

Clear Language Means Better Government? - Address at Clarity Breakfast

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Emily O'Reilly European Ombudsman **Clear Language Means Better Government? Address at Clarity Breakfast** 15 May 2014, Europe House, London

Good Morning.

When I was invited to speak here this morning, I was very happy to take the opportunity to add my voice to that of so many others who are concerned that poor communication, writing unclearly, is a significant contributor to the gap between citizens and their governments. And as European Ombudsman my particular concern is the gap between EU citizens and the governing institutions of the European Union. Having accepted William Robinson's invitation, William emailed rather casually to say that audiences at these breakfast meetings generally know already what the problem is and that ideally I should focus more on solutions than on the problem itself. Thank you William. No pressure...

Nevertheless, I would like to thank William for his invitation! And I want to thank him also for sending me an advance copy of his article '*Making EU Legislation Clearer*' which will be published shortly in the European Journal of Law Reform. Some of what I have to say this morning draws from material in William's forthcoming article.

But I'd like to begin with a concrete example from my former professional life in Ireland of how a Referendum Commission of which I was an ex officio member almost became derailed on the satanic altar of Eurospeak.

The Commission is the body, chaired by a High Court Judge, which is charged with the job of explaining – neutrally – what a particular Referendum means. On this occasion we were explaining the Lisbon Treaty. We spent several weeks getting our own non-expert heads around the provisions and finally unleashed it in bite size form to the public. Some weeks later we had to call a press conference to clarify some misrepresentations from the No side, but, agonising, over our neutrality, we threw in a few other bits and pieces to balance out the 'clarification'.

Most of the assembled media weren't particularly interested one way or the other, but one journalist, trying to find something of interest, scanned the fine detail of our explanations, produced by our lawyers, looked up and asked, "What is Comitology?" Upon which, silence



decided on the top table. I looked into the far distance, as did the Comptroller and Auditor General and along with the two senior Parliamentary Clerks we left it to the man with the microphone, the Judge, to dig us out of that one.

The agonising silence continued as the Judge, uselessly, flicked through his briefing notes to find something he could plausibly use. Eventually, from the back row, the then European Correspondent of RTE, came to our rescue, "I think," he said, "It has to do with Committees..." The following day, the exchange, with every last second of silence thrown in, was lovingly played on national radio.

Comitology is one of those words that emerged within the Brussels bubble and which relates to a complex set of procedures for the passing of technical amendments. Lisbon was getting rid of it which accounted for its inclusion in our press release and while that particular incident was funny in hindsight – although perhaps not for the Judge – it highlighted precisely what we are talking about here, the way in which exclusionary, expert speak develops and cuts off any possibility of inclusion or understanding even by people reasonably clued in about general issues of law and administration.

In thinking about what I might say this morning, I posed four questions. **Firstly** : Is poor communication undermining trust in government? YES. **Secondly** : because government is a complex business, can we reasonably expect to be kept informed in clear language? YES.

Thirdly , and in the specific context of the EU, I asked: is "EuroEnglish" a necessary evil?" Yes, some version of European English is inevitable and what we need to do is to seek to ensure that it acts as an effective form of communication and is not allowed drift too far away from standard English. It should be a tool which unites rather than divides.

Finally , I asked: "Can we embed clear writing principles in a sustainable way?" This is the really big question. My answer is that, YES, it is possible but it will require exceptional and sustained effort by many different parties to government.

Context

But context first. As regards the government of the EU, the nature and extent of the problem is more problematic than that facing the individual member states. It was always going to be difficult to create a sense of European identity and difficult for the governmental institutions of the EU to connect with the people who are now, since the Maastricht Treaty, EU citizens.

The EU, as characterised in the recent Transparency International report on integrity in the EU, is " *a multi-level, multi-cultural and multi-lingual political and economic system with diverse national environments regarding media, civil society and businesses* ". And to that we can add, I believe, diverse political traditions and institutions. Furthermore, the government of the EU is centred physically on Brussels and Luxembourg and, to a lesser extent, Strasbourg. This is what is often referred to as the "Brussels bubble" which, not surprisingly, can be a self-absorbed



or self-contained world that is difficult for outsiders to penetrate.

