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TERMitLEX: a legal terminology knowledge base for translators, interpreters and beyond

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Abstract¹

The first terminology database of the University of Trieste – TERMit – dates back to 1996 and contains collections belonging to all sorts of specialised domains. This paper illustrates a project conducted by a team of linguists and lawyers at the Department of Legal, Language, Interpreting and Translation Studies. The aim of the project was to take TERMit more than a step forward, by developing a new terminological knowledge base, devoted exclusively to legal terminology. The project consisted in i) revising of TERMit's template; ii) updating the existing terminological collections; and iii) disseminating of terminological data. The aim of our paper is to give a general overview of the project and to illustrate more in detail how the lawyers' needs can influence the structure of a terminology database.

Riassunto

La prima banca dati terminologica dell'Università degli Studi di Trieste, TERMit, risale al 1996 e si configura come un insieme di raccolte terminografiche riguardanti i più svariati ambiti specialistici. Il presente articolo illustra un progetto condotto da un gruppo di linguisti e giuristi del Dipartimento di Scienze giuridiche, del Linguaggio, dell'Interpretazione e della Traduzione dello stesso Ateneo, il cui scopo è lo sviluppo di una nuova banca dati terminologica ispirata a TERMit ma volta a contenere esclusivamente termini di natura giuridica. Il progetto consiste in tre fasi: i) revisione del modello di scheda terminografica TERMit; ii) aggiornamento, sia in ordine al contenuto che alla struttura, delle raccolte terminografiche esistenti e inserimento di nuove schede o raccolte; e iii) diffusione delle informazioni pubblicate nelle raccolte terminografiche. L'articolo offre una panoramica del progetto e illustra in maniera dettagliata come le esigenze dei giuristi, intesi come possibili utenti di una tale risorsa, possano influire sulla struttura di una banca dati terminologica.

1. TERMit and IUSLIT: the origins of TERMitLEX

More than two decades ago, a team of researchers of the Advanced School of Modern Languages for Interpreters and

Translators in Trieste developed TERMit (MAGRIS 2002), a database built for the storage of multilingual terminological data. The idea for this database stemmed from the experience gathered over the years with bi- and multilingual terminological collections produced (in paper format) by students as their final research projects, and from the desire to make this body of data available to the general public, in particular to other translators and interpreters, via the Internet.² Ever since TERMit's creation, students could engage on topics of their own choice. For this reason, the database currently contains around 400 collections, which belong not only to a wide array of domains, ranging from medicine to law, from architecture to sports, etc., but also to more specific subdomains that reflect the students' most varied interests and passions.

In 2012, the Advanced School was converted into the Section of Studies in Modern Languages for Interpreters and Translators (SSLMIT) of the newly founded Department of Legal, Language, Interpreting and Translation Studies (IUSLIT). While maintaining its main research interests in the theory and practice of translation and interpreting in general, the SSLMIT now co-exists with the Section of Legal Studies. This new academic setting has led to a remarkable interaction between linguists and lawyers in the two Sections, which has resulted in the launch of shared academic projects receiving European, national or local funding and dealing mainly with legal translation³ and legal interpreting.⁴

A third important "common ground" is legal terminology. This topic is of great interest in linguistics,⁵ but it has not failed to attract attention in legal scholarship as well.⁶ Therefore, it comes as no surprise that it has been chosen as a research topic to be investigated by a joint team of IUSLIT translation studies scholars and law scholars within a project funded by the University of Trieste.⁷ The aim of the project was to develop TERMitLEX, a new terminological knowledge base (TKB) intended as a repository of terminological records related to the legal domain only.

The inspiration for this new resource derived from the TERMit project, with two main reasons underpinning the decision to create a separate TKB. The first one lay in the complexity and multidimensionality of legal terminology (MAGRIS 2004, PERUZZO 2014, SANDRINI 2014, WIESMANN 2004), which come to the fore especially when the legal terminology to be examined and recorded is not only multilingual but also embedded in different legal systems, as is the case with the research on legal terminology carried out at the IUSLIT. The second reason was the co-existence of different professional profiles "under the same roof" in IUSLIT, i.e. linguists and lawyers. Although these profiles may seem worlds apart, there is growing evidence that the gap is narrowing. Suffice it to mention the expanding role of lawyer-linguists in a globalised world, both in the public sector of international law⁸ and in the private sector. These professionals, who are usually trained in both law and language, are key in mediating between legal professionals and linguists (usually translators) when performing revision tasks to ensure accuracy and equivalence, especially in international organisations such as the European Union. However, their relevance is increasingly apparent in the private international and transnational law as well, where «[c]ompanies comprised of lawyer-linguists spring up to work for corporations that need their services in the many international business transactions completed every day» (HARGITT 2013: 444). In the private sector, lawyer-linguists may prove particularly helpful «in case of issues based on conceptual and language differences» as well as «in the drafting of international agreements affecting private law, such as bilateral investment treaties and regional agreements» (HARGITT 2013: 444). The existence of professional profiles other than legal translators and interpreters who may be interested in terminological repositories thus suggested the possibility to test the usefulness of such a resource on a different type of possible end users, i.e. law students and legal practitioners. Once lawyers in the broadest sense of the word were identified as the potential end users of the new TKB, an immediate question arose as to whether the terminological record template used in TERMit, which was originally designed to suit translators' and interpreters' needs, and the type of data usually contained in it, could also fulfil future lawyers' needs and expectations. For these reasons, the needs assessment described in Section 2.1 below was performed.

