

# MODAL ADVERBS OF CERTAINTY IN FORENSIC RHETORIC AT THE EUROPEAN COURT OF JUSTICE

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## Abstract

The article contributes to the discussion of European forensic rhetoric and it aims at demonstrating the strategic use and distribution of selected modal adverbs of certainty (*indeed, clearly, (not) necessarily* and *of course*) in the Opinions of the Advocates General at the European Court of Justice. To this end, it focuses on the rhetorical functions of these adverbs, such as e.g. showing a high degree of commitment, adding emphasis or backgrounding alternative viewpoints. The study applies the notions of stance (Biber *et al.* 1999; du Bois 2007) and heteroglossia (Bakhtin 1981) as well as builds on the research into modal adverbs of certainty by Simon-Vandenberghe and Aijmer (2007). In sum, the author reveals the rhetorical potential of modal adverbs in the context of legal opinion drafting.

**Keywords:** epistemicity, evidentiality, forensic rhetoric, heteroglossia, modal adverbs of certainty, stance

## 1. Introduction

Claiming that reliance on the force of arguments rather than physical strength is a feature unique to the human race (Lichański 2007: 34), Aristotle defined *techné rhetoriké* as “the faculty of observing in any given case the available means of persuasion.” In the Stagirite’s view, these persuasive possibilities could be used in one of the three oratorical settings: deliberative, epideictic and forensic. On the other hand, among contemporary accounts of rhetoric we can find those stressing “the servitude of syntactic forms towards the thought controlling the subject, the speaker, the recipient”<sup>1</sup> in any rhetorically-organised activity involving language, both oral and written (Skwarczyńska 1954: 2.324-397 quoted in Lichański 2007: 80). This claim is especially valid in the context of the present study focusing on the rhetorical usefulness of selected modal adverbs in written forensic rhetoric, exemplified by the Opinions of the Advocates General at the European Court of Justice (ECJ).

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1 The translation is mine.

At the outset, it is important to note that in this article the word “rhetorical” is used to describe language resources which fulfil interpersonal functions (cf. Schwenter and Traugott 2000) and which are deployed by speakers or writers in order to position themselves towards other speakers or writers and their respective standpoints. It is also believed, in line with Traugott (2010: 15), that “very little language use is purely monologic” and that dialogic orientation “concerns the extent to which speakers contest, refute, or build an argument toward alternative or different conclusions.” In light of the foregoing considerations, the goal of this paper is to highlight the dialogic orientation of legal discourse and, more broadly, to bring an interactional dimension to the study of written legal genres such as judgments or opinions.<sup>2</sup> To this end, conceived as a qualitative analysis, the study aims at demonstrating the rhetorical usefulness of modal adverbs found to index some degree of dialogicity (Traugott 2010: 15) and, therefore, associated with alternative viewpoints and doubt.

## **2. Dynamic approach to modal adverbs**

Epistemic or modal adverbs can be found in various classifications of adverbs proposed in grammar books (see e.g. Biber *et al.* 1999). And yet these accounts seem to overlook the distinction between the semantic and pragmatic meaning of modal adverbs, which, as argued by White (2003), are used for a number of reasons not related to the assessment of the speaker’s or the hearer’s knowledge. The importance of such a distinction is, on the other hand, underlined by Simon-Vandenberg and Aijmer (2007: 4–5), who adopt an interactive approach to modal adverbs of certainty, interpreting their use, especially in argumentative discourse, in the context of other utterances, both real and imagined. As held by the scholars, “[t]he rhetorical function or effect of an adverb of certainty is to signal that an utterance presents a stronger argument than an alternative one” (Simon-Vandenberg and Aijmer 2007: 41). Therefore, speakers use adverbs expressing a high degree of certainty in order to position themselves towards other discourse participants or

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2 Cf. Szczymbak (2014; in press).

other voices (Simon-Vandenberg and Aijmer 2007: 33) as well as to influence their hearer's attitudes, beliefs or expectations.

