

## 7 Legal phraseology in contrast

### *The fact that* and its German counterparts

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#### Introduction

Expressions with *the fact that* are common in spoken and written English, with nearly 13,000 occurrences in the British National Corpus. This chapter analyses such expressions when they are used in legal language, with the help of their translation equivalents in German.

To set the scene, here is an example from the *Acquis Communautaire* archive (see ‘Corpus and Methodology’ for more about this corpus):

- (1) In setting the fines, the Commission also took into account the duration of the infringement, the large size and overall resources of some of the undertakings and *the fact that* some of the undertakings were addressees of previous Commission decisions establishing infringements of the same type.

In (1) we have a construction consisting of *the fact that* followed by the noun complement clause *some of the undertakings were addressees of previous Commission decisions establishing infringements of the same type*.<sup>1</sup> The entire construction functions as the object (in fact, the third of three conjoined objects) of the multi-word verb *take into account* in the matrix clause. One can get a sense of the extraordinary range and versatility of the phraseological unit *the fact that* from Hunston (2011): five pages in that study list 43 sub-types with different verbs and prepositions in the *New Scientist* corpus (*due to the fact that*, *stems from the fact that*, *lose sight of the fact that*, etc.). Hunston also presents six more examples where the expression is clause-initial (e.g. *The fact that P. suturalis has two different forms of shell . . . needs a different kind of explanation*) (2011: 112–116). Illuminating though her discussion is, it serves to indicate only some of the wide variety of uses of *the fact that* (Hunston does not mention examples like (1) where the construction is in object position), and to show the pressing need for more extensive analysis.

Despite the frequency of expressions with *the fact that*, they have hitherto been the subject of rather sparse and fragmentary research, probably for two main reasons. One is the relatively limited literature on noun complement clauses in general (but see Francis (1993), Ballier (2007) and Kanté (2010) for some enlightening analysis and reviews of the literature). The second reason is that the field of phraseology did not become firmly established until recent times. Theoretical models which take phrases seriously, such as Pattern Grammar and Construction Grammar, are still quite new; and large corpora, along with the software to recognise and quantify the occurrence of words and phrases, have only been widely available in the last two decades. Lexicographers have, of course, long been

very aware of multi-word expressions (MWEs), but detailed discussion of the practical and theoretical issues of identifying and classifying them has been rare: see Atkins and Rundell (2008: 166ff.) for a rare exception.

Two recent studies discuss the use of constructions with *the fact that* in legal English and their counterparts in other languages, namely Goźdź-Roszkowski and Pontrandolfo (2014) for Italian, and Zeleňáková (2014) for French. These scholars have raised interesting issues about *the fact that* as an MWE, about phraseology in general, about languages in contrast, and about legal language and legal reasoning.

This chapter is a modest attempt to build on the foundations laid by these two studies. The next section reviews some of the work on *the fact that* in English and in contrastive studies, and the following section introduces the corpus and methodology, and extends the data to legal German. Subsequent sections consider the implications of the corpus data for the analysis of expressions with *the fact that*, for English and German in contrast, for legal language and legal reasoning, for plain legal language, and for phraseology.

## Previous studies of *the fact that*

### *Monolingual research*

To the best of my knowledge, the first substantial examination of *the fact that* was Mair (1988), a pioneering corpus-based study which lists only two previous research articles in its short bibliography: Christophersen (1979), which only mentions *the fact that* briefly in passing, and Kiparsky and Kiparsky (1971), a paper which is not relevant to our concerns here. Mair's main intentions were firstly to defend *the fact that* from prescriptive grammarians who discourage its use, and secondly to argue that '*the fact that* is not a mere variant of the conjunction *that* but a genuinely suppletive form which substitutes for *that* in contexts where the latter is ruled out' (1988: 70). He adds another dimension to the observed variety of the construction by noting that the word *fact* can be pre- or post-modified by an adjectival, as in:

- (2) But what finally knocks the theory on the head is *the fact*, not to be denied however wrong or puzzling it may seem, *that* long-haired men are interested in women – and women are interested in long-haired men.

(Mair 1988: 68)

Compare:

- (3) I note not only that the numbers of people in residential and nursing care have increased substantially, as we all know, but also *the surprising fact that* there has been only a modest fall in the numbers of people in local authority care.

(British National Corpus, BNC)

Subsequently Granath (2001) searched the Frown and FLOB corpora (see Smith 2014 for details) and found around 200 instances of *the fact that*, which she subclassified on the basis of their function in the matrix clause (as we did above when we noted that in (1) the construction functions as object). She raises the question of why the verb *regret* (along with 27 other verbs in her corpus) usually took a bare *that*-clause complement, and was only rarely

followed by *the fact that*; whereas with *dislike* and 40 others, it was the other way round – but concedes that currently this is an area of language ‘that cannot be wholly explained in terms of one system or another’ (2001: 240). She goes on to note that the word *the* is not always present in this construction, that the word *that* is sometimes omitted too, and that *the facts that* also occurs, though infrequently. She observes finally that instances can be found where the situation referred to in the complement clause is not regarded by the speaker as a fact:

- (4) Quite frankly, it is not a tax break for the rich. . . . It would be first dollar coverage, it would be a high deductible, it would be very, very affordable for those people and unfortunately I just cannot buy *the fact that* it is a tax break for the rich.  
(CNN Domestic News, 25 Apr 1996) (Granath 2001: 242)