2. TERMitLEX: the project stages

The project can be divided into three stages, all of which were interconnected. The first stage consisted in the revision of the TERMit template by taking into account the needs of future lawyers together with those of translators and interpreters. The second stage required the update of existing collections and the addition of new records (or even full collections) dealing with cutting-edge legal topics, such as immigration and "third generation rights". The third stage implies the dissemination of the TKB by means of the creation of a new website to host it. This last stage is not going to be discussed in this article.

2.1 Understanding future lawyers' terminological needs

The aim of the needs assessment conducted in this project was to clarify the expectations of future lawyers with regard to terminological resources available online. This needs assessment was carried out by means of questionnaires to be completed by students attending the 5-year Degree Programme in Law at the IUSLIT.⁹ More specifically, two groups of final-year students were selected and asked to participate on a voluntary basis, namely students reading either Legal English or Criminal Enforcement Law as their elective modules. The structure of the questionnaire and the results obtained through it are discussed in detail elsewhere (PERUZZO 2018b: 60-77), but the key points are summarised here for convenience.

As regards the structure, the questionnaire included five sections: the first allowed respondents to provide profile data and self-assess their knowledge of English;¹⁰ the second focused on the knowledge and use of both traditional (paper) and electronic (online) linguistic resources, such as dictionaries and encyclopaedias; the third contained a practical task to be performed on a simple legal text dealing with the concept of probation in the UK; the fourth and fifth consisted in the observation and evaluation of a terminological record on the concept of "probation" in IATE¹¹ and TERMit respectively.¹²

A result of great concern for the research team as trainers of future professionals is the lack of knowledge of the features, bases and possible uses of different linguistic and terminological resources. Strikingly enough, some students did not distinguish between a dictionary and a glossary. However, «[t]he use of language is crucial to any legal system» (ENDICOTT 2002/2016), let alone because «[l]awmakers characteristically use language to make law, and law must provide for the authoritative resolution of disputes over the effects of that use of language» (ENDICOTT 2002/2016). In an increasingly globalised world, legal practitioners are constantly faced with the challenges posed by interacting legal and linguistic systems. Therefore, it is the authors' opinion that law students probably need more linguistic training, above all in terms of knowledge of foreign languages, but also as regards the availability of linguistic resources.

As far as terminological records are concerned, the respondents were asked to express their preferences with regard to the structure and content of IATE and TERMit records based on their observation and their personal experience with dictionaries and other linguistic resources. As regards the fields and the content in both IATE and TERMit, respondents praised the presence of definitions and contexts. From the research team's perspective, the students' highlighting of the context as a very useful field came as a surprise, since an initial assumption was that contexts are more relevant to language experts than lawyers. However, a closer look at the context provided in TERMit's record gives a hint as to the reason for this result: the context accompanying the term "probation" can be considered a «knowledge-rich context» (MEYER 2001: 280), since it provides additional conceptual information compared to the definition and can thus be considered an integration. The same can be said about the TERMit's field named "Note", which is generally used to add encyclopaedic information that does not fit the analytical definition per *genus et differentiae* widely used in terminography. In relation to this aspect, it must be noted that the questionnaire allowed to identify a difference between the professional profiles involved in the project. Indeed, what is generally considered additional or encyclopaedic information by terminologists or language experts may not be deemed so by (future) professionals in the field of law. For instance, lawyers may be interested in knowing more on the historical origin and development of a legal concept, because «[l]egal concepts – within a particular legal system – are the result of the stratification of different meanings which have been developed over the course of time» (POZZO 2015: 74). Or they may wish to find out more on the classification of such a concept within a certain subfield in different legal systems. Therefore, it should not be surprising that respondents also acknowledged the usefulness of the so-called "Equivalence" field, which is present in TERMit but absent from IATE and other legal TKBs such as *bistro*.¹³ This field is used to illustrate the conceptual differences and similarities between the legal system(s) expressed in Italian¹⁴ and one or more legal systems expressed in another language. Terminologists therefore need to adopt an interdisciplinary approach including comparative legal analysis,¹⁵ which is essential to provide a comprehensive documentation of the possible differences and similarities between legal systems. The final aim of this descriptive approach is to offer as much information as possible to enable the end users of the TKB to make informed decisions during a translation or drafting process.

However, despite the inclusion of this type of information in the record, the students' comments revealed the need for a more structured organisation of the fields to contain legal data, such as a field listing the references to the sources of law providing for a certain legal institution or the official bodies responsible for the law enforcement in a specific legal subfield.

2.2 Updating and creating terminological collections

The second stage of the project consisted in updating existing collections containing legal terminology and populating the TKB with new records or even new collections,¹⁶ especially dealing with either topical legal issues, such as stepchild adoption in the Italian legal system, or topics related to the current political, economic and social situation of Europe, such as immigration. In the same vein as the questionnaires used to identify future lawyers' terminological needs, the practical problems encountered in updating existing collections and adding new records constituted the starting point for reconsidering some basic choices concerning both the terminological working method and the template structure and, eventually, for discussing them with our law experts.