Since the present study on the rhetorical exploitation of modal adverbs of certainty in forensic discourse follows the dynamic approach advocated by Simon-Vandenberg and Aijmer (2007), attention will now be drawn to the authors' typology of adverbs, adopted as the basis for the current analysis of the corpus data. As proposed by Simon-Vandenberg and Aijmer (2007: 84), drawing on Chafe's (1986) classification of evidentials, adverbs of certainty can be roughly grouped into four clusters:

1. epistemic adverbs
2. evidential adverbs
3. expectation adverbs
4. speech act adverbs

While adverbs in the first category (e.g. *certainly, definitely, indeed, no doubt, undoubtedly, surely*) express a high degree of the speaker's commitment to the truth of the proposition, adverbs found in the second group (e.g. *obviously, clearly, plainly, evidently, manifestly*) express certainty based on evidence. The third cluster, in turn, subsumes adverbs (e.g. *of course, naturally, inevitably, necessarily*) whose "core meaning of certainty is based on the fact that the state of affairs is in accordance with expectations." (Simon-Vandenberg and Aijmer 2007: 84). Finally, the fourth group of adverbs (e.g. *admittedly, undeniably, indisputably, arguably*) includes those which express certitude "through conveying explicitly that the speaker's viewpoint is to be seen in the light of alternative voices" (Simon-Vandenberg and Aijmer 2007: 84). Yet, as the authors themselves maintain, since adverbs tend to be multifunctional, the proposed classification should serve merely as a starting point and, what is more, an analyst may have to assign individual adverbs to several classes (Simon-Vandenberg and Aijmer 2007: 83).

As might be expected, selected adverbs representing the categories referred to above will be dealt with more thoroughly in the Discussion section describing the deployment of modal adverbs in the corpus data. The following section, in turn, will be focused on the specific aims of the undertaken research, the methodology applied in the analysis as well the communicative context of the data.

### **3. Aims, methodology and data**

Despite the wealth of publications approaching modality from various angles, there are still many unexplored aspects which can provide new insight and, eventually, lead to a re-contextualisation and a re-definition of this language phenomenon. The use of modal adverbs of certainty in legal opinion writing seems to be one of such underresearched areas and as such, it calls for a more thorough treatment. One aspect which is worth investigating is that of the rhetorical appeal of this linguistic resource in legal persuasion and judicial argumentation. Therefore, one of the questions that I will be trying to answer in this study concerns the extent to which modal adverbs of certainty are exploited with a view to achieving rhetorical goals by lawyers working in a multilingual environment such as that of the ECJ. As, to date, I have not encountered any such analyses, I will venture an examination of the linguistic preferences of the Advocates General, hypothesising about the possible pragmatic motivation behind them. Finally, the research also aims to reveal multifunctionality of selected adverbs, resulting from their strategic deployment in the argumentative portion of the Opinions, on the one hand, and their position within specific text segments and co-occurrence patterns, on the other.

Methodologically, the study owes much to numerous investigations of epistemic phenomena (e.g. Biber *et al.* 1999; Nuyts 2001; Coates 1983, 2003; Palmer 1986; Brezina 2012) and evidentiality (e.g. Chafe 1986). It is particularly motivated by the interactional model of stance proposed by du Bois (2007: 163),<sup>3</sup> conceptualising stance as a dialogic act co-constructed by social actors who simultaneously evaluate objects and position subjects (self and others). Similarly to the assumptions underlying the dynamic

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3 The interactional concept of stance has been applied, for instance, in the studies by Kärkkäinen (2007), Keisanen (2007) and Rauniomaa (2008).

approach to adverbs proposed by Simon-Vandenberg and Aijmer (2007), du Bois' (2007: 140) understanding of stance entails references to the prior speaker's utterance and the creation of functional-interactional configurations. Another concept which informs the present study is that of Bakhtinian heteroglossia. As believed by Bakhtin (1981: 281), all utterances are dialogised, i.e. they interact with one another as well as with "contradictory opinions, points of view, and value judgments." What follows, in Bakhtin's (1981: 279) view, the dialogic orientation of discourse is a property of *any* discourse.<sup>4</sup>

Finally, in line with Simon-Vandenberg and Aijmer (2007), the following assumptions have been adopted in the study:

- Modality has a dialogic potential and it organises interaction;
- Modal adverbs are used not only to express one's attitude to knowledge but also to fulfil interpersonal functions and as such, they should be analysed against other utterances;
- Modal adverbs are related to types of social activity, social roles and power;
- The epistemic meaning and the rhetorical function of modal adverbs should be distinguished.