Similar examples where the factuality of the complement clause situation is at least in doubt are:

- (5) 1803 G. Moore Diary 15 Jan. in *Mem. Life Sir J. Mackintosh* (1835) I. iv. 175, I would not agree to *the fact that* ennui prevailed more in England than in France.  
(*Oxford English Dictionary*)
- (6) I think you hinted at *the fact that* they perhaps are not quite so good at maybe the harder sciences.  
(BNC)
- (7) All the evidence points to *the fact that* he will overrule Roe and he has said nothing to allay our concerns.  
(COCA)

The observations in these two works are useful, but they do not answer the question of whether *the fact that* has a basic function in English. A plausible answer is offered by Schmid (2007), who argues that the central function of *the fact that* and similar constructions is to ‘reify’ the information expressed in the sentential complement into a nominal concept. Schmid acknowledges that similar proposals were made by Francis (1986) and Conte (1996), but his statement is admirably clear:

The crucial cognitive function of the abstract nouns I am concerned with here is to ‘encapsulate’ the complex pieces of information expressed in the sentential complements as nominal concepts.

(Schmid 2007: 516)

We shall draw heavily on this proposal below, but first we must look at contrastive studies.

### *Bilingual research*

Zeleňáková (2014: 257ff.) looked at *the fact is that* and French *le fait est que* in legal texts as ‘emergent discourse markers’, following Aijmer (2004). Space prevents us from developing this topic, except to make this anecdotal observation: the expression *the fact of the matter is that* seems to have been used extensively by Conservative members of the UK cabinet for

decades to add credibility and weight to their assertions and to suggest that their opponents are not dealing with facts. Here is one example:

- (8) The Prime Minister: *The fact of the matter is that* it is not, as I have explained to the right hon. Gentleman on many occasions, happening only in this country. If the right hon. Gentleman is so concerned about unemployment and recession, why does he not acknowledge the impact that his minimum wage would have upon unemployment?

(BNC)

A more significant bilingual study is Goźdź-Roszkowski and Pontrandolfo (2014), where the notions of *evaluation* and *epistemic stance* were used to pinpoint the functions of this construction and Italian *il fatto che* in legal texts. The authors note that evaluation construed narrowly ('the good or bad dichotomy' is the sense specified in another paper, Pontrandolfo and Goźdź-Roszkowski (2014: 72), citing Hunston (2004)), only applies to some uses of *the fact that*, and not to others. Only 5% of their English examples, and 10% of their Italian examples, involved 'affective reaction to a fact' (Goźdź-Roszkowski and Pontrandolfo 2014: 23). However, they also make the interesting proposal that this explicit evaluation is not the only kind: they also found traces of covert evaluation in their data. Consider this example:

- (9) The artificial (and consequently unfair) nature of the resulting sentence *is aggravated by the fact that* prosecutors must charge all relevant facts about the way the crime was committed.

(Goźdź-Roszkowski and Pontrandolfo 2014: 21)

They list this example under 'Fact is the cause of a problem or its solution', but *aggravated* often carries negative connotations (less so in legal discourse, but the writer could have used the neutral *increased* or *amplified* instead). The nearby words *artificial* and *unfair* are also evaluative. We shall see similar findings in our data from English and German below.

## Corpus and methodology

Like Zelenáková, but unlike Goźdź-Roszkowski and Pontrandolfo, we used a parallel (translation) corpus of English and German texts: the *Acquis Communautaire* corpus of EU law. The corpus contains over a billion words in 22 languages (Steinberger et al. 2014). We extracted 100 random examples of *the fact that* from the corpus, and matched them with their German counterparts. This sample is too small for meaningful quantitative analysis: only in relation to examples (39–44) below is there a numerical reference to the infrequency of overtly evaluative verbs taking *fact* as their object.

An advantage of using a parallel corpus is that each English example can be compared directly with its German counterpart. In a comparable corpus this is not possible. Goźdź-Roszkowski and Pontrandolfo used a corpus of US Supreme Court judgements and a corpus of judgements delivered by the Italian Supreme Court. So to compare the two languages directly, they had to hunt through their corpus for similar examples: so they contrast their English example, reproduced as (9) above, with this one:

- (10) . . . una evidente contraddizione dovuta al fatto che la Corte ha ritenuto . . .  
 . . . *a clear contradiction due to the fact that the Court believed* . . .

The advantage of a comparable corpus is that we can be confident that the examples are authentic and natural. With a parallel corpus, there is always the risk that the translated language is unnatural ‘translationese’. This danger is ‘aggravated’ by ‘the fact that’ the *Acquis Communautaire* corpus does not systematically indicate which is the source text and which the translated text. These are genuine problems, but the reader is free to examine the data in the many examples presented below, and to draw her own conclusions about their quality – and, of course, about the value of conclusions based on these examples.

A further problem with the *Acquis Communautaire* corpus is that it includes a wide variety of documents, some of them only marginally ‘legal’ and some of them not involving judgements. Bonde describes the corpus as follows:

[It] covers all treaties, EU legislation, international agreements, standards, court verdicts, fundamental rights provisions and horizontal principles in the treaties such as equality and non-discrimination. In short: EU-law.

