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“N/A: NO CONCISE TERMINOLOGICAL SOLUTION HAS BEEN FOUND TO DESIGNATE THE CONCEPT”. EXPLORING THE THIRD SPACE OF TERMINOLOGY TRANSFER IN EU LEGAL TRANSLATION

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Abstract

This paper aims to explore the notion of Third Space in EU legal translation by means of a terminology-driven analysis of translation compromise solutions traced in the interinstitutional EU terminology database IATE. From a methodological point of view, the analysis combines a quantitative and a qualitative perspective. The first quantitative phase consists in querying IATE—in particular, its Comparative Multilingual Legal Vocabulary collection—in search of those traces of cultural compromise left in the translation transfer by lawyer-linguists working at the Court of Justice of the European Union (CJEU). The second qualitative phase aims to map the translation techniques used by lawyer-linguists to cope with the absence of equivalent terms. The focus of this qualitative section is on conceptual voids (“N/A”/“Vide”) and “Formulations” found in Spanish as main source and target language/legal system in combination with English, French and Italian as source/target languages/legal systems.

Keywords: Third Space. EU Legal Translation. IATE. Translation techniques. CJEU lawyer-linguists.



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Resumen

El presente artículo explora la noción de tercer espacio en la traducción jurídica llevada a cabo en la Unión Europea a través de un análisis terminológico de las soluciones de compromiso encontradas en la base de datos terminológica interinstitucional de la UE IATE. Desde el punto de vista metodológico, el análisis combina una perspectiva cuantitativa y cualitativa. La primera fase cuantitativa consiste en rastrear IATE – en particular, su colección “Comparative Multilingual Legal Vocabulary” – en busca de aquellas huellas de compromiso cultural dejadas por los juristas-lingüistas del Tribunal de Justicia de la Unión Europea (TJUE) en el proceso de traducción. La segunda fase cualitativa tiene el objetivo de detectar las técnicas de traducción empleadas por los juristas-lingüistas para solucionar casos de ausencia de equivalencia entre los conceptos jurídicos. El foco de esta segunda fase recae en los vacíos conceptuales (“N/A”/“Vide”) y en las “Formulations” encontrados en español como lengua/ordenamiento jurídico origen y meta en combinación con el inglés, el francés y el italiano como lenguas/ordenamientos jurídicos origen/meta.

Palabras clave: Tercer espacio. Traducción jurídica en la UE. IATE. Técnicas de traducción. Juristas-lingüistas del Tribunal de Justicia de la UE.

1. Engaging with the notion of Third Space in Legal Translation Studies

The notion of Third Space (Bhabha 2004) has been fruitfully applied in Legal Translation Studies (see Matulewska & Wagner 2021a), and expectedly so. Constantly faced with the challenges of partial equivalence between legal systems and conceptual voids due to the system-bound nature of legal terms (Biel 2014: 42), legal translators are inevitably forced to engage in the highly complex process of transferring and re-expressing the source text by navigating the “space-in-between” (Clay & McAuliffe 2021: 100) (see Figure 1).

A closer analysis of the lexical items used in postcolonial studies to describe the sociological notion of Third Space shows the strong connection with the very nature of legal translation (see Matulewska & Wagner 2021b: 1246): once translated, the new (legal) text becomes undefined, vague, fluid, hybrid, remixed as a result of a process of negotiation, approximation, transformation, manipulation, recontextualisation, cultural mediation. Legal translation creates spaces for possibilities, alternatives and compromises (see also Scott 2019: 39-40) between two cultural identities often

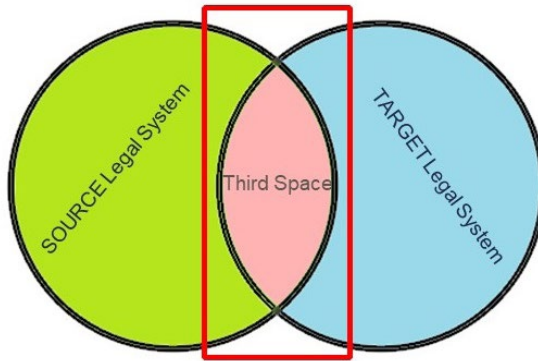


Figure 1. Legal Translation Spaces

characterised by asymmetrical relations of power (Wolf 2000; Carbonell i Cortés & Monzó-Nebot 2021).

Comparative lawyers and legal translation scholars have always been fascinated and inspired by this space-in-between when studying legal translation practice. There are many examples of untranslatability and legal transplants (i.e. the moving of a rule or a system of law from one legal system to another, see Watson 1993), as in the case of legal terms such as negligence, tort, representations, merchantability, remedies, damages, severability, strict liability, non-disclosure agreements, etc. (see Bestué 2013: 246). Other examples include those elements of ‘approximation’ that result from negotiations between the source and the target legal systems or from the translators’ notes as paratextual elements which often influence the reading and interpretation of a specific legal text.