Having outlined the theoretical framework, within which the corpus data will be assessed, I will now focus on the data selected for analysis, specifying the communicative context in which the Opinions are drafted and defining the role that the Advocates General play at the ECJ.

I have built a corpus consisting of 30 Opinions delivered by the Advocates General in the period from March 2011 to March 2013,<sup>5</sup> which were originally written in English.<sup>6</sup> Although the whole corpus consists of approximately 250,000 words, the analysis was based only on the subcorpus composed of the argumentative portions of the Opinions and their concluding sections (about 145,000 words). It should be stressed that

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4 Cf. White's (2003) theory of "engagement" which recognises the multivocal nature of communication, seen as revealing the influence of prior or anticipated utterances of real or imagined speakers.

5 The Opinions were downloaded from <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en> (date of access: 10 May 2013).

6 The Advocates General can write their Opinions in any of the official languages of the EU.

since only Opinions originally written in English were used to compile the corpus, the number of authors was very limited. As a result, the texts used in the analysis were written only by four Advocates General, whose nationalities were as follows: British, Finnish, Slovak and Portuguese.<sup>7</sup>

Generally speaking, as regards the communicative context in which the Opinions are drafted and the status that the Advocates General enjoy at the ECJ, it might be reminded that the role of the Advocates General is to present Opinions on the cases to which they are assigned. Interestingly, the Advocates General are supposed to deliver their Opinions – which, however, are not binding for the ECJ – only if the ECJ believes that a given case raises a new point of law. Needless to say, written Opinions are to be presented publicly and impartially.<sup>8</sup> With regard to their communicative purpose, as validly observed by Salmi-Tolonen (2005: 66), Opinions serve primarily “to persuade the Court that the solution proposed is well founded from a legal point of view and [that] the court’s rulings should be based on it” and, further, “to persuade the litigants that the rulings of the Court which follow are based on a thoroughly and justly argued legal Opinion, and therefore, are the right decisions.”

In the remainder of the article, a discussion of the corpus data will be offered, with emphasis being placed on the most common adverbs of certainty and the role they play in the texts of the Opinions analysed.

#### **4. Discussion**

To begin, as has already been indicated in the previous sections, Opinions of the Advocates General can be viewed as dialogic, argumentative texts which engage in discussion with other “voices,” be it other litigants or other legal texts and instruments. Further, as argued by Salmi-Tolonen (2005: 66), the primary communicative function of written Opinions is that of persuasive argumentation. Consequently, rather than dictate or prescribe a certain course of action, the Advocates General present both arguments and

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7 Given the multicultural background as well as the small number of authors, a possible limitation of the analysis is that of idiosyncratic style. However, it is beyond the scope of this study to address the effect of this factor on the preferred lexical choices attested by the data.

8 More information can be found at: [europa.eu/about-eu/institutions-bodies/court-justice](http://europa.eu/about-eu/institutions-bodies/court-justice).

counterarguments for and against claims advanced by the litigant parties in the previous stages of the legal process (Salmi-Tolonen 2005: 61). Typically, such argumentation involves the following stages:

1. Recognising the rule
2. Interpreting the contents
3. Institutional support
4. Persuasive argumentation (analysis, assessment)
5. Conclusion (opinion and proposed action) (based on Salmi-Tolonen 2005: 91).

Because the present study focuses on persuasive argumentation, the analysis of the strategic use of modal adverbs was limited to the last two stages of the Opinions, that is the assessment and the conclusion, in the case of which author visibility was explicit.

At the outset, I identified the most common modal adverbs of certainty, based on the classification proposed by Simon-Vandenberghe and Aijmer (2007). Consequently, of the total of 205 adverbs covered by the analysis, the following turned out to be the preferred choices: *indeed* (59 tokens), *clearly* (56 tokens), *(not) necessarily* (25 tokens) and *of course* (13 tokens) (Figure 1).<sup>9</sup> On the other hand, among the less frequent adverbs were: *apparently*, *manifestly* and *plainly*, followed by *admittedly*, *certainly* and *obviously*. Most of the instances were evidential and epistemic adverbs, whereas the least number of tokens represented the class of speech act adverbs.

