.

Causal relations

The higher proportion of purpose clauses in EU recitals – as in academic prose and news – is used to show – predictably – the purpose of an action, but also to show results: the frequently initial non-finite clauses are to-clauses of purpose aimed «to give a lead into the next stage of discussion, by stating its purpose [and to] provide a cohesive link with the previous discourse» (Biber et al. 2007: 828; 833). This apparently theoretical consideration establishes a connection between the second (order) and the third

(therefore) items on the list displayed in figure 3 above. Not only is textual legitimacy of EU recitals grounded on reasons – as it has been demonstrated – but it also relies heavily on result/inference adverbials, namely on result/inference cognitive structures. Once the scope is stated, then comes the desirable or desired outcome. Some examples from RECI may clarify the point:

- (21) Therefore, the requirements for access to those simplifications should be aligned with the conditions and criteria [...] (32015R2446)
- (22) [...] and, as a result, also the indicative trajectory of the Union should reach, in 2022 [...] (32018R1999)
- (23) Consequently, UNECE regulations and the amendments thereto [...] should be incorporated (32013R0167)
- (24) It is thus also necessary to provide for an extension of the time limits for the renewal of safety certificates and safety authorisations [...] (32020R0698)

Figure 6 below shows the most frequent result/inference adverbials in RECI:

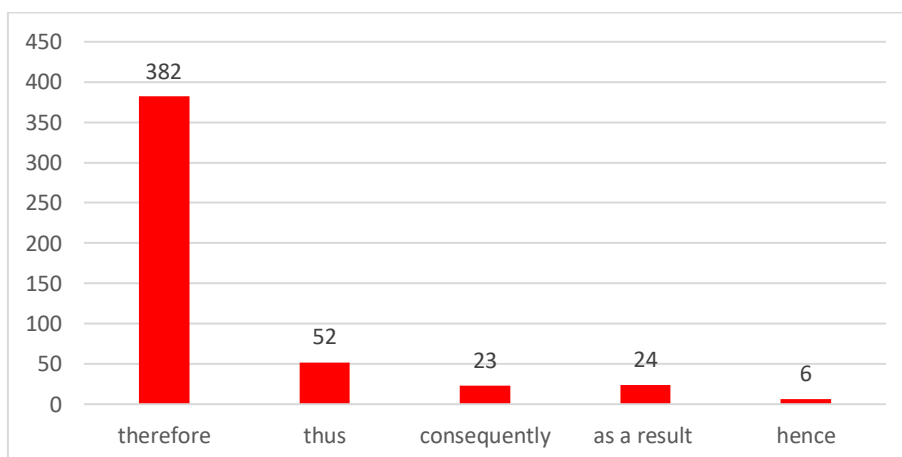


Figure 6 Frequency of result/inference adverbials

As all argumentative texts, most of recitals «have a binary structure, consisting of *premises* and *conclusion*, where conclusions contain information that is *inferred* from *premises*» (van Dijk 1980: 118), while the very first ones usually aim at providing a summary of the facts or at presenting the actual situation (be it political, social, or economic) which makes the regulation at issue necessary. They often refer to other regulations, directives or principles established in the international treaties on which secondary legislation is based. Some examples from RECI may clarify the point:

- (25) (1) The protection of natural persons in relation to the processing of personal data is a fundamental right. (32016R0679)
- (26) (1) Regulation (EU) No 1380/2013 of the European Parliament and of the Council (4) establishes a Common Fisheries Policy (CFP) for the conservation and sustainable exploitation of fisheries resources. (32019R1241)
- (27) (1) The European Foundation for the improvement of living and working conditions (Eurofound) was established by Council Regulation (EEC) [...] (32019R0127)
- (28) (1) The Union has concluded a number of multilateral, regional and bilateral international trade agreements [...] (32014R0654)
- (29) (1) The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the 'Withdrawal Agreement') was concluded on behalf of the Union [...] (32020R2170)

In these introductory recitals, the use of present and past simple tense is very frequent since the aim is to provide a factual framework, within which a problematic aspect has been identified by the Commission or by other stakeholders. Once the situation has been described in details, a socio-economic or political bias is identified:

- (30) (6) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. [...] (10) The objectives and principles of Directive 95/46/EC remain sound, but it has not prevented fragmentation in the implementation of data protection across the Union [...] (32016R0679)
- (31) (3) The ineffective enforcement in cases of cross-border infringements, including infringements in the digital environment, enables traders to evade enforcement by relocating within the Union. [...] (5) Consumers should also be protected against infringements covered by this Regulation that have already ceased [...] (8) Competent authorities should be in a position to open investigations or proceedings on their own initiative [...] (22) The effectiveness and efficiency of the mutual assistance mechanism should be improved. (32017R2394)
- (32) (5) The withdrawal of the United Kingdom from the Union would, in the absence of any special provisions, have the effect that EC type-approvals and EU type-approvals [...] could no longer ensure access to the Union market. [...] (6) Currently, the Union type-approval legislation does not provide for the possibility to re-approve types already approved elsewhere in the Union. (32019R0026)

(33) (3) Traffic noise harms health in numerous ways. Protracted noise-related stress can exhaust human physical reserves, disrupt the regulatory capacity of organ functions and hence limit their effectiveness. Traffic noise is a potential risk factor for the development of medical conditions and incidents such as high blood pressure and heart attacks. The effects of traffic noise should be further researched in the same manner as provided for in Directive 2002/49/EC of the European Parliament and of the Council. (32014R0540)

The examples above, which are mainly «‘material’ clauses” [...] concerned with our experience of the material world» (Halliday and Matthiessen 2004: 179-211) express a general truth as in (33) or a happening as in (31) and (32). The texts seem to be descriptive passages but such descriptions «tend to be concerned with particularized entities rather than generalized ones and are usually woven into sequences» (Halliday and Matthiessen 2004: 216) as in (43) and in (44). Once the problem has been identified and ‘described’, the regulation at issue may be presented as the solution to the bias by providing, on certain occasions, the predictable positive effects of the regulation itself. In other terms, ‘in order to’ prevent the problem from persisting and ‘in order to’ implement the principles as stated in the international treaties or previous regulations and directives or to follow up the advice and the evidence from the various impact assessment committees, the importance and the benefits which (would) derive from the adoption of the regulation are stated:

(34) (4) This Regulation is merely intended to safeguard that freedom by ensuring that an agreed location can be situated anywhere within the Union [...] (32018R1807)

(35) (28) Regulation (EU) 2016/679 and this Regulation provide a coherent set of rules that cater for free movement of different types of data. (32019R0517)

(36) (31) This Regulation regulates the procedure concerning the decision of repayment or remission to be taken by the Commission [...] taking into account the Union interest in ensuring that the customs provisions are respected and the interests of economic operators acting in good faith. (32015R2446)

(37) (11) it is not considered advisable for this Regulation to cover the award of public service contracts in that specific sector. [...] (12) This Regulation is based on the principles of neutrality as regards the system of property ownership referred to in Article 295 of the Treaty [...] (32007R1370)

(38) (3) This Regulation comprehensively harmonises the rules in the Community in order to achieve an internal market for cosmetic products while ensuring a high level of protection of human health. (32019R1223)

(39) (10) [...] This Regulation also provides a margin of manoeuvre for Member States to specify its rules [...] (32016R0679)

In these examples, present simple tense is again mainly used as from the communicative and pragmatic point of view these recitals reinforce the assumption that the regulation at issue definitely serves the purpose of providing a viable solution to a given identified problem: they are propositions whose cognitive processes project in the indicative mode (Halliday and Matthiessen 2004: 470). Frequently, this kind of propositions – aimed at stating or establishing a rule or at showing a new element which is critical to the development and the adoption of the regulation – presents a peculiar structure, which is «the typical environment for a fact [namely] a ‘relational’ process clause of the ‘intensive’ type, either ‘attributive’ or ‘identifying’» (Halliday and Matthiessen 2004: 472). The formal impersonal subject ‘it’ is not a participant in the process nor it refers to other elements in the text, but it stands simply as a ‘subject placeholder’ (Halliday and Matthiessen 2004) because the attribution of stance to the speaker/drafter is implicit (Biber et al. 2007: 977). The main complement clause (that- or to-) constructions are:

It + is + adjective + extraposed complement clause;

It + is also/therefore/hence/further/thus + adjective + extraposed complement clause;

It + should be + adjective + extraposed complement clause

The adjectives that in general control a *that* complement belong to three main semantic domains and express 1) degrees of certainty, 2) affective and psychological states, and 3) evaluation of situations (Biber et al. 2007: 671). As far as recitals are concerned, the most frequently used category of adjectives is the third one, namely ‘importance adjectives’ (Biber et al. 2007: 673).

Figure 7 below shows the most frequent adjectives which occur in the pattern of complement clauses controlled by adjectival predicates:

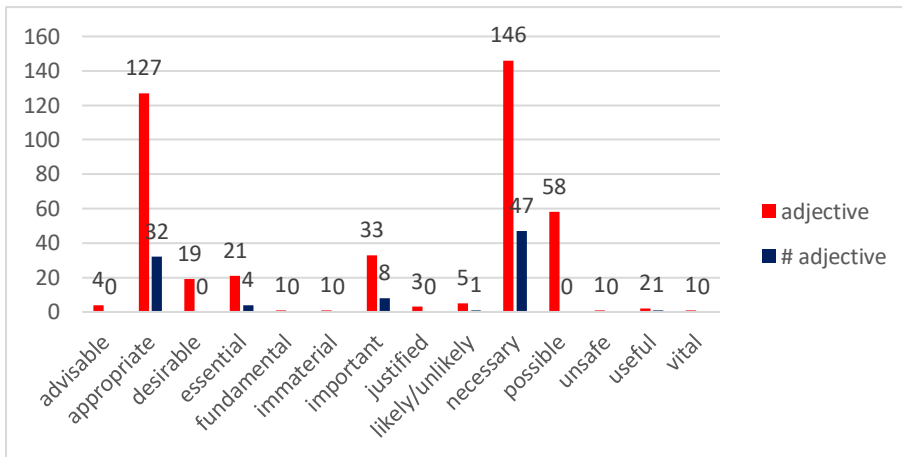


Figure 7 Frequencies of adjectives that control complement clauses.

Adjectives are often pre-modified by adverbs like ‘therefore’, ‘thus’, ‘also’, ‘hence’, and ‘further’ which reinforce the meaning conveyed by the adjective they come with. Some examples from RECI may clarify the point, as far as attributive intensive clauses are concerned – since identifying intensive clauses are far less frequent:

- (40) It is important that manufacturers supply relevant information to vehicle owners in order to prevent misuse of safety devices. (32013R0167)
- (41) [...] it is therefore unlikely that consent was freely given in all the circumstances of that specific situation. (32016R0679)
- (42) It is also appropriate that the Regulation take account of the evolution of Union law and that some of its provisions are adapted in order to facilitate their application. (32013R0952)
- (43) It is necessary that the Director has a sufficiently long mandate in order to ensure stability and delivery of a long-term strategy for the BEREC Office. (32018R1971)
- (44) It is essential that decisions regarding the validity and infringement of EU trade marks have effect and cover the entire area of the Union [...] (32017R1001)
- (45) It is therefore advisable, in respect of the area examined by the SAC, first to limit the fishing effort to previous levels and then not to allow any increase of that level. (32011R1343)
- (46) Given effective competition, it is likely that consumers will receive a fair share of the resulting benefits. (32010R1218)
- (47) [...] it is desirable that the information provided by economic operators be shared, taking account of the relevant data-protection provisions [...] (32013R0952)

(48) [...] it should be possible to modify such an end point, particularly in the case of newly emerging risks. (32009R1069)

These impersonal ‘attributive’ clauses with fact clauses as Carrier and Attributes of assessment realise «a semantic system of assessment» (Halliday and Matthiessen 2004: 474). In particular, the most frequent adjectives used in this evaluative pattern are ‘necessary’, ‘desirable’, ‘essential’, ‘important’, ‘appropriate’, and ‘advisable’: not only do they convey an idea of ‘obligation’ and ‘desire’, but this idea is often reinforced as in (52) and (56) by ‘therefore’ which «not only introduce[s] conclusions denoting consequences of certain facts, but may also introduce INFERRED reasons or causes» (Van Dijk 1980: 210 – emphasis in the original). In addition, if we assume that drafters in carrying out their activity have to report what experts and stakeholders involved in the preliminary phases of the law-making process have found out, it is possible to interpret the fact-clauses as instances of ‘reported speech’, where projections of propositions – namely statements or questions – and proposals – namely offers and commands – from official documents, reports and impact assessments are arranged according to a sequence of enumerated recitals.