Conceptualising legal translation as a Third Space means recognising that it “no longer means bridging a gap between two different cultures but, rather, producing meanings which are created through the encounter of cultures that are already characterized by multiculturalism” (Wolf 2000: 141), precisely as in the case of institutional legal texts. From this perspective, the Third Space can be seen as a drive towards global uniformity in legal cultures (Wolf 2000: 128-130), a view also shared by Prieto Ramos (2017: 186): legal translation in institutional contexts fosters the development of

a global law¹, which is inevitably “a matter of multilingual communication and institutional legal translation”². A case in point is the terminology used in EU legal contexts, where new terms constantly need to be created to find terms for autonomous EU concepts able to account for new supranational realities, thus avoiding borrowing national terminology which may lead to ambiguities (Clay & McAuliffe 2021: 109). Culture-bound legal terms (country-specific legal terminology) may result in discrepancies among the language versions of the EU so this leads to the creation of neutral terms which populate the space-in-between and push the boundaries of the source and target languages towards the centre, where legal meanings are ‘remixed’, and ‘hybridity’ comes into being (Wolf 2000: 141)³.

Against this theoretical background the present study aims to explore the Third Space of terminology transfer in EU legal translation by choosing the Court of Justice of the European Union (CJEU) as a case in point. Legal translation performed by lawyer-linguists working at the CJEU can rightly be considered translation as a Third Space since the texts produced at each stage are inevitably hybrid in nature as a result of the complex processes of multilingual negotiations at work within the Court (Clay & McAuliffe 2021: 118-119).

1. “Globalisation of legal services is [...] no longer limited to large law firms dealing with cross-border and multi-jurisdictional matters but it also regularly features in domestic law practice, where foreign language speakers are parties to the legal process or information is communicated between legal institutions based in different jurisdictions” (Wilson 2023: 641-642).
2. “Supranational institutions rely on translation to create, disseminate, enforce and interpret legal instruments in different languages, according to varying degrees of multilingualism. Institutional translators are ‘key actors responsible for giving linguistic shape to authentic texts which ultimately become sources of law’” (Prieto Ramos 2017: 186).
3. “If we consider the *Third Space* as the potential and starting point for interventionist translation strategies, we realize that such strategies go far beyond the traditional concepts of ‘original’ and ‘translation’, and the old dichotomy of ‘foreignizing’ versus ‘domesticating’ in all its implications. These strategies imply a shift toward the centre, where cultures encounter each other, and where meanings are effectively ‘remixed’ [...]. The place where cultures overlap and *hybridity* comes into being can already be considered as the locus of translation” (Wolf 2000: 141).

2. A case study on the Comparative Multilingual Legal Vocabulary (VJM)

EU legal texts—including the judgments delivered by the CJEU—provide a fruitful testing ground to investigate how the Third Space is shaped in institutional legal translation. By looking at concrete examples of EU legal terms—through a reliable terminological resource such as IATE (InterActive Terminology for Europe), the database for all EU-related terminology—it is possible to uncover those traces of cultural compromise left in the translation transfer by CJEU lawyer-linguists, which are the result of intercultural and hybrid practices leading to a process of ‘fertilisation’ (Schäffner & Adab 2001: 167).

The objectives of this study are therefore twofold: on the one hand, it aims to map, from a quantitative perspective, the relevance of Third Space solutions (i.e. techniques and strategies used by lawyer-linguists to cope with the legal asymmetries or conceptual voids in national legal systems); on the other hand, it aims, from a qualitative point of view, to describe the comparative law process leading to those translation solutions, with a view to underline the key role played by lawyer-linguists and EU legal terminologists in shaping EU law/concepts and populating a supranational Third Space.

The main material used for the analysis is the VJM (*Vocabulaire juridique multilingue* or Comparative Multilingual Legal Vocabulary). This is a collection of terminology within the IATE database, specifically devoted to legal terminology and handled by CJEU lawyer-linguists⁴. Developed in 2008, it is a collection of multilingual terminological entries found in domestic legal systems (24 languages and 30 legal systems), which reflects comprehensive research on comparative law. The collection contains approximately 1,400 entries (32,750 terms) including 250 entries pertaining to the domain of immigration law (rights of aliens), 450 to the domain of family law, 420 to the domain of criminal law (about half of the entries

4. For an overview of the VJM terminological database, see: <https://termcoord.eu/comparative-multilingual-legal-vocabulary-vjm/> (accessed: 21/12/2023) and https://curia.europa.eu/trad/bilan_vocabulaire_juridique_mutlilingue_compare.pdf (accessed: 21/12/2023).

in criminal law are under review) and approximately 280 belonging to other domains⁵.

Every terminological record has different fields such as “Definition”, “Term reference”, “Reliability”, “Context”, “[Origin of the] Reference”, “Owner”, etc., as well as the “Note” field, which is extremely relevant for the present study. The Note field is generally completed by CJEU lawyer-linguists, who carry out a comprehensive comparative law analysis of the concept being defined. For instance, they generally compare laws, specify the existence or absence of a legal concept, and indicate specifications about national legal systems. Furthermore, they may provide warnings against the use of neighbouring concepts or false friends, highlight the existence of different terms in the same language which designate the same concept in different legal systems, or warn against the existence and use of polysemous terms that designate two different concepts in the same language or in different languages.

3. The VJM-driven analysis

The VJM database has been queried⁶ by searching for specific labels in the Note field: “N/A” (“No concise terminological solution has been found to designate the concept”) or “Vide”, which means that the concept does not exist in the target language/legal culture; “Formulation” (“Origin of the term: Formulation created by the lawyer-linguist”), meaning that a compromise solution has been found by lawyer-linguists to solve a problem of legal asymmetry between two national legal systems thus leading to the identification of a Third Space term to be used in the EU legal context.