MODAL ADVERB OF CERTAINTY	CATEGORY	FREQUENCY
<i>indeed</i>	<b>Epistemic certainty adverb</b>	<b>59</b>
<i>clearly</i>	<b>Evidential certainty adverb</b>	<b>56</b>
<i>(not) necessarily</i>	<b>Expectation certainty adverb</b>	<b>25</b>
<i>of course</i>	<b>Expectation certainty adverb</b>	<b>13</b>
<i>apparently</i>	Evidential certainty adverb	8
<i>manifestly</i>	Evidential certainty adverb	8
<i>plainly</i>	Evidential certainty adverb	6

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<sup>9</sup> To put the figures in perspective, the epistemic modal verbs *may* and *might* had 220 and 60 occurrences, respectively.

<i>admittedly</i>	Speech act certainty adverb	5
<i>certainly</i>	Epistemic certainty adverb	5
<i>obviously</i>	Evidential certainty adverb	5
<i>arguably</i>	Speech act certainty adverb	4
<i>definitely</i>	Epistemic certainty adverb	4
<i>inevitably</i>	Expectation certainty adverb	3
<i>undoubtedly</i>	Epistemic certainty adverb	2
<i>unquestionably</i>	Speech act certainty adverb	2

**Figure 1. The most frequent modal adverbs of certainty in the data**

I will now discuss in more detail the most frequent choices which emerged from the data, namely the adverbs: *indeed*, *clearly*, *(not) necessarily* and *of course*, focusing on their rhetorical functions.

### **The case of *indeed***

Representing the category of epistemic certainty adverbs, *indeed*, as reported by Simon-Vandenberg and Aijmer (2007: 201), is found primarily in more formal genres (e.g. parliamentary debates) and it is rather infrequent in conversation. Remarkably, as held by Aijmer (2007: 330), *indeed* is “indexically linked to epistemic stance and can be used to take up positions to what is said, to the hearer, to assumptions which are attributed to the hearer or to people in general.” It is also worth highlighting that this adverb is associated with persuasive, argumentative discourse and, most importantly, that it is linked to the speaker’s authority, as it conveys confidence and power (Simon-Vandenberg and Aijmer 2007: 216).

Not surprisingly then, with 59 tokens, *indeed* was identified as the most frequent certainty adverb in the corpus. Firstly, it is interesting to note that, more often than not, *indeed* occurred in two clearly identifiable patterns. The first of them, the *A and indeed B* pattern incorporating a rhetorical addition was typically used for emphasis. As can be seen in Examples 1 and 2, *and indeed* serves to add an element which is more important



and thus rhetorically stronger (cf. Simon-Vandenberg and Aijmer 2007: 107). In this context, when used to add new evidence, *indeed* may well be replaced by “furthermore.”

*I would point out, however, that the main proceedings concern the acquisition and installation of solar panels in 2005, at which time taxable persons were entitled (**and indeed** required) to allocate capital goods as between the private and business spheres [O-1]*

**Example 1**

*That finding, implying that it is permissible to grant such a benefit, must be read – **and indeed** reveals its meaning – against the background of the principle enshrined in Article 13(1) of Regulation No 1408/71, mentioned above, (23) under which [O-26]*

**Example 2**

The second recurring pattern involving the use of *indeed* was the *Yes, but* Concessive schema, where *indeed* was used as a marker of (at least partial) agreement cueing the acknowledging move (X').<sup>10</sup> In Example 3, for instance, where *indeed* is used in combination with the emphatic *do*, the Advocate General confronts the absentee opponent and, as phrased by Aijmer (2007: 340), “takes up a stance to the preceding discourse for rhetorical purposes in order to later reject the argument.” In other words, by foregrounding and backgrounding selected arguments in Concessive sequences, *indeed* serves to concede a minor point in order to win a major battle.<sup>11</sup>