Semantic assessment and fact clauses

Cognitive and desiderative processes – namely propositions and proposals – are projected in recitals according to recurring patterns, which on the one hand connect the proposition/proposal to its purpose (namely its potential or predictable or desirable consequence) and on the other hand connect the proposition/proposal to its cause (namely its reasonable and experienced cause). The most frequent patterns are presented below:

1) *fact-clause* (proposal and proposition) + (*in order*) *to* [...] or *to this/that end*

(49) In order to ensure effective recovery of fines imposed on associations of undertakings for infringements that they have committed, it is necessary to lay down the conditions on which the Commission [...] (32003R0001)

(50) To optimise the use of the network and ensure its reliability it is useful to introduce additional procedures [...] (32010R0913)

(51) It is desirable to achieve uniform and consistent application of controls throughout the Union in order to avoid unfair competition among Union exporters [...] (32013R0608)

(52) It is essential to that end that the Executive Director [...] have a role in the selection of those scientific experts. (32019R1381)

(53) In order to accommodate the diversity of agricultural systems across the Union, it is appropriate to allow Member States to consider ploughing up [...] (32017R2393)

2) *in the interest of* [...] + *it should/be* + *adjective/verb*

(54) [...] in the interest of avoiding administrative burden by obliging them to create several producer organisations for recognition purposes, it should be possible for a producer organisation to obtain [...] (32017R2393)

(55) It is necessary to provide procedural safeguards for the notifier, both in the interests of legal certainty and to ensure uniform application of this Regulation [...] (32006R1013)

(56) In the interest of clarity, predictability, rationality and simplification and in order to reduce the burden for vehicle manufacturers, this Regulation should contain only [...] (32013R0168)

(57) In the interest of sound financial management, the accumulation by the Office of significant budgetary surpluses should be avoided. (32017R1001)

3) *given* (that) + *fact-clause* or *should* + *be*/adjective or verb

(58) Given that the amendment, [...] enter into force too late for Member States to observe the original deadline for certain notification obligations in 2020, it is necessary to [...] (32020R2220)

(59) Given the nature of such Union General Export Authorisations, there may be a need [...] (32014R0599)

(60) Given the large amounts of data that public authorities and bodies governed by public law handle, it is of the utmost importance [...] (32018R1807)

(61) Given that the derogations from the rules that would normally apply should be limited to what is necessary, it should, [...] be possible for the Member States to continue to apply [...] (32020R0698)

4) *in view/in the light of the* [...] *experience/fact/application/development* etc. + *fact-clause*

(62) In view of the overall positive experience with the application of that Regulation, which expires on 31 May 2010, and taking into account further experience acquired since its adoption, it is appropriate to adopt [...] (32010R0330)

- (63) In view of the need for uniform application of this Regulation and for the proper functioning of the internal market, it is necessary in the interests of efficiency [...] (32006R1013)
- (64) [...] in the light of recent experience it is necessary to clarify the rules applicable to the definition, description, presentation and labelling of spirit drinks [...] (32008R0110)
- (65) In light of the fact that the new legal framework for the CAP has not yet been adopted, it should be made clear that [...] (32020R2220)
- (66) [...] in the light of economic, commercial and legal developments, certain improvements to the legal framework are necessary to strengthen the enforcement [...] (32013R0608)
- (67) In view of the fact that the Community has approved Decision C(2001)107/Final [...] in order to harmonise waste lists with the Basel Convention and revise certain other requirements, it is necessary to incorporate [...] (32006R1013)
- (68) In light of past experience and the enhanced role of BEREC, the Board of Regulators or the Management Board may need to hold additional meetings. (32018R1971)

5) *(in order) to [...] + should*

- (69) To strengthen BEREC, make it more representative and safeguard its expertise, experience and knowledge [...], each Member State should ensure that [...] (32018R1971)
- (70) The Community shipping industry should attain the necessary economies of scale in order to compete successfully on the world liner shipping market. (3209R0246)
- (71) In order to control Union expenditure, there should be a cap on assistance granted to producer organisations [...] (32013R1308)
- (72) [...] the Commission should [...] carry out an evaluation of this Regulation on the basis of information [...], in order to assess the actual effects of this Regulation [...] (32019R1157)
- (73) [...] competent authorities [...] should carry out an official investigation in accordance with Regulation (EU) 2017/625 in order to verify compliance with the requirements for organic production [...] (32018R0848)

Another important aspect to point out – as far as frequent items in the domain of recitals fact-clauses are concerned – are two words: ‘experience(s)’ and ‘need(s)’, as fact-nouns (Halliday and Matthiessen 2004: 470). The former as a ‘noun of indication’ «relates to propositions with indications, which are equivalent to caused modalities (Halliday and Matthiessen 2004: 471); the latter as a noun of modulation «relates to proposals, which are inherently modulated» (Halliday and Matthiessen 2004: 478). This circumstance

presents a further binary relationship: on the one hand, the regulation is based on previously acquired knowledge as reported by experts; on the other hand, the regulation can be developed after having identified a bias or a new state of things and thus a consequent necessity of restoring order or of governing a new situation.

(74) Experience gained so far with the application of Regulation (EC) No 834/2007 shows the need to make clear to which products this Regulation applies. (32018R0848)

(75) Council Regulation (EC) No 834/2007 (14) identified the need for a future review of the Union rules on organic production, taking into account the experience gained from the application of those rules. (32018R0848)

(76) The experience gained in implementing Regulation (EU) No 525/2013 of the European Parliament and the Council (9) indicated the need for synergies and coherence [...] (32018R1999)

(77) Recent experience has demonstrated the need for specific measures to ensure a sufficient supply of sugar to the Union market during the remaining period of sugar quotas. (32013R1308)

If on the one hand, the most frequent adjectival predicates convey an idea of importance and provide an assessment of the situation they refer to, on the other hand, the item 'experience', whose most recurrent collocates are verbs like 'show', 'prove', 'make possible', 'exist', 'highlight' and 'indicate', marks a high degree of certainty.

Thus, in recitals a perfectly balanced combination of elements of assessment linked to opinions – shared by the Committees and other stakeholders involved in the preparatory work – and elements of certitude connected to facts and reality, namely to experience, represent the two main conceptual pillars on which textual legitimacy is built. As it has been demonstrated in this section, the two conceptual pillars have their own syntactic and lexico-grammatical peculiarities which allow the text to convey a message that combines private intentions and public purposes.

5.4.2 Structural interpretation of 'textual legitimacy': rhetorical properties and cognitive structuring

After having presented some of the most meaningful lexico-grammatical features of EU recitals and after having shown how these syntactic and semantic choices are

connected to a precise strategy to combine private intentions and public purposes, it is now important to reflect of EU recitals' 'cognitive structuring' (Bhatia 1993: 113). Apart from some phenomena such as qualification and discontinuity (Mellinkoff 1969; Gustafsson 1976; Bhatia 1984; Mattila 2013), which characterise legal language in general and which characterise EU recitals at textual level, too, in the previous section some syntactic phenomena which are peculiar to EU recitals have been pointed out, namely different patterns of purpose, of causal relations and a variety of creatively arranged fact-clauses aimed at conveying a semantic assessment.

Recitals in EU regulations vary quantitatively (from three in 32006R1627 to two hundred and seven in 320013R1308), in length (from eleven words in recital (30) in 32007R1370 to 1229 words in recital (5) in 32013R0952), in the degree of complexity of information packaging, and in their communicative purpose. Some examples from RECI clarify the point:

(78) (31) This Regulation should be applied in accordance with international maritime law.
(32006R1013)

(79) (9) Particular attention needs to be paid to issues of re-export and end-use.
(32009R0428)

(80) (2) Regulation (EC) No 178/2002 defines risk analysis as a process consisting of three interconnected components: risk assessment, risk management, and risk communication. For the purposes of risk assessment at Union level, it establishes the European Food Safety Authority (the 'Authority'), as the responsible Union risk assessment body in matters relating to food and feed safety. (32019R1381)

(81) (10) In order to ensure a consistent and high level of protection of natural persons and to remove the obstacles to flows of personal data within the Union, the level of protection of the rights and freedoms of natural persons with regard to the processing of such data should be equivalent in all Member States. Consistent and homogenous application of the rules for the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data should be ensured throughout the Union. Regarding the processing of personal data for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Member States should be allowed to maintain or introduce national provisions to further specify the application of the rules of this

Regulation. In conjunction with the general and horizontal law on data protection implementing Directive 95/46/EC, Member States have several sector-specific laws in areas that need more specific provisions. This Regulation also provides a margin of manoeuvre for Member States to specify its rules, including for the processing of special categories of personal data ('sensitive data'). To that extent, this Regulation does not exclude Member State law that sets out the circumstances for specific processing situations, including determining more precisely the conditions under which the processing of personal data is lawful. (32016R0679)

Despite the considerable variety of variables that influence the structure, the length and the communicative purpose of EU recitals, it is possible to identify some frequent cognitive patterns within each recital and among recitals within a given regulation, without prejudice to the fact that each numbered recital expresses one single concept (Tessuto 2021: 157).

As according to the *English Style Guide* (2021), EU recitals provide the ground for the following enacting terms, thus recitals do not establish new rules or norms, but evoke and refer to the principles, to the «authoritative starting point or basis for legal reasoning wherever legal provision must be made for a situation not governed by a strict or precise rule of law» (Robertson 2016: 41). Although from a theoretical perspective principles are not necessarily linked to specific facts and remain at a deeper and more abstract level in the structure of a legal system (Robertson 2016: 38), in recitals, principles from international treaties – for example – combine with facts and opinions (from other documents, such as White and Green Papers) in order to provide a realistic and well-documented framework. The examples below clarify the point:

(82) (28) In order to help the competition authorities of the Member States to apply Articles 81 and 82 of the Treaty effectively, it is expedient to enable them to assist one another by carrying out inspections and other fact-finding measures. (32001R0001)

(83) (2) Achieving freedom to provide services in the field of transport is an important element of the common transport policy under the Treaty. Consequently, it is the aim of that policy to increase the fluidity of movement of the different means of transport within the Community. (32008R1100)

(84) (7) [...] Based on scientific advice and as an action under the Commission White Paper of 12 January 2000 on Food Safety, that Regulation introduced a set of rules aimed at

protecting the safety of the food and feed chain, which is complementary to Community legislation on food and feed. [...] (32009R1069)

(85) (50) In light of the principle of proportionality, the applicability of the price caps for regulated intra-EU communications should be limited in time and should expire five years after its entry into force. Such a limited duration should allow proper assessment of the effects of the measures and evaluation to what extent there is an ongoing need to protect consumers. (32018R1971)

In example (82) two articles – from the EC Treaty and establishing which practices and which abuse of a dominant position within the common market are to be prohibited as incompatible with the common market itself – are mentioned as the ultimate goal of certain measures and actions by competition authorities to carry out. By virtue of the principles which inform the two articles of the EC Treaty, a series of actions are considered advisable – literally, ‘expedient’. The term comes from the Latin *expēdīre*, which means ‘to benefit’ but also ‘to extricate’, originally by freeing the feet (OED)¹⁷. The enacting terms are inspired by the two articles which will turn principles into rules or norms which are narrower and directly linked to facts. Example (83) provides an even more explicit reference to one of the principles par excellence, namely freedom. Freedom in the field of transport is presented by referring to the Treaty as an important step to take and as a crucial element which is ultimately the purpose of the policy at issue. Once the importance of the principle has been affirmed, the second part of the recital – which is introduced by ‘consequently’ – provides the factual predictable effect of the application of the principle, namely the ‘fluidity of movement’. Example (84) combines scientific advice, recommendations from the Commission White Paper on Food Safety and rules, which – established by the regulation in question – are linked to specific actions and whose purpose is explicitly expressed. Details on the methods adopted to implement such rules are provided in the following enacting terms. In preparing the ground for the subsequent enacting terms, EU recitals bridge the gap between principles (as stated in EU Treaties), scientific recommendations (impact assessment) and political opinions (Green and White Papers) and gradually connect the abstract level of principles to the realistic assessment which are inspired by the world as it is or as it has been and which will

¹⁷ <https://www.lexico.com/definition/expedite> (accessed 25.05.21)

influence the way rules will be drafted and the way the world will be. Example (85) turns to the principle of proportionality, which regulates some constraints whose effects are thus justified. This is consistent with what demonstrated in Section 5.1 (*Table 5*) and with the intuition that recitals as a macrosection of EU regulations are made of representative speech acts, where statements, hypotheses, descriptions, and suggestions are the most frequent cognitive patterns which characterise the 'case description'. The expression could seem to be improperly used here if considered its original meaning (Bhatia 1993: 110), but it is actually functional to what this study intends to demonstrate: on the one hand the hybridity of EU regulations as a genre and on the other hand one possible source of influence, that is 'legal cases'.

Recitals are in a broad sense 'descriptions' of particular circumstances which we may call 'cases' even though they are not judicial cases (as in Bhatia's theory). However, what they have in common with judicial case descriptions – on which more later – is their communicative function: both (judicial and non-judicial case descriptions) are not of «universal application and it is absolutely crucial for the writer to specify the kind of case description(s) to which the rule applies» (Bhatia 1993: 110). If case law as a genre is characterised by two key aspects, namely 1) legal precedent to justify decisions and 2) the procedural history of the legal case in question (Mertz 2007: 60), EU recitals have two key elements: on the one hand, there are no legal precedents but textual precedents, namely treaties and secondary legislation which are intertextually mentioned (see examples from 82 to 85); on the other, the summary of assessment, opinions and facts is provided as a necessary background to the coming regulation. As in case law, in recitals these two aspects are interconnected as their common purpose is to provide textual legitimacy to the subsequent enacting terms, namely to provide reasons which support enacting terms and the regulation as a whole. Nevertheless, the reasoning from the syntactic and lexical point of view seems to be logically organised but

it is not a 'chain' of demonstrative reasoning. It is a presenting and representing of those features of the case which 'severally co-operate' in favour of the conclusion, in favour of saying what the reasoner wishes said, in favour of calling the situation by the same by which he wishes to call it. The reasons are like the legs of a chair, not the links of a chain. (Wisdom 1964: 157 in Bhatia 1993: 119)

A few things have been said about syntactic and lexical features of EU recitals, both qualitatively and quantitatively, but it is not easy to present in general terms recitals cognitive patterns since they often vary without complying with an apparent pre-established criterion. Nonetheless, it is possible to find some frequently recurrent patterns which show a certain degree of creativity and try to categorise recitals according to their syntactic, lexical, and communicative features.