The first consideration to be made in this regard is the need to take into account the diachronic evolution of (legal) terminology. The very need to update existing collections indicates that terminology – and its underlying conceptual systems – evolve over time. This affects TKBs in two ways. Firstly, it influences the content to be recorded in terminological records. Contrary to the principles of the General Theory of Terminology, which postulated the recording of synchronic data only, in legal TKBs diachronic data are considered essential to understand how a concept and the conceptual system have evolved and what the consequences for the terms used are.¹⁷ Therefore, diachronic evolution represents a challenge because it requires the constant update of the content. However, in the authors' opinion updating a terminological record does not mean discarding all the information that has become obsolete. In fact, this information may be useful to understand the evolution of the concept and

of the relevant legal framework, thus giving the users of the TKB the opportunity to increase their knowledge. It can also help translators working on texts not concerning the present situation. It follows that the ideal scenario would be having access to a TKB that contains both synchronic and diachronic data. This leads to the second way in which terminological evolution over time affects TKBs, namely the need to "restructure" the terminological records in existing TKBs. This could mean not only that the organisation of the information requires reconsideration, but also that the original design of the terminological template must be reviewed and possibly modified to host diachronic data. The latter case is further discussed in Section 3, while the former is exemplified here through a brief illustration of the research team's experience in updating and integrating an existing collection.

Before doing so, it must be pointed out that, in former TERMit collections dealing with the legal domain, when the multi-layered dimension of legal systems in Europe, i.e. the co-existence of EU and national law in the same legal space, needed to be considered, the approach introduced in comparative law by SACCO (1991: 27) was adopted. According to this approach, a genotype (the "core" of a legal concept) must be distinguished from its phenotypes (the actual manifestations of the genotype in a specific law system, which may lead to differences among legal systems)¹⁸. Following this line, in TERMit the EU and the national levels were usually combined in one single record, which was intended to group all the possible phenotypes of a genotype (and the relative terms). Given the complexity of the legal domain, however, due attention was paid to describing the differences, which involved, among other things, specifying further details in text fields such as "Note", "Synonyms" and "Equivalence" and providing different legal definitions in relation to the supranational and the national level, as shown in the following extract from a record in a bilingual (Italian and English) collection on restorative justice (VITULANO 2013-14), where each definition refers to a different legal framework, as can be inferred from the sources.

en restorative justice

Definition 1 Approach to problem solving that, in its various forms, involves the victim, the offender, their social networks, justice agencies and the community. It is based on the fundamental principle that criminal behaviour not only violates the law, but also injures victims and the community. Restorative justice refers to a process for resolving crime by focusing on redressing the harm done to the victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of that conflict. Participation of the parties is an essential part of the process that emphasizes relationship building, reconciliation and the development of agreements around a desired outcome between victims and offenders.

Source cf. UNODC 2006: 6

Definition 2 Process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.

Source Marshall 1999: 5

Definition 3 Any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party.

Source Directive 2012/29/EU of the European Parliament and of the Council: Article 2(d)

To show how the research team intervened on existing terminological records, a bilingual collection on non-marital relationships dating back to the late 1990s (LAMPIS 1996-97) has been chosen as an example. The topic of non-marital relationships has come to the fore again in recent times in Italy: after long political debates, in 2016 a law was passed which regulates this type of relationships for the first time in this country. Therefore, new records (ZUDÈ 2015-16) concerning some key Italian and Dutch terms embedded in the Italian, Dutch and Belgian national legal systems as well as in the European Union system were added to the collection, some of which are discussed here.

At the beginning of the updating phase, the intention was to follow the genotype-phenotype approach outlined above. However, the interaction with legal scholars led the team to reconsider and abandon it, at least for the key terms, given the challenges posed by the topic and its terminology. The Italian and Dutch terms used in the relevant EU Regulation¹⁹ are *unione registrata* and *geregistreerd partnerschap* and correspond to the English term "registered partnership", which is defined as follows: «the regime governing the shared life of two people which is provided for in law, the registration of which is mandatory under that law and which fulfils the legal formalities required by that law for its creation» (Article 3(1)(a)). The Dutch term *geregistreerd partnerschap* is also the official term pertaining to the legal system of the Netherlands, whereas *wettelijke samenwoning* is the official Belgian term. The Dutch terms, although defined in a slightly different way in the national laws of the Netherlands and Belgium, would still have fitted the relationship between genotype and phenotype. The Italian terms *unione civile* and *convivenza di fatto*, however, added further complexity to the picture. Indeed, while the former is a new form of legally recognized relationship which can be chosen by homosexual couples only, the latter is open to both homosexual and heterosexual couples but is only "minimally" regulated by the law. These intralingual and intrasystemic differences, which are far from negligible, would have excessively strained the genotype-phenotype relation with *unione registrata*. Moreover, they would also make it impossible to establish a synonymic relation between the Italian national terms. On the contrary, when compared to the Dutch national terms, both terms can be considered as a kind of "closest equivalent", each for different legal aspects.