[X] *First, Fujitsu and Hewlett Packard argue that the Bundesgerichtshof’s interpretation interferes with the right to property guaranteed by Article 17 of the Charter of Fundamental Rights, (61) in that it prevents rightholders from granting free licences to copy their works.* [CLAIM]

[X'] *However, while **it does indeed** interfere with that right,* [ACKNOWLEDGMENT]

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10 In the action-oriented approach to Concession, 0 stands for *implied claim*, X stands for *claim*, X' for *acknowledgment*, Y for *counterclaim* and Y' for *return to counterclaim*. A complete description of the interactional model of Concession can be found in Barth-Weingarten (2003).

11 It might be added that the rhetorical potential of *concessio*, i.e. the strategy of “agreeing in order to disagree,” was recognised already by ancient rhetoricians, with Quintilian claiming that “by restricting his claims, by giving up certain theses or arguments, a speaker can strengthen his position and make it easier to defend” (1921– 1933: 488 cited in Couper-Kuhlen and Thompson 2000: 383). As indicated by present-day data, conceding the real or imagined adversary’s arguments continues to be a strategic choice in forensic rhetoric, for instance in the judicial argumentation of the European Court of Justice and the Polish Constitutional Court (Szczyrbak 2014).

[Y] *such interference is in my view clearly permitted by the second sentence of Article 17(1) of the Charter, in so far as it is 'in the public interest and in the cases and under the conditions provided for by law' and fair compensation is paid.* [COUNTERCLAIM] [O-6]

### **Example 3**

It might then be concluded that, being an “arguing word” (Aijmer 2007: 332), *indeed* is a useful linguistic device which helps legal professionals to convey power and assert authority as well as show rhetorical engagement in the dialogue.

### **The case of *clearly***

The second most frequent adverb in the data, namely *clearly*, was attested by 56 tokens. Interestingly, as reported by Simon-Vandenberg and Aijmer (2007: 201), this evidential adverb is most common in legal cross-examinations and business transactions. Another interesting observation concerns the correspondence between *clearly* and *obviously*. As pointed out by the scholars (Simon-Vandenberg and Aijmer 2007: 199), *clearly* is more frequent in writing than in speech, whereas the opposite is true for *obviously*, which they attribute to the fact that *obviously* has come to perform interactional functions in conveying solidarity, while *clearly* is, in their view, an adverb of intellectual reasoning rather than an adverb of interpersonal negotiation.

It should first be noted that the corpus data seem to corroborate the above claim linking *clearly* to authority and *obviously* to solidarity (with the frequency ratio of 56 to 5 tokens, respectively). Again, as can be seen, the Advocates General favour these linguistic resources which stress power and authority. It is also fair to say that by analogy to *indeed*, the adverb *clearly*, suggesting tangible evidence, belongs to discussion and argumentation (Simon-Vandenberg and Aijmer 2007: 226). Accordingly, in Example 4 *clearly* operates as a sentence adverb in initial position, where it can be paraphrased as “it is clear that.” Also in this case, the author’s statement is backed up by available evidence: he claims that a situation, in which “assistance has ceased within the meaning of the second sentence of Article 12(1)(a)” is the disputed “additional trigger.”

Consequently, since the exclusion must be presumed to have some actual effect, it cannot cease merely on departure from UNRWA's area of operation, regardless of the reason for the departure. There must be some additional trigger. **Clearly**, there is such a trigger when assistance has ceased within the meaning of the second sentence of Article 12(1)(a). [O-12]

**Example 4**

In the same vein, Examples 5 and 6, demonstrate how *clearly* is used in logical reasoning to refer to solid evidence, i.e. rules stipulated by legal instruments, which underlines the arguer's judicial authority and validates the proposed solution to the legal question considered.

*At first sight, it would appear that so far the Court of Justice has been asked only once about the rule governing the treatment, pursuant to Article 5(7)(a) of the Sixth Directive, of certain transactions as supplies for consideration: in Gemeente Leusden and Holin Groep. (14) In that judgment, however, the Court **clearly** focused on other rules laid down in the Sixth Directive.* [O-14]

**Example 5**

*(...) such interference is in my view **clearly** permitted by the second sentence of Article 17(1) of the Charter* [O-6]

**Example 6**

Finally, it should again be underlined that *clearly* is another rhetorical device which appears to be favoured by legal opinion drafters, as it stresses accessible evidence and conviction based on reasoning.