(Bonde 2016)

It will be clear that this covers a wide range of text genres. Examples (33–34) below, for example, may form part of a legal text, but out of context they look like engineering language. In constructing the sample of 100 examples, I tried to exclude any that were clearly remote from the type of judgements that Goźdz-Roszkowski and Pontrandolfo examined, so that their data could be compared, at least to some extent, with mine.

In presenting the data below, I have given the English first, followed immediately by the corresponding German text. I have not systematically provided glosses of the German examples: they are published by the EU as translation equivalents, so even readers with limited or no German should be able to understand them to some extent by looking for proper names or cognate words. Where German examples are discussed in detail, I have tried to provide word for word glosses. Note that German has two dictionary equivalents for *fact*: *Tatsache* and *Umstand*. Studying the differences between them is beyond the scope of the paper, but see Endnote 4 for a brief comparison.

### Constructions with *the fact that* in contrast with German

Consider again example (1), reproduced here as (11), this time with its German counterpart:

- (11) In setting the fines, the Commission also took into account the duration of the infringement, the large size and overall resources of some of the undertakings and *the fact that* some of the undertakings were addressees of previous Commission decisions establishing infringements of the same type.
- (12) Bei der Festsetzung der Geldbußen berücksichtigte die Kommission auch die Dauer der Zuwiderhandlung, die erhebliche Größe und die Gesamtressourcen einiger der Unternehmen sowie *die Tatsache, dass* die Kommission an einige der Unternehmen bereits frühere Entscheidungen aufgrund von Zuwiderhandlungen der gleichen Art gerichtet hatte.

Here the English multi-word verbal construction *take into account* and its German single-word counterpart *berücksichtigen* govern a series of object noun phrases: the construction introduced by *the fact that/die Tatsache dass* is the last of these object noun phrases. I would

argue, following Schmid (2007), that the fundamental reason for using *the fact that/die Tatsache dass* here is to enable the writer to reify the information in the sentential complement by nominalising it so that it patterns along with the other noun phrases.<sup>2</sup> It is true that Mair's (1988) line of argument applies here: it would be clumsy, if not impossible, to leave out *the fact/die Tatsache* in these examples. However, this syntactic fact about the two languages does not apply to every instance of *the fact that/die Tatsache dass*, as we shall see. Notice also that the notions of evaluation and epistemic stance do not appear to shed light on these examples. Some of the things that you can do to noun phrases headed by *duration, size, and resources* can also be done to the construction introduced by *the fact that*: you can note them, deplore them, or analyse them, for instance. Once a piece of information has been nominalised, it is fair game for any appropriate verb, not only evaluative ones like *deplore*.

Among the small number of nouns which can take sentential complements (*claim, theory, assumption, etc.*), *fact* is notable for its frequency and its semantic near-emptiness, two characteristics which are no doubt connected. Instances of *the fact that* range from those like (13) where the word *fact* is virtually devoid of meaning and is omissible, to those such as (15) where the writer apparently wants to make it clear that the situation in the complement is indeed a fact:

- (13) LDCOM further stresses *the fact that* the State cannot go back on its declarations without harming its own financial credibility.
- (14) LDCOM hebt ferner hervor, *dass* der Staat seine Erklärungen nicht zurücknehmen könne, ohne seine eigene Kreditwürdigkeit zu beeinträchtigen.
- (15) This is reinforced by *the fact that* the overall performance of the Community producers is negative.
- (16) Dies wird durch *die Tatsache* untermauert, *dass* die Geschäftsergebnisse aller Gemeinschaftshersteller zusammengenommen negativ sind.

Here again, syntactic constraints mean that *the fact* could have been left out in (13), so that it mirrored its German counterpart in (14), whereas this is not possible in (15) (though in (66) the writer could have said 'Dies wird dadurch untermauert, dass . . .' – cf. examples (34), (50), (68), and (70) below). The crucial difference, however, seems to be that in (13) the writer wants to assert a fact, whereas in (15) the information in the sentential complement is assumed to be true and is used to support the conclusion referred to by *this*. There are many ways to assume or presuppose the factual status of a proposition, one of them being to nominalise it without using *Tatsache*, as in (18):

- (17) According to the case law of the Court of Justice, where private investors are prepared to intervene only after the authorities have decided to grant aid, *the fact that those investors are then prepared* to intervene at the same time is no longer relevant.
- (18) Nach der Rechtsprechung des Gerichtshofs sei *die Bereitschaft privater Investoren*, gleichzeitig mit dem Staat aktiv zu werden, nicht mehr relevant, wenn sie diese Bereitschaft erst nach der Entscheidung der Regierung zur Gewährung einer Beihilfe entwickeln würden . . .

Here the English version could have paralleled the German by reading 'the preparedness/readiness/willingness of those investors to intervene'.

In all the examples given so far, the reified proposition in the sentential complement of *the fact that* is used as part of a chain of reasoning. In (11), the proposition is used to justify the size of the fines; in (13) it is used to support an argument about the credibility of the (French) state; in (15), it supports a claim in the previous sentence (not included in the example) that the overall picture is ‘injurious’; and in (17), the proposition is said to be not relevant. Most of the examples in our sample have a similar function with a chain of reasoning. Here are some typical ones (we do not comment on the German equivalents here – see the next section):

The complement clause supports a conclusion:

- (19) The low cooperation by unrelated importers and *the fact that* after the imposition of measures on the PRC, importers do not seem to have experienced particular difficulties further underscores this conclusion.
- (20) Die geringe Mitarbeit seitens der unabhängigen Einführer und *die Tatsache, dass* die Einführer nach der Einführung der Maßnahmen gegenüber der VR China nicht mit besonderen Schwierigkeiten konfrontiert waren, bekräftigen diese Schlussfolgerung noch.

