

"It must be obvious that this line of argument is utterly inconsistent...": on attitudinal qualification in English judicial discourse across legal systems

Davide MAZZI

University of Modena and Reggio Emilia
Department of Linguistic and Cultural Studies
Largo Sant'Eufemia 19, 41121 Modena, Italy
davide.mazzi@unimore.it

La questione delle strategie con cui parlanti e scriventi si pongono di fronte agli eventi comunicativi cui prendono parte, suscita l'attenzione dei linguisti da oltre un decennio. In quest'ottica, Biber et al. (1999) impiegano il termine 'stance' per designare l'espressione di giudizi e valutazioni, indagandone l'uso a cavallo di diversi registri (conversazione, prosa accademica e giornalistica). Inoltre, Conrad & Biber (2000) si soffermano sui diversi modi in cui parlanti e scriventi utilizzano gli avverbiali per contraddistinguere i diversi tipi di 'stance': tra questi, la 'stance' epistemica, intesa come formulazione della posizione di chi parla/scrive rispetto a certezza, veridicità o limitazioni di una proposizione, è stata analizzata con particolare riferimento al discorso accademico (Hyland 1998 e 2005a). In questo contesto, la 'stance' epistemica è stata frequentemente correlata all'uso di strumenti quali 'hedges' e 'boosters', rispettivamente impiegati per esprimere con maggiore o minore assertività le proposizioni del parlante/scrivente. Questo saggio attinge a queste ricerche e ha come obiettivo di intraprendere uno studio comparativo di 'hedges' e 'boosters' in un'altra area del discorso specialistico, il discorso legale esemplificato dal genere delle sentenze. Lo studio è basato su due corpora comparabili e sincronici: il primo include sentenze emesse dalla Corte Suprema della Repubblica d'Irlanda, mentre il secondo comprende testi analoghi della Corte di Giustizia dell'Unione Europea. In quanto tale, la ricerca muove a partire da dati provenienti da due sistemi giuridici che differiscono quanto all'uso della lingua inglese (lingua ufficiale v. lingua franca). Il saggio presenta così i risultati di un'analisi qualitativa e quantitativa di 'hedges' e 'boosters' rilevati attraverso gli strumenti della linguistica dei corpora (Ädel & Reppen 2008; Scott 2009). I risultati mettono in luce i contesti in cui i giudici irlandesi e comunitari tendono ad intensificare il proprio discorso in modo caratteristico: ad esempio, si è potuto osservare che i giudici irlandesi impiegano l'avverbio *clearly* con l'intento di enfatizzare l'interpretazione delle norme da essi prediletta. È così interessante notare che i dati stabiliscono un collegamento tra l'uso degli elementi presi in esame in contesto, da un lato, e le diverse ed eterogenee culture giuridiche in cui l'intensificazione è utilizzata, dall'altro.

Parole chiave:

stance, hedges, boosters, corpus, discorso, genere, sentenze, argomentazione.

1. Introduction

The question of how speakers or writers qualify their contribution to the communicative events they take part in has preoccupied applied linguists for over a decade now. In this respect, studies such as Biber et al. (1999) and Hyland (2005a) have focused on the notion of stance as an attitudinal dimension encompassing features that refer to ways writers convey their judgments or opinions about and commitments to the truth value of what they are writing about. Stance thus denotes the ways writers stamp their personal

authority onto their arguments or step back and disguise their involvement, and it is expressed to varying degrees through attitude markers and self-mentions, to name but a few widespread tools (McGrath & Kuteeva 2012).

A number of works of relevance to the present research have analysed the discourse items through which stance may be codified. Accordingly, Conrad & Biber (2000) and Mazzi (2008a) deal with adverbials of stance as those elements commenting on the content or style of a clause or a specific part of a clause, whereas Hyland (1998, 2005b) examines hedges and boosters in the process of academic knowledge negotiation. On the one hand, he observes that hedges contribute to the weakening of claims through an explicit qualification of the writer's commitment. Overall, therefore, they show doubt and suggest that information is presented less as an accredited fact than as an opinion; as forms of mitigation of the writer's illocutionary force (Thaler 2012), hedges may therefore be employed to convey deference and respect for colleagues' views. On the other hand, boosters enable writers to assert a proposition with confidence, thereby making strong claims about a state of affairs. On the affective plane, they can "mark involvement and solidarity with an audience, stressing shared information, group membership, and direct engagement with readers" (Hyland 1998: 350).

In addition, stance has been investigated in a wide range of discourse areas and genres. For instance, Hu & Cao (2011) undertake a comparative study of hedging and boosting in applied linguistics abstracts across English and Chinese journals, whilst McGrath & Kuteeva (2012) delve into practices of stance and engagement in pure mathematics research articles. Moreover, Fetzter (2006) discusses the pragmatic role of hedging as a communicative strategy of evasiveness in the context of political interviews, and at the same time she correlates references to the media frame by interviewers with the function of boosting a request for a piece of information. Finally, Vass's (2004) insightful article addresses the main socio-cognitive aspects of the use of hedges in two legal written discourse genres, i.e. US Supreme Court opinions and American law review articles. Since Vass's analysis of the relationship between hedging and a number of prototypical features of the selected genres, i.e. context and communicative purpose, is limited to a fairly restricted corpus size (5 judicial opinions and as many articles), research on forms of attitudinal qualification could usefully be extended to larger homogeneous data sets.

In light of the above, the aim of this paper is to undertake a corpus-based comparative study of hedges and boosters as frequent tools used to express the speaker/writer's tentative or strong commitment to their own propositions within judicial settings. The focus therefore remains on legal discourse, but with regard to a single genre: more specifically, hedges and boosters will be observed in the judgments delivered by two courts – the Court of Justice of the European Union (hereinafter, 'the ECJ') and the Supreme Court of the

Republic of Ireland (henceforward, 'the SCI') – in the field of agriculture, a highly controversial area which has been the matter of heated debate between European institutions and Member States for a few decades. In Section 2, the materials on which the research is based are discussed and analytical criteria are clarified, whereas Section 3 is dedicated to a presentation of the findings which are discussed in Section 4.