5.4.3. A taxonomy of EU recitals: prefatory, argumentative, and procedural recitals

Despite the remarkable variety of recitals which are observable in EU regulations, it is possible to identify three main categories of EU recitals: prefatory recitals, argumentative recitals, and procedural recitals.

Prefatory recitals normally introduce the topic and provide a ‘preface’ or a ‘premise’ to what comes after. They are usually characterised by a paratactic structure, whose communicative aim is mainly descriptive and narrative (Werlich 1976) or expository (Hatim 1984). Their length may vary considerably from one to several lines, but the tenses are basically the same, namely simple present and simple past: they are the tenses of description and certainty. The use of present perfect is far less frequent. The examples below show some prefatory recitals:

- (86) (1) The promotion of the harmonious, sustainable and inclusive development of the internal market as an area in which goods, persons, services and capital can freely and safely circulate is one of the priorities of the Union. (32018R1672)
- (87) (1) The Union is committed to building an Energy Union with a forward-looking climate policy. Fuel efficiency is a crucial element of the Union’s 2030 climate and energy policy framework and is key to moderating energy demand. (32020R0740)
- (88) Regulation (EU) No 952/2013 (Code), in its consistency with the Treaty on the Functioning of the European Union (TFEU), delegates on the Commission the power to supplement certain non-essential elements of the Code, in accordance with Article 290 TFEU. The Commission is therefore called to exercise new powers in the post-Lisbon Treaty context, in order to allow for a clear and proper application of the Code. (32015R2446)

- (89) (24) Concerning the protection of geographical indications, it is important to have due regard to the Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS Agreement'), and in particular Articles 22 and 23 thereof, and to the General Agreement on Tariffs and Trade ('GATT Agreement') including Article V thereof on freedom of transit, which were approved by Council Decision 94/800/EC (7). [...] (32019R0787)
- (90) (1) In order to promote the internal market, a comprehensive Union type-approval system for tractors, their trailers and interchangeable towed equipment was established by Directive 2003/37/EC of the European Parliament and of the Council of 26 May 2003 on type-approval of agricultural or forestry tractors, their trailers and interchangeable towed machinery, together with their systems, components, and separate technical units (3). (32015R0167)
- (91) (25) Regulation (EU) No 1151/2012 of the European Parliament and of the Council (8) does not apply to spirit drinks. Rules on the protection of geographical indications of spirit drinks should therefore be laid down. Geographical indications should be registered by the Commission. (32019R0787)
- (92) (9) This Regulation does not affect the ability of Member States to provide, under their national law, for additional national controls on movements of cash within the Union, provided that those controls are in accordance with the Union's fundamental freedoms, in particular Articles 63 and 65 TFEU. (32018R1672)
- (93) (4) Such obstacles to the free movement of data processing services and to the right of establishment of service providers originate from requirements [...] (32018R1807)
- (94) (2) A Regulation is the appropriate legal instrument as it imposes clear and detailed rules which do not give room for diverging transposition by Member States. Moreover, a Regulation ensures that legal requirements are implemented at the same time throughout the Community. (32009R1223)

The category of prefatory recitals has four sub-categories which fulfil four different communicative functions:

- 1) they establish the field, as they provide the actual framework within which the regulation at issue has to work (examples (86), (87), and (88));
- 2) they summarise previous legislative actions, such as approvals, amendments or other legislative documents like treaties and provide the legal framework which supports the newly drafted regulation (examples (89) and (90));

3) they 'point out' potential bias or weak points in the legislative provisions currently in force or new problems or scenarios that previous legislative documents have not covered or predicted (examples (91), (92) and (92));

4) they do a kind of 'self-promotion', by emphasising the advantages and the benefits which derive from adopting a new regulation (example (94)).

Prefatory recitals may occur at the very beginning of the section but also in mid-position as in examples (89) and (91). Another important linguistic device to observe in prefatory recitals is the so-called 'three-part list': this linguistic device is frequently symbolic of completeness, its presence indicates that all enumerated possibilities have been covered and the reader/listener is invited to conclude that the list is comprehensive (Beard 2000, Jeffries 2010). It is used to convey an idea of symbolic completeness to the message delivered, as in 'multilateral, regional and bilateral international trade agreements' (86), 'harmonious, sustainable and inclusive development' (87), and 'type-approval system for tractors, their trailers and interchangeable towed equipment' (90).

Argumentative recitals have usually a more complex and logically elaborate structure which in most cases is hypotactic. The syntactic and lexical elements, which have been identified in the analysis carried out in the previous section, are arranged in argumentative recitals according to recurring cognitive patterns:

1) *semantic assessment (+ semantic assessment)*

(95) (108) It is necessary to lay down measures to ensure a smooth transition to the legal framework governing the import of organic and in-conversion products into the Union as modified by this Regulation. (32018R0848)

(96) (2) It is appropriate to ensure that Regulation (EC) No 450/2008 is consistent with the Treaty on the Functioning of the European Union (TFEU), in particular Articles 290 and 291 thereof. It is also appropriate that the Regulation take account of the evolution of Union law and that some of its provisions are adapted in order to facilitate their application. (32013R0952)

(97) (20) It is expedient to define the concept of concentration in such a manner as to cover operations bringing about a lasting change in the control of the undertakings concerned and therefore in the structure of the market. It is therefore appropriate to include, within the scope of this Regulation, all joint ventures performing on a lasting basis all the

functions of an autonomous economic entity. It is moreover appropriate to treat as a single concentration transactions that are closely connected in that they are linked by condition or take the form of a series of transactions in securities taking place within a reasonably short period of time. (32004R0139)

(98) (8) It is necessary to establish general objectives and principles of risk communication, taking into account the respective roles of risk assessors and managers, while guaranteeing their independence. (32019R1381)

PATTERN 1) is the simplest cognitive structure in argumentative recitals and it is used to introduce a point which is suggested, advised or assessed according to the principles which inform the ideological and political framework of the regulation.

2) *pattern of purpose* [...] + *should* [...] or *fact clause* or PATTERN 1)

(99) (24) In order to keep administrative burdens to a minimum, the notified information for competent authorities, poison control centres and assimilated entities should be submitted centrally for the Community by way of an electronic interface. (32009R1223)

(100) (15) In order to ensure that the Union continues to fulfil its obligations under the GFCM Agreement, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the implementation in Union law of amendments [...] (32011R1343)

(101)(5) In order to meet the challenge of reducing the CO2 emissions of road transport, it is appropriate that Member States, in cooperation with the Commission, provide for incentives to innovate with regard to fuel-efficient and safe C1 tyres, C2 tyres and C3 tyres. (32020R0740)

PATTERN 2) normally occurs in the first argumentative recitals: the cognitive pattern links the reason and the method to employ in order to serve the purpose directly so that the objective and the means to reach it are explicitly connected. In other terms, given the problematic point, an advisable solution is suggested: the modal verb 'should' emphasises this aspect which makes the recital a recommendation rather than an obligation.

3) *pattern of purpose* [...] + *fact clause* or *semantic assessment* [...] + *causal relations* [...]

(102) For the purpose to have a unique identification of economic operators it should be clarified that each economic operator is to register only once with a clearly defined data set. The registration of economic operators not established in the European Union as well as of persons other than economic operators allows for the proper functioning of

electronic systems that require an EORI number as an unequivocal reference to the economic operator. Data should not be stored for longer than needed and therefore rules for the invalidation of an EORI number should be foreseen. (32015R2446)

(103)(4) In order to be sufficiently attractive to the private sector, it is essential that financial instruments are designed and implemented in a flexible and transparent manner. However, experience has shown that certain measure-specific eligibility rules limit the uptake of financial instruments in the rural development programmes, as well as the flexible use of financial instruments by fund managers. Therefore, it is appropriate to provide that certain measure-specific eligibility rules do not apply to financial instruments. For the same reason, it is also appropriate to provide that start-up aid to young farmers under Article 19 of Regulation (EU) No 1305/2013 may also be provided in the form of financial instruments. In view of those changes, it should be provided that, where support for investments under Article 17 of Regulation (EU) No 1305/2013 is granted in the form of financial instruments, the investment must contribute to one or more Union priorities for rural development. (32017R2393)

(104) It is essential that the Union possess appropriate instruments to ensure the effective exercise of the Union's rights under international trade agreements in order to safeguard its economic interests. This is particularly the case in situations where third countries enact trade restrictive measures that diminish the benefits accruing to the Union's economic operators under international trade agreements. The Union should be in a position to react swiftly and in a flexible manner in the context of the procedures and deadlines set out by the international trade agreements which it has concluded. There is therefore a need for rules defining the framework for exercising the Union's rights in certain specific situations. (32014R0654)

Example (103) shows a recital which has a double structure: PATTERN 3) is repeated in the first and in the second part of the recital to create a parallelism which reinforces the arguments presented in the recital. Example (104) shows the pattern whose cognitive chunks are arranged according to another order, but the communicative effect is not affected.

4) *experience has shown/proven/indicated + causal relation* or PATTERN 1) or PATTERN 2)

(105) Experience has shown that most of BEREC's tasks are better carried out through working groups, which should always ensure equal consideration of all NRAs' views and contributions. The Board of Regulators should therefore set up working groups and

appoint their Chairs. NRAs should promptly respond to nomination requests in order to ensure the quick establishment of working groups, in particular those related to procedures with time-limits. The working groups should be open to the participation of experts from the Commission. The staff of the BEREC Office should support and contribute to the working groups' activities. (32018R1971)

(106) Experience has shown that there are cases where business records are kept in the homes of directors or other people working for an undertaking. In order to safeguard the effectiveness of inspections, therefore, officials and other persons authorised by the Commission should be empowered to enter any premises where business records may be kept, including private homes. However, the exercise of this latter power should be subject to the authorisation of the judicial authority. (32003R0001)

(107) The experience with the arrangements for the import of organic products into the Union under Regulation (EC) No 834/2007 has shown that there is a need to revise those arrangements in order to respond to consumer expectations that imported organic products meet standards as high as those of the Union, as well as in order to better ensure the access of Union organic products to the international market. In addition, it is necessary to provide clarity regarding the rules applicable to export of organic products, in particular by establishing organic export certificates.

'Experience' is another element which provides credibility and stability to the reasoning which is based on facts rather than on opinions or assessment, though from experts or appointed committees. Thus, 'experience' gives solid ground for the creation of logical connections among facts, potential effects of given choices and expected results. It is less frequent to find in the same recital objective expressions connected to 'experience' and subjective 'manifestations' connected to opinions and assessment. Nonetheless, the combination of objective and subjective perspectives is possible but far less frequent and linked to the existence of a 'need' as shown in example (105). It is now possible to state that if on the one hand prefatory recitals fulfil an expository function, on the other hand argumentative recitals have a persuasive function whose main sources are «a set of values held by a [...] community» (Cockroft and Cockcroft 1992: 19) and «the models of arguments, which structure emotion as well as reasoning» (Cockroft and Cockcroft 1992:10), namely the Aristotelian *ethos* and *logos*. The strategies syntactically identified in PATTERN 1) – 4) evoke two of the ten models of argument which persuaders may usually

adopt to organise their reasoning, that is «what causes it or what effects does it create» and «what is affirmed about it» (Cockcroft and Cockcroft 1992: 41). EU drafters prefer to exploit positive and inclusive persuasion rather than the negative and selective one, and in order to do that they also make comparisons and provide definitions. The reasons that may justify this strategic approach are connected to the structure of the regulation itself: on the one hand, at the very beginning of the enacting terms there is a section dedicated to ‘definitions’ where the meaning of regulation keywords is provided; on the other hand, the only kind of explicit comparison in EU recitals is the one made between previously approved measures – which have proven to be inadequate – and the newly proposed. Hence, there is an explicit necessity to integrate or amend the former and to approve the latter.

