In Search of the Mot Juste: The Toubon Law and the European Union

Christine Vanston
In Search of the *Mot Juste*: The Toubon Law and the European Union

*The French language is a language of liberty, the language of democracy. It is the language of dreams...*¹

**INTRODUCTION**

France’s love affair with its language spans the centuries. Once characterized as a woman so “beautiful, proud [and] voluptuous...that one loves her with all one’s being,”² the French language has intimately insinuated itself into France’s national identity; it is an integral element of the collective French consciousness.³ Given the fundamental role that the language plays in France’s patrimony,⁴ the government has historically assumed the role of linguistic knight-errant, protecting and defending French from violation at the hands of foreign linguistic barbarians.⁵

The “shrinking globe” has become a *fin de siècle* phenomenon.⁶ Since this phenomenon has been largely promulgated and facilitated by Americans, participation in the new world system entails the quasi-assumption of an American way of life, in which profits take precedence and venerable traditions are bounced out in favor of efficiency.⁷ France, however, cannot—or will not—embrace globalization with the fervor necessary to survive in this shrinking planet. Instead, France

---


² Comédie Francaise, ECONOMIST, July 9, 1994, at 54 (citing Anatole France).

³ See id.


⁵ See Wexler, *supra* note 1 at 296–303. François I set the stage for state-sponsored protection of French, decreeing that French be the official language of the courts. One hundred and thirty-five years later, the creation of the Académie Française—hallowed institution where persons of letters struggle with semantics and debate diction—officialized the homage paid by the state to the language.


⁷ See id.
teeters, alternately ardently defending its traditions and applauding the amplification of the international marketplace.8 As one analyst succinctly stated, France has become "the Titanic-with-the-piano-still-tinkling adrift on a sea of global competition."9 The French deem their identity to be under assault, symbolized, perhaps, by the perceived eradication of their language.10

The parlance of philosophes and of colonial conquest,11 French once dominated the international theater; today, however, it has ceded the stage to English.12 In the era of rapid technological innovation, in which the United States has played a crucial role, the English language has become the current lingua franca.13 As such, Anglo-American colloquialisms have decimated the French language. In response to this decimation, the French Parliament passed the Loi Toubon ("Toubon Law") in 1994.14 Mandating the use of French in every transaction that implicates the public, the law imposes monetary penalties and even criminal sanctions on violators.15 Although vaunted as an imperative protective measure, vital to the preservation of the fundamental role that French language plays in "France's personality and heritage,"16 the law effectuates a form of economic protectionism17 that may violate policies embodied in European Union ("EU") law.18 As the EU methodically dissembles barriers, facilitating the flow of goods and people throughout the continent, the Toubon Law seems to reconstruct similar barriers.19 More than a measure to restore the French language to its former metalinguistic glory, the law may generate economic tremors throughout the entire European Union.

8 See id.
9 Id.
10 See Wexler, supra note 1, at 315.
11 See Comédie Française, supra note 2.
12 See Wexler, supra note 1, at 315.
13 See Fred Coleman, A Great Lost Cause: France vs. the Internet, U.S. News and World Report, April 21, 1997, at 57.
14 See Bernard Cassen, Parler français ou la "langue des maîtres," Le Monde Diplomatique, April 1994, available in LEXIS, World Library, Monde File; Toubon Law, supra note 4.
15 See Toubon Law, supra note 4.
16 Id. art. 1.
This note analyzes the Toubon Law and its effect on commerce within the European Union. Part I of the note highlights relevant provisions of the law and the scope of its application and penalties. Part II examines EU policies relevant to the law and EU reaction to the law. Part II also examines a language legislation case recently decided by the European Court of Justice and recent suits brought under the law that implicate the EU. Part III analyzes the detrimental effect that the law will have on commerce within the EU. The conclusion proposes amendments and alternatives to the Toubon law.

