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## Clarity in the Code du Travail: The Plain Language Movement, French Legislative Drafting, and President Macron's Collective Bargaining Reform

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**CLARITY IN THE CODE DU TRAVAIL:  
THE PLAIN LANGUAGE MOVEMENT,  
FRENCH LEGISLATIVE DRAFTING, AND  
PRESIDENT MACRON'S COLLECTIVE  
BARGAINING REFORM.**

*Adam Boyd\**

ABSTRACT

*Although the French Code is known as concise and elegant, the French Labor Code, or the Code du Travail, is not.<sup>1</sup> Recent reform to the Code du Travail provides a chance to study Plain Language use in France in 2017. This Comment briefly introduces what Plain Language is, its goal of making the law easier to read, and the international movement to implement Plain Language legal reforms. The Comment then introduces a summary of the French legal system relevant to discussion of the Code du Travail, including how legislation is passed and the structure of a French statute. Next, the Comment discusses the recent labor reform in France, with a brief focus on collective bargaining laws in the context of Plain Language. Eventually, the Comment concludes that changes can still be made to the recent reform to provide more clarity to the reader. Finally, the Comment attempts revisions to two proposed articles within Article 7 of Ordonnance 17-1385 in both French and English.*

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<sup>1</sup> The French Code was originally published in 1804 and known as only the *Code Civil*, and is accessible online. *Code Civil*, GALLICA, <http://gallica.bnf.fr/ark:/12148/bpt6k1061517/f2.image> (last visited September 20, 2018). The *Code du Travail* is an additional set of laws for labor. Adam Nossiter, *Macron Takes on France's Labor Code, 100 Years in the Making*, N.Y. TIMES (Aug. 4, 2017), <https://www.nytimes.com/2017/08/04/world/europe/emmanuel-macron-france-economy-labor-law.html>.

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## I. INTRODUCTION

In France, the *Code du Travail* (the Labor Code) has been described as voluminous and indigestible.<sup>2</sup> In the United States, the press has described the French Labor Code as mind-numbing, infamous, and “almost indecipherable.”<sup>3</sup> The Labor Code can be “extraordinarily mystifying” for legal experts, as it contains more than 3,000 pages.<sup>4</sup> Such length, however, is not impossible to imagine. More

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<sup>2</sup> Quentin Périnel, *Le Code du travail et ses articles absurdes (ou hilarants)* [The Labor Code and its absurd (or hilarious) articles], LE FIGARO (Sept. 9, 2015, 9:48 AM) <http://www.lefigaro.fr/vie-bureau/2015/09/09/09008-20150909ARTFIG00079-le-code-du-travail-et-ses-articles-absurdes-ou-hilarants.php>.

<sup>3</sup> Nossiter, *supra* note 1.

<sup>4</sup> *Id.*

than 100 statutes are produced annually in France, and thousands of rules and regulations are made by administrative ministers and agencies each year.<sup>5</sup> Instead of following Montesquieu's<sup>6</sup> belief that the law be plain and simple, the Labor Code has lengthy statutes such as art. L. 122-26 on maternity leave, which alone is sixty-three lines long.<sup>7</sup>

Protracted statutes are only part of the problem. Concision, a "salient characteristic" of French legislation,<sup>8</sup> has at times fallen to "characteristics that have provoked complaint about English drafting: length, complexity, detail and over repetition."<sup>9</sup> As an example, consider a statute written with a long list of factors in an attempt to cover every scenario. Complexity of a law can make following it difficult.

The complexity of the French Labor Code became a flashpoint in 2017 politics. Emmanuel Macron's election to the French presidency was described as an opportunity to transform France's economy through structural reforms.<sup>10</sup> President Macron prioritized labor reform, which necessarily included reform of the French Labor Code, as a major first step in his government.<sup>11</sup>

Such reform is not new in France, and difficulty in understanding French law is not an issue solely attributable to the Labor Code. In 2016, the French Civil Code underwent major reform to revise French contract law after a decade of review and debate.<sup>12</sup>

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<sup>5</sup> EVA STEINER, *FRENCH LEGAL METHOD* 5 (2002).

<sup>6</sup> Charles-Louis de Secondat, baron de La Brède et de Montesquieu was a French lawyer and political philosopher who was born in 1689 and died in 1755. Robert Shackleton, *ENCYCLOPÆDIA BRITANNICA*, <https://www.britannica.com/biography/Montesquieu> (last visited Oct. 10, 2018).

<sup>7</sup> STEINER, *supra* note 5, at 19.

<sup>8</sup> *Id.* at 17.

<sup>9</sup> *Id.* at 19.

<sup>10</sup> INT'L MONETARY FUND, *FRANCE: 2017 ARTICLE IV CONSULTATION-PRESS RELEASE; STAFF REPORT; AND STATEMENT BY THE EXECUTIVE DIRECTOR FOR FRANCE*, COUNTRY REPORT NO. 17/288 4 (2017).

<sup>11</sup> Alissa J. Rubin, *France Unveils Contentious Labor Overhaul in Big Test for Macron*, N.Y. TIMES (Aug. 31, 2017), <https://nyti.ms/2wUJNFa>.

<sup>12</sup> JOHN CARTWRIGHT & SIMON WHITTAKER, *THE CODE NAPOLÉON REWRITTEN: FRENCH CONTRACT LAW AFTER THE 2016 REFORMS* 3 (John Cartwright & Simon Whittaker eds., Hart Publishing, 2017).

Legislation that authorized the reform to occur explained that the Civil Code needed to be modernized, simplified, and be easier to read.<sup>13</sup> France underwent reform to counter the view that French law was “not friendly to commerce” and unattractive as a jurisdiction when it came to choice of law.<sup>14</sup>

What are ways to reform complex legislation? Could it be the visual appearance of a statute on a page? What about revising the wording or length of a statute with numerous clauses? I contend that Plain Language in the law could be one solution to better understand, and implement, the French Labor Code.

“[P]lain [L]anguage drafting” considers the reader in drafting documents.<sup>15</sup> Further, Plain Language drafting should bear in mind that the general public is one’s audience, and thus the casual citizen should be able to readily understand it.<sup>16</sup> When drafting documents for a primary and secondary audience, drafters can add definitions for terms their audience may not understand. They can also just write for the most important audience for the document.<sup>17</sup> Plain Language requires attention to sentences, words, grammatical structures, and to the removal of bad habits of legalese in favor of clarity.

This Comment will argue that plain and easily understood language is vital to reforming the *Code du Travail*. Part II will explain what exactly Plain Language is, and the origins of the movement to make the law easier to understand. This section will include the burden of legalese and complex laws on society which led to a desire for clear and understandable laws around the world. The benefits of implementing Plain Language techniques are also discussed. Part III will review the legislative process in France for context on how the Labor Code has recently changed. Part IV analyzes the collective bargaining provisions in the *Code du Travail* reform from a Plain

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<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Id.* at 8.

<sup>15</sup> MICHÈLE M. ASPREY, PLAIN LANGUAGE FOR LAWYERS 90 (4th ed. 2010).

<sup>16</sup> *See id.*

<sup>17</sup> *See id.* at 92–93.

Language standpoint. Finally, Part V provides proposed revisions of specific statutes using Plain Language guidelines.

## II. PLAIN LANGUAGE AND THE LAW

### A. Plain Language Techniques

Plain Language tries to avoid familiar legal writing habits, such as a single, lengthy sentence, “embedded clauses, archaic and inflated words,” and a “doublet,” which is a pair of similar words.<sup>18</sup> Plain Language aims to focus on improving sentence *length*, *structure*, and *joinder* between them with *punctuation*.<sup>19</sup> Using one main point per sentence, being selective on word choice, and using proper grammar also demonstrate Plain Language objectives.

For comprehension, it is important to only have a couple of clauses per sentence for the brain to fully handle the material in short amounts.<sup>20</sup> Legal authorities and rules of practice differ on the appropriate word count for a sentence, but they generally agree that the targets ideally range from about twenty to thirty words.<sup>21</sup> The structure of long sentences can be “tiring” for a reader, requiring attention to punctuation.<sup>22</sup> Punctuation should be used in drafting to make documents “less puzzling,” “easier for . . . non-lawyers to understand,” and “easier to translate into other languages. . . .”<sup>23</sup> In sum, the solution to an overly long, deficient sentence is to break it up.<sup>24</sup>

Plain Language also encourages a drafter to center on one point per sentence to maintain control over sentence length.<sup>25</sup>

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<sup>18</sup> *Id.* at 99.

<sup>19</sup> *Id.* at 117–20.

<sup>20</sup> *Id.* at 118.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 119.

