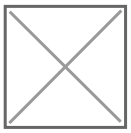
27 May 2010: Opinion issued by the Autorité de la concurrence at the request of chartered accountants

Published on June 09, 2010

**The creation of a lawyer's countersignature does not have an effect of harming competition in the market
for consultation and drafting services for legal documents as provided to companies**



> Version française

A referral for an opinion was made to the Autorité de la concurrence by the Conseil supérieur de l'ordre des experts comptables, as well as by two associations of chartered accountants, the Institut français des experts comptables et des commissaires aux comptes and the Experts comptables et commissaires aux comptes de France, on the issue of the introduction of a lawyer's countersignature for private documents. After this referral, the government tabled a draft bill on the modernization of the regulated judicial and legal professions, with the intention of introducing a lawyer's countersignature.

The introduction of the countersignature and the concerns of the profession of chartered accountants

Taking up one of the proposals of the Darrois report, the government bill on the modernization of regulated judicial and legal professions has established the new possibility for lawyers to countersign a private document. By countersigning, the lawyer confirms having "fully informed" the party receiving his/her advice as to the legal consequences of the private document, with the objective being to improve the legal security of documents signed by companies or individuals and, at the same time, to reduce the risk of disputes by means of enhancing the responsibility of lawyers with regard to the obligation to

provide advice.
The chartered accountants profession is concerned that this new provision, from which it is excluded, could introduce a distortion of competition by notably excluding it from the market to provide advice and the drafting of legal documents for SMEs, and notably for very small companies.

The creation of the lawyer's countersignature does not appear to have substantial negative effects on competition within the market to provide advice and the drafting of legal documents for companies.

Firstly, the Autorité de la concurrence notes that the reservation of the countersigning of private documents strictly to lawyers cannot be described as an "exclusive right", nor can it easily be included amongst the "special rights" according to the provisions of article 106 of the European treaty. Moreover, lawyers do not have a collective dominant position notably in view of the highly atomized nature of the profession, the absence of numerus clausus and the hotly disputed nature of the market to provide advice and the drafting of legal documents. The envisaged mechanism can therefore not lead lawyers to necessarily find themselves in a situation of abusing an alleged dominant position.

Moreover, there is considerable uncertainty as to how widespread the use of documents countersigned by a lawyer will be, as this practice will be positioned between private documents and legal documents: the representatives of the chartered accountants and companies pointed out the limited usefulness that, in their view, the lawyer's countersignature would have for VSE-SME. Moreover, companies seem to feel that the countersignature will increase their costs, which would be particularly damaging for SMEs.

Finally, even assuming that the use of the lawyer's countersignature would become more widespread despite the uncertainties and limits recalled above, the risk of chartered accountants being excluded from the market to provide legal advice to SME cannot be established. Indeed, chartered accountants are in direct contact with companies as a result of their monopoly on the preparation of company bookkeeping. Also, it is often they who direct their customers, particularly SMEs, toward lawyers. Their particular position relative to companies

therefore makes it unlikely that they will be excluded from the market to provide legal services to companies.

In any event, the decision to reserve the countersignature to lawyers can be objectively justified.

Both Union law and national law allow, under certain conditions, certain distortions of competition to be justified if they are indispensable in order to ensure the viability of projects that meet an objective of general interest, provided that these violations are in proportion with the intended objective and that there is no other means that would restrict competition less while also serving to meet the objective under acceptable economic conditions.

In this case, the Autorité has noted that, in its presentation on the reasons for the government bill, the government has indicated that the introduction of the lawyer's countersignature for private documents is intended to strengthen the legal security of corporate documents and to prevent disputes. The objective of heightened legal security resulting from the countersignature could justify it being reserved for legal professionals, for whom legal matters are the main activity and aim of their initial and continuing education, while excluding it from operators who only carry out legal activities on an incidental basis, namely chartered accountants.

It will nevertheless be necessary to ensure that, in practice, this measure actually meets this objective and does not go beyond what is necessary for this purpose.

Consequently, the Autorité de la concurrence is of the opinion that the introduction into French law of a lawyer's countersignature for private documents is not, on the basis of the measure brought before it and of its intended effect, likely to infringe upon competition rules.

> For more details, consult the full text of the opinion 10-A-10 of 27 May 2010 relative to the introduction of a lawyer's countersignature for private documents