The complement clause does not alter an assessment:

- (21) *The fact that* the investment concerned headquarters rather than production capacity did not alter this assessment.
- (22) *Die Tatsache, dass* die Investition anstelle der Schaffung von Produktionskapazitäten die Errichtung eines Firmensitzes betraf, änderte nichts an dieser Einschätzung.

A third party is said to ignore the proposition in the complement clause:

- (23) by proposing to . . . , the Commission is in practice penalising the eligible regions and overlooking *the fact that* in 2001 the new legislative framework had not come into force . . .
- (24) mit dem Vorschlag . . . benachteiligt die Kommission in Wirklichkeit die Empfängerregionen und missachtet *die Tatsache, dass* der neue Rechtsrahmen 2001 noch nicht in Kraft war . . .

The complement clause is the basis of a decision:

- (25) However, based *on* the environmental logic of the scheme and *the fact that* the relevant state aid rules expressly refer to property tax as one way to counterbalance new environmental taxes, the Commission has decided . . .
- (26) Ausgehend von dem der Regelung zugrunde liegenden Umweltschutzgedanken und *von der Tatsache, dass* die Grundsteuer in den einschlägigen Beihilfavorschriften ausdrücklich als ein Ausgleichsinstrument für neue Umweltabgaben genannt wird, hat die Kommission daher beschlossen . . .
- (27) In its decision, . . . the Commission took account of *the fact that* the heavy debt burden, the loss of markets and the excessive workforce were all inherited from a period when the Lithuanian economy was still in transition.
- (28) In ihrer Entscheidung, . . . trug die Kommission *dem Umstand Rechnung, dass* die enorme Schuldenbelastung, das Wegbrechen von Märkten und die zu hohe

Mitarbeiterzahl Altlasten aus einer Zeit waren, als sich die litauische Volkswirtschaft noch im Übergang befand.

The complement clause was recognised as part of the approach relied upon:

- (29) In terms of impact, the report relied, for most regions, on a macro-modelling approach to assess the impact of the SFs on economic and social cohesion. It recognised *the fact that*. 'The emerging results inevitably flow to some extent from assumptions made within the modelling process.'
- (30) Zur Bewertung der Auswirkungen der Strukturfonds auf den wirtschaftlichen und sozialen Zusammenhalt stützte sich der Bericht bei den meisten Regionen auf ein makroökonomisches Modell. Es wird eingeräumt, *dass* die erzielten Ergebnisse unweigerlich zu einem gewissen Grad aus während des Modellgestaltungsprozesses getroffenen Annahmen abgeleitet wurden.
- (31) Moody's decision at that time *was based on the fact* that the agency did not expect France Télécom and Orange to be in a position to generate sufficient cash flow to reduce the group's consolidated debt.
- (32) Der Entscheidung der Ratingagentur *lagen* Zweifel an der Fähigkeit von FT und Orange *zugrunde*, einen ausreichenden Cashflow zu erzielen, um die Schuldenlast des Konzerns zu verringern.

The complement clause is important and needs to be highlighted:

- (33) It is necessary to draw attention to *the fact that* the value of *s* is specific to the situation calculated and can, therefore, be influenced by the action of the body tilt system.
- (34) Es ist *darauf* hinzuweisen, *dass* *s* den spezifischen Wert nur in dem betrachteten Berechnungsfall aufweist und folglich durch die erzwungene Wagenkasten­neigung beeinflusst werden kann.

The complement clause is a good example of the content of another proposition:

- (35) Moreover, the widespread existence of slitting companies and steel service centres in the Community *illustrates the fact that* the GOES do not always leave the factories of the producers in dimensions specifically required by the end-user.
- (36) Zudem *lässt sich* aus der großen Zahl von Unternehmen mit Spaltbandanlagen (Slitting-Anlagen) und von Stahl­servicezentren in der Gemeinschaft durchaus *schließen, dass* die GOES auch in nicht kundenspezifischen Abmessungen ab Werk geliefert werden.

The complement clause explains something:

- (37) The increase between 2003 and the IP *can be explained by the fact that* the Community industry decreased its sales prices (see below) in order to regain market share.
- (38) Der Anstieg zwischen 2003 und dem UZ *war nur möglich, weil* der Wirtschaftszweig der Gemeinschaft seine Verkaufspreise senkte (siehe unten), um so seinen Marktanteil halten zu können.

