

# A Comparative Analysis of Modifier Patterns in German Legal Texts Translated into English

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## Abbreviations

AktG	Aktiengesetz (German Stock Corporation Act)
BGB	Bürgerliches Gesetzbuch (German Civil Code)
DE	German
EN	English
LSP	language for a specific purpose
M P T	manner, place, time
SL	source language
ST	source text(s)
TL	target language
TT	target text(s)
ZPO	Zivilprozessordnung (German Code of Civil Procedure)

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## **Declaration**

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### **Abstract**

This dissertation aims to carry out a comparative analysis of modifier patterns in German legal texts translated into English. The length and complexity of sentences, with numerous modifiers that qualify and restrict the sense are a feature of legal texts. The research focuses on modifier patterns in German articles of association and in their English translations and seeks to answer the questions as to whether there is a pattern and, if so, whether this pattern can be attributed to any model or theory. The research takes account of German and English grammar rules, drafting and translation guidelines for legal texts, translation theory underpinning legal translation, legal translation practice and corpus-based research in related areas. A comparative analysis was carried out on a small corpus of articles of association with the findings indicating that patterns could be determined both within each language and interlingually. The lack of research or linguistic models in this area prohibits any attempts to establish a model. Although the study suggested that adherence to the source language, German, word order in modifier patterns was predominant, suggesting the legal translation practice of adherence to the source language syntax, the scale of the study was too small to be conclusive.

(Word count: 201)

## Introduction

The main motivation of this study is self-interest, which most likely forms the basis for most undertakings. However, in this particular case, the self-interest can be illustrated by the following extract, which is provided by way of example:

Der Mieter ist verpflichtet, auf seine Kosten den Mietgegenstand in vertragsgemäßen Zustand zu erhalten, insbesondere die – gleich aus welchen Gründen – notwendigen werdenden Instandsetzungsarbeiten unter Verwendung von Originalersatzteilen unverzüglich fachgemäß durchzuführen oder durchführen zu lassen.

*(Back translation: The hirer is obliged at his costs the rented object in contractually appropriate condition to maintain, in particular the - even out of whatever reasons - necessary becoming maintenance work under the use of original spare parts without delay professionally carry out or carry out have.)*

The sentence is taken from a confidential commercial hire agreement between a hire company and the renter ("Mieter") and sets out one of the renter's duties, which basically state that the renter must maintain the rented object: *'Der Mieter ist verpflichtet ... den Mietgegenstand ... zu erhalten ...'* The remainder of the sentence adds further information as to how, when and what the renter has to do to maintain the object.

It is precisely this additional information, the "how, why, when, what, where, how much and by whom" that is of interest in the present study: Just how does one start to unpack all this 'modifying' information, arrange it in an appropriate sequence and make it comprehensible for the reader?

The present study aims to investigate whether any conventions exist that can be followed in presenting these modifiers. It is assumed that the grammar rules of the language to be translated into, in this case English, will provide guidance. However, it can be argued that 'legal English' is a semi-specialised language and this raises the further question as to whether it has its own rules of grammar or conventions that it follows or are there restrictions placed upon it? This then further raises the question as to whether it follows these rules or general rules of grammar and, if not, is it

possible to determine any recurrent patterns in how this information is presented when translated into English?

Before addressing these questions, first of all it is necessary to determine what the conventions are for the structure of German and English sentences, whether these differ or not and, if they do, whether this is reflected in the translated sentence structure. Further do the semi-specialised legal languages have their own conventions or patterns? Moreover, are any of these conventions affected by any restrictions placed upon the translator? Either by the *skopos*, that is, the purpose of the translation as defined by Vermeer (1989) cited by Munday (2001, p80) or by conventions regarding legal translation, whether arising out of translation theory or institutional guidelines or general practice.

Thus this study will compare in Chapter 1 the German and English grammar rules for modifiers and German and English as legal languages. Chapter 2 will discuss the role of the translator set within the pertinent translation theory, general practice in legal translation, relevant studies and literature on this topic, including any related research from other areas. Further a small corpus of legal texts will be analysed as to whether these texts follow the conventions for modifiers and/or whether a pattern can be established from this corpus (Chapter 3). Chapter 4 will discuss the results and Chapter 5 will discuss any implications and possibilities for further research.



## 1. Context

### A brief overview and comparison of the German and English languages

As this study contrasts the German and English pattern of modifiers and thus word order in sentences, it is perhaps useful to commence with a brief overview of the pertinent grammatical and syntactical rules and/or conventions governing word order and modifiers in both languages. The following brief grammatical summaries are taken from "A Practice Grammar of German" and the "Cambridge Grammar of English" for the respective language.

For the purposes of this study, which focuses on the function rather than the grammatical class of the unit, a 'modifier' is defined as a word, phrase or clause that functions as an adjective, adverb or adjunct to limit or qualify the meaning of another word or word group.

### The German language

"The Awful German Language" as defined by Mark Twain (1880) is also the language of some of the world's greatest writers, philosophers and scientists, most notably Goethe, Nietzsche and Einstein. Ironically, standard German today or 'Hochdeutsch' can be traced back in part to Martin Luther's bible translation (1522 New Testament, 1534 entire Bible), which played a significant role in spreading a standard language based mainly on the chancellery language in use at the Saxon court in Meissen (Sanders, 2010).

The German subject and object position in a sentence are determined by the position of the conjugated verb, that is, the verb form with an inflected ending. The standard means of referring to word order in German sentences is to refer to the position in the sentence as I, II, III (IV). The subject in a main clause can move around the verb from position I to position III, whilst the conjugated verb is always in position II.

	I	II	III	
a.	Die Firma	liefert	die Ware	
	<i>The company</i>	<i>supplies</i>	<i>the goods</i>	

<i>b.</i>	Gestern	lieferte	die Firma	die Ware
	<i>Yesterday</i>	<i>supplied</i>	<i>the company</i>	<i>the goods</i>

However, nearly any item can be placed in position I, which causes the subject to move to position III (*example b.*). This is referred to as inversion and does not affect the overall meaning of the sentence. The objects follow the verb with the dative object preceding the accusative object, unless they are pronouns, in which case the order is reversed.

There are no fixed rules for the position of adverbials used as modifiers. Generally, the sequence of adverbs and modifying phrases differs from English. The commonly used mnemonic STOMP refers to the general distribution sequence of Subject Time Object Manner Place where TMP refer to the position of adverbs. This can be further expanded to include the objects and causal adverb (C), which results in S (verb) T dative C M accusative P, which is illustrated below:

I	II	Time	Dative	Causal	Manner	Acc.	Place
Sie	gab	gestern	Ihrem Verlobten	wegen seiner Seitensprung	verärgert	das Ring	zurück
<i>She</i>	<i>gave</i>	<i>yester- day</i>	<i>her fiancé</i>	<i>because of his infidelity</i>	<i>angrily</i>	<i>the ring</i>	<i>back</i>

This results in a sentence that, although grammatically possible and correct, would sound strange to a native German speaker. In fact the above sentence lends itself to several possible different word orders. Usually adverbial modifiers in German sentences occur in the *Midfeld*, that is, between the conjugated verb and the end position.

A further point worth mentioning is the declension of nouns in German. This means that a noun may change its form according to gender, number and case. There are five declensions in German and three genders. There are fewer word order restrictions in a German sentence than an English one as the declension of the nouns and the agreement of number with the verb reveal who is doing what to whom, as shown below in the examples:

Der Vater widerspricht den Söhnen  
*The father (subject) contradicts the sons (dative)*

Dem Vater widersprechen die Söhne  
*The father (dative) contradict the sons (subject)*  
thus: *The sons contradict the father*

Nevertheless, despite the freedom allowed in word order, the presentation of information in a sentence also follows a convention. Any item can be placed in position I, most often the subject but a modifier can also be placed there. Position I is also used for emphasis. This emphasis may take the form of emphasising the continuing action, in which case the position I may make reference to the preceding statement. For example:

Man stellte den Zeugen einige Männer vor. Den Täter erkannte keiner.  
(back translation) *One presented (to) the witnesses some men. The perpetrator (accusative) recognised none (subject)*  
(my translation) *Some men were presented to the witnesses. None of the witnesses recognised the perpetrator.*

German sentences are usually written in ascending order of importance, thus the most important information is placed last or before the final verb. This is illustrated in the German examples above where the freedom of structure allows the subject to end the sentence. However, in the English sentence the subject has to precede the verb.

### The English language

As seen in the previous example, the word order between German and English differs greatly. English follows a Subject-Verb-Object order pattern. The form of nouns in English only changes to indicate number or possession<sup>1</sup> and there is no declension, therefore the sequence of words in a sentence is essential to understanding the meaning. Unlike the German adverb sequence, English adverbs generally follow a Manner Place Time (MPT) sequence. Some mobility of adverbs

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<sup>1</sup> The form of the noun may change to indicate gender, e.g. chairman - chairwoman, but the convention now is to refer to chairperson.

remains, however, as adverbs of time can occupy the initial position in a sentence. Adverbs or adverbial phrases can be used in three different sentence positions:

- (i) end, which is considered the most neutral and common, e.g. The judge spoke *slowly*
- (ii) front position, which adds emphasis especially if the adverbial usually takes the mid or end position e.g. *Yesterday* the train was late, and
- (iii) mid position, which is between the subject and verb e.g. The court *usually* adjourns at five o'clock.

The choice of position depends on the development of the text, the linking of clauses and the length of the adverbial. If there is more than one adverbial, the neutral or unmarked sequence of M P T is usual. If there is more than one adverbial of the same class, there is a choice of order with the emphasis falling on the last one. For example:

He arrived in the morning at ten o'clock.

or He arrived at ten o'clock in the morning.

However, this study is not restricted to adverbs as modifiers but also takes account of adjectives, adverbials and adjuncts, which may be adverbial clauses, nominal clauses or comparative clauses and prepositional phrases, and which comment on or expand in some way the meaning of the clause in terms of manner, place, time, frequency, reason, intensity etc. Biber (1999) speaks of adjuncts as 'optional adverbials (that) add additional information to the clause covering a wide variety of meanings, such as place, time, manner, extent, and attitude'.