Procedural recitals are instructional (Werlich 1976) and usually have a paratactic structure. Their main verb is introduced by ‘should’, ‘must’ or ‘might’. The most frequent subjects are ‘the Commission’, ‘Member States’, ‘the contract’, ‘the controller’, ‘compliance’, ‘the provisions’, ‘this Regulation’, and other institutional entities:

- (108)(24) The contract between the Commission and the Registry should provide for procedures to improve the organisation, administration and management of the .eu TLD [...] (32019R0517)
- (109)(13) Third parties demonstrating a sufficient interest must also be given the opportunity of expressing their views, [...] (32004R0802)
- (110)(114) In any case, where the Commission has taken no decision on the adequate level of data protection in a third country, the controller or processor should make use of solutions [...] (32016R0679)
- (111)The Commission, in close liaison with the Advisory Committee on State aid, should be able to adopt implementing provisions laying down detailed rules concerning the procedures under this Regulation, (32015R1589)
- (112)(41) [...] Member States should have the possibility to decide to increase the percentage applied to calculate the amount [...] (32017R2393)
- (113)(43) Compliance with this Regulation should be enforceable, as appropriate, by means of fines and periodic penalty payments. (32004R0139)
- (114)(21) Member States should lay down rules on penalties applicable to infringements of this Regulation and ensure that they are implemented. [...] (32003R1946)

(115)(7) Pharmaceuticals for humans that are addressed by other international agreements, to which the Community or the relevant Member State is party, or organisations, of which the Community or the relevant Member State is a member, should be excluded from the scope of this Regulation. (32003R1946)

The way prefatory, argumentative, and procedural recitals are arranged in the recital section is quite standardised since a prefatory recital – or a series of prefatory recitals – is typically used to introduce a topic or a detail of the theme dealt with in the recital at issue. Then, a series of logically sequenced argumentative recitals (but often also a single argumentative recital) follows the prefatory one(s) to create a sub-section within the recital section. At this point, procedural recitals are introduced to explain ‘who’ has to carry out the task or the procedure which is necessary to obtain the expected results. The analysis of recitals in Regulation 2018/1807 may clarify the point:

Table 8 Taxonomy of recitals in Regulation 2018/1807

Recitals	Type of recitals
(1) The digitisation of the economy is accelerating. Information and Communications Technology is no longer a specific sector [...]	prefatory 1
(2) Data value chains are built on different data activities [...]	prefatory 1
(3) The freedom of establishment and the freedom to provide services [...] apply to data processing services. [...]	prefatory 1
(4) Such <u>obstacles</u> to the free movement [...] originate from requirements in the laws of Member States [...]. Other rules or administrative practices have an equivalent effect [...] Legal <u>uncertainty</u> further limits the choices available to market players [...] This Regulation is merely intended to safeguard that freedom [...]	prefatory 3
(5) At the same time, data mobility in the Union is also inhibited by private restrictions [...]	prefatory 3
(6) The combination of those obstacles has led to a lack of competition [...]	prefatory 3
(7) <u>For reasons of legal certainty</u> and <u>because of the need</u> [...] In order to remove obstacles to trade [...] <u>it is necessary to</u> adopt uniform rules [...]	argumentative 2
(8) The legal framework on the protection of natural persons [...] and in particular Regulation (EU) 2016/679 [...] and Directives (EU) 2016/680 (4) and 2002/58/EC (5) [...] are not affected by this Regulation.	prefatory 2
(9) The expanding Internet of Things, artificial intelligence and machine learning, represent major sources of non-personal data [...]	prefatory 1
(10) Under Regulation (EU) 2016/679, Member States may neither restrict nor prohibit the free movement [...] This Regulation establishes [...] Regulation (EU) 2016/679 and this Regulation provide a coherent set of rules [...]	prefatory 2 and 4

(11) <u>In order to create a framework</u> for the free flow of non-personal data [...] <u>it is necessary to</u> lay down a clear, comprehensible and predictable legal framework [...] A principle-based approach [...] should ensure [...] <u>In order to avoid</u> the risk [...] detailed technical rules <u>should not</u> be established.	argumentative 2
(12) This Regulation should not affect data processing [...]	procedural
(13) The free flow of data within the Union will play an important role [...] Given the large amounts of data [...] it is of the utmost importance that [...] Therefore, public authorities and bodies governed by public law should be covered by this Regulation [...] In this regard, the principle of the free flow of non-personal data for which this Regulation provides should apply also to [...]	prefatory 1 and 4
(14) As in the case of Directive 2014/24/EU, <u>this Regulation is without prejudice to laws</u> [...] Consequently, nothing in this Regulation obliges Member States to contract out or externalise the provision of services [...]	prefatory 4
(15) This Regulation should apply to natural or legal persons [...] This Regulation should therefore not apply to data processing services [...]	procedural
(16) This Regulation does not lay down rules relating to the determination of applicable law in commercial matters and is therefore without prejudice to Regulation (EC) No 593/2008 [...]	prefatory 4
(17) This Regulation should apply to data processing in the broadest sense [...] It should cover data processing of different levels of intensity [...]	procedural
(18) Data localisation requirements represent a clear barrier to the free provision of data processing services [...] In order to give effect to the principle of free flow [...] to ensure the swift removal of existing data [...] and to enable [...] the processing of data [...] Member States should only be able to invoke public security [...]	prefatory 1, argumentative 2 (=blurred)
(19) The concept of ‘public security’, within the meaning of Article 52 TFEU and as interpreted by the Court of Justice, covers both the internal and external security [...] In compliance with the principle of proportionality [...]	prefatory 1 (definition)
(20) In order to ensure the effective application of the principle of free flow [...] and to prevent the emergence [...] Member States should immediately communicate to the Commission any draft act [...]	argumentative 2
(21) Moreover, in order to eliminate potential existing barriers, [...] <u>Member States should</u> carry out a review of existing laws, [...] This should enable the Commission to examine the compliance [...]	argumentative 2 and procedural (= blurred)
(22) The obligations to communicate existing data localisation requirements and draft acts [...] should apply to [...], but not to [...]	procedural
(23) In order to ensure the transparency of data localisation [...] Member States should publish information [...] Alternatively, Member States should provide up-to-date information [...] In order to appropriately inform natural and legal persons [...] Member States should notify to the Commission [...] The Commission should publish this information [...]	argumentative 2 and procedural (=blurred)
(24) Data localisation requirements frequently stem from a lack of	prefatory 3

trust [...] such lack of trust cannot be overcome solely by the nullity of contractual terms [...] Therefore, this Regulation should clearly stipulate that [...]	
(25) Natural or legal persons [...] can comply with such obligations [...]	prefatory 1
(26) Where a natural or legal person is subject to an obligation [...] the competent authority should be able to seek assistance from competent authorities in other Member States. In such cases, competent authorities should use specific cooperation instruments [...]	procedural
(27) Where a request for assistance entails obtaining access [...] such access must be in accordance with Union law or national procedural law [...]	procedural
(28) This Regulation should not allow users to attempt to evade the application of national law. It should therefore provide for the imposition [...] of effective, proportionate and dissuasive penalties [...]	prefatory 4
(29) The ability to port data without hindrance is a key factor in facilitating user choice [...] The real or perceived difficulties in porting data cross-border also undermine the confidence of professional users [...]	prefatory 1 and 3
(30) <u>In order to</u> take full advantage of the competitive environment, [...] In order to align with the innovation potential of the market [...] the detailed information and operational requirements [...] <u>should be</u> defined by market players [...]	argumentative 2
(31) <u>In order to</u> be effective and to make switching [...] such codes of conduct <u>should be</u> comprehensive [...] The codes of conduct should also make clear that [...] The Commission should ensure that [...]	argumentative 2 and procedural (=blurred)
(32) Where a competent authority in one Member State requests assistance from another Member State in order to obtain access [...] it should submit, [...] a duly justified request [...]	procedural
(33) Enhancing trust in the security of cross-border data processing should reduce the propensity of market player [...] to use data localisation [...] It should also improve the legal certainty [...]	procedural
(34) Any security requirements related to data processing [...] should continue to apply [...]	procedural
(35) Security requirements set at national level should be necessary and proportionate [...]	procedural
(36) Directive (EU) 2016/1148 of the European Parliament and of the Council (15) provides for legal measures to boost the overall level of cybersecurity in the Union [...] These elements are to be further specified by the Commission in implementing acts under that Directive.	prefatory 2
(37) The Commission should submit a report on the implementation of this Regulation [...]	procedural
(38) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union [...]	prefatory 4
(39) Since the objective of this Regulation, [...] cannot be sufficiently achieved by the Member States, but can rather, [...] be better achieved at Union level, the Union may adopt measures [...]	prefatory 4

Although it has been possible to identify three main categories and eight subcategories (1. establishing the field, 2. establishing the legal framework, 3. self-promotion, 4. biases in previous regulations, 5. introducing a point, 6. linking reason and method, 7. procedural, and 8. blurred) within the three main ones, this distinction is neither absolute nor rigid. As a matter of fact, some recitals may combine more than one subcategory – as recitals (10), (13) and (29) – or may combine more than one category – as recitals (18), (21) and (31). Thus, sometimes the boundaries between different kinds of recital are blurred. *Figure 8* below shows the distribution of different kinds of recital in RECI. The total amount of recitals in RECI is 1966.

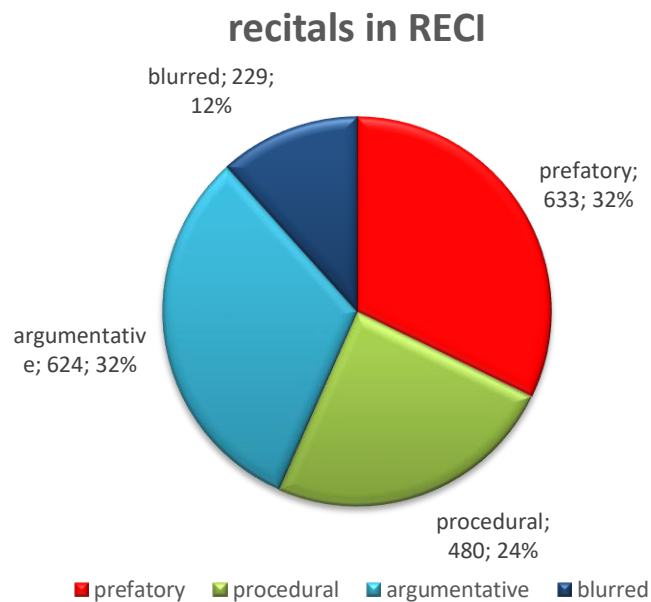


Figure 8 Distribution of recitals in RECI

Within prefatory recitals, it is possible to observe the occurrence of the four subcategories above mentioned:

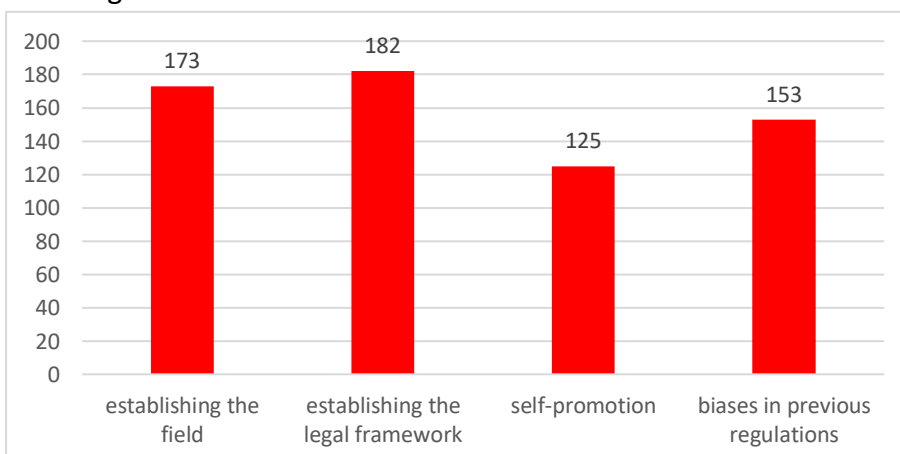


Figure 9 Distribution of subcategories of prefatory recitals

Although the text, that is the recital section, is divided visually into separate and enumerated units, some of these units are bound together, in particular those belonging to the same category, for example the prefatory ones: they create a cohesive but heterogeneous macrounit which is not organised according to a linear sequence but according to a netlike structure. This confirms the assumption that each recital is an isolated nucleus (Tessuto 2021).

Despite being non-enacting terms, recitals are norm-like elements (Humphreys et al. 2015: 41) which are frequently mentioned by judges at the European Court of Justice in their judgments when providing the legal context of a given case (for example in *HF v. European Parliament, Scotch Whisky Association and Others v. The Lord Advocate and The Advocate General for Scotland, Canon Europa NV v. European Commission*, just to mention a few of them): «[i]n the absence of any authoritative connections forthcoming from EU institutions, connections [between recitals and enacting terms] will be made by those who have to interpret the law (judges, lawyers, advisory bodies etc.)» (Humphreys et al. 2015: 42). This means that even though recitals are fundamental to legal reasoning in the EU and are neither impositive (Howerkate 1984 in Trosborg 1995) nor commissive speech acts, their regulative power is expressed «‘off record’, i.e. with no explicit directive force» (Trosborg 1991: 75) but is construed ‘on record’ by judges who interpret recitals as speech acts which express a certain degree of imposition. In addition, to maintain the parallelism between regulations and judgments, recitals are to regulations what *ratio decidendi* and *obiter dicta* are to judgments. It means that, given the high degree of persuasive force of the latter (Tiersma 2007: 1214), from a rhetorical perspective, recitals combine *logos* (*ratio decidendi*) and *ethos* (*obiter dicta*, namely thing said by the way) which both serve the purpose of preparing a suitable framework for the enacting terms to follow.

From the linguistic and pragmatic point of view, recitals are characterised by a less formulaic and legalistic language, which is nevertheless formal (Joos 1961). If EU regulations as a macrogenre (Martin and Rose 2008: 218-225 in Biel 2014: 78) could be categorised as operative legal documents (Tiersma 1999: 139), which adhere to a quite rigid structure (see section 5.1) and create or modify legal relations, the EU recitals as a move (Bhatia 1993) within EU regulations have some features which are common to expository and persuasive legal documents (Tiersma 1999: 139-141). Even though recitals are 'supposedly' objective due to the procedure which establishes the factual and legal background, the terms and conditions of the regulation at issue and the patterns which drafters exploit to organise and develop recitals aim at persuading the receiver that the preliminary explanation (or justification) is reasonable, valid, and acceptable. As the analysis has demonstrated, the linguistic and pragmatic strategies adopted to convey an idea of compliance with principles, laws and experts' impact assessment consist of a binary structure, which is based on the relationship between premises and conclusion and which is established by complement clause (that- or to-) constructions. The premises/conclusion relationship characterises all argumentative texts – such as experimental research papers, but also court judgments – as argumentation «is an essential tool adjudicators — judges and courts — use in order to achieve widespread social consensus about their decisions, thereby securing the legitimacy of their jurisdictional power» (Perelman 1980 in Mazzi 2012: 243).

The next section will present the same kind of analysis - which was carried out on recitals - but performed on another section of EU regulations, namely on enacting terms.