We have not included examples here of the type *in view of the fact that/despite the fact that*, which need separate discussion – see next section. In none of these examples is evaluation

by the writer (in the narrow sense) a factor. In (36), the German version in its use of the word *schließen* ‘conclude’ makes the chain of reasoning, implicit in the English (35), explicit. Only in three out of our hundred examples is the proposition in the sentential complement explicitly evaluated, positively in (39–42), negatively in (43–44):

- (39) [The committee] welcomes *the fact that* NCTS, by simplifying the administrative tasks of customs workers, can help free up human resources . . .
- (40) [Der Ausschuss] begrüßt *die Tatsache, dass* das NEVV, da es die Verwaltungsaufgaben der Zollbediensteten vereinfacht, dazu beitragen kann, Humanressourcen freizustellen . . .
- (41) [The committee] welcomes *the fact that*, in practice, the Court contributes not only to correcting mistakes, but also to developing and improving management in the EU.
- (42) [Der Ausschuss] würdigt *die Tatsache, dass* der Rechnungshof mit seiner Arbeit nicht nur dazu beiträgt, Mängel zu berichtigen, sondern auch das Management der Europäischen Union weiterzuentwickeln und zu verbessern.
- (43) [The committee] deplores *the fact that* the Commission has not made efforts to establish an appropriate mechanism to measure such impacts.
- (44) [Der Ausschuss] bedauert *die Tatsache, dass* die Kommission es versäumt hat, einen entsprechenden Mechanismus zur Beurteilung dieser Auswirkungen zu entwickeln.

This low number of explicitly evaluative examples seems to match the findings of Goźdz-Roszkowski and Pontrandolfo (2014: 23, Figures 1–3), where, as we noted above, their category ‘affective reaction to a fact’ has a small number of examples, and the largest number are classified as ‘fact is the basis for a practical outcome or reasoning’.

### Connecting propositions in chains of reasoning

We also find *the fact that* as part of a larger connective structure involving a preceding proposition or phrasal preposition – the ‘recurring prepositions’ of Hunston (2011: 13). Usually this structure makes explicit the connection between two or more propositions. Here are some typical examples, starting with those that involve a positive connection between the two propositions:

- (45) *In view of the fact that* the quantities traded would be substantial and that the agreement was made between the two largest undertakings active in trading rough diamonds, competition would be substantially weakened as a result of the trade agreement.
- (46) *Angesichts der Tatsache, dass* der Handel beträchtliche Mengen betrifft und die Vereinbarung von den beiden größten, auf dem Gebiet des Rohdiamanhandels agierenden Unternehmen abgeschlossen würde, wäre eine spürbare Beeinträchtigung des Wettbewerbs auf dem Markt . . . zu erwarten.
- (47) . . . the principle’s applicability in the present case is incontestable *in view of the fact that* the State is acting as a shareholder . . .
- (48) . . . die Anwendbarkeit dieses Grundsatzes im vorliegenden Fall sei unstreitig *angesichts der Tatsache, dass* der Staat hier als Aktionär . . . agiert habe.

- (49) The main build up occurred during 2003 and the IP and was *due to the fact that* one of the sampled producers had to satisfy a very big delivery immediately after the end of the IP.
- (50) Der Anstieg war im Jahr 2003 und im UZ am ausgeprägtesten und *darauf* zurückzuführen, *dass* die Stichprobenhersteller unmittelbar nach Ende des UZ einen sehr großen Auftrag erfüllen mussten.
- (51) *In view of the fact that*, in the present case, the investor is the State, the study of domestic law also included administrative law.
- (52) *Da* im vorliegenden Fall der Staat der Investor ist, wurde auch das Verwaltungsrecht in diese Untersuchung des innerstaatlichen Rechts einbezogen.
- (53) The necessary amendment or repeal may arise *due to the fact that* the products upon which measures have been imposed by Regulation (EC) No 151/2003 fall within the scope of the products subject to the proceeding . . .
- (54) Eine solche Änderung oder Aufhebung könnte eventuell erforderlich sein, *weil* die Waren, für die die mit der vorgenannten Verordnung eingeführten Maßnahmen gelten, unter die Warendefinition des Verfahrens . . . fallen.
- (55) However, *owing to the fact that* in most Member States there is no or insufficient export-credit insurance cover offered by private insurers to micro and small companies, the Commission decided . . .
- (56) *Weil* jedoch in den meisten Mitgliedstaaten Klein – und Kleinunternehmen von Seiten privater Versicherer keine oder nur eine unzureichende Ausfuhrkreditversicherungsdeckung angeboten wird, beschloss die Kommission, . . .

In the next group, the two propositions are in contrast:

- (57) *Despite the fact that* the sampled producers recovered to a certain extent from past dumping of imports originating in the PRC, it was also found that the sampled producers still suffered material injury within the meaning of Article 3 of the basic Regulation.
- (58) *Obwohl* sich die Stichprobenhersteller bis zu einem gewissen Grad von dem früheren Dumping der Einfuhren mit Ursprung in der VR China erholt haben, erlitten sie den Untersuchungsergebnissen zufolge dennoch eine bedeutende Schädigung im Sinne des Artikels 3 der Grundverordnung.
- (59) . . . the distinction between data on telecommunications and Internet data, *despite the fact that* the distinction becomes technologically less important.
- (60) . . . der Unterscheidung zwischen Telefon – und Internetdaten, *obgleich* diese Unterscheidung technisch betrachtet an Bedeutung verliert.
- (61) ECTA is of the opinion that the following measures constitute state aid: (i) the ministerial declarations of July and October 2002 informing the market that the State would not leave France Télécom in financial difficulties; . . . and (v) the apparent transfer of France Télécom’s employees within ERAP *despite the fact that* they continue to work for France Télécom.
- (62) Nach Auffassung von ECTA stellen die folgenden Maßnahmen staatliche Beihilfen dar: (i) die ministeriellen Erklärungen zwischen Juli und Oktober 2002, mit denen der Markt darüber informiert worden sei, dass der Staat FT in finanziellen Schwierigkeiten nicht allein lassen würde; . . . und (v) die augenscheinliche Übernahme von – *gleichwohl* weiterhin für FT tätigen – FT-Mitarbeitern durch ERAP.