## Features of German and English legal language

It can be generally agreed that people find legal documents difficult to understand and some even voice the suspicion that this is deliberate on the part of the legal profession although Azuelos-Atias (2011) claims that there is no deliberate intention on the part of lawyers and incoherence is inevitable. Azuelos-Atias is also of the opinion that legal language is ordinary language used in legal discourse. Cao (2007) views legal language as a register, which was first defined by Halliday, McIntosh and Stevens (1964) as a way of identifying different language uses (cited in Cao 2007, p18). Bhatia (2002) views legal language as discourse to be analysed as a genre and refers to Bazerman (1993, cited in Bhatia, 2002 p9) who points to a set of genre systems used by a community to communicate with others outside the community. In law this system of genres would be cases, judgments, contract, agreements, etc. Generally it is accepted that legal language is a *language for a special purpose* (LSP).

According to Mattila (2006) Lagoudaki (2006) and Cao (2007) sentences in legal language are traditionally very long and complicated. Tiersma (1999) suggests the lengthy sentence is an attempt to have all information on a specific topic in one, self-contained unit. This can be traced back to the tradition of writing statutes as a single sentence without punctuation and this practice has been retained in common law jurisdictions.

It can be noted in all languages that the style of the legal language is formal, impersonal, makes use of complex syntax, has its own vocabulary and that the sentence length is longer than in other texts. Conditional sentences are a predominant feature of legal language, in particular in legislative texts but conditional clauses and hypotheses also occur in agreements and contracts, or other commercial legal instruments, to express contingencies.

German, in particular, is viewed as clumsy and complicated with large numbers of attributes in front of substantives (Mattila, 2006). According to Cao (2007) German legal texts are characterised by the passive voice and impersonal verb forms and multiple attributive adjectives, whereas legal English uses complex structures, multiple negations, prepositional phrases and the passive voice.

Another common linguistic feature of legal language are qualifications and exceptions. As stated above, German is known for its attributive adjectives; however, English legal texts also make copious use of modifiers in the form of adjectives, adverbials, adjuncts and prepositional phrases, which assume the structural role of specification (Halliday and Hasan, 1997).

German law has been developed in a systematic, logical, abstract and conceptual manner, which is reflected in the 'abstract and complex' style of German legal language (de Cruz 1999 cited in Cao, 2007 p.22). German law thinks in terms of general principles and its terminology and central method of law-making in its civil law approach is different to that of common law. This is particularly noticeable in the Bürgerliches Gesetzbuch (BGB - German Civil Code) which is written for the legal profession, not the layperson.

The German legal language is influenced by text type phrasing and formatting. There are certain expectations of how a text type is to be formatted and there are even provisions specifying this. For example, many German texts will make reference to the paragraphs in the Zivilprozessordnung (ZPO - the German Code of Civil Procedure) that specify the structure, content and terminology of a given text, such as judgments, decisions, appeals etc. The same applies to the Aktiengesetz (AktG - the German Stock Corporation Act) for example Article 23 which stipulates the content of the articles of association of a stock corporation. The fact that the content of so many legal texts is prescribed by legislation means that publications of collections of standard texts exist, which lawyers then only need to customise to suit their purposes.

In a study of German and Anglo-American contracts Hill (2004) determined that the legalese in German contracts was almost identical from contract to contract with many of the provisions also being quite similar from contract to contract. Hill points out that the study was broadly applicable to the difference between civil law contracts and common law contracts and quotes the anecdote attributed to Georges A. van Hecke (Hill, p. 897) about a contract between an American and Belgian company. The original American draft was 10,000 words, which the Belgians refused and prepared their own 1,400 word draft, which the Americans admitted covered everything necessary and was ultimately signed to everyone's satisfaction. Hill argues that the precision of German grammar with regards to gender and case may

also be a reason for shorter contracts as there is less ambiguity and room for misinterpretation.

The shorter length of German contracts or German legal drafting may be attributable to the extent to which obligations are codified by law and thus parties need only refer to the appropriate legislation without setting out the entire requirement. For example, Section 242 of the BGB specifies contractual performance and may also limit contractual rights. Many terms are defined in German legislation, for example Section 192 BGB defines the beginning, middle and end of a month as

'The beginning of the month is understood to be the first day, the middle of the month the fifteenth day, and the end of month the last day.'

This means that a German contract can use standard terms that have been defined and there is no need for lengthy modifiers. The other advantage of this is that in case of dispute the courts will interpret the contractual provisions according to the standard terms defined in the statutes.

With respect to modifiers, Alcaraz Varó and Hughes (2002) put forward the argument that every LSP is characterised by a functional vocabulary, which in the case of legal English can be subdivided into two main categories: the adjectival/adverbial group; and the conjunctions and prepositional phrases, or modifiers. Gandin (2010) points out that these may lead to possible equivalence problems at the level of conceptual, terminological, and stylistic and genre equivalence.

## 2. Literature Review

### Legal Translation and Translation Theory

As already mentioned, legal language is not a separate language but rather an LSP. Unlike other special purpose languages in translation, such as technical or medical, which are based on universal laws such as the law of physics, legal translation is not merely transcoding language but must also take account of the different legal systems and concepts of civil and common law. The following overview of translation theory as it relates to legal translation is intended to determine the freedom or restrictions imposed on a translator when using modifiers.

Cao (2007) suggests three categories of legal translation depending on the purpose of the TL text. This includes legal translation of documents that are legislative and binding in bilingual and multilingual jurisdictions, such as the translation or co-drafting of acts in Canada or Belgium. This category also includes the translation of private or commercial documents that are to be legally binding as the communicative purposes of the SL and TL are identical. A second category according to Cao is legal translation for informative purposes where the translation is not legally binding but serves information purposes. This may be statutes but most often this category of translation involves private or commercial agreements and contracts, and this is probably the area where most legal translators work. The third category of translation is also for information purposes but this is for judicial purposes, for example, to provide evidence in court cases, and may even be ordinary correspondence.

Sarcevic (1997) points out that

'legal translators have traditionally been bound by the principle of fidelity.'

(Sarcevic, 1997, p.16)

Theorists are still at odds as to the strategy to be employed when translating legal texts and the "spirit" vs "letter" dichotomy as originally raised by St. Jerome has never been conclusively decided.

According to Sarcevic (1997), literal translation had become the accepted method of translation for legislative texts by the 19<sup>th</sup> century as evidenced by two German



translations of the *Code Napoléon* where 'as far as the syntax is concerned, both translations read like the source text' (Sarcevic, p.33). One of the first disputes regarding 'spirit' or 'letter' style of translation arose upon the French translation of the German language Swiss Civil Code into French by Professor Rossel (cited in Sarcevic, 1997 p37). A Swiss lawyer G. Cesana objected to Rossel's use of idiomatic French and emphasis on the communicative nature of the text, similar to Nida's later 'dynamic equivalence', and demanded 'strict observance of the syntax and grammar of the source language' (cited in Sarcevic, 1997 p37). The Rossel/Cesana debate garnered supporters on each side of the literal vs communicative lines. Rossel argued for a variation in translation depending on the communicative function, which also informed Vermeer's *skopos* theory, and that authentic law addressed to the people ought to be in idiomatic French as opposed to non-authentic translations directed to lawyers for information purposes. However Cesana countered by advocating literal translation and warning translators against 'taking on the role of drafters for the sake of elegance of form' (Sarcevic, 1997, p41).

Nida (1969) was one of the first theorists to move away from the spirit vs. letter debate and to propose an analytical procedure and a system of priorities in his 'goal of equivalent response', in which he claims that translating should be the closest natural equivalent of the SL message in terms of meaning and that terms of style should take second ranking. Nida proposed 'dynamic equivalence', which he considered to have been met if a TL recipient responded to the message in the same way as the original SL recipient. In Nida's view, this took precedence over 'formal correspondence', where the syntax and class of words is preserved to remain faithful to the source text.

Nida (1969) also advocated preserving the meaning within the context of the message rather than retaining the structure. In fact, Nida accepted that the translator needed to make grammatical and lexical adjustments to achieve equivalent effect. To this end he put forward a theory of grammatical analysis or 'transformational grammar', which reduces a sentence to its basic level or 'kernel' (Nida 1969, p57). Nida's transformational grammar is considered to lean heavily on Chomsky's transformational generative theory of language, which was not intended for translation, but Nida claims his theory was well-developed before Chomsky's formulation (Gentzler, 1993). When applied to legal translation, Nida's dynamic equivalence would suggest that the translator may freely select the word order.

Newmark's 'semantic' and 'communicative' distinctions have been likened to Nida's 'dynamic equivalence' and 'formal correspondence' (Newmark, 1981 cited in Munday, 2001 p.44). Newmark (1981) acknowledges a difference between the translation of legal documents for information purposes, where he considers communicative translation necessary and a more target-language approach for documents that are to be valid in the TL community. For legal documents this would mean adapting to TL norms and being oriented towards the TL culture.

Rossel's argument as to the communicative nature of legal translation is continued by other theorists. A departure away from literal translation was proposed by Katherina Reiss with a translation-oriented text typology that looked at the function of texts and assigned them to one of three classifications. According to this classification, legal texts were 'informative' (Reiss, 1976 cited by Munday, 2001 pp72-75). Reiss even attempted to move away from the definition of 'equivalence' and instead proposed that a translation should be 'adequate'.

The *skopos* theory of Hans J. Vermeer (1986, cited in Sarcevic 1997, p.66) sets out that a text does not necessarily have the same function in the TL as in the SL and this determines how it is translated. Vermeer emphasised the function of the translation and that its adequacy is determined by its fulfilling its function in the TL. Vermeer attempted to justify his theory by showing that an insurance contract could be translated differently depending on whether it was for information purposes or as a binding contract. However, LSP theorists do not accept that Vermeer's *skopos* theory can be applied to LSP texts. Nor does Sarcevic (2000) accept the general applicability of *skopos* theory to legal translations as regardless of their function they remain subject to legal rules within the law.

As already mentioned this accuracy for LSP texts is more easily achieved where there are universal laws, such as the law of physics, and where the concepts are universally agreed as for the natural sciences. However, legal language is embedded in a social and legal culture that differs not only with respect to the language but also the legislation, jurisdiction and system of law, whether civil law or common law.

Nord's text analysis approach to translation theory is also a functional approach, which takes account of the purpose of the text. However, Nord proposes an analysis of intratextual factors including sentence structure, to determine which features should be prioritised (Nord, 1997 cited in Munday, p83). Although this theory might

suggest more freedom for the legal translator, Nord's proposed hierarchical structure to determine the priority of these features imposes a restriction again.