5.5 The use of representatives in EU enacting terms (regulations): syntactic, rhetorical, and pragmatic peculiarities

In EU regulations, immediately after the preamble and the enacting formula – which after the Treaty of Lisbon is no longer 'has/have decided as follows' but simply 'HAS/HAVE ADOPTED' – the enacting terms, namely the properly legislative part of the act (EU 2021: 23) also called 'articles', are introduced. The enacting terms – which come in the

form of a numbered list of isolated paragraphs – have a standard structure that is represented below:

- (1) the subject matter and scope;
- (2) the definitions;
- (3) the provisions relating to delegated acts and implementing acts;
- (4) the measures relating to implementation. [...];
- (5) transitional and final provisions. (EU 2015: 42)

The purpose of this section is to analyse the enacting terms of EU regulations that, according to the official guidelines, «can be divided broadly into three categories: imperative, permissive, and declarative» (EU 2021: 56). As to declarative provisions, «they are those that are implemented directly by virtue of being declared, for example definitions or amendments» (EU 2021: 56) and whose illocutionary force does not rely on expressions of obligations or permission but on speech acts which are a combination of expositives and performatives (Austin 1962). As articles, definitions in EU regulations are performatives, but as locutionary acts they have some features typical of expositives or representatives (Searle 1975), such as the use of the simple present instead of any other modal verb. On the other hand, imperative and permissive provisions – which can be positive or negative, and can impose a prohibition or give a permission – are exercitives/directives – according to Austin (1962) and Searle (1975) – and commissives. Using Searle’s symbols, we could represent graphically the enacting terms of EU regulations as follows:

Table 9 Enacting terms of EU regulations through Searle’s symbols.

section of EU enacting terms	direction of fit	speech acts
subject matter and scope; definitions	$\uparrow B(p) / D \downarrow \emptyset(p)$	representative acts declaration
provisions relating to delegated and implementing acts; measures relating to implementation. [...];	$! \uparrow W(H \text{ does } A)$ $C \uparrow I(S \text{ does } A)$	directive acts commissive acts
transitional and final provisions	$D \downarrow \emptyset(p)$	declaration

Even though in *Table 5* (see 5.1 above) enacting terms as a whole section of EU regulations are represented in a broad sense as directive and commissive acts, it is possible to identify other types of speech acts – for example, performatives and declaratives: they are far less frequent and expected, but their function is not secondary or casual, as in definitions.

Definitions – which will be further explored later in the text (section 5.4.1.) – provide an ideal speech-act bridge between recitals and articles: they both extend and mitigate the perlocutionary effect of the enacting formula, since definitions give further information which allows the articles to make a specific sense. Their function is not apparently persuasive, but expositive – they clarify usages and references (Austin 1962: 160) – and directive – to paraphrase Searle, definitions get a word or a term to mean something. The propositional content has to be intended as the meaning that a certain word will have in a future situation as established by the articles of the regulation. Two sincerity conditions must be satisfied: on the one hand, what stated in definitions has to be able to be characterised as true or false, as on its truth or its falsity depends the validity of the articles to follow (belief as a sincerity condition). On the other hand, through what is stated in definitions, a wish which cannot be flouted or ignored, is made (want as a sincerity condition): it will influence the way the world will be perceived and the way people will behave in compliance with the newly adopted regulation.

Provisions and measures aimed at implementation, namely the articles which specify prohibitions, obligations, and permissions, are mainly directive and commissive speech acts (Danet 1980; Maley 1987; Trosborg 1995), where the most significant syntactic peculiarities are a dynamic use of deontic modality (Caliendo et al. 2005), depersonalisation and nominalisation (Gotti 2011; Biel 2014). Although EU English is «an unmarked form of English devoid of cultural specificity [... where] neutral forms of expressions are a diplomatic tool» (Felici 2016: 128) and although English is «the least suitable language to express civil law concepts » (Pozzo 2014 in Seracini 2020: 37), the articles of EU regulations – and EU regulations in general – are «constitutive and therefore performative in nature» (Caliendo et al. 2005: 401). In the next sections, the

different parts which make up the enacting terms will be analysed from the perspective of the speech act theory.

5.5.1 Definitions in EU regulations

Before considering practical examples of definitions from the corpus DEFS, a prefatory introduction to definitions is provided.

Definitions are a crucial element not only to EU regulations (and other secondary legislation legal documents), but also to international agreements, contracts, and judicial judgments. If agreements, contracts like EU secondary legislation have incorporating definitions with dedicated sections, in judicial judgments judges' opinions may sometimes establish a new meaning of or a new way to interpret a word or a term. This frequently happens with contracts and insurance policies, when judges are asked to resolve legal and linguistic ambiguities that are often generated by apparently familiar words or phrases, such as 'insured' and 'other persons' as in *State Farm Mutual Automobile Insurance Co. v. Joyce Jacober* (1972). There, the ambiguity in the insuring exclusionary clause perceived by most of the members of the court made the court reason that

the words 'the insured' in the insuring clause can be understood as referring to whichever member of the class of insured people is subject to liability in the particular accident. [...] Those who are not 'the insured' in this sense gain potential status as 'other persons'. (Solan 2010: 83)

In *General Motors Corporation v. Yplon SA*. (1997) the national court asked the European Court of Justice to explain the meaning of the expression 'has a reputation' when referred to a trade mark, since Belgian, French, Dutch and British governments had given different interpretations to the phrase as formulated in their native languages. The European Court of Justice held that

the answer to be given to the question referred must therefore be that Article 5(2) of the Directive is to be interpreted as meaning that [...] a registered trade mark must be known by a significant part of the public concerned by the products or services which it covers. In the Benelux territory, it is sufficient for the registered

trade mark to be known by a significant part of the public concerned in a substantial part of that territory [...].

Not only is the European Court an interpreter, but it is also a translator, a mediator that stands between languages, between cultures as represented by the languages (Robertson 2016), and between concepts as represented by different legal systems. Judges' definitions are stipulative, too, and are a useful tool to express interpretive authority: as declaratory definitions in statutes, they have the force of law (Tiersma 2000) and function as performatives. They do not 'describe' or 'report' or constare anything at all, they are not true or false in the Austinian sense, but they allow the speaker to perform a real action: what is said to be done is accomplished and consequently a real fact is immediately produced. Stipulative definitions are not collected in law dictionaries, but they are in judicial dictionaries: the former provide definitions of legal terms, but also of common words – as in the case of 'whisky' as mentioned in Mellinkoff (1963: 37) or as in the case of the conjunction 'and' in Curzon's *Dictionary of Law* as reported by Harris and Hutton (2007: 155); the latter include judges' definition of ordinary words or expressions from cases, but are less systematic since they do not contain all legal terms.

Apart from the distinction between lexical and stipulative definitions – where the former are a sort of history that defines a word along four dimensions (contextual, syntactic, expressive and indicative) and the latter represent an explicit process of setting up the meaning-relation between some word and some object (Robinson 1954), and apart from a list of at least eighteen names for sorts of definition 'found in good writers' by Robinson (1954: 7), a further meaningful distinction to take into account in the legal context is that between extensive or extensional and intensive or intentional definition (Alcaraz Varó and Hughes 2002). If the former distinction - lexical/stipulative - is more conceptual and generic, as the two categories of definition have two different communicative purposes, the latter distinction - extensive/intensive - is logical and textual as they are two different ways of presenting a given concept.

An intensional definition «state[s] the superordinate concept and list[s] the differentiating characteristics in order to position the concept being defined in its concept system and to delimit it from the other concepts in the system» (Temmerman 2000 in

Garzone 2020: 71); it is analytic and «limits the possible range of meaning and connotations» (Alcaraz Varó and Hughes 2002: 129) that a given term may have.

An extensional definition – also known as denotative definition (Harris and Hutton 2007: 119) – «consists in mentioning examples of what the word applies to» (Robinson 1954: 108): in other terms, it is a kind of definition by example or enumeration. In this respect, the example below from DEFS is quite telling:

(116) (b)

‘vehicle’ means a motor vehicle, tractor, trailer or semi-trailer or a combination of these vehicles, defined as follows:

—

‘motor vehicle’: any self-propelled vehicle travelling on the road, other than a vehicle permanently running on rails, and normally used for carrying passengers or goods,

—

‘tractor’: any self-propelled vehicle travelling on the road, other than a vehicle permanently running on rails, and specially designed to pull, push or move trailers, semi-trailers, implements or machines,

—

‘trailer’: any vehicle designed to be coupled to a motor vehicle or tractor,

—

‘semi-trailer’: a trailer without a front axle coupled in such a way that a substantial part of its weight and of the weight of its load is borne by the tractor or motor vehicle; (32006R0561)

In (116), the definition of the word ‘vehicle’ is a five-part list – motor vehicle, tractor, trailer or semi-trailer or a combination of these vehicles – and constitutes an extensive definition of the word, which is further explained by an indented list of four items, which are individually examples of intensive definitions, characterised by qualification insertions (Bhatia 1993) and syntactic discontinuity (Bhatia 1984).

In particular, the definition of ‘tractor’ has a right-branched pyramidal structure which gradually forms a two-part list through a three-part list to a four-part list conveys an idea of explicit completeness as «any list with four or more than four items [is] taken

to be literal and usually *explicitly* complete in contrast with the default tendency to view three-part lists as *symbolically* complete» (Jeffries 2010: 70).

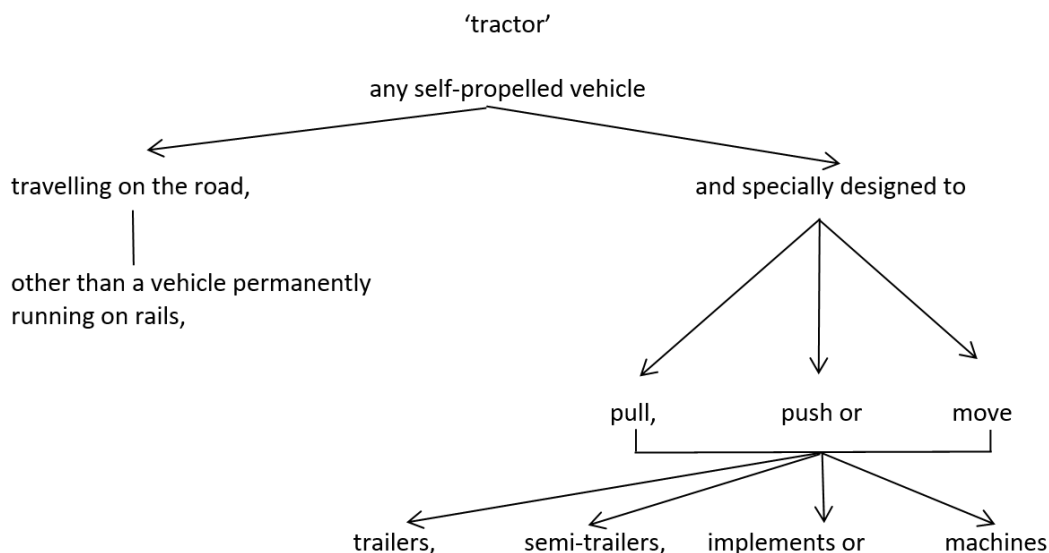


Figure 10 Graphic representation of syntactic discontinuity in the definition of 'tractor' (32006R0561) using Bhatia's model (1993)

Basically, intensive definitions are introduced by the verb 'to mean', while in extensional ones the most occurring verb is 'to include':

- (117) 'user' means a natural or legal person, including a public authority or a body governed by public law, using or requesting a data processing service (32018R1807)

This definitional pattern is quite frequent in EU definitions, which adopt both logical strategies for the sake of precision but also for the sake of rational persuasion.

As previously said, definitions in EU regulations have the function to create a link between recitals, the enacting formula, and the enacting terms: their 'representational' approach to facticity – facts as presented in recitals and as further established in the enacting terms – «becomes instrumental in a tacit translation to a language of claims» (Yovel 2002: 14), namely a language of normativity. In definitions, a frequently used rhetorical device, which strengthens the passage from facticity to normativity and fulfils an effective persuasive function, is the already mentioned four (or more)-part list. Whenever it is possible to turn to it, the attempt to convey an idea of explicit completeness succeeds in making the

following legislative provision «precise, clear, unambiguous and all-inclusive» (Bhatia 1993: 103, 117). The examples below are cases of four (and more than four)-part lists from DEFS:

(118) 18. "biological diversity" means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part [...] (2003R1946)

(119) 'food for special medical purposes' [...] is intended for the exclusive or partial feeding of patients with a limited, impaired or disturbed capacity to take, digest, absorb, metabolise or excrete ordinary food or certain nutrients contained therein, or metabolites [...] (32013R0609)

(120) [...] Sensitive habitats, in particular, include habitat types listed in Annex I, and habitats of species listed in Annex II to Directive 92/43/EEC, habitats of species listed in Annex I to Directive 2009/147/EC, habitats whose protection is necessary to achieve good environmental status under Directive 2008/56/EC and vulnerable marine ecosystems as defined by point (b) of Article 2 of Council Regulation (EC) No 734/2008 (27); (32019R1241)

As is evident from (120), embedded in extensive definitions there exists another kind of definition, that is the 'intertextual' one: this category of definition refers to another definition as provided in a previously adopted document and normally reads as follows:

(121) "food" means food as defined in Article 2 of Regulation (EC) No 178/2002(10); (32003R1946)

(122) 'agricultural area' means agricultural area as defined in point (e) of Article 4(1) of Regulation (EU) No 1307/2013; (32018R0848)

This kind of intertextual definition exploits another strategy aimed at reinforcing and promoting the validity of the regulation at issue, since mentioning another legally binding document is highly persuasive. Another kind of definition, in part similar to the intertextual one but far less frequent in EU regulations, is the tautological one:

(123) "competent authority" means a competent authority designated by a Party to the Protocol, [...] (32003R1946)

(124) 'conformity assessment body' means a conformity assessment body within the meaning of Regulation (EC) No 765/2008, [...] (32020R1056)

(125) 'mixture' means a mixture or solution composed of two or more substances;
(32009R1223)

The examples above are cases of equative definitions (Jopek-Bosiacka 2011: 18): as typical legal definitions, they follow the structure of an equivalence where though *definiendum* and *definiens* are the same or the latter is the former followed by a post-modifying noun-group, as 'designated by a Party' in (123).