I. REAFFIRMING ITS RAISON D'ÊTRE: THE SUBSTANCE OF THE TOUBON LAW

A. Language Legislation in France

Amidst rallying cries of “France for the French,” the French Senate passed the Toubon Law on July 1, 1994.20 Sponsored by Jacques Toubon, then-Minister of Culture and self-designated defender of his nation’s linguistic purity, the bill purported to protect the French language by mandating its use within “l’hexagone” and by outlawing the introduction and usage of foreign—specifically, English—elements into the national vocabulary.21 Although the Loi Bas-Lauriol, the then-effective language law, theoretically continued to check the encroachment of foreign terms into the French lexicon, the 1975 law had fallen into general disuse by the 1990s.22 Carelessly drafted, difficult to apply, and generally ignored,23 the lackluster performance of the Loi Bas-Lauriol symbolized France’s failure to rally its forces effectively to repel the perceived invidious invasion of Anglicisms. Accordingly, proponents of the Toubon Law, invoking the “colonization”24 and forced bilingualism25 of their country, whetted their legislative weaponry and renewed the French battle for linguistic purity.26

20 See Wexler, supra note 1, at 317, quoting Senator Raymond Courriere, whose outburst during the debates on the law was reminiscent of French slogans during the Vichy era.
21 See id. at 319–20.
22 See Nelm-Reyes, supra note 18, at 289.
23 See id.
26 See Wexler, supra note 1, at 318.
B. The Fight Against Coca-Colonization: Why the Law Was Passed

Although France boasts a long and illustrious history of language legislation—from Jacobin decrees renaming the calendar to twentieth century constitutional amendments establishing the national language—^{27}the Toubon Law stands out because of the domestic atmosphere in which it was drafted and passed.\(^{28}\) In the late eighties and early nineties, the conflation of several political, economic, and social factors engendered the deterioration of the collective French self-image, provoking the renewal of the campaign for linguistic protectionism.\(^{29}\) The increasing domination of English in the fields of science and technology had decimated the French vocabulary; French technocrats began to feel severed from useful information and denied access to their own ideas.\(^{30}\) On the artistic front, American television, music, and movies had successfully navigated the Atlantic, implanting themselves firmly in France to the significant economic and cultural detriment of the French arts.\(^{31}\) Once a leader in international cultural and scientific affairs, the French perceived their intellectual empire to have been swallowed up and spat out by American imperialism.\(^{32}\)

Moreover, the rapid cohesion of the EU prompted the French to question their role within the flourishing community.\(^{33}\) The narrow margin by which the Maastricht Treaty passed in a popular referendum indicates the depth of France's insecurity.\(^{34}\) Similarly, the reunification of Germany, its augmented authority in EU affairs, and the accession of new member states led some French officials to believe that France would soon lose its prominence—both political and linguistic—within the Union.\(^{35}\)

Saddled with a soaring national debt, plagued by unemployment, and inundated by waves of unwelcome immigrants, France in 1994 was a troubled country at a loss to remedy its myriad problems.\(^{36}\) By iden-

\(^{27}\) See id. at 301–03.

\(^{28}\) See id. at 313–15.

\(^{29}\) See id.

\(^{30}\) See id. at 313.

\(^{31}\) See id. at 314.

\(^{32}\) See Wexler, supra note 1, at 314.

\(^{33}\) See id. at 315.

\(^{34}\) See id.

\(^{35}\) See id. at 315. One must not forget the fundamental role that the French language originally played in European Union affairs. England did not participate in the original signing of the Treaty of Rome; consequently, the French language predominated, and the French continue to brood over the ensuing encroachment of English as the Union's vernacular.

\(^{36}\) See Wexler, supra note 1, at 315.
tifying the encroachment of Anglo-Americanisms into the French lexicon as the cause of at least some of its troubles, however, the French government effectively managed to designate a scapegoat and to pin the blame for the nation’s malaise on an unwanted outsider.

Yet all language conflicts represent merely “the tip of the iceberg of interethnolinguistic conflict based on economic, political, and cultural grievances.” France’s angry assertion that Anglicisms were ruining its economy and patrimony was a simplistic displacement of the real issues plaguing the country and constituted a naive solution to the country’s profound problems.

C. The Substance of the Law

An augmentation of the substance and the scope of the Loi Bas-Lauriol, the Toubon Law applies to public entities and to private corporations engaged in public service assignments. Article II of the law mandates the use of French in the marketing of all goods and services offered to the public within the French territory. Although a translation in one or more foreign languages may accompany the French version, announcements, inscriptions, or instructions used to impart information to the public must be formulated in French. Moreover, any inscription or announcement made in another language must not, by virtue of its size, script, color, or any other reason, be “better understood” than the French version. Applicable to all goods and services notwithstanding any foreign origins, Article II also covers all written, spoken, or broadcast advertisements relating to the marketed goods, products, and services.