The concept of translation shift came to prominence with the work of Vinay, Darbelnet and Catford and examines the linguistic changes that take place when translating from a ST into a TT. Vinay and Darbelnet (1995, 2004, cited in Munday, 2001, pp56-61) compared English and French texts and identified translation techniques which they assigned either to an oblique (free) or direct (literal) approach to translation. They also highlighted the issue of 'servitude' or the compulsory changes to be made from a ST to TT and 'option', which allows the translator personal choices. Although Munday (2001) points out that the latter is most relevant for literary texts. Catford (1965, cited in Munday 2001, p.60) first introduced the concept of translation shifts in *A Linguistic Theory of Translation*. For Catford a translation shift between a SL and TL was a departure from formal correspondence and was either a level shift or a category shift. Catford's research has been criticised for its contrastive linguistic approach and mainly for not being based on actual translations.

Venuti (1998, cited in Munday, p.145) feels the translator should emphasise the foreign identity of a text so that the reader is aware that they are reading a translation. To this end foreignisation should include closely following the ST structure and syntax, especially the adjunct positions. This appears to be applicable to legal translation where misunderstandings could arise if the ST is understood as a TT but Venuti's theory is based on literary translation and has not been applied to legal translation.

Sarcevic (2000) points out that the usefulness of general translation theory for legal translation is disputed by some legal translators due to the special methods and techniques required by legal translation. She argues that due to the special nature of legally binding texts, substance must always prevail over form in legal translation. However, it must be pointed out that Sarcevic's work concentrates on authentic texts with equally binding force, in particular legislative texts in bilingual or multilingual jurisdictions, which are one genre within a set of legal genre. In this respect, it can be argued that *skopos* theory, which emphasises the function of the text, or the approaches of Reiss and Nord come closer to the purpose of the 'informative' purpose of the translation of a contract.

## Legislation drafting guidelines and translation guidelines

As Sarcevic (1997) states, legal translators have never been free to create new texts in the genius of the target language. As no specific guidelines were available, they were advised to 'honor the principle of fidelity to the original text' (p.112). This meant that translators followed the syntax, terminology and style of the source text. The result, according to Newmark (1982), was that legal translation was 'the most restricted form of translation'. However, Sarcevic claims that since the 1980s, the translator is no longer bound to fidelity to the source text but to the 'uniform intent' of the text, that is, what the writer or legislator intends thereby (p.112).

If legal translators are required to 'honor the fidelity of the source text' (Sarcevic 2000) then it can be assumed that literal translation in the sense of close adherence to the source text is very highly rated. The British Chartered Institute of Linguists sets a three-part exam for a diploma in translation with a general paper and two semi-specialist ones with a choice of options including legal. One of the stated requirements of the exam is accuracy, defined as the correct transfer of information, suggesting close adherence yet in post-exam comments examiners have expressed approval of students who rearranged the sentence structure to give a more natural TL structure thus not adopting strict adherence (Munday, 2001).

As already stated, there is no theory specific to legal translation that this study can draw upon for word order and style. With regards to authentic texts, it is common practice for institutions to issue guidelines for drafting legal instruments as well as guidelines on their translation. This is particularly true in jurisdictions where parallel authentic texts are produced.

The Swiss Federal Office of Justice (2007) has published the *Gesetzgebungsleitfaden* (guidelines). The guidelines advise drafters to make legislation concise, precise and simple to promote intelligibility. The guide also provides suggested wording for the drafters. The Government of Canada has published the *Guide Canadien* (1997) to aid in drafting and revising French legislation; it provides terminology and phraseology, as well as side-by-side comparisons of legislative English and the French counterpart. Canada is in a unique position as not only is the legislation bilingual, it has to harmonize the French civil law aspects with the English common law. The European Union has also published general guidelines on the Quality of Drafting of Community Legislation, which were adopted in 1993.

The Joint Practical Guide (2000, updated 2009) drawn up by the European Parliament, the Council and the Commission for persons involved in the drafting of legislation states that acts adopted by the Community

'must be drawn up in an intelligible and consistent manner that follow uniform principles of presentation and legislative drafting' (Joint Practical Guide, 2000, p.5)

The main message the *Guide* makes is that legislative acts must be drafted 'clearly, simply and precisely' (p.10). The *Guide* continues to give instructions on the verbs and tenses, the terminology, the avoidance of long sentences and 'unnecessarily convoluted wording' (p.14). The *Guide* also warns against complicated sentences that have several phrases, subordinate clauses or parentheses and instead recommends breaking such sentences down into two or more single sentences.

As far as it is possible to establish at the present time, there are no general guidelines available or published on translation strategies for non-legislative legal texts. Drafting guidelines for non-legislative instruments have been written for lawyers, for contracts for example, but very often these focus more on the application and rule of law rather than the syntax, as in the following example taken from *Drafting Contracts: How and Why Lawyers Do What They Do*

'Version 1

No Litigation. No litigation is pending or threatened against the Target.

Version 2

No Litigation. Except as set forth in Schedule 3.14, no litigation is pending or threatened against the Target.

Version 3

No Litigation. Except as set forth in Schedule 3.14, no litigation is pending or, to the Seller's knowledge, threatened against the Target.' (Stark, p.18)

Although it is interesting to see in this example how the author adds the modifying phrases as she extends the qualifications.

In a study carried out by Candlin et al (2002) to determine books on legal writing suitable for second language learners, of the 37 books examined the majority were found to be aimed at native speakers of English and gave recommendations for simplifying legal language including the avoidance of unnecessary modifiers and long sentences. Candlin et al criticise the books for ignoring a linguistic analysis of legal texts.

It is the practical consequences of legislative translation that have informed translation practice rather than translation theory. For example the European Court of Justice at Luxembourg now follows a uniform format and style that facilitates translation as the previous freedom of style led to confusion and misunderstandings (Sarcevic 1997).

To look at legal translation in practice and, in particular for the focus of this study, to look at what determines the placing of modifiers, it is necessary to look at the translation of legislation as the literature and research on legal translation has focused primarily on legislation. This is probably because this is the most visible area of legal translation, the texts are easily accessible and the issue of equal authenticity in bilingual and multilingual jurisdictions for all versions of a legislative instrument. The fact that they also need to be interpreted in a uniform manner to achieve the same legal effect adds an additional objective (Baaij, 2010). For this reason, reference in this study is made to the published guidelines and recommendations of legislative institutions and to the current practices employed by translators of those legal instruments. Sarcevic (1997) covers in great detail the 'creativity allowed a translator' in the Swiss, Canadian and Belgian legislation. These are used here as examples to show the requirements and/or restrictions placed on the translator of legislation.

According to Sarcevic (1997) legal translators must be able to identify the normative content expressed in the statement of law of the source norm and formulate a legal norm in the target text that leads to the same results. Translators need to be aware that the drafting norms do not necessarily reflect grammatical rules. Since even slight changes in language may affect the substance, translators must always take account of legal factors when making linguistic decisions. Newmark (1982) states that as much attention should be paid to the content as to the intention.

Conditional sentences, which frequently form the basis of legal rules, are often reorganised when translating. George Coode, an English barrister, determined four

elements in a conditional sentence, two of which were the case and condition in the fact situation, and the remaining two the legal subject and legal action, which form the statement of law. Driedger (1976, cited in Sarcevic, 1997, p136) took Coode's elements and formed a sample provision in the same order of case, condition, legal subject and legal action thus:

*Where an applicant has passed the test, / if he pays the fee, / the Minister / shall grant him a licence. (cf. Sarcevic 1997).*

Driedger then went on to re-order the sentence in eight different examples, which he claimed was not an exhaustive list. In each case no change was made to the statement of law although it could be moved to precede the fact situation. The fact situation itself could be changed, for example into a relative clause embedded in a subordinate clause

*Where an applicant who has passed the test / pays the fee, / the Minister / shall grant him a licence.*

The elements of the fact situation could be formulated as adverbial modifiers in a subordinate *if* or *where* clause. While allowing for variety, Sarcevic (1997, p164) warns translators against altering the propositional content or creating an ambiguity. Sarcevic (1997) states that 'translators must preserve causal relations at all times so as to express the desired cause and effect' and that according to Thornton (1987) cited by Sarcevic (1997, p165) 'each modifier should be placed as near as possible to the sentence element it modifies'.

Coode's basic word order rule that the fact situation precedes the statement of law is still recommended and was required by the Swiss guidelines of 1976 when drafting criminal provisions and this order was only to be deviated from for compelling reasons (Richtlinien der Gesetzestechnik, 1976). However this is not expressly stated in the *Gesetzestechnische Richtlinien des Bundes* edition of 2003.

The EU also allows its translators more creativity with the 'non-restricted' parts of EU instruments (Koutsivitis, cited in Sarcevic, 1997, p. 224) as can be seen in the comparison of the English and German versions of Article J3 (7) of the Treaty on European Union:

*Should there be any major difficulties in implementing a joint action, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions.*

Ein Mitgliedstaat befasst den Rat, wenn sich bei der Durchführung einer gemeinsamen Aktion größere Schwierigkeiten ergeben; der Rat berät darüber und sucht nach angemessenen Lösungen.

The English conditional sentence follows Driedger's pattern based on Coode, but the German has fronted the statement of law, which makes it clearer than if it were placed in a subordinate clause and avoids inversion. This is permitted under German rules of grammar but would cause a rewording of the statute were the English to take the same approach.

Two of the main text books on legal translation are *New Approach to Legal Translation* by Susan Sarcevic (1997) and *Translating Law* by Deborah Cao (2007). The two authors differ in their recommendations as to the freedom the translator may exercise in linguistic decisions. This may derive in part from their different focus: Sarcevic has focused on legislation and authentic texts whereas Cao also takes account of private legal documents.

According to Sarcevic, legal translators should retain negative clauses as negative and not translate them as positive but the translator is free to determine where the negation falls depending on customary use in the language, for example, 'no person may' or 'a person may not', thus negation of the subject or of the verb.

As long as the substance remains the same, Sarcevic allows that translators may change passive to active or vice versa where one or the other is more natural in the TL, and this appears to be the strategy followed by translators in the jurisdictions studied by Sarcevic. Cao (2007) also supports this. However the Swiss *Gesetzesgebungsleitfaden* specifically states when this change may not be made.

Cao (2007) highlights the syntactical feature of long sentences with modifying phrases and proposes a two-step approach of conducting a careful analysis of the original sentence structure and meaning and then to convey the meaning in the TL, which concurs with a text analysis functional approach proposed by Nord (1988/2005 cited in Munday, 2001, p62). Cao also states that



'it may be necessary to break long sentences up and compose two or more sentences in the TL. It is not necessary to follow and reproduce the SL structures in the TL' (Cao, p. 94).