Although definitions are organised as lists of enumerated and self-supporting entries, they sometimes seem to be dependent on the previous one(s) as in (126) where entry (18) 'customs debt' is used to define entry (19) 'debtor':

(126) (18) "customs debt" means the obligation on a person to pay the amount of import or export duty which applies to specific goods under the customs legislation in force;

(19) "debtor" means any person liable for a customs debt; (32013R0952)

This is a rational way to organise and present definitions of words and terms that will be used in the enacting terms, but unfortunately – as argued by some scholars who support the Plain English Movement, such as Cutts (2002), Williams (2011) and Grasso (2018) just to mention a few – what frequently happens is a 'delay', namely definitions come late, because some terms or phrases defined in the dedicated section are used in recitals, too: for example, 'whole-vehicle type-approval procedure' in Regulation 2013/0167. The chart below shows the distribution of the phrase in the document.

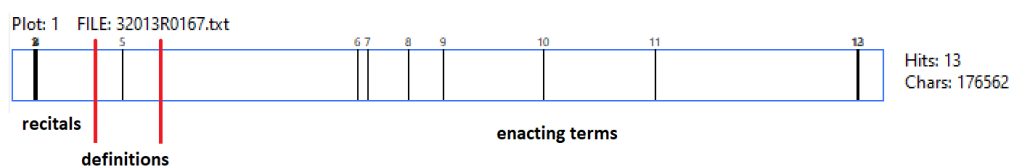


Figure 11 Distribution of 'whole-vehicle type-approval' in 32013R0167: recitals, definitions and enacting terms.

Thus, if definitions in EU regulations create a pragmatic bridge between facticity and normativity, from the communicative point of view their function is only partially fulfilled, as demonstrated by the case above-mentioned: the phrase 'whole-vehicle type-approval' occurs four times in recitals, once in definitions and eight times in the enacting terms, which implies a partial loss of communicative effectiveness of the definition provided

(Cutts 2002), because the phrase ‘whole-vehicle type-approval’ is used in the document before being defined. Nonetheless, this is what happens in contracts, too: the section dedicated to ‘definitions’ comes after the heading, commencement and date, parties, recitals, and operative provisions and comes before interpretation, conditions, precedent provisions, other operative clauses, standard clauses – also known as boiler-plate clauses, closing formula and schedule (Di Renzo Villata et al. 2017: 189-190). This coincidence is not simply a mere juxtaposition of similar sections in different kinds of texts, but it reinforces at a textual level the contractual nature of EU regulations (Robertson 2016): as in any communicative interaction, there exist an addresser, which is the legal authority as represented by the EU institutions, and an addressee, which is embodied by the EU Member States (Caliendo 2004) and not directly by EU citizens.

As mentioned above (see section 5.5), definitions do not have an apparently persuasive function. Before investigating the definitions that most frequently appear in EU regulations, it is important to clarify the reason of the adverb ‘apparently’. As a matter of fact, providing a set of definitions at the beginning of the enacting terms should not be persuasive, but the presence of formal items and approximators, namely hedges, which are aimed at persuasion (White 2003; Finegan 2010), seems to demonstrate something slightly different. The main hedging strategy adopted in EU definitions is limitation, which «remove[s] fuzziness or vagueness from a part of a text by limiting category membership» (Vass 2004: 132) and which is expressed through some fixed lexical items that «functioning as disjuncts» (Vass 2004: 137) ‘limit’ the scope of the utterance probably to soften its illocutionary force, to prevent or temper negative reaction, and to reinforce the idea that what is stated in the regulation is valid and justified within a precise context as identified in the recitals. From the lexical point of view, it is possible to identify some prepositional phrases that carry out this hedging function. The examples below clarify the point:

- (127) "customs supervision" means action taken in general by the customs authorities with a view to ensuring that customs legislation and, where appropriate, other provisions applicable to goods subject to such action are observed [...] (32013R0952)
- (128) limited, in law or in fact, to an entity or industry [...] (32019R0712)
- (129) For the purposes of this Regulation, the following definitions apply [...] (32014R0251)

In particular, (127) combines an introductory hedge and the performative present tense of the verb 'apply' which results in «almost a factual [more objective] tone» (Waters 1997: 813) if compared to 'must' or 'shall': as the basic form for the encoding of performativity (Garzone 2013) its constitutive value guarantees that a certain state of things comes into existence or that the enacting terms of a given regulation make 'the' sense intended. Thus, not only must what has been stated in definitions be true, but its validity depends on the context within the definition has been provided. In other terms, what has been called 'hedge' above (Vass 2004, 2017) may be considered in terms of what Bhatia (1993: 111) refers to as syntactic discontinuity, which is mainly used, according to the scholar, to reduce ambiguity despite being «an 'inelegant' characteristic of legislative writing» (Waters 1997: 811).

Definitions in EU regulations may also state the scope of the act (EU 2015: 39). As a matter of fact, instead of lexical definitions, in EU regulations it is often possible to find sentences under the section headline 'definitions' that read the canonical formula 'x means y' but that should read 'This Regulation applies to any x intended as ...'. An example from DEFS may clarify the point:

(130) 'Registrar' means a natural or legal person that, on the basis of a contract with the Registry, provides domain name registration services to registrants; (32019R0517)

What is provided in (119) is not a lexical definition of the term 'registrar', since in general English it refers to 'an official responsible for keeping a register or official records' or to 'a middle-ranking hospital doctor undergoing training as a specialist' (OED). Although in EU Regulation 2019/0517 'registrar' is not a common word but a term, and although «concepts or terminology specific to any one national legal system have to be used with care» (Šarčević 2016: 201) within the EU legal system, legal criteria adopted to choose a term instead of another aim at legal reliability and follow a cognitive pattern that is onomasiological (Garzone 2020). Therefore, as suggested in *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation* (2015) the definition above could be recast as 'This Regulation applies to any registrar intended as a natural or legal person that, on the basis of a contract with the Registry, provides domain name registration services to registrants' as in the regulation at issue the definition provided is not lexical but stipulative, since «it

serves to provide the recipients with an interpretation of an expression that might otherwise be in doubt or unavailable to them» (Harris and Hutton 2007: 14) or ‘incorporating’, where «an ordinary word is used in the body of the statute, but a separate section then defines the term» (Tiersma 1999: 119): incorporating definitions do not have to be precise but can be highly technical as in Regulation 2014/0540 in DEFS where 24 terms and expressions connected to vehicles and their technical specifications are defined. Definitions in EU regulations may come in many forms, but the subtle distinction between scope and definition is hardly ever entirely overcome. The example below presents another case of fuzzy distinction between scope and definition:

(131) This Regulation applies to:

- (a) identity cards issued by Member States [...]
- (b) registration certificates issued in accordance with [...]
- (c) residence cards issued in accordance with Article [...] (32019R1157)

What (131) provides is not a definition, but the realm of application of the regulation at issue, which indirectly limits the situations under which the three elements listed as (a), (b) and (c) may be valid. From this preliminary presentation of EU definitions, it is apparent that EU regulations do not present a standard format for definitions and that there exists more than one kind of definition. It is in the interaction between EU institutions and Member States that the terms of EU regulations become operative and part of the national legal framework of each state. National institutions, as representatives of the EU citizens, are the direct interlocutor of the EU institutions and the guarantor that the rights and duties of their citizens are granted, so as to avoid episodes like the recent British withdrawal from the European Union and the even more recent risk of a Polish withdrawal (Łazowski 2021). In the next section, the provisions relating to delegated acts and the measures relating to implementation in EU regulations will be analysed to complete the picture of EU regulations. In particular, hedging as a persuasive linguistic device will be taken into consideration.

5.5.2 Provisions relating to delegated acts and implementing acts in EU regulations and measures relating to implementation in EU regulations

This section focuses on the strategies adopted in enacting terms to fulfil a double communicative function. On the one hand, operative provisions in EU regulations, as in statutes, establish new obligations and permissions. In order to do that, they have to follow a precise law-making process (see 2.1) and to demonstrate that the new measures are necessary and respectful of the democratic principles which inform EU institutions, international treaties, and national legislations. Although it is not the primary function of the enacting terms, the rhetorical strategies adopted in drafting them legitimise their validity. This communicative function of enacting terms is functionally similar to that of recitals but is carried out through different linguistic devices. Starting from a keyness analysis (Scott 1997) carried out on ENTE, the top three most frequent items in enacting terms are ‘shall’, ‘article’ and ‘referred’ (*Figure 12*).

Keyword Types: 58		Keyword Tokens: 197873		Search Hits: 0
Rank	Freq	Keyness	Effect	Keyword
1	12272	+ 1081.65	0.037	shall
2	11009	+ 470.6	0.0332	article
3	3798	+ 295.72	0.0117	referred
4	2631	+ 253.99	0.0082	paragraph
5	2326	+ 116.11	0.0072	b
6	2816	+ 95.29	0.0087	accordance

Figure 12 Keyness in enacting terms (Antconc)

From the outset of this analysis, what has been highlighted is how EU regulations – despite being regulative documents – are first and foremost constitutive rules (Caliendo 2004) which are expressed through a performative language. As constitutive rules, EU regulations are directly applicable and have immediate effect, a situation which is even more reinforced by the absence of an explicit recipient (Gibová 2011). The constitutive nature of EU regulations is also demonstrated by the modal ‘shall’ (Foley 2002), which, as a carrier of performative and prescriptive modality, is mainly used as a performative modal, with inanimate subjects and passive voice or with animate subjects and stative lexical verbs (Garzone 2013). In *Table 11* below the occurrences of ‘shall’ in the enacting terms are represented and some examples are provided:

Table 10 Occurrence of 'shall' in ENTE and some examples

constitutive or adeontic 'shall' (performatives) 8586

(132) This Regulation shall apply in civil and commercial matters (32012R0648).

(133) The relevant aid shall include a lump-sum amount (32013R1308)

(134) Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(2). (32011R1343)

prescriptive or deontic 'shall' (directives) 3686

(135) The masters of Union fishing vessels shall accept on board scientific observers (32017R1004)

(136) The Commission shall address its decision to all Member States (32013R0168)

(137) the manufacturer shall fill in only those items of the certificate of conformity (32013R0167)

These findings confirm what suggested by Caliendo (2004): «in Regulations modals are instrumental in establishing a binding legal status which denies any margin of noncompliance. The obligation is created and fulfilled». However, 'shall' is not the only modal used in the enacting terms, since also 'may' is quite frequent as a modal expression of possibility, a permissive choice to act or not, which implies a certain degree of discretion (see *Table 6* section 6.1). This sense of discretion is also conveyed through other linguistic devices, namely hedges, which, as said before, are aimed at persuasion and «allow a writer to present a claim as an opinion rather than a fact» (Hyland 2005: 181). Hedging, which is predominantly expressed lexically (Hyland 1996), can be achieved in an indefinite number of surface forms (Brown and Levinson 1987) but in the EU enacting terms they present certain prototypical peculiarities, which responds to the addresser's intention whose meaning depends on the addressee's intuition (Vass 2017). Some examples from ENTE are presented below to show which hedges are frequently used in the enacting terms of EU regulations:

(155) That declaration shall contain at least the particulars necessary for the entry summary declaration (32013R0952)

(156) A validated catch document shall include, as appropriate, the information set out in Annex II. (32010R0640)

- (157) Where it appears necessary, in order to ensure the safety of cosmetic products placed on the market, the Commission may, after consulting the SCCS, amend Annex I. (32009R1223)
- (158) The Commission shall without delay forward a copy (32003R0001)
- (159) [...] provided that any other measures available under this Regulation appear to be insufficient (32013R1308)
- (160) [...] the rigidity of prices or other circumstances suggest that competition may be restricted or distorted within the common market [...] (32003R0001)
- (161) [...] Article 21 and Article 23 of this Regulation shall apply mutatis mutandis to reasoned submissions within the meaning of Article 4(4) [...] (32004R0802)
- (162) [...] the kind of documentation required to establish a transfer [...] (32017R1001)
- (163) [...] having regard in particular to the specific case of manufacturer's relatively small production volume of the vehicle type concerned [...] (32013R0167)
- (164) [...] clearly foreseeable, very likely and imminent, and capable of being attributed beyond any reasonable doubt to an action or decision [...] (32019R0712)
- (165) A Member State shall only waive the provisions referred to in this paragraph if it has reasonable grounds for doing so. (32013R0168)

The lexical items identified in the enacting terms are recognised by Lakoff (1973: 472) in his research, too. The main function of the hedges as shown in examples (155) to (165) is that of using 'permissive expressions', although the intention of the whole document is to create a legal obligation, in circumstances which cannot be exhaustively defined (Charnock 2009). Thus, on the one hand, the use of performative 'shall' gives the enacting terms their constitutive flavour; on the other hand, the use of hedges partially softens this illocutionary effect. One possible reason which can justify this choice is the fact that the European Member States voluntarily join the EU and voluntarily accept its norms and regulations, which, despite being legally binding and stronger than the single national legislations, impose obligations and permissions through constative and performative expressions rather than prescriptive patterns.

