Stylistic Features of Legal Discourse

A Comparative Study of English and Norwegian Legal Vocabulary

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Summary

The study represents a contrastive investigation of stylistic features peculiar to legal discourse, in English and Norwegian. This is a qualitative study, based on a close reading of parallel English and Norwegian versions of three legal documents. Firstly, the texts were examined with respect to the presence of lexical hallmarks of legal language. A number of lexical items showing characteristic signs of legalese / formalese were identified, briefly examined and then categorized according to the type of patterns they demonstrate. Then, a more detailed analysis of complex prepositional phrases and several verbs, the two categories selected for a more in-depth investigation, was conducted. The latter part involved a quantitative approach based on corpus research, in addition to a qualitative approach.

The study showed that besides the commonly recognized hallmarks of legal discourse, such as general legal terminology or proper nouns referring to legal institutions, legal documents, etc., there are other types of lexical items that are characteristic of legal language. Complex prepositions have been pointed out as a distinctive feature of legal texts. It has been examined to what degree this is the case in Norwegian and in English. Another striking observation of stylistic non-correspondences on the lexical level involved the use of verbs. In the texts examined, some verbs found in the Norwegian versions appeared to have a remarkably more formal colouring than the corresponding verbs in the English versions, and vice versa.

The study will hopefully encourage further investigations into the comparison of stylistic choices in English and Norwegian, as well as the development of a functional bilingual corpus of legal texts in Norwegian and English.

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LIST OF ABBREVIATIONS

LSP	language for specific purposes
BNC	the British National Corpus
LBK	the Lexicographic Corpus of Norwegian Bokmål
ENPC	the English-Norwegian Parallel Corpus
SL	source language
TL	target language
ST	source text
TT	target text

CHAPTER 1 Introduction

The concern of the present thesis is legal language and particularly its formal and functional differences in English and Norwegian texts. The initial aim of this project was to study the translation of legal texts from Norwegian into English and vice versa. However, as the investigation within the topic of legal language progressed, I chose to narrow the focus and put the main weight on a comparative analysis of stylistic choices in English and Norwegian legal documents. The next chapter will introduce the main research questions and the study material, as well as give the outlines of this study. But first of all, some general background information: why study legalese?

1.1 The background: why study legalese

Sealey (2010) suggests three main ways of choosing a research topic. Firstly, the topic for the research may relate to the biography and particular interest of the author. For example, for bilinguals, it may be relevant to conduct a comparative study of the two languages one has native-speaker competence in. Secondly, the research topic may relate directly to the studies one has done previously at lower levels. On the way to a higher degree in language studies one has to get insights into various topics and, often, many aspects of language will be covered just generally. Writing a master thesis is a good opportunity to come back to particular topics and conduct an in-depth investigation. Also, one can combine different topics that one has been introduced to earlier, and study particular language aspects in perspective. Thirdly, you may choose a way of making "good some of the gaps in your knowledge" (*ibid.*) and find a topic where you feel a need for development. All these three reasons played a role when the topic for the present thesis was defined. In addition to my personal interest (work-related and otherwise) in the topic of legal language, the fact that the topic is generally popular, universal and controversial motivated my choice of research topic.

Numerous scholars have pointed out that the language of law matters in very different situations of everybody's life (Mellinkoff 1963, Trosborg 1997, Tiersma 1999, Gibbons 2003 and others). The scholars generally agree on the fact that this issue is problematic. Very basically, the problem is that legalese is difficult to understand for those who are referred to as non-lawyers, or lay people: those who have not studied law specifically, who never indented to get a law degree. Lay people have opted to not bind their everyday life to statute books and

long legal documents, but dedicated their lives to other careers and occupations. Still, lay people, too, have to be very much involved in the world of legislation. People's involvement with the complicated system of law can be as minor as an obligation to have a valid ticket when travelling by bus, and as major an enterprise as purchasing a house (Gibbons: 2003). Language is the main means that makes it possible for law to do its work. Thus, the first point that favors the choice of topic for the present study is the relevance and importance of legalese as a means of communication.

Why does legalese in the perspective of a contrastive analysis of Norwegian and English may deserve interest? Today, most grown-up Norwegians can speak and write English, and many do it at a very advanced level. Of course, one can be fluent in everyday speech. Even English slang is easy for Norwegians to master, as they usually start watching (undubbed) British and American TV-programs from a very young age. When it comes to the language used for writing academic papers, conducting business communication, understanding legal contracts or other official documents, however, it turns out that proficiency in everyday English is not enough. Different life situations demand different language contexts and different vocabulary. It has been claimed by experienced scholars that legal translation is difficult. As well as the lexicon, the grammar rules can vary, depending on the nature of the context. A challenge for a translator is the fact that language, in general, changes over time. The language of law tends to be very conservative on the one hand. Indeed, documents written in the year 2011 often contain words or grammatical structures that are archaic. On the other hand, laws undergo changes from time to time, and new laws emerge. That brings about the appearance of new concepts, meanings, words and patterns in legal communication. A translator working with legal language will always need to be updated as to changes in the legal systems of both the source language and the target language. In fact, legal language represents a distinct language variety, characterized by a specific, highly technical lexis. In language varieties where professional jargon prevails, even neutral and everyday words happen to take different meanings: "A technical term may have a strict definition which makes it descriptively different from the everyday term" (Cruse 2000: 61). This implies that legal discourse poses special problems for the field of translation practice. This theme will be elaborated in Chapter 2, section 2.2.

As background for my research I should also mention my own experience as an employee in a state bureaucracy, where a highly formal language is spoken and written during most of the

working day. My colleagues sometimes made jokes about how we, bureaucrats, bring some very formal expressions into our everyday conversations outside work and thus get a rather funny mixture of language registers. On the one hand, my work involved creating documents where references to regulations and laws were central, and which demanded the use of a formal style. On the other hand, these documents were addressed to ordinary people, for whom the correct understanding of the content was essential. Thus I clearly saw a challenge, which has apparently always existed: the use of officialese makes communication between a state and its citizens challenging and sometimes unnecessarily difficult.

In fact, law has no existence outside of language (Gibbons: 2003.) The factors that contribute to communication include "the knowledge of both the material and the socio-cultural worlds and the extent to which these are shared by the participants" (*ibid.* 12). The next section of this chapter will focus on the communicative function of legalese. The topic has obtained significant attention, in the UK through the Plain English Campaign, and in Norway through the project called *Klarspåk*. The next section gives a short presentation of the two plain language projects.

1.2 "The Plain English Campaign" and "Klarspråk": the communicative role of legalese

The Plain English Campaign in the UK has existed since 1979, helping the government and other organs communicating on legal matters to "make sure their public information is as clear as possible" [1]. The aim of the campaign is to work against the overly complicated language that is often used by government institutions in communication with the people. The campaign fights against what they call "gobbledygook". Among the "rules" a proper plain language should conform to, are keeping sentences short, avoiding passives and nominalizations, avoiding jargon or legalistic words, etc. All this at the same time as one, of course, should keep a serious general tone appropriate for a formal situation. It has been emphasized that plain language does not imply that things should be put in a simple way. Rather, things should be put in a way that is easy to perceive (Bathia 1983b in Williams 2005: 17).

[1] http://www.plainenglish.co.uk/about-us.html

The guide provided by the Plain English Campaign's web-site lists a number of "words to avoid" and suggests alternatives to these words (in parentheses):

Figure 1: Examples of synonymous words and expressions illustrating formalese vs. plain language

• additional (extra)	• in the event of (if)
• advise (tell)	• on receipt (when we/you get)
• applicant (you)	• on request (if you ask)
• commence (start)	• particulars (details)
• complete (fill in)	• per annum (a year)
• comply with (keep to)	• persons (people)
• consequently (so)	• prior to (before)
• ensure (make sure)	• purchase (buy)
• forward (send)	• regarding (about)
• in accordance with (under, keeping to)	• should you wish (if you want)
• in excess of (more than)	• terminate (end)
• in respect of (for)	• whilst (while)

For Norwegian, there is a corresponding project called *Klarspråk*, "Plain Language in Norway's Civil Service"[2]. The project was formally launched in 2009 and its overall goals are very similar to those of the Plain English Campaign. No further comments will be given now regarding Figure 1 or *Klarspråk*, but their relevance will be pointed out later in the thesis.

There is no agreement as to whether or not everything that is said in a very technical, field-specific language can and should be rendered into a conversational and everyday language. There are promoters of the idea that communication of ideas of a legal character can only be expressed with the help of legal jargon. Otherwise, the meaning cannot be conveyed precisely. Words, grammar and syntax are decisive in legal matters. Legal language is conservative and makes use of the established formulae, which have been tested before courts for years and therefore are employed by law professionals with safety. If one chooses to adopt a new formulation with a legal content, there is a risk of "unsuspected deficiencies" (Crystal and Davy 1969: 194).

[2] http://www.sprakradet.no/nb-NO/Klarsprak/

In terms of the social role of legalese, the notion of status should be mentioned. Law students are keen on mastering the technical vocabulary of legal discourse in order to join the so-called "lawyer's club" (Gibbons 2003:37). Thus, legal language is in some way esoteric. It might play a role for one's social and professional status. This idea is also presented and developed in Tiersma (1999: 3). Position in society, especially in a society in which the law plays an important role, can be said to be one of the factors contributing to the conservatism and technicality of the language of the law. Legalese as a distinct branch of language unites law professionals and at the same time makes the border between a legal professional and a lay person clearer and stronger. Thus, socially, legalese is both inclusive and exclusive (Gibbons 2003: 37). The use of Latin maxims serves as a "cohesive factor in the legal profession" (Mattila 2006: 52).

Biber (quoted in Bhatia 2011: 11-24) made an interesting study on the presence of explicitness in academic English. Though the author does not refer to legal English in particular, certain points drawn from his study would, I believe, be just as relevant for formal writing in general, including legal discourse. Biber notes that on the one hand, academic discourse is more explicit than spoken discourse in that the academic style avoids use of personal pronouns, which are a very common cohesive device in normal conversation. On the other hand, academic discourse is implicit in that the logical relations between the elements in the texts are often not linguistically expressed. For example, there is an extensive use of pre-modifying nouns, e.g. *lung cancer* vs. *cancer located in the lung*. Such occurrences of implicitness are not necessarily unfavourable. For the experts within a particular field, the use of pre-modifying nouns contributes to the compactness of the text, which allows the professionals to "quickly scan through a research article and extract the essential information" (*ibid.*) This is one of the well-argued reasons put forward to defend the use of expert language in professional contexts. It is not only linguists or language experts who are concerned with the examination of legal language as a distinct register in order to get rid of incomprehensibility. This concern is, in fact, reciprocal. Law professionals are also engaged in the investigation of the problem and find plausible arguments to defend their distinct communication style.

1.3 A brief overview of the history of legal writing

Insight into history is particularly important when examining legal language, because legal language is one of the oldest representatives of the genre *language for special purposes (LSP)*. It has been pointed out (Šarčević 1997: 9) that the language of the law is not a universal concept. We should refer to it in the plural and talk about languages of law, belonging to different countries and cultures, and having different histories. Legal communication emerged long before the first written legal documents appeared. The precedents of modern legal systems are oral legal systems of ancient societies. It has been noted that ancient legal communication in its oral form used a language which was very close to everyday language. "Legal disputation [was] handled mostly in everyday language. It is the development of writing which permits codification of legal systems" (Gibbons 2003: 18). Turned into written documents, various disputes and discussions of legal character became more standardized. Thus, a distinct legal register started to evolve into a distinct language type. Interestingly, while some scholars point out the fact that in Old English times, oral communication on legal matters was not so distinct from everyday speech; others mention certain moments of "high style" in ancient legal communication, for example the fact that the employment of "exact verbal formulas" was common in legal transactions and proceedings (Tiersma 1999: 13). Historical legal English had prominent instances of alliteration (*ibid.*), while "hypnotic rhythm" served to strengthen its power (Mattila 2006: 47). Modern legal texts are subject to certain constraints, both with respect to content and form. Adherence of legal texts to standard formulae dates back to ancient times, when "largely illiterate, the populace believed that only word-for-word repetition of the formulae would produce the desired effect" (Šarčević 1997: 117).

In fact, English and Norwegian have related histories. For years, the territory of eastern and northern England was subject to Scandinavian law, called the "Danelaw". The word "law" itself stems from Old Norse, where the Old Icelandic meaning of this word was "something laid or fixed" (Melinkoff 1963: 34). By the term "English law" we refer to the law of England and Wales. The legal practice that started and developed on the British Isles is what the whole present-day common law legal system is built upon. Common law is a type of law that operates in most countries which used to be part of the Commonwealth. The term "common law" refers to "the law developed by the English courts over the centuries" (Mattila 2006: 111). Today, with the UK being a member of the European Union system, English law is

being continuously influenced by European Union law, through for example the European Court of Justice, the European Convention on Human Rights, or the Judicial Committee of the Privy Council (Smith 2010: 15). When two or more languages are used at the level of supranational[3] and international legal communication, the interference of national legal systems is unavoidable; "in international law […] the core of uniform law is so sparse that it must be supplemented by institutions and concepts borrowed from various national legal systems" (*ibid.* 15).

Besides Common Law, there is another large Western law system, called Civil Law, or Roman law. Despite the historical fact that England was once conquered by the Romans, "Roman law from this period had little lasting impact on the ordinary Briton" (Tiersma 1999:9). The Civil law system operates in most of continental Europe, including the Nordic countries, and in Latin America. Continental civil law is further divided into Romance, Germanic and Scandinavian law. In Norway, "the legal system is based on Civil Law, but is highly influenced by Common Law. For instance are [sic] Supreme Court decisions of great importance in the interpretation and development of the law."[4]

In terms of vocabulary, it is important to note that the development of legal English was strongly influenced by Latin and French (Crystal and Davy 1969: 195). In English, many of the most common law-related words stem from French: *action*, *agreement*, *appeal*, *bill*, *condition*, *contract*, *crime*, *damage*, *debt*, *declaration*, *evidence*, *execution*, *felony*, *judge*, *judgment*, *justice*, *obligation*, *parties*, *plaintiff*, *police*, *robbery*, *tort*, *verdict* (Mellinkoff 1963: 15).

[3] The term "supranational" is applied by Šarčević (1997: 1) with reference to "regional law such as European law which falls between international and municipal law".

[4] http://www.norlag.ge/index.php?option=com_content&view=article&id=63&Itemid=37&lang=en accessed 08 Oct 2012.

CHAPTER 2 Definitions and methodology

The following sections are aimed at preparing the ground for the analysis. I will present the material, give definitions of the main terms used in the analysis, and specify what notions and concepts these terms refer to. First, the main research question will be stated. Second, the background studies which are fundamental for this work will be presented. Then, a detailed description of the type of language investigated in this thesis will be given in section 2.3. Finally, several sections in the end of this chapter will present the research material and describe the methodology applied.

2.1 Purpose and research questions

The main question that initiated the present study is:

- With respect to semantics and style, are there any striking differences in the Norwegian and English versions of the same legal texts?

Depending on the answer to the main question, a number of sub-questions suggest themselves:

- If the answer on the question above is in the confirmative, are there any patterns, tendencies, trends in stylistic non-correspondences? If so:
- How can such patterns be identified with respect to the text level where they occur (i.e. lexis, grammar or syntax)?
- In the light of the plain English discussion in the previous chapter, what is the effect produced by any stylistic non-correspondences?

At the current stage, the posed questions are general, and as the study progresses and tendencies become more explicit, the research questions will be narrowed down and angled accordingly.

Šarčević (1997: 225) notes that "although strict concordance is not a requirement in EU instruments, syntactic and stylistic diversity appears to be the exception rather than the rule". However, comparing four different language versions (English, French, German and Spanish) of the same EU document, Šarčević (*ibid.*) illustrates with examples of several types of formal deviations in parallel legal translations. The deviations Šarčević reports on are often brought

about by the differences between the four languages at the syntactic level, e.g. word order, clause types, etc. Also, some stylistic non-correspondences at the lexical level are pointed out, e.g. nominalization renderings are not equally common in the four languages examined, the use of referential pronouns is not equally frequent, etc. Further, Šarčević (1997: 118) notices that in legal translation the major parts of the text do not allow any deviations from the original, and the target text should be identical with the source text both with respect to content and style. This is referred to as so-called "frozen" parts of legal texts. Nevertheless, there are usually parts of legal texts which can be considered "free", where certain deviations are allowed and even favoured, if they may contribute to the naturalness of the target language; cf. Figure 1 in Chapter 1. The items presented there are examples of "free" elements in legal texts.

I depart from the above statements when trying to examine English and Norwegian versions of the same documents with respect to stylistic differences and similarities. I will examine the Norwegian and English versions of several legal documents, looking for the most prominent and recurring words, phrases and constructions of a legal character. I expect to identify and map out typically legal linguistic patterns. Of course, it will be necessary to find out if the typically legal patterns at all represent a problem in translation, or if the renderings are well-established in the field of legal translation. I would like to find out how large is the proportion of items and patterns that may be considered "typically legal", in Norwegian vs. English texts. Then, it will be interesting to see if any of the "typically legal" items refer to so-called "free" elements and thus allow a certain degree of choice when it comes to translation.

The concern of this thesis is to explore concrete renderings found in translations from Norwegian into English, and vice versa, and the assessment of them quantitatively as well as qualitatively. As a matter of fact, translation practice reveals numerous non-correspondences between languages, be it on the word, grammar or syntax level. I hope the present study will reveal certain differences and similarities found particularly in legal contexts. Such a study may lead to conclusions that would be useful for those who translate legal texts from Norwegian into English, and give some guidance as to how the presentation of the same legal content may differ in Norwegian and English.

One of the strategies in translation is to look at similar texts written in the source and the target languages in order to find words and expressions from a certain semantic field, so-called "parallel texts" (the strategy is defined in Baker 2011). However, two different

languages involve two different cultures, including also cultures of communication. It is important to identify what challenges we may come across translating within the field of legal language. Further in the study, I will discuss legal language as a particular register and focus on various complexities that arise when legal language is the subject of translation. In the analysis I would like to look in detail at the behaviour of specific lexical units in the process of translation from Norwegian into English and the other way around.

2.2 Studies involved

The present work will mainly be built upon two types of language study: stylistics and contrastive analysis. The theories, terminology and methods employed and referred to in this thesis belong to these two fields. Being a part of stylistics, the study of semantics will be central for the analysis in Chapter 4. Second, the theory of translation will also be involved in that the results obtained in the process of the investigation may, as believed by the author of the present study, be of considerable interest for practitioners of translation. A detailed overview and discussion of the relevant literature on all the mentioned topics will be presented in Chapter 3. In what follows, a few lines describing each type of study will be given.

Stylistics is part of the comprehensive discipline of linguistics and deals particularly with language variation. The present study focuses on a particular language variety: legal language. Therefore, the theory of stylistics is an essential and underlying basis for the definition of the language examined and the presentation of the research questions. The study of semantics deals with meaning and language in use. To evaluate the level of formality of particular words and phrases, a thorough examination of their expressed meaning needs to be conducted.

Next, comparative linguistics, or contrastive analysis, is central for the analysis performed in Chapter 4. The same language variety (i.e. legal language) will be compared in English and Norwegian. Norwegian and English texts will be compared with respect to their levels of formality (i.e. how the Norwegian and English versions differ with regard to their amount of specific technical terms, highly formal constructions, and the like). The most useful sources are likely to be linguistic corpora which allow searches in English and Norwegian. A presentation and description of the linguistic corpora exploited in this study will be given in sections 2.5.2-2.5.4.

Translation is a process where the meaning expressed by words, grammar and syntax is central; translation is indeed about decoding, encoding and transferring meanings. The results and findings obtained in the process of analysis will then be evaluated in the light of translation studies.

Sociolinguistic studies are important for the discussion of the communicative function of the language. Awareness of problems and challenges connected to finding the balance between plain and easily understandable language on the one hand, and precise and field-specific language on the other hand, is also an important part of the study of legal translations. References to plain language, already touched upon in the previous chapter, will be made throughout the thesis.

2.3 Definition of the type of language examined: style, register, mode, tenor and genre

In this section, a more detailed definition of the language type examined in this study will be given. Depending on the situation, time, persons involved in communication, etc., the linguistic choices, applied in spoken or written modes, will vary. Thus, for example the language used for everyday conversation is different from the language used for news reporting. Language variation of this type is the concern of a "stylistic theory" (Crystal and Davy 1969: 4). The term "style" is used in language studies with slightly different definitions by various scholars, but, generally, the notion is employed to assess the degree of formality of a piece of discourse. Crystal and Davy (1969: 90) define "style" as "the description of the linguistic characteristics of all situationally-restricted uses of language". There are different kinds of language variation, depending on what aspects are in focus. Thus, a piece of language can be evaluated in terms of status (e.g. formal/informal), province (e.g. religious, legal, etc.) and other relevant classification criteria (*ibid.* 84). In terms of status, the language examined in the present study is formal. In terms of province, it is legal. The following provides a more detailed definition of the language type in question, in terms of certain linguistic parameters.

Legal language is a particular language variety; it is a "functional variant of natural language" (Mattila 2006: 3). Examples of language varieties are regional varieties, varieties according to education and social class, varieties according to subject matter, and so forth. Also, there are

varieties according to medium, attitude and interference (Quirk et al. 1972: 13). These are "varieties according to attitude" (Quirk et al. 1972: 23), also called stylistic varieties, "the choice of linguistic form that proceeds from our attitude to the hearer (or reader), to the subject matter, or to the purpose of our communication". The attitude is "the gradient between stiff, formal, cold, impersonal" and "relaxed, informal, warm, friendly." This paper focuses on legal language as a particular language variety chosen according to subject matter. Crystal and Davy (1969: 194) note that "[legal language] is a form of language which is about as far removed as possible from informal spontaneous conversation".

The term *register* further specifies a particular variety of language according to situation. In terms of style, the language in question is formal; in terms of register, it is legal language (Kurzon 1997 in Gibbons 2003:9). As a linguistic criterion, register is defined by a situation where language occurs. For example, regional differences generate different types of language registers. Regional differences, in turn, may often entail further register division related to social differences. Thus, "some accents are very prestigious, while others are associated with membership in more ordinary socioeconomic circles" (Tiersma 1999: 51). Legal language is the language of a particular profession, so it falls under the category of "language for specific purposes". This term, commonly abbreviated to LSP, has been employed by numerous linguists investigating the language of particular registers.

Within the register of legal language, there are further characterizations called "field", "tenor" and "mode". These three parameters are defined in terms of functional linguistics and discussed by many scholars, e.g. Cruse (2000: 61) and Baker (2011: 14). By the term "field" linguists refer to the situation where a word occurs, the topic or area of discourse (Cruse 2000: 61). Within a particular field, the specialists have often developed a distinct technical vocabulary, and they "employ technical vocabulary to refer to things which have everyday names" (*ibid.*). The field relevant for the present thesis is communication on legal matters as part of international cooperation between Norway and other European countries in the frame of the European Free Trade Association activities. By the term "tenor", Baker (2011) refers to the relationship between the participants of communication. On the one hand there are "deliverers" of the information: lawyers, judges, state employers. The other side consists of people of different backgrounds and professions, with varying knowledge of the legal activity in question. By the term "mode", Baker (ibid.) refers to the way discourse is communicated. By this criterion, the type of language in question is usually written language; it is the

language used for description of legal procedures, making legal statements, making judicial decisions, or other types of communication on law matters.

Next, the category of "genre" should be mentioned. Legal language is not a single genre; there are a number of sub-genres within the domain of legal matters, which reflect the variety of types of legal discourses. Courtroom language, for example, differs from the language of legal authors or legislators. Thus, judicial decisions is one distinct sub-genre with its peculiar linguistic characteristics; the language of regulation, statutes, agreements, etc. is another distinct sub-genre, and so on. The frames of a certain genre impose certain conventions and rules: "some elements of a genre are obligatory, some are optional, and some recur and are therefore iterative" (Hasan 1985 quoted in Gibbons 2003: 11).

It must be noted, however, that the classification into genre and sub-genre is relative and it is impossible to determine exact boundaries between several related sub-genres. The classification into particular types of language is not frozen. It is up to the researcher to decide the classification pattern, and that often depends on 1) the ultimate purpose of the study, and 2) on the way / manner in which the research is intended to be carried out. Thus, for example, there is no full agreement in how the terms "style", "register", "tenor" are used by various scholars. To take an example, Gibbons (2003: 10) uses the term "tenor" in a more general sense that Baker does. According to Gibbons, "tenor" is "the term for the way language marks formality". The same is true about more comprehensive notions such as "legal language". Trosborg (1997) uses this term as a superordinate term for all legal language-involving activities, such as the language of the law (where legal documents belong), the language of the courtroom, the language of (legal) textbooks, lawyers' communication and, generally, situations where people talk about the law. Mellinkoff (1963) defines the language of the law as "the customary language used by lawyers in those common law jurisdictions where English is the official language".

Awareness of what genre, register, field and tenor a particular legal discourse belongs to is important when it comes to legal translation. For example, the meaning of a given word may vary significantly whether it occurs in lay or legal contexts. The challenges connected to meaning variations will be looked at in detail in Chapter 3.

The definition of language just presented deals with linguistic-technical features of language. Importantly, language should also be defined in terms of another perspective, namely the

origin and purpose of the language type. It has been stated that the language in question is the language of law. But what law exactly does this language present? Norwegian and English, when used for the purpose of communication within the EEA/EFTA cooperation, represent a variety of language of supranational law, as opposed to municipal laws and international laws.

It might be noted also that Norwegian and English are, in a way, languages of very different dimensions. Documents written in Norwegian can be read in original only by Norwegians (and also by Danes and Swedes), or at least only by those who are very familiar with Norwegian language and culture. Documents written in English are available practically internationally. As well as being the language of national documents of numerous English-speaking countries, English is also the language of most international documents. Next, a brief overview of law systems, national and international, where English is the language of communication, will be presented.

2.4 The data

Legal translation can be studied with respect to various aspects. The restrictions as to what topics this work aims to handle were given in one of the previous sections, where the research questions were posed. Now, the task is to find the proper and most relevant research material for my purpose. In this section the research data for the present project will be introduced and discussed.