<sup>23</sup> *Id.* at 122 (citing Richard C. Wydick, *Should Lawyers Punctuate?*, 1 SCRIBES J.L. WRITING 23–24 (1990)).

<sup>24</sup> See JOSEPH KIMBLE, *LIFTING THE FOG OF LEGALESE: ESSAYS ON PLAIN LANGUAGE* 146 (2006).

<sup>25</sup> ASPREY, *supra* note 15, at 124.

Additionally, a multitude of commas can be an immediate clue to a drafter that a sentence is “too complex” and “entangled in a mess of clauses that are out of control.”<sup>26</sup>

The structure of how a law is drafted can also lead to difficulty in understanding. Plain Language use should not be hampered by forcing common structures onto every law. For example, “Coode’s rules” breaks down writing a legislative sentence into four parts: (1) Case, describing a hypothetical scenario; (2) Condition, an act occurs with the case; (3) Legal Subject, who can act upon the case and condition; and (4) Legal Action, what the Legal Subject can do as a consequence of a case and condition being triggered.<sup>27</sup> This structure is not always ideal. Sometimes *if . . . then . . .* sentences in legal writing can be an acceptable sentence as well. However, only using *if . . . then . . .* sentence structures can similarly lead to problems for a reader.<sup>28</sup> Adhering to strict structure over the understanding of the reader can be problematic.

Word choice and grammar can also affect the readability of a text. Legal writing with a nonlegal audience should keep to appropriate reading levels when possible.<sup>29</sup> A law written at a high school reading level is easier to understand than a law written with dense technical language. Legal prose should become more accurate and evolve as the language evolves.<sup>30</sup>

Word choice also involves technical terms in the law. Plain Language allows for technical terms if the writer “explains what they mean or is sure that *all* the likely readers will be able to understand.”<sup>31</sup> Technical or archaic words can permissibly be used if they are a term of art, even if unfamiliar to laypersons.<sup>32</sup> However, alternative words can be equally viable when they refer to the effect of a term and not

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<sup>26</sup> *Id.*

<sup>27</sup> *See id.*

<sup>28</sup> *Id.* at 126–27.

<sup>29</sup> *See* Charles C. Tucker, *The Evolution of Legal Language*, 40 COLO. LAW. 91, 92 (2011) (“Statutes increasingly require consumer and employment documents to meet elevated standards of readability.”).

<sup>30</sup> *Id.* at 93.

<sup>31</sup> ASPREY, *supra* note 15, at 129.

<sup>32</sup> *Id.*

the doctrine of the term.<sup>33</sup> Other items to avoid are “[l]egal buzzwords,”<sup>34</sup> “[w]ord strings” (unnecessarily using rules of construction such as “including, but not limited to”),<sup>35</sup> synonyms (which can “come in pairs (‘doublets’) or threes (‘triplets’)”),<sup>36</sup> “[w]ord clusters,”<sup>37</sup> and archaic words.<sup>38</sup>

Plain Language embraces the fact that words change their meaning over time.<sup>39</sup> Archaic terms can sometimes be retained, but outmoded terms are set aside by legal organizations such as “courts, legislatures, and . . . administrative agencies. . . .”<sup>40</sup> Even terms of art can be modernized when the words become obscure or fall out of common usage.<sup>41</sup>

Lawyers should write without unusual grammar when implementing Plain Language.<sup>42</sup> This means avoiding the future tense,<sup>43</sup> avoiding passive voice (and in place, using active voice),<sup>44</sup> using a positive voice (avoiding negatives in a sentence),<sup>45</sup> abstaining from nominalization (turning verbs into nouns),<sup>46</sup> and circumventing double

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<sup>33</sup> *Id.* at 129-30. Asprey references the term “estoppel”: one can refer “to the doctrine of estoppel. But if you are just referring to the *effect* of estoppel, there is nothing to stop (or estop) you from using *stop* or *prevent* instead.” *Id.* at 130.

<sup>34</sup> *Id.* at 132.

<sup>35</sup> *Id.* at 133-34.

<sup>36</sup> *Id.* at 134. These legal synonyms came about from lawyers reluctant to fully switch from French to English in common law, and using two terms in legal documents when one would suffice. *See id.* at 134-35 (citing DAVID MELLINKOFF, *THE LANGUAGE OF THE LAW* 391 (1963)).

<sup>37</sup> ASPREY, *supra* note 15, at 136.

<sup>38</sup> Tucker, *supra* note 29, at 93.

<sup>39</sup> *See* ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 78 (2012).

<sup>40</sup> Tucker, *supra* note 29, at 93. The writer should decide a legal term is archaic based on whether it is a term of art, whether another term in ordinary English exists with the same meaning, and if there is a requirement by law to use that specific term. *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> ASPREY, *supra* note 15, at 149.

<sup>43</sup> *Id.* at 149-50.

<sup>44</sup> *Id.* at 153-54.

<sup>45</sup> *Id.* at 156-57. Asprey explains using a positive voice instead of a negative voice by example: use “may only” in legal writing instead of “may not.” *Id.*

<sup>46</sup> *Id.* at 161.

negatives.<sup>47</sup> Lawyers should also “give the reader the verb up-front” (keeping the verb near the beginning of the sentence with the noun using the verb) when writing a sentence with various “conditions and requirements” to keep the reader engaged.<sup>48</sup> Provisos usually contradict the sentence or thought before them, so lawyers should avoid writing them.<sup>49</sup> Finally, Plain Language prefers that not too many words are put “before or between the main subject, verb, and object.”<sup>50</sup> This information can clutter and dilute the core message.

Plain Language can be as precise as legalese without its “impenetrable” style.<sup>51</sup> The next section will explain how the goal of writing the law in plain and clear language aligns with the structure of French civil law.

## B. Plain Language Around the World

Citizens around the globe have felt the burden of grappling with legalese. Plain Language can make the law easier for them to understand. Renowned author Jonathan Swift was a renowned critic of legalese.<sup>52</sup> American Founding Father Thomas Jefferson even headed a committee to revise Virginia law and combat wordy statutes.<sup>53</sup> Similarly, in the United Kingdom, philosopher Jeremy Bentham criticized English law, describing it as “spun out of cobwebs”

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<sup>47</sup> *Id.* at 158–59.

<sup>48</sup> *Id.* at 160.

<sup>49</sup> *Id.* at 161. Asprey states the scenario when provisos occur as follows: “[a] clause is drafted, and then later the writer remembers something else and tacks it on as a proviso.” *Id.*

<sup>50</sup> Joseph Kimble, *Writing for Dollars, Writing to Please*, 6 SCRIBES J. LEGAL WRITING 1, 7 (1997).

<sup>51</sup> KIMBLE, *supra* note 24, at 45.

<sup>52</sup> See Jonathan Swift, *A Letter to a Young Gentleman, Lately Enter'd into Holy Orders*, MONASH COLLECTIONS ONLINE 10–11, <http://repository.monash.edu/items/show/65167> (last visited Sept. 24, 2018) (“Two [t]hings I will ju[s]t warn you again[s]t[:] the fir[s]t is the [f]requency of flat unnece[ss]ary [e]pithets[:] and the other is the [f]olly of u[s]ing old threadbare [p]hrases, which will often make you go out of your [w]ay to find and apply them, are nau[s]eous to rational [h]earers, and will [s]eldom expre[s]s your [m]eaning as well as your own natural [w]ords.”).

<sup>53</sup> ASPREY, *supra* note 15, at 30.

and unintelligible.<sup>54</sup> The burden of legalese from these precursor effects is still felt today.

### 1. The United States

The need for Plain Language to combat statutory confusion is ripe in the United States. A prime example is the Armed Career Criminal Act.<sup>55</sup> The United States Supreme Court ruled one clause of the act, a definition for a violent felony, as unconstitutionally vague.<sup>56</sup> The Supreme Court attempted to comprehend one portion of the definition in dispute four times prior.<sup>57</sup> The clause was held unconstitutional in violation of due process.<sup>58</sup> Other areas of reform that could benefit from Plain Language and a simplification of the law include tax law.<sup>59</sup> Simplifying the tax code through statutory reform and removing exemptions in the code could even raise the GDP of the United States over the medium-term.<sup>60</sup>

The push for Plain Language is not new to the United States. Companies introduced Plain Language before laws were introduced by Congress for Plain Language reform in the United States

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<sup>54</sup> *Id.* (citing DAVID MELLINKOFF, *THE LANGUAGE OF THE LAW* 261 (1963)).

<sup>55</sup> 18 U.S.C. § 924.

<sup>56</sup> *Id.* § 924(e)(2)(B). *Johnson v. United States*, 135 S. Ct. 2551, 2555, 2563 (2015).