37 See id. at 291.
38 Id.
39 See id.
41 See id. As originally passed, the Toubon Law attempted to regulate the use of French in a private context, i.e., individuals and their personal business. This provision has since been struck down by the Constitutional Council as an infringement on freedom of expression as guaranteed by the Declaration des Droits de l’Homme. See Wexler, supra note 1, at 327.
42 Toubon Law, supra note 4, art. 2. Examination of other provisions of the law is beyond the scope of this Note, which only analyzes those provisions that directly implicate the European Union.
43 See id.
44 Circulaire du 19 mars 1996, supra note 40, at 2.1.2.
45 Id.
46 See id. The General Agreement on Tariffs and Trade [hereinafter GATT] provides an
Article V of the Toubon Law further attempts to insulate the national lexicon from contamination by foreign terms by compelling the use of French in all contracts to which a public entity or a private person acting in a public capacity is a party. Such contracts may not contain any foreign expression or term if there exists any French expression or term that may be construed as having the same meaning. While this provision does not apply to most contracts to be performed entirely outside France, it does concern all employment agreements entered into within the French territory, whether to be performed inside France or abroad.

Conviction of contravening the Toubon Law automatically entails penalties, the severity of which hinges on the magnitude of the violation. Contraventions are classified into five categories of offenses, which increase in magnitude from first to fifth. Thus, a first class contravention results in a 250 French Franc ("FF") fine, while repeated fifth-class offenses entail a 20,000 FF fine. Moreover, obstruction of a police investigation into an alleged violation of the law may result in incarceration. Most stringently, as a penalty to employers who flout the law in the drafting of contracts, no foreign term of the contract may be used to the detriment of the employee against whom enforcement of the contract is sought.

II. THE EU AND THE TOUBON LAW

A. Reaction to the Law

Tagged "Jack Allgood" by insouciant members of the French Press, Minister Toubon confronted both domestic and foreign opposition to

"audiovisual exemption" and permits signatories to impose certain restrictions on films, television, music, and the like. While the GATT does not particularly interact with the Toubon Law—the latter takes aim at commercial, not cultural matters—it is noteworthy that the French were the driving force behind protection of the European film industry in the GATT. The French thus appear to be attempting to repel foreign elements on all fronts. See Craig Karp, European Cultural Protectionism and the Socioeconomic Forces That Will Defeat It, 5 IND. INT'L & COMP. L. REV. 425, 427 (1995).

47 See Toubon Law, supra note 4, art. 5.
48 See id.
49 See id.
50 See Wexler, supra note 1, at 323–24.
51 See id.
52 See id.
53 See id.
54 Toubon Law, supra note 4, art. 8.
his proposed law. At home, Socialist leaders lambasted the law as a "sort of Maginot line of the language," a naïve folly destined for the same demise as its predecessor. Similarly, France's youth, rapacious consumers of American exports, ridiculed the law; constitutional scholars furrowed their brows about its possible threat to freedom of expression jurisprudence. Perhaps the most potent criticism came from other Member States of the EU—in particular, from England. The centuries-old Anglo-Gallic rivalry thrived on the brouhaha surrounding the proposed law, and the English did not hesitate to fire scathing epithets at their peers across the Channel. For example, one English politician sardonically proposed banning words like croissant and baguette in Great Britain and recommended fining individuals ten pounds if they were caught speaking French.

On a different side of the debate, members of the Dictionnaire des Termes Officiels, citing the necessity of France's ability to express "the realities of the modern world," applauded the law. Similarly, according to a late-night television special on the proposed law, 50% of French citizens who responded expressed their belief that English constitutes a threat to the French language. Though public support for the law was far from unanimous, the law passed with few fundamental differences between the original proposal and the final draft.

B. Confronting the Union

Implemented by the Treaty of Rome in 1957, the European Union envisages a contractual relationship among its members. In exchange for the enhanced political and economic strength that flows from the

55 See Wexler, supra note 1, at 318.
57 See Wexler, supra note 1, at 318.
58 See id. at 318–19.
59 See id.; see also Paul Gould, British Lawmaker Seeks French Ban, UPI, July 5, 1994. The Gallic-Anglo language sniping dates back to at least the French Revolution, when Revolutionaries abolished the Gregorian calendar. The Revolutionaries established evocative new names for the months, such as "brumaire" [foggy] and "floréal" [flowery]. Sneering Brits, however, translated the new names as "Slippy, Nippy, Drippy; Freezy, Wheezy, Sneezy; Showery, Flowery Bowery" et cetera. See Wexler, supra note 1, at 302–03.
62 See Wexler, supra note 1, at 318–19.
63 See Nelms-Reyes, supra note 18, at 281–82.
supranational body to its Member States, the participating countries must “limit their sovereign rights,”64 which they would otherwise be able to exercise. Accordingly, to implement this continental coalition effectively, Article V of the Treaty imposes a general duty on the Member States to uphold and to adhere to EU law.65 Thus, domestic law that clashes with EU law or the policies embodied therein is invalid and correspondingly unenforceable.