2. Materials and methods

The study is based on two synchronic comparable corpora: the first one, the *ECJ corpus*, includes the English version of 50 judgments issued by the Court of Justice of the European Union (279,604 words altogether); the second, the *SCI corpus*, features 46 judgments delivered by the Supreme Court of Ireland (352,753 words).

Judgments are a prominent genre of legal discourse, and they have attracted scholarly attention from a variety of perspectives. From a legal-theoretical point of view, judgments have been studied as the site where the judges' adjudicating power takes concrete form. Emphasis has therefore been laid on the role of justification in judicial decision-making (Alexy 1989), and a large number of now-classic works have focused on the methods through which judges weigh and balance the sources of law they rely upon, e.g. statutes, *travaux préparatoires* and prior court decisions (Goodrich 1987; Peczenik 1989). From a discursive point of view, there has been a spate of interest in the relationship between the structure of judicial texts (Mazzi 2007a) and their distinctive rhetorical properties (cf. Pontrandolfo 2013 on phraseology). Typically, judgments begin with the identification of the court the case was tried in and the parties involved; they proceed with a review of the facts of the case, and they then invariably take a markedly dialogic shape where the arguments of the parties are interwoven to the judges' own line of argument (Cornu 2000; Mazzi 2008b) before the verdict is reached.

In the analysis of judicial discourse, a comparative perspective has often been adopted, either across languages or across legal systems (Pontrandolfo & Goźdź-Roszkowski 2014). As far as the present study is concerned, the two sources were chosen for two reasons. First of all, they reflect the use of English across native and non-native contexts; secondly, the choice is indicative of the fact that the creation of such supra-national bodies as the European Union has brought not only speakers but also different and at times heterogeneous legal systems closer together (Maley 1994; Barceló 1997). EU Membership has had a strong impact on common-law countries like the United Kingdom and the Republic of Ireland: from a legal point of view, these have yielded to Community law, i.e. a legal system largely influenced by the civil-law tradition, and they have had to create a new legal infrastructure to accommodate the influx of vast amounts of EC/EU legislation in economic and

social matters (Byrne & McCutcheon 1996; Dimitrakopoulos 2001; Tomkin 2004). From a more inherently linguistic perspective, these native English-speaking countries have had to come to terms with a different legal and judicial system, in which the use of language might not necessarily overlap with the standards and conventions they have traditionally adopted in domestic legislation. From a lexico-semantic viewpoint, for instance, there may always be room for slight discrepancies in the use of a wide range of lexical items (characteristically, technical terms and modal verbs), each of which has a pivotal role to play in the production and the interpretation of judicial texts (cf. Wagner 2002 on problems related to the use of the controversial spatio-temporal terms 'night' and 'dwelling house').

The criteria of corpus design were essentially fourfold. First of all, the homogeneity of the judicial subject-matter covered by the judgments was an important parameter: for both corpora, only judgments concerning agriculture were selected.¹ Secondly, the homogeneity of the sources was secured, because the judgments were issued by two courts of last resort in the respective jurisdictions, i.e. EU law and the legal system of the Republic of Ireland. Thirdly, the two sources were chosen with a view to their capability of representing English in use in both a native English-speaking national context – i.e. Ireland – and a supra-national context such as the EU, where English is not necessarily the language of the parties involved.²

¹ ECJ judgments were downloaded from the official website of the Court of Justice of the European Union, i.e. <<http://curia.europa.eu/juris/recherche.jsf?language=en&jur=C&td=ALL>>. The URL directs users to a very detailed webpage, where one can set a wide range of search parameters – e.g. Period or Date, Authentic language, Subject-matter and Case status: in our case, *last 5 years* was set as Period or Date, *English* under Authentic language and *Cases closed* under Case status, whereas not only *Agriculture* but also other related terms suggested by the webpage itself were inserted as Subject-matter, e.g. *Agricultural structures, Animal feedingstuff, Beef and veal, Cereals, Coffee, Eggs and poultrymeat* etc. As regards SCI judgments, they were also downloaded from the Court's official website, namely <<http://www.supremecourt.ie/Judgments.nsf/SCSearch?OpenForm&I=en>>: the advanced search function allows one to insert any string in the quest for judgments, in addition to any judge's name one or more cases may be retrieved with. For the purpose of this study, the item *Agriculture* was used as the only search term in that it enabled us to come up with almost as many judgments as those already inserted in the *ECJ corpus*.

² Although the paper is not intended to deal with language policy, the fact remains that language is indeed a major issue in so far as the two corpora are concerned. At an EU level, the language of proceedings is by rule the one used in the application, whereas judges conventionally deliberate in French as a common language (cf. Berteloot 1999 and <http://curia.europa.eu/jcms/jcms/Jo2_7024/>). This implies that in most cases, the English version of judgments is actually a translation from another language. This increases the interest in a variety of English, as it were, employed in a supra-national context across different legal systems. However, it does not prejudice the reliability of the study as it was shown elsewhere that neither the surface of text nor the generic structure of judgments are affected by potentially differing source-languages from which the English version was derived (Mazzi 2007b). As for the Republic of Ireland, it seems equally interesting to note that Article 8 of the Irish Constitution defines Irish as 'the first official language of the country'. However, the Court's judgments are most often delivered in English, even if the *SCI corpus* also includes one judgment (*Ó Murchú v.*

Finally, we made sure that the two corpora were also quantitatively comparable: for the *ECJ corpus*, the carefully constructed search engine of the Court's website was used to retrieve the last 50 judgments delivered by the ECJ on agriculture and its related areas; in the case of the *SCI*, an equivalent advanced search based on the term *agriculture* was launched, with the effect of retrieving a total of 46 judgments. In an attempt to guarantee that the corpora reflect a comparable time span, the websites of the two courts were both accessed for the purpose of corpus design at the end of May 2012. In the context of EU law, however, where agriculture tends to be a hot and at times deeply controversial issue, the time span ultimately covered by the corpus turned out to be more restricted (22 December 2010 – 24 May 2012), because a large number of judgments is pronounced by the court on that topic; by contrast, since agriculture is less often an area on which the Supreme Court of Ireland is called upon to rule, the time span was predictably larger (23 February 2001 – 21 July 2011) for the *SCI corpus*. Overall, the average length of EU judgments was measured as 5,592.08 words, whereas that of Irish texts amounted to 7,668.54 tokens per text.

