

<https://doi.org/10.28925/2311-2425.2023.26>  
UDC 81'42: 81'111

## EU ENVIRONMENTAL LEGISLATION: MITIGATION OF DIRECTIVE ILLOCUTIONARY FORCE

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*This article discusses the illocutionary underpinning of varying degrees of legal force of an international document, derived from the conflict between its genre and institutional nature as an act of hard law and the sphere of environmental relations associated with soft law. The purpose of the article is to identify the types of hedging and mitigation of directive speech acts in the text of binding international law, and their impact on the degree of legal force of the document. Despite the predominance of directive speech acts that correspond to the obligative deontic modality of the document in accordance with the genre and institutional strategy of mandatory prescriptions, most of the acts are presented in indirect, hedged and mitigated versions with varying degrees of de-intensification of the directive illocutionary force. The mitigation of coercion contributes to the discursive strategy of consensus and solidarity in such a sensitive area of international law as environmental legislation. The study revealed that the weakening of the intensity of directive illocutionary force is achieved by employing a number of mitigating and structural devices. The unconditional validity of legal force is reduced through hedging of explicit directives by introducing the parenthetical constructions in the propositional part of the act to refer to the circumstances, i.e. to the varying interests and needs of the states that can be taken into account during the implementation of the document. In addition to hedging, mitigation of explicit directive acts is achieved through bushes – the lexemes with the semantic features denoting an intention to act or a deliberation process instead of actions themselves that blur the propositional or denotative scope of statements, thus influencing the categoricity of the legal norm and, indirectly, its level of obligatoriness. The next type of directive action modifications affecting the mitigation of the directive illocutionary force is achieved through structural transformations of the directive act, whereby the designation of the states as subjects of the directive action is omitted and the position of the phrasal subject is occupied by the nomination of an object or a prescription purpose in combination with a binding verb. As a result, the utterance loses its performative-illocutionary part, which significantly affects the decrease in the degree of strength of the directive illocutionary force.*

**Key words:** *directive speech acts, hedging, mitigation, illocutionary force, legal force.*

**Сніцар В.П. Природоохоронне законодавство ЄС: мітигація директивної ілокутивної сили**

У статті розглядається ілокутивне підґрунтя різного ступеню юридичної сили документа, що зумовлене конфліктом між його жанровою та інституційною природою як акта жорсткого права та сферою регулювання – екологічними відносинами, які зазвичай асоційовані з м'яким правом. Метою статті є виявлення типів хеджування та мітигації директивних мовленнєвих актів у тексті міжнародного зобов'язального права в аспекті їх впливу на ступінь юридичної сили документа. Незважаючи на переважання директивних мовленнєвих актів, які відповідають облігативній деонтичній модальності документа відповідно до жанру та інституційної стратегії імперативності, більшість актів подано в непрямих, хеджованих та пом'якшених варіантах із різним ступенем деінтенсифікації директивної ілокутивної сили. Пом'якшення примусу сприяє реалізації дискурсивної стратегії консенсусу та солідарності в такій чутливій сфері міжнародного права, як екологічне законодавство. У статті виявлено, що послаблення інтенсивності директивної ілокутивної сили досягається низкою пом'якшувальних і структурних засобів. Безальтернативність юридичної сили зменшується за допомогою хеджування прямих директивів шляхом впровадження у пропозиційну частину акту вставних конструкцій для посилення на обставини, тобто на різні інтереси та потреби держав, які можуть бути прийняті до уваги під час виконання документа. На додаток до хеджування, пом'якшення експліцитних директивних актів здійснюється за допомогою бушів – лексем із семами на позначення наміру діяти чи процесу обговорення замість самих дій, які розвивають пропозиційний чи денотативний обсяг висловлювань, таким чином впливаючи на категоричність норми і, опосередковано, на рівень її обов'язковості. Наступний тип модифікацій директивних дій, що впливають на зменшення ілокутивної директивної сили, досягається шляхом структурних перетворень директивного акту, у якому опускається позначення держав як суб'єктів директивної дії, і позицію фразового суб'єкта займає номінація об'єкта або мети приписів у поєднанні із зобов'язальним дієсловом. У результаті висловлювання втрачає свою перформативно-ілокутивну частину, що суттєво впливає на зменшення директивної ілокутивної сили.

