

GETTING A MOVEMENT TO MOVE: THE PLAIN LANGUAGE MOVEMENT

Author: *Maria Tartaglia*¹

Graduate of Masters in International and European Business Law

Abstract

Complexity of legal language and criticisms of its dense and incomprehensible character over the years has culminated in the Plain Language Movement. Two of the most significant steps taken in this Movement were the Plain Writing Act in the United States and the Clear Writing Campaign in the European Union. This Article seeks to evaluate how well documents comply with the Plain Writing Act and the Clear Writing Campaign Guidelines in order to identify and provide remedies for weaknesses in each of the Guidelines. Finally, it will include practical suggestions on how to foster plain language writing in the future.

Key Words: plain language movement, legal language, legalese

Conseguir que un movimiento “se mueva”: el Plain Language Movement

¹ Maria Tartaglia. tartaglia.maria@gmail.com. This article is based on a graduate dissertation submitted to Universidad Pontificia Comillas in the Master Program of International and European Business Law, supervised by Dr. Adam Dubin and Dr. Cristina Carretero Gonzalez. The views included in this article are only the author's.

Resumen

La complejidad del lenguaje jurídica y las quejas sobre su carácter denso e incomprensible a lo largo de los años dio lugar al *Plain Language Movement*. Dos de los pasos más significativos en este movimiento han sido la implementación del *Plain Writing Act* en los Estados Unidos y del *Clear Writing Campaign* en la Unión Europea. Este Artículo propone evaluar si algunos documentos elegidos cumplen con los requisitos del *Plain Writing Act* y del *Clear Writing Campaign* o no, en aras de identificar y proveer remedios a las deficiencias de las guías. En conclusión, el artículo proveerá ideas prácticas sobre cómo conseguir documentos escritos en lenguaje llana en el futuro.

Palabras clave: Plain Language Movement, lenguaje jurídico, jerga jurídica

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1. INTRODUCTION

1.1. Background and Context to This Study

With the territory of being a law student comes many things: studying hard, constantly being overbooked and under-slept, and having a dramatic increase in caffeine intake levels. These things are to be expected. However, the expression of animosity towards legal language itself, rather than directly towards lawyers, is a less commonly expected reaction. It's not uncommon to hear people commenting on the complexity of legal writings, concluding that they are difficult to understand for the average person². People who are highly educated, objectively speaking, oftentimes seek help when faced with even simple legal processes. Despite their high level of education, they often cannot understand the government information explaining, and forms required to receive, things such as unemployment benefits. This begs the question: if highly educated people are struggling to understand such documents, how can high school graduates, or individuals who never received their high school diploma, be expected to fully understand these documents? Unfortunately, this is only one of many examples of legally incomprehensible language.

Take for example the following sentence from an EU Commission document:

² Among the common "lawyer jokes" appear jokes about animosity towards lawyers. Galanter, M., *Lowering the Bar: Lawyer Jokes and Legal Culture*, p. 224.

The Commission, in collaboration with the other institutions of the Union, is constantly reinforcing endeavors to simplify the often cumbersome formalities to be completed by citizens wishing to take advantage of the freedom of movement enshrined in European law with a view to establishing their residence in another Member State³.

Surely, to understand such a long sentence you had to read the sentence twice. Now, note how much easier it is to comprehend once it is re-written in plain language: “The European institutions are doing all they can to make it easier for people to move home from one EU country to another”⁴. Unfortunately, this long sentence is not even the worst case of overly complex legal language. Consider this 178-word sentence contained in a court opinion:

And in the outset we may as well be frank enough to confess, and, indeed, in view of the seriousness of the consequences which upon fuller reflection we find would inevitably result to municipalities in the matter of street improvements from the conclusion reached and announced in the former opinion, we are pleased to declare that the arguments upon rehearing have convinced us that the decision upon the ultimate question involved here formerly rendered by this court, even if not faulty in its reasoning from the premises announced or wholly erroneous in conclusions as to some of the questions incidentally arising and necessarily legitimate subjects of discussion in the decision of the main proposition, is, at any rate, one which may, under the peculiar circumstances of this case, the more justly and at the same time, upon reasons of equal cogency, be superseded by a conclusion whose effect cannot be to disturb the integrity of the long and well-established system for the improvement of streets in the incorporated cities and towns of California not governed by freeholders’ charters⁵.

Such a long sentence is nearly impossible to understand, and it can be boiled down to as few as six words: “We made a mistake last time”⁶. These two samples exemplify legal language, a sub-language of ordinary English used in the legal field and characterized by various aspects, many of which contribute to its incomprehensible nature. Such characteristics include esoteric vocabulary and use of legal jargon, together with the fact that the underlying

³ Monkcom, D., *Keep it Clear: Translating with clarity is vital*, *The Linguist*, Oct/Nov. 2012, p. 13.

⁴ *Id.*

⁵ Hatlen, L., *Conciseness in Legal Writing*, *Wis. Law.*, June 2009, p. 21, citing *Chase v. Kalber*, 1915, pp. 397 - 398.

⁶ *Id.*

concepts are highly complex to begin with, thus contributing to such incomprehensibility⁷. This incomprehensibility and lack of understanding by readers is also fostered by overly lengthy documents and the use of antiquated language⁸. Such misunderstandings and clouded understandings in the legal field are pervasive, ranging from rampant rates of jurors not understanding jury instructions presented to them to incomprehensibly complex consumer contracts and credit card agreements⁹. Given that legal language's primary function is supposed to be that of communication, such high rates of misunderstanding and incomprehensibility in such important areas is clearly problematic¹⁰.

Legal language has been inherently complex for decades, but over the years a movement towards plain writing has slowly developed with an eye to eliminating such complex and incomprehensible language. It was years before the federal government, in 2010, took a unified approach and enacted the Plain Writing Act ("Act" or "Plain Writing Act")¹¹. With this Act came the development of accompanying Guidelines: the Federal Plain Language Guidelines ("U. S. Guidelines")¹². These Guidelines were aimed at helping federal employees to improve the clarity of their writing¹³. Meanwhile, the Europe Union was also taking steps in the same direction. In 2012, the EU developed and introduced the Clear Writing Campaign ("Campaign" or "Clear Writing Campaign") directed at fostering plain language at the EU level¹⁴. This Campaign, like the Plain Writing Act in the U. S., established Guidelines to assist in the quest for plain language: the *How to Write Clearly* pamphlet ("EU Guidelines")¹⁵.

In light of these efforts and the hundreds of years of complaints about overly complex legal language, it seems that we should be closer to achieving the ideal of comprehensible legal language. It has been nearly 44 years since laws mandating clarity in documents intended for the masses were first implemented in the

⁷ Mattila, H., *Comparative Legal Linguistics*, 2006, p. 11.

⁸ *Id.*

⁹ Palmer, K., *Credit Card Rules Still Confuse Consumers*, <http://money.usnews.com/money/blogs/alpha-consumer/2010/07/19/credit-card-rules-still-confuse-consumers>.

¹⁰ Heikki, *supra* note 7, at 31.

¹¹ Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861 (2010).

¹² *Federal Plain Language Guidelines*, PlainLanguage.gov, <http://www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/FederalPLGuidelines.pdf>.

¹³ *Id.*

¹⁴ Directorate-General for Translation, *Clear Writing*, European Commission, September 2010, http://ec.europa.eu/dgs/translation/publications/magazines/languagestranslation/documents/issue_01_en.pdf.

¹⁵ *How to Write Clearly*, European Commission, available at http://ec.europa.eu/translation/writing/clear_writing/how_to_write_clearly_en.pdf.

U. S. at the state level¹⁶. What's more, even before such proactive steps were taken, there were complaints about legal language's complexity. All the way back in 1596, there were accounts of judges berating lawyers for submitting overly lengthy documents to the court¹⁷. In 1817, Thomas Jefferson complained about the overly complex language used by lawyers at the time¹⁸. Being generous, this constitutes over 400 years since the problem of legally complex language has been identified and addressed, and yet we are still dealing with this problem today. Why has change come so slowly in this area? All the way back in 1999, Peter Tiersma posed this question in his book, *Legal Language*¹⁹. Fifteen years later, this question still remains.

