The Autorité de la concurrence will develop new map proposals for the establishment of court bailiffs and judicial auctioneers

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Its new recommendations will take account the short-, medium- and long-term impact of the Covid-19 pandemic on the activity of these two professions.

Background

In December 2019, the *Autorité* issued two opinions relating to the freedom of establishment of court bailiffs and judicial auctioneers, in addition to two proposed maps of establishment areas, accompanied by recommendations relating to the pace of creation of new offices for each of these two professions (see the press release of 2 December 2019).

In a letter dated 22 July 2020, the French Government asked it to develop new map proposals in order to take into account the exceptional context created by the Covid-19 crisis and its impact on the economic activity of these professions.

The previous maps proposed by the *Autorité*, developed in December 2019, were created prior to the health crisis that started in our country in March 2020, and could therefore not take into account the effects of this crisis on the economy of the two professions.

New map proposals as an extension of the investigation carried out in 2019

According to the terms of Article 52 of Law no. 2015-990 on Growth, Activity and Equal Economic Opportunities ("Macron Law"), *"court bailiffs and judicial auctioneers may establish themselves freely in the areas [...]determined jointly by the Ministry of Justice and the Ministry of the Economy, **on the proposal** of the* Autorité de la concurrence*, in application of Article L. 462-4-1 of the French Code of Commercial Law (*Code de commerce*)"* (bold letters added).

In accordance with the legal definition of a decision made "on the proposal" of an authority, by which the author is required to make a decision according to the initial proposal or any subsequent proposal that it has the possibility of requesting, or to not make a decision at all[1], the French Constitutional Court (*Conseil constitutionnel*), in its Decision no. 2015-715 DC of 5 August 2015, considered that: *"if the zoning map mentioned in Paragraph I of Article 52 is established on the basis of a **proposal** by the* Autorité de la concurrence*, the Ministry of Justice and the Ministry of the Economy shall alone be competent in stopping it, **where applicable, after requesting a new proposal from the*** **Autorité de la concurrence***"* (Recital 72, bold characters added).

These requests for new proposals are therefore an extension of the two procedures opened by the *Autorité* in April 2019 to revise the zoning maps relating to the establishment of court bailiffs and judicial auctioneers (see the press release of 19 April 2019).

For reference, in December 2019, the *Autorité* recommended that the Ministry of Justice and the Ministry of the Economy enable the free establishment of 100 new bailiffs (in 32 green areas) and 3 new judicial auctioneers (in 3 green areas) during the two years the new map is in force. It also recommended adding the remainder of the recommendations not met during the previous period. In parallel, the *Autorité* also defined 67 and 96 orange areas respectively in which it did not, in principle, identify any need for the creation of offices for court bailiffs

and judicial commissioners.

However, the scale of the economic effects of the health crisis associated with the Covid-19 pandemic justifies the re-examination of these initial proposals.

New map proposals within a special economic context

Since mid-March 2020, court bailiffs and judicial auctioneers, like many other professions, have not been spared the effects of the unprecedented health crisis facing our country. Some offices saw their activity slow down significantly during lockdown despite the measures taken to continue their activities remotely within a paperless environment.

As written in the texts, the *Autorité* will make its new recommendations taking account of "*significant changes to the economic situation which has a direct impact on the activity of professionals*" [2]. To this end, it will analyse all of the available quantitative and qualitative data in order to assess fluctuations in the activity of the relevant professions caused by this crisis, and evaluate their outlook for the months and years ahead.

As with previous such exercises, the aim of the *Autorité* is to obtain as precise and objective an inventory as possible of the economic situation of court bailiffs and judicial auctioneers, especially those whose offices were recently created, in order to put its recommendations to the Government.

[1] French Administrative Supreme Court (*Conseil d'État*), Div., 10 March 1950, Dauvilier, Rec. p. 157; Legislative Guide (*Guide de légistique*), 3rd edition updated in 2017, p. 298.

[2] Article 1, I, 2° of Decree no. 2016-216 of 26 February 2016 relating to the establishment of the map instituted in I of Article 52 of Law no. 2015-990 of 6 August 2015 on Growth, Activity and Equal Economic Opportunities.

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