

29 February 2016: Notaries, bailiffs and judicial auctioneers

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In application of the "Macron law", the Autorité de la concurrence is launching a public consultation in the context of the drafting of an opinion on the freedom of establishment of notaries, bailiffs and judicial auctioneers.

This opinion will propose a map before the French Minister of Justice setting out the areas where offices run by these professionals could be freely established.

> *Version française*



In brief

In accordance with the provisions of Article L. 462-4-1 of the French Commercial Code (*Code de commerce*), as set out in Article 52 of Law 2015-990 of 6 August 2015 for the growth, activity and equality of economic opportunities, it is the task of the *Autorité de la concurrence* to draw up recommendations for the French Ministry of Justice on the freedom of establishment of notaries, bailiffs and judicial auctioneers.

These will take the form of an opinion, which will include a proposed map setting out:

- Areas where the professionals concerned could freely establish themselves, on the basis that the establishment of offices in these areas would appear useful in terms of enhancing the proximity or provision of services to the population.
- Areas where the establishment of additional offices would be liable to cause harm to the continuity of operation of existing offices and compromise the quality of service provided and where the French Minister of Justice might refuse applications for establishing offices on the *Autorité's* advice.

In order to contribute to the drafting of the map of these areas, interested stakeholders (consumer protection associations, regulatory bodies for specific professions, the professional bodies of the parties involved, as well as anyone fulfilling the conditions required to practise one of the professions involved) are invited to submit their comments to the *Autorité de la concurrence* by 31 March 2016.

THE PROVISIONS OF THE MACRON LAW AIM TO INCREASE FREEDOM OF ESTABLISHMENT FOR THE PUBLIC AND MINISTERIAL OFFICERS CONCERNED

Further to the *Autorité de la concurrence's* recommendations set out in Opinion 15-A-02 (see summary in box at base of page), Article 52 of Law 2015-990 supplements the pricing reform and envisages a reform of the conditions for

setting up in the professions in question. Article 52 consecrates the principle of freedom of establishment in areas where setting up offices would seem useful in terms of enhancing the proximity or provision of services. To this end, it provides for the drawing up of a map for each of the three professions concerned, approved by the French Minister of Justice and Minister of the Economy.

The map must cover:

- Areas where the professionals concerned may freely establish themselves, on the basis that the establishment of offices in these areas would appear useful in terms of enhancing the proximity or provision of services;
- Areas where the establishment of additional offices would be liable to cause harm to the continuity of operation of existing offices and compromise the quality of service provided.

In application of the new Article L. 462-4-1 of the French Commercial Code, as resulting from Article 52 of Law 2015-990, the Autorité's mission is to provide the Minister of Justice with an opinion on the freedom of establishment of notaries, bailiffs and judicial auctioneers. This opinion must include recommendations aimed at improving access to public or ministerial offices with a view to a progressive increase in their numbers. It should also include a qualitative assessment of offices based on criteria of gender and age. These recommendations should be accompanied by a proposed map of the territory, setting out the two types of area described above.

The criteria used by the Autorité in drawing up these maps are set out in Decree 2016-216 of 26 February 2016 on the establishment of the map envisaged in section I of Article 52 of Law 2015-990 of 6 August 2015 for the growth, activity and equality of economic opportunities. They take into account the level and developmental perspectives of the provision of services: number of offices in place, turnover of existing offices over the last five years (distinguishing between levels of salary and fees respectively), number of professionals appointed in these offices, number of vacant offices and age of practising professionals. They are also based on the prospect of development of demand: demographic characteristics and trends, significant changes in economic situation which could have a direct impact on the professionals' activity (changes in real estate and

property markets, number of marriages and deaths, activity in the civil and criminal courts, the rental property market and activity in the commercial courts in terms of judicial liquidation and redress).

THE MAIN CHALLENGES IDENTIFIED AT THIS STAGE BY THE *AUTORITE*, ON WHICH CONTRIBUTIONS WILL BE PARTICULARLY WELCOME

The *Autorité*'s task is of a unique nature. On account of this, the *Autorité* will pay close attention to all remarks submitted by the stakeholders involved, whether they relate specifically to how the maps will be drawn up or to underlying issues.

In the context of drawing up the maps, the *Autorité* has already identified the following issues on which contributions would be particularly useful:

- For each profession concerned, what geographic scaling for the areas in question should be used? (*communes*, cities, catchment areas, *départements*, the areas of jurisdiction of regional courts, appeal courts, etc.);
- What is the geographic location of offices' current customers (by profession) and what is the expected location once new offices are established?
- How should the situation of areas that currently do not have an office but are covered by branch offices be assessed (should they be considered as areas where establishment should be free or limited?)
- How, and in relation to which criteria, should areas of free establishment and areas of limited establishment be identified?
- Given the identification of the aforementioned two types of area, how should the provision by existing professionals be taken into account [is it necessary to take into account only non-salaried licensed professionals, salaried professionals and/or other salaried workers in offices that are likely to benefit from freedom of establishment such as assistant notaries and clerks]?
- How should the impact of the creation of offices in an area be assessed in terms of the professionals who are already there (in particular with regard to the continuing operation of existing offices), on one hand, and customers on the other (in particular in terms of quality of service)?
- What information and criteria are relevant in identifying a suitable rate of office establishment for an area?
- What means might be envisaged to allow better access for women and young people to ministerial offices?

**CONTRIBUTION TO THE PUBLIC CONSULTATION SHOULD BE SUBMITTED BY
31 MARCH 2016 AT THE LATEST**

In accordance with the provisions of Article L. 462-4-1 of the French Commercial Code, the aim of this communication is to enable the *Autorité* to gather comments from:

- official consumer protection associations;
- regulatory bodies for the professions concerned;
- anyone fulfilling the conditions required to practise one of the professions concerned¹.

The professional associations concerned, and professionals aspiring to practise the professions concerned may likewise submit remarks.

Observations should be submitted to the Autorité de la concurrence by 31 March 2016 at the [email address available by clicking on this link](#).

The Autorité de la concurrence specifies that contributions to the public consultation may be treated as confidential and only published with the contributor's agreement.

In brief

In its 2015 Opinion, the *Autorité de la concurrence* highlighted the need to increase the freedom of establishment of notaries, bailiffs and judicial auctioneers

In its [Opinion 15-A-02](#) the *Autorité de la concurrence* stated that restrictions on access to the professions of notaries, bailiffs and judicial auctioneers, particularly inherent in the involvement of the representative associations of the professions concerned in schemes for the creation or transfer of offices, had led to relative stabilisation in the number of offices of the professions concerned over the preceding ten years, with the average number of partners per offices remaining at a low level, in contrast to the 4% growth in the French population between 2005 and 2014. In particular, for notaries, there was a clear lack of proportion between the number of graduates and the number of notaries who could set up or join offices, as well as an increase in the average age of these professionals.

Without disputing the need to maintain a certain territorial coverage, but at the same time encouraging the regrouping of professionals at the heart of networks and the entry into the market of professionals conversant with new technologies or new management methods, the *Autorité de la concurrence* found that it was necessary, in the interests of consumers and the proper administration of justice, to set up a regulated freedom of establishment for these professionals. It therefore recommended that the principle of freedom of establishment be retained but that this freedom should be tempered in some areas where an excessive concentration of offices would in fact compromise the viability of the existing offices and the quality of service provided.

[Link to press release of 13 January 2015](#)

¹These persons (who must meet the conditions of nationality, aptitude, repute, experience and insurance required in order to be appointed) are asked to attach to their remarks a copy of the certificate attesting to the fact that they are professionals who are practising, or likely to be practising in the near future, in the professions in question.

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