Although the U. S. and EU have taken praiseworthy steps to simplify legal language, there is still a long way to go before legal documents are made truly comprehensible. To this effect, the Plain Language Movement must be analyzed in order to ensure the rapid and effective proliferation of understandable legal language. To accomplish this, weaknesses in the current approach to simplify language must be identified. Given that the largest step forward in the Plain Language Movement has been the publication of the Guidelines associated with the Plain Writing Act and the Clear Writing Campaign by the U. S. and EU, respectively, this article will focus on weaknesses in these Guidelines.

1.2. Structure of the Study

This study will propose changes to both the U. S. and EU Guidelines as a way to accelerate the slow progress of the Plain Language Movement. To accomplish this, this article will first analyze compliance of existing documents covered by the Clear Writing Campaign and the Plain Writing Act, as measured by how well they follow their respective Guidelines. Using the results of this analysis, the article will identify aspects of each set of Guidelines which are preventing legal writing from becoming truly comprehensible to the average individual.

This analysis was completed using four separate documents covered by the plain language Guidelines: two from the U. S. and two from the EU. For the U. S., this study looked at the Internal Revenue Service Additional Child Tax Credit Notice ("IRS Notice") and the Medicare Summary Notice ("Medical Summary

¹⁶E.g. – medical consent forms, police search consent forms, releases of liability (commonly used in scuba diving, automobile racing, and skiing). Tiersma, P., *Legal Language*, 2000, pp. 228, 231. Consumer contracts. Wydick, R., *Plain English for Lawyers*, 1978, p. 727.

¹⁷*Id.*

¹⁸"Making every other word a 'said' or 'aforesaid' and saying everything over two or three times, so that nobody but we of the craft can untwist the diction and find out what it means..." *Id.*

¹⁹Tiersma, *supra* note 16, at 241.

Notice”)²⁰. These documents were selected as they benefit from the advantage that both the original pre-plain language version and the post-plain language version are available online²¹. Therefore, through analysis of these documents this article will be able to make a clear conclusion about the efficacy of the Federal Plain Language Guidelines. In the EU, the documents analyzed included the Court of Justice of the European Union’s Press Release No. 6/14 regarding classification of dependents (“Dependents Press Release”) and a Press Release entitled *Parliament Calls for EU Roadmap to protect fundamental rights of LGBTI people* (“LGBTI Press Release”)²². Although there are no original and post-plain language versions of these documents available, both were selected in light of the fact that they are clearly covered by the EU Guidelines and are documents likely to be read by the average citizen.

It’s also worth mentioning that each Member State, and each US State, has taken measures, to varying extents, to foster plain language writing. For example, Spain has published a document entitled the “Report of the Commission for the Modernization of Legal Language in Spain” (*Informe de la Comisión de Modernización del Lenguaje Jurídico Español*)²³. This is a Spanish document that sets forth principles for legal writing²⁴. Although this document is worthy of praise and certainly of interest in an analysis of plain writing within Spain, the focus of this article is on plain writing at the federal level in the US and at the European level in Europe. Furthermore, the analysis looks only to those documents covered by the EU Guidelines, and as this document was not drawn up by an EU Institution, it is not covered by the EU Guidelines. Therefore, a full discussion of these praiseworthy efforts in Spain to foster plain language is beyond the scope of this article.

Finally, after selecting the documents to be analyzed, the analysis carried out involved identifying whether each document “clearly complied,” “clearly did not comply,” or if “compliance could not be determined” regarding each individual provision of the Guidelines. For example, both Guidelines indicate that passive voice should be avoided²⁵. Thus, if a document contained an instance of passive

²⁰ *Additional Child Tax Credit Notice*, Center for Plain Language, available at <http://centerforplainlanguage.org/awards/past-years/clearmark2011/>. *Centers for Medicare and Medicaid Services — Redesigned Medicare Summary Notice*, Center for Plain Language, available at <http://centerforplainlanguage.org/awards/clearmark2012/>.

²¹ This site highlights documents that have been acknowledged by PLAIN as the best examples of plain language principles being applied. *2011 ClearMark Award Winners*, Center for Plain Language, <http://centerforplainlanguage.org/awards/past-years/clearmark2011/>.

²² Press Release 6/14, Court of Justice of the European Union, 2014. Press Release, Committees Committee on Civil Liberties, *Parliament calls for EU roadmap to protect fundamental rights of LGBTI people*, 2014.

²³ *Informe de la Comisión de Modernización del Lenguaje Jurídico Español*, Ministerio de Justicia, available at https://www.administraciondejusticia.gob.es/paj/publico/ciudadano/informacion_institucional/modernizacion/modernizacion_lenguaje_juridico.

²⁴ *Id.*

²⁵ *Federal Plain Language Guidelines*, *supra* note 12, at 20. *How to write clearly*, *supra* note 15.

voice, it would receive a notation of “clearly did not comply” with that provision. After completing this review, a percentage was calculated to determine how well each document complied with the Guidelines. This percentage was calculated by dividing the number of instances of “clear compliance” by the total number of tips contained in the relevant Guidelines. It is important to note that this analysis is focused not on measuring readability of the documents, but rather on whether the documents complied with the tips given in the Guidelines²⁶. As existing academic literature has primarily measured readability, a focus on compliance will bring previously unnoticed weaknesses to light.

The next Chapter will lay out the historical background in the field of plain language, highlighting the steps leading up to implementation of the Guidelines. In that same chapter an in-depth description and comparison of the Guidelines developed as a tool to fostering clear and comprehensible legal language in both the U. S. and the EU will be provided. The following chapter, Chapter 3, will assess compliance of government documents in both jurisdictions with their applicable Guidelines, the results of which will be used to draw attention to the weaknesses of each jurisdiction’s Guidelines. Finally, the last chapter will propose and elaborate on recommendations for further improving clear writing, followed by a section of concluding remarks.

2. GUIDELINES FOR CLEAR WRITING

2.1. U.S. Guidelines

In response to the complexity of legal language, advocates from all different sectors of society began to put forward arguments in favor of simplifying legal language, which eventually gained steam and sparked an entire movement: the Plain Language Movement²⁷. Legislation started at the state level and over time the federal government began to place an emphasis on plain language; guidelines were developed and executive orders were issued with a view to improving federal agency regulations²⁸. In their efforts, the federal government has taken two very important steps towards encouraging plain writing: establishing the Plain

²⁶Readability measures the extent to which a reader can understand the document (e.g. – measuring whether passive voice actually improves comprehension). Compliance only assesses whether a document implemented the suggestions contained in the Guidelines.

²⁷Wydick, *supra* note 16.

²⁸*Dodd-Frank Makes a Mockery of ‘Plain Language’ Movement*, American Banker, 2012 <http://www.americanbanker.com/bankthink/dodd-frank-makes-mockery-of-plain-language-movement-1054644-1.html>. Locke, J., *A History of Plain Language in the United States Government*, Plainlanguage.gov, <http://www.plainlanguage.gov/whatisPL/history/locke.cfm>. Exec. Order No. 12044, 43 Fed. Reg. 12661, 1978.

Language Action and Information Network (“PLAIN”) and enacting legislation entitled the Plain Writing Act²⁹. Both of these actions have cumulated today in a truly unified federal initiative whereby the Act requires documents to be written in “plain language” as defined by the Federal Plain Language Guidelines developed by PLAIN³⁰.

The resulting scope of the Act covers certain documents created by certain entities; “covered documents written by an executive agency, as defined by Section 105 of Title 5 U. S. C.”, but explicitly excluding regulations³¹. Regarding the definition of “executive agency,” the United States Code defines “executive agency” as an “executive department, a government corporation, and an independent establishment”³². This definition primarily includes those agencies that are understood by the general public as being part of the federal government³³. Thus, any “covered documents,” as defined by the Act, which have been written by any executive agency are subject to the provisions of the Act³⁴. The Act defines “covered document” as being any of the following types of documents:

- Those necessary for obtaining a federal government benefit or service;
- Those necessary for filing taxes;
- Those that provide information on federal government benefits or services;
- Those that explain to public how to comply with requirement of federal government;
- Includes letter, publication, form, notice, or instruction³⁵.