However, not everyone would agree with this.

Even where translators are no longer held to strict literal 'word-for-word' translation, which adheres to ST structure and punctuation, this careful adherence still remains a hallmark of legal translation. For example, in multilateral treaties where the text is expected to be sufficiently idiomatic that it reads like an original in each language yet the versions show interlingual concordance so that no ambiguities arise, translators tend to choose literal translation over linguistic style even if this causes an unnatural word order in the TL (Sarcevic 1997). This is perhaps also due in part to lawyers viewing concordance of structure, terminology and syntax between original texts and translations as a measure of accuracy.

This concordance view of the structure can be seen, for example, in the bilingual display of European Commission Regulations. However, following legislative reform in Canada, French drafters and translators are permitted to make deletions and reorganise paragraphs as long as the substance remains the same. This difference in language, particularly in the length of provisions, is due to the different legal concepts between civil law and common law; civil law takes a broad view and is based on principles whereas common law will usually enumerate all the instances. The French drafters and translators of Canadian legislation were also permitted to replace other features of common law, such as the use of couplets, e.g. null and void, with a single lexical item. However, criticism of the French drafters and translators has been made of their having taken so much leeway that the English version has to be adapted to fit.

In summary, there is no specific legal translation theory, nor does general translation theory always transfer to legal translation, where the expectations of the recipient may differ substantially from those of the recipient of a literary translation. Likewise the purpose of the translation dictates the strategy, for example ensuring the uniform intent of EU legislation results in a legal equivalence approach with concordance a main feature, rather than a functional approach (Loiacono, 2010) or a receiver-oriented approach. In practice, legal translators of legislative instruments follow the guidelines set by the pertinent institutions with varying degrees of linguistic freedom.

## Related Research

The practice of viewing legal translation as word-for-word, literal translation has led to a high proportion of studies of legal translation focussing on terminology. This is due in part to the complex and highly specific legal language but also to the issue of translating concepts not only between languages but between legal concepts. The advent of translation memory as a tool in translation has also generated terminological studies but fewer studies of syntax or word order. Syntactical studies in machine translation have focused on punctuation to recognise translation units. Very early research into the pattern of the German language and word order in sentences for use in machine translation was presented by Marchand in 1960. He provides a descriptive model for an extended attribute construction and for the syntax of a German sentence (Appendix 1). The model has not been tested rigorously but Marchand claims it to be 'fairly infallible' (Marchand, p.242).

Härtinger (2010) carried out a study on typical phrases and word patterns in German and Spanish European patents from a corpus of German and Spanish registered patents. The study showed that a feature of these texts was the use of specific, typical phrasing and wording both in German and Spanish. Although this study was investigating the usefulness of translation memories in patent applications, it highlights the stereotypical nature of standard German legal texts and the high degree of repetition within a text type.

Other studies have focused on word combinations (see Biber et al 1999; Biber 2004) and their role in the generic knowledge of a register or genre (Bhatia 2002). Gozdz-Roszkowski (2006) claims that routine phraseology is pervasive in language use and through research on multi-word combinations or 'lexical bundles' as defined by Biber et al (1999, cited in Gozdz-Roszkowski, 2006 p149 ) in legal text-type contracts has determined their characteristic feature of repetitiveness and fixed macrostructure. Proia (2012) has also studied word patterns in legal texts for compatibility with translation memories and points out that many legal texts show a typical pattern in their wording yet also permit a certain amount of variety. Proia also highlighted the conformist structure of German legal documents based in part on the requirements set out by law (see ZPO above) and on the use of published standard documents by lawyers leading to the setting of norms that are taken as standard by the courts. His study also highlights the usefulness of these standard formulations for translators.

Corpus-based research on language universals has focused on recurrent patterns in translation, in particular 'translationese', which is defined by Olohan (2004, cited in Biel 2010) as translation that is influenced by the source language in such a way that it becomes inappropriate. Biel (2010) maintains there is a need for research on translation universals and patterns in translated language, especially for legal translation.

Research on modifiers in legal texts has been carried out by Mkhathshwa (2007). This study investigated the role of grammatical analysis in reading legal texts, specifically the use of modification and subordination in the statutes of two universities by legal writers. Mkhathshwa's study showed that using adjectival and adverbial modifiers in legal texts enhances communication by achieving clarity and precision and that although modifiers may be syntactically optional in a sentence they have the effect of explicitness and provide that which is the point of the information (cf. Halliday and Hasan, 1997, p96). Mkhathshwa argues that almost all the statutory sentences of the universities use modification and subordination to enhance communicative potential and effectiveness.

### Summary

It has not been possible to find any research on modifier patterns in German legal texts. As stated by Biel (2010) there is a lack of legal translation research. The research referred to above has determined standard phrases and repetition of phrases within German legal texts but not any pattern of occurrence. Mkhathshwa's research is important for establishing the role of modifiers in legal texts and the use of corpus as a research method. Taking account of the research into set phrases, word strings and translationese, and accepting that modifiers are a feature of legal language, the question arises as to whether the pattern of modifiers in German legal texts is repeated in the pattern of modifiers when translated into English or whether the modifiers follow English grammatical rules or conventions.

### 3. Methodology

In order to determine whether a pattern can be established, a comparative analysis of a parallel corpus of legal texts will be carried out. A corpus-based approach has been selected as it is an empirical approach to a description of language use by means of authentic data. A small, parallel corpus of German and English legal texts will be analysed. Of necessity the parallel corpus is small as there is a lack of parallel legal corpora, in particular of private legal and litigation documents. This lack is often due to copyright reasons, which either results in excluding such texts or including them in very small samples.

#### Data sample

The texts chosen for this study are German *Satzungen* (articles of association). It was originally intended to compare general terms and conditions of business but this was found to be impractical for this small study as these were too lengthy for a manual comparison and a computer tool was not available. The original texts of the articles of association have been taken from the websites of eight German companies listed on the Frankfurt stock exchange, the DAX. One other company was analysed but has been excluded from the results as it is not listed on the DAX. As already stated, access to legal documents other than legislation is restricted. This results in an over-representation of legislation and under-representation of other legal genres (Biel, 2010). However, articles of association are documents of public record and copies can be obtained from the respective *Handelsregister* (commercial register).

The articles of association of these companies have been selected because

- (a) the companies are all listed on the Frankfurt DAX and can be assumed to form a homogenous group of *Aktiengesellschaften* (stock companies) of a comparable size
- (b) the articles of association are accessible online in a German version with an English translation
- (c) the companies publish the latest version of their articles of association on their websites and

(d) it is assumed that because the companies have a high international profile, their English translation will be of a high quality to reflect the company's image and thus be suitable for analysis.

Furthermore, it was decided to use articles of association because the requirements of content and form are specified in Section 23 Establishment of the Articles of the *Aktiengesetz* (AktG - German stock corporation act) (Appendix 2). It can therefore be assumed that all the companies' articles of association will demonstrate the same format, structure and German language pattern, which will facilitate a comparative analysis. These articles of association are thus considered representative of German articles of association.

This study is also limited in scope due to resource constraints and therefore has been restricted to eight German articles of association and their English translation. A general analytical comparison was carried out of the eight articles of association for content and structure, followed by a specific analysis of clauses in two articles. Article 2 was selected as, following Section 23 AktG, it specifies the *Gegenstand des Unternehmens* (purpose of the company) and was the first article to contain modifiers, thus it was taken as a base to test the feasibility of the methodology. The first clause under Article 2 was excluded as this referred exclusively to the purpose of the individual company and was a simple declarative clause without modifiers. The remaining clause(s) under Article 2 were analysed. For the second article analysed, the first paragraph authorising a capital increase under the article regulating the *Grundkapital* (capital stock) was selected for a comparative analysis of the German and English versions. The clause on capital increase authorisation commencing *Der Vorstand ist ermächtigt* (the management board is authorised) was chosen for its length of a minimum of four lines in each case and for its complexity, which shows a large number of modifiers, but in particular for the initial word string which appeared in all the articles of association. The articles and clauses selected comply with the requirements of information of Section 23 AktG. Subsequent articles and clauses in the articles of association are not mandatory under Section 23 AktG. It is accepted that this is a small representative sample of clauses that reflect the mandatory articles under Section 23 AktG, however, following Hill (2004) it can be argued that adherence to Section 23 AktG will provide a similar pattern in all the articles analysed, which will facilitate comparison. A full analysis of the complete articles of

association of each company would be beyond the scope and resources of this study.

### Data collection

As the corpus is small, for the purposes of this study it was decided that time and expense restraints prohibited the sourcing of expensive computer tools to align the segments and carry out the analysis; the comparison was therefore carried out manually. A colour code system as suggested by Halliday (2002) was chosen to differentiate between the different modifiers. However, as Halliday points out, this has its limitations due to the lack of sufficient colours. Initially every information unit was colour-coded, however, for reasons of clarity and lack of sufficient distinctive colours, it was decided only to colour code those elements that indicate modifiers and/or a shift in the structure of the sentence. For the sake of simplicity these were determined on the basis of the information they provided, for example information relating to time is coded in red. This was decided in order to avoid a long, involved linguistic and grammatical analysis of all the sentence elements. For the purposes of this study, the actual grammatical unit whether adjective, adverb or prepositional phrase is not important; rather the contribution the unit makes as a modifier with regards to information and clarification. The sentences are analysed for 'chunks' of information, this may be a multi-word phrase or single word. A chunk of information is determined to be a phrase or word that answers the questions where? when? how? why? to what extent? and under what circumstances? (Flower and Sitko, 1989, cited in Mkhathshwa 2007, p75). In addition, relative clauses and object complements have also been colour coded to show the relations within a sentence. The colour coding scheme and the clauses analysed are presented in appendix (Appendix 3); the section of the articles of association that these clauses were sourced from is included as Appendix 5. The colour coding on the basis of modifying information is carried out on concordance of terms and meaning. It is accepted that this colour coding may be criticised for being arbitrary and subjective but as this small scale study is only intended as an exploratory investigation into patterns, the colour coding is considered sufficient for this purpose. Furthermore, colour coding on the basis of meaning instead of grammatical unit avoids the confusion of which colour to use if a translational shift occurs, for example when a German adverb is nominalised in the English translation; always retaining the same colour for meaning regardless of grammatical unit highlights the pattern of movement of the modifiers. As an extension, a small analysis was carried out on one sentence adapted from the

numbering sequence for the German declarative clause model established by Marchand (1960). The results of this analysis are also included in appendix (Appendix 4).

