

French law after the 2016 reform and the Toubon law

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The reform of French contract law by the ordinance of 10 February 2016, which entered into force on 1 October 2016, rewrote the provisions of the Civil Code on interpretation. Article 1188 now provides that a contract is to be interpreted according to the common intention of the parties instead of being restricted to the literal meaning of its terms. When this intention cannot be discerned, the contract is interpreted in the sense that a reasonable person placed in the same situation would give to it. Article 1189 requires that all the clauses of a contract be interpreted in relation to one another, giving each the meaning that respects the coherence of the whole. These rules are close to the Swiss and German approach and to the international standards expressed in the UNIDROIT Principles.¹

Article 1190 contains the French version of the *contra proferentem* rule, with a distinction that reflects the reform's attention to standard form contracts. In case of doubt, a contract negotiated by the parties is interpreted against the creditor and in favour of the debtor, while a contract of adhesion is interpreted against the party that proposed it. Article 1191 adds that, where a clause is open to two meanings, the one that gives it some effect prevails over the one that deprives it of all effect. Article 1192 prohibits the interpretation of clear and precise clauses at the risk of distorting them, which codifies the long-standing control of *dénaturation* exercised by the Cour de cassation. For multilingual contracts, the interplay between the common intention under Article 1188 and the prohibition of distorting clear clauses under Article 1192 can be delicate, since a clause that is clear in one version may be ambiguous in another.²

The reform also introduced good faith as a general principle of the negotiation, formation and performance of contracts in Article 1104, which is declared a matter of public policy. Article 1171 allows a court to strike down clauses in contracts of adhesion that create a significant imbalance

between the rights and obligations of the parties, although the provision does not apply to the definition of the main subject matter or to the adequacy of the price. Article 1231-5 permits the court to moderate or increase an agreed penalty if it is manifestly excessive or derisory. Each of these provisions affects the drafting of contracts governed by French law and shows that French law, like Swiss and German law, gives the judge powers that an English court would regard as unusual.³

The French language law of 4 August 1994, known as the Toubon law after the minister who sponsored it, is of central importance for parties dealing with French employees and consumers. The law requires the use of French in the designation, offer, presentation, instructions for use and description of goods and services, in invoices and receipts and in various other documents intended for the public. For employment, the Labour Code provides that a written employment contract performed in France must be drawn up in French. Where the employee is a foreigner and the contract is drawn up in French, a translation into the employee's language must be provided at the employee's request. In case of discrepancy, only the version in the employee's language can be invoked against the employee. Provisions in a foreign language that are not translated cannot be invoked against an employee in France.⁴

Because the Toubon law applies to contracts performed in France, it does not in principle govern the employment contract of a frontier worker who lives in Alsace and works in Basel under Swiss law. The position becomes more complex when a frontier worker performs part of the work from home in France, an arrangement that has become common since the pandemic and that the agreements between Switzerland and France on teleworking and taxation now address. Employers who allow substantial teleworking from France should consider whether French mandatory rules, including the language requirements, may apply to that part of the work. The answer depends on the circumstances and on the court seised. Prudent employers therefore provide French versions of key documents for French-resident staff even where Swiss law governs.⁵

French courts have applied the language requirements of the Labour Code to documents beyond the employment contract itself, including documents setting out the objectives on which variable remuneration depends. Employers that use English-language bonus plans, incentive schemes or internal policies for employees working in France have learned that such documents may be unenforceable against the employee if no French version exists. For groups headquartered in Basel with subsidiaries in

Alsace and elsewhere in France, these rules require a disciplined approach to the translation of human resources documentation.⁶

1 Notes

1. Ordonnance n° 2016-131 du 10 février 2016 portant réforme du droit des contrats, du régime général et de la preuve des obligations, ratified by the loi n° 2018-287 du 20 avril 2018. Arts. 1188 and 1189 of the French Civil Code. To be verified. ↩
2. Arts. 1190 to 1192 of the French Civil Code as amended in 2016. On the control of dénaturation by the Cour de cassation, see the French literature on contract interpretation. To be verified. ↩
3. Arts. 1104, 1171 and 1231-5 of the French Civil Code as amended in 2016 and 2018. To be verified. ↩
4. Loi n° 94-665 du 4 août 1994 relative à l'emploi de la langue française (loi Toubon). On employment contracts, see Art. L. 1221-3 of the French Labour Code. Exact wording and the rule on discrepancies to be verified. ↩
5. On teleworking by frontier workers between France and Switzerland, see the agreements and understandings concluded by the two states on taxation and social security, including arrangements in force since 2023. On the territorial scope of the Toubon law in employment, see French case law and literature. Status to be verified. ↩
6. On the application of the Toubon law and Art. L. 1321-6 of the French Labour Code to documents containing obligations for employees or provisions they need to know, see the case law of the Cour de cassation (chambre sociale). Specific decisions to be verified. ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/basel-french-law-after-the-2016-reform-and-the-toubon-law