23 November 2017: Freedom of Establishment for Notaries - Intermediary assessment

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The *Autorité* has reviewed the number of notary offices established in accordance with the "Macron Law"
in free-establishment areas ("green" zones)

It has published 304 opinions regarding applications to establish notary offices
in regulated-establishment areas ("orange" zones)

Background

Under the powers entrusted to it by the Law of 6 August 2015[1], in June 2016 the *Autorité* proposed a zoning map defining:

- areas in which notary offices may be established freely (247 "green" areas, in which 1,650 notaries may set up practices by 2018);

- areas regulated ex ante by the Ministry of Justice (60 "orange" or "regulated-establishment" areas).

A joint order by the Ministers of Justice and the Economy on 16 September 2016[2] endorsed the *Autorité*'s proposed map

An order of the French Administrative Supreme Court (*Conseil d'État)* of 16 October 2017[3] ruled on the lawfulness of the act. It confirmed the analysis carried by the *Autorité de la concurrence* in its Opinion.

Review of the appointment procedure in "green" zones

As of 17 November 2017, a year on from the start of the time-stamping procedure designed to distinguish between candidates seeking to establish notary offices in "green" areas, here are figures on appointments , in view of the appointments orders published in the Official Journal:

693 notary offices have been created, enabling 720 private notaries to be appointed (including 62 notaries that were already practising);

25 of the offices established have been annulled, since their office holder failed to get sworn in (25 candidates);

- This gives a "net" result of 668 new offices and 633 new notaries.

The Order of 16 September 2016 set a target of 1002 new offices to be established within 12 months of applications being opened and 1650 new notaries for the 2016-2018 period. To this day, 67% of the desired goal was achieved, for creation of offices in the first year, along with 38% of the target number of notaries to be appointed over two years.

The Order of 16 September 2016 provides that, if the number of professionals appointed as at 17 November 2017 is lower than 1650 – which it is – then further applications may be examined until the target is reached. The creation of new offices will, consequently, continue until 1650 new private professionals are appointed in the 247 green zones.

With regard to the figures for newly appointed notaries, in particular those who already held an office and whose names were drawn to receive a second office, the *Autorité* notes that the Conseil d'État has twice ruled[4] that the *Autorité* was referring to the establishment of new private notaries in its area-by-area recommendations for the period 2016-2018 and that consequently, if the number of such new professionals remains below the recommended number in any of the relevant areas, the Government should establish the additional notary offices

required.

The *Autorité* is convinced that the Ministry's services are working hard to ensure the appointment of the 1650 planned new private notaries as soon as possible.

Publication of opinions on applications to establish notary offices in "orange" areas

Since December 2016, 304 applications to establish notary offices in regulated-establishment areas have been referred to and advised on by the Autorité. The Law provides indeed that if the Ministry of Justice intends to turn down an application to establish an office in these "orange" areas, it must refer the case to the *Autorité* for opinion. The *Autorité* reviews the potential for notarial activity in the relevant area within two months of the full application having been filed.

Between 16 January and 18 July 2017, the *Autorité* issued a reasoned opinion on each of the 304 applications to the Minister of Justice:

- In 78% of these opinions, the *Autorité* opposed the requested establishment, considering that it might adversely affect the viability of existing offices in the area and compromise the quality of service provided.

- In 22 % of opinions, concerning 17 (out of 60) regulated-establishment areas, the *Autorité* considered that an application to establish one new office could be approved, thereby enabling a new notary to set up a private practice. Its favourable Opinions are therefore conditional: due to the significant number of applications in each of these areas, a selection process will be necessary in order to approve only one applicant in each area. This mission is the responsibility of the Minister of Justice.

The Minister has so far only authorised the establishment of one office in the "orange" area of Saint-Pierre-et-Miquelon. The Minister of Justice will thus take decisions regarding the other applications to establish notary offices soon.

The *Autorité* has today published a version of its opinions on these 304 applications that is public, anonymised and complies with trade secrecy. These opinions are also intended to be published on the Ministry of Justice website[5].

>See the 304 opinions


Autorité de la concurrence

Liberté d'installation des notaires

Avis rendus par l'Autorité de la concurrence au ministre de la justice entre le 16 janvier 2017 et le 18 juillet 2017 sur les demandes d'installation concernant les zones « orange »

Numéro de la zone	Nom de la zone	N° Saisine	N° avis rendu
8051	Alençon	16/0119AN	17-AN-71
		16/0120AN	17-AN-168
		17/0134AN	17-AN-280
8309	Ambert	16/0139AN	17-AN-69
		17/0078AN	17-AN-110
7507	Auch	16/0150AN	17-AN-35
		16/0160AN	17-AN-37
		16/0161AN	17-AN-61
		16/0162AN	17-AN-62
		16/0163AN	17-AN-63
		16/0165AN	17-AN-66
		16/0166AN	17-AN-93
		16/0167AN	17-AN-114
		17/0085AN	17-AN-111
		17/0086AN	17-AN-150

Revision of the map in 2018

The *Autorité* shall continue to pay close attention to the implementation timetable for the reform. For its own part, it is planning to start its work on revising the map in the first half of 2018. As provided for in the Law, it will run a large-scale public consultation exercise to this end, and all persons who meet the criteria to exercise this profession will be invited to take part, along with professional representative bodies and official consumer protection associations.

On this occasion, it will proceed to a quantitative and qualitative assessment of the application of the first zoning map and will issue any useful recommendation aiming at improving the access procedure to notary offices for the 2018-2020 period.

[1]Law. 2015-990 of 6 August 2015 for Growth, Activity and Equal Economic Opportunities (known as the "Macron Law").
[2]Order of 16 September 2016, taken under Article 52 of Law2015-990 of 6 August 2015 for Growth, Activity and Equal Economic Opportunities.
*[3]**Conseil d'État, 6th and 1st chambers, 16 October 2017, No. 403815.***
*[4]**Conseil d'État, 6th and 1st chambers, 19 May 2017, No. 406017**, considering No. 7; Conseil d'État, 6th and 1st chambers, 16 October 2017, No. 403815, considering No. 19: "the Ministers of Justice and the Economy, following the first*

*series of appointments of newly created offices and, in particular view of the number of **new** professionals appointed, shall be responsible for issuing, where relevant, without awaiting the end of the two-year period established by Law, an additional order allowing the establishment of additional offices" (bold added).*

[5] ***https://opm.justice.gouv.fr/cartographie/notaire***

> Press contact: Chloé Duretête Tel +33 1 55 04 01 20 / EMail