From a methodological perspective, the study combined corpus and discourse tools (Hunston 2002; Ädel & Reppen 2008; Swales 2009; Gabrielatos et al. 2012) for the purpose of a qualitative and a quantitative investigation of markers of authorial qualification. This implied, first of all, retrieving the top twenty items used for this purpose within each corpus. A wordlist was thus generated for both ECJ and SCI judgments by means of the linguistic software package *WordSmith Tools 5.0* (Scott 2009), with the aim of extracting the most frequent hedges and boosters from the first 200 tokens of each corpus. At the same time, Hyland's (1998) extensive list of hedges and boosters was kept as a reference to identify further elements across the two corpora, because the upper end of the wordlist of either corpus displayed fewer than the intended 20 items.

Secondly, a concordance-based study (Sinclair 2003, 2004) of the selected items was carried out. Concordancing is an insightful on-screen function of linguistic softwares, which enables the analyst to automatically collect all the occurrences of a word or phrase in context. As far as this paper is concerned, concordance lines were used as a basis to identify, at the outset, any recurrent (by definition, exceeding a minimum threshold of 10 entries) collocational and phraseological patterns of the selected hedges and boosters. 'Phraseology' is used here as a general term to account for the tendency of words to come together and make meaning by virtue of their combination (Sinclair 2004). Therefore, 'phraseology' is intended as an umbrella term that refers to an extensive range of items which have often been taken as a starting point to

An Taoiseach & chuid eile) delivered in Irish and only subsequently translated into English (cf. Article 8.3 of the Constitution).

describe the communicative practices of specialised communities by means of the recurrence of co-occurring items in medium to large-size corpora (Biber et al. 1999; Hunston 2008; Groom 2010). What is argued here is that phraseology may stand as a suitable candidate for the identification of a number of distinctive aspects and a set of recurrent structures of judicial argumentation.

From a practical point of view, the concordance-based study amounted to detecting collocates – i.e. the words our items co-occur with on a regular basis – as well as focusing on 3/6-grams of each element – so that, for instance, the outstandingly frequent chunk *it must be pointed out that* was examined instead of the simple *must*.

Finally, the use of the phraseological patterns of hedges and boosters in context was associated with the major interpretive and argumentative functions they were observed to perform in the two courts' argument. As Section 3 will show, the use of hedges and boosters was identified as being correlated with six main functions, the vast majority of which appears to be evenly distributed across the two corpora. These include, first of all, the courts' outline of the main premises of their line of argument; secondly, the care taken by judges to spell out the court's interpretation as explicitly as possible within controversial disputes; thirdly, the emphasis on a number of common reasoning techniques; fourthly, the effort to respond to competing arguments raised by the parties; in fifth place, the deployment of pragmatic argumentation; and finally, the stress on key judicial requirements in the current case or gaps in available legislation.

3. Results

3.1 Preliminary overview

By implementing the methods outlined in Section 2, the most frequent hedges and boosters were retrieved for each corpus. The items are listed in Table 1 below with the related frequency (raw and per 1,000 words):

Item (ECJ)	Raw frequency	Per-1,000-word frequency	Item (SCI)	Raw frequency	Per-1,000-word frequency
must	870	3.11	would	1140	3.23
establish	431	1.54	may	796	2.26
should	392	1.41	should	628	1.78
necessary	258	0.92	could	546	1.55
interpret	244	0.87	must	422	1.19
would	176	0.63	can	300	0.85
Cannot	174	0.62	necessary	281	0.79
Can	174	0.62	might	203	0.57
apparent	116	0.42	cannot	153	0.43
essentially	54	0.19	clearly	129	0.36
actually	53	0.18	very	116	0.33

manifestly	35	0.13	seems	111	0.32
wrongly	21	0.07	indeed	61	0.17
precisely	19	0.06	necessarily	57	0.16
partially	18	0.06	no doubt	45	0.13
necessarily	17	0.06	generally	44	0.13
generally	16	0.05	actually	38	0.11
formally	12	0.04	undoubtedly	28	0.08
admittedly	10	0.04	perhaps	25	0.07
approximately	9	0.03	essentially	22	0.06

Table 1. Most frequent hedges and boosters (*ECJ Corpus* and *SCI Corpus*)

The concordance-based analysis of the items reported in Table 1 led to detect their most recurrent collocational patterns. In turn, these were the basis for the identification of repetitive phraseology. Although these 3/6-grams are examined in the next section, their raw and per-1000-word frequency is outlined in Table 2:

Phraseology (ECJ)	Raw frequency	Per-1,000-word frequency	Phraseology (SCI)	Raw frequency	Per-1,000-word frequency
must be interpreted as meaning that	90	0.32	it would be	66	0.18
it is necessary to	38	0.14	it may be	38	0.11
it must be held that	28	0.10	it must be	37	0.11
it must be pointed out that	19	0.06	necessary for the	29	0.08
it would be	10	0.04			

Table 2. Most frequent phraseology (*ECJ Corpus* and *SCI Corpus*)

In the attempt to describe the textual and argumentative uses of hedges and boosters in each corpus, collocational and phraseological patterns were studied in context: as a result, six main functions were retrieved. These were anticipated in Section 2 and are reviewed in 3.2 below.