We may face legalese in two forms: written and spoken. The first is found in for example the language of legislations, contracts, etc. The latter is found in for example the language being uttered in a courtroom. This paper will focus mainly on written legal language, the language of written documents. As will be stated and discussed later, legal language in its written form has certain features that make it distinct from everyday language. Spoken language also has certain peculiarities that emphasize register variety. For example, Tiersma (1999: 51) notes that in England the noun “record” is pronounced by lawyers with stress on the second syllable, just like the verb “record”. There are several other words that have a special pronunciation when being part of legal speech. Further, there is spelling variation. Compare, for instance the spellings *judgement* and *judgment*. The latter is the spelling particularly favoured by lawyers. Tiersma (1999: 52) describes this instance as one of the principles that signal “membership in the profession.”

Written sources containing legalese can be ranged from very legalese-filled, such as statutes or judgments, to less legalese-filled, such as educational material about the law. The first type of texts has been referred to as "operative documents" and the latter as "expository documents" (Tiersma: 1999:139-41). The latter is obviously supposed to clear the obstacles created by extensive technicality, and to provide a freer access by lay people. The focus on plain language has contributed to changes in expository legal texts. I will not consider the details of how Norway and the UK choose to work out the explanatory part of legal communication. As linguistic peculiarities of legal content are the main purpose of this thesis, I would like to focus on operative documents, where the legal jargon is most prominent.

"How to determine what exactly constitutes your data" (Sealey 2010: 74-75)? Sealey (*ibid.*) lists examples of the kinds of data that may be considered as relevant for different language study topics. For the topic forensic linguistics she mentions "transcripts of court testimony, legislative texts, legal contracts, witness statements." Collecting empirical data for my research, I looked for sources of legalese which met the following requirements:

- Written legal documents;
- The existence of official Norwegian and English versions;
- Easily accessible documents, e.g. documents which are available to the public.

A close study of Norwegian and English legal texts which have 1) a translation-original relationship and which 2) in practice are supposed to be given equal status as an original, may be useful as not so much linguistic investigation has been done on this kind of text. Norway is not part of the EU, so many EU legal texts and legislative documents available in many languages do not exist in Norwegian. There is, for example, a corpus of legal texts for Danish, French and English: *the Aarhus corpus of Danish, French and English contract law*. For American English, there is *The Corpus of Supreme Court Opinions (COSCO)*. The official versions of legal documents in both Norwegian and English exist in connection with, for example, EEA / EFTA cooperation, which Norway has been part of since 1960. Here is the data-base for my study:

- *Judgment of the Court* in English, original (**document 1Eo**), approx. 1,200 words;
- *Judgment of the Court* in Norwegian, translation (**document 1Nt**), approx. 1,000 words;

- *Request for an Advisory Opinion* in English, translation (**document 2Et**), approx. 513 words;
- *Request for an Advisory Opinion* in Norwegian, original (**document 2No**), approx. 400 words;
- *Directive 96/71/EC* in English, original (**document 3Eo**), approx. 3,000 words;
- *Directive 96/71/EC* in Norwegian, translation (**document 3Nt**), approx. 2,500 words.

A few words should be said on the nature of these documents. The first four documents 1Eo, 1Nt, 2Et and 2No belong to the case *Case E-2/11 - STX Norway Offshore AS m.fl. v Staten v/Tariffnemnda* and are published on the EFTA Court's web-page.[5] The documents 3Eo and 3Nt represent *Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services*, which is a document relevant for the judgment and the request in documents 1Eo, 1Nt, 2Et and 2No. "Directives" are regulatory documents within the European law, which "lay down an objective or policy that must be achieved within a specified time, and the individual states are entitled to achieve the objectives by whatever means they see fit" (Williams 2010: 55-56).

Now, to what degree can the chosen texts be said to be representative of the type of language they exemplify? In other words, to what degree do the chosen texts speak for "the whole population of […] texts that could have been included" (Sealey 2010: 65)? To answer that, a description of each document will be presented in the remaining part of this section, and a detailed definition of the particular samples that are of interest for the present study will be given in the beginning of Chapter 4 (Analysis).

In section 2.2 it has been noted that judicial decisions and regulations are documents belonging to different sub-genres within the general genre of legal language. Furthermore, as mentioned above, the communicative function of judicial decisions is different from that of regulations, statutes, agreements, etc. The former has many features of description, while the latter is predominantly prescriptive. Thus, it turns out that documents 1Eo, 1Nt, 2No, 2Et, 3Eo and 3Nt do not belong to exactly the same text type. As will be stated later, this study aims mainly to investigate vocabulary and will not include detailed considerations of grammatical, syntactic and textual levels. In the field of legal discourse, vocabulary has a very wide range.

[5] http://www.eftacourt.int/index.php/cases/stx_norway_offshore_as_mfl_v_staten_v_tariffnemnda1

This is due to the fact that legal matters may concern almost any aspect of life. Therefore, a comparative study of legal vocabulary based on the data from several judicial decisions, would, perhaps, be challenging in that one would have to deal with several completely different lexical domains. Therefore, for this study, it has been considered that the sub-genre of the documents to be examined is of minor importance. Rather, I decided to focus on the fact that the chosen documents should be related thematically.

Something needs to be said about what sort of document the EFTA Court decision is. The EFTA Court's main function is to interpret rules and regulations of the EEA Agreement. The information on the EFTA Court's web-page reads:

> *The proceedings before the EFTA Court consist of a written part and an oral part and all proceedings will be in English except in cases where an advisory opinion is sought by a national court of an EFTA State party to the EEA. In the latter case, the opinion of the Court will be in English and in the national language of the requesting court.*

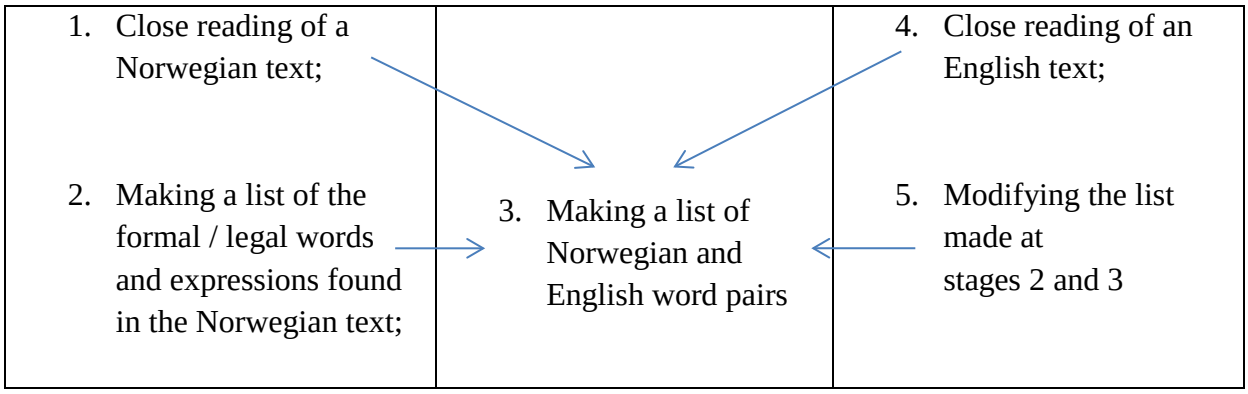
The use of languages in EFTA matters is regulated through the Court's *Rules of Procedure, Articles 25-27*.[6] Thus, for *the EFTA-Court decision*, the English version is the original and the Norwegian version is the translation, while for the *Request for an Advisory Opinion*, the Norwegian version is the original and the English version is the translation.

Interestingly, the original-versus-translation relationship between various versions of the EFTA documents is not that obvious. For the European Union documents, it has been stated that all European Union documents available in several languages are supposed to be equal and none of the language versions is the original (Eggen: 2011: 3). This rule, likely, spreads to the EEA/EFTA documents. In the preface to Cao's book *Translating Law*, an Australian judge, Michael Kirby, mentions the fact that Chinese statutes have two versions, Chinese and English, where both language versions have "equivalent authenticity". The same is true in Finland, where both Finnish and Swedish are official languages and "Finnish and Swedish legislative texts have the same value" (Mattila 2006: 57). However, there always must be a starting point, made in one particular language, from which the "identical" versions in other languages spring. I have to admit that, for my personal convenience, for all the documents examined, I looked at the Norwegian text first and then at the corresponding English text.

[6] http://www.eftacourt.int/images/uploads/RulesofProcedure_E_20081.pdf

Thus, as will be seen later in the analysis, when illustrating with examples, the Norwegian alternative often comes first, and then the corresponding English one. The process of extracting the data for comparison can be illustrated roughly as the following five stages:

Figure 2: An illustration of the process of extracting the research data



As Figure 2 illustrates, the Norwegian and English versions were examined independently (cf. stages 1and 2 for Norwegian, and stages 4 and 5 for English). Then, the data gathered at the four stages was combined in a single list of words (cf. the four arrows pointing towards stage 3). This list of words has been developed into three tables, one for each of the three different texts involved. The three tables, called A, B and C, will be presented in Chapter 4.

Other examples of direct translations from Norwegian into English can be found in the Norwegian-English Parallel Corpus (ENPC). It might be necessary to make use of corpus material in the process of investigating particular renderings of legal terms and concepts. In the section on methodology below I will describe in more detail the possibilities the ENPC offers.

An important note concerning source texts and translations should be taken into consideration. Linguists have warned against drawing conclusions based on the comparison of source texts and their translations, because “translated texts may differ from equivalent original texts in the same language” (Johansson and Hofland 1994 in Fries et al. 1994). Therefore, besides the translations, it might also be useful to look at parallel texts and see how a comparative analysis of very close texts, neither of which is a direct translation, can be useful for translation purposes. The term “translationese” is used to refer to a particular kind of language found only in translations. This term was employed by Newmark (1991: 21) and later by Johansson and Hofland (1994). Translationese emerges when the language of the target text is clearly influenced by the native language of the translator, or by the source language.

I expect that the chosen legal documents contain a number of technical terms and other lexical and syntactic elements that create formality. Further, I assume it might be interesting to compare certain translation solutions found in similar documents that have a somewhat different status: a request, a judgment and an agreement. In legal language, there is some common legal terminology that is universal, but there is also specialist terminology that only the particular branches of law use (Mattila 2006: 5).

For the list of Norwegian and English word pairs, the following three terms are central. The term "legalese", defined by the Oxford English Dictionary Online as "the complicated technical language of legal documents"[7], will be adopted here to refer to words having legal connotations. Also, the words "formalese" and "officialese" will be adopted to cover words with have explicitly formal connotations, while they need not appear solely in legal discourse, but in official language in general.

2.5 Methodology

The way in which the research is intended to be carried out (viz. the methodology) must correspond to the overall purpose of the study. Legal language is built upon established linguistic formulae (Crystal and Davy 1969: 194), the translation of which often follows an established practice. An important question oriented on the outcome of the research is as follows: How can the present analysis contribute to solving the perceived problem? These questions require a careful selection of a research method that will bring plausible and useful results.

First of all, it is important to define what the present section is about. As pointed out by Sealey (2010: 61), the terms "methodology" and "method" are not the same. "Methodology is the science of method" (*ibid*.). The notion "methodology" is in a way superior in relation to a particular method. This notion covers the complex interplay of the particular methods one chooses, the manner in which one intends to combine these methods, and the very process of selecting and preferring one method over another. The latter can be called the process of "methodological considerations", to use Sealey's term. To decide on a particular method(s)

[7] http://www.oed.com/

for a study, one relies on one's own experience and knowledge of the study field and the world in general. This section will cover the methodology in its wide sense.

Three types of language research are defined in Johansson (2003). The first type of language research involves the use of text data, called linguistic corpora. This method is often applied by lexicographers. This method presupposes building up large collections of data, representing genuine texts. This gives an opportunity to show the actual usage of words or structures in a language. In this thesis, the data gathered from a collection of texts available online will be central. The second type of language research involves informants. The method is used primarily in sociolinguistics and phonology. A researcher may create questionnaires aimed at, for example, revealing the variations in a language regarding different social class, sex, age, etc. This method will not be used in the present study, as the research data will be extracted from written texts, not informants. The third type of language research is introspection. That is, a researcher uses his or her own intuition, experience and knowledge to gather and evaluate data for research. This method is often relevant for grammar and syntax studies. Introspection is fundamental for the analysis in Chapter 4. I will use my own experience, knowledge and intuition to make assessments, statements and comments on whether certain words, or grammatical or syntactic constructions, are legal-laden or not, whether they are light or heavy, whether they make sentences easy to understand or vice versa, whether they make the language comprehensible or technical, etc. A reservation should be made that neither English nor Norwegian is my native language. Tables A, B and C in Chapter 4 are compiled with the help of introspective considerations.

The method of collecting the research data can also be defined in terms of "the two very broad research traditions referred to as 'qualitative' and 'quantitative' " (Sealey 2010: 17). If the "quality" (i.e. features, essence) of the investigated aspects is in focus, we apply a qualitative method. In cases when numbers and frequencies make the foundation for our analysis, the method is called quantitative. The quantitative method is relevant for studies involving corpus data analysis. In most research work, one would need to describe as well as to count or calculate, so the two methods are often combined in various proportions. For example, before one starts counting recurring items from the corpus results, one needs to identify what kind of items they are and describe why their characteristics may be relevant for the overall purpose of the research. Often, the figures must be converted so that they can be comparable. This will be the case in the present thesis when the data extracted from a linguistic corpus representing

Norwegian language use and a linguistic corpus representing English language use will be compared. These two corpora are of different sizes. The approach suggested in Sealey (2010: 38) involves work with "relative frequencies", where all raw frequencies are being converted to percentage values or "normalized frequencies" (which is another term used for the same procedure).

Two terms language researchers often operate with are "dependent variable" and "independent variable" (Sealey 2010: 67). The independent variable in my case will be the legal character of certain lexical and grammatical items found in selected texts. The dependent variable will be the degree of correspondence between English and Norwegian with regards to style.

Another important tool used in the study is the Norwegian-English / English-Norwegian Dictionary Online, being accessed from the web-site www.ordnett.no. This is the largest dictionary of this type. Also, Lind's *Norsk-Engelsk juridisk ordbok* will be consulted. Translations provided by dictionaries can be compared to the renderings found in actual source text/target text versions. This strategy may reveal the degree of correspondence between prescriptive (i.e. dictionaries) and descriptive (i.e. the actual use) rules for legal translation.

2.5.1 Corpus linguistics

It has been already mentioned that linguistic corpora will be used as referential corpora in this study. A brief account of what kinds of corpora exist, what purposes different kinds of corpora may be used for and, most importantly, what linguistic corpora may be useful for the present study, are the topics of this section.

The language research method built upon corpus linguistics allows access to huge amounts of language data. As stated in Johansson (2003: 1), the main advantage of working with text collections found in books, articles, the Internet, etc. is that the researcher deals with natural, or authentic, language usage, within a certain context. Thus, various investigations within linguistics can be conducted. The modern method of language research suggests use of various types of ready text corpora. The linguistic term "corpus" refers to a collection of texts,

particularly prepared and “made available in computer-readable form for the purpose of linguistic analysis” (Meyer 2002 preface).

To use the data in the most rational way it is important to define specific questions, i.e. what we want to find out from the material. Johansson’s advice is to “start with one question [...], continue with new questions that spring from the analyses of the material” (2003: 3). Several research questions have been presented in section 2.3. The question “What are the most striking stylistic differences between Norwegian and English legal language” is a starting point for the contrastive analysis in Chapter 4. With the progress of the analysis, more refined research questions will be adjusted accordingly.

Johansson describes work with a corpus as “a kind of a dialog between the researcher and a corpus” (2003: 3). A researcher starts with one question, then examines the relevant corpus material, then continues with new questions that result from the analysis of the corpus material; as soon as new questions arise, a researcher goes on working on the examination of the corpus material again, and so forth. The moving back and forth from posing questions to examining them and, again, to posing new questions, is part of the method of corpus linguistics. The procedure may be imagined as a spiral circle made of many layers. Each layer represents corpus data and their analysis. Every new layer is built upon the preceding one. Therefore, the further a layer lies from the centre of the spiral circle, the more information and evidence it contains. Importantly, doing corpus research, one should not expect to obtain interesting results immediately. It may be necessary to conduct many searches, constantly evaluating the result. Thus, introspection is involved even if the method chosen is that of corpus linguistics.

Today, the field of corpus linguistics makes use of a great variety of corpora of different languages, different sizes and different potential; there are monolingual, bilingual and multilingual corpora. The first generation computer-readable corpora, such as the Brown corpus of American English and the LOB corpus of British English, were compiled in the 1960s and consisted of 1 million words each. Modern corpora are much larger and many of them contain both written and spoken parts. Monolingual corpora can be used for studies of language varieties (such as regional dialects), comparative studies of genre, or simply examination of the genuine usage of various lexical items. Some corpora offer just a few functions, while others have a very great potential, allowing analysis not only on the lexical

level, but also on the levels of grammar and syntax. Besides, there are corpora that provide special functions that allow studying phonology.

The first stage in the analysis presented in Chapter 4, will be the examination of Norwegian and English legal texts in order to find lexical items whose character seems particularly legal. Lists of legal words from several legal texts will be made and systematized in order to obtain an overview of particular patterns, distributions and the like. For this purpose, two monolingual corpora, English and Norwegian, will be used. For English texts, the British National Corpus (BNC) will be used. For Norwegian texts, there are two corpora which may reveal patterns and interesting features in legal texts: the Oslo Corpus of Tagged Norwegian Texts and the Lexicographic Corpus for Norwegian Bokmål (LBK). More detailed information about these corpora will be given in the following sections. Since the main focus of the analysis is a contrastive analysis, the comparison of Norwegian and English will be central. Therefore, there is a need for a bilingual or a multilingual corpus. A corpus that contains both Norwegian and English texts of various genres is the English-Norwegian Parallel Corpus (ENPC).

The three following sections will give a brief introduction to the mentioned corpora. In the following, the relevant sub-corpora will be identified and the way in which these sub-corpora are intended to be applied in the analysis in Chapter 4 will be described.

2.5.2 Linguistic Corpora for Norwegian (The Oslo Corpus of Tagged Norwegian Texts and the Lexicographic Corpus for Norwegian Bokmål)

The Oslo Corpus of Tagged Norwegian Texts comprises 18.5 million words of texts written in *bokmål*; it also contains a *nynorsk* part, but that will not be used in the present work. All texts in the corpus are tagged according to three genres: fiction, non-fiction, and newspapers and magazines. The following two sub-corpora have been chosen for the purpose of the present study:

- The sub-corpus consisting of non-fiction texts. It is comprised of **6.9 million** words, represented by Norwegian Official Reports (NOU reports) and Norwegian laws and regulations. The texts span the period between 1981 and 1995;
- The sub-corpus consisting of fiction texts. It is comprised of **1.7 million** words.

The corpus has a number of search functions, of which the most useful for this study are: 1. it is possible to search for a string of words, not just a single word, and thus examine particular phrases; 2. the search results can be organized according to the preceding or the following word, which is useful in studying collocations.

The Lexicographic Corpus for Norwegian Bokmål has the overall size of approximately 70 million words. The corpus contains Norwegian texts in *bokmål*, dated from 1985 to the present day. The following two sub-corpora have been chosen:

- A sub-corpus comprised of legal texts was compiled by setting the following parameters: *emne* ("subject") = "JUS%" and *kategori* ("category") = "SA%" (*saksprosa*, "non-fiction"). The size of this sub-corpus is **1.1 million** words;
- A sub-corpus comprised of fiction texts was compiled by choosing the following parameter: *kategori* = "SK%" (*skjønnlitteratur*, "fiction"). The size of this sub-corpus is **32.7 million** words.

Thus, two types of sub-corpora, fiction vs. non-fiction (legal), have been identified. A comparison of the frequency of particular words or expressions with respect to genre will be discussed in the analysis in Chapter 4.

The two Norwegian corpora described above provide many similar functions. Nevertheless, it might be reasonable to make use of both of them in this study. The LBK contains a much larger sub-corpus of fiction texts than does the Oslo Corpus of Tagged Norwegian Texts (i.e. 32.7 million words vs. 1.7 million words), while the Oslo Corpus of Tagged Norwegian Texts contains a much larger number of non-fiction (legal) texts than does the LBK (i.e. 6.9 million words vs. 1.1 million words).

2.5.3 The British National Corpus

Access to this corpus (the CQP interface) is made at http://www.tekstlab.uio.no/bnc/BNCquery.pl?theQuery=search&urlTest=yes. The British National Corpus (BNC) is a monolingual corpus that contains 100 million words of British English, including both written and spoken texts. The texts comprising the corpus date back to the late 20th century. The corpus was created in the period between 1991 and 1994. The

corpus provides a great variety of styles and genres. For the purpose of this study, I made the following restrictions as to the corpus of legal texts:

- According to mode: written;
- According to time span: The time span for the selected texts is limited to the period from 1975 to1993 so that it matches the time span available for the Oslo Corpus of Tagged Norwegian Texts;
- According to genre, two types of texts are selected: "W:ac:polit_law_edu" and "W:non_ac:polit_law_edu".

With the mentioned restrictions, the size of the sub-corpus of legal texts is approximately **8.4 million** words. The following restrictions are given to the sub-corpus of fiction texts:

- According to time span: no restrictions;
- According to medium of text: the search is restricted to the category "Book";
- According to genre: the type of texts selected is "W:fict:prose".

With the mentioned restrictions, the size of the sub-corpus of fiction texts is **15.9 million** words.

The Norwegian and English sub-corpora presented above have different sizes (cf. size of each sub-corpus is highlighted in bold type in the preceding). To make the figures from these sub-corpora comparable, each result obtained in the process of the corpus searches will be converted into *normalized frequencies* with the help of the following rule (McEnery 2001: 83):

ratio = number of occurrences of the type / number of tokens in entire sample

For convenience, this formula has been modified into:

number of occurrences of the type **X** 1,000,000 / *number of tokens in entire sample*

Thus, the results will show the proportion of hits per one million words.

2.5.4 The English-Norwegian Parallel Corpus

The English-Norwegian Parallel Corus (ENPC) consists of original texts and their translations and thus is a useful tool for contrastive analysis and translation studies. In the 200 Norwegian and English texts, there are 100 originals and 100 translations. The size of the corpus part including only Norwegian and English texts is approximately 2.6 million words (in recent times several other languages have been included in the corpus).

The English-Norwegian Parallel Corpus (ENPC) can be used as a comparable corpus, as well as a translation corpus, because it contains original texts in Norwegian and English of similar content.[8] The ENPC seems very relevant for the present study, as I am interested in both a comparable and a translation corpus. There are 40 texts of non-fiction, for the English and Norwegian corpus. Of these, only four texts can be considered as particularly legal, while the rest of the non-fiction texts belong to other genres: history, geography, social sciences, natural sciences, etc. The following are the texts which have the class code "Law":

1. *Agreement on the European Economic Area - Main Agreement* (original) / *Avtale om det europeiske økonomiske samarbeidsområde* (translation). Corpus code: aeea1/aeea1t. Size: 12,000 words;
2. *Council Directive 86/378/EEC* (original) / *Rådsdirektiv 86/378/EØF, 89/391/EØF, 93/104/EF* (translation). Corpus code: eea1/eea1t. Size: 10,000 words;
3. *Lov om kommuner og fylkeskommuner (kommuneloven)* (original) / *Act Concerning Municipalities and County Municipalities (Local Government Act)* (translation). Corpus code: kl1/kl1t. Size: 7,000 words;
4. *The Maastricht Treaty* (original) / *Maastricht-traktaten* (translation). Corpus code: maas1/maas1t. Size: 10,000 words.

In total, the size of the corpus of legal texts is approximately 39,000 words. Because the part of the ENPC representing English and Norwegian legal texts is very small, this corpus is not really suitable for a quantitative research. Therefore, it will only be used as a referential corpus in this study. The few legal texts that the corpus does have may be used for investigations of a qualitative type.

[8] http://www.hf.uio.no/ilos/tjenester/kunnskap/sprak/omc/enpc/ENPCmanual.html

CHAPTER 3 Theory

The investigation of particular language varieties with a focus on stylistics was claimed to be very important already in the 1960s: "As English has increasingly come into world-wide use, there has arisen an acute need for more information on the language and the ways it is used" (Quirk 1969 in the preface to Crystal and Davy 1969). Since then, many scholars have conducted studies on various aspects of this topic. As a distinct variety of English, legal English has been defined, studied and discussed. The investigation of the complicated world of legal communication has been the concern of not only linguists and language experts. Experts of the legal profession have also shown an interest in the subject. This topic has interested people of different scientific backgrounds: historians, law professors, linguists, translators, etc. The aim of this chapter is to introduce the background literature relevant to the comparative study of linguistic features in English and Norwegian legal texts. The theories that are most important and fundamental for this thesis will be presented and discussed.

3.1 Translation studies

The documents chosen for comparison in this study are translations. Two documents represent translations from English into Norwegian (i.e. documents 1Eo / 1Nt and 3Eo / 3Nt) and one document represents translation from Norwegian into English (i.e. document 2No / 2Et). Therefore, the investigation of the stylistic characteristics of the chosen texts will be preceded by an introduction to some general theoretical aspects of translation. There are principles, methods and theories developed for and applicable to translation as a science and as a practice. Among the most central scholars in the field of translation are Newmark and Nida, whose classical contributions have been thoroughly consulted in the process of working on this thesis.

In the scientific field of translation studies the name of Nida is central. Nida is the author of several books dedicated to translation as a science. He defines and describes the "basic principles of translation and communication" (1969: 1) and identifies and treats various problems that may and often do arise in the process of translation. Nida worked mainly with biblical translations. Even so, his insights can be applied rather widely. In fact, translation of the Bible has a very long history. A great number of languages and, hence, a great variety of cultures and styles, are involved in biblical translation. Bible translating historically had a

high status and a high priority, and while for other types of texts a free translation could be acceptable and sometimes preferable, biblical translation fell strictly under the category of literal translation and was required to be as close to the original as possible. However, what translation methods provide the highest degree of equivalence is a difficult question. Pursuance of a word-by-word correspondence would seldom suffice. "Equivalence rather than identity" (Nida 1969: 12) means that cultural, temporal, social, situational, etc. considerations must be made account of all the way through the translation process. Equivalence with respect to content has the first priority. Stylistic equivalence, although of a secondary priority, is also very important.

For any kind of translation, the most crucial preliminary questions would be: what type of text does the source language text represent and for whom is the target text intended? Assessment of the readership is important at the initial stage of translation work; a translator should think about the likely setting, i.e. where the text is supposed to be read or published. Newmark (1987:15) suggests three types of readership: the expert, the educated layman and the uninformed.