The querying procedure comprises three steps: 1) selection of the VJM collection within IATE, “owned” by the CJEU; 2) selection of the validated

5. https://e-justice.europa.eu/content_glossaries_and_terminology-119-en.do (updated on 07/05/2020). Accessed: 12/03/2023.

6. A terminological note might be necessary here. IATE uses the term “entry” to refer to the notions/concepts in a specific legal language/system whereas “terms” are single terminological units used to define those specific notions/concepts (so 1 entry has potentially 24 terms). “Anchor language” generally refers to the language of the legal system in which the entry is found (the source legal system) whereas “Language” indicates the target legal language/system.

records only, i.e. records which have been approved by lawyer-linguists from each language unit and are therefore also available for external users; 3) filtering of the Note field by searching for “N/A”, “Vide” and “Formulation” in an Excel file obtained from the selection.

From a quantitative point of view, the VJM-driven queries allow us to answer two research questions: 1) *Which is the most challenging legal system generating the highest number of N/A / Formulations* (focus on the source legal system); 2) *What is the proportion of instances of N/A / Formulations in each target language/legal system?* (focus on the target legal system). Both research questions enable the problematisation of the concept of Third Space in institutional/CJEU legal translation.

From a qualitative point of view, the VJM-driven queries allow us to map the translation techniques used by lawyer-linguists to cope with the absence of equivalent terms, thus following the comparative law process adopted to find compromise solutions or formulate new concepts. This qualitative section focuses on conceptual voids (“N/A” / “Vide”) and “Formulations” found in Spanish as the main source and target language/legal system in comparison with English, French and Italian as source/target languages/legal systems⁷.

3.1. Quantitative insights

Following the three-step querying procedure mentioned in §2, we identified 1,281 validated entries (i.e. entries approved by lawyer-linguists from each language unit and made available for external users), belonging to the VJM collection of the CJEU⁸.

The first query was aimed at identifying the total number of entries containing “N/A” or “Vide”. As shown in Figure 2, 266 of the 1,281 entries

7. The choice of working with one main legal language (Spanish) in combination with English, French and Italian is determined by the pragmatic need to restrict the research scope: it would have been impossible to study all the combinations due to practical constraints (e.g. language/legal knowledge).

8. Last access to the dataset used for the quantitative results presented in this paper: 01/06/2022.

contain one of the two parameters, accounting for 20.76% of the whole collection.

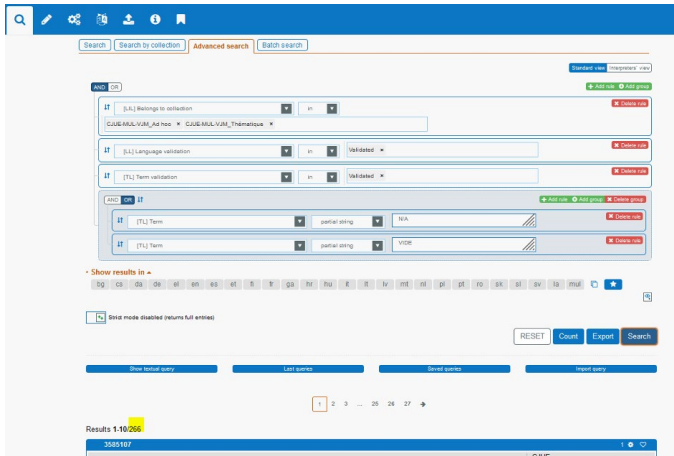


Figure 2. Total number of (validated) entries containing “N/A” or “Vide”

This means that 20.76% of VJM entries have “no concise terminological solution to designate a specific legal concept”.

The second query was aimed at identifying the total number of entries containing “Formulation” in the Note section of the Target Language Term Level (see Figure 3).

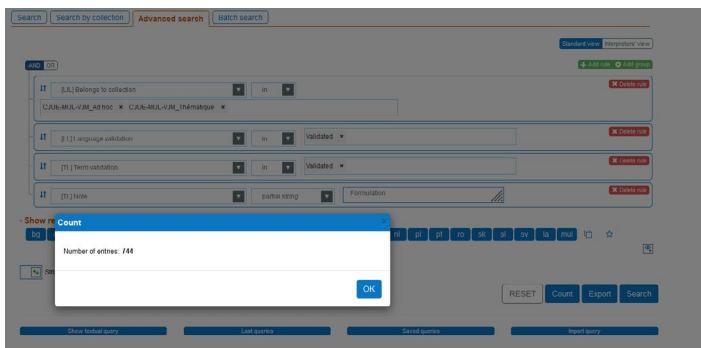


Figure 3. Total number of (validated) entries containing “Formulation”

As shown in Figure 3, 744 out of 1,281 validated entries contain a formulation, accounting for 58.07% of the whole collection. This means that more than a half of VJM entries show cases of formulations created ad hoc by lawyer-linguists to compensate for the absence of a legal concept in a specific legal system⁹; this is undoubtedly an interesting result.

From a quantitative perspective, both figures confirm the highly cultural nature of legal translation and the challenges of translating the law in a supranational multilingual and multicultural institution.