Therefore, while the original terminological collection contained one bilingual record developed on the basis of the genotype-phenotype relation, the updating phase required the conceptual area in question to be structured differently and split into three separate records: one for the EU level (*unione registrata – geregistreerd partnerschap*) and two for the national level (*unione civile – geregistreerd partnerschap, wettelijke samenwoning*; *convivenza di fatto – geregistreerd partnerschap, wettelijke samenwoning*). Each of these records then contains an "Equivalence" field, where the conceptual similarity is accurately described and the differences are pointed out, as in the following example:

Equivalence it-nl La "convivenza di fatto", introdotta appositamente per garantire alle coppie, sia etero- che omosessuali, che non possano o non vogliano contrarre né matrimonio né unione civile il riconoscimento agli occhi della legge del loro status di conviventi e la tutela dei diritti e degli effetti giuridici derivanti da tale status, si può accostare, per corrispondenza funzionale e analogia con gli effetti giuridici depotenziati rispetto a quelli derivanti dal matrimonio, all'istituto olandese della "geregistreerd partnerschap" (lett. "partnership registrata") e a quello belga della "wettelijke samenwoning" (lett. "coabitazione legale"), a cui risulta più affine. In mancanza di un istituto olandese o belga rivolto esclusivamente alle coppie same-sex, a causa della politica della gender-neutrality (che in Italia viene adottata nel caso della "convivenza di fatto"), l'"unione civile" italiana viene anch'essa associata ai suddetti termini olandesi. Si precisa, inoltre, che la denominazione olandese attiene anche al diritto comunitario, ambito in cui acquisisce una definizione diversa; al riguardo, si veda la scheda *unione registrata – geregistreerd partnerschap*.

3. Innovations in TERMitLEX

The identification of future lawyers' terminological needs through questionnaires and the cooperation between different professional profiles within IUSLIT on the updating and integration of existing terminological collections have led to a series of innovations to the terminological record template used by SSLMIT students.²⁰

The most evident innovation that affects the template structure is the introduction of two new fields, i.e. "Legal system" and "Legal framework". The former is generally followed by the name of a country (e.g. Italy, Belgium, the Netherlands) or of an international or supranational organisation with legislative powers (e.g. EU, Council of Europe, UN). This field, which will help to immediately identify the scope of application of official terms, was missing in the original TERMit template and now adds to the existing "Regional label" field, which signals diatopic variants.

3.1 The "Legal framework" field

The second field which was added to the TERMitLEX template is "Legal framework", which is meant to contain a concise description of the legal background of a concept. To illustrate this field, an example belonging to the updated collection on non-marital relationships is provided below, where "Legal framework" contains the main legal sources relevant to the term *unione registrata*. This information is particularly relevant, since it highlights the fact that this legal notion is of European concern and may be a useful starting point for both translators and law professionals in need of further details.

Legal framework I principali riferimenti normativi rilevanti per il presente termine sono: la Proposta di Regolamento del Consiglio del 3 marzo 2016, n. 0060, relativo alla competenza, alla legge applicabile, al riconoscimento e all'esecuzione delle decisioni in materia di effetti patrimoniali delle unioni registrate e il Regolamento del Consiglio dell'Unione Europea del 24 giugno 2016, n. 1104, che attua la cooperazione rafforzata nel settore della competenza, della legge applicabile, del riconoscimento e dell'esecuzione delle decisioni in materia di effetti patrimoniali delle unioni registrate.

Another example comes from a multilingual collection (Italian, English, Spanish and French) on the European market abuse regulation (PANENA 2017-18), more specifically from the record dedicated to *insider dealing*. Here the national and European legal sources are presented in chronological order and the influence of EU acts on domestic legislation is highlighted. In this regard, it is interesting to notice that the recent Brexit may have a significant impact on the relationship between EU and UK legislation. Therefore, major updates to terminological records dealing with UK legal notions may be required, including the separation of records devoted to EU-English terms from those containing UK-English terms.

Legal framework Insider dealing has been considered a criminal offence since 1985 and was set out in Part V of the Criminal Justice Act 1993. The Insider Dealing (Securities and Regulated Markets) (Amendment) Order 2002 is the latest statutory instrument amendment coming into force before the Directive 2003/6/EC. Since 2008, the Financial Services Authority (now Financial Conduct Authority, or FCA) has made greater use of its powers, especially against insider dealing. The Regulation (EU) 596/2014 came into effect on 3rd July 2016, amending the definition of insider dealing to make it compatible with the European regulation, through the S. I. 2016/680.

The "Legal framework" field in TERMitLEX represents an innovation compared not only to TERMit, but also to other existing

TKBs, such as IATE or *bistro*. This field was introduced specifically to summarise the legal knowledge which is considered essential to have a more detailed understanding of the legal notion analysed, such as its historical origin and its main sources of law, as well as any further legal aspect which is not an essential part of the definition, but could prove useful to both law professionals and legal translators. In other words, this field is meant to contain information that would otherwise be scattered across other fields²¹ or even not provided at all.²²

3.2 Existing fields

This collaborative project also allowed the research team to point out which existing fields required greater attention, given the importance accorded to them by both language experts and (future) lawyers. Among these, the "Synonyms" and the "Equivalence" fields are doubtless considered as crucial.