3.2 Attitudinal qualification in context: the functions of hedges and boosters

The first function with which attitudinal qualification may be correlated is the courts' willingness to outline the main premises of their own reasoning. This amounts to emphasising the cardinal principles behind each court's argument, and it is reserved for the **boosters** *it must be held that* and *it must be* in EU and Irish judgments respectively. In all of its 28 occurrences, *it must be held that* introduces the overriding principle on which the court's argumentation will rest in the remainder of the text: in (1), accordingly, the decision to declare Article 44a of Regulation 1290/2005 and Regulation 259/2008 invalid is not simply based on the fact that they impose an obligation to publish personal

data. Rather, it follows from the straightforward implementation of the fundamental rule of fair balance between respective interests duly underlying any provision of EU law.³

- (1) In those circumstances, it must be held that the provisions of European Union law, the validity of which is questioned by the referring court, observe, in so far as they concern the publication of data relating to legal persons, a fair balance in the consideration taken of the respective interests in issue. On the basis of all of the foregoing, Article 44a of Regulation No 1290/2005 and Regulation No 259/2008 must be declared invalid to the extent to which, with regard to natural persons who are beneficiaries of EAGF and EAFRD aid, those provisions impose an obligation to publish personal data relating to each beneficiary without drawing a distinction based on relevant criteria such as the periods during which those persons have received such aid, the frequency of such aid or the nature and amount thereof. (ECJ, Heifert v. Land Essen)

In a similar vein, *it must be* is used to formulate a principle of Irish legal decision-making in 43.3% of its *SCI Corpus* entries. In particular, the cluster colligates with the verbs *remember*, *recall*, *bear in mind*, *assume*, *presume*, *emphasise* and *appreciate* whose semantic preference is that of stating the starting point of the court's appraisal of facts in cases such as (2). Here, the Supreme Court of Justice was requested to assess the proper implementation of EU norms into the national legislative framework. In order to determine whether an act of the *Oireachtas* – i.e. the Irish Parliament – does more than merely transposing EU law into the domestic legal framework, the argument goes, the premise to be borne in mind is that the relevant principles should be derived less from the implementing act itself than from the Directive or Regulation the Act is designed to implement:

- (2) However, in applying that test to a case in which the regulation is made in purported exercise of the powers of the Minister under s. 3 of the 1972 Act, it must be borne in mind that, while the parent statute is the 1972 Act, the relevant principles and policies cannot be derived from that Act, having regard to the very general terms in which it is couched. In each case, it is necessary to look to the Directive or Regulation and, it may be, the treaties in order to reach a conclusion as to whether the statutory instrument does no more than fill in the details of principles and policies contained in the EC or EU legislation. (SCI, Maher et al. v. Minister for Agriculture)

The second function documented by the corpus data is that of **boosters** spelling out the courts' interpretation in hard cases where the difficulty lies in decoding controversial legal terms or norms. In EU texts, this function is overwhelmingly associated with the phraseology *must be interpreted as meaning that*: the highly formulaic nature of the cluster is such that all of its 90 occurrences are devoted to the settlement of disputes by way of an authoritative clarification of the meaning of controversial passages in legislation. In (3), for instance, the Court proceeds to pronouncing judgment by defining the putatively correct interpretation of Subheading 0207 of the first annex to a regulation on the proper quantification of poultry tariffs:

³ In all numbered examples, the words/phrases under investigation are underlined, whereas any salient collocate is in bold typeface. Moreover, the case each example is taken from is reported in brackets at the end of each passage.

- (3) Subheading 0207 12 90 of Annex I to Commission Regulation (EEC) No 3846/87 of 17 December 1987 [...] must be interpreted as meaning that a poultry carcass under that subheading has to be completely drawn, so that it is prejudicial to its tariff classification if part of the guts or trachea, for example, are still attached to the carcass following a mechanical gutting process. (ECJ, *Stolle v. Hauptzollamt-Hamburg*)

In Irish judgments, the function is again served by a **booster**, i.e. *clearly*. The adverbial is used by judges for the purpose of stressing what they see as the preferred interpretation of the law: more specifically, 35.3% of its occurrences signal that the Court is disambiguating controversial terminology by referring to its settled case law. In (4), the meaning of the disputed phrase *power of adjudication* is explained by the Court, which stresses the consistency between the proposed interpretation in the current case and that expressed in *Haughey v. Moriarty*:

- (4) The court then went on to consider the question as to whether what they described again as '**this power of adjudication**' can be considered to be one normally and necessarily exercised by a legislature in a democratic state. The use of the latter phrase is clearly a reference to its use in the judgment of this court in *Haughey v. Moriarty*, where the court said: [...] (SCI, *Ardagh et al. v. Maguire et al.*)

From a more inherently argumentative perspective, it is remarkable that three of the functions identified in the data appear to be closely linked with a number of reasoning techniques to be retrieved in both corpora. The first of these corresponds to a use of **boosters** that highlights some of the Courts' well-established reasoning processes, as it were: in the case of EU judgments, it is apparent that judges are keen on procedural aspects – e.g. case law-oriented practices – they deliberately stress as being the secure foundations for their verdict in the case at hand. This can be pointed out with regard to 21.1% of *it is necessary to*, invariably embedded in the larger pattern [*it is necessary to + analyze/consider + the/its + wording/scope*], as in (5). In order to dispel any doubt about the suitable interpretation of the expression *prevents an on-the-spot check from being carried out*, whose transposition into the various EU languages has been markedly heterogeneous, the Court recalls the standard procedure of looking at the context, as well as the scheme of the related regulation:

