In an opinion issued at the request of the French government, the Autorité examines the price increase system of notaries and court bailiffs in the overseas departments and regions

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The Autorité suggests to review in depth the tariff increases applied at the present time.
Noting the disproportion between the planned tariff increases for the French overseas notaries and court bailiffs and the real costs incurred, the Autorité recommends the government a global overhaul of the regulatory framework.

At the request of the Government, the Autorité delivers today an opinion regarding the regulated tariffs of several legal professions (notaries, court bailiffs and lawyers[1]) concerned by increases applicable in the overseas departments and regions (Guadeloupe, Martinique , French Guyana, Réunion and Mayotte). The current increases are **between + 25% and + 40% depending on professions and territories**, compared to the rates applicable in mainland France. The tariffs in question concern, for example, services such as the receipt of an authentic deed of real estate sale or a will, for notarial deeds, and the command to pay rents or the meaning of an enforceable title, for the acts of court bailiffs.

This opinion aims to provide input for the work of reflection carried out by the French Ministry of Justice, Ministry for the Economy and Ministry of the Overseas territories to adapt the principle of "tariff orientation towards costs", enshrined in the positive law by the law n° 2015-990 of 6 August 2015 for growth, activity and equity of economic opportunities ("Macron law"), to the specific situation of these departments.

The Autorité's analysis focused on justifying the increases provided for these overseas tariffs. These increases were introduced to "offset" differences in professional expenses and living costs between these departments and mainland France and would be justified, according to the professional bodies concerned (consulted at national and local level), by overseas territories specific overcosts.

The Autorité de la concurrence thus examined whether such additional costs could be identified on the basis of financial and accounting data from offices (for more details, see §71 of the opinion, “methodological explanations”).

The main findings of the Autorité: the level of increase for notaries and court bailiffs seems disproportionate and does not appear to be justified by equivalent additional costs.

Following its work, the Autorité reached a number of findings:

- Although this is not systematic, some professional expenses (maintenance and repair of the premises, acquisition of software, heating costs, water, electricity ...) may actually involve extra costs overseas in relation to mainland France. However, these differences, which vary by professions and territories, are well below the level of the current increases (for more details, see from §35 of the opinion « main economic findings »).
  The mark-up rates currently applied do not seem to correspond to the actual identified overcosts and not, in any case, to the level of the applied increases. The validity of this historical legacy has never been reviewed to this day.

- This overcompensation of overseas' overcosts ensures particularly high average rates of profitability in some overseas territories, which, combined with a frequently higher volume of activity than in mainland France, allows many office holders to benefit from very large average earnings (up to three times higher than those of their counterparts in mainland France).

- Overall, the price increases lead to an increase in the price paid by overseas users, which can be estimated at about 26 million euros per year including VAT, for notaries, and about 11 million euros including VAT per year, for court bailiffs. Thus, the average overcost incurred by consumers is about approximately 514 euros per notarial deed and 40 euros per act of court bailiff. The effects of these increases are therefore far from being insignificant on the purchasing power of overseas consumers.

- However, the elimination of the system of price increases overnight could make it difficult for a large number of offices in the French overseas departments and regions to face economic difficulties, which leads the Autorité to recommend a stepwise approach allowing professionals to adapt to a possible elimination or mitigation of price increases.

The findings of the opinion lead the Autorité to make two recommendations:

- to review the current system of increases, so that the objective of reasonable remuneration of the professionals and orientation of prices towards the costs, provided for by the "Macron law", is more respected, and that the overseas consumer does not suffer a tariff surcharge that is not proportionate to the additional costs;

- to develop a method for determining the rate of increase based on objective elements, which takes into account the costs incurred by professionals and criteria such as the cost of living differential between French overseas departments and regions and mainland France and changes in volumes of activity of Overseas offices.

The Autorité's recommendations:
to overhaul the regulatory framework in order to end the inadequacy between the observed additional costs and the practiced increases.

The Autorité then invites the Government to:

- recalibrate the rates of increase, on the basis of a harmonized method taking into account the objective additional costs, ie of additional costs really identified and supported by the professionals, at the level of each profession and in each territory. The savings made by each user could, if this reform is implemented, be of the order of 20 to 30% per act realized by notaries and court bailiffs (for more details, see §132 of the Opinion).

- open the debate on the management of these tariff increases, which are now supported by the sole overseas users, and which could, if maintained, be financed by other means, for example via the inter-professional fund of the access to law and justice (fonds interprofessionnel de l'accès au droit et à la justice). This solidarity fund is registered in the texts but has never been activated yet.

- stagger over time the implementation of any tariff reform, in order to preserve the economic balance of overseas offices in the short term and to offer professionals the opportunity to adapt to the new scales applicable over time.

- identify the possible factors of lack of attractiveness of these professions in the overseas departments and regions, which up to now have been put forward to justify the rate increases, in order to create incentives to the installation.

To see the details of the recommendations made by the Autorité, see from § 155 of the Opinion.

[1]For the latter, these are the only services subject to regulated tariffs: divestments (transactions ending an undivided ownership), licenses (sales by auction of undivided property), judicial security (provisional measures) and real estate seizures (legal proceedings enforcement, directed at the enforcement by a creditor of real estate for resale).

> See the full Opinion 19-A-09 of 11 April 2019 regarding regulated legal professions' tariffs in the French overseas departments and regions (in French)

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