<sup>57</sup> *Id.* at 2558.

<sup>58</sup> *Id.* at 2563. Due process is the “conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case.” *Due Process*, BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>59</sup> *Lok v. Immigration & Naturalization Serv.*, 548 F.2d 37, 38 (2d Cir. 1977) (“The Tax Laws and the Immigration and Nationality Acts are examples we have cited of Congress’s ingenuity in passing statutes certain to accelerate the aging process of judges.”).

<sup>60</sup> *See* INT’L MONETARY FUND, UNITED STATES: 2016 ARTICLE IV CONSULTATION—PRESS RELEASE; AND STAFF REPORT, COUNTRY REPORT NO. 16/226 26 (2016) (“[A] comprehensive reform of the U.S. tax system that removes exemptions, simplifies the system, and reduces statutory rates (both for individual and corporate income taxes)—would raise the level of real GDP by up to 1.6 percent over the next ten years.”).

government.<sup>61</sup> Citibank rewrote a consumer promissory note in Plain Language, finishing it in 1975 and providing a clear example of Plain Language for legally binding material.<sup>62</sup> As for Congress, the “Plain Writing Act of 2010” was passed to combat the burden of legalese in the government.<sup>63</sup> The United States also adopted Plain Language in the *Federal Register*, along with various regulations and government forms.<sup>64</sup> Bryan Garner and Joseph Kimble,<sup>65</sup> legal scholars who promote clear legal writing, have used Plain Language in Federal Court rules such as The Federal Rules of Civil Procedure.<sup>66</sup>

The United States has complied poorly with Plain Language, even after passing the “Plain Writing Act.”<sup>67</sup> Agencies have complied with the letter of the law by publishing reports on implementation of Plain Language use, but the reports have provided minimal information on how the implementation would actually occur.<sup>68</sup> In general, government agencies (such as the Environmental Protection Agency and Department of Defense) from 2012 and 2013 suffered from a lack of detail on “training, covered documents, and public feedback[,]” while some agencies known for using Plain Language compliance did not put forth any effort into reporting it.<sup>69</sup> Recommendations from Rachel Stabler, a legal scholar, on true compliance with Plain Language include more oversight, such as

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<sup>61</sup> ASPREY, *supra* note 15, at 34.

<sup>62</sup> *Id.*

<sup>63</sup> See Plain Writing Act of 2010, Pub. L. No. 111-274, § 2, 124 Stat. 2861 (2010) (“The purpose of this Act is to improve the effectiveness and accountability of Federal agencies to the public by promoting clear Government communication that the public can understand and use.”).

<sup>64</sup> ASPREY, *supra* note 15, at 66–67. The *Federal Register* is a “daily publication containing presidential proclamations and executive orders, federal-agency regulations of general applicability and legal effect, proposed agency rules, and documents required by law to be published.” *Federal Register*, BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>65</sup> ASPREY, *supra* note 15, at 81. Kimble is a longtime editor for a plain language column for legal writing in the Michigan Bar Journal. *Id.*

<sup>66</sup> *Id.* at 78–79.

<sup>67</sup> Richard K. Neumann, Jr., *Legislation’s Culture*, 119 W. VA. L. REV. 397, 428 (2016).

<sup>68</sup> Rachel Stabler, “*What We’ve Got Here is Failure to Communicate*”: *The Plain Writing Act of 2010*, 40 J. LEGIS. 280, 300-301 (2013).

<sup>69</sup> *Id.* at 301–03.

sending reports to the Office of Management and Budget (“OMB”) for review, to then be reported to Congress.<sup>70</sup> Other compliance recommendations include a sentence in every forthcoming agency document to inform the public on Plain Language requirements, and contact information for the public to notify the agency if a document is not easily readable.<sup>71</sup>

Plain Language will take time to move from agency documents to legislation in the United States. Drafting statutes that are difficult to understand is a “centuries-old habit,” and there needs to be a “clear model” for legislators to carry forward into their drafting.<sup>72</sup> One model for legislators to consider is whether family members without expertise in the subject could understand the drafted statute.<sup>73</sup> Plain Language makes the purpose of a statute not just to capture a legal message, but to ensure that such a message is comprehensible to all members of the public instead of an educated few.<sup>74</sup>

Despite the unfortunately habitual pattern of legalese, success stories of recent Plain Language use exist in the United States’ context. The Center for Disease Control’s Ebola Health Advisory Notice was praised by the Center for Plain Language for pushing clear language that even any stressed traveler could understand.<sup>75</sup> Additionally, the Consumer Financial Protection Bureau received praise on its *Ownning a Home* website for concise, one-page documents that lay out step-by-step procedures to the home ownership process.<sup>76</sup> Finally, the Securities and Exchange Commission (“SEC”) has written a handbook on Plain Language techniques for use by agency employees, such as

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<sup>70</sup> *Id.* at 317–18.

<sup>71</sup> *Id.* at 317–18 (mentioning that companies employ a “similar technique” on vehicles requesting feedback on the company drivers from the public).

<sup>72</sup> Neumann, *supra* note 67, at 440.

<sup>73</sup> *Id.* at 456 n.229 (citing Supreme Court Justice Hugo Black and Warren Buffet on how to communicate clearly).

<sup>74</sup> Ruth Sullivan, *Some Implications of Plain Language Drafting*, 22 STATUTE L. REV. 145 (2001).

<sup>75</sup> Sean McLernon, Note, *Why Courts Need to Embrace Plain Language*, 24 GEO. J. POVERTY L. & POL’Y 381, 390 (2017).

<sup>76</sup> *Id.*

omitting “superfluous words” and replacing “jargon and legalese” with shorter words.<sup>77</sup>

Corporations in the United States such as Citibank reported better communication and cost savings on consumer litigation by simplifying language in documents.<sup>78</sup> Other corporations reported efficiency gains and a decrease in litigation from Plain Language adoption.<sup>79</sup>

Plain Language works with more than just legal documents. Plain Language has improved comprehension when used in “oral instructions given to juries,” “medical consent forms,” and “legislation.”<sup>80</sup> George Orwell opined that more work is needed to write less.<sup>81</sup> Crafting a clear, concise statute is well worth the necessary time and effort.

## 2. France

Plain Language reform has occurred in France with administrative law. France created a Steering Committee to Simplify Administrative Language (*Comité d’Orientation pour la Simplification du Langage Administratif*, or “COSLA”) in 2001, bringing together linguists and experts in the French language, in pursuit of understandable language in administrative forms.<sup>82</sup> COSLA rewrote important applications in France, using Plain Language forms for a national identity card, universal health coverage, unemployment welfare, personal retirement, and family welfare.<sup>83</sup>

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<sup>77</sup> Tucker, *supra* note 29, at 93 (citing SEC OFFICE OF INV’R EDUC. & ASSISTANCE, A PLAIN ENGLISH HANDBOOK: HOW TO CREATE CLEAR SEC DISCLOSURE DOCUMENTS (1998)).

<sup>78</sup> ASPREY, *supra* note 15, at 34.

<sup>79</sup> *Id.* at 36.

<sup>80</sup> *Id.* at 44.

<sup>81</sup> *Id.* at 43.

<sup>82</sup> “Un langage clair, ça simplifie la vie !” [Clear language simplifies life], (Fr.) (2002), [https://www.fonction-publique.gouv.fr/archives/home20051107/communications/dossiers-presse/archives/cosla\\_05mars02.pdf](https://www.fonction-publique.gouv.fr/archives/home20051107/communications/dossiers-presse/archives/cosla_05mars02.pdf).

<sup>83</sup> *Id.*

Plain Language is part of the French Code itself when implemented correctly, since French code drafting should be concise, elegant, and simple.<sup>84</sup> The ideal French law resembles a poem in that it describes the smallest number of concepts in the fewest words.<sup>85</sup> French statutes are not supposed to be as long as compared to the statutory style in the United States, but the French code still defines the rights of man in an expansive legal catalogue.<sup>86</sup>

However, the state of French law today has concerned scholars and officials who have seen a large legislative output of statutes create a negative impact on their quality.<sup>87</sup> No permanent institution exists to consistently review the law and recommend reform, leading to increased legislative output.<sup>88</sup> Notably, the *Conseil d'Etat*, France's "highest administrative court," supervises the drafting of legislation referred to it for advice on matters of "style, terminology, coherence and context."<sup>89</sup> This administrative court attempts to catch bad drafting of law and "comment on" portions of bills that contravene the law.<sup>90</sup> However, a desire to constantly reform the law and overabundant activity from the legislature to meet the demands of modern government and politics may inadvertently cause an increase in lackluster drafting.<sup>91</sup> Thousands of regulations are also being added to these statutes every year, reducing the general accessibility of the law.<sup>92</sup>

In 2016, France saw major reforms to the Civil Code and contract law. Although the Civil Code was admired for a concise linguistic style, the drafters of the 2016 reform "did not feel bound" to its style in order to make the law more understandable and accessible to citizens.<sup>93</sup> "[C]ontemporary vocabulary" and "more explicit expressions" were added, and various scholars have expressed

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<sup>84</sup> Neumann, *supra* note 67, at 409.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 410.