Article 30 of the Treaty of Rome prohibits Member States from imposing “quantitative restrictions on imports and all measures having equivalent effect.”66 As enunciated in the prologue to the Treaty, the “progressive abolition of restrictions on international trade” is an EU goal;67 thus, any unjustified infringement on this heightened freedom of movement of goods patently antagonizes EU policies and warrants annulment.68

Although the validity of the Toubon Law under EU law has not yet been determined, its predecessor, the Loi Bas-Lauriol, was the subject of a Commission inquiry.69 Suspected of imposing an unlawful trade barrier under Article 30, the Commission scrutinized the Loi Bas-Lauriol to assess if it engendered “effects equivalent to quantitative restrictions” on trade among the Member States.70 In defense of the law, the French government argued that any burden that the law placed on foreign companies was justifiable because the law was an implementation of public policy.71 Invoking Article 36 of the Treaty, which permits Member States to impose certain trade restrictions if they are a necessary means of implementing public policy, the French government argued that the need to protect its language and to purge it of noisome foreign terms and expressions was an implementation of public policy.72 Although the Commission did not strike the law down, the Inquiry prompted a heightened awareness of the possible invalidity of domestic language legislation.

64 Treaty of Rome, supra note 19, art. 5.
65 See id.
66 Id. art. 30 (emphasis added).
67 Id.
68 See id. art. 3.
69 See Nelms-Reyes, supra note 18, at 282–83.
70 Id., see also Treaty of Rome, supra note 19, art. 30.
71 See Nelms-Reyes, supra note 18, at 282–83.
72 See id.
C. Piageme: *The European Court of Justice Looks Askance at a Similar Law*

In 1993, the European Court of Justice voided a similar Belgian language law on the grounds that it unduly burdened commerce among the Member States. In *Piageme v. Peeters*, the Court interpreted a Belgian law requiring foodstuffs to be labeled exclusively in the language of the region in which they are sold to violate Union law. The plaintiffs, an association of mineral water importers, asserted that the defendant violated the Belgian law by marketing bottled water with only French and German labels in the Flemish-speaking region of Belgium. The plaintiffs claimed that the law required the defendant, another mineral water importer, to label his products in Flemish. Interpreting a Council Directive to preclude Member States from imposing an absolute obligation to use a particular language on foodstuffs without allowing for the "possibility of using another language easily understood by purchasers or ensuring that the purchaser is informed by other measures," the ECJ ruled that the law constituted an impermissible trade restriction. Citing the necessity of a tailored, fact-specific investigation into whether the label’s inscription was indeed "easily understood" by consumers, the ECJ held that each suit initiated under the law must be assessed on an individual basis. *Piageme* thus implies that the ECJ will cast a wary eye on laws mandating exclusive use of a certain language and will limit the “fundamental right” of providing information to the consumer if the method by which the information is provided unjustifiably dams the stream of commerce.

D. *Suits Brought Under the Toubon Law*

Since the Toubon Law is a reaffirmation of the importance of the French language in France's national identity, it facilitates inquiries

---


74 See id.

75 See id.

76 See id.

77 See id.


79 See Piageme, *supra* note 73.
into potential violations by endowing five private organizations with the legal competence to bring actions directly against transgressors. Functioning as semi-private prosecutors, these groups exist solely to protect the French language. An extension of the French legal institution of partie civile, whereby the victim may institute a criminal proceeding, the organizations may sue businesses presumed to have violated relevant portions of the law. Thus, despite the Toubon law's relative newness, French language watchdog groups have already launched thousands of investigations into possible transgressions of the law. Between January and April 1996, these language groups investigated 1,926 potential contraventions of the law; 33 convictions resulted.