²⁹ Co-chairs include individuals from US Citizenship and Immigration Services (Kathryn Catania), a staff attorney from the Office of the Federal Register (Miriam Vincent), and an individual from the General Services Administration (Katherin Spivey). Initially, when this organization was created it was entitled the Plain English Network, but its official name was subsequently changed to the Plain Language Action and Information Network (PLAIN).. *About Us*, Plainlanguage.gov, <http://www.plainlanguage.gov/site/about.cfm>. Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861, 2010; Plain Language in Government

³⁰ Baker, J., *And The Winner Is: How Principles of Cognitive Science Resolve the Plain Language Debate*, 2012, p. 291.

³¹ Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861, 2010.

³² 5 U. S. C. § 105, 1966.

³³ Army and Air Force Exchange Service, Department of Health and Human Services, Department of Agriculture (USDA), Department of Commerce (DOC), Department of Defense (DOD), Department of Education (ED), Department of Energy (DOE), Department of Housing and Urban Development (HUD), Department of the Interior (DOI), Department of Justice (DOJ), Department of Labor (DOL), Department of State, Department of Transportation (DOT), Department of the Treasury, and the Department of Veteran’s Affairs (VA). *Agency List*, Federal Register, <https://www.federalregister.gov/agencies>.

³⁴ Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861, 2010.

³⁵ *Id.*

Those documents that are covered within the scope of the Act must comply with the provisions set forth in the Act, which includes both substantive and procedural requirements³⁶. As this article focuses solely on compliance with the substantive requirements, a full account of the procedural requirements has been omitted. The main substantive provision of the Act requires that covered documents be “clear, concise, [and] well-organized,” meaning that they must comply with general standards of plain language writing³⁷. The legislation itself lacks detail on exactly what is meant by “clear, concise, [and] well-organized”³⁸. However, the federal government has explicitly accepted the Federal Plain Language Guidelines developed by PLAIN as the official guide on general standards of plain language³⁹.

The Federal Plain Language Guidelines, comprising a full 118 pages, have been adopted by the federal government as the common standard for plain language writing⁴⁰. These Guidelines detail the plain language principles that federal documents under the Plain Language Act must comply with and includes a wide array of writing techniques ranging from grammatical rules and formatting to word choice and the thought process behind the writing⁴¹. The first major portion of the Guidelines provides pre-writing tips. This section also deals with the overall organization, including guidance on formatting and sequence⁴². In general, this section urges writers to begin the document with the most important information and then include background information, to the extent that it is necessary, towards the end⁴³. The first point of emphasis is on chronological organization and how the flow of the document should be determined by the order in which readers are likely to ask questions⁴⁴. Regarding formatting, the Guidelines indicate that good organization involves frequent use of headings⁴⁵. The section further breaks down the types of headings and indicates that Question Headings are the most useful, but headings that are too long lose their clarifying effect⁴⁶.

³⁶ Plain Writing Act § 4(a)(1).

³⁷ Baker, *supra* note 30, at 301.

³⁸ *Id.*

³⁹ 5 U. S. C. § 301, 2012; OMG Memorandum, M-11-15 (Apr. 13, 2011).

⁴⁰ *Federal Plain Language Guidelines*, *supra* note 12. *Plain Language: A Handbook for Writers in the U. S. Federal Government*, Lauchman Group, 2009. <http://www.lauchmangroup.com/PDFfiles/PLHandbook.PDF>. See also *How to Write Clearly*, *supra* note 15, at 1.

⁴¹ An analysis of compliance with the objective measures of the Guidelines is beyond the scope of this Article. *Federal Plain Language Guidelines*, *supra* note 12.

⁴² *Id.* at 6 – 14.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 11 – 14.

⁴⁶ Question headings are those framed as a question. For example, “Why do we use headings?” would be considered a question heading. *Id.*

The Guidelines also suggest that writers should consider using bold and italics to highlight *important* information⁴⁷. These formatting and organization tips aim to resolve both information overload, a common criticism of legal writing, as well as to allow readers to quickly identify the key points of any given document. The remainder of the guidelines focus on the actual process of writing and give guidance to take into account regarding words, sentences, paragraphs, and other miscellaneous aids to clarity⁴⁸.

2.1.1. Words

This section explains that active voice should be used instead of passive voice because passive voice has been proven to decrease clarity⁴⁹. However, it does provide exceptions for when passive voice can be used⁵⁰. The Guidelines also warn against turning verbs into their corresponding noun form⁵¹. For example, instead of saying “carry out a review,” simply say “review”⁵². The Guidelines give helpful tips on how to recognize this structure known as a nominalization⁵³. The Guidelines tell writers that words ending in *-ment*, *-tion*, *-sion*, and *-ance*, as well as sentences using the verbs *achieve*, *effect*, *give*, *have*, *make*, *reach*, and *take*, commonly indicate nominalizations⁵⁴. Another barrier to understanding is use of the antiquated word *shall*, which the Guidelines suggest should be substituted with the verb “must” for obligations, “must not” for prohibitions, “may” for discretionary actions, and “should” for recommendations⁵⁵. Other antiquated words that muddle clarity and should be avoided include *above-mentioned*, *aforementioned*, *foregoing*, *henceforth*, *hereafter*, *hereby*, *herewith*, *thereafter*, *thereof*, *therewith*, *whatsoever*, *whereat*, *wherein*, and *whereof*, to name a few⁵⁶.

⁴⁷ *Id.* at 82.

⁴⁸ *Id.*

⁴⁹ *Id.* at 20.

⁵⁰ The Guidelines acknowledge that passive voice can be used when the only actor in the sentence is the law itself. *Id.* at 21.

⁵¹ *Id.* at 23.

⁵² *Id.*

⁵³ A nominalization is when the writer uses a noun form instead of a verb, reducing clarity. For example, saying “[t]he implementation of the plan was successful” is a nominalization that could be fixed by saying “[t]he plan was implemented successfully.” *Improving Sentence Clarity*, Purdue University, Online Writing Lab, <https://owl.english.purdue.edu/owl/resource/600/01/>. It is interesting to note that neither of the Guidelines used this technical term, which would in fact have been in violation of their own guidelines on clear writing.

⁵⁴ *Federal Plain Language Guidelines*, *supra* note 12, at 23.

⁵⁵ *Id.* at 25.

⁵⁶ *Id.* at 47.

This section also includes Guidelines to ensure that legal texts take into account their intended audience⁵⁷. Traditionally, legal documents were viewed strictly as communications within the legal community, and as such it was presumed that the recipient of the document would understand abbreviations that were common in the legal sector⁵⁸. However, with the increased focus on average citizens as the recipients of legal documents, this assumption no longer remains. With this in mind, the Guidelines indicate that contractions should be used where appropriate, which the Guidelines describe as being not “wherever possible, but wherever they sound natural”⁵⁹. Similarly, the Guidelines suggest that abbreviations should be minimized and replaced with “nicknames”⁶⁰. For example, instead of using ESAC for Engineering Safety Advisory Committee, clearly identify the full name and then just refer to the “Committee”⁶¹. Finally, the Guidelines encourage writers to avoid legal, foreign, and technical jargon, albeit acknowledging that depending on the audience technical terms may be the clearest way to express an idea⁶².

The Guidelines emphasize the need for writing to be concise and lay out the following considerations on how to write concisely⁶³:

- Prefer the familiar word to the far-fetched.
- Prefer the concrete word to the abstraction.
- Prefer the single word to the circumlocution.
- Prefer the short word to the long.
- Prefer the Saxon word to the Romance word.

In addition, unnecessary words should be omitted, including prepositions, redundant words, excess modifiers, and doublets and triplets.

2.1.2. Sentences and Paragraphs

This section emphasizes that sentences should be kept short⁶⁴. Furthermore, both sentences and paragraphs should contain only one idea⁶⁵. The next issue that arises with the construction of sentences is the issue of where the subject,

⁵⁷ *Id.* at 25.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 33.

⁶¹ *Id.*

⁶² *Id.* at 39.

⁶³ *Id.* at 35.

⁶⁴ *Id.* at 50.

⁶⁵ *Id.* at 50, 62 – 68

verb, and object should be located; the Guidelines maintain that all three of these parts of the sentence should always be kept close together⁶⁶. This tip is extremely important in improving clarity. When reading, readers naturally look to these three components to make sense of a sentence, and if they are too far separated the reader starts to forget what was initially said and gets confused by the large number of intervening words⁶⁷.