The identification and illustration of possible synonymy relations within a single language on the one hand and of equivalence relations when comparing two or more languages on the other are fundamental for translators and interpreters, since they need terminological data as accurate as possible to provide a high-quality product or service. But information on synonymy and equivalence may prove particularly useful also to lawyers, who may consult a legal TKB for a variety of reasons. For instance, their level of foreign language proficiency may not be high enough to enable them to read through complex legal texts, or they may be involved in legal drafting in a language other than their mother tongue or even in translation activities, where detailed terminological data may be of help. For these reasons, in TERMit and TERMitLEX "Synonymy" and "Equivalence" are meant to have a practical purpose, i.e. to facilitate the translator's, the interpreter's or the lawyer's work by saving time, reducing the necessary effort to find the information required in the decision-making process, and presenting the information in a clear and precise but at the same time concise manner. In other words, these two fields are compiled after a generally time-consuming comparative law activity, most of the time carried out with the support of field experts, and after consulting a wide range of sources, increasingly by means of corpus linguistics methods, in order to guarantee the accuracy and reliability of the information provided. The resulting fields then contain summaries of these research activities, which may sometimes be very detailed and fine-grained. As shown through the example on non-marital relationships discussed in Section 2.2, the attention devoted to synonymy and equivalence relations in TERMitLEX and the ongoing and unforeseeable evolution of law may determine a change in the overall methodological approach adopted to manage the terminology in a TKB.

Another aspect that emerged clearly is that lawyers tend to give absolute priority to authentic definitions found in official legal texts, while language experts, who do not usually have the same legal knowledge or mindset as lawyers, may prefer unofficial but more explicative definitions. An example taken from a bilingual collection (Italian-German) on the law of inheritance (ORLANDI 2016-17) shows an attempt to meet these differences in terms of end-users' needs. The entry *prelegato* contains two definitions. The first is very close to the definition provided by the Italian Civil Code²³ and explicitly mentions the source (i.e. art. 661), taking it for granted that the user knows that this legal provision is contained in the Civil Code. The second definition, though assuming a certain degree of legal knowledge (for instance, the end user must know what *legato* refers to), provides additional information – both conceptual and terminological – compared to the first one.

Definition 1 Disposizione particolare, legato a favore di uno dei coeredi ed a carico di tutta l'eredità, ossia a carico di tutti i coeredi onerati (art. 661).

Source cfr. Ballorani/De Rosa/Mezzanotte 2012: 794

Definition 2 Legato gravante a carico di tutta l'eredità, nel quale il beneficiario sia uno dei coeredi. Costui, pertanto, cumula le due qualità di coerede (onerato) e di legatario.

Source del Giudice 2001²⁴: 813

Therefore, a fundamental aspect to bear in mind when first designing a terminological record template and then when compiling it is how to strike a balance between language experts' and lawyers' needs.

4. Concluding remarks and future work

The innovations just described lead to a final general remark. A paramount decision to be taken at the outset of any terminological project concerns the assessment of the intended end users of the TKB and their needs. In this specific case, end users are professionals belonging to two communities, i.e. linguists and lawyers, who are interested in the same domain, law, but have different information needs. The main challenge for the research team in this case was to design a terminological record template that is well structured, clear and user-friendly, able to contain information relevant to both professional communities, without at the same time giving rise to an information overload.

The TERMitLEX template was obtained by combining, on the one hand, the expertise in terminology and translation studies of

the linguists in the research team and their experience as professional translators and, on the other, the expertise in the legal field and in multinational law of the team's law scholars. The template was also designed to take into account the needs and expectations expressed by the law students who took part in the needs assessment. Given that law students and professional lawyers may very likely differ with reference to needs and expectations but that no evidence has been collected in this regard so far, a future research direction is to shift the focus from students to professional lawyers, such as lawyers conducting cross-border activities, lawyer-linguists working in the public and in the private sector, legal scholars publishing in different languages. The aim of this future study will be to investigate the professionals' interest in and actual use of terminological repositories, in order to further adapt these resources to foster their use or increase their usefulness in daily practice.

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Appendix

Example of trilingual (Italian, German, and Spanish) TERMitLEX terminological record extracted from CERICOLA 2017-18.

mandato Morphosyntax *m.* Usage label *main term* Style label *official*

Source ? **Sentenza 12848/2006**

Lexica Attestato in ? **Del Giudice 2014**: 791

Phraseology esecuzione, estinzione, adempimento, revoca del mandato; stipulare, revocare, eccedere, conferire, eseguire un mandato

Definition Contratto col quale una parte si obbliga a compiere uno o più atti giuridici per conto dell'altra.