For example, the Association du Droit de Comprendre ("ADC"), a linguistic association created by the Toubon Law, instituted one of the first suits under the law. In ADC v. La Société The Disney Store, the organization sued the Disney Store under Article II of the law for its failure to use French in the sale of certain toys in its Champs-Elysees store. International marketing savant and, more importantly, symbol of insatiable American imperialism, Disney responded that since the toys in question had been imported from Great Britain, which is a Member of the EU, the ADC's demand that Disney remove the items from its shelves would violate Article 30 of the Treaty of Rome. Citing Piageme, Disney further asserted that the law's requirement of a French translation of any inscription on the goods was an "unjustifiable obstacle to inter-community commerce" because other means were available for the consumer to "easily understand" the product. Although the case was dismissed because the court determined that the plaintiff lacked standing to sue, Disney subsequently pulled the deviant items

---

80 See Circulaire, supra note 40.
81 See id.
83 See Toubon Law, supra note 4, art. 2.14.
85 See id.
86 "Association for the Right to Know."
87 See Nelms-Reyes, supra note 18, at 308.
88 See id. at 309. Some of the items targeted were labeled "Born in the USA Pen Party" and "Goofy's Blow Pipe." See id.
89 See id.
90 See id.
91 See id. at 305–06. Holding that individuals could not join in a suit with one of the designated
from its shelves, apparently implicitly acknowledging that its sale of products such as "Mickey’s Stuff for Sun Gleams" violated the law.\textsuperscript{92}

Undaunted by their inability to enforce the law against Disney, other language groups subsequently pursued the Chambéry franchise of the Body Shop, citing the British purveyor of beauty products for neglecting to label in French 10 out of 400 items for sale in its store.\textsuperscript{93} In fining the Body Shop 1000 FF for its failure to translate products like "pineapple face wash" into French, the judge noted that the applicability of the Toubon Law must be determined on a case by case basis.\textsuperscript{94} Thus encouraged, the groups resumed their legal assault against the Paris branch of the Body Shop one year later, again asserting an Article II violation of the law.\textsuperscript{95} Although the court dismissed the case on a procedural issue, the associations pledged to appeal the judgment.\textsuperscript{96}

While the linguistic watchdog associations rigorously continue their quest to administer the law, French courts have yet to determine its full scope. For example, in a recent case that could create sweeping repercussions throughout the European Union—and perhaps the world—a French court wrestled with the question of whether the law applied to cyberspace.\textsuperscript{97} In \textit{ALF v. Georgia Tech}, plaintiffs claimed that an English-language Website based in France violated the Toubon law.\textsuperscript{99} Created and maintained by Georgia Tech, an American University that offers a graduate program in engineering in Metz, the Website promotes the school, details admission procedures, and lists courses of study.\textsuperscript{100} Asserting that such information constituted advertising and therefore fell within the scope of the law, the ALF decried the English-dominated Internet as a "new form of colonialism"\textsuperscript{101} and demanded that the school translate its site into French. Georgia Tech, in turn,
responded that visiting a Website constitutes a private communication, analogous to a telephone call; accordingly, the Internet intrinsically lies outside the scope of the law.\textsuperscript{102} Accepting Georgia Tech's argument that the plaintiffs lacked standing to sue—by failing to file the case with a prosecutor before taking it to court as mandated by the law—the court dismissed the case, which was the first attempt by any country to force translation on the World Wide Web.\textsuperscript{103} ALF appealed the decision, standing by its original claim that the Website violated the law.\textsuperscript{104} Similarly citing the plaintiffs' failure to comply with the procedural requirements of the law, the appeals court dismissed the case for good.\textsuperscript{105} However, since the court did not consider the substantive merits of the claim, the applicability of the Toubon Law to cyberspace has not yet been resolved.

III. A DELICATE BALANCE: INTERACTION OF THE LAW AND UNION POLICIES

Recent domestic decisions under the Toubon Law, coupled with the Union's stance on such legislation, forecast a heated confrontation between French language purists and EU law.\textsuperscript{106} Cases like \textit{Piageme} demonstrate the EU's reluctance to uphold language laws when they operate as an obstacle to interstate trade;\textsuperscript{107} the untrammeled flow of goods and services throughout the Union will always best domestic linguistic protection. It would thus appear that France's legislative attempt at cultural cloistering, which affects the entire Union, lies open to supranational scrutiny as a form of economic protectionism.\textsuperscript{108}

