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LEGAL TRANSLATION AND TERMINOLOGICAL RESOURCES
How to deal with stipulative correspondence

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Abstract – The notion of 'equivalence' is not new to translation studies and terminology but has been studied differently in these two disciplines, since translation equivalence and terminological equivalence do not coincide: while the former establishes a relationship between source-language (SL) and target-language (TL) units, segments or full texts, the latter assesses the relationship between terms and concepts embedded in conceptual systems. However, in the translation process, terminological resources are used to solve translation problems, so information on terminological equivalence is crucial for making the most appropriate choices in terms of translation equivalence. While playing a fundamental role in the building of bi- or multilingual terminological resources, equivalence has frequently failed to receive the visibility it deserves. In many resources, terms in two or more languages are presented as if they were characterized by full equivalence, even when this is not the case, while it would be better for the degree of equivalence to be specified. The aim of this paper is to provide an overview of the debate over the notion of equivalence in translation studies and in terminology, with special emphasis on legal terminology. The role of equivalence in legal terminological repositories is discussed in order to introduce "stipulative correspondence" (Magris 2018), a category that identifies the lexical relation between a term referring to a concept embedded in a specific legal system and a term used in a target language – which is not a language in which the legal system is generally expressed – to refer to the same concept. Stipulative correspondence is illustrated by examples extracted from an Italian-English parallel corpus of judgments delivered by the Italian Constitutional Court (Schiavi 2017-2018). It is argued that stipulative correspondence should be taken into account when designing (or restructuring) terminological resources and when describing information relevant to legal translation.

Keywords: stipulative correspondence; translation equivalence; terminological equivalence; legal terminology; legal translation.

1. The debate over the notion of 'equivalence'

The notion of 'equivalence' has always been at the core of two disciplines, translation studies and terminology. Notwithstanding its centrality, the term has never had a single, shared meaning, since it is "also a standard polysemous English word, with the result that the precise sense in which

translation equivalence is understood varies from writer to writer" (Shuttleworth, Cowie 1997, p. 49, emphasis in the original). In many cases, what equivalence is has also been taken for granted.

Although the concept of equivalence has been studied separately in translation and terminology, it should not surprise that scholarly discussion reveals a high degree of overlapping, given the close relationship between the two in practice. In what follows, a brief review of the debate on the concept of equivalence is provided since it is functional to the understanding of the main topic of this paper, i.e. 'stipulative correspondence'.

1.1. Equivalence in translation studies

Equivalence is a slippery, "controversial issue in translation studies" (Krein-Kühle 2014, p. 15), and this explains why so much has been written on it. In Wilss's words (1982, p. 134), "there is hardly any other concept in translation theory which has produced as many contradictory statements and has set off as many attempts at an adequate, comprehensive definition as the concept of translation equivalence between source language text and target language text". Koller (1989, p. 99) actually believes that a general consensus has been reached, not on the definition of equivalence, but rather on the fact "that it is not helpful to think of the notion [of equivalence] as a uniform one, nondifferentiated", while Gerzymisch-Arbogast (2001, p. 228) argues that "'[e]quivalence' is one of the most traditional and critical concepts in translation theory".

In early translation studies, equivalence meant a one-to-one relationship between source text (ST) elements and target text (TT) elements. This view can be traced in a series of definitions advanced by various scholars. As far back as 1960, Oettinger (1960, p. 110) defined 'interlingual translation' as "the replacement of elements of one language […] by equivalent elements of another language […]". Five years later, Catford (1965, p. 20) proposed the following definition of 'translation': "[t]he replacement of textual material in one language (SL) by equivalent textual material in another language (TL)". A slight shift in focus can be traced in Wilss's definition (1982, p. 62). In his view, translation leads "from a source-language text to a target-language text which is as close an equivalent as possible and presupposes an understanding of the content and style of the original", so emphasis is put on both content and style of the ST.

Albeit presented as a self-explanatory concept like in the preceding quotations, equivalence still plays a fundamental role in the definition provided by Nida and Taber (1969, p. 12), who state that "[t]ranslating consists in reproducing in the receptor language the closest natural equivalent of the source-language message". Here a first turn towards a source-language

message rather than *textual material* and towards the response of the *target-language receptor* to such message can be noticed, which can be considered a crucial indication that a very narrow linguistic conception of translation has been abandoned in favour of a wider definition that also takes no strictly linguistic aspects into account. As emerges clearly from one of the definitions provided by Delisle (2003, pp. 39, 63), equivalence is the result of translation conceived of as an operation, i.e. the interlingual transfer that consists in interpreting the meaning of a source text and producing a target text in an attempt of establishing a relation of equivalence between the two, in accordance with the parameters inherent in communication and within the limits of the constraints imposed on the translator.

