9 June 2016: Freedom of establishment for notaries

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Proposed map of progressive establishment of new notarial offices

The Autorité de la concurrence identifies, on a total of 307 areas throughout the territory, 247 areas where it would be beneficial to create notarial offices, which would also lead to enhanced territorial coverage. It recommends the liberal establishment of 1650 new notary offices by 2018.



> Version française

In accordance with Law 2015-990 of 6 August 2015 for the growth, activity and equality of economic opportunities (also known as the "Macron law"), the *Autorité de la concurrence* proposes a map for the establishment of new notarial offices to the French Ministers of Justice and Economy. This map aims at improving proximity or provision of notary services to the population.

Three objectives have guided the development of this proposition:

1. To improve territorial coverage, in order to bring notaries closer to the population and the companies located in areas currently poorly served by public transportations;

2. To open up the profession, giving younger people the opportunity to set up and offer new services;

3. To preserve the economic viability of existing offices, especially in rural areas.

The *Autorité* recommends an increase of 20% in the number of liberal notaries by 2018. The overall total of incumbents or notary offices' partners will be increased to around 10,250 (compared with the current 8,600). Even taking into consideration the number of salaried notaries, this figure will remain below the one suggested by the Superior Council of French Notaries (*Conseil Supérieur du Notariat*, "CSN") in 2008, which had publicly committed to reaching 12 000 notaries in 2015.

Across the entire country, the *Autorité* has identified 247 free-establishment areas (out of a total of 307 areas). The 1,650 new offices are shared out proportionally according to the needs identified locally.

These recommendations are the first stage in a progressive process which aims to modernize and feminize the profession, to progressively balance the number of notaries in accordance with the needs of the French economy, by 2024, and to promote the establishment of many graduates aspiring to renew the offer of service, without threatening the viability of existing offices.

As the French Minister of Justice is the guardian of freedom of establishment for notaries, the *Autorité* has proposed to him 23 further recommendations, in

An opinion by the Autorité requested in the context of the provisions of the "Macron law".

As public and ministerial officers, notaries are appointed by the French Minister of Justice. The number of notarial offices has barely increased in a decade: 4,571 offices in 2015, compared with 4,507 in 2005, an increase of +1.42% in 10 years. The stagnation is explained by the rules to entry prior to the Macron law, which led to a disparity between the supply of notarial services (stability in the number of offices) and the demand for legal services (a large growth in the needs of the French population and businesses).

The *Autorité* had already acknowledged this point in its opinion of 9 January 2015, which largely inspired the modernizing of the rules to entry for public and ministerial positions decided by the legislator in adopting the law.

Its new advisory missions[1] bring the *Autorité*, today, to issue an opinion on the freedom of establishment for notaries. Within this context, recommendations are made to the government to improve the access to offices, with particular regard to the potential differences in age or gender, to reinforce the territorial cohesion and to gradually increase the number of notaries across the country. These recommendations are based on a thorough analysis of the economy and the demography of the profession, closely tied in with the areas and needs, as well as on 364 responses to the public consultation launched last February.
This new plan does not affect the Bas-Rhin, Haut-Rhin and Moselle departments, where the notary system is still governed by rules derogating from common law.

The identification of 247 free-establishment areas

The *Autorité* proposes to the government that the following map should be adopted:



This map identifies 'free-establishment areas' (in green) and 'regulated-

establishment areas' (in orange).

In the green areas, '*the setting up of offices appears to be useful to strengthen the proximity and/or the services offered*'. Applicants who meet the conditions provided by the law may be appointed as notaries within the recommended time frame for the creation of offices. The law states that this time frame must be *'compatible with a progressive increase in the number of professionals in the areas identified'*, in order not to have an adverse effect on the activities of existing offices.

The *Autorité* has identified 247 green areas. Across the entire country, it recommends the appointment of 1,650 incumbent notaries or notary offices' partners by 2018. This is the first stage of a process towards the gradual rebalancing of the number of notaries in accordance with the needs of the French economy by 2024. These recommendations will be revised every two years.

The number of creations must also be compared with the more than 12,000 notaries who graduated between 2005 and 2015. In the absence of the creation of offices, the potential renewal of these generations (about 1,800 places in the next 10 years) appears very insufficient in order to be able to offer a liberal exercise to these qualified professionals. However, their establishment provides an opportunity to strengthen the territorial coverage in the areas that are currently not well-endowed (large agglomerations and coastal areas), and will contribute to an improvement in the services offered, both quantitatively and qualitatively (reduction in file processing time, increased customer choice, diversification in the supply of notarial services).

These recommendations are adjusted for each area. They are designed proportionally to the identified local needs, in order to take full account of the potential of the area but also of the situation of existing offices. In the area corresponding to the Parisian agglomeration[2] for example, where these needs are the most important, the Autorité recommends the free establishment of 159 new notaries by 2018. Around Montauban , however, an area of minor needs, the establishment of 5 additional liberal notaries is, for example, recommended for the same period. A large number of areas are involved, including around small

agglomerations, like those of Sablé-sur-Sarthe or Aurillac , for example, where, respectively one and two liberal establishments are recommended by 2018.

Procedure for the submission of applications in green areas

Applicants wishing to setup in green areas can submit their application during a period of eighteen months from an upcoming date to be set by the French Minister of Justice. Completed electronically on the French Minister of Justice's website, these applications will be time stamped. Applications for establishment will be granted according to the recommendations, following their date of receipt . Applicants can apply in various green areas, but they may only apply once in each area.