Under the EJC's analysis in \textit{Piageme}, the Union will limit a Member State's attempt to establish language requirements in commerce.\textsuperscript{109} Notwithstanding the limited scope of the holding in that case—the court only addressed labeling requirements on foodstuffs—\textit{Piageme} serves as a helpful tool in predicting the potential impermeability of the Toubon Law under a deluge of European scrutiny.\textsuperscript{110}

\begin{footnotes}
\textsuperscript{102} \textit{The Guardian Online Page}, March 6, 1997.
\textsuperscript{103} See Coleman, \textit{supra} note 13.
\textsuperscript{104} See Kristi Essick, \textit{Court Throws out French-Language Internet Case} <http://www.idg.co.nz.nzweb>.
\textsuperscript{105} See id.
\textsuperscript{106} See Nelms-Reyes, \textit{supra} note 18, at 305.
\textsuperscript{107} See \textit{Piageme}, \textit{supra} note 73.
\textsuperscript{108} See Belluzzi, \textit{supra} note 17, at 128–29.
\textsuperscript{109} \textit{Piageme}, \textit{supra} note 73.
\textsuperscript{110} See id.
\end{footnotes}
Piageme stands for the proposition that a Member State’s “fundamental right” to ensure consumer comprehension will be curtailed if the Member State requires exclusive use of a certain language on goods.\textsuperscript{111} The court’s holding that such a requirement violates Article 30 of the Treaty of Rome casts aspersions on the validity of other language laws.\textsuperscript{112} Perhaps in anticipation of a similar challenge to the law by manufacturers, Article II of the Toubon Law specifically provides for the use of one or more foreign languages in conjunction with French on the product.\textsuperscript{113} Stated differently, by not mandating the exclusive use of French under article II,\textsuperscript{114} proponents of the law may have enlarged any potential “loophole” that would enable the law to withstand Union scrutiny.

For example, the defendants’ assertion in Disney that the Toubon Law was an “unjustifiable obstacle to intra-community commerce”\textsuperscript{115} on the grounds that “other means were possible to describe the product”\textsuperscript{116} fell flat. Although the case was not decided on the merits, the Toubon Law’s specific allowance for the use of other languages under article II ostensibly would have negated Disney’s argument.

Just as the backers of the Toubon law apparently anticipated a Piageme-based challenge, they also inserted a sort of escape clause into their legislation by invoking “public policy” as the basis for creating and ratifying the law.\textsuperscript{117} Article 36 of the Treaty of Rome provides that a Member State may inhibit the flow of imports and exports if the measure is based on public policy.\textsuperscript{118} However, any exercise of public policy must be indistinctly applicable to both domestic and foreign providers of goods and services.\textsuperscript{119} Accordingly, if a non-French national or business of the EU can demonstrate that the law severely impedes its ability to trade with France—amounting to unlawful de facto discrimination—supranational Union law could invalidate the statute despite France’s invocation of public policy.\textsuperscript{120}

\textsuperscript{111} See id. The ECJ may find such a law a barrier to trade when it does not implicate public health or consumer awareness issues, as it did in the Piageme case.

\textsuperscript{112} See id.

\textsuperscript{113} See Circulaire, supra note 40.

\textsuperscript{114} See id.

\textsuperscript{115} See Nelms-Reyes, supra note 18, at 309.

\textsuperscript{116} Piageme, supra note 73.

\textsuperscript{117} See Toubon Law, supra note 4, art. 20.

\textsuperscript{118} See id.

\textsuperscript{119} See Nelms-Reyes, supra note 18, at 303–04.

\textsuperscript{120} See id.
An examination of suits instituted under the 1994 legislation reveals that neither the language groups nor the government has pursued any prominent French exporters under the law.121 This reluctance to nip at the corporate hands that economically nourish France prompts an inference of both a hypocritical purpose to and a discriminatory application of the law.122 If France placed as much pride in its mother tongue as it alleges, it would seem that the language watchdog groups and the government would zealously pursue the most well-publicized businesses to make an example of them. Such businesses, however, would be loath to expand or entrench their commercial ventures in the French market if they ran the risk of publicized—and pesky—prosecution. Thus, the language associations have conveniently avoided prosecuting these businesses, prompting a presumption that the legislature’s purpose was not the exorcism of diabolical foreign terms from the French lexicon, but rather a xenophobic effort to restore public faith in the beloved—and ailing—patrie.123