**The case of (*not*) *necessarily***

Decidedly less frequent in the corpus than the adverbs *indeed* and *clearly* discussed above, (*not*) *necessarily* (attested by 25 instances) belongs to the class of expectation adverbs, since it is used to express the speaker's or writer's conviction regarding the inevitability of a certain state of affairs, being a consequence of another state of affairs. What is more, in the case of the negative *not necessarily*, as validly observed by Simon-Vandenberghe and Aijmer (2007: 287), the meanings of deontic and epistemic necessity often co-occur. It should also be noted that this adverb (by contrast to

the other adverbs examined in the present study) is never found in sentence-initial position, which, as argued by the scholars (Simon-Vandenberg and Aijmer 2007: 299), suggests that even though (*not necessarily*) does express the speaker's stance, it has not progressed as far as the other adverbs "on the path towards epistemic markers." Instead – as Simon-Vandenberg and Aijmer (2007: 299) continue – this negative adverb, similarly to *definitely*, is becoming more of a response marker with its own specific meaning.

Some of the above characteristics of (*not necessarily*) are confirmed by my data. For instance, the meaning of expectation resulting from external circumstances can be seen in Example 7. Here, the rhetorical effect of *necessarily* is enhanced by the presence of the adverb *objectively*, as the parallel structure *necessarily and objectively* is more emphatic than *necessarily* alone. Again, the author bases his argument on clearly verifiable evidence, namely "the difference in retirement age," which must be accepted as the reason for the permitted derogation. A similar observation can be made with regard to Example 8, where the assessment being referred to follows from objective factors, such as relevant legislation, i.e. "Title II of Regulation No. 1408/71."

*The Court has held that 'where ... a Member State prescribes different retirement ages for men and women for the purposes of granting old-age and retirement pensions, the scope of the permitted derogation is limited to forms of discrimination which are **necessarily and objectively** linked to the difference in retirement age'. [O-8]*

**Example 7**

*Such an assessment is **necessarily** based on the rules contained in Title II of Regulation No 1408/71 which concern the determination of the legislation applicable. [O-21]*

**Example 8**

The strategic deployment of *not necessarily*, in turn, is illustrated by Example 9, where this negative adverb is used to deny something that appears to be a logical consequence.<sup>12</sup> More specifically, according to relevant regulations, fair compensation is due after a certain date, but it does not have to apply to events occurring prior to that date. The lack of "inevitable necessity" is additionally emphasised by the truth-evaluating *in principle*, implying the arguer's agreement as to the general idea, but not the specific

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12 Out of the 25 occurrences of *necessarily* in the corpus, seven instances were in the negative.

details concerning the case. Evidently, as suggested earlier in the article, the meanings of deontic and epistemic necessity conveyed by *not necessarily* overlap.

*That means inter alia that, where a Member State has provided for an exception or limitation to the reproduction right in accordance with Article 5(2)(a) and/or (b) of the Directive, it is required to ensure that rightholders receive fair compensation in respect of relevant events after 22 December 2002 but, in principle, **not necessarily** before.* [O-6]

#### **Example 9**

As the above examples demonstrate, (*not*) *necessarily*, similarly to other certainty adverbs, has its rhetorical strength and it is used to stress inevitable necessity (or its lack) resulting from circumstances which are beyond the arguer's control and which, therefore, can be regarded as objective.

#### **The case of *of course***

The fourth most frequent certainty adverb in the corpus, that is *of course*, had only 13 occurrences and yet, as I believe, it deserves some attention. As found by Simon-Vandenberg and Aijmer (2007: 201-202), this expectation adverb is most common in demonstrations and broadcast interviews.<sup>13</sup> Since it is used to redress the power balance between the interlocutors by playing down the speaker's superiority resulting from possession of knowledge (Simon-Vandenberg and Aijmer 2007: 205), it naturally fulfils face-saving functions and is deployed as a politeness marker. Simon-Vandenberg and Aijmer (2007: 30) also note the concessive meaning of *of course*, likening it to *although*, and, at the same time, suggesting that it be interpreted as an equivalent of the presupposition "as everyone knows." Furthermore, like *indeed*, *of course* is found to cue acknowledgments in Concessive schemata; however, by contrast to *indeed*, it operates as a marker of solidarity and equality. In certain contexts, it may, conversely, signal superiority of the arguer's knowledge too.