Various types of texts require various types of translation methods. Some texts may benefit from being altered by the translator, in that certain unintended mistakes may be corrected, culture-specific elements adjusted so they fit the TL readership, and the like. Literary texts require naturalness of the TL, so the translator will often have to be creative. The main focus in this case should be on the naturalness of the TL, as opposed to a "one-to-one translation". The naturalness of a TL means that "word order, syntactic structures, collocations and words are predictable" (*ibid.* 27). On the other hand, non-literary texts (among them texts of authoritative style, such as legal documents) require a translation that reflects "any deviation from a 'natural' style" (ibid p.20)

Translation of legal documents falls under institutional translation, which is, in turn, part of specialized translation (Newmark 1987: 151). There are three main functions of language (Newmark citing Bühler): expressive, informative and vocative. The research material I am dealing with belongs to the text type *authoritative statements*, "written by acknowledged authorities" (*ibid.* 39). In this type of text the language has an expressive function. The text is denotative (as opposed to connotative). This type of text should be translated "closely, matching the writing, good or bad of the original. [They] … have to be translated in the best style that the translator can reconcile with the style of the original" (*ibid.*). The denotation (i.e.

propositional reference) of a word comes before its connotation (i.e. any secondary applications) in a non-literary text.

3.2 Earlier studies of legal language

Crystal and Davy (1969) suggest a descriptive study of language styles, as opposed to a critical or an evaluative study. They present and discuss techniques that may be used for describing a particular language variety and point out the lack of any methods that can be applied for systematic and detailed stylistics study. In 1969, Crystal and Davy posed the question: "What *are* the linguistic features which characterize the main varieties of English?" (Crystal and Davy 1969: 9). Since then, a number of studies on the topic have appeared.

Mellinkoff is referred to as the central person in the field of legal language (Tiersma 1999: vii). Among the scholars who have focused particularly on the study of legal language, he is the most prominent figure. His book *The Language of the Law* is considered a classic on the subject (Tiersma 1999). The topic of legal language has previously been looked at and researched from different angles. The practice of translation of the legislative documents of the European Union into the languages of all the member countries has been challenged and scrutinized. Williams (2005) focuses on verbal constructions in prescriptive English texts. Mattila (2006: 35) mentions the danger of centralized legislation being incomprehensive and even inappropriate for "smaller" EU countries, whose local legislative traditions are not reflected in the general principles of the EU. Eggen (2011) examines the problems related to the translation of culture-specific terms in EU documents, with specific reference to Norwegian and English translation versions. Another perspective applied to the study of legal language is seen in a study of modals in legal English (Trosborg 1997). Trosberg's discourse analysis of statutes and contracts examines the nature of legal language in such texts from a functional perspective. She focuses on "communicative functions in relation to sender and receiver role relationships" (Trosborg 1997: 145). Towards the end of this work she touches upon challenges of translation within the genres of legal language. She discusses the problem of equivalence and refers to the so-called "Skopos theory" that promotes the goals of the target text as the main guiding element in the process of translation. The view is supported and elaborated in Newmark: translation is "rendering the meaning of a text into another language in the way that the author intended the text" (1988: 5). In other words, translation

should be oriented towards function, rather than prescription (Trosborg 1997: 145). This may entail tensions between for example word order and emphasis, grammar and naturalness, and the like.

Such studies, as the study of modals or the study of culture-specific terms in legal translation, are topics that require a qualitative kind of research. The angle intended in the present thesis is quantitative as well as qualitative. Elements of quantitative research are necessary for the present contrastive study in order to obtain the overall picture of the technicality of English and Norwegian legal texts, within a very specific scope of usage, i.e. ETFA communication. At the same time, a qualitative approach is an important way to assess and evaluate the results obtained quantitatively.

A combination of a qualitative and a quantitative approaches is shown in Thunes (1993 in Johansson and Oksefjell 1993: 28), where several English and Norwegian texts, originals and translations, are investigated with respect to translational correspondence. Thunes ranges types of translational correspondences from type 1, which refers to a precisely close, word-by-word correspondence, to type 4, which refers to the cases where non-correspondence is obvious and "discrepancies between original and translation [occur] not only on the structural, but also on the semantic level" (Thunes 1993 in Johansson and Oksefjell 1993: 28). For the present thesis, it is relevant that among the texts examined by Thunes there is *the Agreement on the European Economic Area, Articles 1-52* and its Norwegian translation, available in the ENPC (this document has been mention previously in section 2.5.4). The comparison of degrees of translational correspondence in three different genres, i.e. fiction, legal document and technical description, showed that type 1 correspondence occurred remarkably more often in the legal document, than in other texts investigated. At the same time, a very low occurrence of type 4 translational correspondence is reported for the legal document. Thunes noted, however, that the legal document in question contained many headings, which affected the overall picture of correspondences. Headings are frequent and are inherent in legal writing, they are in fact part of legal discourse, so the suggestion Thunes (ibid.) eventually makes to exclude headings from the analysis of the legal text, would not necessarily bring more correct results. Indeed, the results showing a high frequency of type 1 translational correspondence and a low frequency of type 4 translational correspondence imply that the demands of high fidelity, which are obligatory in the field of legal translation, are met.

3.3 Translation of legal documents

Legal language as a particular type of specialist language has been defined in Chapter 2. This section will touch upon questions related to translation of legal discourse. As part of the general field of translation, legal translation is a distinct sub-field, where in addition to the most basic norms and rules applicable to the general practice of translation, there are also particular norms, methods and theories that apply to this very specific sub-field. Šarčević's book *New Approaches to Legal Translation* (1997) sheds light on a clear distinction between the two practices: literal translation, or translation in general, and legal translation, claiming that legal translation requires a different translation method than translation in general. According to Šarčević (ibid.), the reason why legal translation cannot be covered and explained by the theories of translation in general lies in the communicative function of legal texts. Šarčević discusses the issue of presence and degree of creativity in legal translation. It has been emphasized that the formal correspondence is not less important that the literal correspondence; i.e. grammatical and stylistic patterns of the source language should be reproduced as closely as possible (Šarčević 1997: 17).

Translation can be classified into several groups according to what kind of language is involved: general, literary, and specialist or technical translation (Cao 2007: 8). Between these classes there are overlapping practices together with very distinctive practices connected to peculiarities of specific language topics. Thus, legal translation is subject to the common principles of translation in general, and, at the same time, it is constrained by the principles applicable to the specialist or technical translation of legalese. To specify more exactly what type of legal translation is in question, there are further classifications according to the subject matter. Cao (2007: 8) draws the following divisions: domestic statutes and international treaties; private legal documents; legal scholarly works; case law.

Various views on classification of LSP texts according to their communicative function are discussed in Šarčević (1997: 7-8). Legal texts were classified as **informative** (i.e. objective and aimed particularly at conveying information), **expressive** (i.e. subjective and author-centered), **conative** (i.e. persuasive and addressee-oriented; cf. Newmark 1987). Informative texts were further classified as **directive** or **interrogative** (Sager 1990: 102). Eventually two general functions of legal communications have become commonly recognized: regulatory and informative. Based on these two functions, Šarčević (1997) suggests the following three-fold classification of legal language type according to the function of the text: 1. prescriptive

(laws, regulations, codes, contracts, treaties, conventions, etc.); 2. descriptive and also prescriptive (judicial decisions, actions, pleadings, requests, etc.); 3. purely descriptive (law textbooks, etc.). The purpose of prescriptive texts is to regulate, while the purpose of descriptive texts is to inform. I will follow this typology and state that document 3Eo/3Nt is prescriptive, while documents 1Eo/1Nt and 2No/2Et are descriptive and also prescriptive. Williams (2005) notes that court judgments are mainly descriptive, as such documents, indeed, give a description of the case before a few lines on the final court decision appears in the end of the document.

Is the function of the legal text in the SL identical to the function of the legal text in the TL? Should the readership at all be considered when we deal with "important authoritative statements"? Newmark (1987:15). The intention of the target text may or may not be identical to the intention of the source text. Generally speaking, in translation, the function of the original text will not always be identical to the function of the translation. It has been argued that a translation can never convey the original completely, and that is why translations only describe what is said in the original. This controversial view is not relevant for the texts examined here. As stated earlier, both the Norwegian and English versions of EFTA documents are treated equally as originals. Thus, it will be assumed that the function of the original is identical to the function of the translation in this case.

CHAPTER 4 Analysis

The analysis that follows consists of two main stages and is divided into Part I and Part II. In the first stage, the work will be concentrated on the compilation, systematization and categorization of Table A, Table B and Table C, provided in the end of Part I. A description of the principles according to which the selection of items for these tables was conducted will be the subject of section 4.1 *An overview of hallmarks of legal language*. The second stage of the analysis, Part II, will represent a detailed examination of selected examples in the light of the research questions that have been presented earlier in this thesis.

According to Newmark, translation of lexis involves far more difficulties and challenges than the rendering of grammar and syntax (1987: 32). This statement is arguable, as, in fact, the syntax of legal texts is notoriously complicated, with its long complex sentences, impersonal structures, nominalizations, passive constructions, etc. However, as Trosberg (1997: 14) notes, "when it comes to comparing legal English with various types of scientific English, the syntactic complexity of the former may not be particularly noteworthy". Thus, the overly complex syntax is more likely a general characteristic of scientific language than a distinct feature of legal communication. Therefore, I limit the scope of the study to the lexis. Particular interest will be given to what Newmark refers to as "semantic range" (1987: 34). The degree of legalese attributed to particular words will be evaluated and compared across two language versions of similar documents.

In linguistics, a standard division is made between four major levels inside which language can be analyzed. These types are listed in Gibbons (2003: 9). The "grapho-phonic level" deals with the mere realization of words, i.e. pronunciation and writing. The "lexical level" is the level covering the meaning of words. This is followed by the "grammar level" and the "discourse level". These four levels are related. An example of a connection between two levels of language is the use of contractions in informal writing and full forms in formal writing (i.e. the grapho-phonic and the grammar levels). The level of discourse is related to all other levels, as the pronunciation, spelling, meaning, and grammar all depend on the context of the situation. Therefore, even though this study focuses on the level of lexis, in the light of the above-said, the fact that words are not independent participants of the discourse will be borne in mind all the way.

Part I: An overview of hallmarks of legal language

The items bearing specifically legal connotations will be referred to as "hallmarks of legal language". The term is adopted from Mellinkoff (1963). The following section gives a detailed description and explanation of this notion.

4.1 Hallmarks of legal language: the definition

What gives a text a legal character? "Legal language […] has recognizable and distinct patterns in the deployment of the linguistic resources" (Gibbons 2003: 9). Commonly, the description of legal language presented by various scholars mentions the following distinct features of legal texts: long and complex sentences, technical vocabulary / "vocabulary peculiar to the legal register" (Trosberg 1997: 23), archaic words, unusual sentence structure, nominalizations and passives, multiple negation and impersonal constructions and redundancy also referred to as a "boilerplate" (Tiersma 1999). Further, legal language is said to be "formulaic" and to be composed of "technical terms, common terms with uncommon meaning, archaic expressions, doublets, formal items, unusual prepositional phrases, high frequency of *any* " (Trosborg 1997: 13). Mellinkoff (1963) points out the "frequent use of common words with uncommon meanings". Complex prepositions are also mentioned as characteristic of legal vocabulary, though no comprehensive study on the occurrence and distribution of complex prepositions in legal texts has been conducted yet (Johnson and Coulthard 2010: 11). The term "hallmarks of the language of the law", applied by Mellinkoff (1963) to refer to the characteristics of the language of the law, will be adopted in this study. Having this list of legal language features in mind, I will conduct a close reading of the texts (presented in section 2.4), marking out particular examples of legalese and studying the correspondences between the two languages.

Consider the opening of *Judgment of the Court*, the Norwegian version (i.e. translation):

(1) *ANMODNING til EFTA-domstolen i medhold av artikkel 34 i Avtalen mellom*
(2) *EFTA-statene om opprettelse av et Overvåkningsorgan og en Domstol fra*
(3) *Borgarting lagmannsrett i en sak for denne domstol mellom STX Norway Offshore AS*
(4) *m. fl. og Staten v/Tariffnemda, om arbeids- og ansettelsesvilkår som er fastsatt i en*
(5) *tariffavtale som er erklært å ha allmenn gyldighet innenfor skips- og verftsindustrien*

(6) *er forenlige med EØS-retten, og om tolkningen av EØS-avtalen artikkel 36 og artikkel*
(7) *3 i rettsakten omhandlet i nr. 30 i vedlegg XVIII til EØS-avtalen, dvs.*
(8) *europaparlaments- og rådsdirektiv 96/71/EF av 16. desember 1996 om utsending av*
(9) *arbeidstakere i forbindelse med tjenesteyting, som tilpasset EØS-avtalen ved avtalens*
(10) *protokoll 1, avsier [...] slik dom*

In these ten lines, formalese and/or legalese is expressed in various forms. First, very striking are syntactic relationships: a long sentence with several subordinate and coordinate clauses. Then, a distance from the reader is made linguistically explicit through frequent use of passives in lines 4 and 5 and nominalizations in lines 2, 6, 8 and 9. As mentioned before, I would like to focus on a smaller level than syntax and grammar, and make an attempt to examine separate words and expressions in terms of any possible deviation from plain language.

The word *anmodning* in line 1, meaning "request", "petition", "appeal", "solicitation",[9] has a number of synonyms in Norwegian, e.g. *bønn, forespørsel, spørsmål*. While the word *spørsmål* ("question") has a neutral character and may occur in various types of discourse, from conversation to legalese, the word *anmodning* represents a rather formal alternative and is mostly preserved for formal contexts. Also, *allmenn gyldighet* in line 5 immediately associates with formalese. This collocation has a very restricted use. To prove these statements, various kinds of evidence may be provided. First, it is an introspective ability of competent language users to choose a proper synonym in a proper situation. Second, linguistic corpora are an effective way to examine nuances of usage of a given word.

Next, the items *EFTA-domstolen, artikkel 34, Avtalen mellom EFTA-statene om opprettelse av et Overvåkningsorgan og en Domstol* and *Borgarting lagmannsrett, STX Norway Offshore AS m. fl., Staten v/Tariffnemda, EØS-retten, EØS-avtalen, artikkel 36, artikkel 3, nr. 30 i vedlegg XVIII til EØS-avtalen, avtalens protokoll 1* and *europaparlaments- og rådsdirektiv 96/71/EF av 16. desember 1996 om utsending av arbeidstakere i forbindelse med tjenesteyting* are proper nouns. In this extract proper nouns constitute the largest part of the text. Proper nouns of this type may be said to fall under the category of hallmarks of legal discourse, because they denote very concrete references, objects or notions particularly within the area of legal matters. For this group of legal hallmarks, only a short note, with respect to

[9]Here, and for all similar translations in the rest of the analysis, the website www.ordnett.no is used, unless otherwise stated.

translation, will be made in section 4.1.2. Beyond that, proper nouns will not be considered in this study.

Next, the preposition *i medhold av* appears in line 1. Prepositions of this type are common in formal contexts. This statement can be checked with the help of a linguistic corpus, which will be done shortly. Also, the fact that Lind's *Norsk-engelsk juridisk ordbok* contains this preposition strengthens the assumption that this phrase is part of legal vocabulary. Prepositions of this kind will be paid particular attention in the present study; see sections 4.2.1 – 4.2.7.

The word *sak* in line 3 is also a legal hallmark. Considered out of context, this Norwegian word can have a very neutral (sometimes even colloquial) meaning, while in other contexts it may imply a quite formal style. Compare the two sentences below (found on http://www.ordnett.no/):

(a) *hvor kan vi sette fra oss* ***sakene*** *våre* (very neutral, everyday sense)
Eng.: *where can we put our* ***things***
(b) ***saken*** *er til behandling i departementet* (formal)
Eng.: ***the matter*** *is being processed by the ministry*

In (b), the words *behandling* ("processing") and *departementet* ("the ministry") constitute the context for the word *sak* and contribute to the legal connotations of this word. In (a), the redundancy of the pronouns *vi*, *oss* and *våre* contributes to the neutrality of style, as formal discourse usually tends to avoid the use of personal pronouns. Thus, the context reveals the proper meaning of a word, out of a variety of meanings.

The word *domstol* in line 3, meaning "court", "court of law", "court of justice" is an important part of legal vocabulary. A word of this kind can be classified as belonging to the semantic field of law, which is discussed in section 4.1.1.

There are a few examples of field-specific terms in this extract: *arbeids- og ansettelsesvilkår* (line 4), *tariffavtale* (line 5) and *skips- og verftsindustrien* (line 5).

Finally, there are a few verbs: *fastsatt*, *erklært*, *omhandlet*, *tilpasset* and *avsier*. Introspectively, I incline to an opinion that all these verbs have formal connotations. This assumption will be examined later in the analysis.

In the above discussion, only the Norwegian version was considered. Now, the pairs formed by Norwegian and English items which are hallmarks of legalese / formalese, will be illustrated and discussed. Table 1 below shows the renderings as they appear in the English and Norwegian versions of the same document (see Appendix for full text). Boldface marks out the pairs where the lack of stylistic correspondence is considered to be striking.

Table 1: List of Norwegian and English legal hallmarks from the opening of *Judgment of the Court*

Nr.	NORWEGIAN	ENGLISH
(1)	anmodning	request
(2)	**i medhold av**	**under**
(3)	sak	case
(4)	fastsatt	provided for
(5)	erklært	declared
(6)	(ha) allmenn gyldighet	(be) universally applicable
(7)	rettsakt	act
(8)	omhandlet	referred to
(9)	**avsier**	**gives**

According to Table 1, two pairs are stylistically striking: (2) and (9). In (2), the English equivalent *under* is generally a more neutral word than the Norwegian *i medhold av*. In terms of meaning, the word *under* is easily comprehensible and may seem somewhat "lighter" than the corresponding Norwegian term. In (9), the verb *å avsi* ("to pass", "to pronounce") does not seem to correspond stylistically to the English variant *to give*. *Give* is a common everyday word in English, while *avsi* is not part of everyday vocabulary in Norwegian. These comparisons are extracted from a very short piece of text and do not justify any conclusions. But if we continue charting the corresponding pairs through the whole document, we might reveal some recurring patterns.

Tables A, B and C in the end of this chapter are elaborated versions of Table 1; in addition to the list of English lexical items in one column and their Norwegian counterparts in another, they contain the classification of the selected items into particular groups. According to what criteria have these groups been established? I suggest that the following five categories be used to organize legal hallmarks on the lexical level:

- Terms belonging to the semantic field of law (SFL);
- Proper nouns, referring to physical and non-physical participants in a legal context;
- Words of general formalese;
- Complex prepositions;
- Field-specific terms.

4.1.1 The semantic field of law

Many linguists have applied the term "semantic fields" (Lyons 1984, Baker 2011) to make categorizations of vocabulary. Words can be grouped according to "conceptual fields" or "semantic fields" (Baker 2011: 16). I would thus claim that words like *domstol* ("court"), *dom* ("judgment"), *sak* ("case"), *rettsakt* ("legal document"), *ankemotpart* ("defendant"), etc. are words belonging to the semantic field of law (SFL). A "semantic field" may consist of words denoting physical things (e.g. the semantic field of vehicles: *car*, *bike*, *truck*, etc.) or non-physical notions. Words denoting concepts within the area of law will often refer to non-physical concept. For example, the concepts *law* and *regulation* are rather abstract, even though, in written form, they are something we can point to and sometimes handle as physical things. Within the SFL, words and phrases can be put into certain categories depending on whether they belong to universal legal terminology and are, therefore, likely to be found in most texts with a legal content, or whether they represent specialist legal terminology. The words *article*, *directive*, *provision*, etc. also belong to the semantic field of law. Generally, we know that law is expressed through a great number of written documents, i.e. articles, provisions, regulations, and the like. In context, such words often appear in the form of proper names, e.g. *Article 34*, *Directive 96/71/EC*, and so on.

Word pairs such as *dom* / *judgment* or *domstol* /*court* show a fairly clear correspondence for English and Norwegian; there are cases where a so-called "plain translation" exists and should be used (Newmark 1987: 36). For Norwegian and English, languages of two culturally very close countries, words like *judgment*, *court*, *rule*, etc. are so-called "semantic universals", to apply Newmark's term (1981: 166). For particular fields (e.g. law, sports, education, music, etc.), there is a great number of distinct words that have nearly the same application in English and Norwegian. It must be noted, however, that besides such clear-cut correspondences as *dom* / *judgment*, there are terms that have a rather complicated translation

relationship. Consider the word *registrar* from document 1Eo. The Norwegian version makes use of the word *justissekretær*. The English-Norwegian Dictionary Online suggests the translation *dommerfullmektig*. Lind's *Norwegian-English Dictionary of Law* translates *dommerfullmektig* into "assistant judge" or "deputy judge". The translation pair *registrar* / *justissekretær* is an example of an established rendering, applicable in the field of EFTA-legal communication. A study of the translation of this kind of terminology is beyond the scope of this thesis. Translation of legal terminology is the responsibility of certain professional units who work on translation for European institutions who are often being assisted by terminologists with a special competence in comparative law studies (Šarčević 1997: 237).

Some words that belong to the semantic field of law are words which in everyday conversation have a common meaning, but, when they are put into a legal context, acquire a different meaning, or meanings. "In common with words from natural language in general, terms from legal language have multiple meanings (polysemy)" (Mattila 2006: 66). The word pair *case* / *sak* discussed above is one example of polysemy. Consider now the word *rettsakt* as it appears in the Norwegian version of *Judgment of the Court*. A dictionary of legal terms[10] gives the following definitions of *rettsakt*: 1) "legal document", 2) "legislative act". The latter refers particularly to an EU context, where a directive or a regulation will be examples of a legislative act. In the English version of the document *Judgment of the Court*, the corresponding word is *act*. The most common meaning of *act* is "one thing that you do".[11] The meaning of this word in the context of the English Common Law system, however, is very precise, denoting "a law that has been officially accepted by Parliament or Congress".[12] Mellinkoff (1963: 10-12) pays particular attention to the "frequent use of common words with uncommon meanings" and illustrates with such examples as *action* meaning "law suit", *avoid* meaning "cancel", *said* meaning "mentioned before", and many others of this type. In the light of legal systems, the physical and social world is viewed differently than it is generally for a lay person: "the legal view of the world is unique and particular" (Gibbons 2003:9). Thus, the meanings of a given word can differ significantly depending on where and by whom it is used.

[10] *Norsk-engelsk juridisk ordbok* (Lind, 5th edition).
[11] *Longman Dictionary of Contemporary English* (2003).
[12] *Longman Dictionary of Contemporary English* (2003).
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4.1.2 Proper nouns

The next group of legal hallmarks is proper nouns, denoting names for institutions, state bodies, titles, etc. Naturally, proper nouns found in legal texts often belong to the semantic field of law. However, they are given a separate place in my study because the rules and practices for the translation of proper names, also in legal texts, differ from the rules and practices that apply to common nouns. There is a great number of proper nouns in *Judgment of the Court*: e.g. *EFTA-domstolen, Tariffnemda, europaparlaments- og rådsdirektiv, EFTAs overvåkningsorgan, Europakommisjonen, lagmannsrett, Tariffnemda*, *EEA Agreement*, and others. These belong to the category "international institutional terms" (Newmark 1981: 74). In most cases, such words have official translations. In *Judgment of the Court*, for example, the proper noun *Oslo tingrett* is rendered into "Oslo tingrett (Oslo District Court)". The original Norwegian name is preserved, and an additional explanatory translation or English counterpart is given. Proper names will not be examined in this study, so they are not included in Tables A, B and C.

4.1.3 Common formalese

Next, there is a category defined as common formalese. Words like *anmodning* ("request") are, as already stated, peculiar to various types of formal discourse, not only legal language. Apart from legal contexts, this Norwegian word may occur in other more or less formal situations. Still, formal words constitute a significant part of legal vocabulary.

4.1.4 Complex prepositions

It has been observed that certain complex prepositions are frequent in all six documents. To be able to claim whether or not complex prepositions are part of legal vocabulary, we need to conduct a study that would provide "precise statistical information" (Crystal and Davy 1969: 22). With the help of linguistic corpora, the frequency and distribution of complex prepositions in legal texts will be calculated. Two types of comparison are important here: 1) the distribution of complex prepositions in legal vs. non-legal texts in English and in Norwegian; 2) the distribution of complex prepositions in Norwegian vs. English legal texts. The number of prepositions of a legal character will be counted, the patterning will be

mapped out, and a comparison carried out, commented on and discussed in detail (sections 4.2.1 – 4.2.7).

4.1.5 Field-specific terms

For the fifth group, field-specific terms, it should be clarified that there are field-specific terms related to law, and field-specific terms not related to law. The latter is, for example, the case with accountancy terminology in legal documents on tax law. Field-specific terms are identified in Tables A, B and C, but they will not be further investigated in this study.

4.1.5 Other hallmarks of legal discourse

I have restricted the scope of this study to vocabulary and will not touch upon syntax. I will only note that nominalizations are no doubt used abundantly in both the Norwegian and English versions, e.g. *posting of workers - utsending av arbeidstakere*. Also passives prevail in both Norwegian and English. As for the textual level, all three documents have a peculiar formulaic lay-out. Although the lay-out of the legal texts will not be considered in this study, it needs to be noted that the full versions of the documents examined, which are provided in the Appendix, have been copied from the original pdf files and pasted into a Word document. As a result, the original lay-out of these documents, i.e. paragraphing, spacing, etc. was distorted. The URL/web addresses to each of the documents are provided in the bibliography to provide access to the original pdf versions.

4.1.6. Features investigated in the following part of the analysis

What Tables A, B and C in the end of Part I show is the result of an examination of a qualitative kind, consisting of the extraction of lexical items related to legal matters in the examined texts. I have made an attempt to investigate the documents very carefully, trying not to omit any relevant instances. As already mentioned, I restricted the investigation to vocabulary. A further restriction is that proper nouns are not included as part of legal markers. Translation of legal texts is about working with very different levels of language. Some words have straightforward and commonly known renderings. This is particularly the case with proper nouns. Also, the most common words from the semantic field of law often have firmly

established translations. Translation of legal terminology is a complicated aspect, as it has been briefly illustrated in section 4.1.1. This part of legal vocabulary, which, according to Newmark (1987: 151) “only makes up about 5-10% of a text”, is also beyond the scope of the present analysis.