While the Toubon Law may undoubtedly affect the flow of goods throughout the European Union, it also implicates the flow of intangible items.124 For example, the law may create fundamental problems within the sector of transactions in Union capital markets.125 The dominance of English, finance’s lingua franca, has gone largely unchallenged.126 The Toubon Law, however, requires French state and local authorities to draft certain contracts in pure French.127 If the law is ignored, the errant contract’s provisions cannot be enforced against the signatory.128 Compounding this caveat is the fact that some English financial terms can only be rendered loosely in translation; accordingly, fearing litigation over the substance of the terms, foreign businessmen within the Union may hesitate to sign a contract in French.129

Further, the law engenders difficulties within the Eurobond market.130 France, one of the world’s biggest debtors, often knocks at

121 See Coleman, supra note 13.
122 See id.
123 See id.
125 See id.
126 See id.
127 See id.
128 Toubon Law, supra note 4, art. 5.
130 See Tran, supra note 124.
foreign doors in search of cheap credit. In such transactions, like syndicated loans, contracts are shifted among dozens of banks. If the Toubon Law mandates translation of the contracts into French at each stage of the transaction, the cost of doing business in the Eurobond market may skyrocket.

Although the Toubon Law seems to be foreboding for players in international financial markets, the law may actually be less draconian than it seems. Article 5 of the law provides that legal entities subject to public law are exempt from the language requirements when they engage in commercial or industrial activities to be performed outside France. However, public entity contracts are not performed “outside” France if payments are transferred to or from an account domiciled within France. Moreover, the law does not clearly demarcate the boundary between “public” and “private” activities. The substantive blurriness poses an interpretive difficulty when the connection between a public and a private entity is remote, and it is not difficult to imagine litigation over this provision.

In order to clarify some of the confusion that the Toubon Law had sown in financial markets, the French government recently amended the law relating to agreements concerning the provision of investment services to be wholly performed outside France. In its Investment Services Directive (“ISD”), the government provided that certain French public entities may enter into such agreements in foreign languages with impunity. The ISD also allowed for an exception to the law for the same French entities in Eurobond issues. Riddled with problems of interpretation and applicability, the Toubon law also implicates an exponentially expanding international industry—the Internet. Ironically, though France lags far behind the United States

---

131 See id.
132 See id.
133 See What’s the French for Cock-Up?, supra note 129.
134 See Tran, supra note 124.
135 See Nelms-Reyes, supra note 18, at 294–95.
136 See id.
137 See id.
139 See id.
140 See id.
141 See Coleman, supra note 13.
in the cyberspace race, and despite a widespread Gallic reluctance to use the computer service, France is the first country to attempt to force translation upon the World Wide Web.\textsuperscript{142} When the ALF sued Georgia Tech for creating and maintaining a website in English, the language watchdog association flirted with precedent-setting issues in the jurisdiction of cyberspace.\textsuperscript{143} Commonly perceived as a test case, the Georgia Tech litigation exemplifies the friction inherent in the interaction of the Toubon Law with the European Union.\textsuperscript{144} Since both the trial and appeals court only addressed the case on its procedural grounds, the applicability of the substantive aspects of the law to cyberspace has not been resolved. However, given the resolute vigilance that the language watchdog groups have already demonstrated in such cases as \textit{Body Shop} and \textit{Disney}, it seems likely that the groups will not hesitate to relitigate the issue.

Since the Toubon Law had never been applied to cyberspace, the essence of the Georgia Tech litigation was whether the language legislation extended to the Internet.\textsuperscript{145} While the plaintiffs asserted that the Internet was a business operation amenable to state regulation—and therefore subject to the law—the defendants claimed that the Web merely constitutes a form of private communication.\textsuperscript{146} Accordingly, just as the Toubon law could not apply to telephone conversations, the school maintained, it could not apply to its website.\textsuperscript{147} Moreover, the University asserted that logging onto the website constitutes an entrance into the University in a virtual sense—and the University conducts its classes in English.\textsuperscript{148}

Citing the right of the French people to "know in their own language what is going on in their country," members of the language associations decried the infiltration of American websites into the French information super highway as a "new form of colonialism."\textsuperscript{149} Admittedly, English language sites abound on the French Internet; only five percent of sites originating in France use \textit{le français} exclusively.\textsuperscript{150} Indeed, many French companies prefer to conduct Internet business in

\textsuperscript{142} See id.
\textsuperscript{143} See id.
\textsuperscript{144} See id.
\textsuperscript{145} See \textit{The Guardian Online Page}, supra note 102.
\textsuperscript{146} See Macintyre, supra note 100.
\textsuperscript{147} See \textit{The Guardian Online Page}, supra note 102.
\textsuperscript{148} See Essick, supra note 104.
\textsuperscript{149} Coleman, supra note 13.
\textsuperscript{150} See Sage, supra note 24.
English only. Since English is the marketplace’s lingua franca, French firms find it more suitable—and more profitable—to operate in that language.