2.1.3. *Miscellaneous Aids to Clarity*

In general, the Guidelines propose that the complexity of legal writing can be decreased, and comprehension increased, merely by treating legal writing as a conversation⁶⁸. It is commonplace in oral conversation to use examples to clarify when the other person does not understand, writers should include as many examples possible⁶⁹. Thus, examples should also be used in written language, as it is also a form of communication intended to convey an idea.

2.2. EU Guidelines

Just as with the Plain Language Movement in the U. S., the Movement in the EU was built from the bottom up, with Sweden being one of the first Member States, in the early 1970s, to impose a plain language initiative⁷⁰. However, in the mid-90s, the Movement began to gain attention at the EU level, in part due to complaints from EU translators about the poor English that they were being required to translate⁷¹. Following this, the EU implemented a campaign aimed at achieving clear and comprehensible documents: the Fight the Fog Campaign⁷². Under this Campaign a set of hints to help writers create plain language documents was established⁷³. Then, in 2012, a successor campaign to the Fight the Fog program was created: the Clear Writing Campaign, which is still in effect today⁷⁴.

⁶⁶ *Id.* at 51.

⁶⁷ Hatlen, *supra* note 5.

⁶⁸ Phelps, T. G., *The New Legal Rhetoric*, 1986, p. 1090.

⁶⁹ *Id.* *Federal Plain Language Guidelines*, *supra* note 12, at 70.

⁷⁰ The initiative instituted by Sweden involved 6 language experts who worked to make sure that the legislation, as well as other documents, were written clearly. Balmford, C., *Plain Language: beyond a 'movement' repositioning clear communication in the minds of decision-makers*, PlainLanguage.gov, <http://www.plainlanguage.gov/whatisPL/definitions/balmford.cfm>.

⁷¹ *Id.*

⁷² *Fight the Fog, Write Clearly*, Eurosfair, http://www.eurosfair.prd.fr/bibliotheque/pdf/Write_EN_Fight-the-fog.pdf.

⁷³ *Id.*

⁷⁴ Directorate-General for Translation, *supra* note 14.

Although the new Campaign does not contain strict or specific provisions on scope, but rather identifies a general environment within the EU that seeks to foster plain language writing, it is clear that the Clear Writing Campaign covers documents created by the EU Institutions⁷⁵. Thus, documents covered include, among others, reports and press releases issued by these Institutions⁷⁶. The standards applied to these documents are not explicit laws or requirements that must be complied with, rather an overall message to be kept in mind when writing: Keep it Short and Simple “KISS”⁷⁷. In order to ensure that this objective is carried out, EU Guidelines detailing 10 hints on how to improve the clarity of one’s writing were developed (*How to Write Clearly*)⁷⁸. In addition to substantive guidelines, the Clear Writing Campaign included various supplemental actions. These supplemental actions have included an advice hotline, plain language conferences, and a promotional video⁷⁹. This Clear Writing Campaign has also focused on the need to provide employees with an avenue for having their documents edited prior to publication⁸⁰.

This publicity accompanying the Clear Writing Campaign distinguishes it from the U. S. approach⁸¹. Another huge distinction between the two approaches is the level of enforcement; the U. S. approach to plain language in government documents involves an official legal mandate, whereas in the EU, plain language is not an obligation but rather a suggestion⁸². In comparison to the US Guidelines, the EU Guidelines are more concise and do not include distinct sections but rather lists 10 hints on how to write clearly⁸³. Hints #1 and #2 implore EU employees to engage in a brainstorming process, which, as with the more subjective US Guidelines, are not addressed in this Article⁸⁴. The first substan-

⁷⁵ *Id.*

⁷⁶ *EU Targets Jargon with Clear Writing Campaign*, DW, <http://www.dw.de/eu-targets-jargon-with-clear-writing-campaign/a-16248889-1>.

⁷⁷ *Id.*

⁷⁸ Directorate-General for Internal Policies, *Citizens Rights and Constitutional Affairs*, 2012, available at [http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462442/IPOL-JURI_NT\(2012\)462442_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462442/IPOL-JURI_NT(2012)462442_EN.pdf).

⁷⁹ EU officials offered hotline for ‘clear writing’, Euractiv.com, 2009, <http://www.euractiv.com/pa/eu-officials-offered-hotline-cle-news-222938>. Monkcom, *supra* note 3, at 5. *Good news: clarity’s a-coming!*, YouTube (June 10, 2010) http://www.youtube.com/watch?v=sxzU2UH9j_I.

⁸⁰ *Good news: clarity’s a-coming!*, *supra* note 71. This is especially important given that many employees are writing in English, even though English is not their native language. EU officials offered hotline for ‘clear writing’, *supra* note 79.

⁸¹ *Compare Federal Plain Language Guidelines*, *supra* note 12, and *How to Write Clearly*, *supra* note 15.

⁸² This distinction is emphasized in the EU Guidelines where it is acknowledged that the plain language guidelines “are hints, not rules.” *How to Write Clearly*, *supra* note 15, at 1.

⁸³ *Id.*

⁸⁴ *Id.*

tive issue addressed by the EU Guidelines deals with formatting and can be seen as an improvement because it institutes formatting tips that were not included in the Guidelines accompanying the Fight the Fog Campaign⁸⁵. This third hint on formatting indicates that longer documents should include a table of contents, although they do not define what constitutes a longer document. Furthermore, it indicates that documents should be drawn up in the following order: summary, middle, and conclusion⁸⁶.

Hint #4 can be summarized with the expression “Keep It Short and Simple” (KISS)⁸⁷. The Guidelines elaborate on this vague mantra through the use of specific lists of terms and possible simplifications⁸⁸. The Guidelines also implore writers to cut out unnecessary words, noting that sentences should be, on average, twenty words⁸⁹. As far as simplifying texts, the Guidelines indicate that connecting words should be included, positive forms should be favored over negative forms, and that consistent references should be used⁹⁰.

The focus of Hint #6 is on reducing the use of nominalizations⁹¹. It indicates that simply turning a noun phrase back into its verb form can dramatically increase comprehension, pointing out to the reader that many nominalizations end in *-ion*⁹². The guidance in this section actually took a step back from the Fight the Fog Campaign, reducing the amount of detail provided on nominalizations⁹³. The discussion on passive voice in the Guidelines was also condensed, eliminating a significant number of examples from the Guidelines⁹⁴.

Finally, the Guidelines deal with word choice, drawing attention to false friends and warning against the use of technical legal jargon⁹⁵. The Guidelines give suggested definitions for common jargon and as reference include links to definitions of additional technical and legal terms⁹⁶. This section also notes that writers should avoid the use of abbreviations⁹⁷. Finally, it provides suggestions on

⁸⁵ *Id.* at 5. *Fight the Fog, Write Clearly*, *supra* note 72.

⁸⁶ *How to Write Clearly*, *supra* note 15, at 5.

⁸⁷ *Id.* at 6.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 8.

⁹² *Id.*

⁹³ *Fight the Fog, Write Clearly*, *supra* note 72.

⁹⁴ *Id.*

⁹⁵ This, like with the description of nominalizations, is a strength of the Guidelines. Where they could have used the technical term “false cognate,” the Guidelines followed their own guidance and stuck with the use of “false friend” instead. *Fight the Fog, Write Clearly*, *supra* note 72, at 9, 11-12.

⁹⁶ *Id.*

⁹⁷ *Id.* at 13.

how to deal with uncommon acronyms; write out the full expression if it only occurs a few times in the document, spell out the acronym the first time and identify a consistent abbreviation to be used throughout the text, or include and attach a list of abbreviations to the document⁹⁸.