As mentioned in §2, all the entries were collected in an Excel file, which allowed for the filtering of strategic information confirming how the specific setting of translation at the CJEU conforms to the very notion of legal translation as Third Space (Clay & McAuliffe 2021: 95).

The first research question concerns the source legal system (SLS): *which is the most challenging legal system generating the highest number of N/A / Formulations?* The analysis aims to detect those concepts that exist in the domestic legal system but are absent in one of the target systems.

Table 1 shows the results filtered by *anchor languages*¹⁰, in other words, the number of entries in the EU SLS which have at least 1 N/A / VIDE or Formulation in any of the EU languages/target legal systems.

Apart from its symbolism, which is highly relevant in the light of the postcolonial approach to translation as Third Space, ‘anchor’ languages are usually languages of the procedure before the Court which are later considered as (powerful) points of reference for all the other languages.

9. In both cases, it is important to stress that one single entry might have X number of N/A / VIDE or Formulations in different languages/legal systems but it is always counted as one N/A / VIDE or Formulation since the focus is on the concept, i.e. a problematic legal concept existing in that domestic legal system but absent in the target legal system(s), and not on its linguistic realisations.

10. “The anchor language is the anchor to which all the other languages in the entry are attached. The definitions in the other languages should be as similar as possible to the definition in the anchor language. The anchor language is usually the source language of the text in which the term occurred. However, if the object of a concept is country-specific, the anchor language should be (one of) the language(s) of the country concerned (which should be indicated in the ‘Origin’ field). [...] <https://iate.europa.eu/assets/handbook.pdf> (updated on 03.02.2023, p. 69). Accessed: 12/03/2023.

<i>Anchor</i>	N/A / VIDE	FORMULATION
bg	0	2
cs	2	6
da	0	1
de	38	101
el	0	1
en	8	13
es	21	100
et	0	0
fi	0	11
fr	147	409
ga	0	0
hr	0	2
hu	2	0
it	24	60
lt	0	1
lv	0	0
mt	0	0
nl	10	22
pl	0	2
pt	1	1
ro	0	4
sk	1	2
sl	1	0
sv	2	5
TOT	257 [266]¹¹	744

Table 1. N/A / Vide and Formulation in the SLS (anchor languages)

11. The total number of entries containing N/A / VIDE (257) slightly differs from the total number identified automatically upon querying the IATE/VJM database (266) (see Figure 2), which may be due to the fact that some records do not contain the explicit label “N/A” or “VIDE”. Since the difference is not significant (9), both total numbers have been included in the analysis considering that they will not introduce bias into either the quantitative results or the qualitative interpretation.

Conceptual voids (N/A / Vide) are found in 12 legal cultures which are, unsurprisingly, from the oldest and most “powerful” EU countries: French (57%), German (15%), Italian (9%), Spanish (8%), Dutch (4%), and English (3%).

A similar proportion is reflected in the Formulation queries, where 18 legal cultures use formulations as anchor languages: French (55%), German (14%), Spanish (13%), Italian (8%), Dutch (3%), English (2%).

The presence of “senior” legal cultures and the powerful role played by French in creating a Third Space can be explained by looking at different factors, both theoretical and practical. Starting with the latter, it is widely known that French is used as the working language of the CJEU (*cf.* Clay & McAuliffe 2021: 114-116), inevitably influencing the way in which the VJM database is populated. The predominance of French is also due to the fact that many entries relate to immigration law, which is well represented in the VJM database (250). Consequently, most of the notions come from EU law (then transposed to the various national legal systems); in this specific context, since the database envisages the compulsory presence of an anchor language, French is generally used as a default anchor language, as the working language of the CJEU, even though the term is not coined in the French legal system. It is also true that less populated countries tend to appeal the CJEU less frequently than others, so statistically the number of cases brought before the CJEU is inferior for less ‘powerful’ countries¹².

As far as possible theoretical/postcolonial explanations are concerned, the predominant position of French in the CJEU’s processes has a major impact on the nature of the Third Space in this context, significantly limiting the degree of freedom in the cultural and linguistic negotiations occurring within it (*cf.* also Wolf 2000). As Bobek (2015: 307) puts it, “*linguistic domination spills over into intellectual domination, which leads to ideas, notions, or solutions from outside the Francophone legal family not being genuinely represented within the institution, and not being systematically translated into its cases*”.

12. See, for example, the 2022 Annual Report/ Statistics concerning the judicial activity of the Court of Justice available here: https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-03/stats_cour_2022_en.pdf. Accessed: 21/12/2023.

The quantitative results of this first research question are in line with the findings of other studies (see Clay & McAuliffe 2021: 115), that is, the influence of French as the source language of the CJEU, holding a hierarchically superior position over the [23] other languages by virtue of its special status as sole working language of the Court.

The second research question concerns the target legal system (TLS): *what is the proportion of instances of N/A / Formulations in each target language/legal system?* The analysis aims to detect concepts belonging to one of the source legal systems which are absent in the target legal systems and therefore pose challenges for the lawyer-linguists of those language units.

Table 2 shows the results filtered by *target languages*, that is, the number of entries in the EU TLS which have at least 1 N/A / VIDE in one target language (out of 266 total entries) or Formulation (out of 744 total entries) in any of the EU languages/target legal systems.