**Ключові слова:** *директивні мовленнєві акти, хеджування, мітигація, ілокутивна сила, юридична сила.*

## **Introduction**

The analysis of discursive strategies in their interaction with the speech acts pragmatics of the document is of certain scientific and practical relevance, since the features of such a correlation ultimately affect the legal force of the document and the degree of its obligative nature. Institutional-discursive strategies with a predominance of either consensual or prescriptive components are presumably derived from three factors: (1) the specifics of environmental legislation as predominantly soft law, (2) the genre of a specific document within the scope of

this law, (3) and the degree of binding / legal force of EU legislation for Member States.

The material under study covers the European Climate Law of 2021, adopted by the EU Regulation, i.e. an act of the European Union that is legally binding and subject to immediate execution as a law in all participating States simultaneously.

Proceeding from the second (“hard” genre of the Law) and the third (compulsory EU legislation) extralinguistic factors, the verbal and pragmatic characteristics of the text under consideration should iconically reproduce its highest legal force. On the other hand, the analysis of the document reveals a number of characteristics of the soft law discourse, in the stylistics of which the environmental relations of states are often regulated.

In view of the unequal impact on the pragmatics of the European Climate Law of genre and institutional factors as well as the features of the regulatory sphere, which are manifested by the speech acts specificity of the document, the article focuses on the illocutionary underpinning of the varying degree of obligations embodied in institutional strategies.

The purpose of the article is to identify the types of hedging and mitigation of directive acts in the text of binding international law and their impact on the degree of legal force of the document.

**Theoretical Background.** In theoretical terms, the article is based on the studies of (a) speech acts in various institutional discourses, taking into account their gradation according to the intensity of illocutionary force, (b) hedges and bushes as mitigators of both illocutionary and propositional components of speech acts.

The article uses the most traditional classification of speech acts into assertives, directives, commissives, expressives and declaratives (Searle, 1969), while focusing on explicit and implicit directives, i.e. acts compelling to a certain action, in view of the implied specifics of the genre of the European Climate Law as a legally binding document, based on directive illocutionary force. Of particular importance for the article are the studies that distinguish speech acts by the degree of intensity/de-intensification of their illocutionary force (Holmes, 1984; de Pablos-Ortega, 2020). Directives and commissives are differentiated according to the criteria: direct – indirect, strong – weak, hedged – unhedged, conventional – non-conventional, with the combination and intersection of these criteria to

develop more or less detailed classifications (Kravchenko et al., 2022, p. 1042; Kravchenko et al., 2021, p. 184; de Pablos-Ortega, 2020).

A number of criteria that specify the degree of illocutionary force are associated with the concept of hedges and other mitigators, which to some extent weaken the directive illocutionary force. The article uses the classification of mitigators proposed by C. Caffi (2006), including the identification of categories such as hedges that affect the illocutionary force of the utterance by distancing its addresser, and bushes that blur the propositional content of the utterance (Caffi, 1999, p. 883), making it fuzzier.

**Methods.** The article integrates a speech acts approach to the analysis of an international legal document with some explanatory tools of the theory of mitigation in the version of the classification of mitigators into bushes, hedges and shields – taking into account the absence of a clear line between classes of mitigators in relation to their impact on the intensity of directive illocutionary force (Kravchenko et al., 2022). To clarify the meaning of lexemes-bushes and their function in blurring the denotative scope of a directive statement, the article uses elements of componential analysis.

**Results and Discussion.** The pragmatics of EU environmental legislation includes both speech act and discursive levels, which form relationships of inclusion based on the “means-ends” principle. Therefore, it is logical to begin the analysis with the speech act pragmatics as the main marker of discursive strategies.

The speech act organization of the European Climate Law demonstrates a predominance of directive speech acts that implement the discursive strategy of prescribing the normative provisions and their mandatory compliance. The maximum degree of illocutionary force of an explicit directive act is marked by the illocutionary verb *shall*, which should be used as a verb of positive imperative with a meaning “to impose an obligation or a requirement”, according to the requirements of the EU regulations for authors and translators (ISO/IEC Directives, 2021, Table 3 – Requirement). The same recommendation is contained in English Style Guide (2023, p. 58).

This type of the strongest directive acts is represented by (1) and (2).

(1) “*When implementing the target referred to in the first subparagraph, the relevant Union institutions and the Member States shall prioritise swift and predictable emission reductions and, at the same time, enhance removals by natural sinks*” (Article 4 (1)).