In terms of citizens having an attachment to, or sense of identity with it, the EU cannot realistically be compared with any of the individual member states. While many member states are multi-lingual and multi-cultural, this is not necessarily a barrier to citizens having a sense of national identity and of attachment to the state.

In his 2005 book, *Postwar*, the late historian Tony Judt, commented on the extent to which citizens of the individual states of Europe have failed to take an interest in what's happening in other European countries. In his view, during the period since 1945, there has been a general boredom with events in other European countries which he characterises as a "*natural by-product of the largely un-European universe of most Europeans*". Judt argues that, perhaps contrary to what one might expect, the explosion of media services and of television in particular, has not had the effect of widening the European horizons of citizens of the individual member states. In fact, according to Judt, television in particular has done the opposite, it has, he says, reinforced "*national distinctions and a high level of mutual ignorance*".

Perhaps not entirely mischievously, Judt suggests that, more than anything else, the bond uniting Europeans is a shared interest in football!

Since then citizens' knowledge of, and attachment to, the EU has taken a further bashing partly as a result of the economic turmoil that has engulfed many member states in recent years. There is a crisis of legitimacy of government that affects both the EU collectively and many of the individual member states. There has been a growth of disharmony within the EU and a certain loss of social cohesion. There is a perceived deficit in democratic accountability not least in the EU's handling of the economic and financial crisis. There appears to be some recurrence of extreme racism. There is a perception of a retreat by some from the idea of solidarity between member states. And in the case of the United Kingdom, there is the on-going tug-of-war about continued membership of the Union.

Ultimately, as Ireland's President, Michael D. Higgins, said in a speech to the European Parliament last year the EU "*draws its legitimacy from the support of its citizens*". The fact that so many EU citizens are apparently disengaged is a serious worry for the EU.

Next week's elections to the European Parliament will give us some more concrete information on the extent of citizens' engagement with the EU. Voter turn-out for elections is a fair indicator of citizen engagement and the trend in European Parliament elections in recent decades is worrying. The turnout figures for these elections have dropped in every election since 1979, from a high of 62 per cent in 1979 to just 43 per cent, across 27 Member States, in 2009. But within this average of 43 per cent in 2009, we find a 90 per cent turnout in Belgium - where, technically, voting is mandatory on its citizens - but just a 19.6 per cent turn-out in Slovakia. And for the UK the turn-out in 2009 was just 34.7 per cent.

Clear Language Means Better Government?



There is a question mark in the title of my talk: *Clear Language Means Better Government?* The question mark is there as a reminder that we need to question what we mean when we talk of "better government". Several countries have in recent years promoted what have variously been called "Better Government" or "Better Regulation" projects. Some, like the "Better Regulation" initiative in Ireland, was unashamedly addressed to the needs of business - simplifying regulation and removing barriers and red tape - but failed to address the wider needs of the people more generally.

On the other hand, the current "Good Law Initiative" in the UK does appear to support what I understand by the term "better government". The Initiative promotes the use of Plain English in the writing of law to ensure, as far as is possible, that ordinary people have some reasonable prospect of actually understanding it. It supports access to the law for ordinary people through a dedicated legislation website. It encourages engagement with interested citizens in deciding which laws are actually necessary and in the drafting of laws. But perhaps most importantly, it reflects the democratic principle that the law is meant for the people and not for a professional legal elite. The website of the Initiative says, rather boldly:

" We want to build a shared accountability for (and pride in) the quality of our law, and to create confidence among users that legislation is for them ."

I don't know if this Initiative is succeeding but its purposes are noble. At the same time, I have read some comments by Lord Neuberger, President of the Supreme Court, which suggest that there is still a long way to go in the UK in terms of making the law accessible to ordinary citizens.