Target	N/A	% entries [266]	FORM.	% entries [744]
bg	49	18.42	147	19.76
cs	12	4.51	197	26.48
da	32	12.03	120	16.13
de	36	13.53	128	17.20
el	27	10.15	120	16.13
en	38	14.29	125	16.80
es	37	13.91	76	10.22
et	25	9.40	240	32.26
fi	58	21.80	145	19.49
fr	26	9.77	141	18.95
ga	12	4.51	316	42.47
hr	37	13.91	29	3.90
hu	15	5.64	140	18.82
it	38	14.29	74	9.95
lt	27	10.15	72	9.68
lv	8	3.01	119	15.99

mt	11	4.14	112	15.05
nl	46	17.29	128	17.20
pl	50	18.80	107	14.38
pt	26	9.77	25	3.36
ro	47	17.67	76	10.22
sk	32	12.03	91	12.23
sl	38	14.29	93	12.50
sv	69	25.9	139	18.68

Table 2. N/A / VIDE and Formulation in the TLS (target languages)

Table 2 should be read horizontally in order to answer to the second research question. The results show that out of 266 entries containing a N/A / VIDE in the whole VJM collection, 69 (25.9%) have Swedish as the target language; this means that lawyer-linguists working in the Swedish unit have identified 69 conceptual voids, i.e. concepts existing in one of the ‘senior’/‘powerful’ legal cultures (see Table 1) that are inexistent in the Swedish legal system. Swedish is followed by Finnish (21.80%), Polish (18.80%) and Bulgarian (18.42%).

As far as Formulations are concerned, the most challenging language/legal system is Gaelic (42.47%), followed by Estonian (32.26%), Czech (26.48%) and Bulgarian (19.76%).

All in all, these quantitative results¹³ confirm the asymmetrical power relation at stake when negotiating among different (sometimes distant) legal systems. Less common and younger legal systems have to compete with highly powerful legal systems/languages such as French, which is in line with the original concept of Third Space in postcolonial studies, always conceived as “embedded in a priori power relations” (Wolf 2000: 134).

13. The overall quantitative results provided in this section (§3.1) could be potentially affected by the specific focus or inclinations of individual lawyer-linguists working in/from specific language units/combinations who might be particularly active in proposing formulations for challenging legal concepts.

3.2. Qualitative insights

The aim of this section is to map the translation techniques (see, among others, Chesterman 1997) found in the IATE database to deal with conceptual voids and asymmetries between domestic legal systems. This analysis focuses on the note field of the records which describes the comparative law process that has led CJEU lawyer-linguists to a specific (Third Space) solution. Due to research constraints, Spanish is chosen as the language of interest in combination with English, French and Italian. A quantitative overview of the number of N/A / Vide and Formulations used in these language combinations is provided in Table 3¹⁴.

	N/A / Vide	Formulation
ES>EN	0	17
EN>ES	3	0
ES>FR	2	13
FR>ES	23	47
ES>IT	3	7
IT>ES	4	2

Table 3. Total number of N/A / Vide / Formulation in ES<>EN/FR/IT

As far as conceptual voids are concerned, the records contain important information that helps IATE users (e.g. legal translators, lawyers, etc.) deal with the current absence of a specific concept in the target legal system (see also Wilson 2023: 651-655). In such instances, the terminological record is never empty (even though there is a conceptual gap between the two legal cultures and the SLS concept does not exist in the TLS) as notes are included in the entry to explain how the source legal system works. Figure 4 shows an example of N/A between Italian and Spanish related to the procedural law term *improcedibilità*.

14. The focus of this section is on the type of techniques used (from a qualitative point of view) and not on the quantitative dimension of the phenomenon (e.g. the most common technique adopted to solve a problem of legal asymmetry) in line with the general objectives of the study.

★ IATE ID: 3585539

Domain: 1494 Procedural law CJEU [LAW]

Notes:
 Note: Projet qualité: DDP C-61/14 (Langue de procédure: IT / Système juridique de départ: IT)

Description de la notion: "Empêchement à la poursuite de l'instance constaté par le juge en cas d'événements extérieurs et ultérieurs à l'acte introductif d'instance du fait desquels l'action ne peut plus être poursuivie (par ex. lorsque le litige devient privé d'objet)."

Concept description: "Impediment to the continuation of proceedings identified by the court in case of events extraneous and subsequent to the document initiating court proceedings, as a result of which the case cannot be continued (e.g. when a dispute becomes devoid of purpose)."

Cross-references:
 Cross-reference: current entry is not to be confused with 3585512 *inammissibilità* ↗

Owner: CJUE

Figure 4. [3585539] *improcedibilità*

The concept description in the entry level provides a definition of the problematic term in the Italian procedural law in French and English, which is followed by a note by the Spanish lawyer-linguists in which they try to find compromise solutions to fill the conceptual void in the TLS (Figure 5).

es

Definition:

Note: «N/A» significa qu'aucuna solution terminológica concisa n'a été trouvée pour désigner la notion. [16.11.2018]

Al parecer, el sistema italiano distingue causas de inadmisión o decaimiento del proceso según sean, o bien anteriores (o concomitantes) o inherentes al escrito de demanda (por ejemplo, vicios de forma), o bien externas al escrito de demanda o posteriores a su presentación (por ejemplo, cuando el procedimiento pierde su objeto). En el primer caso, se habla de "inammissibilità" [IATE:3585512] y, en el segundo, de "improcedibilità". Este último término no tiene una traducción inmediata. Según el contexto, podría hablarse en español simplemente de "inadmisibilidad"; de "inadmisibilidad sobrevenida" o incluso de "causa de sobreseimiento" o "causa de archivo".