Another step towards the abandonment of the traditional conception of equivalence as one-to-one correspondence is represented by Koller (1989, p. 100, emphasis in the original), who agrees with prior literature when he states that "[t]he concept of equivalence postulates a relation between SL text (or text element) and TL text (or text element)", but acknowledges that "[t]he concept as such does not say anything about the *kind* of relation: this must be additionally defined". On these premises, Koller (1989, pp. 100-104) argues that five types of equivalence can be established, namely "denotative equivalence", "connotative equivalence", "text-normative equivalence", "pragmatic equivalence", and "formal equivalence". Baker (1992), in turn, adopts a bottom-up approach for didactic purposes and distinguishes "equivalence at word level" from "equivalence above word level", "grammatical equivalence", "textual equivalence", and "pragmatic equivalence", therefore also recognising the need to define equivalence according to different parameters. In this regard, Newman (1994, p. 4695) highlights that the degree of relevance of every factor affecting equivalence depends on the specific situation in which translation is required and that it is the translator's task to decide which factor(s) to give priority to. In the same vein, Halverson (1997, p. 210) makes it clear that the application of the concept of equivalence to translation studies is problematic because of the difficulties in establishing relevant units of comparison, specifying a definition of sameness, and enumerating its qualities. Despite the issues posed by equivalence, Halverson points out two fundamental aspects: first, that the sameness involved in equivalence is gradable rather than absolute, and second, that the definition of equivalence much depends on what the unit of equivalence is and, therefore, on what is being observed. This view is shared by Newmark (1993, p. 75), whose standpoint on the subject is however more clear-cut, since he states that "[t]ranslation equivalence cannot be defined" and acknowledges that "there are only degrees of translation equivalence".

The dramatical changes and substantial progress experienced by translation studies over the past decades have led the notion of equivalence itself to undergo a radical re-conceptualisation. The acknowledgment of asymmetry between languages as systems has first led to a shift in focus: while equivalence was originally conceived as a formal relation between linguistic systems, it started being considered as a relation between single speech acts, i.e. between the source text (ST) and the target text (TT). The distinction between "formal correspondence" (Catford 1965) or "interlingual equivalence" (Kenny 2009, p. 98) on the one hand and "textual equivalence" (Catford 1965) or "intertextual equivalence" (Kenny 2009, p. 98) on the other dates back to the mid-1960s and has received much criticism for being dominated by a narrow linguistic perspective and for failing to take into account extralinguistic or cultural aspects. However, this criticism has probably marked the first step towards the many turns taken by translation studies since then, namely the pragmatic, cultural, functional and empirical turns identified by Snell-Hornby (2006). Since the purpose here is not to review the history of translation studies, suffice it to say that while the concept of equivalence was the "basic criterion of work in translation" (Snell-Hornby 2006, p. 38) in the 1960s and 1970s, the turns experienced by translation studies – with the functional turn fostered mainly by the supporters of *Skopos* theory (Nord 1997; Reiss, Vermeer 1984; Vermeer 1996) leading the way – have relegated it to a marginal, sometimes even insignificant role.

Translation studies have thus seen a transition in the notion of equivalence first from correspondence between discrete linguistic systems to correspondence between texts and then from correspondence between texts to a partial or even complete disregard for equivalence. Equivalence has been overshadowed by other notions in these various turns experienced by translation studies. For instance, *Skopos* theory, which can probably be considered to hold the most extreme position against equivalence, jettisons it in favour of 'adequacy' of the translation for the intended purposes. However, *Skopos* theorists are not the only critics in this sense. For instance, Snell-Hornby (1986, p. 15) also questions the suitability of equivalence as a fundamental notion in translation studies, considering it as too static to represent a dynamic relationship, and refers to it as an "illusion".

These and many other attempts[1] have been made to challenge the centrality of equivalence in translation studies. Nevertheless, equivalence, be

[1] See, among others, Holmes's replacement of the term 'equivalence' with "network of *correspondences*, or *matchings*, with a varying closeness of *fit*" (1988, p. 101, emphasis in the original), or Arrojo's interpretation (1986, pp. 23-24) of translation as a form of meaning production or transformation.

it by way of proving its usefulness and suitability or its uselessness and unsuitability in translation, has always pervaded the debate in translation studies and has been attributed such a wide array of meanings that led Pym (2010, p. 37) to claim that "[e]quivalence could be all things to all theorists". Although not as wide as Pym's, Wilss's and House's positions seem to point in the same direction. Wilss (1992, p. 197) recognises that, in the 1970s, equivalence in translation studies was considered in a rigid and static way, but highlights the impossibility of getting rid of this notion when describing the relationship between a ST and a TT. House (1997, p. 26), in turn, acknowledges the validity of the criticisms levelled at the narrowness of "definitions of equivalence based on formal, syntactic and lexical similarities alone", though recognising the usefulness of a pluralism of definitions of equivalence that can account for the relationship between a ST and a TT. Therefore, while it may be true that "equivalence has become unfashionable" (Pym 2010, p. 49), its existence has not been denied altogether or, as Pym (2010, p. 50) puts it, "[e]quivalence has thus by no means disappeared". As Krein-Kühle (2014, p. 31) sees it, "a theoretical contextualised account of the nature, conditions and constraints defining translation and equivalence remains a central task of the discipline of TS [translation studies]".

1.2. Equivalence in terminology

Apart from translation studies, equivalence has always been a central concern also of terminology. However, while in translation studies the discussion over equivalence – both from a theoretical and a practical perspective – seems unavoidable because of the need to establish a relationship between a ST and a TT, in terminology the notion of equivalence is given a prominent role in bilingual or multilingual contexts, with monolingual terminology focusing on other aspects (e.g. synonymy and polysemy).