But we should not confine ourselves to the language of legislation. The style and tone of all communications from government and its agencies affect how government is perceived by citizens and affect the capacity of citizens to become engaged with government. Better government, in the context of a democracy, is as much about citizen involvement, trust and integrity as it is about efficiency.

The recent Transparency International report on integrity in the EU, to which I referred earlier, makes this very point. Commenting on the so-called "Brussels bubble", TI say:

" Within this bubble, English and EU specific terminology rarely used in non-EU contexts dominate the discourse, creating a barrier for outsiders to understand effectively or challenge how Brussels operates ."

At the same time, we should not fool ourselves that the use of plain language in our laws, whether at national or EU level, will guarantee good behaviour by government or, indeed, by the people.

A very interesting example is that of the Weimar Constitution of 1919 in Germany which, incidentally, was a major influence in the drafting of Ireland's 1937 Constitution. The drafting of



the Weimar Constitution was itself heavily influenced by a new approach to legal drafting championed in the Swiss Civil Code of 1907. That Code been written in popular and clear language and had an easily comprehended and open structure. Its main draftsman, a certain Eugen Huber, wrote that the Code

" must speak in popular ideas. The man of reason ... should have the feeling, as he reads it, that the statute speaks to him from the heart... Its provisions must mean something to the educated layman, even if it will always mean more to the specialist ".

This, then, was the model followed in the Weimar Constitution. Gerard Hogan, a leading authority on the Irish Constitution and now a judge of the High Court in Ireland describes the Weimar Constitution as follows.

" The language was clear and direct and comprehensible to the lay person; the structure was comprehensible and open and, critically, the principles espoused were left deliberately incomplete, to be filled (as occasion required) by means either of a special organic law or by judicial decision ."

Furthermore, according to Hogan, Weimar was a key influence in the drafting of many other inter-war constitutions in Europe - for example in Poland, Austria, Portugal and Czechoslovakia as well as in Ireland.

Now the point of this historical digression is that the existence of the Weimar Constitution, wonderful as it was, was not enough to prevent the rise of Nazism nor to prevent Hitler from assuming dictatorial powers. In fact, Hitler subverted the Constitution from within and succeeded in invoking a provision, Article 48, which allowed him to trample over those civil liberties guaranteed by the Constitution.

So: good laws, by themselves, are not enough to ensure good behaviour. But I think we can safely say that bad laws actively encourage or facilitate bad behaviour.

Clear Language and the EU

So, let's consider the EU communication challenges.

In the case of EU legislation, my understanding of these problems has been helped greatly both by William Robinson's forthcoming paper as well as by the insights of Eleanor Sharpston, the UK Advocate General at the European Court of Justice.

One big issue is that, contrary to the practice in Ireland and the UK, the drafting of EU legislation is not assigned to specialists in drafting legislation. In fact, the first draft is done by staff with technical competence in the particular area but who are unlikely to have legal drafting skills. While the first draft exercises a huge influence on the final product, the drafter is also aware that the content may well be changed substantially. This does not encourage the first



drafter to be too concerned about the quality of the first draft.

The drafting is also likely to be done by a person who is not writing in his or her own mother tongue. EU legislation is drafted mostly either in English or in French and neither may be the first language of the drafter or even the second language. Drafting legislation is a specific skill for a person working in his own language; for a person working in a second or third language, and who is not a specialist draftsman, this must be the stuff of nightmares!

Also, with 28 member states, the EU does not have the advantage of a single, shared and well-embedded legal system. In fact, the EU legal system itself is still very much a work in progress. As Advocate General Sharpston has pointed out, it would be hard to overstate the difficulties arising from the multiplicity of national legal systems. What goes unsaid in national legislation, because of a shared understanding of the law, may well have to be spelled out at EU level because there is not a shared understanding of a particular term or principle. While some terms and principles may be shared from one national system to another, there is the complication that similar terms may be used in two or more national systems but, unfortunately, they may be used in quite different senses from one member state to another.