Owner: CJUE

Term: N/A (IT > ES)

Term reference: ---

Term type: term

Reliability: ★★★★★

Owner: CJUE

very reliable

Figure 5. [3585539] *improcedibilità* in ES¹⁵

Similar strategies are found in all the other cases of N/A / Vide: the concept is usually explained through a paraphrase in the entry by means of highly relevant information on how the SLS works, how to cope with the absence

15. <https://iate.europa.eu/entry/result/3585539/es>. Accessed: 13/03/2023.

of a functional equivalent in the TLS, how to translate the concept according to different translation contexts, etc. The existence of the N/A label in the target language does not prevent lawyer-linguists from searching for compromise solutions. Studying these solutions, based on comparative law, means recognising the powerful role of lawyer-linguists as cultural mediators who contribute to filling in or creating a Third Space and make a dialogue possible between two or more different legal systems.

As far as Formulations are concerned, lawyer-linguists tend to adopt—although not always consciously—a variety of translation techniques (see, among others, Brannan 2013, 2018; Peruzzo, 2019) which can be summarised in five main types¹⁶:

1. word-for-word translation of the SL term/definition
2. term formulated from external references (existing notions in the TLS)
3. term accompanying existing TLS terms (synonymy or polysemy, especially national vs. EU concept)
4. term formulated within CJEU case law
5. new term formulated *ad hoc* to prevent legal asymmetries

The first technique, which is also used in N/A / Vide cases, is the literal translation of the SL term or definition. This is the case of the term *adoptante único* in Spanish [record: 3583719]¹⁷ (adoption by one person), which is formulated in Italian through a calque *adottante unico*, a legal notion which is not present in the Italian legal system. The translation solution often remains closer to the TLS or to the SLS, in the latter case being easily recognised as ‘translationese’ (see, among others, Biel 2014).

Literal translations of SL definitions are valuable translation solutions adopted in these cases because they contribute to the understanding of the asymmetry between the Spanish and Italian legal systems by focusing on the SL legal system, which is the anchor language in this case.

16. There are no official/codified procedures that CJEU lawyer-linguists have to follow when creating formulations, so the classification proposed in this study reflects an academic systematisation of the results by the author based on VJM queries.

17. <https://iate.europa.eu/entry/result/3583719/all>. Accessed: 13/03/2023.

An interesting technique is the formulation created from existing notions in the target language, as in the case of the term *knowledge of birth* [record: 3583598]¹⁸, formulated in English to express the provision of Article 117 of the Spanish Civil Code (*conocimiento del nacimiento*). As shown in Figure 6, “reference to the concept which led to the creation of the term” is included in the record even though “it does not contain the exact term”.

The screenshot shows a terminology record in English (EN) for the term "knowledge of the birth". It is divided into two sections: "Definition" and "Term".

Definition:

- Note:** There is no time limit in the UK(E) for bringing proceedings for a declaration of parentage under Section 55A of the Family Law Act 1986, and consequently knowledge of the birth has no relevance as a starting point for such a time-limit. However the court has a discretion to refuse to hear an application if it considers that the determination of the application would not be in the child's best interests.
- Owner:** CJUE

Term: knowledge of the birth

- Term reference:** RASMUSSEN v. DENMARK - 8777/79 [1984] ECHR 17 <http://www.bailli.org/eu/cases/ECHR/1984/17.html> / SHOFMAN v. RUSSIA - 74826/01 [2005] ECHR 760 <http://www.bailli.org/eu/cases/ECHR/2005/760.html> [Reference to the concept which led to the creation of the term. It does not contain the exact term.] [12.04.2011]
- Term type:** term
- Reliability:** ★★★★★
- Note:** Origin of the reference: Formulation UK / Case law INT
- Owner:** CJUE

Figure 6. [3583598] *conocimiento del nacimiento* in EN¹⁹

In this specific case, two judgments of the European Court of Human Rights have been consulted to use the term “knowledge of the birth”, which causes a translation problem because in the UK, unlike Spain, there is no time limit for bringing proceedings for a declaration of parentage under Section 55A of the Family Law Act 1986, and consequently knowledge of birth has no relevance as a starting point for such a time-limit.

The third technique is the formulation of a term accompanying existing TLS terms. In this case, one single term might designate two different concepts in the same language (polysemy) or there can be different terms in the same language designating the same concept in different legal systems

18. <https://iate.europa.eu/entry/result/3583598/all>. Accessed: 13/03/2023.

19. <https://iate.europa.eu/entry/result/3583598/es>. Accessed: 13/03/2023.