<sup>87</sup> STEINER, *supra* note 5, at 5.

<sup>88</sup> EVA STEINER, FRENCH LAW: A COMPARATIVE APPROACH 115 (2010).

<sup>89</sup> STEINER, *supra* note 5, at 14.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 5.

<sup>93</sup> CARTWRIGHT & WHITTAKER, *supra* note 12, at 13.

opinions on these reforms.<sup>94</sup> One critique was that the law overused technical legalese instead of conversational French, but that technical language was necessary and nevertheless included.<sup>95</sup>

### 3. Global Impact of Plain Language

The burden of complex legalese exists around the world. Australia's Parliament issued reports in 1993 that criticized legal writing and how it affected access to justice for the public.<sup>96</sup> Recommendations included keeping the law as graspable to the public as possible, and to make the comprehension and use of legislation easier.<sup>97</sup> Too many laws in Australia were difficult to understand, so the government adopted a majority of the 46 House Committee recommendations in 1995 to combat complex language in the law.<sup>98</sup> In Canada, a 1990 report that decried legalese was published, titled *The Decline and Fall of Gobbledygook: Report on Plain Language Documentation*.<sup>99</sup> In Quebec, due to its practice of bilingualism in English and French, *le style clair et simple* (clear and simple style) was created alongside Plain English.<sup>100</sup> In Ireland, the Irish Law Reform Commission recommended Plain Language reform in legislation in 2000.<sup>101</sup>

Norway created a seismic shift in making the law more understandable: in May 2014, Norway adopted a language revision of the Constitution that resulted in “two equal Norwegian language versions of the Constitution – one in bokmål and one in nynorsk.”<sup>102</sup> The “archaic version of the *bokmål* dialect” would be updated and a

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<sup>94</sup> *Id.* at 13–14 (citing a “Report to the President of the Republic, 2”).

<sup>95</sup> *Id.* at 13.

<sup>96</sup> ASPREY, *supra* note 15, at 4.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 69.

<sup>100</sup> Nicole Fernbach, *Plain French in Canada: A Review of Past and Present Activities*, 38 CLARITY J. 16 (1997).

<sup>101</sup> ASPREY, *supra* note 15, at 69.

<sup>102</sup> *The Constitution*, STORTINGET, <https://www.stortinget.no/en/In-English/About-the-Storting/The-Constitution/> (last visited Sept. 29, 2018) (stating “the language and spelling in the [older] Constitution were based on a relatively conservative normalization of the language that was carried out in 1903”).

“new *nynorsk* edition” would be added.<sup>103</sup> Additionally, in 1993, the Council of the European Communities drafted a resolution to make legislation “clear and simple.”<sup>104</sup>

Plain Language has also been incorporated into other methods of clarifying the law, such as rules regarding the visual presentation of draft legislation.<sup>105</sup> In 1997, the Canada-Ukraine Legislative Drafting Programme incorporated rules involving point size, weight of letters, spacing, margins, indents, and titles.<sup>106</sup> In this program, Ukrainian participants viewed untranslated Canadian statutes to suggest how to make a more visually appealing, readable statute.<sup>107</sup> Canada’s legislative drafting approach served as a possible model for Ukraine to study as Ukraine adopted a new constitution and rewrote major parts of its legal code.<sup>108</sup> Ukraine, conversely, could look to Canada for guidance as another country that dealt with using two languages at the legislative level.<sup>109</sup>

Ukraine looked outward for legal cooperation because it achieved independence in 1991 but lacked the structure for effective administration and drafting legislation.<sup>110</sup> Canadian statutes were given out in seminars in Ukraine, to officials within the government and those outside the government (to legal environments such as universities).<sup>111</sup> Model Canadian statutes distributed to Ukrainians were untranslated to force analysis on empty space and written words.<sup>112</sup> This analysis would lead to a standardized draft format for modern

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<sup>103</sup> Emily Woodgate, *Constitution Set for Modernization*, NEWSINENGLISH (May 6, 2014), <http://www.newsinenGLISH.no/2014/05/06/constitution-set-for-modernization/>.

<sup>104</sup> STEINER, *supra* note 5, at 13 (citing Council of the European Communities 1993 O.J. (C 166) 1).

<sup>105</sup> STEINER, *supra* note 5, at 22.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> Robert C. Bergeron, *The Canada-Ukraine Legislative Drafting Programme: A Success Story in International Legal Co-operation*, 21 STATUTE L. REV. 1, 2 (2000).

<sup>109</sup> *Id.* at 3.

<sup>110</sup> *Id.* at 2.

<sup>111</sup> *Id.* at 6 (“A normative text should never look like the first prize of a ‘put-as-many-words-as-you-can-on-the-page’ contest.”).

<sup>112</sup> *Id.*

legislating with electronically-drafted bills.<sup>113</sup> A legislative drafting guide was also prepared to suit Ukrainian needs, and was continually revised.<sup>114</sup>

Even outside of the legal world, overly technical or professional jargon can obstruct comprehension. The journal *Science* began requiring authors to write in Plain Language back in 2007.<sup>115</sup> Technical language in *Science* was making it harder for scientists in a specialty to understand articles that were published outside of that particular specialty, impeding peer review.<sup>116</sup>

### III. FRENCH CIVIL LAW AND THE LEGISLATIVE PROCESS

#### A. The French Code in a Nutshell

The French Code is still similar to the first draft, and was written mostly in 1800 during a five-month period at the Chateau de Fontainebleu.<sup>117</sup> The Civil Code (known as the *Code Civil*) was one of the codes adopted under Napoleon Bonaparte, and later codes appeared to address issues like labor.<sup>118</sup> The Civil Code in 1804 had 2,281 articles, and large swaths of the original code have not been amended.<sup>119</sup> The influence of the code rippled to countries around Europe, Latin America, and even North America.<sup>120</sup> French law is generally regarded as having order, logic, clarity, and accessibility to a “well-educated citizen,” all while complying with the linguistic standards of l’Académie Française.<sup>121</sup>

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<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 7.

<sup>115</sup> ASPREY, *supra* note 15, at 28.

<sup>116</sup> *Id.*

<sup>117</sup> Neumann, *supra* note 67, at 403.

<sup>118</sup> *Id.* at 404.

<sup>119</sup> *Id.* at 406.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at 412. l’Académie Française is a French institution in charge of preserving the purity of the French language. *Id.*

The French tend to write the law in general principles, which contrasts sharply with English rules.<sup>122</sup> Generality is a key characteristic in legislative drafting to cover the scope of an “infinite number of legal situations” under the umbrella of “broad language and short sentences,” while using indefinite pronouns and neutral language within each rule.<sup>123</sup> “[B]road maxims” and “fertile principles” (meaning innovative and productive means to solve a problem) are how one author of the Civil Code described the role of law in France.<sup>124</sup> While English statutes try to create a catalogue of all situations, France relies on government regulations to supplement details to statutes in the code.<sup>125</sup> „[V]erbosity” and “redundancy” should be replaced with concise legislative drafting.<sup>126</sup>

## B. French Legislative Process

The drafting of legislation in a parliamentary system like France usually originates in a ministry or specially designated commission; is explained to a legislature; is passed as a bill; and is codified.<sup>127</sup> For commissions, appointed committees fulfill ministerial commitments or implement political goals, but they are not the sole source of law reform.<sup>128</sup> Judicial or administrative bodies issue annual reports that suggest areas for reform.<sup>129</sup>

French statutes (known as *les lois*) manifest in four ways: *les lois organiques*, *les lois référendaires*, *les ordonnances*, and *les lois ordinaires*.<sup>130</sup> The two most relevant types of laws for the purposes of this Comment are *les ordonnances* and *les lois ordinaires*.<sup>131</sup> *Les ordonnances* are laws that the legislative branch delegates to the executive in specific areas, similar to regulations in the United States.<sup>132</sup> They are enacted for a limited

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<sup>122</sup> STEINER, *supra* note 5, at 15.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 16 (quoting “Portalis, one of the authors of the [Civil] code”).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 19.