- (5) In that regard, it should be borne in mind that, according to the Court's settled case-law, in interpreting a provision of European Union law, it is necessary to consider not only **its wording** but also its context and the objectives pursued by the rules of which it is part [...]. It must be observed, first of all, that the actual wording of Article 23(2) of Regulation No 796/2004 does not contain any indication as regards the meaning to give to the expression 'prevents an on-the-spot check [from being carried out]'. [...] In view of the linguistic differences, the purport of the concept of European Union law in question cannot be determined on the basis of an exclusively textual interpretation. That expression must therefore be interpreted in the light of the context in which it is used and of the aims and scheme of the regulation of which it is part [...]. (ECJ, *Omejc v. Republika Slovenija*)

In SCI judicial opinions, the use of **boosters** in the same respects tends to underlie the Court's deployment of "argument from legislative intentions" (Summers 1991; Mazzi 2014a), whereby the judges' decision ultimately rests

on their purported knowledge of the legislators' intentions at the moment when the rule in question came into force. This is the case with both 5.4% of the occurrences of *clearly* and 40% of those of *no doubt*. The former significantly collocates with items sharing a distinctive semantic preference of 'volition', e.g. *envisage*, *intend*, *it be (not) the intention* and *unwilling*: in (6), thus, Justice Keane justifies his standpoint that Ministers are prevented from including a provision for the creation of an indictable offence in a statutory norm, on the grounds that this was the actual resolve of the *Oireachtas* as it passed the relevant legislation. In (7), likewise, the thesis is that only under special circumstances can members of the public be denied the right to access information retained by public bodies. In an equally emphatic way, the remark is supported by the view that this precisely corresponds to the legislature's willingness:

- (6) While a Minister in his particular area of responsibility was undoubtedly entitled to give effect to principles and policies which had never been enacted by the *Oireachtas* but were contained in an EC measure, that could only be done by invoking the powers conferred on ministers by S.3 of the 1972 Act. Where a Minister availed of those powers, as he could have done in this case, he was precluded from including in the instrument a provision for the creation of an indictable offence. That was clearly intended by the *Oireachtas* as an important limitation on the power of ministers to give effect by delegated legislation to EC measures and they could not have envisaged that a Minister would circumvent that prohibition by purporting to make the order under other legislation which contained no indication that it was intended to be used for the purpose of giving effect to EC measures. (SCI, *Browne v. Attorney General*)
- (7) As was emphasised by O'Donovan J in the *Minister for Agriculture and Food v. The Information Commissioner* (2000) 1 I.R. 309 at 319, in the light of its preamble, it seems to me that there can be no doubt but that it was the intention of the legislature when enacting the provisions of the Freedom of Information Act, 1997, that it was only in exceptional cases that members of the public at large should be deprived of access to information in the possession of public bodies and this intention is exemplified by the provision of s. 34 (12)(b) of the Act which provides that a decision to refuse to grant access to information sought shall be presumed not to have been justified until the contrary is shown. (SCI, *Sheedy v. Information Commissioner*)

Predictably, the line of reasoning of both ECJ and SCI also implies responding to competing arguments raised by one of the parties. This best characterises the next function of attitudinal qualification across the two corpora. To begin with, the selected items may mark the onset of the Court's own counterclaims, as with *it must be pointed out that* in ECJ judgments. In 26.3% of its occurrences, the **booster** collocates with dialogic formulations in which the opposing argument by one of the parties can be readily perceived, e.g. *unlike what * pointed out* or *although it is true that*. In (8), therefore, the Court's statement that the main objective of Regulation 1/2005 is to protect animals during transport ought to be read as a counter-argumentation to the disputed (if credible) allegation that the regulation envisages the elimination of technical barriers to trade along with a smooth operation of market organisations:

- (8) As regards the objectives of Regulation No 1/2005, it must be pointed out that, although it is true that the elimination of technical barriers to trade in live animals and the smooth operation of market organisations, referred to in recital 2 in the preamble to that regulation, form part of the purpose of that regulation in the same way as they formed part of that of Directive 91/628, of which Regulation No 1/2005 constitutes the extension, it is, however, apparent from recitals 2, 6 and 11 in the preamble to that regulation that, like that directive, its main objective is the protection of animals during transport. (ECJ, *Danske Svineproducenter v. Justitsministeriet*)

In the *SCI corpus*, the response to competing arguments often takes the form of passages where the Court offers varying degrees of concession to the arguments it seeks to reverse. As a result, whereas the booster in (8) emphasizes the Court's own standpoint, the two elements observed in the Irish texts qualify the opposing argument, either in more tentative terms (cf. 23.7% of the corpus entries for *it may be*) or with a more assertive tone (32.2% of *undoubtedly*). In (9), accordingly, Justice Fennelly argues that the point made by the Minister for Agriculture – notably that the presence of bone spicules, a processed animal protein the marketing of which is forbidden by EU law, justified the action of impounding a cargo – was not to be discarded as completely irrelevant, but rather as a minor one compared to the main issue of proceedings. And in (10), the actual merit in the argument that the milk quota scheme has to be defined at an EU level is challenged by the Court, whose ruling is that implementation plans are left to Member States to determine, instead:

- (9) On the other hand, the Minister says that the second issue has potential future relevance. It may be important in other cases to know whether the presence of bone spicules, without direct evidence of processed animal proteins, will justify the sort of actions taken. Nonetheless, it seems to me that it is necessary to address the second question only if a positive answer is given to the first. If the Minister had no power, under the 2000 Regulation, to issue recall instructions or search and seizure notices, it does not matter whether the product was allegedly contaminated with processed animal protein or merely with other irrelevant and harmless foreign matter. If she had not the power, she could not do it. (*SCI, Minister for Agriculture et al. v. Albatros Feeds Ltd.*)
- (10) It is undoubtedly the case that the milk quota/super levy scheme is intended to be tightly regulated by the EC institutions and that the manner in which it operates in all the member States is regularly monitored by the Commission. However, that does not alter the fact that, in specific areas, the EC has decided that the manner in which it is to be implemented in the member States is to be left to the member States to determine. (*SCI, Maher et al. v. Minister for Agriculture*)