In Tables A, B and C, there are several instances where the category to which a Norwegian word has been assigned does not correspond to the category to which its English counterpart has been assigned. Thus, a Norwegian word defined as clearly formal may happen to have an English counterpart belonging to a fairly neutral style. Taking into consideration my own intuition and the overall impression, obtained after having skimmed several Norwegian documents and their English versions, my particular interest fell on the complex prepositions and the instances where it has been observed that the stylistic characteristics (i.e. the level of formality) of the Norwegian and English corresponding words do not match, e.g. *avsi* vs. *give*, where the English alternative is a stylistically neutral word, while its correspondent in Norwegian is a verb that has a restricted legal use.

Abbreviations used in Tables A, B and C:

SFL	semantic field of law
Form.	common formalese
Neut.	neutral
c.P	complex preposition
Prep.	simple preposition
Non-f.cl.	non-finite clause
FS	field-specific
Para.	paraphrase
aP	adjective phrase
prep.v.	prepositional verb
adj.	adjective
adv.	adverb

TABLES A, B and C

Table A: Examples of legal hallmarks found in *Judgment of the Court*

No.	ENGLISH (original)	NORWEGIAN (translation)	Category Eng. / Norw.	
1	judgment	dom	SFL	
2	request	anmodning	Form.	
3	under	i medhold av	Prep.	c.P
4	case	sak	SFL	
5	provided for	fastsatt	Form.	
6	collective agreement	tariffavtale	SFL (also FS)	
7	declared	erkært	Form.	
8	(be) universally applicable	(ha) allmenn gyldighet	Form.	
9	Act	rettsakt	SFL	
10	in the framework of	i forbindelse med	c.P	
11	gives	avsier	Neut.	SFL
12	Judge-Rapporteur	saksforbredende dommer	SFL	
13	judge	dommer	SFL	
14	registrar	justissekretær	SFL	
15	defendant	ankemotpart	SFL	
16	having regard to	med henvisning til	Non-f. cl.	c.P
17	defendant	saksøkt	SFL	
18	hearing	rettsmøte	SFL	
19	make (a request)	fremme (en anmodning)	Form.	
20	seek	anmode	Neut.	Form.
21	action	søksmål	SFL	
22	brought by	inngitt av	Neut.	Form.
23	regulation	vedtak	SFL	
24	clause	bestemmelse	SFL	
25	petition	begjæring	SFL	
26	filed by	inngitt av	Form.	
27	grant	vedta	Form.	
28	in connection with	hvor	c.P	Para./ N.
29	appeal	anke	SFL	

Table B: Examples of legal hallmarks found in *Request for Advisory Opinion*

No.	NORWEGIAN (original)	ENGLISH (translation)	Category Norw. / English	
30	framsatt av	by	Form.	Neut.
31	fastsatt	established	Form.	
32	i samsvar med	in accordance with	c.P	
33	i samsvar med	in accordance with	c.P	
34	(som det) påhviler	(which) is up to	Form.	Neut.
35	å føre	to present	Form.	Neut.
36	fastsette	set out	Form.	Neut.
37	fastsatt	stipulated	Form.	
38	(kan) erklæres	(can) be declared	Form.	

Table C: Examples of legal hallmarks found in *Directive 96/71/EC*

No.	ENGLISH (original)	NORWEGIAN (translation)	Category Eng./Norw.	
39	(having) regard to	(har) under henvisning til	Non-f. cl.	c.P
40	proposal	forslag	Form.	
41	opinion	uttalelse	Neut.	Form.
42	in accordance with	etter	c.P	Prep.
43	laid down	fastsatt	Form.	
44	whereas	ut fra følgende betraktninger	Form./subj.	c.P
45	pursuant to	i henhold til	adv.	c.P
46	for	med hensyn til	Prep.	c.P
47	based on	på grunnlag av	Prep. v.	c.P
48	under (the Treaty)	etter (traktaten)	Prep.	
49	with effect from	fra	c.P	Prep.
50	transitional period	overgangsperiode	FS	
51	under	i henhold til	Prep.	c.P
52	contract	avtale	SFL	
53	in the framework of	i henhold til	c.P	

54	with regards to	med hensyn til	c.P	
55	legislation	lovgivning	SFL	
56	applicable to	som får anvendelse på	Form.	
57	envisaged	aktuell	Form.	Neut.
58	contractual obligations	avtaleforpliktelser	SFL	
59	in the absence of	dersom … ikke	c.P	Neut.
60	according to	i samsvar med	adj.	c.P
61	in performance of	under oppfyllelsen av	c.P	
62	according to	i samsvar med	adj.	c.P
63	mandatory rules	ufravikelige regler	SFL	
64	under	etter	Prep.	
65	in the absence of	dersom … ikke	c.P	Neut.
66	said	nevnt	Form./SFL	Neut.
67	concurrently	parallelt	Form.	Neut.
68	according to	i samsvar med	adj.	c.P
69	precedence	forrang	SFL	
70	in relation to	på	c.P	Prep.
71	act	rettsakt	SFL	
72	harmonized	harmonisert	Neut.	From.
73	under (certain conditions)	på (vilkår)	Prep.	
74	derogate	fravike	Form./SFL	
75	without prejudice to	med forbehold for	c.P	
76	adopt	vedta	Form.	
77	shall apply	får anvendelse	Form.	
78	in accordance with	i samsvar med	c.P	
79	as regards	med hensyn til	adv.	c.P
80	under	i henhold til	Prep.	c.P
81	the party	[para]	SFL	[-]
82	provided	forutsatt at	Form.	
83	for the puposes of	i	c.P	Prep.
84	by	i samsvar med	Prep.	c.P
85	in the case of	i tilfelle av	c.P	
86	in the field of	på	c.P	Prep.

87	(that their) application	ved anvendelsen av	Para.	c.P
88	within the meaning of	i henhold til	c.P	
89	in accordance with	i samsvar med	c.P	
90	in compliance with	i henhold til	c.P	
91	on a basis of	på grunnlag av	c.P	
92	within the meaning of	i henhold til	c.P	
93	for the purpose of	ved	c.P	Prep.
94	in accordance with	i samsvar med	c.P	
95	in accordance with	i samsvar med	c.P	
96	in the event of	i tilfelle av	c.P	
97	under	fastsatt i	Neut.	Form.
98	jurisdiction	domsmyndighet	Form.	
99	under	i samsvar med	Neut.	Form.
100	comply with	etterkomme	Form.	
101	forthwith	umiddelbart	Form.	Neut.
102	thereof	om dette	Form.	Neut.
103	on the occasion of	når	c.P	adv.
104	provide	fastsette	Form.	
105	within the meaning of	i henhold til	c.P	
106	on the basis of	på grunnlag av	c.P	
107	in the absence of	dersom … ikke	c.P	Neut.
108	within the meaning of	i henhold til	c.P	
109	on account of	på grunn av	c.P	
110	as regards	med hensyn til	adv.	c.P

Part II: Discussion of stylistic non-correspondences between Norwegian and English counterparts

4.2 Complex prepositions

Quirk et al. (1972: 301) distinguish a particular type of prepositions they refer to as complex:

PREP1+NOUN+PREP2

Prepositional phrases conforming to this pattern are for example: *in comparison with, in the light of, as a result of*, etc. Quirk et al. (ibid.) state that this particular type is in fact the most numerous category of prepositional phrases. The following patterns are identified within this particular category:

IN+NOUN+OF *in case of*
IN+NOUN+WITH *in accordance with*
BY+NOUN+OF *by way of*
ON+NOUN+OF *on account of*
other types: *at variance with, in exchange for, in addition to, at the expense of*, etc.

In Tables A, B and C, there is a great variety of this type of complex prepositions, e.g. *in accordance with, in the framework of, in the case of, in the field of, in the absence of, in compliance with, for the purpose of*, and the like. Complex prepositional phrases "are indivisible both in terms of syntax and in terms of meaning" and they can be described as having "less of the character of a preposition and more of the character of a free syntactic construction" (Quirk et al. 1972: 302-303). Another term describing this type of prepositions is "multiword prepositional structures" (Williams 2005: 33).

As for the role and distribution of complex prepositions in English, Quirk et al. (1972: 304) note that "Legal English is notable for complex prepositions, the following being among those found mainly in legalistic or bureaucratic usage: *in case of, in default of, in lieu of, on pain of, in respect of*". This statement supports my observation made in section 4.1 that complex prepositions can themselves be hallmarks of legal discourse. This statement can be checked with the help of the BNC. Table 2 below illustrates the representation of these five complex prepositions in fiction compared to non-fiction.

Table 2: The distribution of the complex prepositions *in case of, in default of, in lieu of, on pain of* and *in respect of* in fiction vs. non-fiction English texts (the BNC)

PP	**Fiction (instances per million words)**	**Non-fiction (legal texts) (instances per million words)**
in case of	3.09	6.66
in default of	0.13	2.5
in lieu of	0.63	1.78
on pain of	0.44	0.95
in respect of	5.92	80.74

These figures support the notion that the occurrence of these five complex prepositions is considerably more frequent in non-fiction than in fiction. *On pain of* and *in lieu of* seem to be almost obsolete in modern English, also within the genre of law; while *in respect of* appear to have an outstandingly high frequency within the legal genre. A similar comparison will shortly be provided for several complex prepositions found in the examined documents.

4.2.1 An overview of complex prepositions found in the examined texts

The three tables below (3.1-3.3) illustrate pairs formed by several most frequent Norwegian and English complex prepositions as they occur in the three texts.

Table 3.1: The Norwegian and English pairs of complex prepositions found in *Judgment of the Court*

No.	NORWEGIAN (translation)	ENGLISH (original)
(1)	**i medhold av** (artikkel)	**under** (Article)
(2)	**i forbindelse med** (tjenesteyting)	**in the framework of** (the provision of services)
(3)	**med henvisning til** (rettsmøterapporten)	**having regard to** (the Report for the Hearing)
(4)	**med hensyn til** (om arbeids- og ansettelsesvilkårene […] er forenlige)	**[Ø]** (whether the terms and conditions of employment […] are compatible)
(5)	**på grunnlag av** (Verkstedoverenskomsten 2008-2010)	**on the basis of** (the Verkstedoverenskomsten 2008-2010)
(6)	**ved** (arbeidsoppdrag)	**in connection with** (work assignments)

Table 3.2: The Norwegian and English pairs of complex prepositions found in *Request for an Advisory Opinion*

No.	NORWEGIAN (original)	ENGLISH (translation)
(7)	**i samsvar med** (artikkel 3 nr. 8)	**in accordance with** (Article 3(8))
(8)	**i samsvar med** (artikkel 3 nr. 8)	**in accordance with** (Article 3(8))

Table 3.3: The Norwegian and English pairs of complex prepositions found in *Directive 96/71/EC*

No.	NORWEGIAN (translation)	ENGLISH (original)
(9)	**i forbindelse med** (tjenesteyting)	**in the framework of** (the provision of services)
(10a)	(har) **under henvisning til** (traktaten)	(having) **regard to** (the Treaty)
(10b)	(har) **under henvisning til** (forlag)	(having) **regard to** (the proposal)
(10c)	(har) **under henvisning til** (uttalelse)	(having) **regard to** (the opinion)
(11)	**etter** (fremgangsmåten)	**in accordance with** (the procedure)
(12)	**i henhold til** (traktatens artikkel 3 bokstav c))	**pursuant to** (Article 3 (c) of the Treaty)
(13)	**med hensyn til** (tjenesteyting)	**for** (the provision of services)
(14)	**i henhold til** (avtale)	**under** (a contract)
(15)	**i henhold til** (en offentlig eller privat avtale)	**in the framework of** (a public or a private contract)
(16)	**med hensyn til** (hvilken lovgivning)	**with regard to** (the legislation)
(17)	**i samsvar med** (artikkel 6 nr.2)	**according to** (Article 6(2))
(18)	**i samsvar med** (artikkel 6 nr.1)	**according to** (Article 6(1))
(19)	**i samsvar med** (prinsippet)	**according to** (the principle)
(20)	**i samsvar med** (nr.3)	**in accordance with** (paragraph 3)

(21)	**med hensyn til** (skipsbesetningen)	**as regards** (seagoing personnel)
(22)	**i henhold til** (avtale)	**under** (a contract)
(23)	**i samsvar med** (nasjonal lovgivning)	**by** (the national law)
(24)	**i henhold til** (nr. 3 i denne artikkel)	**within the meaning of** (paragraph 3 of this Article)
(25)	**i henhold til** (nr. 8 i denne artikkel)	**within the meaning of** (paragraph 8 of this Article)
(26)	**i henhold til** (første ledd)	**within the meaning of** (the first subparagraph)
(27)	**i henhold til** (denne artikkel)	**within the meaning of** (this Article)
(28)	**i henhold til** (traktaten)	**in compliance with** (the Treaty)
(29)	**i samsvar med** (nasjonal lovgivning)	**in accordance with** (national legislation)
(30)	**i samsvar med** (nasjonal lovgivning)	**in accordance with** (national legislation)
(31)	**i samsvar med** (eksisterende internasjonale konvensjoner)	**under** (existing international conventions)

For Norwegian, the most frequent complex preposition found in the three documents is *i samsvar med*. In most cases, this preposition corresponds to *in accordance with* or *according to* in the English versions. In example (23), *i samsvar med* corresponds to *by* in English, while in example (31) it corresponds to the preposition *under*.

Regarding the preposition *under* in the English version, it expresses reference to legal sources several times in the three documents. *under* has been observed earlier as the corresponding item for the Norwegian complex preposition *i medhold av*, cf. example (1). In examples (14) and (22), *under* corresponds to the Norwegian *i henhold til*.

In accordance with, in turn, is not always rendered into *i samsvar med*. In example (11) it corresponds to *etter* ("by", "based on") in the Norwegian version.

Next, *i henhold til* is another frequent complex preposition found in the documents examined. It corresponds to various renderings in English: *pursuant to* (12), *under* (14) and (22), *in the framework of* (15), *within the meaning of* (24), (25), (26) and (27), *in compliance with* (28).

This brief comparison reveals a complex and inconsistent relationship between Norwegian and English complex prepositions in given texts. It terms of style, this indicates vagueness and unclearness of the language. The authors of *The Routledge Handbook of Forensic Linguistics* (Johnson and Coulthard 2010: 11), who adhere to the functionalist view (i.e. Halliday's theory claiming that function determines the kind of language used), state that "complex prepositions are semantically more precise than simple ones and therefore avoid vagueness". In a discussion of clarity, precision, unambiguity and inclusiveness, Bhatia (in Johnson and Coulthard 2010: 38) notes that "another device used for clarity is complex-prepositional phrases, such as *in accordance with* or *in pursuance of*, instead of simple prepositions". In the light of the conducted investigation, it is difficult to share this view. However, the statements by Johnson and Coulthard, and by Bhatia, concern the use of complex preposition in legal texts in English. Is the use of complex prepositions in English legal texts more "justified" than the use of complex prepositions in Norwegian texts, or vice versa? For a lay person without a professional understanding of all the nuances of law communication, it is perhaps impossible to answer this question. A contribution from a linguistic point of view will be of a quantitative kind. In the next section, linguistic corpora will be used to investigate the distribution of several complex prepositions in Norwegian and in English.

4.2.2 The distribution of complex prepositions: fiction versus non-fiction (legal texts)

The aim of this section is to find out to what degree some complex prepositions act as markers of legal language, and if and how this is different in Norwegian and in English. Based on the three tables above, the following complex prepositions are chosen for closer examination:

Norwegian: *i medhold av*, *i samsvar med*, *i henhold til* and *med hensyn til*;

English: *in the framework of*, *in accordance with*, *with regard to* and *in compliance with*.

For Norwegian, the Lexicographic Corpus for Norwegian Bokmål (LBK) will be used in order to find potential differences in the distribution of complex prepositions in different genres, e.g. fiction vs. non-fiction. For English, the British National Corpus (BNC) will be used.

Table 4.1 below illustrates the distribution of the Norwegian complex prepositions in fiction vs. non-fiction texts. Table 4.2 below is a similar type of illustration for the English complex prepositions. The figures in Table 4.1 and Table 4.2 represent normalized frequencies (see section 2.5.3).

Table 4.1: The distribution of the complex prepositions *i medhold av*, *i samsvar med*, *i henhold til* and *med hensyn til* in fiction vs. non-fiction (legal) Norwegian texts, presented in normalized frequencies per 1 million words

PP	**Fiction**	**Non-fiction (legal)**
i medhold av	0.06	51.8
i samsvar med	1.6	204.5
i henhold til	3.36	292.8
med hensyn til	6.9	125.5

Table 4.2: The distribution of the complex prepositions *in the framework of, in accordance with, with regard to* and *in compliance with* in fiction vs. non-fiction (legal) English texts, presented in normalized frequencies per 1 million words

PP	**Fiction**	**Non-fiction (legal)**
in the framework of	Ø	1.3
in accordance with	3.5	63.0
with regard to	2.5	35.1
in compliance with	0.2	3.6

The results obtained in Table 4.1 and Table 4.2 show a clear pattern: all the examined complex prepositions prevail in non-fiction texts. This is the case for the Norwegian examples as well as the English examples. Still, the occurrence of complex prepositions is noticeably more frequent in Norwegian legal texts (cf. the highest frequency which has been revealed in Table 4.1 is 292.8 %) than in English legal texts (cf. the highest frequency which has been

revealed in Table 4.2 is 63.0%). It might be the case that complex prepositions are used more sparingly and more consistently in English.

4.2.3 Discussion of different translations of Norwegian complex prepositions

For the purpose of this section, two research tools will be used: 1) the Norwegian-English Dictionary Online; 2) the English-Norwegian Parallel Corpus.

A. *i medhold av*

This complex preposition has the highest frequency in the legal texts, and the lowest frequency in the fiction texts, compared to the other complex prepositions presented in Table 4.1. The following translation is suggested by the Norwegian-English Dictionary Online:

i medhold av loven
pursuant to the law, in agreement/accordance with the law

Now, this phrase will be searched for in the ENPC. The single word *medhold* is used as the search word. The following parameters are chosen: non-fiction, Norwegian, original. The search resulted in the following four matches:

1. *Denne lov gjelder for kommuners og fylkeskommuners virksomhet, herunder kommunal og fylkeskommunal virksomhet **i medhold av** andre lover.*(KL1)
   *This Act applies to the activity of municipalities and county municipalities including municipal and county municipal activity **in pursuance of** other Acts.*(KL1T)

2. *Melding om vedtak truffet **i medhold av** denne paragraf forelegges vedkommende organ i dettes neste møte.*(KL1)
   *Notice of any resolution passed **in pursuance of** this section is to be put before the body concerned at its next meeting.(KL1T)*

3. *kommunale eller fylkeskommunale nemnder opprettet **i medhold av** andre lover gjelder følgende regler:(KL1)*
   *municipal or county municipal boards appointed **in pursuance of** other Acts the following rules apply:*(KL1T)

4. *kommunale eller fylkeskommunale nemnder opprettet **i medhold av** andre lover.* (KL1)
   *municipal or county municipal boards created **in pursuance of** other Acts.* (KL1T)

As explained earlier (2.5.4), the ENPC contains only one legal text representing a translation from Norwegian into English. Thus, all the instances of *i medhold av* appear in the same text: KL1/ KL1T. In three out of four cases, it collocates with the nouns denoting *(legal) act*. For comparison, we may check what Norwegian renderings correspond to the English preposition *in pursuance of*. The search word is "pursuance"; the type of text: non-fiction; language: English, original.

5. *The provisions of this Chapter and measures taken **in pursuance thereof** shall not prejudice the applicability of provisions laid down by law (AEEA1)*

   *Bestemmelsene i dette kapittel og tiltak truffet **med hjemmel i** disse bestemmelsene, skal ikke hindre at bestemmelser om særbehandling av fremmede statsborgere får anvendelse når de er fastsatt ved lov (AEEA1T)*

6. *as amended or supplemented, as well as the acts adopted **in pursuance thereof** in so far as they concern provisions which are identical in substance to those of this Agreement;(AEEA1)*

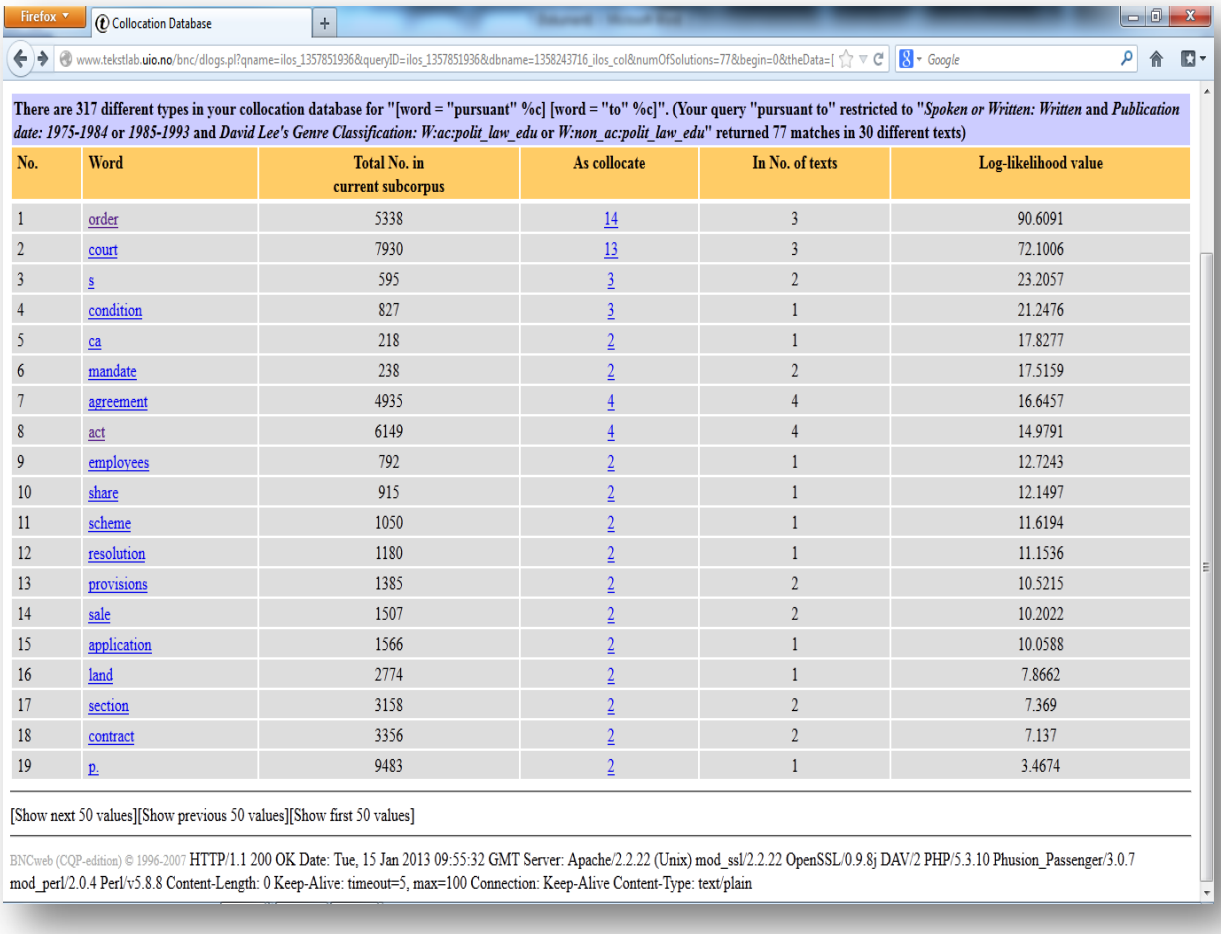
   *slik de er endret eller utfylt, samt de rettsakter som er tatt **i henhold til** dem, i den utstrekning de gjelder bestemmelser som i sitt materielle innhold er identiske med bestemmelser i denne avtale;(AEEA1T)*

Interestingly, the complex preposition *pursuant to* has 428 hits in the British National Corpus, while a preposition with a similar meaning but different form, *in pursuance of*, has 138 hits. This fact might prompt an assumption that in original English texts the use of *pursuant to* is most common. Still, in the translation from Norwegian the variant *in pursuance of* dominates. Is it the form that plays a role? That is, *i* is directly rendered into *in*; *av* is rendered into *of*. If so, this might be an example of what Johansson and Hofland (1994 in Fries et al. 1994) refer to as "translationese" (in Fries et al. 1994: 26). A search for *pursuant to* in the ENPC provides 10 matches, of which (in the Norwegian translation) 7 correspond to *i henhold til*, and 3 correspond to *etter*. For comparison, *pursuant to* was made a search for in the fiction and non-fiction (legal) sub-corpora of the BNC. Strikingly, *pursuant to* is completely absent in the English fiction texts, while in the non-fiction texts it is highly common, with the frequency of 9.25% per one million words.

A search in the Oslo Corpus of Norwegian Tagged Texts revealed the following list of nouns which tend to form a prepositional phrase with *i medhold av*: *lov, lovgivning, paragraf* (including the symbols "#" or "§"), *artikkel, bestemmelse, forskrift, punkt, vedtekt*, etc. Now, what nouns, following the complex prepositions *in pursuance of* and *pursuant to*, are most

frequent in English legal texts? The BNC is used to investigate these questions. Figure 3a demonstrates nominal collocations with *pursuant to*, while Figure 3b demonstrates nominal collocations with *in pursuance of*. The restriction "1 right, 5 right" is given to the window span (i.e. the following words are of interest), and the restriction "any noun" is given to the tag. The most frequent words following *pursuant to* are *order* and *court*, followed, with a marked gap, by *agreement* and *act*. The most frequent words following *in pursuance of* are *contract* and *pact* followed by *suicide* and *order*.