In (46) and (48), the German version closely parallels the English one. Such examples were outnumbered in our sample, however, by the types illustrated in (49–62), where a single word in German corresponds to the more complex English structure. Arguably the factual status of the proposition in the clausal complement is more important in (45–48); in the remaining examples, a single word in English, paralleling the German, would have been possible.

In (62), the clause introduced by *despite the fact that* corresponds to *gleichwohl weiterhin für FT tätigen* (“although further active for FT”) – an adjectival phrase without a verb, and thus a further simplification of the structure. Anticipating our discussion of plain legal language below, it is worth pointing out that the less elaborate structure in (62) is not necessarily easier to understand than the more complex (61). Sometimes elaborate syntax aids comprehension.

### English and German legal language in contrast

We have already noted in relation to examples (17–18) that nominalisation can fulfil the same function as a construction with *the fact that*. Here is a similar example:

- (63) Hence, *owing to the fact that* the Company’s fundamentals *were healthy*, France Télécom’s situation cannot be compared to that of companies such as Vivendi Universal or Crédit Lyonnais.
- (64) *Angesichts der gesunden Grundlagen* von FT lasse sich die Situation des Konzerns nicht mit der anderer Unternehmen wie Vivendi Universal oder Crédit Lyonnais vergleichen. (The German starts with “In view of the healthy foundations of FT”.)

In other cases, we found German using nominalisation as part of a radical difference from the English structure. Examples (31–32) above are one such pair. Here is another:

- (65) The authorities maintain that the loan proposal was never signed by France Télécom *owing to* the excessive cost of the financial terms proposed to it *and the fact that* the Commission was raising doubts.
- (66) Nach Auskunft der Regierung hat FT den vorgesehenen Vorschuss niemals in Anspruch genommen, zum einen *aufgrund* der hohen Kosten, die mit den angebotenen Finanzierungsbedingungen verbunden gewesen seien, zum anderen *aufgrund der Bedenken*, die die Kommission geäußert hätte. (The German text here ends with “owing to the doubts that the Commission had voiced”.)

We have seen several examples where an elaborate construction with *the fact that* corresponds to a single word in German, among them *in view of the fact that* > *da* “since” in (51–52), *owing to the fact that* > *weil* “because” in (55–56), and *despite the fact that* > *obgleich* “although” in (59–60).

Examples where a construction with *the fact that* had as its German counterpart a construction with *da* – “there” were common in our sample.<sup>3</sup> Examples (33–34) and (49–50) illustrate this contrast: *It is necessary to draw attention to the fact that* in (33) corresponds to (34) *Es ist daraufhinzuweisen, dass* “It is thereupon to be insisted that”. Here are some more:

- (67) Although the Council has decided that the Member States should benefit from Community financial support to eradicate the disease, this does not alter *the fact*

*that* the specific financing decisions adopted by the Commission after receiving a request for reimbursement . . . point out that this is contingent on the planned action being taken immediately . . .

- (68) Zwar hat der Rat beschlossen, dass die Mitgliedstaaten eine Finanzhilfe der Gemeinschaft zur Tilgung der Seuche erhalten müssen, jedoch ändert dies nichts *daran, dass* in den von der Kommission nach Erhalt eines Erstattungsantrags verabschiedeten spezifischen Entscheidungen über eine Finanzhilfe darauf hingewiesen wird . . . dass dieser Anspruch an die unmittelbare Anwendung der geplanten Maßnahmen gebunden ist . . .
- (69) Despite the difficulties in obtaining data *due to the fact that* different types of building work were interconnected, the evaluators attempted . . .
- (70) Trotz der Schwierigkeiten bei der Sammlung von Daten, die *darauf* zurückzuführen waren, *dass* unterschiedliche Arten von Bauarbeiten miteinander verbunden waren, versuchten die Prüfer, . . .

In (70), the German version uses *die darauf zurückzuführen waren, dass* “which were thereto to be traced back, that”, where the English has [understood: *which were*] *due to the fact that*.

Finally we reproduce here some of the instances where the German structure diverges sharply from the English one. In a few cases we found the German word *Tatsache* or *Umstand* used:<sup>4</sup>

- (71) As regards applications for a reduction in fines, *the statistics provided should be seen in the light of the fact that* in a single investigation normally more than one undertaking applies for a reduction in fines.
- (72) Im Hinblick auf Anträge auf eine Ermäßigung von Geldbußen *sollte bei der Betrachtung der vorgelegten Statistik die Tatsache berücksichtigt werden, dass* im Normalfall bei einer einzigen Ermittlung mehr als ein Unternehmen eine Geldbußenermäßigung beantragt. (The words in bold translate as “in the consideration of the provided statistics, the fact should be considered that”.)
- (73) *Where the incurrence of the debt is due to the fact that* the goods covered by the ATA carnet have not been re-exported or have not been assigned a customs-approved treatment or use within the periods laid down by the ATA Convention . . .
- (74) *Hat die Entstehung der Abgabenschuld ihren Grund in dem Umstand, daß* Waren, für die ein Carnet ATA ausgestellt worden ist, nicht wiederausgeführt oder nicht innerhalb der gemäß dem ATA-Übereinkommen festgelegten Frist ordnungsgemäß erledigt worden sind . . . (The words in bold translate as “If the incurrence of the debt has its origin in the fact that”.)