#### 4. Evaluation of the Results

The German articles of association were first compared to the requirements set out in Section 23 of the AktG. All eight articles of association followed the information requirements of the AktG in the order listed by the AktG. In brief this is:

1. The company's business name and domicile
2. The purpose of the company
3. The amount of the share capital
4. The segmentation of the share capital and classes of shares
5. Whether the shares are to be issued in bearer or registered form
6. The number of members of the management board
7. The permitted form of announcements by the company
8. Other provisions permitted by the AktG.

Six of the eight companies changed the above order by inserting number (7) after number (2) above but kept the remaining order. In all instances the formatting and structure of the articles was identical between the respective German and English versions. All the companies, apart from two, retained the German style of denoting an article with the '§' sign. One company replaced the sign with 'article' and one company used both in the heading of each article with, for example, Article 1 and § 1 in brackets.

In Article 2, the following sentence

'Die Gesellschaft ist zu allen Maßnahmen und Geschäften berechtigt, die ...'

occurred in six of the articles of association. It is a declarative clause with a relative clause modifying the *Maßnahmen und Geschäften* (measures and business transactions). The same pattern of main clause and relative clause was retained in every English translation. Two sentences had a further qualification as follows

'..., die unmittelbar oder mittelbar der Erreichung des Gesellschaftszwecks förderlich erscheinen'

which appeared as



- (a) '...which appear likely to directly or indirectly promote the achievement of the company's aims'

and the following sentence that occurred in two companies' articles of association:

'..., die mit dem Unternehmensgegenstand zusammenhängen oder ihm unmittelbar oder mittelbar zu dienen geeignet sind.'

- (b) '... that are connected with its corporate purpose or which are suitable to directly or indirectly serve such purpose.'
- (c) '...which is related to, or directly or indirectly serves, the object of the Company<sup>2</sup>.

In (a) the sequence in the relative clause has been changed to English language conventions with the verb 'appear' followed directly by the adverb 'likely'; the infinitive 'to promote' has been split to insert the adverb, which retains the word order of the German adjective before the relative clause complement, which adheres to German grammar rules. Prescriptive English language rules would place the adverb after the verb. The same pattern of placing the adverb immediately before the verb is observed in (b) and (c) and of splitting the verb to insert the adverb in (b).

In the same Article 2 six companies make a reference to

'...im In- und Ausland Zweigniederlassungen einrichten'  
(back translation: at home and abroad branches set up)

or 'Errichtung von Zweigniederlassungen im In- und Ausland'  
(back translation: establishment of branches at home and abroad)

In four of six cases, the modifying unit in English followed the German word order in line with English language conventions on adverbs of place, thus 'branches at home and abroad'; in one clause the modifying unit was placed at the end of the sentence, in line with the German word order and English adverb position, and in one clause

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<sup>2</sup> (c) does not account for *geignet* (suitable), which may have resulted in a different pattern had it been included.

the adverb became an adjective before the noun thus 'set up domestic and foreign branches'.

A comparative analysis of the first sentence commencing *Der Vorstand ist ermächtigt* using the Marchand (1960) numbering sequence (Appendix 1) reveals the patterns in the German and English sentences. A breakdown of the pattern is shown in Appendix 4. This German sentence contains essentially the same information, thus the same modifiers. The German sentences follow the conventional German sentence order with the adverbs in a Time-Manner-Place sequence. Only two of the articles reverse numbers 8 and 9 (the object and time modifier). Four of the articles follow the same pattern of modifiers 11-11b-11c; apart from the modifier 11a, which is a prepositional phrase, all the modifiers are found in the *Midfeld*, that is to say, between the verb forms. The sentence breaks down into three distinctive parts: the first part contains items 1-3-14 in that order, the second part contains 8-9-11a, in this order except for three cases, and the remainder of the sentence where the '11' items occur where the order 11-11b-11c occurs five times.

The English sentence breakdown reveals a consistency in word order. The first part of the sentence is a one-to-one transcoding of the German sentence except for one of the articles. The second part of the sentence shows homogeneity among the English sentences although closer comparison shows that both the English and German sentences show correspondence within the respective language in four sentences up to six positions. With regards to the sequence of adverbs of manner, designated by '11', six of the English translated sentences mirrored their German original sentences. When viewed separately, the English and German sentences each showed distinct patterns within the language in three areas, positions 1-3, positions 4-7 for the English and 4-6 for the German, and again a similar pattern for the final positions. After allowing for the reorganisation of the first part of the sentence (positions 1-7) the English sentences mirrored the German sentence patterns for the modifiers 11-11b-11c and 11d and retained them at the end of the sentence; five articles retained them in exactly the same order. The only exception was the prepositional phrase 11a; five of the seven English sentences moved 11a into fourth position after the verb 'authorised'/'entitled' and followed it with the infinitive. This placed the modifier immediately after the verb it qualifies, in line with English grammar rules, although it also breaks the rules by placing the modifier between the verb and complement, that is, the phrase 'to increase...' e.g.

'The Board of Management is authorized with the consent of the Supervisory Board to increase the Company's share capital...'

## 5. Discussion of the Findings

This comparative analysis set out to investigate

- 1) if there is a pattern to modifiers in German legal texts translated into English
- and 2) if so, does this pattern follow a model or theory?

These questions will now be discussed in light of the results of the comparative analysis and in relation to the literature and theory analysis set out in Chapter 2.

The results show that a pattern is apparent in the German ST and in the English TT. The pattern of the German modifiers follows the conventions for modifier position in German grammar rules. The pattern for modifiers in the English translated sentences closely mirrors the German modifier pattern to the extent that it can be argued that English grammar rules are breached by placing the time modifier first in a sequence of modifiers. It may also be argued that in the sentence analysed with multiple modifiers, the time modifier may be modifying either of the two verb phrases with no distortion of meaning, as in

'...is authorised to increase the share capital until a specific date'  
or '...is authorised until a specific date to increase the share capital'

so the position of the time modifier after the first verb phrase is justified in placing the modifier immediately after the word group it modifies (Thornton, 1987). Although this analysis is not evaluating the translation quality, it can be stated subjectively that the position of the modifier does not hinder understanding of the sentence nor can it be said that the placing of the modifier changes the meaning of the sentence.

All the sentences analysed showed close adherence to the ST syntactical pattern. This pattern was only broken to allow for the English language Subject-Verb-Object pattern. The close mirror pattern sequence between the German and English modifying elements could suggest either that the translators were not aware of any grammar rules governing the sequence of modifiers or that the translators were following a policy of adhering to the German sentence word order as far as possible. This is contrary to Baker's (2001) argument that 'most translators prefer to give priority to the syntactic principles of the target language'. As already stated, there are

only general rules on modifier sequence in English grammar and the number of modifiers in the sentence(s) analysed in these legal texts far exceeds the number found in an average English sentence. However, a research of English grammar did not result in determining a model of modifier sequence that incorporated every type of adjunct modifier.

The close adherence to the German modifier pattern suggests the translators are striving to achieve 'fidelity to the source text' (Sarcevic, 1997). Different reasons may be inferred for this 'fidelity' such as standard practice in legal translation of literal translation, an attempt to avoid any ambiguity or mistranslation or a lack of knowledge of English grammar rules. Although it must be pointed out subjectively that strict adherence to the modifier sequence does not affect comprehension of any of the sentences. An analysis of a larger sample would reveal whether this adherence is prevalent throughout all such sentence types or only specific to the ones analysed. Thus to answer the second question, the close adherence is not following an English grammar model as such but rather the convention in legal translation of 'fidelity to the source text'.

## 6. Implications for Future Research

This comparative analysis was carried out on a very small scale as a preliminary investigation of whether a pattern of modifiers was present and if this could be attributed to a model or theory. An attempt to determine the correct pattern is beyond the scope of this investigation but it does raise the question of what the correct pattern should be. This is an area of research that lends itself more to grammar and linguistics, in particular as it fell into disfavour with translation theorists many years ago and who have since focussed on a communicative approach and most recently a receiver-oriented approach to translation theory. However, with a rise in corpus-based research, which lends itself to analyses of this sort, and the growing use of translation memory software, it is possible that this area will enjoy greater focus.

The difficulty of acquiring a corpus of non-legislative legal texts has already been highlighted. However, a corpus of legal texts would be essential to carrying out further research in the area of modifier patterns. As there is a lack of specificity regarding the grammar rules, research in this area could have direct application in training for legal translators. Further, the articles of association that were analysed all followed the same format, structure, content and, to some extent, the same word order, which is typical of non-legislative German legal texts where a standard form is used repeatedly (Hill, 2004). Further research into this area not only for patterns but the word strings included in them, would greatly benefit legal translators working in this field. This would possibly lead to greater congruency between texts. In particular, if, according to Hill (2004) the standard wording and phrasing in German non-legislative texts is interpreted in a uniform way by the courts, which means that lawyers do not stray too far from this wording and phrasing, it might be useful to have a bank of corresponding standard wording and phrasing in English for a translation, which would result in a lack of ambiguity and provide specific, uniform terms that are always interpreted the same way. This would then provide the legal translator with greater certainty, not least because, as already pointed out, definitions are not spelled out in German texts where they have been defined by statute, as can be evidenced by the much shorter length of German articles of association compared to their English counterparts.

It is felt that this small comparative analysis has only briefly touched on the issue of patterns of modifiers in German legal texts translated into English and that further research in this area would be of benefit.

## Appendix 1 - Marchand (1960) model

Descriptive model of extended attribute construction and German declarative clause adapted from German Syntax Patterns, James W. Marchand, University of California, Berkeley, 1960

das langsam durch die Adern fließende dunkelrote Blut  
 = the slowly through the veins flowing dark-red blood  
 or the dark red blood slowly flowing through the veins

1	2	3	4	5	6
adjective + der-word + any number of elements + participial + adjective + noun					
	ein-word				
	preposition				
	pronoun				
	adverb				
	indefinite adj.				

1	2	3	4	5	6
The example is thus: das langsam durch die Adern fließende dunkelrote Blut.					

The proper English sequence (sometimes awkward) may be obtained by rearranging: 1, 5, 6, 4, 2, 3.