2.3. Comparison of the Guidelines

There are a few core differences and similarities between the EU and U. S. Guidelines⁹⁹. As far as similarities, both Guidelines suggest the use of personal pronouns, positive forms instead of negative forms, and consistent references, while suggesting that unnecessary words be avoided¹⁰⁰. Although these suggestions are virtually identical in both Guidelines, there are other tips in both Guidelines that are similar but not identical. For example, both Guidelines suggest the use of headings, but the EU does not warn against headings that are too long nor does it go into detail regarding which types of headings are best¹⁰¹. While both Guidelines acknowledge that passive voice should be avoided, the U. S. Guidelines detail exceptions to this general rule¹⁰². Nominalizations are also discouraged in both Guidelines, but the EU Guidelines only provide one ending by which writers can identify nominalizations (*-ion*), whereas the U. S. Guidelines give numerous tips on identifying nominalizations¹⁰³. With regard to sentence length, both Guidelines indicate that sentences should be brief, but only the EU Guidelines give a suggested length (20 words)¹⁰⁴. Both Guidelines address word choice and suggest using concrete rather than abstract words, but the U. S. Guidelines supplement this suggestion with a list of possible substitutions. Finally, although both focus on the need to avoid the use of jargon, the EU Guidelines seem to place more emphasis on explaining jargon when it is used, whereas the U. S. Guidelines focus more on decreasing its use altogether¹⁰⁵.

Focusing on the reader is a main emphasis in both Guidelines, but they differ in their approaches. The U. S. Guidelines focus on achieving this based on an understanding of the language and knowledge that the readers are likely to be familiar with, whereas the EU Guidelines focus more on anticipating

⁹⁸ *Id.*

⁹⁹ Compare *How to Write Clearly*, *supra* note 15, and *Federal Plain Language Guidelines*, *supra* note 12.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Federal Plain Language Guidelines*, *supra* note 12, at 21.

¹⁰³ *How to Write Clearly*, *supra* note 15, at 8.

¹⁰⁴ *Id.* at 6.

¹⁰⁵ *Id.*

the questions of the readers¹⁰⁶. Only the U. S. Guidelines acknowledge that oftentimes within a single document more than one intended audience will be present and that each audience should be addressed separately¹⁰⁷. Finally, both Guidelines indicate that abbreviations should be avoided where possible, but the EU gives more specific tips on how to deal with abbreviations when they come up¹⁰⁸.

As far as differences between the Guidelines, some differences have their roots in situational differences between the two locations. For example, the EU provides guides on how to avoid the use of false friends because it is faced with writers and intended readers that are native speakers of different languages¹⁰⁹. The remaining differences have more to do with policy and preference of the two governments. In this regard, two key differences between the Guidelines can be noted immediately: the U. S. Guidelines are much more detailed and provide rules backed by an actual law as opposed to “hints” or suggestions developed to implement a non-legally binding plain language campaign¹¹⁰. On a general level, both Guidelines include links to further information; however, the EU Guidelines include more references¹¹¹. Another difference regarding the level of detail given in the Guidelines is that although both give examples for the hints included, the U. S. Guidelines provide far more examples¹¹².

Finally, there are various tips provided in one set of Guidelines and not the other. Topics that the U. S. Guidelines, but not the EU Guidelines, cover include the following: avoiding outdated legal terms, guidelines on word choice when describing obligations, using present tense as much as possible, limiting each sentence to one idea, and keeping the subject, verb, and object of sentences as close as possible¹¹³. The U. S. Guidelines also include suggestions on length and organization of paragraphs that the EU Guidelines do not include¹¹⁴. The below table provides an overview of the key differences between the two Guidelines.

¹⁰⁶ *Federal Plain Language Guidelines*, *supra* note 12, at 1. *How to Write Clearly*, *supra* note 17, at 3 – 4.

¹⁰⁷ *Federal Plain Language Guidelines*, *supra* note 12, at 8.

¹⁰⁸ *Compare How to Write Clearly*, *supra* note 15, and *Federal Plain Language Guidelines*, *supra* note 12.

¹⁰⁹ *How to Write Clearly*, *supra* note 15, at 11 – 12.

¹¹⁰ *Compare How to Write Clearly*, *supra* note 15, and *Federal Plain Language Guidelines*, *supra* note 12.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Federal Plain Language Guidelines*, *supra* note 12, at 47. This is the requirement that indicates writers should replace “shall,” with other obligation words such as “must, must not, may, and should.” *Compare How to Write Clearly*, *supra* note 15, and *Federal Plain Language Guidelines*, *supra* note 12.

¹¹⁴ *Compare How to Write Clearly*, *supra* note 15, and *Federal Plain Language Guidelines*, *supra* note 14.

Table I. Guidelines Comparison Chart

Guidelines contained <i>only</i> in U. S.	Guidelines contained <i>only</i> in EU
Avoiding outdated legal terms	Requiring Table of Contents for longer documents
Guidelines on word choice when describing obligations (<i>use of shall</i>)	
Using present tense as much as possible	
Limiting each sentence to one idea	
Keeping the subject, verb, and object of sentences as close as possible to each other	
Guidelines on structuring paragraphs	

Source: *How to Write Clearly*, *supra* note 15; *Federal Plain Language Guidelines*, *supra* note 12.

3. ANALYSIS

3.1. Study Results

In accordance with the methodology set forth above, the documents were compared with their respective Guidelines and compliance rates measured in order to draw conclusions regarding the quality of the existing U. S. and EU Guidelines with a view to proposing suggestions for moving forward in the Plain Language Movement. The first U. S. document analyzed, the IRS Notice, met a majority of the recommendations contained in the U. S. Guidelines and had an overall compliance rate of 54 percent¹¹⁵. The IRS Notice clearly complied with nineteen provisions of the Guidelines, but compliance with eleven provisions was unclear due in large part to the subjective nature of the Guidelines. The document clearly did not comply with the Guideline's provisions on use of transition words, varying paragraph length, and preference for question headings. In the end, there was only a 5 percent increase in clear compliance with the Guidelines as compared to the original version of the document. The second U. S. document, the Medicare Notice, had a lower compliance rate of 46 percent, clearly complying with only 16 of the provisions. However, the document did have fewer clear non-compliances, with only one instance where the document clearly did not comply with the Guidelines. This left 18

¹¹⁵ See *Infra*. Table II.

instances where it could not be determined whether the document complied with the Guidelines or not. Overall, although the increase in clear compliance with provisions from the prior version of this document only increased from 29 percent to 46 percent, clear non-compliance decreased from 29 percent to only 3 percent.

As far as the EU documents, compliance rates were generally lower. The LGBTI Press Release had nine instances of clear compliance, three instances of clear non-compliance, and nine instances where compliance could not be determined. Although there was no previous version of this document which could be compared to the existing document, the overall compliance with the Guidelines was a mere 43 percent. Furthermore, the Dependents Press Release, had an even lower compliance rate (35 percent), with only seven instances of clear compliance. This document also clearly did not comply on four instances, leaving nine instances where compliance could not be determined. These results indicate various weaknesses in each of the Guidelines, which if addressed and remedied properly could be a significant step forward in the Plain Language Movement. The following table shows the results of the compliance analysis.

Table II. Study Results

U. S.				EU			
IRS Notice (Before)				LGBTI Press Release			
Clearly complied	18	51%	89%	Clearly complied	9	43%	86%
May have complied	13	37%		May have complied	9	43%	
Clearly didn't comply	4	11%		Clearly didn't comply	3	14%	
IRS Notice (After)				Dependents Press Release			
Clearly complied	19	54%	91%	Clearly complied	7	35%	80%
May have complied	13	37%		May have complied	9	45%	
Clearly didn't comply	3	9%		Clearly didn't comply	4	20%	
Medicare Notice (Before)				AVERAGES			
Clearly complied	10	29%	71%	Clearly complied	8	39%	83%
May have complied	15	43%		May have complied	9	44%	
Clearly didn't comply	10	29%		Clearly didn't comply	3.5	17%	
Medicare Notice (After)							
Clearly complied	16	46%	97%				
May have complied	18	51%					
Clearly didn't comply	1	3%					

U. S.				EU			
IRS Notice (Before)				LGBTI Press Release			
AVERAGES (Before)							
Clearly complied	15.75	45%	87%				
May have complied	14.75	42%					
Clearly didn't comply	4.5	13%					
AVERAGES (After)							
Clearly complied	17.5	50%	94%				
May have complied	15.5	44%					
Clearly didn't comply	2	6%					

3.1.1. Complexity of the Guidelines

A key aspect to consider in assessing weaknesses of each set of Guidelines is whether more or less detailed guidelines are more effective. Solely based on the fact that the U. S. Guidelines are extremely lengthy and provide in-depth descriptions and that there were higher compliance rates among the U. S. documents, it may seem that the more detailed and comprehensive the Guidelines, the more effective they are. However, it is impossible to definitively conclude that in-depth guidelines are more effective. In fact, such great level of detail could have an inverse effect on plain writing, introducing overly technical provisions. For example, the EU Guidelines seek to simplify legal writing through the basic statement, “Keep it Short and Simple”¹¹⁶. In contrast, the U. S. Guidelines, in an attempt to convey that same idea, do so by imploring writers to:

- Prefer the familiar word to the far-fetched.
- Prefer the concrete word to the abstraction.
- Prefer the single word to the circumlocution.
- Prefer the short word to the long.
- Prefer the Saxon word to the Romance word¹¹⁷.