Source ? c.c.: art. 1703

Legal framework Con il contratto di mandato una parte (? **mandatario**) si obbliga a compiere uno o più atti giuridici per conto dell'altra (? **mandante**) (artt. 1703 ss. ? c.c.). Si tratta di un contratto consensuale, bilaterale, ad effetti obbligatori e di natura personale. Pertanto il mandato non va confuso con la ? **procura**, che è un atto unilaterale con il quale il dominus negotii conferisce il potere di agire in suo nome e per suo conto e assume gli effetti derivanti dal contratto concluso dal rappresentante con terzi. Mentre nella procura il rappresentante ha la facoltà di esercitare il potere conferitogli, nel mandato il mandatario ha l'obbligo di eseguire il mandato con l'ordinaria diligenza e rendere conto del suo operato al mandante (artt. 1710 c.c.). La procura e il mandato si incontrano nel caso di ? **mandato con rappresentanza**, se il mandatario agisce in nome e per conto del mandatario spendendone il nome; si ha invece ? **mandato senza rappresentanza** quando il mandatario agisce in nome proprio acquistando diritti e obblighi derivanti dal negozio concluso con terzi per incarico del mandante, al quale poi dovrà trasferire i diritti acquistati (v. ? **rappresentanza indiretta**). Inoltre il mandato si presume oneroso (art. 1709 c.c.) e, dunque, che sia dovuto un compenso a favore del mandatario; sta al mandante dimostrare che il mandato era stato pattuito come gratuito (cfr. ? **Torrente & Schlesinger 2017**: 584-5).

Context Ferma la distinzione tra ? **procura** e mandato – risolvendosi, la prima, nel conferimento ad un terzo del potere di compiere un atto giuridico in nome di un altro soggetto e, il secondo, in un contratto in forza del quale una parte si obbliga a compiere uno o più atti giuridici nell'interesse de un'altra – il ? **mandato con rappresentanza** a vendere beni immobili non è soggetto all'onere della forma scritta stabilito, ai sensi del combinato disposto degli artt. 1392 e 1350, n. 1, c.c. per l'atto di procura, atteso che gli effetti del contratto si riproducono in capo al rappresentato in forza del solo rapporto di rappresentanza, mentre il mandato spiega i suoi effetti nel rapporto tra rappresentante e ? **rappresentato**.

Source ? **Sentenza 12848/2006**

Concept field fonti e modificazioni della rappresentanza

Related words? **rapporto di gestione** Type of relation *super*.

Related words ? **procura** Type of relation *ant*.

Related words mandato con rappresentanza, mandato senza rappresentanza, mandato generale, mandato speciale, mandato oneroso, mandato gratuito, mandato in rem propriam, mandato collettivo; commissione, contratto di spedizione Type of relation *sub*.

Related words rappresentante, ? **rappresentato**, ? **mandatario**, ? **mandante**, ? **rappresentanza indiretta**, presunzione di onerosità, obbligo di rendiconto, diligenza Type of relation *general*

Equivalence it-de Tra i due termini è possibile stabilire una equivalenza relativa. Una differenza sostanziale si rileva nell'onerosità del contratto, in quanto l'ordinamento italiano presume che il mandato sia oneroso (art. 1709 c.c.), anche se le parti possono accordarsi per la gratuità del mandato, mentre il BGB stabilisce che il mandatario, accettando il contratto di mandato, si obbliga a compiere un atto a titolo non oneroso (unentgeltlich, § 662 BGB); qualora l'Auftrag preveda un compenso, rientrerebbe nella tipologia del Geschäftsbesorgungsvertrag (contratto di gestione d'affari). Inoltre, a differenza dell'ordinamento italiano, nelle cause di estinzione dell'Auftrag non è contemplata la morte o incapacità sopravvenuta dell'Auftraggeber: «Der Auftrag erlischt im Zweifel nicht durch den Tod oder den Eintritt der Geschäftsunfähigkeit des

Auftraggebers», § 672 ? **BGB**.

Equivalence it-es Tra i due termini è possibile stabilire un'equivalenza relativa, poiché i due ordinamenti descrivono l'onerosità o la gratuità del contratto di mandato con una diversa prospettiva: l'ordinamento italiano presuppone che il mandato sia oneroso, salvo patto contrario (presunzione di onerosità, art. 1709 ? c.c.), mentre il Código Civil stabilisce che «a falta de pacto en contrario, el mandato se supone gratuito» (art. 1711 ? **CC**).

Spanish **mandato** Morphosyntax *m*. Usage label **main term** Style label **official**

Source ? **Sentencia 11/2018**

Lexica Encontrado en ? **DEJ**: 1048

Phraseology aceptación, ejecución, realización, revocación, extinción del mandato; el mandato vincula, obliga alguien a hacer algo; ejecutar, cumplir, revocar, aceptar un mandato

Definition Contrato por el que se obliga una persona a prestar algún servicio o hacer alguna cosa, por cuenta o encargo de otra.

Source cfr. ? **CC**: art. 1709

Legal framework A pesar de que el Código Civil confunde a menudo mandato y representación, la doctrina moderna distingue con nitidez estos negocios. Sus diferencias se encuentran primero en el origen del mandato, que nace de un contrato y por lo tanto requiere la aceptación del ? **mandatario**, mientras que el ? **apoderamiento** es un negocio unilateral y no es necesaria aceptación. Además, el poder puede nacer a consecuencia de contratos distintos del mandato (contrato de sociedad, de arrendamiento de obras y servicios, entre otros). En segundo lugar, el mandato es una relación obligatoria entre ? **mandante** y mandatario, mientras del apoderamiento deriva una facultad y no una obligación para el ? **apoderado**. Por último, el mandato produce efectos entre mandatario y mandante, mientras que el apoderamiento tiene efectos en la relación exterior entre terceros y representado excluyendo el representante. Entonces mandato y apoderamiento son básicamente independientes, pero pueden encontrarse juntos a menudo en caso de mandato unido a representación (cfr. ? **O'Callaghan Muñoz & Fernández González 2017**: 257).