<sup>127</sup> Neumann, *supra* note 67, at 407.

<sup>128</sup> STEINER, *supra* note 88, at 116.

<sup>129</sup> *Id.*

<sup>130</sup> STEINER, *supra* note 5, at 10–11.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

period of usually three to six months, or can be given the same legal force and permanence as a normal statute if approved by Parliament.<sup>133</sup> *Les lois ordinaires* are normal statutes, although Parliament has more limited authorization to legislate certain subjects in France because the French Parliament must share legislative sovereignty with the executive branch.<sup>134</sup> Therefore, many subjects of law debated in Parliament are up to the executive's discretion and scope.<sup>135</sup>

Laws in France can begin in either of the two houses of Parliament.<sup>136</sup> The houses in Parliament are the lower house, the National Assembly, and the upper house, the Senate.<sup>137</sup> Both houses give the proposed law two readings, and the government can choose to make a special conference committee to draft an acceptable bill for both houses if the two houses cannot agree.<sup>138</sup> If the special committee is unsuccessful, the National Assembly will decide the final text of the bill.<sup>139</sup> The President of France will look over the bill before it becomes law.<sup>140</sup> The President can send the bill back to Parliament for further review or to a constitutional court to analyze.<sup>141</sup> Finally, the bill becomes law after publication in the French record of statutes and decrees.<sup>142</sup> The record is called the *Journal Officiel de la République Française* ("J.O.").<sup>143</sup>

### C. Layout of French Statutes

French statutes are divided into articles, which are then subdivided into indented paragraphs (perhaps arranged as I, II, III,

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<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 11.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 11–12.

<sup>137</sup> *National Parliaments: France*, LIBRARY OF CONGRESS, <https://www.loc.gov/law/help/national-parliaments/france.php> (last visited Sept. 30, 2018).

<sup>138</sup> STEINER, *supra* note 5, at 12.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

etc., for clarity).<sup>144</sup> These indented paragraphs are sometimes divided further into subparagraphs (cited as 1o, 2o, 3o, etc.).<sup>145</sup> Rules are to be stated one at a time within each article of a French statute.<sup>146</sup> Qualifications to the general rule should be in separate succeeding indented paragraphs or articles, which follows the French format of drafting from the general (or broad), to the particular (or narrow).<sup>147</sup>

Common, simple, and descriptive headings are used in drafting French statutes.<sup>148</sup> Statutes can begin with general clauses under a heading *disposition générales*, with subsequent specific provisions that classify subject matter (*dispositions relatives à*), and end with miscellaneous and specific details that are reminiscent of English statutes.<sup>149</sup>

#### IV. THE MANGLED POETRY OF THE FRENCH LABOR CODE

Despite the focus on concision and Plain Language in the French Civil Code, English drafting characteristics have seeped into realms such as the French Tax Code and Labor Code.<sup>150</sup> “[L]ength, complexity, detail, . . . repetition,” and extremely technical wording have reduced the ease of reading for parts of the French code.<sup>151</sup>

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<sup>144</sup> *Id.* at 24.

<sup>145</sup> *Id.* at 24, 28.

<sup>146</sup> *Id.* at 28.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> STEINER, *supra* note 5, at 19.

<sup>151</sup> *Id.* Steiner points out two illustrations of this complexity: art. L. 122-26 of the *Code du Travail* is 63 lines long and expounds on maternity leave rights, while a law determining gross income for taxes is seven pages long. *Id.* Regarding art. 121-3 of the French Penal Code, Steiner explains that the article’s “word groupings” were “badly arranged,” creating complex sentences that distanced the verb from its subject around multiple clauses and phrases. *Id.* at 19–20. Steiner also notes that art. 121-3’s “overuse of negatives” and redundancy contributed to the difficulty of interpreting the article. *Id.*

In particular, the Labor Code spans over 3,000 pages.<sup>152</sup> The recent *ordonnances* to reform labor were signed by French President Emmanuel Macron on September 22, 2017.<sup>153</sup> These *ordonnances* allowed a study of how Plain Language techniques are used in legislative drafting and the Labor Code.<sup>154</sup> This section provides a brief introduction on changes to the *Code du Travail*, commentary on Plain Language issues on a specific *ordonnance* issued by President Macron, and brief recommendations on Plain Language and information to better understand changes in the law.

#### A. Macron's Labor Overhaul

The Plain Language techniques mentioned in this Comment can be analyzed in conjunction with a recent overhaul in the law. In particular, President Macron signed five *ordonnances*, believing that they will foster social and economic change.<sup>155</sup>

The reform provided several changes to the *Code du Travail*. First, the reform gave companies flexibility to negotiate wages and conditions with employees without being bound by trade union deals over an entire industry.<sup>156</sup> One part of the reform capped financial damages if a worker was unfairly fired, in order to avoid what employers say are lengthy court cases that discourage hiring in France.<sup>157</sup> Payouts would change from a minimum of six months' salary for two years of employment, to a new model of three months' salary for two years of employment.<sup>158</sup> Another change modified when

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<sup>152</sup> *France's Macron Signs Labour Reforms in Law, Defying Protests*, BBC NEWS (Sept. 22, 2017), <http://www.bbc.com/news/world-europe-41358850>.

<sup>153</sup> *Emmanuel Macron signe les ordonnances réformant le droit du travail* [Emmanuel Macron signs the ordonnances reforming the Labor Code], LE MONDE (Sept. 22, 2017, 2:26 PM), [http://www.lemonde.fr/politique/article/2017/09/22/emmanuel-macron-signe-les-ordonnances-reformant-le-droit-du-travail\\_5189752\\_823448.html?xtmc=code\\_du\\_travail\\_22\\_septembre&xtcr=6](http://www.lemonde.fr/politique/article/2017/09/22/emmanuel-macron-signe-les-ordonnances-reformant-le-droit-du-travail_5189752_823448.html?xtmc=code_du_travail_22_septembre&xtcr=6).

<sup>154</sup> *Id.*

<sup>155</sup> BBC NEWS, *supra* note 152.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

and why companies can fire employees.<sup>159</sup> Other aspects of the reform included issues with telework, mergers of staff representation organizations for situations at work, and small business negotiation reform with employees.<sup>160</sup> Some reforms took effect on publication, while other reforms would require further decrees of clarification—up to twenty according to the French government—by the end of 2017.<sup>161</sup> Specifically, *Ordonnance* 17-1385 focused on collective bargaining, and is the focus of this Comment’s analysis of Plain Language use in modern French legislation.<sup>162</sup>

## B. Ordonnance on Collective Bargaining

*Ordonnance* 17-1385 implemented some Plain Language techniques and French legislative techniques of concision and clarity. This sub-section will discuss some of the ways the laws on collective bargaining have changed in a Plain Language context for the citizens of France.

Some aspects of Plain Language drafting and making the law accessible to the public will be incorporated in section V. This includes modifying punctuation and word choice, changing technical words when possible in favor of synonyms, and focusing on word order in French (subject–verb–object without too much information in-between them in the sentence). This section will elaborate on the

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<sup>159</sup> Sylvie Corbet, *Macron Signs Decrees to Implement Major Labor Reform*, ASSOCIATED PRESS (Sept. 22, 2017), <https://www.apnews.com/7b84068c36fc46a7a4c639ae343a1fc7>.

<sup>160</sup> *Code du travail: les cinq ordonnances publiées au « Journal officiel »* [Labor Code: The five ordonnances published in the “Official Gazette of France”], LE MONDE (Sept. 23, 2017, 4:51 AM), [http://www.lemonde.fr/politique/article/2017/09/23/code-du-travail-les-cinq-ordonnances-publiees-au-journal-officiel\\_5190020\\_823448.html#zQWXc4rR1evJdXhp.99](http://www.lemonde.fr/politique/article/2017/09/23/code-du-travail-les-cinq-ordonnances-publiees-au-journal-officiel_5190020_823448.html#zQWXc4rR1evJdXhp.99).

<sup>161</sup> *Id.*

<sup>162</sup> Ordonnance 17-1385 du 22 septembre 2017 relative au renforcement de la négociation collective [Ordonnance 17-1385 of September 22, 2017 on Strengthening Collective Bargaining], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Sept. 23, 2017, texte n° 29, <https://www.legifrance.gouv.fr/eli/ordonnance/2017/9/22/2017-1385/jo/texte> [hereinafter Ord. n° 17-1385 du 22 septembre 2017, J.O. du 23 sept. 2017].

sentence and paragraph length of the law, the structure of the new law, and provide brief recommendations.