Equivalence in terminology has followed a roughly similar path as the one experienced in translation studies in that it has shifted its focus from the – conceptual rather than linguistic – system(s) to a more textual dimension (Rogers 2009). However, this shift has occurred in more recent times, if we consider that, in 2008, Rogers still maintained that "[t]he focus in Translation Studies is clearly on text, whereas in Terminology Studies it has traditionally been on system" (Rogers 2008, p. 102). Therefore, while textual equivalence in translation studies has a longer tradition and has been mainly *parole*-oriented, the same cannot be said about terminology, which has mainly concentrated on conceptual, context-independent, and *langue*-oriented equivalence (in Saussurian terms).

Looking at some examples of equivalence typologies developed in terminology, it can be observed that the categories proposed derive directly from the central position occupied by concepts and conceptual systems in

terminological analysis. The quest for equivalence in terminology has always favoured concepts rather than terms. As Sandrini (1996, p. 343) puts it, "the characteristics, i.e. the intensions of concepts have to be analysed regardless of their linguistic representation", and "[t]he linguistic form of the term is only of secondary importance". Consequently, not only has the linguistic layer taken second place to the conceptual layer, but also language has traditionally been seen as a system (*langue*) rather than as the concrete manifestation of the system through speech acts (*parole*). For instance, Sandrini (1996, pp. 342-343), drawing on Arntz and Picht (1989) and Felber and Budin (1989), imagines two extremes, i.e. "absolute equivalence" and "no equivalence". In the former case, there is only one concept to which terms, seen as linguistic labels in two or more languages, relate. In the latter, no relation can be established between two concepts because they are completely different. Between these two extremes, "at least two intermediate cases of partial equivalence" (Sandrini 1996, p. 343) can be observed: in the first case, two concepts overlap but present some differences, while in the second case one concept comprises another concept, which means that they are in a superordinate-subordinate relationship.[2] Sandrini (1996, p. 344) thus claims that "[c]onceptual equivalence is the basis on which a translator proceeds to reach his ultimate goal of textual equivalence".

Ever since the 1990s, the interest in terminology as a discipline has progressively moved away from conceptual relationships. The supremacy of concepts and thus of conceptual systems over other aspects and the predominantly standardisation-oriented approach proposed by what is known as the Wüsterian 'General Theory of Terminology' has been challenged by new approaches that "paved the way to integrating Terminology into a wider social, communicative, and linguistic context" (Faber 2009, p. 112). These alternative theoretical frameworks have been fostered by the development of IT tools suitable for terminological analysis and especially corpus linguistics, so that corpus analysis has become a fundamental part of any terminological activity. As a consequence, a number of descriptive approaches have been adopted, namely Socioterminology (Gambier 1991; Gaudin 1993, 2003), which integrates sociolinguistic principles in terminology and focuses on variation in different social and situational contexts, Textual Terminology (Bourigault, Slodzian 1999), which aims at reflecting the actual use of terminological units in authentic specialised contexts by integrating corpus-linguistics methods (see Condamines 2010, p. 46), the Communicative Theory of Terminology (Cabré 2000), in which terms are conceived as "units of knowledge, units of language and units of communication" at one and the

[2] For these phenomena, generally referred to as "overlapping" and "inclusion/exclusion", see also Mayer (2002, p. 126).

same time (Cabré 2003, p. 183), and Sociocognitive Terminology (Temmerman 2000), in which insights derived from cognitive semantics on prototype structure, analogical thinking and metaphorisation are exploited for reformulating the concept of 'concept' and elaborating the concept of 'unit of understanding', necessary for explaining variation as a result of different verbal, situational and cognitive contexts.

Although all of these alternative paradigms are essential for understanding the state of the art of equivalence in legal terminology, given the nature of this paper, which focuses on "terminology based on real use in texts" (Condamines 2010, p. 46), prominence is given here to textual terminology. Its emergence, according to its proponents, is due to two main reasons. The first is that "[l]es applications de la terminologie sont le plus souvent des applications textuelles (traduction, indexation, aide à la rédaction)" and, as such, "la terminologie doit 'venir' des textes pour mieux y 'retourner'" (Bourigault, Slodzian 1999, p. 30). The second reason – more relevant to the present work – is that "[c]'est dans les textes produits ou utilisés par une communauté d'experts, que sont exprimées, et donc accessibles, une bonne partie des connaissances partagées de cette communauté, c'est donc par là qu'il faut commencer l'analyse" (Bourigault, Slodzian 1999, p. 30). In this regard, a close relationship between terminology and translation can be spotted, since in the literature some examples of studies can be found that can be assimilated to textual terminology but belong to translation studies (see, for instance, Krein-Kühle 2003; Rogers 2007a, 2007b, 2008).

2. Equivalence in legal terminology

Narrowing the discussion to the role of equivalence in legal terminology, two main points emerge. The first is that legal terminology is "extremely parochial" and, since "the technical terminology of each jurisdiction is different", "words and phrases are not easily rendered into another language" (Tiersma 2008, p. 16). Given that "[f]or the differences in each and every legal system, it is natural that terminological incongruity exists between different legal systems" (Cheng, Sin 2008, p. 34), in legal terminology the focus on the conceptual layer has prevailed over the linguistic layer. This emerges clearly in the idea expressed by Šarčević with reference to the assessment of equivalence in legal terminology. In her view, "terminologists should not deal with isolated concepts but need to compare the conceptual structures of the functional equivalent and its source term by analyzing the conceptual hierarchies to which each belongs" (Šarčević 1997, p. 243). It follows that the first step to establish equivalence among legal terms is to analyse and compare the underlying conceptual systems.