(2) “*The relevant Union institutions and the Member States shall ensure continuous progress in enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change in accordance with Article 7 of the Paris Agreement*” (Article 5 (1)).

However, we were able to identify only a few normative statements in which *shall* denotes a direct, unconditional directive act that underlies the maximum binding force of the document. In 90 % of statements formulating the normative content of the Law, directives are presented in their various hedged, mitigated, and indirect forms, which in one way or another affect the weakening of the obligative modality of the document.

In particular, the article revealed such types of modifications of directive acts:

1. Hedging of explicit acts through parenthetical constructions *as necessary, as appropriate, where appropriate, as prescribed by the Member State concerned*, etc. that provide a certain variability in the application of the document as exemplified by (3) and (4).

(3) “*⟨...⟩ the Commission shall assess in particular the availability under Union law of adequate instruments and incentives to mobilise the investments needed, and propose measures as necessary*” (Article 4 (2)).

(4) “*⟨...⟩ the Commission shall make a legislative proposal, as appropriate, based on a detailed impact assessment*” (Article 4 (3)).

2. Another type of hedges is represented by insert constructions in the propositional parts of the speech acts, which refer to the varying interests of the states that are taken into account during the implementation of the normative provision, thereby weakening the directive illocutionary force and obligative modality of the act in favor of the conditions and circumstances in its application (i.e. national law enforcement, the individual capabilities of states, etc.) associated with dynamic modality as in (5) and (6).

(5) “*the consistency of relevant national measures with ensuring progress on adaptation as referred to in Article 5, taking into account the national adaptation strategies referred to in Article 5 (4)*” (Article 7 (1b)).

(6) “*The relevant Union institutions and the Member States shall take the necessary measures at Union and national level, respectively, to enable the collective achievement of the climate-neutrality objective set out in paragraph 1, taking into account the importance of promoting both fairness and solidarity*”

*among Member States and cost-effectiveness in achieving this objective*” (Article 2 (2)).

In (6), an extended hedge specifies the conditions for ensuring climate neutrality at the supranational and national levels, namely: the measures should rely on the concepts of justice, solidarity, as well as considerations of economic efficiency in achieving this goal. The lexemes *justice* and *solidarity* do not denote legal meanings but connote, especially in combination with the participle *promoting*, a declarative seme that blurs the obligation to some extent.

In addition, the nominative units *fairness*, *solidarity*, and *cost-effectiveness* are, to some degree, legal euphemisms, as they actually indicate the damage that is inevitable for European countries in implementing measures to prevent climate change. Fairness is understood here in the sense of “proportionality” in the infliction of damage to the economies of member states as a result of their measures to ensure climate neutrality.

Thus, insert constructions introduce conditions under which the propositional part of the act is feasible and thus implement the function of not only hedges, which are associated with the illocutionary scope of statements, but also bushes, blurring the denotative/propositional content of acts.

Some semiotic studies on international legal discourse interpret this type of hedges as the implicated intertextuality devices referring to the semiospheres of national legislations which are used to expand in a particular manner the powers of the parties-addressees to avoid conflicts of interest.

By foregrounding the heterogeneity they provide for and, to some extent, eliminate the possibility of variable interpretation of the international legal text and the rules of conduct that have been laid down, thus manifesting a combined strategy for (a) forecasting the possibility of flouting the document provisions in favor of the national interests of the parties, with (b) indicating the source of alternative interpretations and (c) their unification in a general rule (Kravchenko et al., 2022, pp. 785–786).

3. In addition to hedging, mitigation of explicit directive acts is achieved through bushes that blur the propositional or denotative scope of statements. In particular, in (7) and (8) the function of bushes is performed by the verbs expressing intention or desire in the performative part of the act and “dividing” the modal verb of obligation and its correlating notional verb as in (7) and (8).

(7) “⟨...⟩ *the Union shall aim to achieve negative emissions thereafter*” (Article 2 (1)).

(8) “<...> *the Union shall aim to achieve a higher volume of its net carbon sink in 2030*” (Article 4 (1)).

Such verbs are semantically redundant, and their use decreases the directive illocution, as the seme ‘intention’ shifts the directive provision from the sphere of real to potential actions, from prescriptions to the statement of intentions.

If we compare the acts *the Union shall aim to achieve* and *the Union shall achieve*, the greater intensity of the directive illocution in statements without the verb *aim* becomes apparent.