Another linguistic device which characterises the enacting terms is the use of lexical items to create intertextual link ('referred' in *Figure 12*) with other documents (regulations, directives, or treaties, for example) or with different parts (paragraph, point,

subparagraph) of the same document. Intertextual devices fulfil four main functions: 1) they signal textual authority, 2) they provide terminological explanation, 3) they facilitate textual mapping, and 4) they define the legal scope. In other terms, not only do they create cohesion, harmony, and authoritativeness within and among regulations: they provide terminological explanation and textual mapping, since on the one hand, they serve the general function of textual coherence, but on the other hand, they serve the «generic and disciplinary functions of making law clear, precise, unambiguous and all-inclusive» (Bhatia 1998: 2). In particular, the patterns which are most frequent in the enacting terms were:

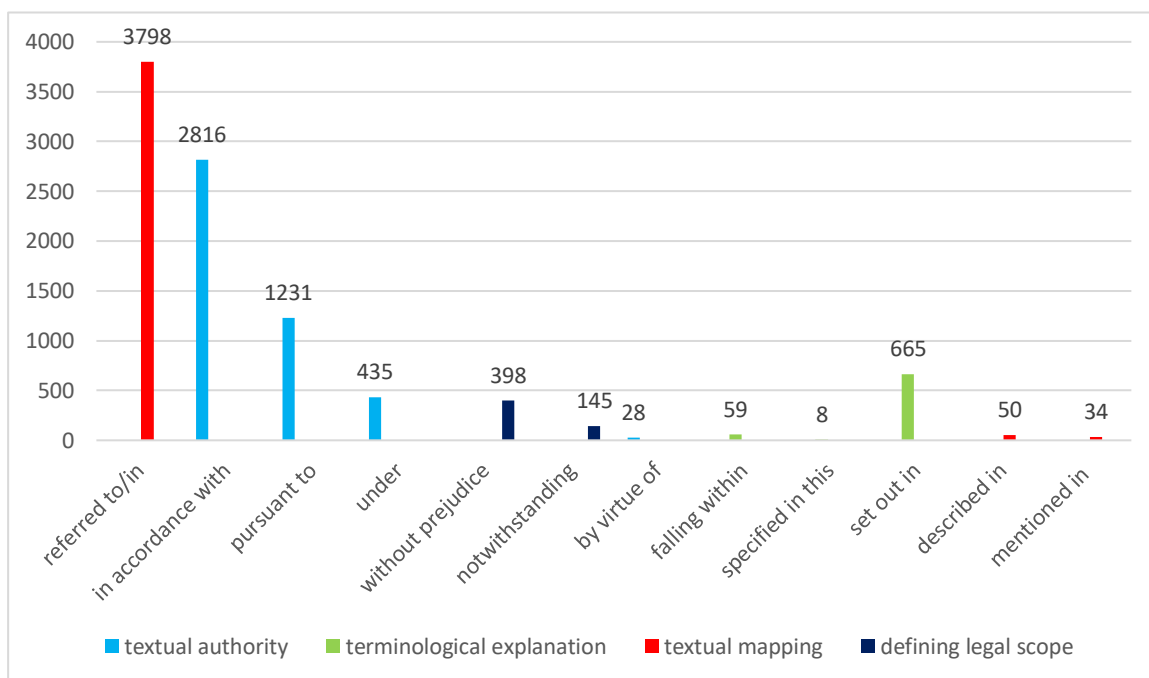


Figure 13 Occurrences of intertextual links in ENTE

As shown in Figure 12, the most frequently used links signal textual authority ('under', 'pursuant to', 'in accordance with') and textual mapping ('referred to/in'), which is coherent with the textual legitimacy expressed also in recitals. Despite being limited to two kinds of linguistic devices, namely hedges and textual links, this analysis shows how the regulative and facilitative functions (Danet 1980) of EU regulations are carried out using representative declarations (Searle 1976) which are based on the premises provided in recitals and which are never too direct, to prevent negative reactions (Vass 2004). If in recitals legitimacy and authority are obtained and fostered through linguistic devices such

as fact clauses and semantic assessment and purpose and causal patterns, in the enacting terms legitimacy originates from intertextual references, the use of the performative 'shall', and of the future-oriented 'present simple' (Garzone 2001).

The last part of the enacting terms to analyse is the closing section dedicated to transitional and final provisions, which has a standard and formulaic aspect. As said before (see section 6.1), the most formal and ritualistic parts of a legal document tend to occur at the start and the end since ritualistic language creates a frame around the document, marking its beginning and its end (Tiersma 1999) and this is exactly the rhetorical function carried out by final provisions.

5.5.3 Transitional and final provisions in EU regulations

Transitional and final provisions in EU regulations are usually introduced by a title, such as 'Period of validity' or 'Entry into force'. As anticipated, this closing part of EU regulations has a fixed structure, due to its ritualistic performative function. It usually reads as follows:

(166) Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 25 October 2012.

(167) Period of validity

This Regulation shall enter into force on 1 June 2010.

It shall expire on 31 May 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 April 2010.

As shown in *Table 10*, the speech acts which characterise this last part of the enacting terms are declarations (Searle 1975) or performatives (Austin 1962). The modal verb 'shall' is used as a performative verb (Caliendo 2004), since it occurs with inanimate subjects ('This regulation', 'it') and with the passive voice (which is a further indicator of

performativity according to Austin 1962). The 'obligation' – as the performative meaning of 'shall' can be «deemed to derive from its preceptive sense» (Garzone 2001: 165) – is at the same time created and fulfilled, thus performed.

In conclusion, the analysis carried out demonstrated that EU regulations are regulative tools which are also the expression of the European soft law: they are aimed at increasing EU's influence abroad but originated within the EU to govern internal affairs. The power of persuasion is «an existential requirement for the EU's popular legitimacy and credibility» (Michalski 2005) both within and beyond its legal framework and its geopolitical borders.

6. Conclusions

The law-making process in the European Union (EU) is a complex procedure which combines two complementary aspects – the socio-political dimension and the linguistic *regime* – and which has no equal in the world. This is the reason why the European legal framework is the only example of supranational legal system, which originates from international law – from the principles established in the international treaties on which the EU is founded – and civil and common law – the legal systems of the European Member States. Not only is the supranational legal system unique from a legal point of view, but it is unique also from a procedural perspective: the European Commission has the right of legislative initiative, the European Council and the European Parliament are the official legislators, but before new law is adopted a series of fixed steps has to be taken. After the Commission has submitted a proposal to the Council and the European Parliament, they both can adopt a legislative proposal either at the first reading or at the second reading. If they do not reach an agreement after the second reading, a conciliation committee is convened to draft a text that – once accepted by both institutions – is adopted. The fact that the procedure – as briefly described above – involves transnational institutions – since the Commission represents the administrative body, the Council is made up of the heads of government of each member state, and the Parliament is the only body directly elected – has led many scholars to talk of ‘democratic deficit’ since, despite the centrality of the Parliament in a model of political representation, this model has failed to build effective links between the people and the Union: «the governments have delegated powers to the European level, policy-making in Brussels has become isolated from domestic public opinion and national parliaments» (Hix and Hoyland, 2011). The EU is a ‘mixture’ of post-modern factors and old nation-state traditions reflected in the «most complex constitutional and decision-making arrangements imaginable» (Wilson 2014), but the original project of the United States of Europe – as envisaged by the Founding Fathers of the EU – should have led to a different epilogue.

Initially, the Monnet Method – «named after the venerable Jean Monnet» (Modi 2020: 321) – of functional and political spillovers had to start a virtuous circle of economic integration which should have culminated with political and social integration: the tasks in the post-world war Europe aimed at creating European institutions for a productive cooperation among member-states whose elites – at the beginning – enjoyed ‘permissive consensus’, ‘popular trust’, and a ‘deference to their decisions’ on European matters (Mair 2013 in Modi 2020) but that started losing their credibility and showing the method’s vulnerability immediately after the result of the vote in France and the Netherlands against the European draft constitution in 2005. Citizens were asking national leaders to act in order to protect their national interests and national leaders could do nothing but follow up those requests.

In such a complex scenario, where the supranational institutions seem to be on the verge of losing their legitimacy and their accountability, it is possible to see how the so-called phenomenon of ‘democratic deficit’ was not something completely unexpected or unpredicted from the very beginning of the European integration project. In fact, it is possible to assume that the Founding Fathers of the modern European Union were well-aware of the risks inherent in the model of functional and political spillovers and that they tried to tackle the problem by adopting a textual approach. In other terms, the way secondary legislation – regulations, directives, decisions, recommendations, and opinions, namely EU laws – is drafted in Europe, is influenced by the historical and political background from which EU laws originate. In particular, the structure of EU regulations – which after being adopted by the Council and the Parliament and ratified by the Member States become part of their national legal framework without any transposition or alteration – and their rhetoric express the ‘unexpected’ awareness mentioned above.

Indeed, the structure of EU regulations – as stated in the *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation* (2015) – consists of 1) a title, which comprises all the information in the heading of the act aimed at identifying it; 2) a preamble, namely the citations, the recitals and the solemn enacting formula; 3) the enacting terms, namely the operative provisions organised in numbered articles; 4) the annexes (when

necessary). As EU regulations are European laws or European statutes, the comparison between continental statutes and EU regulations shows that in the former an important part which is of paramount importance in the latter, is omitted, namely recitals. Not only are recitals 'statements of reasons' (EU 2015) for the adoption of the act, but they carry out a rhetorical function which I called 'textual legitimacy': together with lexical items and syntactical patterns of purpose which are coherent with the primary function of this section, other patterns are used to justify and legitimise the operative provisions that follow the preamble and introduce the enacting formula. The other patterns that characterise EU recitals are causal patterns, fact clauses and patterns of semantic assessment. Thus, if on the one hand recitals officially provide the reasons that justify the act, on the other hand they also give an assessment of the current situation and of the possible effects of the adoption of a new regulation and express opinions which, in the rhetoric of the recitals, are based on facts. Findings demonstrated that in EU regulations there exist at least three kinds of recitals – prefatory, argumentative, and procedural – and that each category has its own syntactic, rhetorical, cognitive, and communicative features aimed at creating 'textual legitimacy'.

In other terms, EU recitals are highly persuasive, which is not a meaningless observation, if we consider the contractual nature of EU law. Not only do EU institutions have to 'persuade' Member States and convince them about the fact that the provisions established in the newly adopted act are necessary, but they also have to provide valid reasons that national governments can transfer to their citizens, who are often sceptical about the utility of measures imposed by the European institutions. If it is not surprising to find these lexical items and these patterns in recitals, it is unexpected to find out that a similar communicative function is carried out in another section of the document, namely in the enacting terms, where new obligations and permissions are established. Although the use of modality – in particular of 'shall' and 'may' – in the operative provisions can suggest that they are mainly directive and commissive speech acts (according to Searle's terminology (1975)) another function – similar to the one carried out by recitals – is fulfilled: the use of hedges and intertextual links, on the one hand, softens the illocutionary force of the regulative statements; on the other hand, the frequent

reference to other previously approved documents, such as regulations, treaties, agreements, and directives, legitimises the terms of the regulation under consideration. Furthermore, this peculiarity characterising recitals was found – though to a lesser degree – in the enacting terms, where modals are used ‘adeontically’ (Garzone 2001) – with inanimate or existential subjects and passive forms (Caliendo (2004) –; hedging softens the illocutionary force of the utterance and creates a particular impression on the addressee (Vass 2004), and intertextual links are mainly used to express textual authority.

For this reason, the enacting terms, too, carry out a double communicative function: on the one hand they establish new norms and govern human behaviour; on the other hand, they tend to justify the new norms by referring to other legal documents which legitimise them and their validity. Not only does the adoption of regulations by EU supranational institutions follow a fixed procedure (formal aspect), but – when someone would express their doubt about the accountability of the measure – it is also legitimised by an intricate web of references to other consolidated documents (substantive aspect).

The coexistence within the same document of different communicative functions, which combine according to Bhatia’s (1995) terminology ‘socially recognized purposes’ – those typical of legislative documents in general – and ‘private intentions’ – which are those connected to legitimacy and accountability of European institutions – make EU regulations a hybrid genre: despite belonging to the category of operative legal documents (Tiersma 1999) which contain legal performatives and adhere to a very rigid structure, EU regulations are also expository and persuasive documents, like judicial opinions, which are not especially formulaic or legalistic because judges aim at persuading that their decision is correct, objective, rational, and informed by the principles of the law.

Findings demonstrated that EU regulations as speech acts are master speech acts (Fortion 1971) which generate other speech acts depending on the formula and on the content of the regulation. In addition, the combination – within a regulation – of different illocutionary forces and, thus, of different ‘directions of fit’ (Searle 1975) supported the assumption that EU regulation as a genre is hybrid.

As the analysis demonstrated, EU regulations are master speech acts (Fortion 1971) and communicative events. Since every communicative event is characterised by a communicative purpose, rhetorical patterns, and an intended audience (Swales 1990), EU regulations were conceived as 'structured communicative events' (Hyon 1996) which perform a social action (Martin 1985). However, this social action does not fulfil uniquely a regulatory function – which is what one may expect from operational legal texts – but, as demonstrated through the study, also a persuasive one, which is also confirmed by the pragmatic structure that the EU regulations considered showed after being analysed by adopting Austin's (1962) and Searle's (1975) concepts and taxonomies.