Based on these premises, there is little disagreement that absolute equivalence, which corresponds to the situation where "two legal concepts are identical with respect to all their conceptual features as well as their conceptual extension", "is not possible with concepts coming from different legal systems" (Sandrini 1999, p. 102). Indeed, in legal terminology absolute equivalence can be found only when the underlying conceptual system is unique (de Groot 2006, p. 424; Sandrini 1999, p. 102). In this regard, Sacco (1992, pp. 487-488) takes the discussion further and envisages two situations in which absolute equivalence may be possible. The first is when an 'artificial' entity establishes a total, permanent correspondence, without reservation, between two expressions belonging to two different languages. This happens, for instance, when the legislator is bilingual and thus requires that two texts have the same meaning. The second situation occurs when legal rules are transplanted from one legal system into another legal system via translation. Though Sacco gives the Quebec lawmaker as an example of his first hypothesis,[3] his view about bilingual legislators establishing equivalence among terms can be extended to other contexts where the "principle of equal authenticity" (Šarčević 1997, p. 64)[4] applies, namely in the European Union, where "interlingual text reproduction" (Kjær 2007, p. 7) occurs.[5] This extension of Sacco's view is further supported by Correia (2003, p. 41), who states that "[w]here Community law is concerned […], the term 'equivalence' not only remains valid but also has a rare chance to deploy its full semantic content". However, Correia himself (2003, p. 41) concedes that equivalence "can only be an approximation because – […] paradoxically – there are different degrees of equivalence. It is the translator's job to find the best linguistic equivalences, in order to safeguard the legal equivalence of multilingual law as far as possible". By the same token, Garzone (2003, p. 209) notices that, "[a]lthough widely accepted, in time the presumption of equal authenticity has […] been subject to extensive criticism, as in many cases divergences in meaning between the different language versions of an international instrument do exist".

Other two eminent scholars have acknowledged different degrees of equivalence in legal terminology with a strong emphasis on the conceptual layer. The first is de Groot, whose view slightly differs from Sacco's perspective, since he posits that "full equivalence only occurs where the source language and the target language relate to the same legal system" (de

[3] See de Groot (2006, p. 424) for references to authors who deal with other bilingual or multilingual legal systems, such as those of Belgium, Finland and Switzerland.

[4] Also known as the "equal authenticity rule" (Cao 2007, p. 73) or the "principle of plurilinguistic equality" (van Els 2001, p. 311).

[5] For a critical view of equivalence as an "a priori characteristic of all translations" within the EU context, see Koskinen (2000).

Groot 2006, p. 424), while "near full equivalence" occurs when the legal areas of the SL and TL legal systems relevant to translation undergo a partial unification or when one legal system adopts a concept from another legal system maintaining the same functioning as in the system that originated it (de Groot 1996a, p. 14).

The second scholar is Šarčević (1997, p. 237), who envisages three possible cases, namely near, partial and zero or non-equivalence, which are based on the distinction between essential and accidental characteristics of legal concepts. In her view, near equivalence is the optimum degree of equivalence in legal translation and "occurs when concepts A and B share all of their essential and most of their accidental characteristics (intersection) or when concept A contains all of the characteristics of concept B, and concept B all of the essential and most of the accidental characteristics of concept A (inclusion)" (Šarčević 1997, p. 238). Partial equivalence is the most frequent degree of equivalence between functional equivalents and "occurs when concepts A and B share most of their essential and some of their accidental characteristics (intersection) or when concept A contains all of the characteristics of concept B but concept B only most of the essential and some of the accidental characteristics of concept A (inclusion)" (Šarčević 1997, p. 238). Finally, non-equivalence occurs when "only a few or none of the essential features of concepts A and B coincide (intersection) or if concept A contains all of the characteristics of concept B but concept B only a few or none of the essential features of concept A (inclusion)" or when "there is no functional equivalent in the target legal system for a particular source concept" (Šarčević 1997, p. 239). However, with reference to the distinction between near and partial equivalence, it must be noted that discriminating between *essentialia* and *accidentalia* is not always an easy task and that such a distinction may be made on the basis of situational or contextual factors rather than in an aprioristic manner.

Based on the typologies of equivalence in legal terminology just presented, a remark can be made concerning the close relationship between legal terminology and translation, as also emerges from what has just been said above. For instance, Sacco (1992) opens his most influential article on legal translation by discussing the translatability and un-translatability of legal terms and continues his discussion by concentrating solely on legal terminology. In the same vein, at the very beginning of his reflections on the problems of translating legal texts, de Groot (1996b, p. 155) stresses that "[s]ince legal systems differ from state to state, each country has its own independent legal terminology". He then goes on in recognising that, "[w]hen the target language and the source language relate to different legal systems, absolute equivalence is impossible" (de Groot 1996b, p. 157), presenting a terminological issue as an example (the equivalence relation between the