Plain language advocates have put forth this rule, arguing that these simple changes in word choice are imperative for making writing “direct, simple, brief, vigorous, and lucid”¹¹⁸. However, although it is important to decrease overly wor-

¹¹⁶How to write clearly, *supra* note 15, at 6.

¹¹⁷Federal Plain Language Guidelines, *supra* note 12, at 36.

¹¹⁸*Id.*

dy language in legal writing, this rule may not adequately address that concern¹¹⁹. Rather, this rule provides minimal guidance given that the entire focus of the Guidelines is to simplify language, providing such technical guidance as “prefer the Saxon word over the Roman word” is counterintuitive, as it requires a higher level of knowledge of philology than the majority of writers have in order to be able to distinguish between the Saxon and Roman¹²⁰. In this instance, the simplicity of the EU Guideline’s “Keep it Short and Simple” motto would be much more effective¹²¹.

3.1.2. Amount of Information

Another window for weakness pops up with regard to finding the perfect balance between too much and not enough information. The U. S. Guidelines are 118 pages as compared to the EU Guidelines, which comprise a total of 16 pages¹²². The length of the U. S. Guidelines places serious barriers to achieving plain language. Expecting that already overworked federal employees will actually be able to read and implement this lengthy document may be an invalid assumption. Furthermore, even if a writer had the time to read the Guidelines, the sheer amount of information could easily prevent the writer from understanding how to implement the Guidelines. Finally, in addition to the sheer length of the U. S. Guidelines, these also include numerous plain language links and resources, totaling 22 additional sources¹²³. The Guidelines themselves implore writers to avoid overly lengthy documents, as such length clouds comprehension. Thus, it seems counterproductive to develop a lengthy and detailed set of guidelines.

These problems of lack of time and increased risk of confusion are amplified by the plethora of supplemental resources available. First, there are at least six Guidelines directed at helping federal employees write clearly, as compared to the EU where there were only two Guidelines¹²⁴. Although these Guidelines do arguably include helpful supplemental information, the sheer number of guidelines available online makes it difficult for readers to feel confident that they have chosen

¹¹⁹ Hatlen, *supra* note 5.

¹²⁰ See generally Fowler, H. W., *The King’s English*, 1922.

¹²¹ *How to Write Clearly*, *supra* note 15, at 6.

¹²² *Federal Plain Language Guidelines*, *supra* note 12. *How to Write Clearly*, *supra* note 15.

¹²³ See generally *Federal Plain Language Guidelines*, *supra* note 12.

¹²⁴ Clarity International, <http://clarity-international.net/>; *Federal Plain Language Guidelines*, *supra* note 12; *Guidelines for creating plain language materials*, Center for Plain Language, <http://centerforplain-language.org/about-plain-language/guidelines-for-creating-plain-language-materials/>; *Plain Language: A Handbook for Writers in the U. S. Federal Government*, *supra* note 75; Usability.gov, <http://www.usability.gov/>. *English Style Guide*, EU Commission, 2014, available at http://ec.europa.eu/translation/english/guidelines/documents/styleguide_english_dgt_en.pdf; *How to write clearly*, *supra* note 15.

the “right” guidelines, which not only wastes the writer’s time but also increases the likelihood that less sound plain language principles are being applied. Next, in addition to Guidelines, the U. S. Plain Language Movement is accompanied by numerous additional tips, tricks, information, and suggestions. For example, there are two websites intended to help writers achieve plain writing: PlainLanguage.gov and the Center for Plain Language¹²⁵. The former contains a brief and quick reference for writers in a hurry, providing a checklist of fourteen items to bear in mind¹²⁶. Within this checklist there are links which provide simple and brief examples explaining each of the suggested substantive changes¹²⁷. The Center for Plain Language website contains five links intended to provide guidance on writing clearly¹²⁸. Given all of this information, the time needed to read, assimilate, and learn how to apply the information provided would be a lengthy endeavor, requiring hours of dedication. Despite the weaknesses stemming from such overwhelming amount of information, the negative effects can be stymied in various ways.

To a certain extent, the U. S. Guidelines make information easily searchable and “digestible” for readers such that the Guidelines can be used as a go-to resource as opposed to a document that needs to be read from cover to cover. The Guidelines accomplish this by minimizing the reading required of an individual seeking to learn how to write in plain language by referring to suggested changes more than once within the document. For example, plain language principles suggest that conditions and exceptions should follow the main clause. The Guidelines not only mention this principle in a specific section entitled “Place the main idea before exceptions and conditions” but also under two other sections¹²⁹. Furthermore, the Guidelines enable writers to cherry-pick the pages that they need to read, while simultaneously minimizing the amount of information missed by the writer who chooses not to read the entirety of the Guidelines. The Guidelines accomplish this by including a detailed table of contents and hyperlinks. For example, in the section on writing short paragraphs, there is a reference advising readers to also consult the section on “cover[ing] only one topic in each paragraph”¹³⁰. This provides enough information that even if the reader did not continue to that section of the Guidelines for specific tips, they would at least know that in their attempt to write in plain language they should be aiming to have only one idea per paragraph.

¹²⁵ Plainlanguage.gov, www.plainlanguage.gov.

¹²⁶ *Quick Reference Tips*, PlainLanguage.gov, <http://www.plainlanguage.gov/howto/quickreference/>.

¹²⁷ *Document Checklist for Plain Language*, PlainLanguage.gov, <http://www.plainlanguage.gov/howto/quickreference/checklist.cfm>.

¹²⁸ Center for Plain Language, <http://centerforplainlanguage.org>.

¹²⁹ Under the heading “Place words carefully” and in the section on organization. *Federal Plain Language Guidelines*, *supra* note 12, at 7, 56, 60.

¹³⁰ *Federal Plain Language Guidelines*, *supra* note 12, at 67.

3.1.3. Specificity

In light of the above, there is a fine line between harmful complexity and excessive information and helpful specificity. As compared to the U. S. Guidelines, the EU Guidelines provide fewer tips on implementing plain language rules. For example, the section on nominalizations in the EU Guidelines only gives four ways to identify nominalizations, whereas the U. S. Guidelines give eleven¹³¹. It's worth highlighting that the U. S. documents in this study had higher compliance rates with the nominalization rule than the EU documents: four violations in the US documents and six in the EU documents (both collectively). Another area where the EU Guidelines contain fewer tips on applying the guidelines is in the case of avoiding the passive voice¹³². In fact, the EU Guidelines do not even attempt to define or give tips on what passive voice is or how to spot it¹³³. Rather, they give three examples of sentences in passive voice with their corresponding active voice structure¹³⁴. Even though less than 50% of lawyers can accurately identify the passive voice consistently in their writing, the only advice that the EU Guidelines give on this topic is that active voice requires that an agent be mentioned¹³⁵. Given how problematic passive voice is, it seems that there should be much more emphasis and focus placed on trying to help individuals properly identify and fix such sentences¹³⁶. On the other hand, the U. S. Guidelines define both active and passive voice, indicate that passive voice and past tense are not synonymous, and list six sample sentences where passive voice was changed to active voice¹³⁷. Furthermore, the concept of passive voice is described in as simple of terms as possible¹³⁸. Another example of the specificity of the Guidelines can be seen in the way the U. S. Guidelines explain how the main idea should come before any exceptions because it notes that if a sentence starts with the word "except," the sentence does not start with the main idea and should likely be re-worded¹³⁹. From the writer's perspective, this makes compliance and plain language writing simple; all the writer needs to do in editing their work is use "Ctrl + F" to search for the word "except" at the beginning of a sentence and then restructure sentences as needed.