Once identified and confirmed this persuasive function together with the ordering function (Danet 1980) carried out by every regulative act, the syntactic, rhetorical and pragmatic features were identified in order to show which linguistic devices and textual patterns were frequently used in EU regulations to carry out these two apparently opposite functions. Not only was the initial assumption confirmed – that the textual peculiarities of EU regulations were an attempt to tackle the phenomenon called 'democratic deficit' from a textual perspective –, but the analysis demonstrated that the coexistence, within EU regulations, of recitals and enacting terms, which are respectively expressions of soft and normative power, is functional to the so-called 'contractualisation of relations' (Tulmets 2007).

On the one hand, the above-mentioned 'coexistence' of recitals and enacting terms in EU regulations reflects the twofold 'contractual nature of EU law' (Robertson 2016) and provides 'vertical consistency between EU and member states' policies' (Tulmets 2007) and external coherence between EU and third countries.

In conclusion, the results obtained through the analysis of ninety EU regulations allow us to provide an answer to the research questions as stated at the beginning of the study, that is how EU regulations are drafted and why. The cognitive and rhetorical canon of EU regulations presents a unique peculiarity, namely a section called 'recitals', which is usually not included in statutes but which is included in contracts and judgments. Within EU regulations, its function is to give legitimacy to the whole legislative act which, in the enacting terms too, shows a similar trend, that is, despite being aimed at establishing

obligations and permissions, it carries out this rhetorical function through persuasive strategies, by adopting linguistic devices which soften the illocutionary force of the operative provisions, and by using mainly performative speech acts, hedges and intertextual links.

These textual features of EU regulations are some of the various manifestations that soft power can show in going beyond the traditional understanding of power, meant as the ability to influence the behaviour of others to get the outcome one wants (Nye 1990: 154). The persuasive language which characterises EU regulations, as demonstrated in this study, cannot be considered an example of 'traditional' legal language, as it is, on the contrary, British English in the UK and American English in the US.

The existing divide between, on the one hand, legal language as aimed at establishing rights and duties, and on the other hand, legal language as aimed at developing a consensus – as in the EU – can be remedied by political interventions on the still 'unfinished political system' of the EU, where uneven and arbitrary division of competences defy traditional political models (Michalski 2005). The role of linguistics in this process is instrumental: the end of the process is unknown to linguists but, as technicians, they will support the transition which will remain political. It may be useful to adjust EU legal language and differentiate the language of legal documents that govern internal policies from the language of diplomacy and foreign affairs, as diplomacy and soft power did not prevent the UK from withdrawing from the EU, did not limit the spread of concerns about legitimacy and accountability in the EU – what has been referred as 'democratic deficit' above –, and did not preclude Euroscepticism from stemming in many EU countries.

As «there is no legal reason (apart from precedent) why the material is arranged in this way» (Cutts 2002: 9) in EU regulations, this study has demonstrated that the 'non-legal' reason has to do with rhetoric and diplomacy, with persuasion and soft power, but also with the alleged failure of a method never adopted before anywhere in the history of Western law, that is the 'Monnet method of functional spillovers'. Therefore, by applying the linguistic and philosophical concepts of 'genre' and 'speech act' to European regulations, the analysis confirmed not only that law cannot exist without language (see

p. 25), but also that there are different strategies to establish obligations and rights through language and that, in EU regulations, this strategy may be defined 'obligation through persuasion'. This implies that further research may be carried out on other European and non-European legal texts which – while officially regulating social behaviour and, thus, creating a new social order – try to achieve consensus without manifesting it expressly in an attempt to pursue what Bhatia (1993) calls 'private intentions'.

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2. Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.
3. Regulation (EC) No 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms.
4. Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.
5. Council Regulation (EC) No 411/2004 of 26 February 2004 repealing Regulation (EEC) No 3975/87 and amending Regulations (EEC) No 3976/87 and (EC) No 1/2003, in connection with air transport between the Community and third countries.
6. Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty.
7. Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.
8. REGULATION (EC) No 561/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85.
9. REGULATION (EC) No 1013/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2006 on shipments of waste.
10. COUNCIL REGULATION (EC) No 1184/2006 of 24 July 2006 applying certain rules of competition to the production of, and trade in, agricultural products.
11. COUNCIL REGULATION (EC) No 1419/2006 of 25 September 2006 repealing Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport, and amending Regulation (EC) No 1/2003 as regards the extension of its scope to include cabotage and international tramp services.
12. COMMISSION REGULATION (EC) No 1627/2006 of 24 October 2006 amending Regulation (EC) No 794/2004 as regards the standard forms for notification of aid.
13. Commission Regulation (EC) No 1935/2006 of 20 December 2006 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

14. REGULATION (EC) No 1370/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70.
15. COMMISSION REGULATION (EC) No 1418/2007 of 29 November 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply.
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19. REGULATION (EC) No 1100/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 October 2008 on the elimination of controls performed at the frontiers of Member States in the field of road and inland waterway transport.
20. COMMISSION REGULATION (EC) No 1147/2008 of 31 October 2008 amending Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, as regards Part III.10 of its Annex 1.
21. COUNCIL REGULATION (EC) No 169/2009 of 26 February 2009 applying rules of competition to transport by rail, road and inland waterway.
22. COUNCIL REGULATION (EC) No 246/2009 of 26 February 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia).
23. COUNCIL REGULATION (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.
24. COUNCIL REGULATION (EC) No 487/2009 of 25 May 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector.
25. COMMISSION REGULATION (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia).
26. REGULATION (EC) No 1069/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 October 2009 laying down health rules as regards animal by-products

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27. COMMISSION REGULATION (EC) No 1125/2009 of 23 November 2009 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, as regards Part III.2, Part III.3 and Part III.7 of its Annex I.
 28. COUNCIL REGULATION (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty.
 29. REGULATION (EC) No 1223/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 November 2009 on cosmetic products.
 30. COMMISSION REGULATION (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices.
 31. COMMISSION REGULATION (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector.
 32. REGULATION (EU) No 640/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 July 2010 establishing a catch documentation programme for bluefin tuna *Thunnus thynnus* and amending Council Regulation (EC) No 1984/2003.
 33. REGULATION (EU) No 913/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 September 2010 concerning a European rail network for competitive freight.
 34. COMMISSION REGULATION (EU) No 1217/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements.
 35. COMMISSION REGULATION (EU) No 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements.
 36. REGULATION (EU) No 1232/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 November 2011 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.
 37. REGULATION (EU) No 1343/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on certain provisions for fishing in the GFCM (General Fisheries Commission for the Mediterranean) Agreement area and amending Council Regulation (EC) No 1967/2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea.
 38. REGULATION (EU) No 1215/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

39. REGULATION (EU) No 651/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 4 July 2012 on the issuance of euro coins.
40. REGULATION (EU) No 1024/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation').
41. REGULATION (EU) No 167/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 February 2013 on the approval and market surveillance of agricultural and forestry vehicles.
42. REGULATION (EU) No 168/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles.
43. REGULATION (EU) No 608/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003.
44. REGULATION (EU) No 609/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009.
45. REGULATION (EU) No 952/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 October 2013 laying down the Union Customs Code.
46. REGULATION (EU) No 1287/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014 - 2020) and repealing Decision No 1639/2006/EC.
47. REGULATION (EU) No 1308/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007.
48. REGULATION (EU) No 1379/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000.
49. REGULATION (EU) No 251/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91.

50. COMMISSION REGULATION (EU) No 372/2014 of 9 April 2014 amending Regulation (EC) No 794/2004 as regards the calculation of certain time limits, the handling of complaints, and the identification and protection of confidential information.
51. REGULATION (EU) No 517/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006.
52. REGULATION (EU) No 540/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 on the sound level of motor vehicles and of replacement silencing systems, and amending Directive 2007/46/EC and repealing Directive 70/157/EEC.
53. REGULATION (EU) No 599/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.
54. REGULATION (EU) No 652/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material, amending Council Directives 98/56/EC, 2000/29/EC and 2008/90/EC, Regulations (EC) No 178/2002, (EC) No 882/2004 and (EC) No 396/2005 of the European Parliament and of the Council, Directive 2009/128/EC of the European Parliament and of the Council and Regulation (EC) No 1107/2009 of the European Parliament and of the Council and repealing Council Decisions 66/399/EEC, 76/894/EEC and 2009/470/EC.
55. REGULATION (EU) No 654/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization.
56. COUNCIL REGULATION (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.
57. COMMISSION REGULATION (EU) 2015/2282 of 27 November 2015 amending Regulation (EC) No 794/2004 as regards the notification forms and information sheets.
58. COMMISSION DELEGATED REGULATION (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.

59. REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
60. REGULATION (EU) 2016/792 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2016 on harmonised indices of consumer prices and the house price index, and repealing Council Regulation (EC) No 2494/95.
61. REGULATION (EU) 2017/1001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 on the European Union trade mark.
62. REGULATION (EU) 2017/1004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 May 2017 on the establishment of a Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy and repealing Council Regulation (EC) No 199/2008.
63. REGULATION (EU) 2017/1130 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 defining characteristics for fishing vessels.
64. REGULATION (EU) 2017/2393 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2017 amending Regulations (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), (EU) No 1306/2013 on the financing, management and monitoring of the common agricultural policy, (EU) No 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products and (EU) No 652/2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material.
65. REGULATION (EU) 2017/2394 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004.
66. REGULATION (EU) 2018/848 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007.
67. REGULATION (EU) 2018/1672 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2018 on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005.
68. REGULATION (EU) 2018/1807 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 November 2018 on a framework for the free flow of non-personal data in the European Union.

69. REGULATION (EU) 2018/1971 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009.
70. REGULATION (EU) 2018/1999 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council.
71. REGULATION (EU) 2019/26 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 8 January 2019 complementing Union type-approval legislation with regard to the withdrawal of the United Kingdom from the Union.
72. REGULATION (EU) 2019/126 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 January 2019 establishing the European Agency for Safety and Health at Work (EU-OSHA), and repealing Council Regulation (EC) No 2062/94.
73. REGULATION (EU) 2019/127 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 January 2019 establishing the European Foundation for the improvement of living and working conditions (Eurofound), and repealing Council Regulation (EEC) No 1365/75.
74. REGULATION (EU) 2019/517 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 March 2019 on the implementation and functioning of the .eu top-level domain name and amending and repealing Regulation (EC) No 733/2002 and repealing Commission Regulation (EC) No 874/2004.
75. REGULATION (EU) 2019/712 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 April 2019 on safeguarding competition in air transport, and repealing Regulation (EC) No 868/2004.
76. REGULATION (EU) 2019/787 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008.
77. REGULATION (EU) 2019/833 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2019 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation, amending Regulation (EU) 2016/1627 and repealing Council Regulations (EC) No 2115/2005 and (EC) No 1386/2007.

78. REGULATION (EU) 2019/1154 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on a multiannual recovery plan for Mediterranean swordfish and amending Council Regulation (EC) No 1967/2006 and Regulation (EU) 2017/2107 of the European Parliament and of the Council.
79. REGULATION (EU) 2019/1157 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement.
80. REGULATION (EU) 2019/1239 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 establishing a European Maritime Single Window environment and repealing Directive 2010/65/EU.
81. REGULATION (EU) 2019/1241 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005.
82. REGULATION (EU) 2019/1381 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on the transparency and sustainability of the EU risk assessment in the food chain and amending Regulations (EC) No 178/2002, (EC) No 1829/2003, (EC) No 1831/2003, (EC) No 2065/2003, (EC) No 1935/2004, (EC) No 1331/2008, (EC) No 1107/2009, (EU) 2015/2283 and Directive 2001/18/EC.
83. REGULATION (EU) 2020/698 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 May 2020 laying down specific and temporary measures in view of the COVID-19 outbreak concerning the renewal or extension of certain certificates, licences and authorisations and the postponement of certain periodic checks and periodic training in certain areas of transport legislation.
84. REGULATION (EU) 2020/740 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 May 2020 on the labelling of tyres with respect to fuel efficiency and other parameters, amending Regulation (EU) 2017/1369 and repealing Regulation (EC) No 1222/2009.
85. REGULATION (EU) 2020/1056 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 July 2020 on electronic freight transport information.
86. REGULATION (EU) 2020/2170 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2020 on the application of Union tariff rate quotas and other import quotas.
87. REGULATION (EU) 2020/2171 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2020 amending Annex IIa to Council Regulation (EC) No 428/2009 as

regards granting a Union General Export Authorisation for the export of certain dual-use items from the Union to the United Kingdom of Great Britain and Northern Ireland.

88. REGULATION (EU) 2020/2220 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 December 2020 laying down certain transitional provisions for support from the European Agricultural Fund for Rural Development (EAFRD) and from the European Agricultural Guarantee Fund (EAGF) in the years 2021 and 2022 and amending Regulations (EU) No 1305/2013, (EU) No 1306/2013 and (EU) No 1307/2013 as regards resources and application in the years 2021 and 2022 and Regulation (EU) No 1308/2013 as regards resources and the distribution of such support in respect of the years 2021 and 2022.
89. REGULATION (EU) 2021/267 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 February 2021 laying down specific and temporary measures in view of the persistence of the COVID-19 crisis concerning the renewal or extension of certain certificates, licences and authorisations, the postponement of certain periodic checks and periodic training in certain areas of transport legislation and the extension of certain periods referred to in Regulation (EU) 2020/698.
90. COMMISSION IMPLEMENTING REGULATION (EU) 2021/414 of 8 March 2021 on technical arrangements for developing, maintaining and employing electronic systems for the exchange and storage of information under Regulation (EU) No 952/2013 of the European Parliament and of the Council.