German *Ehescheidung,* the French *divorce*, and the Italian *divorzio*). In these cases, de Groot maintains that the "approximate equivalence" between the concepts allows for the use of the terms for translation purposes but points out the need to examine the circumstances under which such an equivalence can be established or is to be considered sufficient. In his view, the context and the goal of the translation are fundamental, followed by the "character of the document to be translated", which leads him to conclude that the acceptability of equivalents is a relative concept. However, it is interesting to note that the same scholar also deals with equivalence in relation to the desiderata for reliable bilingual legal dictionaries and, in this case, suggests that dictionaries should indicate the degree of equivalence, i.e. "whether the translation suggestion is a full equivalent, the closest approximate equivalent (acceptable equivalent) or a partial equivalent" (de Groot 2006, p. 430). A similar stance, accompanied by an example of terminological incongruity, is taken by Joseph (1995, p. 18, emphasis in the original), who illustrates the difficulties posed by "the distinctions in types of *property* across various languages" and concludes that there is no absolute best solution to the problems but rather that the solution must be taken in accordance with "the context in which one is translating".

The close link between legal terminology and translation is also acknowledged, among others (see, for instance, Kasirer 1999; Paunio 2013; Wagner, Gémar 2013), by another eminent scholar in the field of legal translation, Cao (2007, p. 53). In her view "[l]egal terminology is the most visible and striking linguistic feature of legal language as a technical language, and it is also one of the major sources of difficulty in translating legal documents", because "many legal words in one language do not find ready equivalents in another, causing both linguistic and legal complications".

2.1. Equivalence in legal translation-oriented terminological resources

In translation as a practice, terminology and terminological equivalence appear to be two crucial factors affecting translators' everyday activity and the quality of the final product. Evidence of the central role of terminology in translation practice is easily observed, such as in the following situations: translators use already existing terminological resources or populate their own terminological databases to carry out their work, terminologists and translators collect terminological data for translation purposes[6], software

[6] In this regard, it will suffice to mention here EU's terminology database IATE (Interactive Terminology for Europe), which is publicly available online at https://iate.europa.eu/home

developers design products for terminology management either as stand-alone applications or as solutions integrated in computer-assisted translation tools (CAT) and in machine translation (MT) tools.

On the backdrop of such an important role played by terminology in translation practice, it would seem essential, if not obvious, for terminological equivalence to occupy a prominent position within bi- or multilingual terminological – as well as lexicographical – resources. However, this is far from reality. While, as seen above, terminological equivalence has played a central role in theoretical discussions, it is a somewhat assumed tenet of multilingual terminological databases (TDBs). In other words, in many TDBs, as in most bi- and multilingual dictionaries, lists of terms in two or more languages are presented as if they were characterized by absolute equivalence, even when this is not the case (see, for instance, Šarčević 1997, p. 240). This is particularly problematic when legal terminology is to be recorded in a TDB since, as seen above, the very fact of legal concepts, and thus legal terms, being embedded in different legal systems makes the chances of finding instances of absolute equivalence almost null. However, descriptions of the degree of equivalence between legal elements belonging to different legal systems are still scant.

With reference to bilingual legal dictionaries, de Groot and van Laer (2006, p. 73) state that such resources "should indicate the degree of equivalence: whether the translation suggestion is a full equivalent, the closest approximate equivalent (acceptable equivalent) or a partial equivalent". The same idea can be extended to TDBs. Yet, even in elaborate legal TDBs, the description of equivalence relations is an uncommon feature. Indeed, rather than describing the degree of equivalence, many TDBs record definitions, whose presence is seen as crucial "since they establish the meaning of concepts in precise formulations" (van Laer 2014, p. 76), while "explanations of the usage of terms may also be productive" (van Laer 2014, p. 76). The combination of legislative definitions and encyclopaedic information is considered the best solution to provide the information necessary for a translator to "avoid the pitfall of blindly substituting one term for another" (van Laer 2014, p. 76). Therefore, what a legal dictionary (or TDB) provides is not an "immediately insertable equivalent", but rather information that can be used by the translator "as an aid in his all-important decision-process in recreating the text" (Snell-Hornby 1990, p. 224). However, instead of placing all the burden of comparing the definitions and the encyclopaedic information to assess the degree of equivalence (and

(12.10.2021), but whose full version is restricted to the staff, translators included, of the EU institutions. Most IATE's entries are created by the translators and terminologists of the language services of the EU institutions, while some data are provided by external contractors.

therefore of possible translatability) on the end user of terminological resources, some TDBs have gone a step further and introduced a field devoted to equivalence relations. With regard to legal terminology, this is the case, for instance, of TERMitLEX (Magris 2018), where the 'Equivalence' field is not meant to substitute definitions or other fields that provide conceptual information, but rather to expound the results of a comparative legal analysis and to illustrate the possible conceptual differences and similarities between legal concepts embedded in different legal systems and expressed in different languages in order to enable the end users to make informed decisions.