Figure 3a: Collocations with the preposition *pursuant to*



Firefox | Collocation Database

www.tekstlab.uio.no/bnc/dlogs.pl?qname=ilos_1357851936&queryID=ilos_1357851936&dbname=1358243716_ilos_col&numOfSolutions=77&begin=0&theData=[

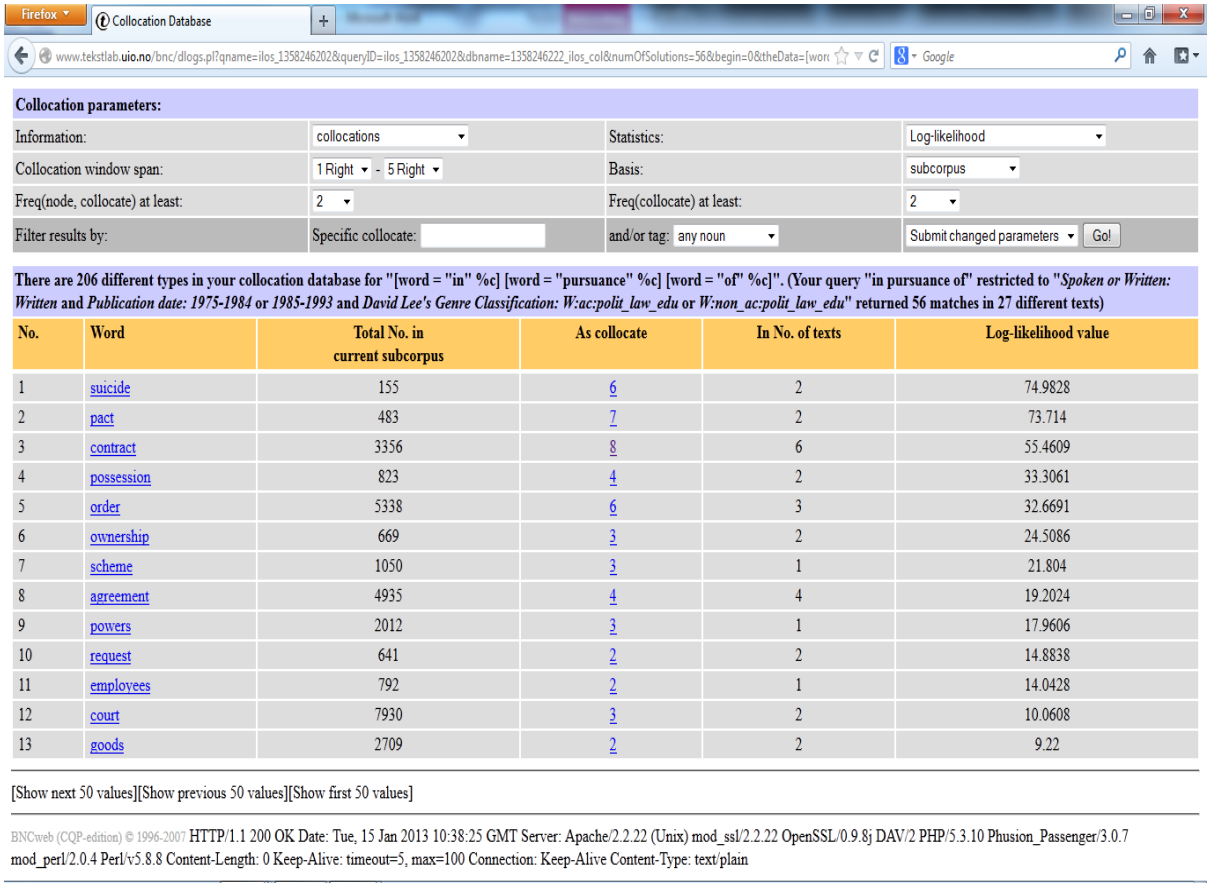
There are 317 different types in your collocation database for "[word = "pursuant" %c] [word = "to" %c]". (Your query "pursuant to" restricted to "*Spoken or Written: Written* and *Publication date: 1975-1984* or *1985-1993* and *David Lee's Genre Classification: W:ac:polit_law_edu* or *W:non_ac:polit_law_edu*" returned 77 matches in 30 different texts)

No.	Word	Total No. in current subcorpus	As collocate	In No. of texts	Log-likelihood value
1	order	5338	14	3	90.6091
2	court	7930	13	3	72.1006
3	s	595	3	2	23.2057
4	condition	827	3	1	21.2476
5	ca	218	2	1	17.8277
6	mandate	238	2	2	17.5159
7	agreement	4935	4	4	16.6457
8	act	6149	4	4	14.9791
9	employees	792	2	1	12.7243
10	share	915	2	1	12.1497
11	scheme	1050	2	1	11.6194
12	resolution	1180	2	1	11.1536
13	provisions	1385	2	2	10.5215
14	sale	1507	2	2	10.2022
15	application	1566	2	1	10.0588
16	land	2774	2	1	7.8662
17	section	3158	2	2	7.369
18	contract	3356	2	2	7.137
19	p	9483	2	1	3.4674

[Show next 50 values][Show previous 50 values][Show first 50 values]

BNCweb (CQP-edition) © 1996-2007 HTTP/1.1 200 OK Date: Tue, 15 Jan 2013 09:55:32 GMT Server: Apache/2.2.22 (Unix) mod_ssl/2.2.22 OpenSSL/0.9.8j DAV/2 PHP/5.3.10 Phusion_Passenger/3.0.7 mod_perl/2.0.4 Perl/v5.8.8 Content-Length: 0 Keep-Alive: timeout=5, max=100 Connection: Keep-Alive Content-Type: text/plain

Figure 3b: Collocations with *in pursuance of*



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www.tekstlab.uio.no/bnc/dlogs.pl?qname=ilos_1358246202&queryID=ilos_1358246202&dbname=1358246222_ilos_col&numOfSolutions=56&begin=0&theData=[wor

Google

Collocation parameters:

Information:	collocations	Statistics:	Log-likelihood
Collocation window span:	1 Right - 5 Right	Basis:	subcorpus
Freq(node, collocate) at least:	2	Freq(collocate) at least:	2
Filter results by:	Specific collocate:	and/or tag: any noun	Submit changed parameters Go!

There are 206 different types in your collocation database for "[word = "in" %c] [word = "pursuance" %c] [word = "of" %c]". (Your query "in pursuance of" restricted to "*Spoken or Written: Written* and *Publication date: 1975-1984* or *1985-1993* and *David Lee's Genre Classification: W:ac:polit_law_edu* or *W:non_ac:polit_law_edu*" returned 56 matches in 27 different texts)

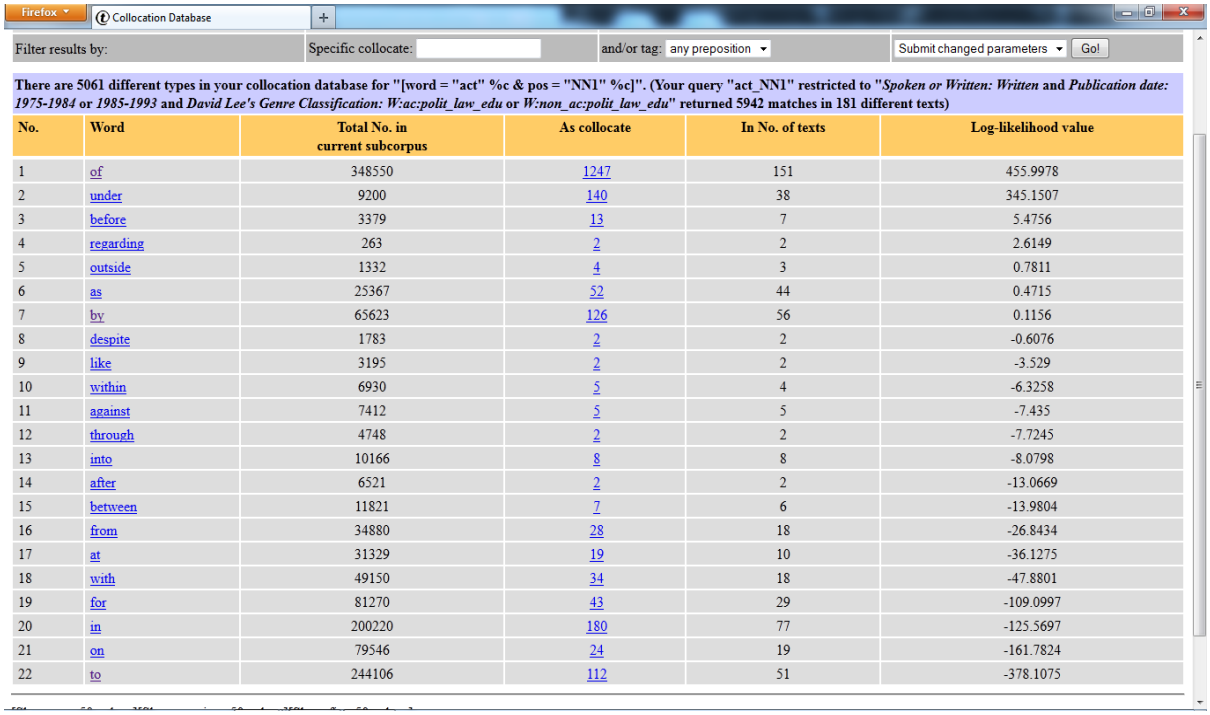
No.	Word	Total No. in current subcorpus	As collocate	In No. of texts	Log-likelihood value
1	suicide	155	6	2	74.9828
2	pact	483	7	2	73.714
3	contract	3356	8	6	55.4609
4	possession	823	4	2	33.3061
5	order	5338	6	3	32.6691
6	ownership	669	3	2	24.5086
7	scheme	1050	3	1	21.804
8	agreement	4935	4	4	19.2024
9	powers	2012	3	1	17.9606
10	request	641	2	2	14.8838
11	employees	792	2	1	14.0428
12	court	7930	3	2	10.0608
13	goods	2709	2	2	9.22

[Show next 50 values][Show previous 50 values][Show first 50 values]

BNCweb (CQP-edition) © 1996-2007 HTTP/1.1 200 OK Date: Tue, 15 Jan 2013 10:38:25 GMT Server: Apache/2.2.22 (Unix) mod_ssl/2.2.22 OpenSSL/0.9.8j DAV/2 PHP/5.3.10 Phusion_Passenger/3.0.7 mod_perl/2.0.4 Perl/v5.8.8 Content-Length: 0 Keep-Alive: timeout=5, max=100 Connection: Keep-Alive Content-Type: text/plain

For comparison, the collocation patterns for the noun *act* in English have been checked with the help of the BNC. Figure 4 below demonstrates the following: with the restriction "2 left, 1 right" given to the window span (i.e. the preceding words are of interest), and the restriction "any preposition" given to the tag, the prepositions occurring most frequently before the noun *act* are: *of*, *under*, *in* and *by* (cf. the column "As collocate"). The preposition *to* also shows a fairly high collocational frequency with the noun *act*. But if it is assumed that *to* appears in the collocation list also, being part of expressions such as *according to*, *with regard to*, *pursuant to*, etc., it becomes obvious that the simple prepositions *of*, *under*, *in* and *by* are much more frequent premodifiers of *act* than complex prepositions.

Figure 4: Collocations with the noun *act*



Filter results by: Specific collocate: and/or tag: any preposition Submit changed parameters Go!

There are 5061 different types in your collocation database for "[word = "act" %c & pos = "NN1" %c]". (Your query "act_NN1" restricted to "*Spoken or Written: Written* and *Publication date: 1975-1984* or *1985-1993* and *David Lee's Genre Classification: W:ac:polit_law_edu* or *W:non_ac:polit_law_edu*" returned 5942 matches in 181 different texts)

No.	Word	Total No. in current subcorpus	As collocate	In No. of texts	Log-likelihood value
1	of	348550	1247	151	455.9978
2	under	9200	140	38	345.1507
3	before	3379	13	7	5.4756
4	regarding	263	2	2	2.6149
5	outside	1332	4	3	0.7811
6	as	25367	52	44	0.4715
7	by	65623	126	56	0.1156
8	despite	1783	2	2	-0.6076
9	like	3195	2	2	-3.529
10	within	6930	5	4	-6.3258
11	against	7412	5	5	-7.435
12	through	4748	2	2	-7.7245
13	into	10166	8	8	-8.0798
14	after	6521	2	2	-13.0669
15	between	11821	7	6	-13.9804
16	from	34880	28	18	-26.8434
17	at	31329	19	10	-36.1275
18	with	49150	34	18	-47.8801
19	for	81270	43	29	-109.0997
20	in	200220	180	77	-125.5697
21	on	79546	24	19	-161.7824
22	to	244106	112	51	-378.1075

Based on the evidence provided in the preceding, the following conclusion can be drawn:

- *i medhold av* has a very restricted use, in that it is limited to legal texts;
- it collocates mainly with *lov* ("act"), or other similar nouns;
- examples 1- 6 from the ENPC showed that *i medhold av* is almost synonymous with (though much less frequent than) *i henhold til* and with respect to frequency and collocation pattern, corresponds mostly to *under* in English.
- *in pursuance of* / *pursuant to* are considerably less frequent in legal English than *i medhold av* and *i henhold til* in legal Norwegian, but correspond to them with respect to form and style, which may be one of the reasons why these renderings are found in translations from English into Norwegian.

B. *i samsvar med*

This complex preposition is, according to Tables A, B and C, the most frequent in Norwegian legal texts. The corresponding English items from the examined texts are mentioned in section 4.2.1. These are: *in accordance with*, *according to* and *under*. The Norwegian-English Dictionary Online gives the following definition*:*

være i samsvar med
be in accordance with, be in step with, be in keeping with

A search for *i samsvar med* in the ENPC, with the given restrictions: Norwegian = original, English = translation, genre = non-fiction, resulted in two hits:

7. *Revisjonen skal kontrollere at den økonomiske forvaltning foregår **i samsvar med** gjeldende bestemmelser og vedtak, og foreta en systematisk vurdering av bruk og forvaltning av de kommunale midler med utgangspunkt i oppgaver, ressursbruk og oppnådde resultater.*
   (KL1)

   *The audit shall check that the financial management is being conducted **in accordance with** current provisions and resolutions, and undertake a systematic assessment of the application and management of local authority funds on the basis of functions, use of resources and results achieved.*
   (KL1T)

8. *Gjeldende vedtekter om interkommunalt samarbeid må innen to år etter denne lovs ikrafttreden bringes **i samsvar med** de krav som er fastsatt i lovens ¶ 27 nr. 2.*
   (KL1)

   *Current Articles relating to the joint discharge of municipal and county municipal functions must within two years after the commencement of the present Act be brought **into conformity with** the requirements laid down in ¶ 27(2) of the Act.*
   (KL1T)

Both sentences represent translation from Norwegian into English (text KL1/ KL1T is the only example of Norwegian-English legal translation in the ENPC). Example (10) reveals an interesting rendering: *into conformity with*. Semantically, *i samsvar med* is different in (9) and in (10). In (9) it is used in a nominative context, while in (10) it occurs in an accusative context, which in English is conveyed by the preposition *into* instead of *in*. A search for collocations in the Oslo Corpus of Tagged Norwegian Texts reveals that the most frequent words following *i samsvar med* are: *paragraf* (including the symbols "#" or "§"), *regelverk*, *artikkel*, *avtale*, *bestemmelse*, *forskrift*, *lov*, *punkt*. Thus, the use of this preposition is very similar to the use of the preposition *i medhold av*.

C. *i henhold til*

The Norwegian-English Dictionary Online reads:

i henhold til
(ifølge) pursuant to, under, according to, in accordance with, in conformity with ● i henhold til straffeloven av 1902 pursuant to the Criminal Justice Act of 1902 ● i henhold til §12 skal begge parter møte under section 12 both parties shall attend

There is one example of the prepositional phrase *i henhold til* in the ENPC:

9. *All resultatinformasjon som kreves **i henhold til** budsjett og tildelingsbrev fra ulike departementer, sendes både til Kirke-, utdannings- og forskningsdepartementet og det angjeldende departement.*
   (NFRV1)

   *All information concerning results that is required **in compliance with** the budget and grant procedures of various ministries shall be sent to both the Ministry of Education, Research and Church Affairs and the ministry concerned.*
   (NFRV1T)

Table 3.3 in section 4.2.1 demonstrates the following English renderings: *pursuant to, under, in the framework of, within the meaning of, in compliance with*. The list of collocations with *i henhold til* provided by the Oslo Corpus of Tagged Norwegian Texts reveals that the following nouns follow this complex preposition most frequently: *paragraf, lov, lovbestemmelse, avtale, bestemmelse, forskrift*. An examination of the collocations shows that *i henhold til* seems to play the same semantic role as *i medhold av* and *i samsvar med*. The three complex prepositions are peculiar to legal contexts and are used as near-synonyms. Of these three, *i medhold av* is most frequent, while *i samsvar med* and *i henhold til* have almost the same, and also a fairly high, frequency.

4.2.4 Complex prepositions and plain language

This section will illustrate an example of a Norwegian complex preposition being described as an inappropriate filler in many formal or legal contexts. The following remark is found on the Norwegian website for the plain language campaign[13]:

> *Et annet vagt uttrykk er «i forhold til». Hvis du ikke er ute etter å sammenligne ting, bør du unngå dette uttrykket. Bruk heller en vanlig preposisjon, f.eks. i, med, om, på, til, for, eller uttrykk som «når det gjelder» eller «med tanke på».*

[13] /http://www.sprakrad.no/nb-NO/Klarsprak/sprakhjelp/Skriverad/Sjekkliste-for-skribenter/vage-ord/

> Eng.: “Another vague expression is *i forhold til* (‘in relation to’). In cases where you do not intend to compare things, you should avoid using this expression. Use a simple preposition instead, e.g. *in*, *with*, *about*, *on*, *to*, *for*, or expressions like *as far as … is concerned* or *taking into consideration*”.

The web-page then offers a number of examples that illustrate this point; see Table 5 below. In order to find the most proper translation of the phrase *i forhold til* the Norwegian-English Dictionary Online was consulted:

i forhold til
in proportion to, proportionately to, according to, on, for ● prisen har gått opp med 100 kroner i forhold til i fjor the price has gone up by 100 kroner on last year ● han er stor i forhold til alderen he's big for his age

There is no clear equivalent in English. This fact itself points towards the ambiguous and too imprecise meaning of this prepositional phrase. Note that the rendering *according to*, which earlier in this section has been observed as one of the most frequent renderings of *i samsvar med*, *i medhold av* and *i henhold til*, now appears among the suggested translations for *i forhold til*. A search for *i forhold til* in the ENPC reveals various renderings: *as compared to, in relation to, compared with, in proportion to, (proportional to), compared to, about, with regards to, with respect to.* Also, there are several instances where the phrase *i forhold til* has no rendering; that is, the English version is paraphrased so that it does not contain a corresponding prepositional phrase. An example of a paraphrase is:

> Norw.: *de sentrale signalene og symbolene som skaper en egen identitet* ***i forhold til*** *foreldregenerasjon*
>
> Eng.: *the essential signals and symbols which create a new identity* ***different from*** *the preceeding generation's*

The discussion made by the Norwegian plain language proponents below illustrates how the nuances make a difference in meaning. (The original Norwegian version from the *Klarspråk*’s web-page is attached in the Appendix.)

Table 5: The discussion of several plain-language alternatives for the Norwegian complex preposition *i forhold til*

Example: Norw.: *Politiet har et ansvar i forhold til å oppklare saken.* Eng.: The police have a responsibility ***about/with regards to*** closing the case.	Comment: Are the police trying to disclaim (repudiate) the responsibility? (One should say *ansvar for* ("the responsibility for"), not *ansvar i forhold til* ("responsibility in relation to"). The web page suggests making the following reformulation: *Politiet har et ansvar for å oppklare saken.* Eng.: *The police have a responsibility to close the case.*
Example: Norw.: *Det pågår en debatt i forhold til bekjempelse av kriminaliteten.* Eng.: *A debate **with regards to / in relation to** the fight against crime is being held.*	Comment: How unclear can a debate be? It is indeed *debatt om* ("a debate about"), not *debatt i forhold til* ("with regards to")? The following version is suggested: *Det pågår en debatt om bekjempelse av kriminaliteten.* Eng.: *A debate **on** the fight against crime is being held.*
Example: Norw.: *Norske holdninger og posisjoner skal fremmes i forhold til våre forhandlinger med andre land.* *Eng.: Norwegian attitudes and positions will be promoted **in relation to** our negotiations with other countries.*	Comment: The case will obviously be discussed exactly during the negotiations, not in relation to the negotiations. (Saken skal vel tas opp *i* selve forhandlingene, ikke «i forhold til» dem). The following version is suggested: *Norske holdninger og posisjoner skal fremmes i våre forhandlinger med andre land.* *Norw.: Norwegian attitudes and positions will be promoted **in** our negotiations with other countries.*

Of course, the comments presented in Table 5 may seem too exaggerated. Most people are not so critical of particular words, and a perfectly plain language would probably never be fully incorporated into formal communication. The preposition *i forhold til* does not occur in any of the documents which have been read closely in this study. The search for *i forhold til* in the LBK produced the following normalized frequencies per one million words in non-fiction

(legal) vs. fiction: 447.2 vs. 26.3. Such a difference is outstanding. Indeed, it seems to be a prominent legal discourse item.

4.2.5 Complex prepositions in legal translation: summary

The analysis so far has been carried out with respect to two aspects: first, the legal language items have been categorized according to their nature and function; second, a discussion of and evidence for the assumption that certain complex prepositions constitute a considerable part of legal vocabulary has been performed. In the following, I give a brief summary of what has been done in the first part of the analysis, an assessment of the methodology and an evaluation of the results.

Taking the examples above as support for my claim, I would argue that most of the complex prepositions discussed in the sections above are often redundant, and, perhaps, even unnecessary; they are often overused in legal discourse. Only three texts are investigated in this study. Nearly 30 examples of Norwegian-English pairs of complex prepositions (Tables 3.1-3.3) have been looked at, and several of them have been examined more closely. However, it is possible that the renderings found in the three texts are confined to these three texts only. Therefore, *the Norwegian-English Dictionary of Legal Language* and the Norwegian-English Dictionary Online were consulted to compare the renderings found in the examined texts to the dictionary translations. In addition, a few translation examples were found in the ENPC. The study showed that translation of complex prepositions, which are most prominent in the English legal sub-genre, does not follow a fixed pattern. Tables 3.1-3.3 show that English makes use of simple prepositions, favouring the plain language norms, more often than Norwegian. The simple prepositions *under* (5 times), *by* and *for* with the meaning "pursuant to" or "in accordance with", were found in the English texts. In Norwegian, one instance of *etter*, meaning "in accordance with", and one instance of *ved*, meaning "in connection with", were found.

In technical translation, there is an important division between technical terms and descriptive terms. There is a common belief among technical translators that technical terms in fact *should* be used rather than descriptive terms, as the meaning conveyed by a technical term seems to be more precise. In practice, this is often a disadvantage as far as the communicative purpose is concerned (Newmark 1987: 154). As the corpus research presented in section

4.2.3 showed, an abundance of certain complex prepositions seems to be the norm in Norwegian legal texts. The complex prepositions *i medhold av*, *i samsvar med* and *i henhold til* almost exclusively belong to legal contexts and enhance the overall effect of formality. With certain restrictions,[14] these three items can be referred to as technical terms. The simple prepositions *etter* and *ved*, which have been observed to function as substitutes for these complex prepositions, can be referred to as descriptive terms. Documents 1Eo/1Nt and 3Eo/3Nt represent translation from English into Norwegian. In these documents several instances of the rendering of a "technical" complex preposition into a "descriptive" simple preposition have been found. This might be an example of the conscious or subconscious tendency of a translator to search for a technical word in the target language whenever possible, without regard to the stylistic character of the word used in the source language.

[14] Complex prepositions are not usually considered as technical terms in linguistics, as they are not lexical, but function words. Still, for this particular example, and based on the corpus evidence presented in section 4.2.4, it may be claimed that some complex prepositions are part of legal vocabulary.

4.3 A discussion of the formality level of several Norwegian-English verb pairs

Tables A, B and C reveal examples where a word is categorized as neutral in one language (English or Norwegian), but as being formal in the counterpart language. Such non-correspondences are observed both ways: words having neutral connotations in English correspond to words having explicit legal connotations in Norwegian, and the other way around. Such non-correspondence is shown by some nouns, e.g. *opinion* (rather neutral) vs. *uttalelse* (rather formal); some adverbs, e.g. *concurrently* (rather formal) vs. *parallelt* (rather neutral) or some verbal premodifiers, e.g. *said* (formal) vs. *nevnt* (rather neutral). Very frequently, this type of non-correspondence is shown by verbs. Note that verbs generally are one of the least frequent word classes in legal texts. Further, verbs that occur in legal language have rather remarkable semantic and stylistic qualities; there is a number of particular lexical sets to which the verbs of legal discourse belong. Consider some of the verbs found in *Judgment of the Court*: *provide*, *declare*, *concern*, *refer to*, *adapt*, *represent*, *give*, *seek*, etc. Most of them are verbs used very restrictively, often in a formal setting. Plain language work at word level often seems to focus on terminology, which in terms of word class is usually limited to nouns. In the previous sections it has been shown that complex prepositions as a distinct word class (or a subclass of the word class "prepositions") alone represent a significant group of hallmarks of legal language. In the following discussion, an attempt will be made to see to what extent verbs, as a distinct word class, enhance the overall formality and complexity of legal language. Several Norwegian-English verb pairs will be discussed in terms of their levels of formality.

4.3.1 Variety of word meanings: synonymy in legal contexts

Every lexical word has a particular meaning. Meaning is "the thing or idea that a word, expression, or sign represents".[15] Meaning is what a word refers to in the real or imaginary world. The same word often has several different references, dependent on the context where this word appears; but also, the same, or nearly same, meaning can be conveyed in different ways, by different words or lexical units. Moreover, the same word or the same lexical item may have two or more meanings. Most words in most languages have synonyms. Depending on the situation, we prefer certain words over their synonyms. At the same time, it is correct

[15] *Longman Dictionary of Contemporary English* (2003).

to claim that every lexical item has one and only one meaning in the particular context in which it occurs. Therefore, in the following the term "synonym" is used in the sense "near-synonym", taking into consideration the fact that perfect synonyms hardly exist. When it comes to translation, it is a challenge to convey this interplay between word, reference and context. In legal translation, as in most technical translations, the use of synonymy is very restricted. An existing term cannot be substituted with a synonymous word. Once an equivalent has been selected, the same term must be repeated though the rest of the text, in order to avoid confusion. If a legal translation has the status of an authenticated text, "the language therein has the status of a precedent" (Šarčević 1997: 118). Verbs and prepositions are among those few word classes where, to a certain degree, a so-called free translation approach can be applied. Among the reasons of why some creativity may be needed in legal translation, the following have been pointed out: transfer of the sense of the original as precisely as possible, respect for the genius of the target language, and the intention of achievement of certain legal effects (ibid. 119). I would like to add a fourth reason, which involves plain language considerations: Where possible, a translator's creativity can be used to make a legal text more comprehensive for a lay public.