### Model of the German declarative clause

1	2	3	4	5	6	7	8	9
non- element	any element but 3 or 16	finite verb	personal pronoun subject	personal pronoun object direct + indirect	1-word adverb of time	noun pronoun subject	noun pronoun object indirect + direct	adverb phrase of time
10	11	12	13	14	15	16	17	
negative	adverb of manner	adverb of place	verb	past complement	infinitive participle	finite verb	double infinitive	

## **Appendix 2 - § 23 Aktiengesetz (Section 23 German Stock Corporation Act)**

Aktiengesetz

### **Zweiter Teil Gründung der Gesellschaft**

#### **§ 23 Feststellung der Satzung**

- (1) Die Satzung muß durch notarielle Beurkundung festgestellt werden.  
Bevollmächtigte bedürfen einer notariell beglaubigten Vollmacht.
  
- (2) In der Urkunde sind anzugeben
  1. die Gründer;
  2. bei Nennbetragsaktien der Nennbetrag, bei Stückaktien die Zahl, der Ausgabebetrag und, wenn mehrere Gattungen bestehen, die Gattung der Aktien, die jeder Gründer übernimmt;
  3. der eingezahlte Betrag des Grundkapitals.
  
- (3) Die Satzung muß bestimmen
  1. die Firma und den Sitz der Gesellschaft;
  2. den Gegenstand des Unternehmens; namentlich ist bei Industrie- und Handelsunternehmen die Art der Erzeugnisse und Waren, die hergestellt und gehandelt werden sollen, näher anzugeben;
  3. die Höhe des Grundkapitals;
  4. die Zerlegung des Grundkapitals entweder in Nennbetragsaktien oder in Stückaktien, bei Nennbetragsaktien deren Nennbeträge und die Zahl der Aktien jeden Nennbetrags, bei Stückaktien deren Zahl, außerdem, wenn mehrere Gattungen bestehen, die Gattung der Aktien und die Zahl der Aktien jeder Gattung;
  5. ob die Aktien auf den Inhaber oder auf den Namen ausgestellt werden;
  6. die Zahl der Mitglieder des Vorstands oder die Regeln, nach denen diese Zahl festgelegt wird.
  
- (4) Die Satzung muß ferner Bestimmungen über die Form der Bekanntmachungen der Gesellschaft enthalten.



- (5) Die Satzung kann von den Vorschriften dieses Gesetzes nur abweichen, wenn es ausdrücklich zugelassen ist. Ergänzende Bestimmungen der Satzung sind zulässig, es sei denn, daß dieses Gesetz eine abschließende Regelung enthält.

Translation provided by Norton Rose

## **Germany: the Stock Corporation Act - English translation**

Division Two. Formation of the Company

### **§ 23 Establishment of the Articles**

- (1) 1 The articles shall be established in the form of a notarial deed.  
2 Attorneys-in-fact shall require a power of attorney certified by a notary.
- (2) The deed shall specify:
- 1. the founders;
  - 2. the par value of par-value shares, the issue price of non-par shares and, if more than one class of shares exists, the class of shares subscribed by each founder;
  - 3. the paid-in amount of the share capital.
- (3) The articles shall determine:
- 1. the company's business name and domicile;
  - 2. the purpose of the enterprise; in particular in the case of enterprises engaged in industry and trade, the articles shall specify the kind of products and goods to be produced and traded;
  - 3. the amount of the share capital;
  - 4. the segmentation of the share capital either in par-value shares or in non-par shares; the par value of par-value shares and the number of shares of each par value; the number of non-par shares and, if more than one class of shares exists, the classes of shares and the number of shares in each class;
  - 5. whether shares are to be issued in bearer or registered form;
  - 6. the number of members of the management board or the rules for determining such number.

- (4) In addition, the articles shall contain provisions regarding the form of announcements by the company.
- (5) The articles may contain different provisions from the provisions of this Act only if this Act explicitly so permits. 2The articles may contain additional provisions, except as to matters that are conclusively dealt with in this Act.

## Appendix 3 - Data

### Legend - Colour Code

Main clause\*

Relative clause, non-finite clause

Adjunct of manner (prepositional phrase)

Adjunct of place

Adjunct of manner

Adjunct of degree

Adjunct of purpose

Adjunct of indefinite frequency

Adjunct of time

noun phrase (object)

object complement

## Company 1

### § 2 Gegenstand des Unternehmens

2. Die Gesellschaft ist zu allen Maßnahmen und Geschäften berechtigt, die geeignet sind, den Gesellschaftszweck zu fördern. Hierzu gehören auch die Errichtung von Zweigniederlassungen sowie der Erwerb und die Errichtung von anderen Unternehmen sowie die Beteiligung an solchen im In- und Ausland.

### § 2 Purpose of the Company

2. The Company is entitled to all measures and business transactions which are appropriate to promote the purpose of the Company. This also includes the establishment of branches as well as the acquisition and establishment of other enterprises as well as of an interest in such enterprises, in Germany and abroad.

### § 4 Grundkapital

2. Der Vorstand ist für die Dauer von fünf Jahren von der Eintragung dieser Ermächtigung in das Handelsregister an ermächtigt, mit Zustimmung des Aufsichtsrats das Grundkapital durch Ausgabe neuer Aktien gegen Bareinlagen einmal oder mehrmals, insgesamt jedoch um höchstens EUR 50.000.000 zu erhöhen (Genehmigtes Kapital 2009/I). [...]

### § 4 Nominal Capital

2. The Executive Board shall be entitled for a duration of five years, effective from the entry of this authorisation with the Commercial Register, to increase the nominal capital, subject to Supervisory Board approval, by issuing new shares against contributions in cash once or several times by up to a total of EUR 50,000,000 (Authorised Capital 2009/I). [...]

## Company 2

### § 2 Gegenstand des Unternehmens

- (2) Die Gesellschaft ist berechtigt, **alle Geschäfte vorzunehmen, die mit dem Gegenstand des Unternehmens zusammenhängen** oder ihm **unmittelbar oder mittelbar zu dienen geeignet sind**.
- (3) Die Gesellschaft kann **andere Unternehmen** gründen, erwerben und sich an ihnen beteiligen, insbesondere **an solchen, deren Unternehmensgegenstände sich ganz oder teilweise auf die vorgenannten Gebiete erstrecken**. Sie kann **Unternehmen, an denen sie beteiligt ist, unter ihrer einheitlichen Leitung** zusammenfassen oder sich **auf die Verwaltung der Beteiligung** beschränken. Sie kann **ihren Betrieb ganz oder teilweise in verbundene Unternehmen** ausgliedern oder verbundenen Unternehmen überlassen.

### § 2 Object of the Company

- (2) The Company is authorized **to undertake all business which is related to, or directly or indirectly serves, the object of the Company**.
- (3) The Company may establish, acquire or take **participating interests in other companies**, in particular **those whose objects fully or partially cover the aforementioned areas**. It may bring **companies in which it holds participating interests under its uniform control**, or confine itself **to the administration thereof**. It may transfer **their operations in full or in part to newly established or existing subsidiaries**.

### § 4 Grundkapital

- (2) Der Vorstand ist ermächtigt, **das Grundkapital bis zum 29. April 2015 mit Zustimmung des Aufsichtsrats** durch Ausgabe neuer auf den Namen lautender Stückaktien **einmalig oder mehrmals um bis zu insgesamt Euro 530.000.000,00** zu erhöhen. Die Ausgabe neuer auf den Namen lautender Stückaktien kann **dabei** gegen Bar- und/oder Sacheinlagen erfolgen, **wobei** Kapitalerhöhungen gegen Sacheinlagen **insgesamt | nur | um bis zu Euro 423.397.120,00** erfolgen dürfen (Genehmigtes Kapital I).

#### § 4 Capital Stock

- (2) The Board of Management, with the consent of the Supervisory Board, is authorized until April 29, 2015 to raise the capital stock by a total of up to €530,000,000.00 through the issuance of new registered shares in one or more installments. The issuance of new registered shares may take place against cash contributions and/or contributions in kind. Capital increases against contributions in kind may only be carried out for a total up to €423,397,120.00 (Authorized Capital I).

## Company 3

### § 2

- (2) Die Gesellschaft darf **den Unternehmensgegenstand** selbst, durch verbundene Unternehmen und Beteiligungsunternehmen oder durch den Abschluss von Unternehmens- und Kooperationsverträgen mit Dritten verwirklichen. Sie ist **zu allen Geschäften und Maßnahmen** berechtigt, **die geeignet sind, den Geschäftszweck zu fördern**, insbesondere zur **Errichtung von Zweigniederlassungen im In- und Ausland** und zum Erwerb, zur Verwaltung und zur Veräußerung von Beteiligungen an anderen Unternehmen.

### Article 2

- (2) The Company may realize **its object** itself, through affiliated companies and equity participations or through the conclusion of affiliation and cooperation agreements with third parties. It is entitled **to have recourse to all transactions and measures** which are suitable for promoting its business object, in particular the **establishment of branches in Germany and abroad** and the acquisition, management and disposal of interests in other enterprises.

### § 4

- (3) Der Vorstand ist ermächtigt, **das Grundkapital der Gesellschaft bis zum 5. Mai 2016 mit Zustimmung des Aufsichtsrats** durch die Ausgabe neuer Stückaktien gegen Bar- oder Sacheinlagen **einmalig oder mehrfach**, jedoch **insgesamt höchstens um Euro 1 462 936 397,00** zu erhöhen (Genehmigtes Kapital 2011).

### Article 4

- (3) The Board of Managing Directors is authorized, **with the approval of the Supervisory Board**, to increase **the Company's share capital until 5 May 2016** through the issuance of new shares with no par value in exchange for cash or contributions in kind, **in either one or several tranches**, but **not exceeding a maximum amount of €1,462,936,397.00** (Authorized Capital 2011).

## Company 4

### § 2 Gegenstand

(2) Die Gesellschaft ist zu allen Handlungen und Maßnahmen berechtigt, die der Erreichung des Gesellschaftszwecks dienen.

(3) Die Gesellschaft kann Zweigniederlassungen im In- und Ausland errichten sowie sich

an anderen Unternehmen beteiligen. Die Gesellschaft kann Unternehmen erwerben oder sie veräußern, sie unter einheitlicher Leitung zusammenfassen und Unternehmensverträge mit ihnen schließen oder sich auf die Verwaltung der Beteiligung beschränken. Sie ist berechtigt, ihren Betrieb ganz oder teilweise in Beteiligungsunternehmen auszugliedern.

(2) The Company may take all actions and measures which are incidental to the accomplishment of the Company's purposes.

