The Autorité de la concurrence closes an investigation into 23 French bar associations

Published on November 17, 2026

The *Autorité* has closed an investigation into 23 French bar associations and reminds the entire legal profession that lawyers must remain free to opt out of non-compulsory cover included in insurance policies taken out collectively by bar associations.

Five bar associations in eastern France have been asked to ensure compliance by offering their members the option to opt out of non-compulsory cover.

Background

The Investigation Services of the *Autorité de la concurrence* opened an investigation into commercial practices in professional insurance for lawyers following a report by the Directorate General for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF). Twenty-three French bar associations (Albertville, Aix-en-Provence, Amiens, Bordeaux, Dijon, Hauts-de-Seine, Lille, Lyon, Mâcon, Marseille, Nancy, Nantes, Metz, Mulhouse, Paris, Poitiers, Reims, Rennes, Sarreguemines, Saverne, Strasbourg, Thionville and Toulon) were accused of taking out collective professional indemnity and/or protection insurance policies comprising a range of optional cover and of imposing such non-compulsory cover on self-employed lawyers (*avocats libéraux*) practising within their jurisdictions.

- With regard to professional indemnity insurance, 18 of the 23 bar associations investigated offered their members the option to opt out of the main non-compulsory cover, namely public liability insurance and criminal defence cover. While some bar associations do not offer the option to opt out of other non-compulsory cover, the *Autorité* considers that it would not be appropriate to take

action against those associations on this ground alone, given the more limited significance of such cover.

The *Autorité* has asked the five bar associations that do not offer any opt-out (Metz, Mulhouse, Sarreguemines, Saverne and Thionville) to ensure compliance by offering their members the option to opt out of the main non-compulsory cover mentioned above.

- With regard to health and protection benefits, the *Autorité* considers that, under the French law of 31 December 1971, bar associations are responsible for "*administering and using* [their] *resources to provide assistance, allowances or any other benefits granted to* [their] *members* […]*, allocating costs among* [their] *members and pursuing recovery thereof*". As this expressly falls within the purpose of protection insurance policies, bar associations may therefore make such cover compulsory for their members.

Bar associations may require their members to join collective professional indemnity insurance schemes

Lawyers are required to have professional indemnity insurance to practise. Although lawyers may, under the law, take out their own insurance, both the French Supreme Court (*Cour de cassation*) and the former *Conseil de la concurrence* held that bar associations may require their members to join a professional indemnity insurance scheme taken out by their bar association.

Almost all French bar associations offer their members the option to opt out of non-compulsory cover

While bar associations may take out collective professional indemnity insurance, they may not require their members to subscribe to non-compulsory cover under such schemes.

During its investigation, the *Autorité* noted that most of the bar associations investigated offer lawyers the option to opt out of the two main types of non-compulsory cover, namely public liability insurance and criminal defence cover.

Although the *Autorité* regrets that other non-compulsory cover, such as "natural disasters", "personal accident insurance for staff on assignment", "costs incurred for replacement or temporary administration" and "personal belongings and clothing left at any location", is not automatically included in the option to opt out, this cannot, however, be regarded as an anti-competitive practice.

However, the *Autorité* has asked the bar associations of Metz, Mulhouse, Sarreguemines, Saverne and Thionville to ensure compliance by offering their members the option to opt out of the main non-compulsory cover, namely public liability insurance and criminal defence cover. These amendments have been made to the insurance policies taken out by the bar associations concerned.

Protection insurance may be made compulsory

Article 17-6 of the French law of 31 December 1971 sets out the responsibilities of the governing bodies (*conseils de l'ordre*) of the bar associations, which include "*administering and using* [their] *resources to provide assistance, allowances or any other benefits granted to* [their] *members* [i.e. lawyers]*, former members, surviving spouses and children*".

The *Autorité* notes that such responsibilities fall withing the purpose of protection insurance policies. Consequently, the health and protection cover taken out by the bar associations complies with the legal provisions and does not constitute an anticompetitive practice.

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