The study of meanings is central to the field of semantics. There are different views on the classification of the notion "meaning" into several types. The most important division is two-fold: descriptive and non-descriptive kinds of meaning (Cruse 2000: 46). The former is the most basic type of meaning. It is also referred to as "ideational", "referential", "logical" or "propositional" (ibid.) Descriptive meaning or descriptive information is identified in earlier studies by Lyons (1984: 50): "it can be explicitly asserted or denied and, in the most favourable instances at least, it can be objectively verified". This type of meaning has to do with the truth or falseness of what is said. All other types of meaning are of the non-descriptive type, and among them are expressive meaning and evoked meaning. The former has to do with emotional state, which is normally not relevant in the case of legal documents. The latter, on the other hand, is relevant for this study. Evoked meaning has to do with the subject of communication. Evoked meaning appears for example in connection with a particular dialect (related to geography, age or social class) or in connection with a particular register. The expressive meaning is hidden in the individual character of a particular word, chosen out of a number of descriptive synonyms. Thus, synonyms are words with more or less the same descriptive meaning. The non-descriptive meaning(s) expresses those slight differences that make a competent language user make appropriate choices and, for a

particular context, choose the most appropriate word from a range of synonyms. In this section, the focus is put on the expressive meaning of words peculiar to legal language.

To illustrate very briefly the difference between hyponymous and synonymous relationships between verbs, an example from Lyons (1984: 292) will be used. "Hyponym" is a term describing an "asymmetrical" relation between words, as opposed to the "symmetrical" relation described by the term "synonyms" (ibid.). For verbs, there are general words such as *get* which have a number of hyponyms appropriate for more specified contexts, e.g. *buy*, *borrow*, *win*, *catch*, *find*, *grasp*, etc. These words have an asymmetrical relation with the superordinate verb *to get*. However, these verbs are not synonymous. The verb *to obtain* would almost always, but to varying degrees, be synonymous with the verb *to get*. These two verbs differ in their level of formality. Thus, it is synonymous relationships that are of interest in my study.

The process of assessment of the expressive meaning of words will involve stylistic scales. Following Newmark (1987: 14), three types of stylistic scales can be applied to assign a piece of language to a particular style. First, there is "the scale of formality":

Taboo – slang – colloquial – informal – neutral – formal – official – officialese.

The part of the stylistic scale relevant for this study stretches from the point "neutral" to "officialese". The types on the opposite side from neutral, i.e. informal, colloquial, slang and taboo, are not represented by the language in the documents in question.

Next, there is "the scale of generality or difficulty":

Simple – popular – neutral – educated - technical – opaquely technical.

As for this scale, the four categories from 'neutral' to 'opaquely technical' may be relevant for the words in Tables A, B and C. "Neutral", in terms of difficulty, covers a type of language where basic vocabulary only is used, while 'opaquely technical' covers a type of language that is comprehensible only to an expert.

The third scale is called "the scale of emotional tone":

Understatement ('cold') – factual ('cool') – warm – intense.

The language of legal documents is supposed to keep a serious tone, which corresponds to the scale points ‘factual’ and ‘understatement’.

Work on synonymy in translation requires consideration of a text with respect to the referential level. A translator must find out what is the intention of the source text (ST), what the text is about, and so on. As a preliminary task before translation of any technical text, Newmark (1987: 21) recommends answering the following questions: What is the register of language in the text? What is the tone? Are there any words or passages that are particularly difficult?

4.3.2 An illustration of deviations according to the level of formality

In this section, several verb pairs will be compared in terms of their stylistic features.

D. ***give* / *avsi***

Eng.: (1a) *The Court […]* ***gives*** *the following judgment*

Norw.: (1b) *[…]* ***avsier*** *domstolen […] slik dom*

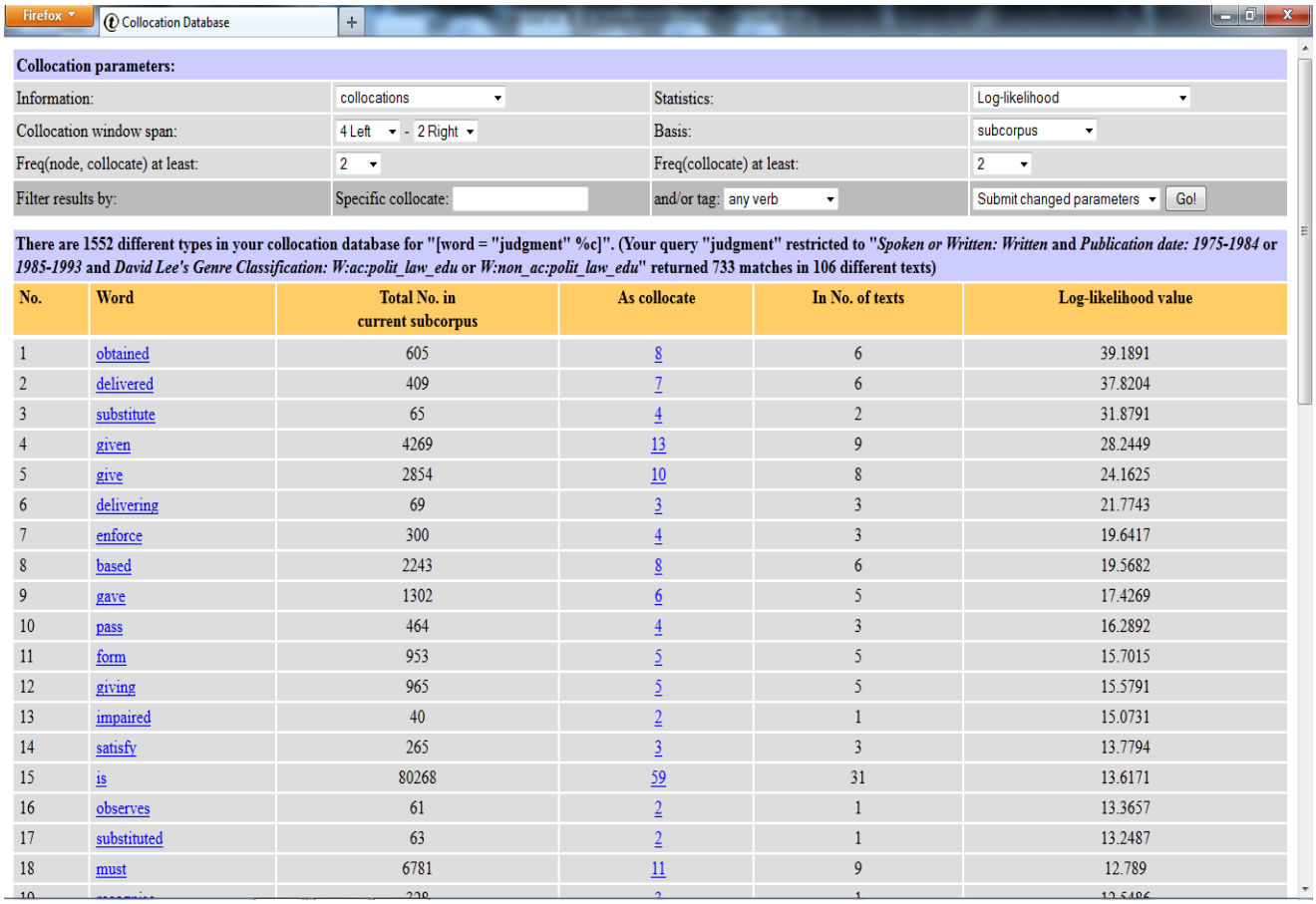
The word *avsi* from the Norwegian example means “pronounce”, “deliver”, “give”, “render” in cases when it modifies the noun *dom* (“judgment”), as stated in *the Norwegian-English Legal Dictionary*. The Norwegian-English Dictionary Online, which covers the whole variety of possible meanings, both of an every-day sense and a specialist sense, gives the following definition:

avsi verb
1 (fremsi) pass, pronounce, hand down, make (decision), return
2 (si fra seg) withdraw from
avsi dom
deliver judgement, pass judgement, pronounce judgement, pass sentence (i kriminalsak)
avsi kjennelse
(jus) give a verdict (lagrett), make a court order (voldgift)
avsi straffedom
(jus) pass sentence

The definitions and examples above reveal the particular legal character of the Norwegian word *avsi*. Very likely, on the scale of formality the word would be placed far towards the formal end of the scale labelled ‘officialese’. The word used in the corresponding document in

English is *to give*, which is, in fact, one of the most common and neutral verbs in English. In terms of paradigmatic relationships (i.e. synonymy and hyponymy), *give* is a superordinate word, covering a wide range of meanings denoting the action of giving. With the help of the BNC, we can look at the list of verbs with which the noun *judgment* happens to collocate. Among such verbs are *deliver* and *pass*. These particular verbs are listed by the Norwegian-English Dictionary Online (cf. the table above). With reference to the formality scale, *deliver* and *pass* are likely to be placed close to the end of the scale representing the official style, while the word *give* is likely to be placed in the middle, at 'neutral'. However, the overview of verbs that collocate with the word *judgment*, obtained from the BNC (see Figure 5 below), shows that the verb *give* forms a collocation with *judgment* much more often than the verbs *deliver* and *pass*. The column "As collocate" shows that the forms *given*, *give*, *gave* and *giving* collocate with *judgment* 34 times (13+10+6+5). The verb *pass* collocates with *judgment* 4 times, while the word *deliver* collocates with *judgment* 10 times (7+3).

Figure 5: Screen short of the collocations with the noun *judgment*.



Collocation Database

Collocation parameters:

Information:	collocations	Statistics:	Log-likelihood
Collocation window span:	4 Left - 2 Right	Basis:	subcorpus
Freq(node, collocate) at least:	2	Freq(collocate) at least:	2
Filter results by:	Specific collocate:	and/or tag: any verb	Submit changed parameters Go!

There are 1552 different types in your collocation database for "[word = "judgment" %c]". (Your query "judgment" restricted to "*Spoken or Written: Written* and *Publication date: 1975-1984* or *1985-1993* and *David Lee's Genre Classification: W:ac:polit_law_edu* or *W:non_ac:polit_law_edu*" returned 733 matches in 106 different texts)

No.	Word	Total No. in current subcorpus	As collocate	In No. of texts	Log-likelihood value
1	obtained	605	8	6	39.1891
2	delivered	409	7	6	37.8204
3	substitute	65	4	2	31.8791
4	given	4269	13	9	28.2449
5	give	2854	10	8	24.1625
6	delivering	69	3	3	21.7743
7	enforce	300	4	3	19.6417
8	based	2243	8	6	19.5682
9	gave	1302	6	5	17.4269
10	pass	464	4	3	16.2892
11	form	953	5	5	15.7015
12	giving	965	5	5	15.5791
13	impaired	40	2	1	15.0731
14	satisfy	265	3	3	13.7794
15	is	80268	59	31	13.6171
16	observes	61	2	1	13.3657
17	substituted	63	2	1	13.2487
18	must	6781	11	9	12.789

E. ***make (a request) / fremme (en anmodning)***

Eng.: (2a) *Borgarting lagmannsrett ("Court of Appeal")* ***made*** *a request for*
Norw.: (2b) ***fremmet*** *Borgarting lagmannsrett en anmodning om*

For the verb pair *to make* and *å fremme*, the English verb has a neutral character, while the Norwegian verb has a fairly formal character. *Make* is, similarly to the verb *give* discussed above, a superordinate verb that has various hyponyms for more precise nuances of the action of *making*. This verb occurs commonly in such fixed expressions as *make a mistake*, *make an appointment*, *make an effort*, etc., or more formal variants such as *make a statement*, *make a decision*, *make a judgment*, etc. The verb *to make* in itself does not have any outstanding stylistic connotations; it is neutral both with respect to the scale of formality and to the scale of difficulty. The Norwegian verb *å fremme*, on the contrary, has specific connotations. The word is not common in everyday conversation. A search for this word in the Lexicographic Corpus for Norwegian Bokmål verifies this statement: A search for *å fremme* in the sub-corpus of fiction texts shows that the normalized frequency per one million words is 1.9%, while a search for *å fremme* in the sub-corpus of non-fiction (legal) texts shows that the normalized frequency per one million words is 47.3%.

The verb *å fremme* is polysemous, i.e. has several meanings. The most common set of meanings includes the renderings "promote" or "encourage". Another set of meanings, also very common, includes the renderings "present", "produce" or "submit". In specific legal contexts the verb may take the meaning "proceed with". On the scale of formality, this word is likely to be placed at 'formal', while on the scale of difficulty it is likely to be placed on 'educated' or, perhaps, 'technical'.

The collocation *å fremme en anmodning* occurs, in fact, very seldom. Neither the Oslo Corpus of Tagged Norwegian Texts nor the Lexicographic Corpus for Norwegian Bokmål gave any hits for this word combination (nor did the combination *fremme + anmodning*). In the preceding position, the word *anmodning* collocated mostly with prepositions, e.g. *etter*, *med*, *på*, which has been checked with the help of the function "the list of collocations" in the Lexicographic Corpus for Norwegian Bokmål. It may be that, the choice of *å fremme* for the Norwegian version illustrates an attempt to employ a word-by-word equivalent, thus preserving the *form* of the original item as well as the meaning. To sum up, the following can be stated regarding the phrases *å fremme en anmodning* and *to make a request*:

- they are similar with respect to form (i.e. the same word classes are used in English and in Norwegian);
- they are rather similar with respect to their level of formality (i.e. both phrases are peculiar to formal settings, though the Norwegian one is of a far more restricted use than the English one), however;
- a striking stylistic difference between these two phrases is observed with respect to their level of difficulty. On the scale of difficulty, the English alternative is likely to be placed at 'educated', while the Norwegian one is likely to be placed at 'technical', because of the employment of the register-specific verb *å fremme*.

F. *derogate from* / *fravike*

Eng.: (4a) *Member States may, under certain conditions,* ***derogate from*** *the provisions concerning minimum rates of pay*
Norw.: (4b) *[…] kan medlemsstatene på vise vilkår* ***fravike*** *bestemmelsene om minstelønn*

The two verbs in question have a formal character. The Norwegian verb *fravike* means "depart from", "deviate from" or "abandon"; the latter meaning is particularly restricted to a legal setting. The English verb *derogate* means "to repeal or abrogate in part (a law, sentence, etc.); to destroy or impair the force and effect of; to lessen the extent or authority of",[16] which is in fact a very register-specific meaning. A striking distinction between the two verbs lies in the frequency of their usage in English vs. Norwegian. According to the Lexicographic Corpus for Norwegian Bokmål, the verb *fravike* has the normalized frequency of 12.7% per one million words in the Norwegian non-fiction (legal) texts, and of 0.21% per one million words in the Norwegian fiction texts. According to the BNC, the verb *derogate from* has the normalized frequency of 1.1% per one million words in the English non-fiction (legal) texts, and of 0.06%[17] per one million words in the English fiction texts. An interesting example involving the verb *fravike* was found in the LBK:

[16] http://www.oed.com/.
[17] A search for the prepositional verb *derogate from* gave no matches in the sub-corpus of legal English texts, while a search for a single verb *derogate* resulted in one match.

*Det er grunn til å peke på at artikkel 7 er en av de bestemmelsene i EMK som det ikke er adgang for statene til å **fravike (derogere fra)** i krigssituasjoner eller under unntakstilstand.32 Det samme gjelder artikkel 15 i SP* . (AV06NyGr01.284)

The verb phrase *derogere fra* occurs 4 times in the whole LBK; all four instances are found in the same source.

The types of English written sources containing usages of *derogate from* are very homogeneous, involving academic prose of the genre "law" only; this conclusion may be drawn from the results of the search for *derogate from* in the entire BNC. The types of sources containing usages of *fravike* are not so homogeneous: a search for this item in the entire LBK showed that it occurs in various sub-genres: law texts, newspapers and also several fiction texts; hence it has a considerably wider range of use than the English variant *derogate from*. Based on the above discussion, the formality status of the two verbs in question may be stated as follows:

- on the scale of formality, *fravike* is likely to be placed at some point between 'formal' and 'official', while *degorate* is likely to be placed at or close to 'officialese'.

G. said / nevnt

Eng.: (4a) *according to Article 6 (1) of the **said** Convention*
Norw.: (4b) *i samsvar med artikkel 6 nr. 1 i **nevnte** konvensjon*

The words *said* was mentioned earlier, described as an example of a "common word with uncommon meaning" (cf. section 4.1.1). As a verb, the word *say* is an everyday neutral word, being, in addition, a superordinate word for various verbs denoting the act of speaking, e.g. *tell*, *whisper*, *pronounce*, *utter*, *yell*, etc. In examples 4a and 4b above, this word functions as an adjective. The general meaning of the verb *to say* (with its most common meaning "to utter or pronounce"[18]) and the meaning of the adjective *said* meaning "named or mentioned before"[19] are related and the words *name* and *mention* are hyponyms of *say*. When it comes to the stylistic colouring of *said*, its use as an adjective is exclusively formal and predominates in legal discourse.

[18] http://www.oed.com/
[19] *ibid.*

For the above verb pairs D-G, examples D and E illustrate a stylistic non-correspondence where the Norwegian variant is strikingly more formal than the English variant, while examples F and G illustrate the stylistic non-correspondence with the opposite relationship, i.e. the Norwegian variant appears to be closer to neutral than the English variant. Such kinds of non-equivalence can often be described as over- and under-translating (Newmark 1987: 34). The Norwegian verbs *avsi* illustrates a clear example of under-translating, as it is strictly register-specific in comparison to the English verb *give*.

An analysis of this kind might be of a special interest for the practice aimed at achieving plain language. Of course, a reservation must be made that the attributions “formal” and “legal” may differ significantly in practice: While the language of general formal settings often allows the modification into a more plain type, certain sub-genres of legal communication do not allow any attempts at being made easier, as that may entail a distortion in the communication of the legal content.

CHAPTER 5 Conclusion

5.1 Summary and evaluation of method and findings

The importance of this kind of study has been indicated through a number of theoretical and practical illustrations throughout the thesis. Besides the importance of this piece of research for the field of stylistics and semantics, the investigation of language varieties may be practically useful for other language studies also, for example translation or foreign language acquisition, as well as for other sciences not directly related to language, e.g. sociology, anthropology, psychology, etc.

Legal translation has been given significant attention in recent years. Particularly the work and practices of translators for the European Union have been investigated and reported on. Still, the Norwegian language has not yet been studied properly as a language that, in the frame of the EEA/EFTA cooperation, has "equivalent authenticity", like the 29 other languages of the unity.[20] Thus, there is a need for more studies comparing Norwegian and English in terms of various settings in which international cooperation involves these two languages. Over the few past decades, a number of concrete linguistic challenges within the science of legal linguistics has been identified and investigated. This was the background for my study. In the process of translation, one inevitably comes across the fact that a certain language variety imposes restrictions; this requires insight into stylistics. Thus, the angle I attempted to take in this study was to investigate if and how the degree of formality, which is inherent in various lexical items of legal vocabulary, is different in English and Norwegian legal texts.

This study was based on a data-base, composed of 6 documents, i.e. 3 originals and 3 translations. Close reading of these documents showed that the two language versions are very similar. Only really thorough scrutiny of the texts makes non-correspondences come out. This conforms to the principle that "the more important the language of a text, the more closely it should be translated" (Newmark 1991: 1).

The methodology applied in this study combined introspection, corpus linguistics and dictionary references. I am fully aware of potential deficiencies in the conducted analysis: introspection has played a considerable role, which is, of course, open to criticism. The

[20] The European Economic Area (EEA) unites the 27 EU Member States and the three EEA EFTA States (Iceland, Liechtenstein, and Norway; cp. http://www.efta.int/eea.aspx).

classification presented in Tables A, B and C is subjective. Nevertheless, what matters is the examination of the *parallels*, i.e. the comparison of the Norwegian and English counterparts, in terms of any degree of deviation related to style and semantics, on the lexical level. Lexical pairs in Norwegian and English, showing legal or formal characteristics, were collected in Tables A, B and C. For quantitative purposes, these tables illustrate the overall density of legal and formal terms in the given texts in English and in Norwegian. For qualitative purposes, several lexical items were chosen for a more in-depth investigation.

Within the study of semantics, synonymy and polysemy have been focused on. These two kinds of relationship between words were considered with respect to how the presence of a specifically legal context decides what meaning a word takes. Being "natural" reasons for lexical ambiguity, synonymy and polysemy represent challenges for translation in general, and particular challenges for legal translation. Several concrete examples and illustrations have been provided on this problem.

As a result, the following findings can be summed up.

For complex prepositions, it has been observed that they appear very frequently in both English and Norwegian legal language. A contrastive examination involving fiction vs. non-fiction (legal) texts in Norwegian and English sub-corpora has shown that:

- Complex prepositions appear to be markedly more common in non-fiction (legal) texts than in fiction texts. This is the case for both Norwegian and English;
- However, complex prepositions appear to be even more frequent in Norwegian legal texts than in English legal texts;
- Translational correspondences between English and Norwegian complex prepositions fluctuate greatly;
- English tends to make use of certain complex prepositions more consistently than Norwegian.

For corresponding verb pairs, it has been observed that:

- The stylistic features attributed to English-Norwegian verb pairs, do not always correspond in translation;

- While a translation of a verbal element may show a one-to-one reproduction of form, and of the propositional meaning, the items in question may appear to show a striking non-correspondence in terms of their stylistic features;

What has been pointed out above matters for the assessment of the overall level of formality and complexity of legal language. As has been discussed in the theoretical part of this thesis, a translator's creativity can, where possible, be used to make the often technical and complicated language of legal texts more comprehensible for a lay public. Complex prepositions and verbs have been identified as more or less "free" parts of legal discourse, where considerations of plain language should be applied more extensively.

5.2 Suggestions for further investigations on the topic

A close reading of the chosen documents, i.e. the starting point for my project, revealed a number of contrasts between English and Norwegian linguistic choices. This study focused only on a few aspects of vocabulary: complex prepositions and some verbs. At the lexical level, it would be interesting in the future to carry out a detailed study of the correspondences and contrasts between English and Norwegian nouns. There are strikingly many nominalizations in both the Norwegian and English versions. Still, a nominalization used in the Norwegian version does not always correspond to a nominalization in the English version, and vice versa. Further, the amount of legal or specialist terms expressed by compounds is rather striking. The formation of compound nouns in Norwegian and English differs. Compare, for example the Norwegian *etableringsadgangen* corresponding to *freedom of establishment* in English, or *kapitalanbringelsen* corresponding to *where such capital is invested*. It might result in an interesting study to have a closer look at this type of technical words, comparing English and Norwegian renderings. Archaic constructions such as *whereas* and *thereof*, which used to be common in medieval English (Tiersma 1999: 93) but which today seem to be peculiar to legal discourse, appear in document 3Eo. These are also very prominent markers of legal/formal discourse and it may be interesting to study the renderings of this type of constructions in translation.

Beyond the vocabulary level, a contrastive study of sentence structure in Norwegian and English legal texts might reveal other patterns and tendencies which are interesting from a stylistic perspective.

Another suggestion for further investigation is to study parallel texts, written independently from one another, though related by a common topic, to see if the patterns detected in the present study are also present there (cf. the phenomenon of "translationese" explained in section 2.4).

Comparing styles, I restricted the study to two sub-genres: fiction on the one hand and legal texts on the other hand. These two sub-genres represent the two opposite ends of the formality scale. While fiction usually includes a number of varieties of language styles, from conversational to neutral, legal texts represent a variety where the style fluctuates between neutral and opaquely formal. Thus, the present study does not consider the use of complex prepositions in other non-fiction genres than legal discourse. For further research, it might be interesting to consider other non-fiction genres, e.g. newspapers, academic writing, etc.

The disadvantage of the ENPC is that it does not really allow for the study of the translation of legal texts: There are a very few legal texts in it. There is no corpus that would allow a proper comparative study of English and Norwegian legal language. To make further investigations comparing Norwegian legal discourse to other languages, there is a need for a computer-based corpus that provides useful search possibilities.

On a personal note, the present writer benefited tremendously from the whole process of studying various aspects of the topic of legal language.

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APPENDIX 1a

JUDGMENT OF THE COURT
23 January 2012*

(Freedom to provide services – Directive 96/71/EC – Posting of workers – Minimum rates of pay – Maximum working hours – Remuneration for work assignments requiring overnight stay – Compensation for expenses)

In Case E-2/11,
REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Borgarting lagmannsrett (Borgarting Court of Appeal) in the case of

STX Norway Offshore AS and Others
and
The Norwegian State, represented by the Tariff Board,

concerning the compatibility with EEA law of terms and conditions of employment provided for in a collective agreement declared universally applicable within the maritime construction industry and concerning the interpretation of Article 36 of the EEA Agreement and Article 3 of the act referred to at point 30 of Annex XVIII to the EEA Agreement, i.e. Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, as adapted to the EEA Agreement by Protocol 1 thereto,

THE COURT,

composed of Carl Baudenbacher, President, Per Christiansen and Páll Hreinsson (Judge-Rapporteur) Judges,
Registrar: Skúli Magnússon,

having considered the written observations submitted on behalf of: the Appellants, represented by Kurt Weltzien, advokat with the Confederation of Norwegian Enterprises, Ingvald Falch and Peter Dyrberg, advokats, Advokatfirmaet Schjødt AS, Oslo, and Tarjei Thorkildsen, advokat at the law firm BAHR, Oslo;

- the Defendant, represented by Pål Wennerås, advokat, Office of the Attorney General (Civil Affairs);
- the Belgian Government, represented by Liesbet Van den Broeck and Marie Jacobs, Directorate General Legal Affairs of the Federal Public Service for Foreign Affairs, Foreign Trade and Development Cooperation, acting as Agents;
- the Icelandic Government, represented by Dr Matthías G. Pálsson, Legal Counsel, acting as Agent, and Hanna Sigríður Gunnsteinsdóttir, Head of Department of Standards of Living and Labour Market, Ministry of Welfare, acting as Co-Agent;

- the Norwegian Government, represented by Pål Wennerås, advokat, Office of the Attorney General (Civil Affairs), acting as agent;
- the Polish Government, represented by Maciej Szpunar, Undersecretary of State, Ministry of Foreign Affairs, acting as Agent;
- the Swedish Government, represented by Anna Falk, Director, and Charlotta Meyer-Seitz, Deputy Director, Ministry for Foreign Affairs, acting as Agents;
- the EFTA Surveillance Authority ("ESA"), represented by Xavier Lewis, Director, and Fiona M. Cloarec, Officer, Department of Legal & Executive Affairs, acting as Agents;
- the European Commission ("the Commission"), represented by Johan Enegren, Legal Service, acting as Agent;

having regard to the Report for the Hearing,
having heard oral argument of the Appellants, represented by Peter Dyrberg and Ingvald Falch, the Defendant and the Norwegian Government, represented by Pål Wennerås, the Swedish Government, represented by Anna Falk, ESA, represented by Gjermund Mathisen, and the Commission, represented by Johan Enegren, at the hearing on 12 October 2011,

gives the following

Judgment

I Facts and Procedure

1 By a letter of 9 February 2011, Borgarting lagmannsrett ("Court of Appeal") made a request for an Advisory Opinion, registered at the Court on the same day, in a case pending before it between, on the one hand, STX Norway Offshore AS and eight other companies active in the maritime construction industry, and, on the other hand, the Norwegian State, represented by the Tariff Board.