¹³¹ Compare *Federal Plain Language Guidelines*, *supra* note 12, and *How to write clearly*, *supra* note 15.

¹³² *How to write clearly*, *supra* note 15, at 10.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* Hatlen, *supra* note 5.

¹³⁶ Hatlen, *supra* note 5.

¹³⁷ *Federal Plain Language Guidelines*, *supra* note 12, at 20.

¹³⁸ *Id.*

¹³⁹ *Id.* at 58.

Finally, one weakness that seems to present itself in both Guidelines is the lack of simple non-linguistic based tips, such as keyboard shortcuts and simple features of Microsoft Word. This is problematic because it makes arriving at the final result that both Guidelines seek more difficult: comprehensible documents. As acknowledged by the Clarity International newsletter, merely inculcating the knowledge of what plain language is to lawyers will not be sufficient to improve legal writing¹⁴⁰. Rather, the learning process requires this knowledge acquisition to be followed up with guidance on how to implement and put such knowledge into practice¹⁴¹. After all, it's one thing to know that active voice improves clarity, but identifying the use of passive voice and how to change that passive voice structure into active voice is a completely different issue.

Based on all of the above, it seems that having detailed guidelines has certain benefits, but only within certain limits. The use of such detail ensures that those reading the Guidelines will not only have the basic concepts behind plain language writing, but will also be able to implement such suggestions. Furthermore, although there is a real risk associated with having too much information, such risks can be mitigated with well-organized documents.

3.1.4. *Subjective or Objective Measures*

Another potential weakness in both Guidelines is the lack of objective measurements by which writers can assess whether they are complying with plain language principles. The EU Guidelines contain two very objective measures: documents should in general be at most 15 pages and sentences should be 20 words on average¹⁴². The U. S. Guidelines only provide such objective measures regarding paragraphs, indicating that paragraphs should be no more than 250 words, should average 150 words, and should range from 3 – 8 sentences¹⁴³. Although objective measures would make it easier for writers to comply with the Guidelines, using such objective measures leaves less room for adapting to individual circumstances. Another criticism against objective measures has been specifically directed towards the Flesch reading scale, which measures the number of syllables per sentence, invoking the core criticism that such a standard does not accurately measure readability¹⁴⁴. After all, merely having fewer syllables or words per sentence

¹⁴⁰ *Training for Plain Language*, Clarity, 2010, available at, <http://www.plainlanguagenetwork.org/standards%20-%20clarity.pdf>.

¹⁴¹ Clarity International, *supra* note 146.

¹⁴² *How to write clearly*, *supra* note 15, at 6.

¹⁴³ *Federal Plain Language Guidelines*, *supra* note 12, at 66.

¹⁴⁴ Leete, A., *Plain Language Legislation: A Comparison of Approaches*, 1981, p. 4. Masson M. E. J. and Waldron, M. A., *Comprehension of Legal Contracts by Non-Experts: Effectiveness of Plain Language Drafting*, 1994, p. 67.

is not a sure-fire way of improving clarity¹⁴⁵. However, it's important to note that this argument addresses readability rather than compliance.

Subjective Guidelines, on the other hand, focus primarily on the end result: clear communication¹⁴⁶. This method requires writers to have a higher level of understanding of the principles and concepts underlying plain language writing and to make more "judgment calls" in their writing. Such a system is beneficial only if the writers do in fact have the capability to make these "judgment calls" in a manner that will improve clarity in the writing, which arguably they do not given the fact that legal language has yet to be simplified. Given the advantages and disadvantages of both subjective and objective measures, the ideal set of guidelines would combine both of these types of measurements.

3.1.5. *Terms of Art*

One of the major criticisms of the Plain Language Movement relates to the specific nature of the legal field; jargon and technical terms cannot be so easily removed from legal texts¹⁴⁷. In response, plain language principles acknowledge that terms of art cannot be replaced, but that most legal jargon does not meet the definition of "term of art"¹⁴⁸. Despite the importance of this distinction between legal jargon and terms of art for writing in plain language, neither of the Guidelines help writers understand when legal jargon is considered a term of art. An example where guidance would have been helpful is in the IRS notice, where the term "tax credit" is used without any reference to its definition. If the Guidelines had had a provision on this distinction, perhaps the writer would have identified this as mere legal jargon, ultimately opting for a more comprehensible word.

4. RECOMMENDATIONS

Based on the above analysis, it is clear that there are significant barriers that prevent both Guidelines from being maximally effective. To address such low compliance rates and underwhelming short-term results in terms of achieving comprehensible documents, both Guidelines should be updated and reformed. The cornerstone of this reform should include finding a middle ground between the length and detail of the U. S. Guidelines and the simplicity of the EU Guidelines. One

¹⁴⁵ Felsenfeld, C., *The Plain English Movement in the United States*, 1981, p. 411.

¹⁴⁶ Bast, C. M., *Lawyers Should Use Plain Language*, 1995, <http://www.afn.org/~afn54735/language1.html>.

¹⁴⁷ Johanson, S. M., *Counterpoint: In Defense of Plain Language*, 1992, p. 37.

¹⁴⁸ *Id.*

of the major changes that should be made in both Guidelines is to include more practical tips on how to accomplish the end results that they currently suggest. For example, to assist writers in properly identifying and fixing passive voice, the Guidelines should include a tip on how to activate grammar check in Microsoft Word (“MS Word”). Following this simple change in settings, writers will be able to quickly identify passive voice, as Word will underline every instance of passive voice found within the document. Furthermore, MS Word readability tests should be activated in order to give the writer an overall picture of how comprehensible their document is. The information included in this check includes the following: sentences per paragraph, words per sentence, percentage of passive sentences, and a Flesch reading ease score¹⁴⁹. Another simple suggestion could include reminding writers that they can use “Ctrl + F” to search for instances of nominalizations by searching for the indicators included in the Guidelines¹⁵⁰. This same search function could also be used to search for redundant expressions and other words that should be replaced. Furthermore, in accordance with the existing Guidelines, both Guidelines should make it clear that addition of the above tips should be presented in a simple, easy to read format. For example, these tricks and tips could be included in caption textboxes with different formatting, or as a pull quote¹⁵¹. Ultimately, this will help strike the necessary balance between detail and brevity.

Another great way to simplify the large quantities of information present would be to include as the first page of the Guidelines a checklist for writers to consult as a reminder of all the issues and suggestions that they should be thinking about when writing. This checklist would play an essential role in various manners. First, it would prevent the writer from having to read the entirety of the Guidelines and allow them to skip to pages that address certain check boxes that they are unsure of how to implement. In addition, this checklist would encourage writers to check that all of the principles of plain language were followed in their writing. The importance of this rationale cannot be understated. As a twenty-four year old writing this paper, I found myself on numerous occasions writing sentences that violated the very Guidelines that I had spent hours upon hours studying. As I wrote, I found myself writing things such as “as part of” instead of just using the word “in”. I even naturally typed “set forth herein” without even thinking about it, clearly violating the rules against use of archaic language. Fi-

¹⁴⁹ The Flesch Reading Ease score is one of many measures of readability of a text. A Score of 60 or above is considered to be plain language. Stockmeyer, N. O., *Using Microsoft Word's Readability Program*, 2009, p. 46, available at <https://www.michbar.org/journal/pdf/pdf4article1467.pdf>.

¹⁵⁰ These indicators include *-tion*, *-ment*, *-sion*, and *-ance*, and words that follow verbs such *achieve*, *effect*, *give*, *have*, *make*, *reach*, and *take*. *Federal Plain Language Guidelines*, *supra* note 12, at 23.

¹⁵¹ *Federal Plain Language Guidelines*, *supra* note 12, at 52. A pull quote is a visual signpost, frequently used in news articles, that is used to emphasize a quote contained within the text. *Pull Quote*, Merriam Webster, <http://www.merriam-webster.com/dictionary/pull%20quote>.

nally, even though the Guidelines very clearly indicate that abbreviations should not be used, and even though this knowledge is very easy to apply, it took me three drafts before I realized I had abbreviated Internal Revenue Service without first spelling out the entirety of the abbreviation. The fact of the matter is that by the time individuals are writing for the federal government or EU Institutions, they are at an age that they have developed a style of writing and have certain writing habits that are difficult to break without substantial effort.