The construction of the Court's own argument equally serves as the context for a specific function of **hedging**, namely the deployment of pragmatic argumentation (Carbonell 2013; Mazzi 2014b). This is an inherently consequentialist argument form, whereby "judges often defend a decision by referring to the consequences of application of a particular legal rule in the concrete case" (Feteris 2002: 349). Of the many variants of pragmatic argumentation discussed so far in the literature, "Variant II" (Van Poppel 2012) appears to be frequent in the two corpora under investigation: the Court holds that a decision should not be reached on the grounds that it would bring about

undesirable effects. This variant of pragmatic argumentation is correlated to the 3-gram *it would be* in 60% of its ECJ occurrences, and 57.6% of its SCI entries. The correlation between the cluster and Variant II of pragmatic argumentation is significant in both EU and Irish judgments, and it becomes particularly evident in the former due to its strong colligational ties with negatively evaluative adjectives denoting the downsides of the decision dispreferred by the Court, e.g. *excessive*, *inconsistent with* and *manifestly contrary to*:

- (11) Like the farmers who have applied for livestock aid, farmers who have applied for aid under Article 22 of Regulation No 1257/1999 [...] and who fail to comply with the rules on the identification and registration of bovine animals run the risk of the same legal consequences [...]. In those circumstances, it would be inconsistent with the principle of equal treatment if the situation of farmers who applied for aid under Article 22 of Regulation No 1257/1999, which is subject to a condition relating to density of livestock, were treated differently from the situation of farmers who applied for livestock aid, with only the latter having the right to be informed by the national authorities that any animals found not to be correctly identified or registered in the system for the identification and registration for bovine animals are to count as animals found with irregularities liable to have legal consequences, such as a reduction in or exclusion from the aid concerned. Furthermore, that difference in treatment could not be objectively justified. (ECJ, Nagy v. Mezőgazdasági)
- (12) I am satisfied that it would be a step too far to infer such a power in an Act which did not expressly provide for such a power. Further, I am satisfied that to make such an inference would be to legislate – a matter for the Oireachtas, not a court of law. Indeed, it would be an unconstitutional construction of the Act of 1993. (SCI, Quinn v. Attorney general et al.)

What is common to both passages is the Courts' use of a **hedge** to expatiate on the undesirable consequences of a decision they will eventually reject as unacceptable. In (12), Justice Denham warns that allowing for the special power advocated by the one of the defendants – i.e. the Minister for Agriculture – on a regular basis, would not simply force the Supreme Court to legislate, but more generally lead to the adverse effect of an unconstitutional construction of an Act of the *Oireachtas*. In (11), similarly, the ECJ is requested to establish whether farmers applying for livestock aid and those applying for aid under Regulation No 1275/1999 are to be treated differently for any reason. Accordingly, it offers an insightful reading based on the cogent nature of the principle of equal treatment, which underlies an instance of pragmatic argumentation best schematised in Table 3 below:

Variant II	ECJ text
1. Action X should not be performed	1. Action X (i.e. ruling that <i>farmers who have applied for livestock aid and farmers who have applied for aid under Article 22 of Regulation No 1257/1999</i> should be treated differently) should not be performed.
1.1a Action X leads to Y	
1.1b. Y is undesirable	1.1b. Y is undesirable (<i>it would be inconsistent with the principle of equal treatment</i>)
1.1a-1.1b' (If action X leads to Y and Y is undesirable, then action X should not be performed)	

Table 3. Variant II of pragmatic argumentation in *Nagy v. Mezőgazdasági*

Finally, a peculiarity of Irish judgements lies in the use of **boosters** to either draw attention to judicial requirements that the Supreme Court deems fundamental in the current case, or highlight gaps in the legislation in force at the time the case is tried. The former applies to 24.2% of the attested occurrences of the whole pattern [*necessary for the x to do y*] instantiated in (13), where Justice Fennelly recalls that defendants in the main dispute are demanded to demonstrate that plaintiffs are *guilty of inordinate and inexcusable delay* whenever the burden of proof falls upon them. Moving on to the SCI's intention to identify conspicuous lacks in legislation, this is often expressed by means of *indeed*: in 9.8% of its attested uses, this item leads the judge to point out the areas that current norms hardly ever cover in a satisfactory manner (cf. 14 below):

- (13) The governing consideration is that first stated by Hamilton C.J., namely that "the courts have an inherent jurisdiction to control their own procedure and to dismiss a claim when the interests of justice require them to do so". It is always necessary for the defendant applicant to demonstrate, and he bears that burden, that the plaintiff has been guilty of inordinate and inexcusable delay. Subject to that, however, the court should aim at a global appreciation of the interests of justice and should balance all the considerations as they emerge from the conduct of and the interests of all the parties to the litigation. (SCI, Anglo-Irish Beef Processors Ltd. et al. v. Montgomery et al.)
- (14) I can well understand how infelicities and omissions in the Instrument led Murphy J. to observe of Rule 7(2) that "This may prove to be a difficult provision to construe as to when the information must be given to the superior officer". Indeed, the Instrument is completely silent on that important topic. (SCI, Curley v. Arbour Hill)

4. Discussion

The findings presented in Section 3 show that boosters tend to outnumber hedges across the two corpora, even though the two items ranked first in the SCI wordlist (*would* and *may*) would normally be classified as hedges. This study has been less concerned with a separate investigation of hedging and boosting than with the overall identification of important aspects of attitudinal qualification in two comparable data sets from the same genre. In the main, hedges and boosters can be seen to have an important function as markers of judicial discourse across the two courts.