The need to compare legislative definitions and encyclopaedic information to assess the degree of terminological equivalence derives from the assumption that the concepts expressed by the terms in the source language and in the target language(s) belong to different legal systems, each of which has its own tradition and has experienced a historical evolution of its own. However, as acknowledged by various authors (see above), legal terms in different languages do not necessarily refer to different legal systems. Take the most obvious example, EU legislation, where twenty-four languages are used to express the same legal system. In this case, the degree of equivalence between terms in different languages is supposedly absolute, although a non-trivial number of judicial cases before the European Court of Justice have proven that the use of different languages may lead to different interpretations of legal provisions. Despite these judicial cases, absolute equivalence in bi- or multilingual legislation and case law is of the essence in officially bi- or multilingual countries. As seen above, in all the other cases when translation is not made in one of the official languages in which the legal system is expressed, the degree of equivalence cannot be absolute. Yet, it is believed that the degrees of equivalence described in mainstream literature so far (near, partial, etc.) are not wholly appropriate to describe what happens in translation. When considering near and partial equivalence, the comparison between legal systems is inevitable. However, when we translate a legal text into a language which is not the official language in which the underlying legal system is expressed, our aim is to convey the legal content of the ST. This means that the TT, and thus the terms in the TL, should point to, or at least maintain a close relationship with, the legal system in which the ST is embedded. Therefore, in this case the legal system involved is one and one only, and while legal comparison may help find possible translation candidates, the translator should be aware of the risks of using legal terms belonging to a different legal system. Precisely because only one legal system is involved in this type of translation, the very debate over conceptual equivalence – from a terminological perspective – could be skipped altogether, at least in theory. To put it differently, if the system is

one, there is no need to compare concepts embedded in different legal systems, and the terms used, regardless of the language, should refer to the same concept in the same legal system. In such a situation, the relationship between a ST terminological unit and a TT one is not established at the conceptual level, but rather at the lexical level. This type of relationship, long unrecognized and unnamed, was first pinpointed in legal terminology by Magris (2018, p. 17), who proposed to name it 'stipulative correspondence'.

3. Stipulative correspondence

Stipulative correspondence has been introduced to designate the relationship established between a term referring to a concept embedded in a specific legal system and a term used in another language, which is not the language in which the legal system is usually expressed, to refer to the same concept. This relationship thus relates to lexical units rather than concepts (Magris 2018, p. 17). To illustrate stipulative correspondence, this paper will use examples extracted from an Italian-English parallel corpus of judgments delivered by the Italian Constitutional Court (Schiavi 2017-2018). The institution of the Constitutional Court, which held its first public hearing in 1956, is provided for in the Italian Constitution itself, which sets forth also the Court's basic functions. Simplifying the Court's role to the extreme, it can be said that its most important function is to rule on disputes regarding the constitutionality of the laws and other legally binding acts issued by the State, Regions or Autonomous Provinces.

The parallel corpus contains all the judgments delivered by the Italian Constitutional Court in the period 2008-2011 that have been translated into English and made available on the Court's website.[7] These translations have been produced by external translators and revised in-house by members of the Court's staff appointed for this purpose. It should be noted that the Constitutional Court does not have all its judgments translated into English, but rather selects whether a case is to be translated or not based on its supposed international relevance. Indeed, in the last decades, domestic courts have increasingly begun to consult the jurisprudence of other national courts, especially in EU-related case law (van Opijnen 2016, p. 33). To ensure and facilitate cross-border accessibility, the translation of judgments – at least in English – is thus almost essential.

It is quite obvious that every judgment delivered by the Constitutional Court deals with a case of its own and that, since the corpus consists of 71

[7] The English translations of the Court's judgments are available at https://www.cortecostituzionale.it/actionJudgment.do (12.10.2021).

judgments, the circumstances of the single cases could not have been considered. Instead, the focus has been placed on identifying the terminological units that are shared by the Court's decisions because they designate concepts related to the procedure adopted and the principles applied by the Court when dealing with a case.

The first example presented here concerns the Italian term "principio di autosufficienza dell'ordinanza di rimessione". The Italian term is most likely cryptic to most Italian native speakers who are not versed in constitutional law and designates the principle according to which the referral order must be complete, i.e. it must contain all the information necessary to the Constitutional Court to decide whether a legally binding act is constitutional or not. However, to have a better understanding of this principle, it is necessary to know what a "referral order" is and how the constitutional process works in Italy. This is certainly not the place for a thorough discussion of the Italian constitutional process, which is particularly complex and would require much more space to do it justice. Suffice to say that, when a doubt arises as to the constitutionality of a law or legally binding act during court proceedings in Italy, the court issues an "ordinanza di rimessione" ("referral order") to refer the constitutionality issue to the Constitutional Court and suspends its proceedings until the Constitutional Court decides.

The concept designated by the term "principio di autosufficienza dell'ordinanza di rimessione" is specific to the Italian constitutional procedure and thus to the Italian legal system. This means that, in the English translations of the judgments where the term occurs, a TL term is needed to refer to the same legal principle. Therefore, a TL term is created and a relationship of stipulative correspondence between the SL term and the TL term established. However, it should be noticed that, in the Italian subcorpus, the principle under examination is designated by three terms: "principio di autosufficienza dell'ordinanza di rimessione", "principio di autosufficienza dell'atto di rimessione", and "principio di autosufficienza". What technique has been applied to refer to the Italian legal concept in English then? A relationship of stipulative correspondence has been established via multilingual secondary-term formation, which "occurs as a result of […] (b) a transfer of knowledge to another linguistic community, a process which requires the creation of new terms in the target language" (Sager 2001, p. 251). Secondary term formation includes several techniques, such as borrowing, loan translation, paraphrase, parallel translation, adaptation, and creation *ex nihilo*, which "can be used simultaneously or sequentially and often give rise to several alternative or competing new terms. It can therefore take time before a terminology stabilizes in this field" (Sager 2001, p. 253). However, most probably because of the small number of occurrences (six in total) and of the specificity of the subject matter, one term only has been

created in English for both full forms in Italian, namely "principle of the self-sufficiency of the referral order", while the short form "principle of the self-sufficiency" has been used for the Italian short form. As regards the technique used, the English term "principle of the self-sufficiency of the referral order" has been created by resorting to loan translation, but one of the elements used in the term – "referral order" – is itself a loan translation of an Italian term identifying an Italian legal concept.