2 The case concerns the interpretation of Directive 96/71/EC ("the Directive") on the posting of workers. In essence, the Court of Appeal seeks guidance whether the terms and conditions of employment in a collective agreement which has been declared universally applicable and thus is mandatory within the industry concerned are compatible with EEA law in the context of the posting of workers.

3 The case arises from an action against the Norwegian State, represented by the Tariff Board, brought by STX Norway Offshore and eight other companies in the maritime construction industry which claim that the Regulation issued by the Tariff Board giving universal application to various clauses in a collective agreement is invalid and, in addition, seek compensation in this regard.

4 According to the request, the Tariff Board issued a formal decision on 6 October 2008 by way of regulation ("the Tariff Board Regulation") to make parts of the Engineering Industry Agreement ("Verkstedoverenskomsten" or "VO") universally applicable within the maritime construction industry. The Tariff Board Regulation, which entered into force on 1 December 2008, was issued on the basis of the Verkstedoverenskomsten 2008-2010 between the Confederation

of Norwegian Enterprise and the Federation of Norwegian Industries with the Norwegian Confederation of Trade Unions and the Norwegian United Federation of Trade Unions. The VO may be extended such that it has universal application in the engineering and associated industries if a request is made by one of the parties to the Agreement. In the present case, the matter was brought before the Tariff Board as a result of a petition filed by the Norwegian Confederation of Trade Unions.

5 The Tariff Board granted universal application to clauses contained within the VO on the following matters:
- The basic hourly wage (Clause 3.1)
- Normal working hours which are not permitted to exceed on average 37.5 hours per week (Clause 2.1.2)
- Overtime supplements (Clause 6.1)
- A shift-working supplement (Clause 6.3)
- A 20% supplement for work assignments requiring overnight stays away from home (Clause 7.3)
- Compensation for expenses in connection with work assignments requiring overnight stays away from home i.e. travel, board and lodging and home visits (Clause 7.3)

6 On 24 March 2009, STX Norway Offshore and eight other companies in the maritime construction industry brought an action against the Norwegian State, represented by the Tariff Board. By a judgment of 29 January 2010, Oslo tingrett (Oslo District Court) held that the Tariff Board Regulation was compatible with the Directive and Article 36 of the EEA Agreement ("EEA"). On 2 March 2010, that judgment was appealed to the Borgarting Court of Appeal, which, in turn, requested an Advisory Opinion on 9 February 2011.

[…]

On those grounds,
THE COURT

in answer to the questions referred to it by *Borgarting lagmannsrett* hereby gives the following Advisory Opinion:

1. The term "maximum work periods and minimum rest periods" set out in point (a) of the first subparagraph of Article 3(1) of Directive 96/71/EC covers terms and conditions regarding "maximum normal working hours", such as those described in the request for an Advisory Opinion.

2. Article 3(1), first subparagraph, point (c), of Directive 96/71/EC, as interpreted in light of Article 36 EEA, does, in principle, preclude an EEA State from requiring an undertaking established in another EEA State which provides services in the territory of the first State to pay its workers the minimum remuneration fixed by the national rules of that State for work assignments requiring overnight stays away from home, unless the rules providing for such additional remuneration

pursue a public interest objective and their application is not disproportionate. It is for the national authorities or, as the case may be, the courts of the host EEA State, to determine whether those rules in fact pursue an objective in the public interest and do so by appropriate means.

3. Directive 96/71/EC does not permit an EEA State to secure workers posted to its territory from another EEA State compensation for travel, board and lodging expenses in the case of work assignments requiring overnight stays away from home, unless this can be justified on the basis of public policy provisions.

4. The proportion of the employees covered by the relevant collective agreement, before it was declared universally applicable, has no bearing on the answers to Questions 1(a), 1(b) and 1(c).

Appendix 1b

EFTA-DOMSTOLENS DOM
23. januar 2012*

(Fri bevegelighet for tjenester – Direktiv 96/71/EF – Utsending av arbeidstakere – Minstelønn – Lengste ordinære arbeidstid – Vederlag for arbeidsoppdrag hvor overnatting utenfor hjemmet er nødvendig – Kompensasjon for utgifter)

I sak E-2/11,
ANMODNING til EFTA-domstolen i medhold av artikkel 34 i Avtalen mellom EFTA-statene om opprettelse av et Overvåkningsorgan og en Domstol fra Borgarting lagmannsrett i en sak for denne domstol mellom

STX Norway Offshore AS m.fl.
og
Staten v/Tariffnemnda,

om arbeids- og ansettelsesvilkår som er fastsatt i en tariffavtale som er erklært å ha allmenn gyldighet innenfor skips- og verftsindustrien er forenlige med EØSretten, og om tolkningen av EØS-avtalen artikkel 36 og artikkel 3 i rettsakten omhandlet i nr. 30 i vedlegg XVIII til EØS-avtalen, dvs. europaparlaments- og rådsdirektiv 96/71/EF av 16. desember 1996 om utsending av arbeidstakere i forbindelse med tjenesteyting, som tilpasset EØS-avtalen ved avtalens protokoll 1, avsier

DOMSTOLEN,

sammensatt av Carl Baudenbacher, president, Per Christiansen og Páll Hreinsson (saksforberedende dommer), dommere,
justissekretær: Skúli Magnússon,
etter å ha tatt i betraktning de skriftlige innlegg fremmet av:

- de ankende parter, representert ved advokat Kurt Weltzien, NHO, advokatene Ingvald Falch og Peter Dyrberg, Advokatfirmaet Schjødt AS, Oslo, og advokat Tarjei Thorkildsen, BA-HR advokatfirma, Oslo,
- ankemotparten, representert ved advokat Pål Wennerås, Regjeringsadvokaten,
- Belgias regjering, representert ved Liesbet Van den Broeck og Marie Jacobs, Directorate General Legal Affairs of the Federal Public Service for Foreign Affairs, Foreign Trade and Development Cooperation,
- Islands regjering, representert ved dr. Matthías Pálsson, Legal Counsel, og Hanna Sigríður Gunnsteinsdóttir, Head of Department of Standards of Living and Labour Market, Ministry of Welfare,
- Norges regjering, representert ved advokat Pål Wennerås, Regjeringsadvokaten,
- Polens regjering, representert ved Maciej Szpunar, Undersecretary of State, Ministry of Foreign Affairs,
- Sveriges regjering, representert ved Anna Falk, Director, og Charlotta

Meyer-Scitz, Deputy Director, Ministry for Foreign Affairs,
- EFTAs overvåkningsorgan ("ESA"), representert ved Xavier Lewis, Director, og Fiona Cloarec, Officer, Department of Legal & Executive Affairs,
- Europakommisjonen ("Kommisjonen"), representert ved Johan Enegren, medlem av Kommisjonens juridiske tjeneste,

med henvisning til rettsmøterapporten
og etter å ha hørt muntlige innlegg fra de ankende parter, representert ved Peter Dyrberg og Ingvald Falch, saksøkte og Norges regjering, representert ved Pål Wennerås, Sveriges regjering, representert ved Anna Falk, ESA, representert ved Gjermund Mathisen, og Kommisjonen, representert ved Johan Enegren, i rettsmøte 12. oktober 2011,
slik

Dom

I Faktum og saksgang
1 Ved brev datert 9. februar 2011, registrert ved EFTA-domstolen samme dag, fremmet Borgarting lagmannsrett en anmodning om en rådgivende uttalelse i en verserende sak for lagmannsretten mellom STX Norway Offshore AS og åtte andre selskaper i skips- og verftsindustrien mot staten v/Tariffnemnda.

2 Saken gjelder tolkningen av direktiv 96/71/EF ("direktivet") om utsending av arbeidstakere. I hovedsak anmoder lagmannsretten om veiledning med hensyn til om arbeids- og ansettelsesvilkårene i en allmenngjort tariffavtale er forenlige med EØS-retten.

3 Saken har sitt utspring i et søksmål mot staten v/Tariffnemnda inngitt av STX Norway Offshore og åtte andre selskaper i skips- og verftsindustrien, hvor det er nedlagt påstand om at Tariffnemndas vedtak om allmenngjøring av ulike bestemmelser i en tariffavtale er ugyldig, samt krevd erstatning i denne forbindelse.

4 Ifølge anmodningen fattet Tariffnemnda den 6. oktober 2008 vedtak om fastsettelse av forskrift om delvis allmenngjøring av Verkstedoverenskomsten ("VO") i skips- og verftsindustrien ("Tariffnemndas forskrift"). Tariffnemndas forskrift, som trådte i kraft 1. desember 2008, ble utstedt på grunnlag av Verkstedoverenskomsten 2008-2010 mellom Næringslivets Hovedorganisasjon og Norsk Industri på den ene side og Landsorganisasjonen i Norge og Fellesforbundet på den annen. VO kan utvides slik at den allmenngjøres i verkstedsindustrien og tilknyttede industrier dersom en av partene i overenskomsten anmoder om det. Den foreliggende sak ble brakt inn for Tariffnemnda etter en begjæring inngitt av Landsorganisasjonen i Norge.

5 Tariffnemnda vedtok at bestemmelsene på følgende områder i VO skulle allmenngjøres:

- grunnlønn per time (§ 3.1)
- ordinær arbeidstid, som ikke skal overstige gjennomsnittlig 37,5 timer

per uke (§ 2.1.2)
- overtidstillegg (§ 6.1)
- skifttillegg (§ 6.3)
- 20 % tillegg for arbeidsoppdrag hvor overnatting utenfor hjemmet er nødvendig (§ 7.3)
- godtgjørelse for kostnader ved arbeidsoppdrag hvor overnatting utenfor hjemmet er nødvendig, dvs. reise, kost, losji og hjemreiser (§ 7.3).

6 STX Norway Offshore og åtte andre selskaper aktive innenfor skips- og verftsindustrien reiste ved stevning 24. mars 2009 søksmål mot staten v/Tariffnemnda. Ved Oslo tingretts dom 29. januar 2010 ble Tariffnemndas vedtak ansett forenlig med direktivet og EØS-avtalen artikkel 36. Dommen ble 2. mars 2010 anket til Borgarting lagmannsrett, som 9. februar 2011 besluttet å anmode om en rådgivende uttalelse.

7 Følgende spørsmål er forelagt EFTA-domstolen:

[…]

På dette grunnlag avgir
EFTA-DOMSTOLEN
som svar på spørsmålene forelagt den av *Borgarting lagmannsrett*, følgende rådgivende uttalelse:
1. Begrepet "lengste arbeidstid og korteste hviletid" fastsatt i bokstav a) i artikkel 3 nr. 1 første ledd i direktiv 96/71/EF omfatter vilkår om "lengste ordinære arbeidstid" av den art som er beskrevet i anmodningen om rådgivende uttalelse.

2. Artikkel 3 nr. 1 første ledd bokstav c) i direktiv 96/71/EF, tolket i lys av EØS-avtalen artikkel 36, er i prinsippet til hinder for at en EØSstat kan kreve at et foretak etablert i en annen EØS-stat og som yter tjenester på førstnevnte stats territorium, betaler sine arbeidstakere den minstelønn som er fastsatt i denne stats nasjonale regler for arbeidsoppdrag hvor overnatting utenfor hjemmet er nødvendig, med mindre reglene som gir rett til slikt tilleggsvederlag har et mål som er begrunnet i tvingende allmenne hensyn, og anvendelsen av dem ikke er uforholdsmessig. Det er opp til nasjonale myndigheter eller eventuelt domstolene i vertsstaten å avgjøre om disse regler faktisk forfølger et mål som er begrunnet i tvingende allmenne hensyn, og om dette gjøres ved bruk av forholdsmessige midler.
3. Direktiv 96/71/EF tillater ikke en EØS-stat å sikre arbeidstakere utsendt til dens territorium fra en annen EØS-stat kompensasjon for utgifter til reise, kost og losji for arbeidsoppdrag hvor overnatting utenfor hjemmet er nødvendig, med mindre dette kan rettferdiggjøres på grunnlag av bestemmelser om offentlig orden.

4. Dekningsgraden for den aktuelle tariffavtale før den ble erklært å ha allmenn gyldighet, er ikke av betydning for svarene på spørsmål 1 a), 1 b) og 1 c).

Appendix 2a

Anmodning om en rådgivende uttalelse fra EFTA-domstolen framsatt av Borgarting lagmannsrett 1. februar 2011 i sak mellom STX Norway Offshore AS m.fl. og Staten v/Tariffnemnda
(Sak E-2/11)

Borgarting lagmannsrett har ved brev av 1. februar 2011 rettet en anmodning til EFTA-domstolen, mottatt
ved domstolens kontor 9. februar 2011, om en rådgivende uttalelse i sak mellom STX Norway Offshore
AS m.fl. og Staten v/Tariffnemnda, med følgende spørsmål:

1. Tillater direktiv 96/71/EF, herunder dets artikkel 3 nr. 1 første ledd bokstav a) og/eller c) jf annet ledd, at en EØS-stat sikrer arbeidstakere som er utsendt til deres territorium fra en annen EØSstat, følgende arbeids- og ansettelsesvilkår som i EØS-staten der arbeidet utføres er fastsatt ved landsomfattende tariffavtale som er erklært å ha allmenn gyldighet i samsvar med artikkel 3 nr. 8:

a) lengste ordinære arbeidstid,

b) tilleggsvederlag til grunnlønn pr time, for arbeidsoppdrag hvor overnatting utenfor hjemmet er nødvendig, med unntak for arbeidstakere som blir inntatt på arbeidsstedet, og

c) kompensasjon for utgifter til reise, kost og losji for arbeidsoppdrag hvor overnatting utenfor hjemmet er nødvendig, med unntak for arbeidstakere som blir inntatt på arbeidsstedet?
Hvilken eventuell betydning har den aktuelle tariffavtales dekningsgrad, før den er erklært allmenngjort, for besvarelsen av ovennevnte spørsmål?

2. Dersom arbeids- og ansettelsesvilkår i EØS-staten der arbeidet utføres, som er fastsatt ved en landsomfattende tariffavtale som er erklært å ha allmenn gyldighet i samsvar med artikkel 3 nr. 8, oppfyller vilkårene i artikkel 3 nr. 1 i direktiv 96/71/EF; må den nasjonale domstolen foreta en selvstendig bedømmelse av om disse arbeids- og ansettelsesvilkårene oppfyller vilkårene i artikkel 36 EØS, herunder læren om tvingende allmenne hensyn?

3. Dersom spørsmål 2 besvares bekreftende:

a) Tillater artikkel 36 EØS at et allmenngjøringsvedtak, hvor enkelte arbeids- og ansettelsesvilkår i en landsomfattende tariffavtale er erklært å ha allmenn gyldighet innenfor den aktuelle industri, begrunnes med ”å sikre utenlandske arbeidstakere lønns- og arbeidsvilkår som er likeverdige med de vilkår norske arbeidstakere har”?

b) Kan det presumeres, med forbehold for motbevis som det påhviler de private parter å føre, at arbeids- og ansettelsesvilkår som er forenlige med direktiv 96/71/EF, jf artikkel 3 nr. 1 sammenholdt med artikkel 3 nr. 8, sikrer beskyttelse av arbeidstakere og lojal konkurranse?

c) Hvilken eventuell betydning for svaret på spørsmål 3 a) har det at vertsstaten har et system hvor nasjonal lovgivning fastsetter arbeidsvilkår som gjelder generelt og som suppleres ved at arbeids- og ansettelsesvilkår fastsatt ved landsomfattende tariffavtale kan erklæres å ha allmenn gyldighet innenfor det aktuelle yrke eller næring?

Appendix 2b

Request for an Advisory Opinion from the EFTA Court by Borgarting lagmannsrett dated 1 February 2011 in the case of STX Norway Offshore AS m.fl v Staten v/Tariffnemnda (Case E-2/11)

(2011/C 208/06)

A request has been made to the EFTA Court by a letter of 1 February 2011 from Borgarting lagmansrett (Borgarting Court of Appeal), which was received at the Court Registry on 9 February 2011, for an Advisory Opinion in the case of STX Norway Offshore AS m.fl. v Staten v/Tariffnemnda, on the following questions:

1. Does Directive 96/71/EC, including its Article 3(1) first subparagraph (a) and/or (c), see second subparagraph, permit an EEA State to secure workers posted to its territory from another EEA State, the following terms and conditions of employment, which, in the EEA State where the work is being performed, have been established through nationwide collective agreements that have been declared universally applicable in accordance with Article 3(8) of the Directive:

(a) maximum normal working hours;

(b) additional remuneration to the basic hourly wage for work assignments requiring overnight stays away from home, with an exception for employees who are hired at the work site; and

(c) compensation for travel, board and lodging expenses in the case of work assignments requiring overnight stays away from home, with an exception for employees who are hired at the work site?

What bearing, if any, does the proportion of employees covered by the relevant collective agreement, before it was declared universally applicable, have on the answers to the above questions?

2. If terms and conditions of employment in the EEA State where the work is performed, which are stipulated in a nationwide collective agreement declared universally applicable in accordance with Article 3(8), satisfy the requirements under Article 3(1) of Directive 96/71/EC, does the national court have to carry out a separate evaluation of whether these terms and conditions of employment satisfy the requirements under Article 36 EEA, including whether they can be justified by overriding requirements in the general interest?

3. If question 2 is answered in the affirmative:
(a) Does Article 36 EEA permit that the stated grounds for a universal application decision, whereby certain terms and conditions of employment in a nationwide collective agreement are declared universally applicable to the industry concerned, are ‘to ensure that foreign workers enjoy equivalent pay and working conditions to Norwegian workers’?

(b) Can it be presumed, with reservations for any evidence to the contrary which it is up to the private parties to present, that terms and conditions of employment that are compatible with Directive 96/71/EC, see Article 3(1) read in the light of Article 3(8), safeguard the protection of workers and loyal competition?

(c) What is the effect, if any, on the answer to question 3(a) of the host State applying a system under which generally applicable terms and conditions of employment are set out in national laws and supplemented by terms and conditions of employment stipulated in nationwide collective agreements that can be declared universally applicable to the profession or industry concerned?EN 14.7.2011 Official Journal of the European Union C 208/7

Appendix 3a

DIRECTIVE 96/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 1996 concerning the posting of workers in the framework of the provision of services

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 57 (2) and 66 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189b of the Treaty (3),

(1) Whereas, pursuant to Article 3 (c) of the Treaty, the abolition, as between Member States, of obstacles to the free movement of persons and services constitutes one of the objectives of the Community;

(2) Whereas, for the provision of services, any restrictions based on nationality or residence requirements are prohibited under the Treaty with effect from the end of the transitional period;

(3) Whereas the completion of the internal market offers a dynamic environment for the transnational provision of services, prompting a growing number of undertakings to post employees abroad temporarily to perform work in the territory of a Member State other than the State in which they are habitually employed;

(4) Whereas the provision of services may take the form either of performance of work by an undertaking on its account and under its direction, under a contract concluded between that undertaking and the party for whom the services are intended, or of the hiring-out of workers for use by an undertaking in the framework of a public or a private contract;

(5) Whereas any such promotion of the transnational provision of services requires a climate of fair competition and measures guaranteeing respect for the rights of workers;

(6) Whereas the transnationalization of the employment relationship raises problems with regard to the legislation applicable to the employment relationship; whereas it is in the interests of the parties to lay down the terms and conditions governing the employment relationship envisaged;

(7) Whereas the Rome Convention of 19 June 1980 on the law applicable to contractual obligations (4), signed by 12 Member States, entered into force on 1 April 1991 in the majority of Member States;

(8) Whereas Article 3 of that Convention provides, as a general rule, for the free choice of law made by the parties; whereas, in the absence of choice, the contract is to be governed, according to Article 6 (2), by the law of the country, in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another country, or, if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated, unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract is to be governed by the law of that country;

(9) Whereas, according to Article 6 (1) of the said Convention, the choice of law made by the parties is not to have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable under paragraph 2 of that Article in the absence of choice;

(10) Whereas Article 7 of the said Convention lays down, subject to certain conditions, that effect may be given, concurrently with the law declared applicable, to the mandatory rules of the law of another country, in particular the law of the Member State within whose territory the worker is temporarily posted;

(11) Whereas, according to the principle of precedence of Community law laid down in its Article 20, the said Convention does not affect the application of provisions which, in relation to a particular matter, lay down choice-of-law rules relating to contractual obligations and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonized in implementation of such acts;

(12) Whereas Community law does not preclude Member States from applying their legislation, or collective agreements entered into by employers and labour, to any person who is employed, even temporarily, within their territory, although his employer is established in another Member State; whereas Community law does not forbid Member States to guarantee the observance of those rules by the appropriate means;

(13) Whereas the laws of the Member States must be coordinated in order to lay down a nucleus of mandatory rules for minimum protection to be observed in the host country by employers who post workers to perform temporary work in the territory of a Member State where the services are provided; whereas such coordination can be achieved only by means of Community law;

(14) Whereas a 'hard core` of clearly defined protective rules should be observed by the provider of the services notwithstanding the duration of the worker's posting;

(15) Whereas it should be laid down that, in certain clearly defined cases of assembly and/or installation of goods, the provisions on minimum rates of pay and minimum paid annual holidays do not apply;

(16) Whereas there should also be some flexibility in application of the provisions concerning minimum rates of pay and the minimum length of paid annual holidays; whereas, when the length of the posting is not more than one month, Member States may, under certain conditions, derogate from the provisions concerning minimum rates of pay or provide for the possibility of derogation by means of collective agreements; whereas, where the amount of work to be done is not significant, Member States may derogate from the provisions concerning minimum rates of pay and the minimum length of paid annual holidays;

(17) Whereas the mandatory rules for minimum protection in force in the host country must not prevent the application of terms and conditions of employment which are more favourable to workers;

(18) Whereas the principle that undertakings established outside the Community must not receive more favourable treatment than undertakings established in the territory of a Member State should be upheld;

(19) Whereas, without prejudice to other provisions of Community law, this Directive does not entail the obligation to give legal recognition to the existence of temporary employment undertakings, nor does it prejudice the application by Member States of their laws concerning the hiring-out of workers and temporary employment undertakings to undertakings not established in their territory but operating therein in the framework of the provision of services;

(20) Whereas this Directive does not affect either the agreements concluded by the Community with third countries or the laws of Member States concerning the access to their territory of third-country providers of services; whereas this Directive is also without prejudice to national laws relating to the entry, residence and access to employment of third-country workers;

(21) Whereas Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (5) lays down the provisions applicable with regard to social security benefits and contributions;

(22) Whereas this Directive is without prejudice to the law of the Member States concerning collective action to defend the interests of trades and professions;

(23) Whereas competent bodies in different Member States must cooperate with each other in the application of this Directive; whereas Member States must provide for appropriate remedies in the event of failure to comply with this Directive;

(24) Whereas it is necessary to guarantee proper application of this Directive and to that end to make provision for close collaboration between the Commission and the Member States;

(25) Whereas five years after adoption of this Directive at the latest the Commission must review the detailed rules for implementing this Directive with a view to proposing, where appropriate, the necessary amendments,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. This Directive shall apply to undertakings established in a Member State which, in the framework of the transnational provision of services, post workers, in accordance with paragraph 3, to the territory of a Member State.

2. This Directive shall not apply to merchant navy undertakings as regards seagoing personnel.

3. This Directive shall apply to the extent that the undertakings referred to in paragraph 1 take one of the following transnational measures:

(a) post workers to the territory of a Member State on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or

(b) post workers to an establishment or to an undertaking owned by the group in the territory of a Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or

(c) being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting.

4. Undertakings established in a non-member State must not be given more favourable treatment than undertakings established in a Member State.

Article 2

Definition

1. For the purposes of this Directive, 'posted worker` means a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works.

2. For the purposes of this Directive, the definition of a worker is that which applies in the law of the Member State to whose territory the worker is posted.

Article 3

Terms and conditions of employment

1. Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in Article 1 (1) guarantee workers posted to their territory the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:

- by law, regulation or administrative provision, and/or

- by collective agreements or arbitration awards which have been declared universally applicable within the meaning of paragraph 8, insofar as they concern the activities referred to in the Annex:

(a) maximum work periods and minimum rest periods;

(b) minimum paid annual holidays;

(c) the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;

(d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;

(e) health, safety and hygiene at work;

(f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;

(g) equality of treatment between men and women and other provisions on non-discrimination.

For the purposes of this Directive, the concept of minimum rates of pay referred to in paragraph 1 (c) is defined by the national law and/or practice of the Member State to whose territory the worker is posted.

2. In the case of initial assembly and/or first installation of goods where this is an integral part of a contract for the supply of goods and necessary for taking the goods supplied into use and carried out by the skilled and/or specialist workers of the supplying undertaking, the first subparagraph of paragraph 1 (b) and (c) shall not apply, if the period of posting does not exceed eight days.

This provision shall not apply to activities in the field of building work listed in the Annex.

3. Member States may, after consulting employers and labour, in accordance with the traditions and practices of each Member State, decide not to apply the first subparagraph of paragraph 1 (c) in the cases referred to in Article 1 (3) (a) and (b) when the length of the posting does not exceed one month.

4. Member States may, in accordance with national laws and/or practices, provide that exemptions may be made from the first subparagraph of paragraph 1 (c) in the cases referred to in Article 1 (3) (a) and (b) and from a decision by a Member State within the meaning of paragraph 3 of this Article, by means of collective agreements within the meaning of paragraph 8 of this Article, concerning one or more sectors of activity, where the length of the posting does not exceed one month.