In other cases the structures diverged even more radically:

- (75) . . . the consultant is wrong to carry out his analyses in the light of a single factor (the ministerial interview on 12 July 2002) to the exclusion of all others (*despite the fact that there are no grounds for asserting* that market operators considered the ministerial interview to be an important factor for investors).
- (76) Der Berater kann seine Analysen also nicht auf einen einzigen Faktor (das Ministerinterview vom 12. Juli 2002) stützen und sämtliche anderen Faktoren ignorieren (*wobei nichts für die Behauptung spricht, dass* das Minister-interview nach

Einschätzung der Marktteilnehmer für die Investoren von Bedeutung gewesen wäre). (The words in bold translate as “in which connection nothing speaks for the claim, that.”)

- (77) *The discussion* also **highlighted the fact that** active competition law enforcement is likely to be required to avoid incumbent firms’ behaviour limiting competition from the substitute services.
- (78) **In der Diskussion wurde deutlich, dass** eine aktive Durchsetzung des Wettbewerbsrechts erforderlich sein dürfte, um zu vermeiden, dass etablierte Firmen durch ihr Verhalten den von alternativ angebotenen Dienstleistungen ausgehenden Wettbewerb beschränken. (The words in bold translate as “In the discussion [it] became clear, that”.)
- (79) **The fact that** the Directive on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC **was adopted** on 21 February 2006, only five months after the presentation of the Commission proposal, following the agreement reached at first reading between Parliament and the Council, was an inter-institutional success symbolising the Union’s political will.
- (80) Die Richtlinie über die Vorratsspeicherung von Daten, die bei der Bereitstellung öffentlicher elektronischer Kommunikationsdienste verarbeitet werden, und zur Änderung der Richtlinie 2002/58/EG, die am 21. Februar 2006 nur fünf Monate nach Vorlage des Vorschlags der Kommission nach der Einigung zwischen Parlament und Rat in erster Lesung **verabschiedet** wurde, war ein interinstitutioneller Erfolg, der den politischen Willen der EU deutlich macht. (The structure of the German sentence is: “The Directive . . . , which was adopted at first reading . . . was an inter-institutional success”.)
- (81) In a 1989 report on Member States’ policies for controlling FMD, the Commission noted that some Member States that did not practise preventive vaccination of livestock could impose restrictions on trade in animals with Community partners that did vaccinate. The restrictions **were justified by the fact that** even though vaccinated animals appear clinically normal they may be carrying the virus.
- (82) In einem Bericht über die Politiken der Mitgliedstaaten zur Bekämpfung der MKS stellte die Kommission im Jahr 1989 jedoch fest, dass einige Mitgliedstaaten, die keine prophylaktischen Impfungen ihres Viehbestands durchführten, **berechtigt waren**, gegenüber den Mitgliedstaaten der Gemeinschaft, die prophylaktische Impfungen praktizierten, Beschränkungen beim Handelsverkehr mit Tieren anzuwenden **mit der Begründung**, äußerlich gesunde, geimpfte Tiere könnten Virusträger sein. (The words in bold translate as “were justified . . . on the grounds [that]”.)

There are no apparent general patterns at work in this group of examples, but they do indicate one of the advantages of working with a translation corpus: a rich and sometimes surprising array of equivalents often comes to light. General patterns might well appear in a larger sample, of course.

### Plain legal language

In some instances, using a construction with *the fact that* is a simple and efficient way to get the message across. This is certainly the case in (11), where a series of NPs appear in object

position and the proposition in the complement clause is conveniently added to the series; and a similar point can be made about the pair of NPs in subject position in (19). We have also noted instances like (15), where the writer apparently uses the word *fact* to mark the factual status of the proposition in the complement clause.

In other cases, the single-word counterparts of the construction involving *the fact that* provide cross-linguistic support for the argument that the construction can be unnecessarily cumbersome: examples (49–62) illustrate this clearly, and it would be perfectly possible to simplify (45–48) in similar ways, in both languages. The admirable guidelines from the EU translation unit, known in English as *How to Write Clearly* (European Commission 2012a), advise writers to avoid the expression *in view of the fact that*, and to use *as* instead. The German counterpart *Klar und deutlich schreiben* (European Commission 2012b) likewise rejects *in Anbetracht des Umstands, dass* (not attested in our corpus) in favour of *weil*. (The French *Rédiger clairement* (European Commission 2012c) advises *comme* rather than *en raison du fait que*, and the Italian *Scrivere chiaro* (European Commission 2012d) rejects *in considerazione del fatto che* in favour of *poiché*. I am not competent to check all the available language versions, but the Dutch and Spanish guidelines give similar advice, although the longer phrase in these two languages (*i betragtning af at/habida cuenta de que*) does not contain an equivalent of the word *fact*.)