Compared to the previous example, the term "referral order" has a much higher frequency in the corpus, since it occurs 367 times. Like in the previous case, in the Italian subcorpus a range – albeit limited – of terms refer to the act used to initiate proceedings before the Constitutional Court, i.e. "ordinanza di rimessione", "ordinanza di rinvio", and "atto di rimessione", whereas in the English subcorpus only one term is used. The English term is particularly interesting because it has been obtained, again, via loan translation, since "rimessione" and "referral" may be considered to have the same broad meaning of "officially sending someone to an authority that is qualified to deal with them". Therefore, "referral order" can be considered as a neologism obtained via secondary term formation. However, if we look beyond the Italian national legal setting, we will discover that the term "referral order" already exists in legal English, where it has different meanings. For instance, in the United Kingdom, a "referral order" is a community sentence introduced by the Youth Justice and Criminal Evidence Act 1999 and used by courts when dealing with young people between the ages of 10 and 17, who appear in court for the first time and plead guilty to the offence they are accused of.

The last example provided here refers to the Italian term "giudice *a quo*", which designates the court issuing a referral order. In the Italian subcorpus, two more terms are used to refer to this court, i.e. "giudice rimettente" and "Corte rimettente". Unlike in the two previous examples, where the correspondence is many-to-one, here the correspondence is many-to-many, since in the English subcorpus a variety of terms are used, namely "referring court", "lower court", "referring judge", and "referring body". What we notice is that in Italian we have two possible term heads, "giudice" and "Corte", whereas in English we have three possible heads, "court", "judge", and "body". The reason for a greater variety in English may lie in the fact that the Italian "giudice" is an umbrella term covering both single judges and panels of judges, a meaning that is better conveyed in English with "court" and the broader term "body" than with "judge", which refers to an individual officer rather than a panel. As regards the modifier, in Italian there are two options: the Latinism "*a quo*" and "rimettente", which derives from the verb "rimettere" as "rimessione" in the second term analysed above. Two modifiers are also used in the English subcorpus, but a difference can be

noticed. The modifier "referring" follows the same pattern as the Italian "rimettente", pointing at the "referral order", and can be considered a loan translation. It is interesting to notice that the same term is used in the case law of the European Court of Human Rights to designate the same concept in cases against Italy (see, for instance Case of Tommaso v. Italy, Application no. 43395/09, Grand Chamber judgment of 23 February 2017). It can be thus concluded that even supranational case law has recourse to stipulative correspondence to maintain a link with national legal concepts. However, like in the case of "referral order", also the term "referring court" is not a univocal term, since it has a different meaning depending on the context in which it is used. For instance, a "referring court" (or "referring judge") in the European judicial system is a national court or tribunal of a European Union Member State submitting a request for preliminary ruling to the European Court of Justice. Furthermore, "referring court" may also be used in other national contexts to designate a court that refers responsibility for performing a certain act or deciding on a particular matter to another body. Consequently, stipulative correspondence can be said to be highly context dependent.

If we consider the other term used in the English subcorpus, "lower court", we can notice that it is obtained through explicitation. Given that the Constitutional Court has a higher status than the courts of general jurisdiction submitting questions of constitutionality to the Constitutional Court, the choice of the more explicit modifier seems reasonable in this context, since it allows for an effective transfer of knowledge while maintaining the link to the Italian legal system. However, also in this case stipulative correspondence highly depends on the context: outside of it, the term "lower court" may refer to any court having a lower status than another court, not necessarily an Italian court submitting a question of constitutional relevance to the Constitutional Court.

4. Stipulative correspondence and legal terminological resources

What is the connection between stipulative correspondence and legal terminological resources, then? Before answering this question, some preliminary issues must be addressed.

The first is that texts are the 'natural environment' of terms and, vice versa, terms are "integral components of texts" (Rogers 2009, p. 217). If we consider the textual turn experienced by terminology as both a practice and a discipline on the one hand, and the need of specialized translators to have access and contribute to the creation of organized collections of terminological information on the other, it is not difficult to imagine instances

of stipulative correspondence being recorded in terminological resources. Indeed, stipulative correspondence may resemble the first case of absolute equivalence envisaged by Sacco (see Section 2 above), where absolute equivalence relations are established by an 'artificial' entity. However, the case described by Sacco occurs in bi- or multilingual legal contexts where the legal system is one and the languages have the same official status. Therefore, in bi- or multilingual legal systems the relation of absolute equivalence between terms is relatively stable, and the meaning of the terms, regardless of the language, depends on the legal system. This means that, even when such terms are extracted from their context, they retain their meaning.