(synonymy). An interesting example is the notion of *filiación biológica* in Spanish (also referred to as *filiación natural* or *filiación por naturaleza*) [record: 3583519]²⁰, which is rendered into English by means of a formulation from Council Regulation (EC) No 2201/2003 (*birth parent-child relationship*) to be used in the EU context. The English record also contains the reference to two domestic terms—*genetic parentage* and *biological parentage*—which are synonyms commonly used in UK case law. The legal asymmetry is well explained in the Note field of the English record: “The parent-child relationship as created by natural procreation, whereby a natural child is begotten of the union of the natural mother and natural father. Where procreation is not natural, the use of traditional terms become problematic. Genetic/biological parentage (terms which can be used interchangeably) is to be contrasted with legal or social parentage”.

Moreover, there are some interesting cases in which the terms are coined within CJEU case law, as in the case of the three terms used in the C-619/19 *de Diego Porras* judgment referring to three types of contracts in the Spanish legal system: *contrato de interinidad* [record: 3585617]²¹, *contrato eventual* [record: 3585605]²² and *contrato para obra o servicio determinados* [record: 3585551]²³. The terms used in French and Italian (in the English sections of the record, there are no English equivalents, so the section contains the N/A label) are *ad hoc* terms created within the C-619/19 case:

- a) *contrato de interinidad* = contrat à durée déterminée en vue d'un remplacement ou de la couverture d'un poste vacant / contratto di interinidad
- b) *contrato eventual* = contrat à durée déterminée pour accroissement temporaire d'activité / contratto occasionale per circostanze legate alla produzione
- c) *contrato para obra o servicio determinado* = contrat à durée déterminée pour l'exécution d'une tâche occasionnelle / contratto per la realizzazione di opera o servizio determinato

20. <https://iate.europa.eu/entry/result/3583519/all>. Accessed: 13/03/2023.

21. <https://iate.europa.eu/entry/result/3585617/es>. Accessed: 13/03/2023.

22. <https://iate.europa.eu/entry/result/3585605/es>. Accessed: 13/03/2023.

23. <https://iate.europa.eu/entry/result/3585551/es>. Accessed: 13/03/2023.

In the case of the French solutions, references were also made to the French Labour Code (Article L1242-5) and judgment n. 13/08067 of the Cour d'appel de Paris to render the term *contrato eventual*, and Code du travail (Article L1242-5) and the judgment of the Cour d'appel de Bourges n. 00/01332 to render the *contrato para obra o servicio determinado*, which shows that these translation techniques are often combined to obtain a compromise solution in the TLS.

The final translation technique identified is the creation of a new term from scratch, as in the case of the French term *partenariat enregistré entre deux personnes de même sexe* [record: 3583711]²⁴, which is a supranational term specifically created to describe a notion which exists in different legal systems and which is more restrictive than the French PACS (*pacte civil de solidarité*) (see Figure 7).

The screenshot shows the IATE entry for the term 'partenariat enregistré entre deux personnes de même sexe'. It includes a definition, a note, the owner (CJUE), and term metadata such as reliability (★★★★) and origin (Formulation FR).

Definition:	
Note:	Le terme "partenariat enregistré entre deux personnes de même sexe" a été formulé pour décrire une notion existant dans plusieurs systèmes juridiques, plus restrictive que dans le système français. En France, le pacte civil de solidarité (PACS) est une forme de partenariat enregistré créé pour permettre à des couples de même sexe ou de sexe opposé de conclure un contrat pour organiser leur vie commune.
Owner:	CJUE
Term:	partenariat enregistré entre deux personnes de même sexe
Term reference:	---
Term type:	term
Reliability:	★★★★
Note:	Origine de la référence: Formulation FR
Owner:	CJUE

Figure 7. [3583711] *partenariat enregistré entre deux personnes de même sexe*

The notion of ‘registered partnership’ exists in different legal systems but refers to both same or different sex couples, whereas in this specific case the focus is on same-sex couples. This latest example shows the key role of lawyer-linguists in easing the communication between EU domestic legal systems, thus creating a hybrid and fluid space. The use of an autonomous (new) legal term, as indicated by Clay & McAuliffe (2021: 119), “has the

24. <https://iate.europa.eu/entry/result/3583711/all>. Accessed: 13/03/2023.

effect of signposting to the reader that the text occupies a separate space, outside the sphere of national legal texts”.

4. Discussion

The quantitative and qualitative overview provided in Section 3 of this paper show that legal translation at the CJEU is fully consistent with the characterisation of translation as Third Space (Clay & McAuliffe 2021: 118-119). From the viewpoint of Legal Translation Studies, this is in line with one of the common paradoxes of legal translation: “the fact that the translation is impossible does not imply that it must not be done and indeed does not mean that it cannot be done” (Glanert & Legrand 2013: 518). CJEU lawyer-linguists play a pivotal role in providing solutions to conceptual voids and legal asymmetries. More specifically, they can either fill in a space-in-between with existing conceptual notions (as demonstrated with the translation techniques mentioned in §3.2) but also—and more interestingly—they may create a completely new space to ease the communication between EU domestic legal systems, as demonstrated with techniques 4 and 5. In doing so, they push the boundaries of source and target languages/legal systems towards the centre, paving the way for a hybrid space.

As far as the Third Space of terminology transfer is concerned, the preliminary trends based on the Spanish <> English/French/Italian combination show that the new terms formulated by CJEU lawyer-linguists are placed over a continuum with the SLS and the TLS at the two extreme poles²⁵. Once formulated, these new terms can experience three different outcomes:

- a) full integration into the TLS (not recognisable as translated terms);
- b) partial integration into the TLS (marked as supranational EU legal term);
- c) no integration (marked as foreign terms/translationese).