And in the case of the UK and Ireland, because of our shared Common Law tradition, we are in a sense further cut off from the European legal mainland.

The quality of EU legislation reflects also the complex procedural stages involved in moving from a Commission proposal to the final outcome which, these days, is likely to include the Trialogue involving the Parliament, the Council and the Commission. While all law making involves compromises, it is probably fair to say that law making within the EU involves heroic levels of compromise. The process is not one which lends itself easily to laws which are expressed in clear language and structured in a logical and coherent fashion. And sometimes, in the urgency of getting a result, language may creep in which is deliberately ambiguous. And on top of all that, we have the situation with EU legislation that no one language version takes precedence over another. In Ireland, we have the issue that the Irish language version of our Constitution takes precedence over the English language version; but the occasional complication this creates is nothing compared to the complications of attempting to reconcile so many different language versions of the same law.

History of EU Efforts

William Robinson's forthcoming article sets out the history of high level efforts to promote clear writing/plain language within the EU. The news, I'm afraid, is not good. I'm simply going to mention now some of the key initiatives and the dates they were decided upon:

1985 – Existing guidance notes on legislative drafting were brought together in a Manual on Legislative Drafting.

1992 – the European Council adopted the Birmingham Declaration requiring that Community



legislation be “clearer and simpler”.

1993 – a European Council resolution set out drafting guidelines with the aim of making “*legislation as clear, simple, concise and understandable as possible*”.

1997 – an Intergovernmental Conference adopted a declaration on the quality of drafting of Community legislation; the declaration asked that the Commission, the Council and the Parliament should adopt agreed guidelines and make appropriate organisational arrangements to act on them.

1998 – Guidelines were produced in response to the 1997 declaration and included the general principle that “*legislative acts shall be drafted clearly, simply and precisely*”.

1999 – the three key institutions produced the Joint Practical Guide to drafting legislation.

2001 – the Commission launched its Governance Initiative stating that the EU “*must pay constant attention to improving the quality, effectiveness and simplicity of regulatory acts*”.

2003 - the Commission, the Council and the Parliament adopted an Inter-institutional Agreement affirming their commitment to improving the quality of EU legislation.

2004 – the four countries holding the rotating presidency during 2004- 2005 launched a Joint Initiative on Regulatory Reform.

2010 – the Commission launched the Smart Regulation project and in that year also launched its Clear writing Campaign which applies to all forms of written communication in the Commission.

EuroEnglish - Here to Stay?

Turning for a moment now to the question of EuroEnglish, I suspect many of us who speak English as our first language have an instinctive unease about the way in which English is used within the EU system. I recall, shortly after I was elected as European Ombudsman, being told by an Irish MEP that it takes just a few months of exposure before even the native English speaker finds himself or herself slipping unconsciously into EuroEnglish. I know now that the MEP was correct.

One definition of EuroEnglish is that it is “*an emerging variety of the English language used by speakers in the European Union whose mother tongue is not English*”. With 24 official EU languages, there is an obvious need for a common working language and English has in recent years displaced French as that common working language.

Linguistically, this is very interesting. EuroEnglish is being used as the *lingua franca* among individuals and officials who have do not have a shared first language. And interestingly, it is not



confined to business use; it is used also as a social language and I suspect that there are many couples in Brussels, Luxembourg and Strasbourg for whom EuroEnglish is their family language.

EuroEnglish speakers are shaping this variant of English with structures, vocabulary and pronunciations that owe as much to the other dominant languages of Europe (particularly French) as they do to English. The European Commission's *Clear Writing Campaign* gives particular guidance on the dangers of mixing up languages and using words and phrases, borrowed from another language, which in English have a different meaning. Typical examples of this are where the word "assist" is used, in the French sense of "being present", rather than in the English sense of "helping"; or where the verb "to control" is used, in the French sense of "to check or verify", rather than in the English sense of "to exercise power over".