Most importantly, they operate at the intersection of three inter-related dimensions of judicial argumentative discourse in both corpora, i.e. a sense of putative objectivity, authoritativeness, and the search for cogent and convincing arguments. As regards the courts' purportedly objective tone, first of all, the use of hedges in examples such as (12) may be read in line with Vass's (2004: 134) view that this type of attitudinal qualification creates "an impression of objectivity and prevent[s] future conflict, especially regarding future applications of the decision". Accordingly, the choice of hedging and the simultaneous deployment of pragmatic argumentation may serve a two-fold purpose. The former enables the court to pass judgment without imposing its

will over the parties' argument or sounding too straightforward. At the same time, the use of pragmatic argumentation raises the profile of the court's reasoning in that it does not appear as symptomatic of the court's attempt to prevail over opposing arguments as it is of worries about the undesirable effects a different decision would produce in the long term.

From the viewpoint of the courts' authoritativeness, secondly, the occurrences of hedges and boosters in the contexts best described in examples (8)-(10) project a highly favourable image for both courts, i.e. that of adjudicating institutions which pronounce a verdict only after carefully balancing the needs and arguments put forward by the parties in the dispute. As we could see, there is a distinctively dialogic character in the observed use of *it must be pointed out that*, *it may be* and *undoubtedly*. This is indicative of the trend to warrant serious consideration for any major aspect covered in the parties' line of reasoning, whether in the form of broader allegations (cf. 8) or more explicitly formulated arguments (9 and 10 alike). Likewise, the courts' recourse to argument from legislative intentions – as for *clearly* and *no doubt* in (6)-(7) – may lend itself to interpretation on two levels: the first of these is a great boost to the SCI's own credentials, because knowledge of the *Oireachtas*'s intentions could imply the Court's rigorous scrutiny of any preparatory document informing the parliamentary debate and eventually leading to the law's enforcement (cf. Summers 1991). The second level at which argument from legislative intentions might be read has something to do with the Court's emphasis on the ultimate willingness of the *Oireachtas*. This might be closely linked with the search for convincing support for its own standpoint, in so far as this is argued to coincide with the scheme with which the law was passed. Indeed, it might be argued that the Court is striving to reinforce its own argument, while at the same time shifting the responsibility for a potentially controversial decision to another, highly influential subject, such as the *Oireachtas* itself. This is an example of how hedges and boosters are relevant as discursive resources for signalling the courts' quest for cogent arguments. This becomes equally evident in the choice of the hedge *it may be* in (9) as well as in the preference for pragmatic argumentation in (11)-(12). Not only does *it may be* soften the illocutionary force of an opposing argument to ultimately "reinforce the justice's line of argumentation" (Vass 2004: 134), but there is also a high degree of strategic maneuvering behind pragmatic argumentation, as documented in Section 3.

The notion of 'strategic maneuvering' was introduced by pragma-dialectic scholars of argumentation to refer to "the continual efforts made in all moves that are carried out in argumentative discourse to keep the balance between reasonableness and effectiveness" (Van Eemeren 2010: 40). The simultaneous pursuit of both aims is a distinctive trait of pragmatic argumentation: it is as reasonable to contend in (11) that the importance of the principle of equal treatment prevents the ECJ from reaching decisions that

would undermine its uniform and ubiquitous application, as it is a valid concern for the SCI to make sure that no Acts of the *Oireachtas* are constitutionally misconstrued. Nevertheless, these arguments also serve as powerful rhetorical weapons for both courts to have the upper hand in the resolution of serious disputes.

On a final note, it is not only noteworthy that hedges and boosters were reported to be closely connected with the onset of recurrent argumentative patterns across the two courts, with special reference to argument from legislative intentions and pragmatic argumentation. It is equally interesting that corpus data suggest the presence of context-specific differences between the two courts worth further investigation in future research. As documented elsewhere (Mazzi 2014a), on the one hand, the ECJ rather impersonally proceeds to the quest for legal truth, as it were, by laying strong, unmediated emphasis on a preferred interpretation arising from a set of influential sources including (but not limited to) the Court's settled case law. On the other hand, the findings presented here are indicative of SCI's proclivity to negotiate its adjudicating role in terms of a cline between assertive and cautious approaches to the interpretation of controversial legislation. SCI Justices therefore do more than just reiterate the importance of key interpretative requirements in the judicial process, in that they sometimes even take a critical stance with respect to the gaps of the legislation they are supposed to elucidate and enforce. This sheds light on an essential dimension of hedges and boosters that invites further corpus-based comparative investigations, i.e. the capability of such forms of attitudinal qualification to reflect clear interactional and institutional understandings of judges as socially situated writers (Hyland 1998) operating within their respective legal system and culture.

REFERENCES

- Ädel, A. & Reppen, R. (2008). The challenges of different settings. An overview. In A. Ädel & R. Reppen (eds.), *Corpora and discourse. The challenges of different settings* (pp. 1-6). Amsterdam: Benjamins.
- Alexy, R. (1989). *A theory of legal argumentation. The theory of rational discourse as theory of legal justification*. Oxford: Clarendon Press.
- Barceló, J. J. (1997). Precedent in European Community Law. In N. MacCormick & R. Summers (eds.), *Interpreting precedents. A comparative study* (pp. 407-436). Aldershot: Dartmouth.
- Berteloot, P. (1999). Le droit à la langue de l'Union Européenne. In E. Jayme (ed.), *Langue et droit* (pp. 345-362). Bruxelles: Bruylant.
- Biber, D., Johansson, S., Leech, G., Conrad, S. & Finegan, E. (1999). *Longman grammar of spoken and written English*. London: Longman.
- Byrne, R. & McCutcheon, P. (1996). *The Irish legal system*. London: Butterworths.