### 1. Sentence and Paragraph Length

The analysis of *Ordonnance* 17-1385 (“Ord. n°17-1385”) begins with a Plain Language focus on sentence length, and a particular focus on the following: the smallest number of concepts in the fewest words per sentence (preferably one thought per sentence), a word count of twenty-five to thirty words per sentence, and the result of a visually appealing statute. Overall, Ord. n°17-1385 had mixed results in appropriate sentence length and the use of subdivided paragraphs within an article (1<sup>o</sup>, 2<sup>o</sup>, 3<sup>o</sup>) for visual appeal.

Article 1 of Ord. n°17-1385 is a good example of short sentences that lay out four areas of modification to the *Code du Travail*.<sup>163</sup> Article 1 also takes advantage of subparagraphs in the newly drafted language itself. Article 1’s replacement of articles L. 2253-1 to L. 2253-3 in the *Code du Travail* created thirteen subparagraphs for the new article L. 2253-1, and four subparagraphs for the new article L. 2253-2.<sup>164</sup> Article 1 laid out a list of terms in short sentences to make a more visually appealing statute to read and understand, compared to one large paragraph in an article.

Article 1’s changes to existing articles L. 2253-1 and L. 2253-2 of the *Code du Travail* contrast starkly with Article 7’s sweeping reform of an entire chapter, including new sections and subsections.<sup>165</sup> Article 7 consists of a new replacement chapter for the labor code, replacing prior law with twenty-one articles with further sections and subsections.<sup>166</sup> Only eight of these twenty-one articles use subparagraphs to make the statute clearer to the reader.<sup>167</sup>

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<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> The articles from Ord. n°17-1385 that used subparagraphs are L. 2242-1, L. 2242-11, L. 2242-13, L. 2242-14, L.2242-15, L. 2242-17, L. 2242-20, and L. 2242-21. *Id.*

Some of the revisions proposed under Article 7 use paragraph breaks as well. However, overall paragraph and subparagraph length rebel against appropriate French legislative drafting, and the suggested Plain Language guide of twenty-five to thirty words for sentences.<sup>168</sup> Drafting legislation for the French code should place the smallest number of concepts in the fewest words possible for a sentence. If multiple paragraphs and subparagraphs are needed, they need to be short and concise. Unfortunately, Article 7 proposes an entire chapter overhaul, with various article revisions that supply a wall of text.<sup>169</sup> If such length was needed, paragraphs and subparagraphs would make the statute clearer to a reader.

Article 7 comes up as an example of inappropriate sentence length, specifically in regards to Art. L. 2242-7. The first paragraph of Art. L. 2242-7 alone consists of just three sentences. Yet, this one paragraph drags in length with sentence word counts of thirty-six, seventy-four, and sixty-eight, respectively.<sup>170</sup>

Article 6 of Ord. n°17-1385 also replaces an entire chapter within the labor code, while Article 8 takes a more modest approach in replacing a sub-section of an existing chapter.<sup>171</sup> Article 6 uses concise sentences and paragraphs; the number of paragraphs per article remain short and there is a generous use of subparagraphs.<sup>172</sup> Article 8 also attempts to use short paragraphs, but the advice of using more short and concise sentences could still apply if it were redrafted. More precisely, Article 8's proposed revision for L. 2232-24 uses long sentences and three paragraphs.<sup>173</sup> Article 8's proposal for L. 2232-26 also uses long sentences with multiple lines in length and five paragraphs.<sup>174</sup>

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<sup>168</sup> *Id.* (referencing Article 7's proposed changes to the *Code du Travail* for existing Art. L. 2242-3, Art. L. 2242-6, Art. L. 2242-7, Art. L. 2242-8, and Art. L. 2242-9).

<sup>169</sup> Ord. n° 17-1385 du 22 septembre 2017, J.O. du 23 sept. 2017.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

Concision should always be the focus of drafting French statutes. I recommend that Articles 6, 7, and 8 of Ord. n°17-1385 be revised with this in mind. Even breaking up the wall of text into further paragraphs and subparagraphs could aid the reader.

## 2. Structure of Legislation and Supplemental Information

*Ordonnance* 17-1385 itself was structured with a significant number of headings to aid the reader. There were three Titles, nine Chapters, and eighteen Articles to guide a reader through the reform.<sup>175</sup> Most of the Articles focused on replacing, restating, removing, and adding snippets and lines within the *Code du Travail*.<sup>176</sup> However, Articles 6, 7, and 8 provided major reform without the assistance of legislative drafting language. Entire chapters, paragraphs, sections, and subsections were replaced.<sup>177</sup> This left a reader with the task of comparing the old code to the new one, going line by line in each text to see what was changed, reshuffled in order, or simply removed.

One way to more easily compare changes in the Labor Code by *Ordonnance* 17-1385 is to read the statement published in the *Journal Officiel* from the Labor Minister, Muriel Pénicaud, to President Macron.<sup>178</sup> Minister Pénicaud stated a broad overview of the global changes within the labor code, and laid out particular changes of importance within each article in *Ordonnance* 17-1385.<sup>179</sup> Changes were mentioned in the statement with short paragraphs for each article of *Ordonnance* 17-1385. Examples included references in the statement to Article 2 (stating the change in the law for small businesses with less than fifty employees) and Article 5 (the removal of provisions in the

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<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> Rapport au Président de la République relatif à l'ordonnance n° 2017-1385 du 22 septembre 2017 relative au renforcement de la négociation collective [Report to the President of the Republic on the ordonnance 2017-1385 of September 22, 2017 on Strengthening Collective Bargaining], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Sept. 23, 2017, texte n° 28, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000035607302&categorieLien=id>.

<sup>179</sup> *Id.*

Labor Code discussing periodic negotiation to new provisions relating to compulsory bargaining with companies) for *Ordonnance* 17-1385.<sup>180</sup> Seventeen articles were mentioned in total in the statement to the President, with explanations about the changes.<sup>181</sup>

However, the statement's discussion on Articles 6 and 7 was only one paragraph, and Article 8 only received one paragraph with three dash bullets.<sup>182</sup> These three articles in *Ordonnance* 17-1385 replaced a total of six Sections, eleven Sub-Sections, and various "Paragraphes" (a "paragraphe" is an additional sub-division in a French law to sub-sections).<sup>183</sup> A wall of text summarized in two paragraphs could be judged as insufficient to the average layperson or business owner wanting to be informed on labor reform.

I recommend that future statements published in the *Journal Officiel* by Ministers of the French government go into more depth about *ordonnances* that are enacted. Statements specifying articles within new laws should be more detailed when large swaths of a code are replaced *en masse*, as opposed to changing a few words or a few lines of an existing article. These statements can be used by lawyers, business owners, and even the typical layperson to better understand changes in the law without resorting to detailed statutory comparisons of what rights may have been removed, revised, or created.

## V. REWRITTEN PROPOSALS

This section provides specific rewrites of *Ordonnance* 17-1385. These examples show an attempt of rewriting certain articles with the same information in a clearer manner. Based on the research in this article on Plain Language, and the techniques used in drafting French law, these recommendations serve as a way to improve this *ordonnance* and future reform for the *Code du Travail*.

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<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

I first provide Art. L. 2242-7, proposed in Article 7 of *Ordonnance* 17-1385 of September 22, 2017, unaltered in French in the left column of Box 1. The right column is the same law, revised to reflect Plain Language guidelines. In Box 2, I repeat the process with English translations. These examples show that it may take time to make a law easier to understand, but it is possible to rewrite a law with an educated public as a primary audience. The focus on the rewording is to create more short and concise sentences when possible in the law. Attention is paid to separating thoughts and goals into separate sentences for better clarity to the reader. Sentence structure in French (subject-verb-object) remains a priority for clarity.

I chose Art. L. 2242-7 as an example of a long, densely written statute. This statute could be revised for better readability. In particular, this statute describes penalties an employer could face when collective bargaining negotiations are not followed appropriately to the manner prescribed. By revising this statute, an employer can better understand the consequences of inaction, and the law can more clearly lay out the penalties involved for noncompliance. I separated main thoughts into separate sentences and paragraphs to avoid confusion. I looked at word order, nominalization, and other Plain Language techniques mentioned above. Some revisions of the law were longer than the original. However, Plain Language writing focuses on clarity to the reader, which can sometimes require a similar length of text.