We thus have some limited evidence that a contrastive, corpus-based approach can supplement efforts to simplify legal language.

## Implications for phraseology

In studying constructions like *the fact that*, it is a familiar principle that we need to distinguish between the phrase on its own, and the phrase as part of a larger expression such as *in view of the fact that*. The contrastive data presented here also indicate that we often need to look at the wider context to analyse the function of *the fact that* – not just the immediate context, but also at least the sentence as a whole, as the divergent equivalents in (75–82) indicate clearly. It would also be interesting to compare related expressions with *the fact* across languages, as these two pairs of examples indicate:

- (83) As to the compatibility of the support measures within the meaning of the Guidelines, Bouygues Telecom argues that. . . Basically, ***the fact is that*** the Ambition 2005 plan does not satisfy the minimum requirements of the Guidelines.
- (84) Zur Frage der Vereinbarkeit dieser Maßnahmen mit den Leitlinien ***macht BT geltend, dass*** . . . der Plan Ambition 2005 erfülle die in den Leitlinien aufgestellten Mindestanforderungen nicht. (The words in bold translate as “BT argues, that.”)
- (85) The very first contact can win or lose a client, so ***it’s an incredible fact that*** 30% of all artists don’t say their name when answering the phone.
- (86) Schon der erste Kontakt kann einen Kunden gewinnen oder verlieren, daher ***ist es erstaunlich, dass*** sich 30% aller Künstler nicht mit ihrem Namen melden. (The words in bold translate as “it is astonishing that.”)

The role of *the fact that* constructions in what we have called ‘chains of reasoning’ has come out clearly in the data here, and this is one advantage of focusing on legal language, where chains of reasoning are frequent and usually explicit. However, by limiting the data here to legal genres, it remains an open question whether our results apply to other genres or to the two languages as a whole. Surely the frequent occurrence of constructions with *da*– in our

data (cf. examples (67–70) above) is a reflection of their frequent occurrence in other German genres. It is likely that one can find a similar range of uses of *the fact that* in academic writing and other genres where explicit reasoning is frequent, but demonstrating that will need further research.

## Conclusions

Noun complement constructions introduced by *the fact that*, and their equivalents in other languages, seem to yield helpful insights into legal reasoning. We have taken the view that such constructions enable propositions to be nominalised, and thus reified and used in chains of argumentation. Legal texts, with their often complex patterns of reasoning, are particularly good illustrations of this analysis.

Using a parallel corpus has shown that other constructions can be employed in a similar way. Viewing two languages in direct contrast can shed light on each of them, and can bring to light modes of expression which are less obvious in monolingual work. By taking an expression in one language, and looking at its counterpart in the other, we can ask whether the formulation in the second language would have been available in the first one. Sometimes it is not available: the German constructions using *daran dass* and *darauf. . . dass* in (68) and (70) have no direct English equivalents. In other cases, an equivalent formulation could have been used in the first language: in (64), the German construction *Angesichts der gesunden Grundlagen von FT* raises the intriguing question of why the perfectly acceptable English equivalent *In view of FT's healthy foundations* was not used. Similarly, instances where the counterpart is simpler than the original can also illustrate some ways in which legal language can be simplified in the first language.

Much work remains to be done on *the fact that* and related constructions, notably in relation to Construction Grammar (cf. Bergs and Diewald 2008) and to phraseological theory. This paper has tried to open up some paths for such future research.

## Notes

- 1 Only a small group of nouns (*idea, suggestion, claim*, etc.) can take complement clauses, and *fact* is by far the most common of these. Huddleston and Pullum (2002: 965) give a fuller list. Like most nouns, *fact* can also be followed by a relative clause, so we can contrast:

- (a) The fact that he arrived on time surprised us. [*fact that* + noun complement clause]
- (b) The fact that he mentioned surprised us. [*fact that* + relative clause]

The most common distinguishing feature is that relative clauses like *he mentioned* would be grammatically incomplete if they were main clauses, whereas *he arrived on time* would be complete. Also, in (b) the word *that* could be replaced by the relative pronoun *which*; this is not possible in (a). In this paper we are only concerned with *the fact that* + noun complement clause, as in (a). Another name for noun complement clauses is *appositive clauses*: this is the term used by Quirk et al. (1985: 1321). Some reasons to avoid the latter term are given by Huddleston and Pullum (2002: 1016ff.).

- 2 Cf. also Huddleston and Pullum (2002: 965): '*the fact (that)* . . . serves as a device for nominalising clauses by incorporating them into an NP that can occupy any ordinary NP position'.
- 3 German has two homonyms: *da* can be a subordinating conjunction ("since"), as in (52), and it can be a locative adverb ("there"). As a separate word there are no corpus examples of the latter in this paper, but the famous words of the poet and activist Heinrich Heine were: *Hauptsache ist: Ich bin da!* ("The main thing is: I am there!"). Just as in (formal) English, the word *there* combines with prepositions (*thereby, thereupon*, etc.), we find in all varieties of German very frequent combinations such as *darauf* in (34) and *daran* in (68).

- 4 It is possible that *Umstand* is a more natural word than *Tatsache* in our data, suggesting that some of the examples with *Tatsache* are translations from the English. Perhaps (72) with *Tatsache* reads like translationese whereas (74) using *Umstand* could be original German. Further research would be necessary to verify this suggestion.

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