Supervision of establishments in 60 orange areas

The Autorité has also defined 60 orange areas, in which there are no needs for the creation of offices a priori.These are essentially rural sectors: the Commercy , Guingamp or Guéret areas , for example, will be regulated-establishment areas. Certain overseas sectors will also be classified as orange areas, such as the areas of La Trinité (Martinique) or Mayotte .

The establishment of new notaries will not, in principle, be prohibited in the orange areas, but they will require prior review to eliminate the risk of 'threatening the continuity of service from the existing offices and compromising the quality of the service provided'. The French Minister of Justice is always entitled to accept an application. A refusal must be justified 'in terms, in particular of the characteristics of the area and the level of economic activity of the professionals concerned'. Any refusals will be made after an opinion by the Autorité. In the context of this opinion, the Autorité will, in the two months after the submission of a completed application, carry out a case by case review of the potential local supply and demand for notarial services in the area. This opinion will be made public.

Ultimately, the increased supply of notaries appears more useful around certain agglomerations and in coastal areas, where the density of notarial coverage is minimal. Conversely, the 60 regulated establishment areas are mainly located in

rural sectors and in certain overseas territories. The Autorité's proposal, consequently aims at ensuring the preservation of the notarial presence throughout the entire territory.

The definitive map will be published shortly by the Ministers of Justice and Economy, based on the Autorité's proposal.

The Autorité's other recommendations

To ensure the success of these reforms and as requested by the legislator, the Autorité formulates a series of recommendations to the government, aiming at:

- optimizing the operation of free establishment, reviewing the application prior to the establishment in high potential areas, increasing fluidity, systematizing the transmission of information, especially statistic ones, to the Autorité, and considering the extension of the system to the three departments of Alsace-Moselle;

- reducing barriers to entry for establishment's applicants, particularly those concerned with training, appointment procedure, access to financing or essential services, and advertising regulations;

- increasing the diversity and quality in notarial services, by strengthening the guarantees of efficiency and independence of the disciplinary and ethical controls;

- improving women's access to the offices, through the provision of gender statistics and the enhancing of gender equality in professional representative bodies, particularly at a national level;

- improving young people's access to offices, by encouraging the intergenerational transmission of experience (mentoring or tutoring), and by making the inter-professional funds (responsible in particular for granting aids for establishment in certain areas of the territory) for access to law and justice quickly available.

In conclusion, these 23 recommendations aim at strengthening territorial cohesion of services, improving gender equality in accessing notarial offices,

better integrating young graduates into the notarial profession, lowering the barriers to entry for the applicants' establishment, and ensuring continuity in quality of service, for the benefit of notarial services' users.

[1] Article L. 462-4-1 o the Franch Commercial Code, and Article 52 of the Macron Law

[2] For 101 municipalities and 5,964,141 inhabitants, the Paris establishment area accounts for, in 2013, 725 notaries with tenure or associates in 287 offices. For around 334,000 deeds, these offices made an average turnover per liberal notary of 1,250,000 to 1,500,000 euros.

[3] For 167 municipalities and 221,462 inhabitants, the Montauban establishment area accounts for, in 2013, 35 notaries with tenure or associates in 25 offices. For around 14,700 deeds, these offices made an average turnover by liberal notary of 500,000 to 750,000 euros.

[4] For 33 municipalities and 38,519 inhabitants, the Sablé-sur-Sarthe establishment area accounts for, in 2013, 6 notaries with tenure or associates in 4 offices. For around 2,300 deeds, these offices made an average turnover per liberal notary of 500,000 to 750,000 euros.

[5] For 96 municipalities and 82,451 inhabitants, the Aurillac establishment area accounts for, in 2013, 11 notaries with tenure or associates in 5 offices. For around 5,000 deeds, these offices made an average turnover per liberal notary of 500,000 to 750,000 euros.

[6] If the number of applications for the creation of offices registered in the 24 hours following the application opening date is superior, for one area, to the recommendations, the order of the applications will be determined by lots, in the presence of a representative of the Superior Council of French Notaries ("CSN"), as written in the upcoming French Ministry of Justice order.

[7] For 134 municipalities and 44,495 inhabitants, the Commercy establishment area accounts for, in 2013, 9 notaries with tenure or associates in 6 offices. For around 3,500 deeds, these offices made an average turnover per liberal notary of less than 500,000 euros.

[8] For 40 municipalities and 52,453 inhabitants, the Guingamp establishment area accounts for, in 2013, 6 notaries with tenure or associates in 6 offices. For around 2,800 deeds, these offices made an average turnover per liberal notary of 500,000 to 750,000 euros.

[9] *For 260 municipalities and 120,872 inhabitants, the Guéret establishment area accounts for, in 2013, 21 notaries with tenure or associates in 16 offices. For around 9,900 deeds, these offices made an average turnover per liberal notary of less than 500,000 euros.*

[10] *For 10 municipalities and 81,475 inhabitants, the La Trinité establishment area accounts for, in 2013, 3 notaries with tenure or associates in 1 office. For between 750 - 1250 deeds, these offices made an average turnover per liberal notary of 500,000 to 750,000 euros.*

[11] *For 17 municipalities and 212,645 inhabitants, the Mayotte establishment area, in 2013, does not account for any offices.*

> See summary of opinion 16-A-13

> See full opinion 16-A-13 of 9 June 2016 regarding the freedom of establisment for notaries and a proposed map of establisment areas, accompanied by recommandations on the pace of new notarial offices' creation

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