Box 1
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<p>Art. L. 2242-7 proposed in Article 7 of Ordonnance 17-1385 from September 22, 2017.</p> <p><b>Article 7</b></p> <p>Le chapitre II du titre IV du livre II de la deuxième partie du même code est remplacé par les dispositions suivantes :</p> <p>« Chapitre II</p> <p>« Négociation obligatoire en entreprise</p> <p>« Section 1</p> <p>« Ordre public</p> <p>...</p> <p>« Art. L. 2242-7.- Dans les entreprises où sont constituées une ou plusieurs sections syndicales d'organisations représentatives, l'employeur qui n'a pas rempli l'obligation de négociation sur les salaires effectifs mentionnée au 1° de l'article L. 2242-1 est soumis à une pénalité. Si aucun manquement relatif à cette obligation n'a été constaté lors d'un précédent contrôle au cours des six années civiles précédentes, la pénalité est plafonnée à un montant équivalent à 10 % des</p>	<p>Plain Language Revision Proposal</p> <p><b>Article 7</b></p> <p>Le chapitre II du titre IV du livre II de la deuxième partie du même code est remplacé par les dispositions suivantes :</p> <p>« Chapitre II</p> <p>« Négociation obligatoire en entreprise</p> <p>« Section 1</p> <p>« Ordre public</p> <p>...</p> <p>« Art. L. 2242-7.- Cet article s'applique aux entreprises ayant une ou plusieurs sections syndicales d'organisations représentatives. L'employeur est soumis à une pénalité lorsqu'il n'a pas rempli l'obligation de la négociation sur les salaires effectifs mentionnée au 1° de l'article L.2242-1.</p> <p>Cette pénalité est un montant équivalent aux exonérations de cotisations sociales versées chaque année lorsque la violation est constatée. Le montant ne peut pas excéder une période de trois années</p>
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<p>exonérations de cotisations sociales mentionnées à l'article L. 241-13 du code de la sécurité sociale au titre des rémunérations versées chaque année où le manquement est constaté, sur une période ne pouvant excéder trois années consécutives à compter de l'année précédant le contrôle. Si au moins un manquement relatif à cette obligation a été constaté lors d'un précédent contrôle au cours des six années civiles précédentes, la pénalité est plafonnée à un montant équivalent à 100 % des exonérations de cotisations sociales mentionnées au même article L. 241-13 au titre des rémunérations versées chaque année où le manquement est constaté, sur une période ne pouvant excéder trois années consécutives comprenant l'année du contrôle.</p> <p>« Dans le cas où la périodicité de la négociation sur les salaires effectifs a été portée à une durée supérieure à un an en application de l'article L. 2242-11 du présent code, le premier alinéa n'est pas applicable pendant la durée fixée par l'accord. Au terme de cette durée, il est fait application du premier alinéa du présent article.</p>	<p>consécutives en comptant l'année précédant le contrôle. Ces cotisations de sécurité sociale sont celles mentionnées à l'article L.241-13 du code de la sécurité sociale.</p> <p>Cette pénalité est plafonnée à 10% des exemptions mentionnées dans l'alinéa précédent si aucun autre manquement à cette obligation n'a été constaté lors d'un précédent contrôle au cours des six années civiles précédentes. Si au moins un manquement a été constaté lors d'un précédent contrôle au cours des six années civiles précédentes, le montant de la pénalité est plafonné à 100%.</p> <p>Si la périodicité de la négociation salariale a été portée à une durée supérieure à un an en application de l'article L. 2242-11 du présent code, les pénalités décrites dans les alinéas précédents du présent article ne s'appliqueront pas pendant la durée fixée par l'accord. Au terme de cette durée, les alinéas précédents du présent article sont appliqués.</p> <p>L'autorité administrative compétente qui constate le manquement mentionné dans les alinéas précédents fixe le montant de la pénalité. L'autorité</p>
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<p>« Lorsque l'autorité administrative compétente constate le manquement mentionné au premier alinéa, elle fixe le montant de la pénalité en tenant compte notamment des efforts constatés pour ouvrir les négociations, de la situation économique et financière de l'entreprise, de la gravité du manquement et des circonstances ayant conduit au manquement, dans des conditions fixées par décret.</p> <p>« La pénalité est recouvrée dans les conditions prévues à la section 1 du chapitre VII du titre III du livre Ier du code de la sécurité sociale.</p> <p>« Le produit de la pénalité est affecté au régime général de sécurité sociale, selon les mêmes modalités que celles retenues pour l'imputation de la réduction mentionnée à l'article L. 241-13 du même code.</p>	<p>le fixe en tenant compte notamment des efforts constatés pour ouvrir les négociations, de la situation économique et financière de l'entreprise, de la gravité du manquement et des circonstances ayant conduit au manquement, dans des conditions fixées par décret.</p> <p>La pénalité est recouvrée dans les conditions prévues à la section 1 du chapitre VII du titre III du livre Ier du code de la sécurité sociale.</p> <p>Le produit de la pénalité est affecté au régime général de sécurité sociale selon les mêmes modalités que celles retenues pour l'imputation de la réduction mentionnée à l'article L. 241-13 du même code.</p>
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Box 2

<p>Art. L. 2242-7 proposed in Article 7 of Ordonnance 17-1385 from September 22, 2017 (Translation).</p> <p><b>Article 7</b></p> <p>Part Two, Book II, Title IV, Chapter II of the Labor Code is replaced by the following provisions:</p> <p>« Chapter II</p> <p>« Mandatory Business Negotiations</p> <p>« Section 1</p> <p>« Public Policy</p> <p>...</p> <p>« Art. L. 2242-7.-In companies where they incorporated one or several union representatives, the employer who has not filled the obligation of workforce wage negotiation mentioned in subparagraph 1 of Article L.2242-1 is subject to a penalty. If no failure pertaining to this duty has been identified throughout a previous audit throughout the six previous calendar years, the penalty is capped at an amount equivalent to 10 percent of exemptions from social security</p>	<p>Plain Language Revision Proposal (Translation).</p> <p><b>Article 7</b></p> <p>Part Two, Book II, Title IV, Chapter II of the Labor Code is replaced by the following provisions:</p> <p>« Chapter</p> <p>« Mandatory Business Negotiations</p> <p>« Section 1</p> <p>« Public Policy</p> <p>...</p> <p>« Art. L. 2242-7.- This article applies to companies with one or more incorporated union representatives. The employer is subject to a penalty when it does not fulfil obligatory wage negotiations mentioned in subparagraph 1 of Article L.2242-1.</p> <p>This penalty is an amount equivalent to total social security contributions exempted under wages paid each year where the breach is found. The amount shall not exceed a consecutive three-year period, counting from the year before the audit. These</p>
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<p>contributions mentioned in Article L. 241-13 of the Social Security Code, under remunerations paid each year where the breach is found, over a period not exceeding three consecutive years from before the audit. If at least one breach relating to this duty has been noted during a previous audit in the previous six calendar years, the penalty is capped at an amount equivalent to 100 percent of exemptions from social security contributions mentioned in the same Article L. 241-13 under remunerations disbursed each year where the breach is established, over a period not exceeding three consecutive years involving the year of the audit.</p> <p>In the event where the frequency of negotiation on wage negotiation has been conveyed for a period longer than one year under Article L. 2242-11 of the present code, the first paragraph is not enforceable during the fixed period by agreement. At the conclusion of this period, the first paragraph of this article shall be applied.</p> <p>When the relevant administrative authority finds the breach mentioned in the first paragraph, it fixes the amount of the penalty, taking into account in</p>	<p>social security contributions are those mentioned in Article L.241-13 of the Social Security Code.</p> <p>This penalty is capped at 10% of the mentioned exemptions in the prior paragraph if no other breach of this obligation has been found in prior audits in the six previous calendar years. If at least one breach has been found during a prior audit in the previous six calendar years, the penalty amount is capped at 100 percent instead.</p> <p>If frequency of wage negotiation has been conveyed for a period longer than one year under Article L. 2242-11 of the present code, the penalties described in the prior paragraphs of this article will not apply during the fixed period by the agreement. At the end of this period, the prior paragraphs of this article are applied.</p> <p>The relevant administrative authority who finds the breach mentioned in the prior paragraphs fixes the amount of the penalty. The authority takes into account, in particular, the efforts made to open negotiations, the economic and financial situation of the</p>
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<p>particular the efforts made to open negotiations, the economic and financial situation of the company, the seriousness of the breach and the circumstances having led to the breach, under conditions set by decree.</p> <p>The penalty is recovered in the prescribed conditions in section 1 of chapter VII of Title III of Book 1 of the Social Security Code.</p> <p>The proceeds of the penalty are appropriated to the general social security system, according to the same conditions as those used for the allocation of the reduction mentioned in Article L. 241-13 of the prior-mentioned code.</p>	<p>company, the seriousness of the breach and the circumstances which led to the breach, under conditions set by decree.</p> <p>The penalty is recovered in prescribed conditions in section 1 of chapter VII of Title III of Book 1 of the Social Security Code.</p> <p>The proceeds of the penalty are appropriated to the general social security system according to the same terms as those used for the allocation of the reduction mentioned in Article L. 241-13 of the prior-mentioned code.</p>
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Next, I provide Art. L. 2242-8, proposed in Article 7 of Ordonnance 17-1385 of September 22, 2017, unaltered in French in the left column of Box 3. The right column is the same law, revised to reflect Plain Language guidelines. In Box 4, I repeat the process with English translations. The purpose of this statute is to provide a penalty when equal wages for equal work between men and women are not negotiated with large companies. The law lays out how much the penalty shall be, what period the penalty applies to, and how to allocate funds collected from the penalty. I chose this article in particular because it shows a tightly written statute that could benefit from minor structural changes and more clear language.