An example will clarify this point. The 'principle of subsidiarity' as defined in Article 5 of the Treaty on European Union remains the same principle, no matter whether you call it "principio di sussidiarietà", "Grundsatz der Subsidiarität", "principe de subsidiarité" or any other term in the other official languages of the EU. However, let us imagine a situation in which the concept of "principle of subsidiarity" needs to be referred to in a non-official language.[8] In this case, the non-official language has no direct relationship with the legal system in which the concept is embedded. Therefore, in order to transfer the knowledge carried by the term "principle of subsidiarity" we need to establish a relation of stipulative correspondence between the SL term and the TL term. In other words, absolute equivalence is only possible when there is a relationship between the languages and the underlying legal system, i.e. the legal system must be expressed in those languages. On the contrary, for stipulative correspondence to exist, no relationship between one of the languages involved and the legal system is needed. The non-official language of the legal system is thus a means to transfer legal knowledge to the benefit of a different linguistic community. However, the lack of a language-legal system relationship makes stipulative correspondence a context-dependent relation existing between a SL and a TL term. Put differently, if we isolate the TL term from its context, the connection with the SL legal system may be lost and the meaning with it. For instance, in the examples provided in Section 3 above, the terms extracted from the English subcorpus are meaningful only because both the context and cotext provide all the information necessary for their correct interpretation. This makes stipulative terms more similar to translation equivalents than terminological equivalents. However, the fact that stipulative terms are

[8] Due to space constraints, the example provided here does not account for the possible issues caused by the need to use EU terminology in texts produced in or for non-EU countries whose official languages are also official languages of the EU (e.g. Italian, French and German in Switzerland).

created through secondary term formation to work in a specific context does not prevent these terminological units from being reused in other texts. The data provided by the corpus described above actually show that the same stipulative term may be 'recycled' in various translations. Therefore, while stipulative correspondence starts as a contextual, purpose-driven and possibly transitory relation at the lexical level, it may consolidate over time and stabilise within a certain setting. For instance, we can easily imagine that the Italian Constitutional Court will continue to use the stipulative term "referral order" in the English translations of its judgments.

It is thus the author's contention that stipulative terms, despite their sometimes unstable relationship with the SL terms, should be included in terminological resources, since end users need to be aware of both equivalents and other possible solutions in order to make well-informed decisions. When stipulative terms are recorded in terminological resources, they need to be provided with all the necessary information to be recognized as such rather than as a type of equivalent. In an ideal situation, the records in the terminological repository would be provided with a field where the relation between the SL term(s) and the TL term(s) is explained, in a similar way as in the 'Equivalence' field available in TERMitLEX described in Section 2.1. Other fields may also be used to provide further information to identify a term as a stipulative term or as an equivalent. However, the way in which this information is provided depends on the internal structure of every repository. A field in which the reference legal system is specified may be of help. If, for instance, next to "referral order" we see an indication of Italy as the relevant legal system, knowing that English is not an official language of Italy, we could conclude that the term is linked to the Italian term via stipulative correspondence. However, the cases where a term may work as a stipulative term in a context and as an equivalent (near, partial, or absolute) in another context may require particular attention and a meticulous internal, onomasiological organisation of the terminological repository. Therefore, the inclusion of stipulative terms may require both the insertion of separate entries for homonyms and the creation of links between them so as to avoid possible confusion. Going back to one of the examples provided above, we can imagine a legal terminology database containing one entry for "referral order" with the Italian meaning and another entry for "referral order" with the British meaning. Despite the fact that they designate concepts in different legal systems, it would be a good idea to specify in the relevant entries that the same term may have a completely different meaning in a different legal scenario, especially in light of the growing intertwining and contamination of domestic and international law.

The acknowledgment of stipulative correspondence as one of the possible interlingual relations in legal terminology suggests promising future

research perspectives. One immediate line of inquiry should be directed at identifying the most convenient ways to include stipulative terms in TDBs in order to make them recognisable and reusable. But further research is also needed to explore who creates stipulative terms. The examples provided in this paper have been presented as stipulative terms used by translators and revisers as part of a translation process. However, no study has been carried out to investigate who the 'author' of these stipulative terms is and whether these terms already existed in English prior to the Constitutional Court's decision to have its judgments translated. Neither has a study been undertaken to verify whether any internal guidelines or principles exist that are to be applied in the creation process. This leads us to another possible line of research, i.e. the contexts in which stipulative correspondence comes into play. The corpus used in this paper relates to a very limited context, namely the translation of national case law into a language which is not an official language of the underlying legal system. However, more contexts in which stipulative terms are used can be envisaged and should be explored, such as the translation of domestic normative texts in a non-official language, where possible patterns of creation of stipulative terms may be investigated. Yet, stipulative correspondence may be used also in texts which do not necessarily result from translation. Let us think of scholarly legal literature written in a certain language but dealing with concepts originally expressed in another language, or of supranational case law referring to national legal concepts (see Peruzzo 2019a, 2019b). In all these cases, the drafting – rather than translation – of texts requires the inclusion of stipulative terms, which are thus created by professional profiles other than translators (e.g. legal scholars, judges, etc., unless the stipulative terms already existed as the result of a translation task and were reused in these texts). This suggests yet another possible research direction, which involves the study of the diachronic development and possible circulation of stipulative terms in texts of different origin. Stipulative correspondence can thus be considered as a fertile research area with both theoretical and practical value.

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