Context Esta doctrina, plasmada recientemente en la sentencia citada por la parte recurrente de 24 de octubre de 2008, Rc. 1030/2003, ratificada por la de 13 de febrero de 2014, Rc. 200/2012, interpreta el artículo 1738 del Código Civil en el sentido de exigir para su aplicación la concurrencia de dos condiciones: en primer lugar, que el tercero con el que contrata el ? **mandatario** haya actuado de buena fe, o sea que desconociera la anterior ? **extinción** del mandato, condición que se da en el supuesto que enjuiciamos; y en segundo lugar, que dicho mandatario, en el momento de hacer uso del poder, ignorara la muerte del ? **mandante** o la concurrencia de cualquier otra de las causas que hacen cesar el mandato, condición esta que no concurre en el presente supuesto en el que el mandatario usó el poder cuando le había sido debidamente notificada su ? **revocación**.

Source ? **Sentencia 11/2018**

Concept field fuentes y modificaciones del poder de representación

Related words ? **relación de gestión** Type of relation **super**.

Related words ? **apoderamiento** Type of relation **ant**.

Related words mandato general, mandato especial, ? **mandato con representación**, ? **mandato sin representación**, mandato tácito, mandato expreso Type of relation **sub**.

Related words ? **mandatario**, ? **mandante**, ? **representación indirecta**, ? **apoderado**, ? **poderdante**, ? **contemplatio domini**, ? **poder de representación** Type of relation **general**

German **Auftrag** Morphosyntax *m*. Usage label **main term** Style label **official**

Source ? **BGB**: § 663

Lexica Belegt in ? **Köbler 1999**: 32

Phraseology im Namen oder Auftrag jmds. handeln; einen Auftrag erteilen, erlöschen, annehmen, widerrufen, kündigen; Annahme, Erlöschen, Ausführung, Widerruf, Fortbestand, Erteilung des Auftrags; der Auftrag erlischt, verpflichtet jmd. etwas zu tun

Definition Nach dem Gesetz liegt ein Auftrag, verstanden als Vertragsverhältnis, nur vor, wenn der Beauftragte sich gegenüber dem Auftraggeber vertraglich verpflichtet, für diesen unentgeltlich von Seiten des Auftraggebers ein Geschäft zu besorgen.

Source ? Palandt 2001: 817

Legal framework Der Auftrag ist gemäß § 662 BGB ein Vertrag, durch den sich eine Partei (der ? **Beauftragte**) verpflichtet, für die andere Partei (? **Auftraggeber**) ein Geschäft unentgeltlich zu besorgen. Den Auftraggeber hat keine Pflicht gegen den Beauftragten, sodass der Auftrag als ein einseitiger verpflichtender Vertrag betrachtet wird. Erhält dagegen der Auftragnehmer ein Entgelt, so handelt es um keinen Auftrag, sondern um einen Geschäftsbesorgungsvertrag (§ 675 BGB) (vgl. ? **Deutsches Rechts-Lexikon 2001:** 377). Aus dem ? **BGB** (§§ 662 ff.) kann der Auftrag zu indirekter Stellvertretung führen: Der Vertreter ist bei diesem Fall Partner des Dritten und muss er das aus dem Geschäft Erlangte an seinem Vertretenen herausgeben (§ 667 ? **BGB**). Umgekehrt kann er vom Auftraggeber Ersatz verlangen. Außerdem nicht selten enthält ein Auftrag auch die Erteilung einer ? **Vollmacht**, wobei dagegen eine direkte Stellvertretung entsteht. Dennoch gilt die Vollmacht wegen des Abstraktionsprinzips immer vom Auftrag als unabhängig (vgl. ? **Petersen & Medicus 2016:** 385).

Context Wer zur Besorgung gewisser Geschäfte öffentlich bestellt ist oder sich öffentlich erboten hat, ist, wenn er einen auf solche Geschäfte gerichteten Auftrag nicht annimmt, verpflichtet, die Ablehnung dem ? **Auftraggeber** unverzüglich anzuzeigen. Das Gleiche gilt, wenn sich jemand dem Auftraggeber gegenüber zur Besorgung gewisser Geschäfte erboten hat.

Source ? BGB: § 663

Concept field Quellen und Änderungen der Vertretungsmacht

Related words ? Grundverhältnis Type of relation **super**.

Related words ? Vollmacht, Geschäftsführung ohne Auftrag Type of relation **ant**.

Related words Dienst- bzw. Arbeitsvertrag, Geschäftsbesorgungsvertrag Type of relation **coord**.

Related words Mandat, Zahlungsauftrag, Kreditauftrag Type of relation **sub**.