Language is about communication and requires that there is a shared meaning for words and terms used within the particular language. Languages also are in constant evolution. The normal pattern is that a dominant language influences a less dominant language and, of course, you don't have to be a language purist to find this disturbing. Ironically, with EuroEnglish, we have almost the reverse situation where English, one of the dominant languages in the world, is being changed by the very fact of it being spoken extensively by people for whom it is not a first language.

I wonder if are we heading for a situation where speakers of EuroEnglish will outnumber those who speak English as a first language. The key task now is to ensure that, to the greatest extent possible, EuroEnglish is not allowed to drift too far away from standard English so that the scope for confusion and lack of clarity in the use of EuroEnglish is minimised.

Of course the English language is being stretched inexcusably, to put it mildly, in other areas, particularly by business as the following gem will show. The context was the long-running tussle between Irishman Paddy McKillen and the Barclay brothers over control of three famous hotels in London: Claridge's, The Connaught and The Berkeley. McKillen made an arrangement with Colony Capital which, apparently, protected his interest in the three hotels. In its statement, Colony Capital said:

"Joining forces with him is a real-time example of how leverage-related resolutions need to proceed in [Europe \[Link\]](#), not with foreclosures and value dissipation, but through collaboration with best of class borrowers on a holistic basis across all lending relationships as a lynchpin for economic recovery in the region."

Embedding Clear Writing Principles

Last March the UK's **Committee on Standards in Public Life** published comparative research entitled *Public Perceptions of Standards in Public Life in the UK and Europe* which included the measurement of average levels of public trust across all public institutions. On top were: Finland, Denmark, Norway, Sweden and the Netherlands. The UK and Ireland were in the



middle range while Portugal came last. So is there a strong correlation between high levels of citizen trust in government and good, clear communication by government with its citizens? I suspect the answer is YES, but not in isolation, and it would be interesting to hear more about this.

In any case, for the EU to retain the trust of its citizens it needs to communicate clearly and effectively and I don't believe that there is any magic solution. But we need at least to know the size of the task.

At the political level there needs to be awareness and that, in turn, must be reflected in the day to day management of all EU institutions. Communication has to be a priority.

When the Commission's Clear Writing Campaign was launched, Commissioner Vassilou spelled out what was needed in order for the Campaign to succeed including:

- explicit and real support for the Campaign from the very top in each institution;
- systematic and rigorous quality control measures put in place; and
- proper training and other supports provided for staff.

And we need to see this as an on-going way of life - not a time-limited campaign. There also needs to be a relentless focus on the standard of written work. Ideally, maintaining this focus should be the responsibility of someone reasonably senior in the institution who is required to report regularly to the very top. The greatest danger is that a campaign of this kind will be seen as a passing fad, something to which lip service is paid in the short term. Good communication, clear writing, must become embedded in the management practices of each institution and managers must be measured against their performance in this area.

As European Ombudsman, I believe that the right to good administration includes the right to clear and effective communication by government to EU citizens.

As regards my own Office, I am building on the work done by my predecessor who committed to making our decisions and other communications as reader-friendly as possible. Recently, we have adopted a new approach to the structuring and the use of language in our decisions and I am hoping that we will see good results from this.

To conclude, let me share with you the best lesson I ever had on the writing of plain English. I was a very young journalist, not even a journalist, just an intern on a rather old fashioned women's magazine. Among my many humble tasks was the selection and editing of the short stories that our dear readers sent in by the boxful.

My editor, a formidable woman by the name of Barbara Dixon, was the Olympic champion of plain English and I quickly learned that her distaste for adornment included pretty much every commonly used adverb and adjective in the English language. No one ever ran quickly in Ms Dixon's world or laughed merrily.

So on this occasion, as I approached her desk with the latest short story, I was pretty confident



that I had scrubbed it clean of every frill and I handed it over. With her red pen poised, she scanned the pages until she came to the sentence. "He nodded his head." Out went 'his head' with Ms Dixon exclaiming, "What else would he nod?" that statement followed by a loud recitation of every body part that one most certainly would never nod. And I never needed another lesson.

Thank you for listening.