25. These outcomes might well represent an example of (legal) translation as a site of language contact and therefore be associated with what is known as the code-copying continuum (see Malamatidou 2016).

An example of the first case is the Italian term *adottante unico* (from the Spanish *adoptante único* 3583719), which is no longer recognisable as a translation and is also used in original documents written in Italian²⁶.

A term which is marked as EU-specific and hybrid is the one discussed in Figure 7 (*partenariat enregistré entre deux personnes de même sexe*) [3583711], which is clearly marked as an autonomous concept in the EU supranational order²⁷.

Finally, an example of a term which is not integrated into the TLS and therefore stands out as atypical/translationese is the Italian formulation *matrimonio invalido sanabile*²⁸, used to express the Spanish *convalidación del matrimonio nulo* provided for in Articles 48 and 76 of the Spanish Civil Code (ratification of a voidable marriage), which is a concept from the Spanish legal system. The Italian term, a calque from Spanish, has not entered the TLS and is recognisable as a foreign term.

5. Future steps

There are at least three future research scenarios that a complementary view on the research topic can offer, in addition to the analysis of other fields of VJM terminological records that can also be useful for the purposes of the present enquiry (e.g. the section *Warnings* containing neighbouring concepts and false friends, or *Origin of the reference* that specifies the type of procedural document, or the indicators of the term *reliability, usage or evaluation*) or the analysis of the potential impact of recognising this Third Space in the translation practice and process.

The first natural continuation of the research could be aimed at identifying the Formulations adopted by CJEU lawyer-linguists in large corpora of EU and especially national case law to explore how such instances of

26. <https://www.comune.quincinetto.to.it/it-it/download/domanda-di-attribuzione-dell-assegno-di-maternita-di-base-33623-9-1105-d5d521a0ded927dde6d-f804e709929b7>. Accessed: 13/03/2023.

27. “Hybridity of CJEU texts which exhibit features which mark them out as distinct and the product of cross-fertilisation of influences from both source and target languages and legal cultures” (Clay & McAuliffe 2021: 119).

28. <https://iate.europa.eu/entry/result/3583541/it>. Accessed: 13/03/2023.

terminological compromise ‘travel’²⁹ to the discursive level, shaping a new hybrid space, a blend of source and target legal systems and languages. It would be interesting to answer the following research questions: once formulated in the EU legal context, do these terms enter into the domestic legal system? (see Biel & Doczekalska 2020). If so, do they integrate with existing notions or remain marked as foreign concepts and therefore remain in a third space? This could allow the study of the impact of institutional translation on the globalisation (Europeanisation) of law (see Prieto Ramos 2017), which would definitely contribute to rethinking the impact of globalisation on translation.

A second area of investigation could concern the issues of power and ideology (see Carbonell i Cortés & Monzó-Nebot 2021) in national legal cultures, which have remained in the background of this study. How does the EU cope with legal cultural differences and power imbalances? Translating EU legal terminology, as demonstrated in this paper, also means translating asymmetries. The analysis conducted on “N/A” / “Vide” and “Formulation” has confirmed the Francocentric view of the CJEU (Bobek 2015): entries and note fields in French contain a higher level of information compared to other EU languages and French is frequently used as a pivot language (powerful anchor language) to create new concepts.

A third area of enquiry could focus on the rationale behind the creation and consequent adoption of new institutional terms especially in certain legal domains which are undergoing significant evolution, such as family law. As Matulewska & Wagner (2021: 1248) affirm, “the evolution of society, morals and the place of men and women in the couple has greatly contributed to changing the initial perception of the family”, having an impact on cultural codes and stereotypes. The VJM records contain interesting examples of linguistic and cultural ideology especially when referring to gender issues. As an example, the concept of *respeto mutuo entre cónyuges*

29. The word “travel” is borrowed here from Heffer *et al.* (2013: 11), who use the concept of “textual travel” in the study of legal-lay communication, where they find “extensive textual movement both from legal sources (legislation, common law, regulations) to lay audiences (defendants, witnesses, juries) and from lay producers (eyewitnesses, clients, lay litigants) to legal addressees (interviewing officers, lawyers, judges)”.

(mutual respect of spouses) provided for in Article 67 of the Spanish Civil Code, “however desirable, is not a concept with any legal content in the UK” (record: 3583630)³⁰, or the concept of *separación de los cónyuges* (separation of spouses) (Ley Foral 15/2005) (record: 3583752)³¹ is “a term (with no legal meaning in UK) to encompass both judicial separation and de facto separation”. These notes offer a glimpse into the way certain legal systems work compared with others, thus revealing cultural codes and stereotypes.

These new areas of research will certainly contribute to understanding the limits and possibilities of translating between asymmetrical cultures, which are prerogatives of contemporary societies characterised by hybrid identities and the multiplicity of cultural borders (Wolf 2000: 142).

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30. <https://iate.europa.eu/entry/result/3583630/en>. Accessed: 13/03/2023.

31. <https://iate.europa.eu/entry/result/3583752/en>. Accessed: 13/03/2023.

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