(3) The Company may set up domestic and foreign branches, offices and subsidiaries and may acquire interests in other companies. The Company may acquire and dispose of other companies may place them under joint management and conclude intercompany agreements with them or may limit itself to the management of its interests in such companies. The Company may place all or part of its business operations into subsidiaries, joint ventures or associated companies.

(4) Die Gesellschaft darf genehmigungsbedürftige Finanzdienstleistungen sowie Bank- und Immobiliengeschäfte nicht unmittelbar selbst tätigen.

(4) The Company may not engage directly in any financial services transactions or banking transactions or transactions with real property which are subject to licensing requirements.



### § 3 Grundkapital

[...]

- (2) Der Vorstand ist ermächtigt, **das Grundkapital der Gesellschaft bis zum 7. April 2014 mit Zustimmung des Aufsichtsrats** durch Ausgabe neuer, auf den Namen lautender Stückaktien gegen Bar- und/oder Sacheinlagen, **ganz oder in Teilbeträgen, einmal oder mehrmals um bis zu insgesamt 1.000.000.000,00 €** zu erhöhen (Genehmigtes Kapital 2009).
- (2) The Board of Management is authorized **with the consent of the Supervisory Board** to increase **the Company's share capital in the period until April 7, 2014** by a total of **€1,000,000,000.00,** | in one lump sum or by separate partial amounts | **at different times** by issuing new, registered no-par value shares in exchange for cash and/or non-cash contributions (Approved Capital 2009).

## Company 5

### § 2

- (2) **Soweit gesetzlich zulässig**, ist die Gesellschaft zu allen Geschäften und Maßnahmen berechtigt, **die geeignet erscheinen, den Gesellschaftszweck zu fördern**, **insbesondere** zum Erwerb und zur Veräußerung von Grundstücken, zur Errichtung von **Zweigniederlassungen im In- und Ausland**, zum Erwerb, zur Verwaltung und zur Veräußerung von Beteiligungen an anderen Unternehmen sowie zum Abschluss von Unternehmensverträgen.

### § 2

- (2) **To the extent permitted by law**, the Company is entitled to transact all business and take all steps **which appear likely to promote the object of the Company**, **in particular** to acquire and dispose of real estate, to establish **branches at home and abroad**, to acquire, administer and dispose of participations in other enterprises, and to conclude enterprise agreements.

### § 4

- (5) Der Vorstand ist ermächtigt, **das Grundkapital bis zum 30. April 2016** durch Ausgabe neuer Aktien gegen Geldeinlagen **einmalig oder mehrmals um bis zu insgesamt 230.400.000 Euro** zu erhöhen. **Dabei** ist den Aktionären ein Bezugsrecht einzuräumen. Der Vorstand ist **jedoch** ermächtigt, Spitzenbeträge von dem Bezugsrecht der Aktionäre auszunehmen und das Bezugsrecht auch **insoweit** auszuschließen, **wie es erforderlich ist**, um den **Inhabern der | von der Gesellschaft und ihren verbundenen Unternehmen ausgegebenen Optionsrechte, Wandelschuldverschreibungen und Wandelgenussrechte | ein Bezugsrecht auf neue Aktien in dem Umfang** zu gewähren, **wie es ihnen nach Ausübung des Options- beziehungsweise Wandlungsrechts zustehen würde.**

### § 4

- (5) The Management Board is authorized to increase **the share capital on or before April 30, 2016**, **once or more than once**, **by up to a total of € 230,400,000**

through the issue of new shares against cash payment. Shareholders are to be granted pre-emptive rights. However, the Management Board is authorized to except broken amounts from shareholders' pre-emptive rights and to exclude pre-emptive rights in so far as is necessary to grant to the holders of option rights, convertible bonds and convertible participatory rights issued by the Company and its affiliated companies | pre-emptive rights to new shares to the extent that they would be entitled to such rights after exercising their option or conversion rights.

## Company 6

### Gegenstand des Unternehmens

#### § 2

- (2) Die Gesellschaft kann in den in Abs. 1 bezeichneten oder verwandten Geschäftsbereichen selbst oder durch Tochter- oder Beteiligungsgesellschaften tätig werden. Sie ist zu allen Handlungen und Maßnahmen berechtigt, die mit dem Unternehmensgegenstand zusammenhängen oder ihm unmittelbar oder mittelbar zu dienen geeignet sind.
- (3) Die Gesellschaft kann auch andere Unternehmen gründen, erwerben oder sich an ihnen beteiligen, insbesondere | an solchen, | deren Unternehmensgegenstände sich ganz oder teilweise auf die in Abs. 1 genannten | Geschäftsbereiche erstrecken. Des Weiteren ist sie berechtigt, sich vornehmlich | zur Anlage von Finanzmitteln | an Unternehmen jeder Art zu beteiligen. Sie kann Unternehmen, an denen sie beteiligt ist, strukturell verändern, unter einheitlicher Leitung zusammenfassen oder sich auf deren Verwaltung beschränken sowie über ihren Beteiligungsbesitz verfügen.

### Corporate Purpose of the Company

#### § 2

- (2) The Company may conduct its business activities in the industries specified in para. 1, or in related industries, itself or through subsidiaries and/or companies in which it holds an interest. It is entitled to take all actions and measures that are connected with its corporate purpose or which are suitable to directly or indirectly serve such purpose.
- (3) The Company may also establish, acquire or hold an interest in other enterprises, in particular | in such enterprises | whose corporate purpose extends, | in whole or in part, | to be [sic] business areas | specified in para. 1. In addition, it is entitled to acquire interests in enterprises of any kind | with the primary purpose | of a financial investment. The Company may change the structure of the enterprises in which it holds an interest, may unite them under a unified management or confine itself to managing them and may dispose of the interests it holds.

## Grundkapital und Aktien

### § 3

- (2) Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats bis zum 2. Mai 2017 das Grundkapital der Gesellschaft um bis zu 460.000.000 € durch ein- oder mehrmalige Ausgabe neuer, auf den Namen lautender Stückaktien gegen Bar-und/oder Sacheinlagen zu erhöhen (genehmigtes Kapital gemäß §§ 202 f. AktG, Genehmigtes Kapital 2012).

## Registered Share Capital and Shares

### § 3

- (2) The Board of Management is authorized, with the approval of the Supervisory Board, to increase until May 2, 2017, the registered share capital of the Company by up to a total of €460,000,000, through the issuance, one or several times, of new registered no-par value shares against contributions in cash and/or in kind (authorized capital pursuant to Sections 202 et seqq. AktG, Authorized Capital 2012).

## Company 7

### § 2 Gegenstand des Unternehmens

- (2) Die Gesellschaft ist zu allen Handlungen und Maßnahmen berechtigt, die unmittelbar oder mittelbar der Erreichung des Gesellschaftszwecks förderlich erscheinen.
- (3) Die Gesellschaft kann im In- und Ausland Zweigniederlassungen errichten sowie sich an anderen Unternehmen beteiligen. Die Gesellschaft kann Unternehmen erwerben oder sie veräußern, sie unter einheitlicher Leitung zusammenfassen und Unternehmensverträge mit ihnen schließen oder sich auf die Verwaltung der Beteiligung beschränken. Sie ist berechtigt, ihren Betrieb ganz oder teilweise in Beteiligungsunternehmen auszugliedern.
- (2) The company is entitled to perform all acts and take all steps which appear likely to directly or indirectly promote the achievement of the company's aims.
- (3) The company may establish subsidiaries and branches in Germany and abroad, and can participate in other enterprises. The company can buy or sell enterprises, combine them under single management and conclude enterprise agreements with them or restrict itself to managing the participation. It is entitled to spin off its operations - as a whole or in part - into affiliated enterprises.

### § 4 Höhe und Einteilung des Grundkapitals

- (8) Der Vorstand ist ermächtigt, das Grundkapital in der Zeit bis zum 10. Februar 2015 mit Zustimmung des Aufsichtsrats einmalig oder in Teilbeträgen um insgesamt bis zu EUR 648.000.000,00 durch Ausgabe neuer, auf den Namen lautender Stückaktien mit Gewinnberechtigung ab Beginn des Geschäftsjahres ihrer Ausgabe gegen Bar- oder Sacheinlagen zu erhöhen (Genehmigtes Kapital 2010/I).
- (8) The Management Board is authorized, with the approval of the Supervisory Board, to increase the share capital in the period until February 10, 2015 once or in partial amounts by a total of up to EUR 648,000,000.00 by issuing new no

par value registered shares, carrying a dividend right as of the beginning of the fiscal year in which they are issued, against contributions in cash or in kind (Authorized Capital 2010/I).

## Company 8

### § 1

- (3) Gegenstand des Unternehmens ist die Rückversicherung in allen Versicherungszweigen.

Die Gesellschaft kann im In- und Ausland Zweigniederlassungen einrichten, andere Unternehmen aller Art gründen, erwerben und sich an ihnen beteiligen sowie Unternehmen leiten oder sich auf die Verwaltung der Beteiligung beschränken. Sie ist zu allen Geschäften und Maßnahmen berechtigt, die geeignet scheinen, dem Gegenstand des Unternehmens zu dienen.

### Article 1

- (3) The object of the Company is the provision of reinsurance in all classes of business.

The Company may establish branches in Germany or other countries, may form, acquire or participate in companies of all types, may manage companies or restrict itself to managing the participations. It is entitled to carry out all transactions and measures that appear suited to serving the object of the Company.

### § 4

- (1) Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats das Grundkapital der Gesellschaft bis zum 21. April 2014 um insgesamt bis zu 280 Millionen € durch Ausgabe von neuen auf den Namen lautenden Stückaktien gegen Geld oder Sacheinlagen zu erhöhen (Genehmigtes Kapital 2009). Die Ermächtigung kann einmal oder mehrmals, ganz oder in Teilbeträgen ausgenutzt werden. Der Vorstand ist ferner ermächtigt, mit Zustimmung des Aufsichtsrats den weiteren Inhalt der Aktienrechte und die Bedingungen der Aktienausgabe festzulegen.

### Article 4

- (1) The Board of Management shall be authorised, with the consent of the Supervisory Board, to increase the Company's share capital at any time up to 21 April 2014 by an amount of up to 280 million euros by issuing new registered no-par-value shares against contributions in cash or in kind



(Authorised Capital Increase 2009). The authorisation may be exercised as a whole or in parts on one or more occasions. The Board of Management shall also be authorised, with the consent of the Supervisory Board, to determine all other rights of the shares and the terms of issue.