Another addition that should be made to both Guidelines to improve comprehension is a discussion of terms of art. Such an amendment could involve a list of terms of art together with a definition which could be something similar to the following: “writing [that] cannot genuinely be simplified, and [where] the difficult terms are legally necessary”¹⁵². Furthermore, in order to address the issue of information overload and complexity, the Guidelines should be reviewed with a view to simplifying them. For example, the U. S. Guidelines should remove the long suggestion on word choice and replace it with a simple mandate to choose simple language where possible, followed by numerous examples.

The next big area to be addressed in future Guidelines is to find a way to balance the use of objective and subjective measures, as each comes with benefits and drawbacks. One possible way to balance the disadvantages associated with objective measures is to provide an overarching principle to guide the decision-making of writers. The U. S. Guidelines indicate that the primary and easiest way to write in plain language is to write as if you were having a conversation¹⁵³. This concept is revisited throughout the Guidelines. When discussing the use of examples within writing, the Guidelines acknowledge that the use of examples in spoken English as a manner of clarifying a concept when someone is confused is common and should be conveyed in writing as well¹⁵⁴. There is widespread support in the plain language community for the belief that one of the easiest and most effective ways to clarify legal language is to encourage writing English as it is spoken.

On the other hand, a potential way to address disadvantages of using subjective standards would be to provide for substantive testing to evaluate whether the changes indicated in the subjective measures did in fact increase comprehension. Such substantive testing should involve reading of the document both by other legal professionals as well as members of the target audience of the document. Allowing lawyers to edit the document would provide an opportunity to ensure accuracy of information. Meanwhile, allowing the target audience to read and evaluate the documents would allow for the most accurate assessment of the do-

¹⁵² Some examples to include are the following: *Res judicata*, *laches*, and *proximate cause*. Johanson, *supra* note 147. Another example is the use of INCOTERMS (both the categorization itself and the terms developed under it). Leete, *supra* note 144, at 8.

¹⁵³ *Federal Plain Language Guidelines*, *supra* note 12.

¹⁵⁴ *Id.* at 69.

cuments comprehensibility. Furthermore, if the documents were required to be submitted to review by the intended audience it would necessarily require the writer to identify the intended audience, as required by both of the Guidelines, but for which there is currently no accountability or manner of measuring whether the writer engaged in that mental process before writing.

Finally, the Guidelines could benefit greatly from the implementation of strict editing requirements. This requirement should be two-fold: it should require strict, mandatory editing procedures prior to a document's publication and a mandatory re-write requirement for already published documents. For example, if a federal agency or EU Institution receives a certain number of questions regarding a specific published document, the agency should be given a window of time during which they must amend the questioned portions of that document.

A final way in which both Guidelines could be strengthened would be to increase the focus on plain language and its role in translating. As the world becomes more and more globalized the need for document translation also grows. The current US Guidelines do not address the interaction between plain language and translating, and the EU Guidelines only provide a cursory list of false friends between French and English. It has been argued that by using plain language texts as the basis for a translation, the final translated text will have fewer mistakes and awkward verbatim translations¹⁵⁵. By this logic, both Guidelines should include a section addressed specifically towards legal translators, providing guidance on how they can incorporate plain language principles into their translating practice.

As far as the EU Guidelines in particular are concerned, a change that would be beneficial for the EU Guidelines would be to increase the amount of detail, while making sure not to introduce complexity. Finally, given all of the resources available on PLAIN's website, the EU Guidelines could benefit from developing a Plain English Campaign website. Within the website, things such as examples and links to additional resources should be included.

5. CONCLUSION

Since early on, legal language began to develop in a complex fashion. This made it difficult for the average citizen to understand a legal text. Use of archaic language and complex structures stemmed from a history of mixing of languages at the same time that the legal profession was still developing. Nearly simultaneously, critics of the complexity of legal language began to emerge, arguing that the level of complexity in legal documents was hindering comprehension by the

¹⁵⁵ See generally Swedish Translation Services, <http://www.swedishtranslationservices.com/intro-to-plain-language-for-translators-%E2%80%93-presentation-from-fit-congress/>.

masses. Arguments aimed both at what made legal language complex as well as at why lack of comprehension was so detrimental abounded. Over time, these arguments burgeoned into a full-on movement. The movement focused on using “plain language” that would increase readability of legal texts. Efforts aimed at this goal came from all angles: state governments, local governments, federal government, private organizations, and individual advocates, to name a few. Their efforts included actions such as enactment of legislation, development of guidelines on how to write in plain language, and publicity campaigns.

From these efforts arose the Plain Writing Act in the U. S. and the Clear Writing Campaign in the EU, each accompanied by their own set of guidelines. Each of these Guidelines set forth principles on how to write government documents in plain language. They included guides on topics such as formatting, word choice, and sentence structure. Although at first glance it appears that the governments, through these guidelines, have taken huge strides forward in fostering the use of plain language in government documents, this analysis and supporting evidence indicates that such positive impact may not actually be occurring. The existing Guidelines fail to strike the proper balance between brevity and detail and between objective measures and subjective measures. Thus, the result is continued slow progress in the Plain Language Movement and low compliance rates with the Guidelines. This evidence is further bolstered by the results of this study, which indicated that even those documents that were recognized for their clarity and comprehensibility by the ClearMark Awards still had low compliance rates with the Guidelines¹⁵⁶. In the EU, the story was the same, with the tested documents only minimally complying with the Guidelines. This supports the argument that greater changes need to be made to existing plain language efforts.

One of the biggest weaknesses in both the U. S. and EU Guidelines was the inability to strike the proper balance between detailed and comprehensive guidelines, without the information becoming so overwhelming as to cloud comprehension. This included issues ranging from there not being enough examples to explanations of each suggested technique being too complicated. Another area in which the Guidelines struggled to strike a proper balance was in the use of subjective and objective guidelines, each with advantages and disadvantages. In order to address these impediments to truly clear and comprehensible legal language, both the U. S. and EU Guidelines should be amended. These amendments must be focused on increasing detail of the EU Guidelines and making a more equal amount of objective and subjective measures within each set of Guidelines. Another criti-

¹⁵⁶ Both documents were recognized by the ClearMark Awards, which are awards designed to acknowledge those federal documents that best exemplify plain language. The IRS Notice was a ClearMark Grand Prize winner in 2011. *2011 ClearMark Award Winners*, Center for Plain Language, <http://centerforplainlanguage.org/awards/past-years/clearmark2011/>. The Medical Summary Notice won an award of distinction in 2012 at the ClearMark Awards. *2012 ClearMark Award Winners*, Center for Plain Language, <http://centerforplainlanguage.org/awards/clearmark2012/>.

cal change in the Guidelines will need to be the addition of substantial measures for editing and testing of completed documents to ensure their clarity.

Unfortunately, despite these proposed changes, there are still numerous barriers to improving legal writing and to fully implementing a plain language regime. One significant barrier to increased compliance of documents with their respective Guidelines includes the lack of proper training in plain writing. Regardless of the quality of the Guidelines and all of the supporting documentation, it would require the dedication of a full-time job to truly master and properly execute such plain writing. Clarity International addressed all that is necessary for practitioners in order to properly write in plain language; the practitioner must have the adequate knowledge, skills, and competence¹⁵⁷. Ultimately, practitioners need knowledge on topics such as grammar, general linguistics, readability, user testing, and document design, and must also be able to apply that knowledge in their writing¹⁵⁸. Unfortunately, there is currently no consensus or frequency of plain language specific courses at universities, meaning that upon graduation practitioners have to learn these skills in the field as they go¹⁵⁹. Even in those instances where law schools or other universities have legal writing courses, their focus is not solely on plain language concepts, but rather on “good writing” more generally¹⁶⁰. This is just one area of many where drastic changes could be made in an effort to push the proliferation of plain language forward. Before the Plain Language Movement will be able to truly make strides and improve legal writing, not only must Guidelines be amended in the short-term, but research on what long-term changes need to be made in the legal field more generally must be studied.

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¹⁵⁷ *Training for Plain Language*, *supra* note 140.

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