5. Member States may provide for exemptions to be granted from the first subparagraph of paragraph 1 (b) and (c) in the cases referred to in Article 1 (3) (a) and (b) on the grounds that the amount of work to be done is not significant.

Member States availing themselves of the option referred to in the first subparagraph shall lay down the criteria which the work to be performed must meet in order to be considered as 'non-significant`.

6. The length of the posting shall be calculated on the basis of a reference period of one year from the beginning of the posting.

For the purpose of such calculations, account shall be taken of any previous periods for which the post has been filled by a posted worker.

7. Paragraphs 1 to 6 shall not prevent application of terms and conditions of employment which are more favourable to workers.

Allowances specific to the posting shall be considered to be part of the minimum wage, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.

8. 'Collective agreements or arbitration awards which have been declared universally applicable` means collective agreements or arbitration awards which must be observed by all undertakings in the geographical area and in the profession or industry concerned.

In the absence of a system for declaring collective agreements or arbitration awards to be of universal application within the meaning of the first subparagraph, Member States may, if they so decide, base themselves on:

- collective agreements or arbitration awards which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or

- collective agreements which have been concluded by the most representative employers' and labour organizations at national level and which are applied throughout national territory,

provided that their application to the undertakings referred to in Article 1 (1) ensures equality of treatment on matters listed in the first subparagraph of paragraph 1 of this Article between those undertakings and the other undertakings referred to in this subparagraph which are in a similar position.

Equality of treatment, within the meaning of this Article, shall be deemed to exist where national undertakings in a similar position:

- are subject, in the place in question or in the sector concerned, to the same obligations as posting undertakings as regards the matters listed in the first subparagraph of paragraph 1, and

- are required to fulfil such obligations with the same effects.

9. Member States may provide that the undertakings referred to in Article 1 (1) must guarantee workers referred to in Article 1 (3) (c) the terms and conditions which apply to temporary workers in the Member State where the work is carried out.

10. This Directive shall not preclude the application by Member States, in compliance with the Treaty, to national undertakings and to the undertakings of other States, on a basis of equality of treatment, of:

- terms and conditions of employment on matters other than those referred to in the first subparagraph of paragraph 1 in the case of public policy provisions,

- terms and conditions of employment laid down in the collective agreements or arbitration awards within the meaning of paragraph 8 and concerning activities other than those referred to in the Annex.

Article 4

Cooperation on information

1. For the purposes of implementing this Directive, Member States shall, in accordance with national legislation and/or practice, designate one or more liaison offices or one or more competent national bodies.

2. Member States shall make provision for cooperation between the public authorities which, in accordance with national legislation, are responsible for monitoring the terms and conditions of employment referred to in Article 3. Such cooperation shall in particular consist in replying to reasoned requests from those authorities for information on the transnational hiring-out of workers, including manifest abuses or possible cases of unlawful transnational activities.

The Commission and the public authorities referred to in the first subparagraph shall cooperate closely in order to examine any difficulties which might arise in the application of Article 3 (10).

Mutual administrative assistance shall be provided free of charge.

3. Each Member State shall take the appropriate measures to make the information on the terms and conditions of employment referred to in Article 3 generally available.

4. Each Member State shall notify the other Member States and the Commission of the liaison offices and/or competent bodies referred to in paragraph 1.

Article 5

Measures

Member States shall take appropriate measures in the event of failure to comply with this Directive.

They shall in particular ensure that adequate procedures are available to workers and/or their representatives for the enforcement of obligations under this Directive.

Article 6

Jurisdiction

In order to enforce the right to the terms and conditions of employment guaranteed in Article 3, judicial proceedings may be instituted in the Member State in whose territory the worker is or was

posted, without prejudice, where applicable, to the right, under existing international conventions on jurisdiction, to institute proceedings in another State.

Article 7

Implementation

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 16 December 1999 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 8

Commission review

By 16 December 2001 at the latest, the Commission shall review the operation of this Directive with a view to proposing the necessary amendments to the Council where appropriate.

Article 9

This Directive is addressed to the Member States.

Done at Brussels, 16 December 1996.

Appendix 3b

Ot.prp. nr. 13 (1999-2000)

Om lov om endringar i lov 4. februar 1977 nr. 4 om arbeidervern og arbeidsmiljø m.v. (arbeidsmiljøloven) og lov 4. juni 1993 nr. 58 om allmenngjøring av tariffavtaler m.v. (allmenngjøringsloven)

1 Rådsdirektiv 96/71/EF om utsending av arbeidstakere i forbindelse med tjenesteyting

EUROPAPARLAMENTS- OG RÅDSDIREKTIV 96/71/EF av 16. desember 1996 om utsending av arbeidstakere i forbindelse med tjenesteyting

EUROPAPARLAMENTET OG RÅDET FOR DEN EUROPEISKE UNION HAR

under henvisning til traktaten om opprettelse av Det europeiske fellesskap, særlig artikkel 57 nr. 2 og artikkel 66,

under henvisning til forslag fra Kommisjonen **1**

under henvisning til uttalelse fra Den økonomiske og sosiale komite, **2**

etter framgangsmåten fastsatt i traktatens artikkel 189 B **3** og ut fra følgende betraktninger:

1. I henhold til traktatens artikkel 3 bokstav c) er et av Fellesskapets mål å fjerne hindringer for den frie bevegelighet for personer og tjenester mellom medlemsstatene.
2. Med hensyn til tjenesteyting er alle restriksjoner på grunnlag av nasjonalitet eller bostedskrav forbudt etter traktaten fra overgangsperiodens utløp.
3. Gjennomføringen av det indre marked skaper et dynamisk miljø for tjenesteyting over landegrensene ved å anspore et økende antall foretak til midlertidig å sende ut arbeidstakere for å utføre arbeid på territoriet til en annen medlemsstat enn den stat der de til vanlig er sysselsatt.
4. Tjenesteytingen kan bestå enten i at et foretak utfører arbeid for egen regning og under egen ledelse i henhold til avtale inngått mellom foretaket og mottakeren av tjenesteytelsene, eller i at arbeidstakere leies ut til et foretak i henhold til en offentlig eller privat avtale.
5. Slik fremming av tjenesteyting over landegrensene forutsetter rettferdig konkurranse og tiltak som garanterer respekt for arbeidstakernes rettigheter.
6. Et arbeidsforhold som overskrider landegrensene, reiser problemer med hensyn til hvilken lovgivning som får anvendelse på arbeidsforholdet. Det er i partenes interesse å fastsette hvilke arbeids- og ansettelsesvilkår som skal gjelde for det aktuelle arbeidsforholdet.
7. Romakonvensjonen av 19. juni 1980 om hvilken lovgivning som får anvendelse på avtaleforpliktelser **4**, undertegnet av tolv medlemsstater, trådte i kraft 1. april 1991 i flertallet av medlemsstatene.

8. I konvensjonens artikkel 3 er det fastsatt som hovedregel at partene fritt skal kunne velge lovgivning. Dersom lovgivning ikke er valgt, skal arbeidsavtalen i samsvar med artikkel 6 nr. 2 reguleres av lovgivningen i den stat der arbeidstakeren til vanlig utfører arbeid under oppfyllelsen av avtalen, selv om vedkommende er midlertidig utsendt til en annen stat eller, dersom arbeidstakeren ikke til vanlig utfører arbeid i en bestemt stat, av lovgivningen i den stat der det forretningssted som har ansatt vedkommende, befinner seg, med mindre det framgår av omstendighetene som helhet at avtalen er nærmere knyttet til en annen stat, da avtalen i så fall skal reguleres av lovgivningen i denne staten.

9. I samsvar med artikkel 6 nr. 1 i nevnte konvensjon skal partenes valg av lovgivning ikke føre til at arbeidstakeren fratas det vern som gis etter ufravikelige regler i den lovgivning som ville få anvendelse etter artikkelens nr. 2 dersom lovgivning ikke var valgt.

10. I artikkel 7 i nevnte konvensjon er det fastsatt at ufravikelige bestemmelser i en annen stats lovgivning, særlig lovgivningen i den medlemsstat til hvis territorium arbeidstakeren er midlertidig utsendt, på visse vilkår kan få anvendelse parallelt med den lovgivning som er erklært som gjeldende.

11. I samsvar med prinsippet om forrang for fellesskapsretten fastsatt i nevnte konvensjons artikkel 20 berører ikke konvensjonen anvendelsen av bestemmelser som på særskilte områder fastsetter lovvalgsregler for avtaleforpliktelser, og som er eller vil bli nedfelt i rettsakter fra De europeiske fellesskaps organer eller i nasjonal lovgivning harmonisert ved gjennomføring av slike rettsakter.

12. Fellesskapsretten er ikke til hinder for at medlemsstatene anvender sin lovgivning eller tariffavtaler inngått mellom partene i arbeidslivet på personer som er ansatt, også midlertidig, på deres territorium, selv om arbeidsgiveren er etablert i en annen medlemsstat. Fellesskapsretten forbyr ikke medlemsstatene å sikre med egnede midler at disse reglene overholdes.

13. Medlemsstatenes lovgivning må samordnes for å fastsette en grunnstamme av ufravikelige reglar for minimumsvern som skal overholdes i vertslandet av de arbeidsgivere som sender ut arbeidstakere som skal utføre midlertidig arbeid på territoriet til den medlemsstat der tjenestene ytes. Slik samordning kan oppnås bare ved hjelp av fellesskapsretten.

14. Tjenesteyteren bør overholde en grunnstamme av klart definerte verneregler, uten hensyn til varigheten av arbeidstakerens utsending.

15. Det bør fastsettes at reglene om minstelønn og minste antall feriedager med lønn per år ikke får anvendelse i visse klart definerte tilfeller av montering og/eller installering.

16. Det bør også sikres en viss fleksibilitet i anvendelsen av bestemmelsene om minstelønn og minste antall feriedager med lønn per år. Når utsendingen ikke

varer mer enn én måned, kan medlemsstatene på visse vilkår fravike bestemmelsene om minstelønn eller gi mulighet til å fravike gjennom tariffavtaler. Dersom arbeidet som skal utføres, er av ubetydelig omfang, kan medlemsstatene fravike bestemmelsene om minstelønn og minste antall feriedager med lønn per år.

17. De ufravikelige reglene om minimumsvern som gjelder i vertsstaten, må ikke være til hinder for at det anvendes arbeids- og ansettelsesvilkår som er gunstigere for arbeidstakerne.

18. Prinsippet om at foretak etablert utenfor Fellesskapet ikke må få gunstigere behandling enn foretak etablert på en medlemsstats territorium, bør overholdes.

19. Med forbehold for andre bestemmelser i fellesskapsretten innebærer dette direktiv ikke en forpliktelse til å anerkjenne vikarbyråer juridisk, og det hindrer heller ikke at medlemsstatene anvender sin lovgivning om utleie av arbeidstakere og vikarbyråer til foretak som ikke er etablert på deres territorium, men som driver virksomhet der i forbindelse med tjenesteyting.

20. Dette direktiv berører verken de avtaler som er inngått av Fellesskapet med tredjestater eller medlemsstatenes lovgivning om den adgang tredjestaters tjenesteytere har til deres territorium. Dette direktiv berører heller ikke nasjonal lovgivning om innreise, opphold og arbeid for arbeidstakere fra tredjestater.

21. I rådsforordning (EØF) nr. 1408/71 av 14. juni 1971 om anvendelse av trygdeordninger på arbeidstakere, selvstendig næringsdrivende og deres familiemedlemmer som flytter innenfor Fellesskapet **5** er det fastsatt bestemmelser som får anvendelse på trygdeytelser og -premier.

22. Dette direktiv berører ikke medlemsstatenes lover om kollektive tiltak til forsvar for faglige og yrkesmessige interesser.

23. Vedkommende organer i de forskjellige medlemsstater må samarbeide ved anvendelsen av dette direktiv. Medlemsstatene må treffe egnede tiltak for tilfeller der dette direktiv ikke overholdes.

24. Det er nødvendig å sikre riktig anvendelse av dette direktiv og med henblikk på dette sørge for et nært samarbeid mellom Kommisjonen og medlemsstatene.

25. Seinest fem år etter at dette direktiv er vedtatt, må Kommisjonen gjennomgå gjennomføringsreglene for direktivet med sikte på å foreslå eventuelle nødvendige endringer.

VEDTATT DETTE DIREKTIV:

Artikkel 1

Virkeområde

1. Dette direktiv får anvendelse på foretak som er etablert i en medlemsstat, og som i forbindelse med tjenesteyting over landegrensene sender ut arbeidstakere i samsvar med nr. 3 til en medlemsstats territorium.

2. Dette direktiv får ikke anvendelse på foretak i handelsflåten med hensyn til skipsbesetningen.

3. Dette direktiv får anvendelse i den utstrekning foretakene nevnt i nr. 1 treffer et av følgende tiltak over landegrensene:

    a. sender ut arbeidstakere til en medlemsstats territorium for egen regning og under egen ledelse i henhold til avtale inngått mellom utsendingsforetaket og mottakeren av tjenesteytelsene, som driver virksomhet i denne medlemsstaten, forutsatt at det foreligger et arbeidsforhold mellom utsendingsforetaket og arbeidstakeren i utsendingsperioden, eller

    b. sender ut arbeidstakere til en medlemsstats territorium, til et forretningssted eller til et foretak som eies av gruppen, forutsatt at det foreligger et arbeidsforhold mellom utsendingsforetaket og arbeidstakeren i utsendingsperioden, eller

    c. i egenskap av vikarbyrå eller i egenskap av virksomhet som stiller en arbeidstaker til rådighet, sender ut en arbeidstaker til et brukerforetak som er etablert eller driver virksomhet på en medlemsstats territorium, forutsatt at det foreligger et arbeidsforhold mellom vikarbyrået eller foretaket som stiller en arbeidstaker til rådighet, og arbeidstakeren i utsendingsperioden.

4. Foretak etablert i en ikke-medlemsstat, skal ikke gis gunstigere behandling enn foretak etablert i en medlemsstat.

Artikkel 2

Definisjon

1. I dette direktiv menes med utsendt arbeidstaker en arbeidstaker som i et begrenset tidsrom utfører arbeid på territoriet til en annen medlemsstat enn den stat der vedkommende til vanlig arbeider.

2. I dette direktiv defineres arbeidstaker på samme måte som i lovgivningen til den medlemsstat arbeidstakeren er utsendt til.

Artikkel 3

Arbeids- og ansettelsesvilkår

1. Medlemsstatene skal påse at foretakene nevnt i artikkel 1 nr. 1, uansett hvilken lovgivning som gjelder for arbeidsforholdet, på områdene nedenfor sikrer arbeidstakere som er utsendt til deres territorium, de arbeids- og ansettelsesvilkår som i medlemsstaten der arbeidet utføres, er fastsatt

    - ved lov eller forskrift og/eller
    - ved tariffavtaler eller voldgiftskjennelser som er erklært å ha allmenn gyldighet i henhold til nr. 8, i den utstrekning de angår virksomhet som er nevnt i vedlegget:

a. lengste arbeidstid og korteste hviletid,

b. minste antall feriedager med lønn per år,

c. minstelønn, herunder overtidsbetaling; dette gjelder ikke for supplerende yrkesbaserte pensjonsordninger,

d. vilkår for utleie av arbeidstakere, særlig gjennom vikarbyråer,

e. helse, sikkerhet og hygiene på arbeidsplassen,

f. vernetiltak med hensyn til arbeids- og ansettelsesvilkår for gravide kvinner eller kvinner som nylig har født, for barn og for ungdom,

g. likebehandling av kvinner og menn og andre bestemmelser om likebehandling.

I dette direktiv defineres begrepet minstelønn nevnt i nr. 1 bokstav c) i samsvar med nasjonal lovgivning og/eller praksis i den medlemsstat arbeidstakeren er utsendt til.

2. I tilfelle av førstegangsmontering og/eller første installering som utgjør en integrerende del av en avtale om levering av varer, som er nødvendig for å kunne ta de leverte varene i bruk, og som utføres av leverandørforetakets faglærte arbeidere og/eller spesialarbeidere, får nr. 1 annet strekpunkt bokstav b) og c) ikke anvendelse dersom utsendingsperioden ikke overstiger åtte dager. Denne bestemmelse får ikke anvendelse på byggearbeid oppført i vedlegget.

3. Medlemsstatene kan etter konsultasjon med partene i arbeidslivet i samsvar med tradisjon og praksis i hver medlemsstat vedta ikke å anvende nr. 1 annet strekpunkt bokstav c) i de tilfeller som er nevnt i artikkel 1 nr. 3 bokstav a) og b), når utsendingens varighet ikke overstiger én måned.

4. Medlemsstatene kan i samsvar med nasjonal lovgivning og/eller praksis fastsette at det kan gjøres unntak fra nr. 1 annet strekpunkt bokstav c) i tilfellene nevnt i artikkel 1 nr. 3 bokstav a) og b) og fra vedtak gjort av en medlemsstat i henhold til nr. 3 i denne artikkel ved tariffavtaler i henhold til nr. 8 i denne artikkel for én eller flere virksomhetssektorer dersom utsendingens varighet ikke overstiger én måned.

5. Medlemsstatene kan fastsette at det kan gjøres unntak fra nr. 1 annet strekpunkt bokstav b) og c) i tilfellene nevnt i artikkel 1 nr. 3 bokstav a) og b) når omfanget av det arbeid som skal utføres, er ubetydelig. Medlemsstater som benytter seg av muligheten nevnt i første ledd, skal fastsette kriterier som må oppfylles for at omfanget av arbeidet som skal utføres, skal kunne betraktes som «ubetydelig».

6. Utsendingens varighet skal beregnes på grunnlag av en referanseperiode på ett år fra begynnelsen av utsendingen. Ved slik beregning skal det tas hensyn til eventuelle tidligere perioder der stillingen har vært besatt av en utsendt arbeidstaker.

7. Nr. 1 - 6 skal ikke være til hinder for at det anvendes arbeids- og ansettelsesvilkår som er gunstigere for arbeidstakerne. Ytelser som gjelder spesielt for utsendingen, skal betraktes som en del av minstelønnen, med mindre de betales som refusjon av utgifter som faktisk er påløpt på grunn av utsendingen, for eksempel reiseutgifter, kost og losji.

8. Med «tariffavtaler eller voldgiftskjennelser som er erklært å ha allmenn gyldighet» menes tariffavtaler eller voldgiftskjennelser som må overholdes av alle foretak i det aktuelle geografiske område og innenfor det aktuelle yrke eller den aktuelle næring. Dersom det ikke finnes ordninger for å erklære at tariffavtaler eller voldgiftskjennelser skal ha allmenn gyldighet i henhold til første ledd, kan medlemsstatene, dersom de ønsker det, basere seg på

    - tariffavtaler eller voldgiftskjennelser som generelt anvendes på alle tilsvarende foretak i det aktuelle geografiske område og innenfor det aktuelle yrke eller den aktuelle næring, og/eller
    - tariffavtaler som er inngått av de mest representative arbeidsgiver- og arbeidstakerorganisasjonene på nasjonalt plan, og som anvendes på hele det nasjonale territorium,

    forutsatt at det ved anvendelsen av dem på foretakene nevnt i artikkel 1 nr. 1 på områdene oppført i nr. 1 første ledd i denne artikkel sikres likebehandling av disse foretakene og de øvrige foretakene nevnt i dette ledd som er i en tilsvarende situasjon.

    Likebehandling i henhold til denne artikkel skal anses å foreligge dersom nasjonale foretak i en tilsvarende situasjon

    - på det aktuelle arbeidssted eller i den aktuelle sektor er underlagt samme forpliktelser som utsendingsforetakene på områdene nevnt i nr. 1 første ledd og
    - er pålagt å oppfylle slike forpliktelser med samme virkninger.

9. Medlemsstatene kan fastsette at foretakene nevnt i artikkel 1 nr. 1 må sikre arbeidstakerne nevnt i artikkel 1 nr. 3 bokstav c) de vilkår som gjelder for vikarer i den medlemsstat der arbeidet utføres.

10. Dette direktiv er ikke til hinder for at medlemsstatene i henhold til traktaten på grunnlag av likebehandling kan pålegge nasjonale foretak og andre staters foretak

    - arbeids- og ansettelsesvilkår på andre områder enn dem som er nevnt i nr. 1 første ledd, når det dreier seg om bestemmelser om offentlig orden,
    - arbeids- og ansettelsesvilkår fastsatt i tariffavtaler eller voldgiftskjennelser i henhold til nr. 8 for annen virksomhet enn den som er nevnt i vedlegget.

Artikkel 4

Samarbeid om informasjon

1. Ved gjennomføringen av dette direktiv skal medlemsstatene i samsvar med nasjonal lovgivning og/eller praksis utpeke ett eller flere samarbeidskontorer eller én eller flere vedkommende nasjonale myndigheter.

2. Medlemsstatene skal sørge for samarbeid mellom de offentlige myndigheter som i samsvar med nasjonal lovgivning er ansvarlige for å føre tilsyn med arbeids- og ansettelsesvilkårene nevnt i artikkel 3. Slikt samarbeid skal særlig bestå i å besvare grunngitte anmodninger om informasjon fra slike myndigheter om utleie av arbeidstakere over landegrensene, herunder henvendelser om åpenbart misbruk eller mulige tilfeller av ulovlig virksomhet over landegrensene. Kommisjonen og de offentlige myndigheter nevnt i første ledd skal samarbeide nært for å gjennomgå eventuelle vanskeligheter som måtte oppstå ved gjennomføringen av artikkel 3 nr. 10. Gjensidig administrativ bistand skal gis gratis.

3. Hver medlemsstat skal treffe egnede tiltak for å gjøre informasjonen om arbeids- og ansettelsesvilkår nevnt i artikkel 3 allment tilgjengelig.

4. Hver medlemsstat skal underrette de øvrige medlemsstater og Kommisjonen om samarbeidskontorene og/eller de vedkommende myndigheter nevnt i nr. 1.

Artikkel 5

Tiltak

Medlemsstatene skal treffe egnede tiltak i tilfelle av manglende overholdelse av dette direktiv.

De skal særlig påse at arbeidstakere og/eller deres representanter har egnede ordninger til rådighet med henblikk på overholdelse av forpliktelsene fastsatt i dette direktiv.

Artikkel 6

Domsmyndighet

For å gjøre gjeldende retten til arbeids- og ansettelsesvilkårene sikret i artikkel 3 kan det innledes rettergang i den medlemsstat til hvis territorium arbeidstakeren er eller har vært utsendt, uten at det berører retten til å innlede rettergang i en annen stat i samsvar med eksisterende internasjonale konvensjoner om domsmyndighet.

Artikkel 7

Gjennomføring

Medlemsstatene skal vedta de lover og forskrifter som er nødvendige for å etterkomme dette direktiv, innen 16. desember 1999. De skal umiddelbart underrette Kommisjonen om dette.

Disse bestemmelsene skal, når de vedtas av medlemsstatene, inneholde en henvisning til dette direktiv, eller det skal vises til direktivet når de kunngjøres. Nærmere regler for henvisningen fastsettes av medlemsstatene.

Artikkel 8

Gjennomgåelse ved Kommisjonen

Innen 16. desember 2001 skal Kommisjonen gjennomgå gjennomføringsreglene for dette direktiv med henblikk på å foreslå eventuelle nødvendige endringer for Rådet.

Artikkel 9

Dette direktiv er rettet til medlemsstatene.

Utferdiget i Brussel, 16. desember 1991

Appendix 4

An abstract from http://www.momswhothink.com/reading/list-of-adverbs.html [accessed on 9 Feb 2013].

«Unngå vage og upresise ord.

Det er lett å gripe til vage ord hvis vi ikke er helt sikre på hva vi selv mener, eller hvis vi rett og slett ikke ønsker å uttrykke oss helt klart. Men som oftest er det lurt å la være å bruke vage og flertydige ord. Slike ord kan gjøre det uklart for mottakeren hva avsenderen mener.

Vi skal bruke ordet *forhold* som eksempel her.

Ordet forhold kan bety flere ting. Eksempler på uheldig bruk av dette ordet finner du nedenfor.

Eksempel
*For Kystverket innebærer dette **et aktivt forhold** i kystsoneplanlegging i samarbeid med lokale og regionale aktører.*

Kommentar
Hva betyr *forhold* her? Ut fra sammenhengen ser det ut til at det betyr *deltakelse*, men sikre kan vi ikke være.

Forslag til omformulering
*For Kystverket innebærer dette **aktiv deltakelse** i kystsoneplanlegging i samarbeid med lokale og regionale aktører.*

Eller:

*Dette innebærer at Kystverket **må delta aktivt** i kystsoneplanlegging ...*

Eksempel
*Mangel ved varen foreligger ikke hvis feilen skyldes **forhold ved forbrukeren**, for eksempel uforsiktig bruk eller dårlig vedlikehold.*

Kommentar
Her bidrar ordet *forhold* til å tåkelegge meningen. Hvis vi fjerner det og skriver om setningen, blir meningen klar.

Forslag til omformulering
*Det er ingen mangel ved varen hvis feilen skyldes **noe forbrukeren selv har gjort / hvis forbrukeren selv er skyld i** feilen ...*

Et annet vagt uttrykk er «i forhold til». Hvis du ikke er ute etter å sammenligne ting, bør du unngå dette uttrykket. Bruk heller en vanlig preposisjon, f.eks. i, med, om, på, til, for, eller uttrykk som «når det gjelder» eller «med tanke på».

Eksempel
*Politiet har et ansvar **i forhold til** å oppklare saken.*

Kommentar
Forsøker politiet å fraskrive seg ansvar? Det heter «ansvar *for*», ikke «ansvar i forhold til».

Forslag til omformulering
*Politiet har et ansvar **for** å oppklare saken.*

Eksempel
*Det pågår en debatt i **forhold til** bekjempelse av kriminaliteten.*

Kommentar
Hvor ullen kan debatten være? Det heter «debatt *om*», ikke «debatt i forhold til».

Forslag til omformulering
*Det pågår en debatt **om** bekjempelse av kriminaliteten.*

Eksempel
*Norske holdninger og posisjoner skal fremmes **i forhold til** våre forhandlinger med andre land.*

Kommentar
Saken skal vel tas opp *i* selve forhandlingene, ikke «i forhold til» dem.

Forslag til omformulering
*Norske holdninger og posisjoner skal fremmes **i** våre forhandlinger med andre land.*»