#### Appendix 4 - Analysis according to Marchand (1960)

Analysis of the sentence commencing *Der Vorstand ist ermächtigt* following the numbering of the Marchand (1960) model of the German declarative clause (see Appendix 1).

Where more than one modifying unit can be assigned to an adverb as classified by Marchand, these have been extended by adding 'a' to 'd' designations.

##### German Article clause first sentence

1	3	9	14	11a	8	11	11b	11c	15		
1	3	14	8	9	11a	11	11b	11c	15		
1	3	14	11a	8	9	11c	11	15			
1	3	14	8	9	11a	11	11b	11c	15		
1	3	14	11a	9	8	11c	11	11b	11	15	
1	3	14	8	9	11a	11b	11c	11	11d	11	15
1	3	14	8	9	11a	11	11c	11b	11c	15	
1	3	14	8	9	11	11b	11c	15			

##### English Article clause first sentence

1	3	14	9	15	8	11a	11	11b	11c		
1	11a	3	14	9	15	8	11c	11	11b		
1	3	14	11a	15	8	9	11c	11			
1	3	14	11a	15	8	9	11	11b	11c		
1	3	14	11a	15	9	8	11c	11	11b	11	
1	3	14	11a	15	8	9	11b	11c	11	11d	11
1	3	14	11a	15	8	9	11c	11c	11b	11	
1	3	14	15	8	9	11b	11c	11			

##### Sentence by sentence comparison German (DE) - English (EN)

DE1	1	3	9	14	11a	8	11	11b	11c	15		
EN1	1	3	14	9	15	8	11a	11	11b	11c		
DE2	1	3	14	8	9	11a	11	11b	11c	15		
EN2	1	11a	3	14	9	15	8	11c	11	11b		
DE3	1	3	14	11a	8	9	11c	11	15			
EN3	1	3	14	11a	15	8	9	11c	11			
DE4	1	3	14	8	9	11a	11	11b	11c	15		
EN4	1	3	14	11a	15	8	9	11	11b	11c		

DE5	1	3	14	11a	9	8	11c	11	11b	11	15	
EN5	1	3	14	11a	15	9	8	11c	11	11b	11	
DE6	1	3	14	8	9	11a	11b	11c	11	11d	11	15
	1	3	14	11a	15	8	9	11b	11c	11	11d	11
DE7	1	3	14	8	9	11a	11	11c	11b	11c	15	
EN7	1	3	14	11a	15	8	9	11c	11c	11b	11	
DE8	1	3	14	8	9	11	11b	11c	15			
EN8	1	3	14	15	8	9	11b	11c	11			

## German sentence

2. Der Vorstand ist für die Dauer von fünf Jahren von der Eintragung dieser Ermächtigung in das Handelsregister an ermächtigt, mit Zustimmung des Aufsichtsrats das Grundkapital durch Ausgabe neuer Aktien gegen Bareinlagen einmal oder mehrmals, insgesamt jedoch um höchstens EUR 50.000.000 zu erhöhen (Genehmigtes Kapital 2009/I). [...]
- (2) Der Vorstand ist ermächtigt, das Grundkapital bis zum 29. April 2015 mit Zustimmung des Aufsichtsrats durch Ausgabe neuer auf den Namen lautender Stückaktien einmalig oder mehrmals um bis zu insgesamt Euro 530.000.000,00 zu erhöhen. Die Ausgabe neuer auf den Namen lautender Stückaktien kann dabei gegen Bar- und/oder Sacheinlagen erfolgen, wobei Kapitalerhöhungen gegen Sacheinlagen insgesamt | nur | um bis zu Euro 423.397.120,00 erfolgen dürfen (Genehmigtes Kapital I).
- (1) Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats das Grundkapital der Gesellschaft bis zum 21. April 2014 um insgesamt bis zu 280 Millionen € durch Ausgabe von neuen auf den Namen lautenden Stückaktien gegen Geld oder Sacheinlagen zu erhöhen (Genehmigtes Kapital 2009). Die Ermächtigung kann einmal oder mehrmals, ganz oder in Teilbeträgen ausgenutzt werden. Der Vorstand ist ferner ermächtigt, mit Zustimmung des Aufsichtsrats den weiteren Inhalt der Aktienrechte und die Bedingungen der Aktienaussgabe festzulegen.
- (3) Der Vorstand ist ermächtigt, das Grundkapital der Gesellschaft bis zum 5. Mai 2016 mit Zustimmung des Aufsichtsrats durch die Ausgabe neuer Stückaktien gegen Bar- oder Sacheinlagen einmalig oder mehrfach, jedoch insgesamt höchstens um Euro 1 462 936 397,00 zu erhöhen (Genehmigtes Kapital 2011).
- (2) Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats bis zum 2. Mai 2017 das Grundkapital der Gesellschaft um bis zu 460.000.000 € durch ein- oder mehrmalige Ausgabe neuer, auf den Namen lautender Stückaktien gegen Bar-und/oder Sacheinlagen zu erhöhen (genehmigtes Kapital gemäß §§ 202 f AktG, Genehmigtes Kapital 2012).

- (8) Der Vorstand ist ermächtigt, das Grundkapital in der Zeit bis zum 10. Februar 2015 mit Zustimmung des Aufsichtsrats einmalig oder in Teilbeträgen um insgesamt bis zu EUR 648.000.000,00 durch Ausgabe neuer, auf den Namen lautender Stückaktien mit Gewinnberechtigung ab Beginn des Geschäftsjahres ihrer Ausgabe gegen Bar- oder Sacheinlagen zu erhöhen (Genehmigtes Kapital 2010/I).
- (2) Der Vorstand ist ermächtigt, das Grundkapital der Gesellschaft bis zum 7. April 2014 mit Zustimmung des Aufsichtsrats durch Ausgabe neuer, auf den Namen lautender Stückaktien gegen Bar- und/oder Sacheinlagen, ganz oder in Teilbeträgen, einmal oder mehrmals um bis zu insgesamt 1.000.000.000,00 € zu erhöhen (Genehmigtes Kapital 2009).
- (5) Der Vorstand ist ermächtigt, das Grundkapital bis zum 30. April 2016 durch Ausgabe neuer Aktien gegen Geldeinlagen einmalig oder mehrmals um bis zu insgesamt 230.400.000 Euro zu erhöhen. Dabei ist den Aktionären ein Bezugsrecht einzuräumen. Der Vorstand ist jedoch ermächtigt, Spitzenbeträge von dem Bezugsrecht der Aktionäre auszunehmen und das Bezugsrecht auch insoweit auszuschließen, wie es erforderlich ist, um den Inhabern der | von der Gesellschaft und ihren verbundenen Unternehmen ausgegebenen Optionsrechte, Wandelschuldverschreibungen und Wandelgenussrechte | ein Bezugsrecht auf neue Aktien in dem Umfang zu gewähren, wie es ihnen nach Ausübung des Options- beziehungsweise Wandlungsrechts zustehen würde.

## English sentence

2. The Executive Board shall be entitled **for a duration of five years, effective from the entry of this authorisation with the Commercial Register**, to increase **the nominal capital**, subject to Supervisory Board approval, by issuing new shares against contributions in cash **once or several times by up to a total of EUR 50,000,000** (Authorized Capital 2009/I). [...]
- (2) The Board of Management, **with the consent of the Supervisory Board**, is authorized **until April 29, 2015** to raise **the capital stock by a total of up to €530,000,000.00** through the issuance of new registered shares **in one or more installments**. The issuance of new registered shares may take place against cash contributions and/or contributions in kind. Capital increases against contributions in kind may **only** be carried out **for a total up to €423,397,120.00** (Authorized Capital I).
- (1) The Board of Management shall be authorised, **with the consent of the Supervisory Board**, to increase **the Company's share capital at any time up to 21 April 2014 by an amount of up to 280 million euros** by issuing new registered no-par-value shares against contributions in cash or in kind (Authorized Capital Increase 2009). The authorisation may be exercised **as a whole or in parts on one or more occasions**. The Board of Management shall also be authorised, **with the consent of the Supervisory Board**, to determine **all other rights of the shares and the terms of issue**.
- (3) The Board of Managing Directors is authorized, **with the approval of the Supervisory Board**, to increase **the Company's share capital until 5 May 2016** through the issuance of new shares with no par value in exchange for cash or contributions in kind, **in either one or several tranches**, but **not exceeding a maximum amount of €1,462,936,397.00** (Authorized Capital 2011).
- (2) The Board of Management is authorized, **with the approval of the Supervisory Board**, to increase **until May 2, 2017**, **the registered share capital of the Company by up to a total of €460,000,000**, through the issuance, **one or several times**, of new registered no-par value shares against contributions in

cash and/or in kind (authorized capital pursuant to Sections 202 et seqq. AktG, Authorized Capital 2012).

- (8) The Management Board is authorized, with the approval of the Supervisory Board, to increase the share capital in the period until February 10, 2015 once or in partial amounts by a total of up to EUR 648,000,000.00 by issuing new no par value registered shares, carrying a dividend right as of the beginning of the fiscal year in which they are issued, against contributions in cash or in kind (Authorized Capital 2010/I).
- (2) The Board of Management is authorized with the consent of the Supervisory Board to increase the Company's share capital in the period until April 7, 2014 by a total of €1,000,000,000.00, | in one lump sum or by separate partial amounts | at different times by issuing new, registered no-par value shares in exchange for cash and/or non-cash contributions (Approved Capital 2009).
- (5) The Management Board is authorized to increase the share capital on or before April 30, 2016, once or more than once, by up to a total of € 230,400,000 through the issue of new shares against cash payment. Shareholders are to be granted pre-emptive rights. However, the Management Board is authorized to except broken amounts from shareholders' pre-emptive rights and to exclude pre-emptive rights in so far as is necessary to grant to the holders of option rights, convertible bonds and convertible participatory rights issued by the Company and its affiliated companies | pre-emptive rights to new shares to the extent that they would be entitled to such rights after exercising their option or conversion rights.

## **Appendix 5 - Articles of Association (German and English)**

Excerpts of Sections I and II of the Articles of Association that have been analysed of the following companies\* are included:

Company 1

Company 2

Company 3

Company 4

Company 5

Company 6

Company 7

Company 8

All excerpts have been accessed from the websites of the companies in the Internet as of 4 September 2012.

\*anonymised for the purpose of this publication in August 2013.



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**Statement**

I hereby declare that I prepared this dissertation independently without the help of anybody and that I did not use any publication other than those cited in the introduction, the research paper or the bibliography.

**Date of Submission**

31 October 2012