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<sup>13</sup> Contrary to my findings, in the scholars' data, *of course* ranked as the most frequent adverb of certainty (Simon-Vandenberg and Aijmer 2007: 204).

Predictably, of all the uses of *of course* in the data, the concessive meaning clearly stood out. Example 10 illustrates a Concessive sequence, where *of course* is used to background an alternative standpoint (namely, the assertion that the Italian Tribunal is able to reformulate the preliminary question submitted for consideration by the ECJ so that it would no longer be purely hypothetical). Thus, it is especially useful for anticipatory rebuttal, with the arguer weaving into the argumentation a possible objection and refuting it in the return to the counterclaim, signalled with the contrastive marker *however*. Therefore, whenever *of course* is found in *Yes, but* patterns, it loses its strength of a certainty marker and it may be justifiably termed a “precursor of disagreement” instead (Simon-Vandenberghe and Aijmer 2007: 303).

[Y] *Nevertheless, in the present case I am inclined to conclude that the mismatch between the wording of the preliminary question on the one hand, and the texts of the national provision and the observations of the parties, on the other, render the preliminary reference of a hypothetical character both in fact and in law.* [COUNTERCLAIM]

[X] *It is, of course, open to the Court to simply leave it to the Commissione Tributaria Regionale di Milano to check the soundness of its initial interpretation of national law, (10) after the Court has provided answers to the questions referred.* [ACKNOWLEDGMENT]

[Y] *However, this may be insufficient to cure the hypothetical nature of the question.* [RETURN TO COUNTERCLAIM] [O-16]

### **Example 10**

The concessive meaning aside, another context in which *of course* resurfaced in the corpus as a useful rhetorical device involved the presupposition of taken-for-granted knowledge. Accordingly, the as-everybody-knows meaning of *of course*, used to state something which is supposed to be known both to the writer and the reader, can be seen in Example 11. In this paragraph, by inserting *of course*, the author expresses his conviction that the reasons for applying an imputation system to foreign-sourced dividends are obvious both to him and the reader.

*At this juncture it is necessary to make two observations. Firstly, the aim of applying an imputation system to foreign-sourced dividends is, of course, to achieve the effect described by*

*Advocate General Geelhoed, in other words, to eliminate the effect in the residence State taxation of a lower effective tax rate in the source State. (...) [O-24]*

**Example 11**

Overall, the concessive dimension and the solidarity-orientedness of *of course* merit attention and the argumentative potential of this adverb should not be overlooked in rhetorically-oriented analyses of judicial reasoning, either.

## **5. Conclusions**

The aim of this article was to demonstrate how the Advocates General at the ECJ use modal adverbs of certainty to achieve rhetorical goals. As predicted, the study revealed that the use of modal adverbs is far from infrequent and that this class of words is a common persuasive and argumentative device used by justices to align with or disalign from other viewpoints. More specifically, the examination showed that in their judicial reasoning, the Advocates General tend to favour authority-oriented epistemic adverbs (*indeed*) as well as evidential adverbs referring to evidence (*clearly*). Another common feature was the strategy of conceding, that is “agreeing to disagree,” which involved the use of *indeed* and *of course* to foreground and background arguments and counterarguments, respectively.

In conclusion, adopting a broader perspective and assuming that discourse is fundamentally argumentative, it should be reiterated that rhetoric is an inseparable element of every form of interaction, be it private or institutional. Modal adverbs of certainty, in turn, serve the rhetorical purposes of both speakers and writers and as such, they contribute to effective persuasion and negotiation. For this reason, they can be viewed not only in terms of truth and knowledge, but also as interactive markers of stance, status and authority.

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