Box 3
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<p>Art. L. 2242-8 proposed in Article 7 of Ordonnance 17-1385 from September 22, 2017.</p> <p>« Art. L. 2242-8. – Les entreprises d’au moins cinquante salariés sont soumises à une pénalité à la charge de l’employeur en l’absence d’accord relatif à l’égalité professionnelle entre les femmes et les hommes à l’issue de la négociation mentionnée au 2o de l’article L. 2242-1 ou, à défaut d’accord, par un plan d’action mentionné à l’article L. 2242-3. Les modalités de suivi de la réalisation des objectifs et des mesures de l’accord et du plan d’action sont fixées par décret. Dans les entreprises d’au moins 300 salariés, ce défaut d’accord est attesté par un procès-verbal de désaccord.</p> <p>«Le montant de la pénalité prévue au premier alinéa du présent article est fixé au maximum à 1 % des rémunérations et gains au sens du premier alinéa de l’article L. 242-1 du code de la sécurité sociale et du premier alinéa de l’article L. 741-10 du code rural et de la pêche maritime versés aux travailleurs salariés ou assimilés au cours des périodes au titre desquelles l’entreprise n’est pas couverte par l’accord ou le plan</p>	<p>Plain Language Revision Proposal.</p> <p>« Art. L. 2242-8. – Les entreprises d’au moins cinquante salariés sont soumises à une pénalité en l’absence d’accord relatif à la négociation mentionnée au 2o de l’article L. 2242-1 relatif à l’égalité professionnelle entre les femmes et les hommes, ou l’absence d’un plan d’action mentionné à l’article L. 2242-3. La pénalité est à la charge de l’employeur. Les modalités de suivi sont fixées par décret pour mesurer la réalisation des objectifs et des mesures de l’accord et du plan d’action. Dans les entreprises d’au moins 300 salariés, ce défaut d’accord est attesté par un procès-verbal de désaccord.</p> <p>La pénalité prévue au premier alinéa de cet article est pour des périodes dont l’entreprise n’est pas couverte par l’accord ou le plan d’action mentionné au premier alinéa du présent article.</p> <p>Le montant de la pénalité est fixé au maximum à 1% des rémunérations et gains versés aux salariés ou assimilés au sens du premier alinéa de l’article L. 242-1 du code de la sécurité sociale et du premier alinéa de l’article L.</p>
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<p>d'action mentionné au premier alinéa du présent article. Le montant est fixé par l'autorité administrative, dans des conditions prévues par décret en Conseil d'Etat, en fonction des efforts constatés dans l'entreprise en matière d'égalité professionnelle entre les femmes et les hommes ainsi que des motifs de sa défaillance quant au respect des obligations fixées au même premier alinéa.</p> <p>«Le produit de cette pénalité est affecté au fonds mentionné à l'article L. 135-1 du code de la sécurité sociale.</p>	<p>741- 10 du code rural et de la pêche maritime.</p> <p>L'autorité administrative fixe le montant, dans des conditions prévues par décret en Conseil d'Etat, en fonction des efforts constatés dans l'entreprise pour s'acquitter aux obligations fixées au même premier alinéa.</p> <p>Le produit de cette pénalité est affecté au fonds mentionné à l'article L. 135-1 du code de la sécurité sociale.</p>
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Box 4

<p>Art. L. 2242-8 proposed in Article 7 of Ordonnance 17-1385 from September 22, 2017. (Translation)</p> <p>Art. L. 2242-8. - Companies with at least 50 employees are subject to a penalty at the expense of the employer in the absence of an agreement on professional equality between women and men at the end of the negotiation mentioned in the 2o Article L. 2242-1 or, failing agreement, an action plan referred to in Article L. 2242-3. The procedures for monitoring the achievement of the objectives and measures of the agreement and the action plan are set by decree. In companies with at least 300 employees, this lack of agreement is attested by a verbal record of disagreement.</p> <p>The amount of the penalty provided for in the first paragraph of this article is set at a maximum of 1% of earnings and earnings within the meaning of the first paragraph of Article L. 242-1 of the Social Security Code and the first paragraph of the Article L. 741-10 of the Rural and Maritime Fishing Code paid to employees or similar workers during the periods in respect of which the enterprise is not covered by the agreement or the</p>	<p>Plain Language Revision Proposal (Translation).</p> <p>Art. L. 2242-8. - Companies with at least 50 employees are subject to a penalty in the absence of an agreement relating to the negotiation mentioned in 2o of Article L. 2242-1, relating to professional equality between women and men, or the absence of an action plan mentioned in Article L. 2242-3. The penalty is borne by the employer. The monitoring procedures are set by decree to measure the achievement of the objectives, the measures of the agreement, and the action plan. In companies with at least 300 employees, this lack of agreement is attested by a verbal record of disagreement.</p> <p>The penalty provided for in the first paragraph of this article is for periods which the enterprise is not covered by agreement or the action plan mentioned in the first paragraph of this article.</p> <p>The penalty amount is set at a maximum of 1% of earnings and gains paid to employees or similar workers within the meaning of the first paragraph of Article L. 242-1 of the Social Security Code and the first</p>
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<p>action plan mentioned in the first paragraph of this article. The amount is set by the administrative authority, under conditions laid down by decree of the Conseil d'Etat, according to the efforts made in the company in terms of professional equality between women and men as well as the reasons for its failure. as regards compliance with the obligations laid down in the same first paragraph.</p> <p>The product of this penalty is allocated to the fund mentioned in Article L. 135-1 of the Social Security Code.</p>	<p>paragraph of the Article L. 741-10 of the Rural and Maritime Fishing Code.</p> <p>The administrative authority sets the amount, under conditions laid down by decree of the Conseil d'Etat, according to compliance efforts made in the company with the obligations laid down in the first paragraph of this article, as well as the reasons for failure to meet the obligations.</p> <p>The product of this penalty is allocated to the fund mentioned in Article L. 135-1 of the Social Security Code.</p>
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The biggest change I recommended in the revisions were structural in cutting up the paragraphs in each article. A lot of objectives were densely worded and stacked into long sentences. I divided up the main thoughts into shorter paragraphs to ease the reader in understanding what was being said. I provided repetition by focusing on “the penalty” at the beginning of different paragraphs in order to avoid jamming multiple caveats to the law in a single sentence. I also made the sentences shorter to keep one main thought when possible per sentence. I focused on active voice when possible to keep the reader engaged, and reviewed Plain Language recommendations to better revise these laws. Overall, I would still make further changes. However, that requires altering laws as a whole, and not revising a single article in a vacuum. Overall, the revised articles are less dense and easier for a reader to understand. And that should be how all laws are written.

## VI. CONCLUSION

France has achieved major reform in labor and refining the *Code du Travail*. Notably, this reform did not just consist of regulating hours and wages of unions: it offered France an opportunity to revise part of an unwieldy and complex web of laws with Plain Language. This Comment ventured to describe the Plain Language movement and its effects around the world, starting with a general overview of French law, including legislative procedure, types of French laws, and the structure of a French statute. The Comment then provided analysis on the reform to the *Code du Travail*, and particular changes to collective bargaining in substance and in a Plain Language context. Furthermore, the Comment used Plain Language techniques to revise part of the law.

Constructing clear legislation takes time and effort, and any techniques to improve a law’s clarity are almost always a welcome relief for society at large. While this Comment focused on what needed to be improved on the new revisions to the *Code du Travail*, the recent reform was overall an improvement in clarity. Making the law accessible to an educated reader requires dedication to Plain Language. Plain Language techniques in legislation can help any citizen

understand how their government operates and how to follow the law without having to hire a lawyer to interpret it. Overall, the methods outlined above can improve any future legislation. The suggested revisions to the new reform illustrate that the *Code du Travail* can and should be clearer to the reader. French law is concise in the original *Code Civil*. That concision and clarity is an achievable goal for the *Code du Travail* as well.