- Carbonell, F. (2013). Reasoning by consequences: Applying different argumentation structures to the analysis of consequentialist reasoning in judicial decisions. In C. Dalman & E. T. Feteris (eds.), *Legal argumentation theory: Cross-disciplinary perspectives* (pp. 1-20). Dordrecht: Springer.
- Conrad S. & Biber, D. (2000). Adverbial marking of stance in speech and writing. In S. Hunston & G. Thompson (eds.), *Evaluation in text. Authorial stance and the construction of discourse* (pp. 56-73). Oxford: Oxford University Press.
- Cornu, G. (2000). *Linguistique juridique*. Paris: Montchrestien.
- Dimitrakopoulos, D. G. (2001). The transposition of EU Law: 'Post-decisional' politics and institutional autonomy. *European Law Journal*, 7, 442-458.
- Feteris, E. T. (2002). A Pragma-dialectical approach of the analysis and evaluation of pragmatic argumentation in a legal context. *Argumentation*, 16, 349-367.
- Fetzer, A. (2006). "Minister, we will see how the public judges you". Media references in political interviews. *Journal of Pragmatics*, 38, 180-195.
- Gabrielatos, C., McEnery, T., Diggle, P.J. & Baker, P. (2012). The peaks and troughs of corpus-based contextual analysis. *International Journal of Corpus Linguistics*, 37, 151-175.
- Goodrich, P. (1987). *Legal discourse*. London: MacMillan.
- Groom, N. (2010). Closed-class keywords and corpus-driven discourse analysis. In M. Bondi & M. Scott (eds.), *Keyness in Text* (pp. 59-78). Benjamins: Amsterdam.
- Hu, G. & Cao, F. (2011). Hedging and boosting in abstracts of applied linguistics articles: a comparative study of english- and chinese-medium journals. *Journal of Pragmatics*, 43, 2795-2809.
- Hunston, S. (2002). *Corpora in applied linguistics*. Cambridge: Cambridge University Press.
- Hunston, S. (2008). Starting with the small words. Patterns, lexis and semantic sequences. *International Journal of Corpus Linguistics*, 13, 271-295.
- Hyland, K. (1998). Boosting, hedging and the negotiation of academic knowledge. *Text*, 18, 349-382.
- Hyland, K. (2005a). Stance and engagement: A model of interaction in academic discourse. *Discourse Studies*, 7, 173-192.
- Hyland, K. (2005b). *Metadiscourse. Exploring interaction in writing*. London: Continuum.
- Maley, Y. (1994). The language of the law. In J. Gibbons (ed.), *Language and the law* (pp. 11-50). London: Longman.
- Mazzi, D. (2007a). *The linguistic study of judicial argumentation. Theoretical perspectives, analytical insights*. Modena: Il Fiorino.
- Mazzi, D. (2007b). The construction of argumentation in judicial texts: Combining a genre and a corpus perspective. *Argumentation*, 14, 21-38.
- Mazzi, D. (2008a). "I first have to decide whether there were any notes in the first place. I consider that there probably were": Adverbials of stance in equity judges' argumentation. *Textus*, 21, 505-522.
- Mazzi, D. (2008b). La sentenza come genere argomentativo: una riflessione linguistica. In G. Garzone & F. Santulli (eds.), *Il linguaggio giuridico. Prospettive interdisciplinari* (pp. 239-262). Milan: Giuffrè.
- Mazzi, D. (2014a). "The words are plain and clear...": On interpersonal positioning in the discourse of judicial interpretation In R. Breeze, M. Gotti & C. Sancho Guinda (eds.), *Interpersonality in legal genres* (pp. 37-60). Bern: Peter Lang.
- Mazzi, D. (2014b). "Our reading would lead to...": Corpus perspectives on pragmatic argumentation in US Supreme Court judgments. *Journal of Argumentation in Context*, 3, 103-125.
- McGrath, L. & Kuteeva, M. (2012). Stance and engagement in pure mathematics research articles: Linking discourse features to disciplinary practices. *English for Specific Purposes*, 31, 161-173.

- Peczenik, A. (1989). *On law and reason*. Dordrecht: Kluwer.
- Pontrandolfo, G. (2013). La fraseología como estilema del lenguaje judicial: el caso de las locuciones prepositivas desde una perspectiva contrastiva. In L. Chierichetti & G. Garofalo (eds), *Discurso profesional y lingüística de corpus. Perspectivas de investigación* (pp. 187-215). Bergamo: CELSB.
- Pontrandolfo, G. & Goźdź-Roszkowski, S. (2014). Exploring the local grammar of evaluation. The case of adjectival patterns in American and Italian judicial discourse. *Research in language*, 12, 71-91.
- Scott, M. (2009). *WordSmith tools 5.0*. Liverpool: Lexical Analysis Software.
- Sinclair, J. (2003). *Reading concordances. An introduction*. London: Longman.
- Sinclair, J. (2004). *Trust the text. Language, corpus and discourse*. London: Routledge.
- Summers, R. (1991). Statutory interpretation in the United States. In N. MacCormick & R. Summers (eds.), *Interpreting statutes* (pp. 407-459). Aldershot: Dartmouth.
- Swales, J. (2009). Afterword. In M. Charles, D. Pecorari & S. Hunston (eds.), *Academic writing. At the interface of corpus and discourse* (pp. 291-294). London: Continuum.
- Thaler, V. (2012). Mitigation as modification of illocutionary force. *Journal of Pragmatics*, 44, 907-919.
- Tomkin, J. (2004). Implementing community legislation into national law: The demands of a new legal order. *Judicial Studies Institute Journal*, 4, 130-153.
- Van Eemeren, F. H. (2010). *Strategic maneuvering in argumentative discourse*. Amsterdam: Benjamins.
- Van Poppel, L. (2012). The Strategic function of variants of pragmatic argumentation in health brochures. *Journal of Argumentation in Context*, 1, 97-112.
- Vass, H. (2004). Socio-cognitive aspects of hedging in two legal discourse genres. *Ibérica*, 7, 25-141.
- Wagner, A. (2002). The legal discourse of the common law. A game of chess. *International Journal for the Semiotics of Law*, 15, 345-360.