A similar function is performed by other bushes-mitigators, particularly, if the verb denoting a prescribed action is preceded by a verb or a non-finite verb designating the process of thinking about actions as in (9).

(9) “*By 30 June 2021, the Commission shall review relevant Union legislation in order to enable the achievement of the target set out in paragraph 1 of this Article and the climate-neutrality objective set out in Article 2 (1) and consider taking the necessary measures, including the adoption of legislative proposals, in accordance with the Treaties*” (Article 4 (2)).

Therefore, in (9), through the use of the bush-mitigator *consider* with the seme ‘to think about carefully’, the obligation moves from the sphere of actions to the sphere of cognitive activity, from the realm of reality to the sphere of possibility and potentiality.

The next type of modifications of directive speech acts affecting the weakening of the illocutionary directive force is represented by directives in which the phrasal subject position is occupied by a lexeme or combination denoting the target of the directive action instead of its performer as in (10).

(10) “*In order to reach the climate-neutrality objective set out in Article 2 (1), the binding Union 2030 climate target shall be a domestic reduction of net greenhouse gas emissions (emissions after deduction of removals) by at least 55 % compared to 1990 levels by 2030*” (Article 4 (1)).

Some of these directives are represented by passive constructions, which further distance the subjects of the directive illocution from their obligations contained in the propositional content of the act as in (11).

(11) “*Union-wide greenhouse gas emissions and removals regulated in Union law shall be balanced within the Union at the latest by 2050, thus reducing emissions to net zero by that date, and the Union shall aim to achieve negative emissions thereafter*” (Article 2 (1)).

All categories of directives in which the phrasal subject position is occupied by the target or object of obligation are classified as indirect or implicit directive acts with a double illocutionary force – a direct assertion of necessity or desirability of an action (assertive act) and an indirect call to perform the action (directive act).

Directives differing in the degree of intensity of their illocutionary force form the basis of the discursive-institutional strategies of the Law, balancing between the mandatory prescriptions derived from the genre and institutional factors and the mitigation of coercion associated with the specificity of the regulatory sphere, to achieve consensus and solidarity among subjects with different national interests and risks to the economy due to the implementation of the climate law.

The strategy of achieving consensus and veiling disagreements is implemented through mitigation tactics, which are aimed either at implying the mandatory nature of document compliance through the structural arrangement of an assertive act, or at shifting the action from the realm of reality to the realm of procedure and potentiality, or at foreseeing and acknowledging the possibility of some variability in national implementation depending on various circumstances and national interests of states.

**Conclusions and perspectives.** The illocutionary basis of the Climate Law obligations, varying in their degree of imperativeness, indicates that the criterion of the sphere of regulation, associating environmental law with soft law is dominant for the pragmatic organization of the document in comparison with the parameters of the genre and institutional law of the EU, governed by hard law. Despite the predominance of directive speech acts that correspond to the obligative deontic modality of the document in accordance with the genre and institutional strategy of mandatory prescriptions, most of the acts are presented in indirect, hedged and mitigated versions with varying degrees of deintensification of the directive illocutionary force. The mitigation of coercion contributes to the discursive strategy of consensus and solidarity in such a sensitive area of international law as environmental legislation. The article revealed that the weakening of the intensity of directive illocutionary force is achieved by a number of mitigating and structural devices. The unconditional validity of legal force is reduced through hedging of explicit directives by introducing the parenthetical constructions in the propositional part of the act to refer to the circumstances, i.e. to the varying interests and needs of the states that can be taken into account during the

implementation of the document. In addition to hedging, mitigation of explicit directive acts is achieved through bushes – the lexemes with the semes designating an intention to act or a deliberation process instead of actions themselves that blur the propositional or denotative scope of statements, thus influencing the categoricity of the norm and, indirectly, its level of obligatoriness. The next type of directive action modifications affecting the decrease of the illocutionary directive force is achieved through structural transformations of the directive act, wherein the designation of the states as the subject of the directive action is omitted, instead of which the position of the phrasal subject is occupied by the nomination of an object or a purpose of prescriptions in combination with a binding verb. As a result, the utterance loses its performative-illocutionary part, which significantly affects the reduction of directive illocutionary force.

The analysis of assertive, commissive and declarative speech acts in the context of their impact on the legal force of international legal instruments is the objective of further research.

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*Дата надходження статті до редакції: 14.04.2023.  
Прийнято до друку 20.05.2023*