If applicable to cyberspace, the Toubon Law may drastically damage the French economy. For example, the French businesses that prefer to maintain English-only websites cite a lack of necessary resources to translate the sites. Imposing this financial burden on businesses effectively cripples them, rendering them less profitable and, indirectly, exacerbating the already lackluster French economy. Moreover, a recent public offering of stock in a French-only Net server revealed the public antipathy to the law as applied to cyberspace. Attracting only 26,500 of the 65,000 subscribers that it had expected, the server’s share price plummeted by 70 percent.

The EU, however, would be the real loser in the Toubon Law-internet confrontation. The melding of myriad cultures into a single allied body constitutes part of the Union’s appeal; accordingly, considering the Continent’s facility with and diversity of art, music, literature, and images generally, Europe should be positioning itself to play a central role on the Internet. The Toubon Law, if applicable to the Net, will only serve to stifle any technological progress that Europe may accomplish. By mandating the use of French on all websites in France, the law would foist superlative burdens on site designers and would force them to abandon Net development, thereby facilitating the Union’s current technological regression. If French officials attempt to force translation on the Net, they will stunt the growth of a burgeoning industry, forgetting, ironically, the profitability of that great French phrase: laissez-faire.

The European and French recalcitrance to participate fully in the Internet vogue sweeping the globe exemplifies a cultural rigidity that simply cannot stand if the EU is to flourish. If the EU is to succeed

---

151 See Coleman, supra note 13.
152 See id.
153 See id.
154 See id.
155 See id.
157 See id. Instead, only two percent of European homes enjoy connection to the Internet; in the commercial sector, many executives consider it a badge of honor to maintain a computer-free office. Id.
158 See Coleman, supra note 13.
159 See id.
as a social, political, and economic world coalition, it must leap to the technological forefront, abandoning traditional mindsets and zealously embracing new developments.\textsuperscript{160} The Toubon Law, however, exemplifies such cultural rigidity. For example, French Foreign Minister Hervé de Charette recently sniped at the Commission president that far too many of the Commission's Internet servers used the English language.\textsuperscript{161} Instead of bickering over the perceived merits of one language over another, European countries must cohere; the Toubon Law, unfortunately, acts principally to cleave.

\textbf{CONCLUSION}

At the close of the twentieth century, disillusionment blankets France. Politicos tread, to their peril, the endlessly shifting sands at the Elysées; record-high unemployment metastasizes; citizens launch bitter epithets in the faces of immigrants. Disintegrating from within, France also imagines itself attacked from without. Yankee hustle-bustle erodes the \textit{art de vivre}, suburban thoroughfares smack of American commercialism, and the language of Molière has been corrupted into a Français gibberish. France, then, is a country clinging to the listing balustrades of its traditions for support. In the face of globalization—or, as some have bluntly put the point, coca-colonization—France has not yet struck the balance through which it can simultaneously preserve its traditions and embrace the advantages of the expanding international marketplace.

The Toubon Law is thus regrettable: by making it more difficult for entities to perform business in France, the proponents of the law effectively distance the country from the financial rewards that wait to be reaped within the Union. Moreover, the law deters Member States from cementing their bonds with France, for little benefit lies in allying with a country that has cast itself adrift in a sea of isolationism. What remains to be determined, however, is how stringently the law will be enforced. The law may slide into historical oblivion like its predecessor, unnoticed and unregretted. Alternatively, it may evolve into an oft-brandished legal weapon. Yet what is truly distressing about the law is the message it conveys to other Member States: France, once a funda-

\textsuperscript{160} See \textit{id}.

\textsuperscript{161} See \textit{Language—the Internet and English, Reuters, AGENCE EUROPE}, March 28, 1997.
mental figure in Union affairs, appears to be struggling to survive; the celebrated *art de vivre*—the art of living—has become *the art de survivre*—the art of surviving.

*Christine Vanston*