Related words ? Beauftragte, ? **Auftraggeber**, Auftragsbestätigung, Ablehnung, Geschäftsbesorgung, ? **unmittelbare Stellvertretung**, ? **Bevollmächtigte**, ? **Vollmachtgeber**, ? **Vertretungsmacht** Type of relation **general**

Note Das Mandat das Verhältnis des Rechtsanwalts zur Partei, seinem Auftraggeber (dem Mandanten). Der Rechtsanwalt ist verpflichtet, ausschließlich die Interessen seines Mandanten zu vertreten, und kann bei Zuwiderhandlung zur Rechenschaft gezogen werden (vgl. ? **Deutsches Rechts-Lexikon 2001:** 2792).

Notes

2.1 This paper is the result of collaborative efforts by the two authors. As regards the organisation and the actual drafting of the paper, Marella Magris, who is in charge of the TERMit and TERMitLEX projects, wrote Section 1, Katia Peruzzo, who was responsible for the analysis of lawyers' terminological needs, wrote Sections 2 and 3. The Concluding remark and future work section was written jointly.

2.2 The web portal TERMit is no longer available.

2.3 See, for instance, *QVALETRA – Quality in Legal Translation*, <http://www.eulita.eu/qualettra>.

2.4 See, for instance, *AVIDICUS 3 - Assessment of Video-Mediated Interpreting in Criminal and Civil Justice – Assessing the Implementation*, <http://wp.videoconference-interpreting.net/>.

2.5 The literature on legal terminology in linguistics is vast and it is beyond the scope of this paper to provide a detailed review. However, it is worth recalling here some of the most prominent scholars who have dealt with it: BORJA ALBI & GARCÍA-IZQUIERDO (2016), BAJTÍ? (2010, 2017), BIEL (2008), CHIOCCHETTI & RALLI (2007), KERREMANS, TEMMERMAN & TUMMERS (2003), NIELSEN (2016), PRIETO RAMOS (2014), PRIETO RAMOS & GUZMÁN (2018), SANDRINI (1996b, 1999), ŠAR?EVI? (1985, 1997) and TEMMERMAN (2018).

2.6 See, for instance, the works by LEMMENS (2011), MATTILA (2006, 2012) and SACCO (1992, 2000).

2.7 *FRA 2015 «Sviluppo di una base di conoscenza terminologica multilingue in ambito giuridico» (Development of a multilingual legal terminological knowledge base)*, Department of Legal, Language, Interpreting and Translation Studies, University of Trieste, coordinator: Marella Magris; in-house team members: Luca Ballerini, Maria Cristina Barbieri, Mitja Gialuz, Dolores Ross, Federica Scarpa; external team members: Vincenzo Inzerillo, Katia Peruzzo.

[2.8](#) For a brief overview of the role of lawyer-linguists in the European Union institutions, see ROBERTSON (2010).

[2.9](#) The questionnaire was compiled in May 2016 and April 2017 by a total of 66 students.

[2.10](#) Among the array of foreign languages covered by the new TKB (i.e. Italian, English, German, French, Spanish, Dutch and Croatian), English was considered the best available option to make students reflect on their knowledge of linguistic resources and terminological needs, given its diffusion.

[2.11](#) IATE (Interactive Terminology for Europe), available at <https://iate.europa.eu/home>.

[2.12](#) For a detailed illustration of the practical task and of the evaluation of the terminological records, see PERUZZO (2018b, 2019).

[2.13](#) *bistro* is the information system for legal terminology in Italian, German and Latin developed at the [Institute for Applied Linguistics](#) of [Eurac Research](#). Available at <http://bistro.eurac.edu/it/>.

[2.14](#) Ever since the creation of TERMit, Italian has been a compulsory language in the terminological collections produced as final research projects by BA students in Applied Interlinguistic Communication and MA students in Translation and Interpreting at the University of Trieste.

[2.15](#) The close relationship between comparative law, legal terminology and legal translation has been highlighted by various scholars. See, for instance, ENGBERG (2013), GALDIA (2003), GEEROMS (2002), JOPEK-BOSIACKA (2013), SANDRINI (1996a) and SIMONNÆS (2013).

[2.16](#) The SSLMIT presently holds 55 legal terminology collections, for a total of around 2700 records, and some new collections are underway.

[2.17](#) See, for instance, the studies by PERUZZO (2017, 2018a) and PICTON (2011, 2014).

[2.18](#) For a more detailed discussion on the application of the genotype-phenotype distinction to a multilingual legal TKB, see PERUZZO (2014).

[2.19](#) The main EU source of law in this field is "Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships", *OJ L 183*, 08/07/2016, pp. 30-56.

[2.20](#) An example of a TERMitLEX record is provided in the appendix.

[2.21](#) For instance, in TERMit, information on relevant sources of law could be inserted in the "Note" field which, however, was not dedicated to legal aspects in particular. The same occurs in IATE, where references to relevant legislation are stated in the "Note" field.

[2.22](#) For instance, in *bistro* no sources of law are provided other than those serving as sources of definitions and contexts.

[2.23](#) The relevant legal provision reads as follows: «Art. 661. (Prelegato). Il legato a favore di uno dei coeredi e a carico di tutta l'eredità si considera come legato per l'intero ammontare.»

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