Freedom of establishment of notaries and commissioners of justice: proposed maps for 2023-2025

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The *Autorité* recommends the private establishment of 600 new notaries and 33 new commissioners of justice by 2025

Background

In accordance with Law 2015-990 of 6 August 2015 on growth, activity and equality of economic opportunities (known as the "Growth and Activity Law"), the *Autorité de la concurrence* is proposing to the Ministers of Justice and the Economy maps of establishment areas for notaries and commissioners of justice, together with recommendations on the pace of creation of new offices for the period 2023-2025.

A first opinion for the new profession of commissioner of justice

As of 1 July 2022, commissioners of justice are the public and ministerial officers who have replaced court bailiffs and judicial auctioneers. They will exercise the competences formerly entrusted to these two professions within the jurisdiction of the court of appeal of the headquarters of their office.

This is therefore the first time the *Autorité* has issued an opinion on the freedom of establishment of judicial commissioners. Since 2016, it has issued two opinions and one deliberation on the freedom of establishment for each of the two former professions.

Targets for the appointment of new professionals achieved under the latest maps

As far as notaries are concerned, the appointment targets set in the first two maps were almost met. The backlog amounted to 33 unfilled appointments for the 2016-2018 map (the target was 1,650 appointments) and around 87 for the 2018-2020 map (the target was 733 appointments). Appointments are still underway for the 2021-2023 map, but **the target of 250 new notaries will be reached before the map expires (end of August 2023)**.

The appointment targets of the first maps for court bailiffs and judicial auctioneers (2017-2019) were not met. The backlog was estimated at around 59 court bailiffs (out of 202 professionals to be appointed) and six judicial auctioneers (out of 42 professionals to be appointed). **The objectives of the second maps (2021-2023)**, which are more moderate due to the impact of the health emergency on the professions concerned, **have already been achieved (50 new court bailiffs and no new judicial auctioneers)**.

The Autorité finds that the notarial profession is doing particularly well, while the profession of commissioner of justice faces a number of challenges

The notarial profession continues to generate excellent economic results, thanks primarily to the particularly buoyant property business in recent years. This favourable situation has facilitated the development of the offices created since 2017. Nevertheless, the slowdown in the property market since mid-2022 could restrict the activities of notaries over the next two years.

The new profession of commissioner of justice is in the process of being structured, and the consequences of the health emergency are compounding the structural difficulties it is facing. In particular, the *Autorité* notes that staff numbers are falling, as is the profitability of the offices and the demand for services from these professionals.

The Autorité issues new recommendations for appointments for the period 2023-2025

In accordance with the need for gradual progress anticipated by the Legislator, and taking account of inflation since 2017, the *Autorité* recommends that, over the period of validity of the next maps (2023-2025), **only 600 new notaries should be established in 168 free establishment areas (out of a total of 293 areas), and only 33 new commissioners of justice should be established in 13 free establishment areas (out of a total of 99 areas).**

The recommendations and observations of the Autorité to improve access to offices

The *Autorité* accompanies its proposal for a map for notaries and commissioners of justice with qualitative recommendations aimed at improving the implementation of the Growth and Activity Law, while welcoming the major reforms undertaken to respond to its previous recommendations (greater transparency in the procedure for appointments in free establishment areas, introduction of an electronic drawing of lots, etc.).

1. Revision of establishment maps for notaries and commissioners of justice

As public and ministerial officers, notaries ad commissioners of justice are appointed by the Minister of Justice to an existing, vacant or established office. The Growth and Activity Law introduced a principle of regulated freedom of establishment, with a view to lowering the barriers to entry into these professions and adapting the territorial coverage to the needs of the economy.

Within the framework of this provision, the *Autorité's* [1] mission is to propose to the Government, every two years, a map [2] identifying, on the one hand, areas in which the establishment of professionals is effective ("green areas") [3] and, on the other hand, areas in which the establishment is controlled ("red areas") [4].

A. A first opinion for the new profession of commissioner of justice

1. The creation of the profession and the results of previous maps

As of 1 July 2022, commissioners of justice are the public and ministerial officers who have replaced court bailiffs and judicial auctioneers. They have a monopoly on actions previously entrusted to court bailiffs and judicial auctioneers. They can serve documents, enforce court decisions, make findings and carry out inventories, valuations and sales at judicial auctions.

Since 2016, the establishment of court bailiff and judicial auctioneer offices has taken place in two waves on the basis of the Autorité's recommendations:

Opinion by the Autorité	Biennial recommendations for appointments	Date of decrees adopting the map proposal
Opinions 16-A-25 and 16-A-26 of 20 December 2016	+202 court bailiffs in 35 green zones +42 judicial auctioneers in 36 green zones	December 2017
Opinions 19-A-16 and 19-A-17 of 2 December 2019	+100 court bailiffs in 32 green zones +3 judicial auctioneers in 3 green zones	Non-approved proposals (5)
Deliberations 2021/01 and 2021/02 of 28 April 2021	+50 court bailiffs (6) No judicial auctioneers	July 2021

The Chancellery has now completed the appointments for the second map (+50 new court bailiffs). Regarding the first maps, all the appointment targets could not be fully met; the remainder was estimated at around 59 court bailiffs and six judicial auctioneers.

2. Overview of the supply and assessment of office creation

The *Autorité* finds that the profession of commissioner of justice, which is in the midst of restructuring, is facing not only the consequences of the health emergency but also a decline in its workforce and a deterioration in its working conditions:

- the first two waves of office establishments failed to stem the decline in the total number of independent commissioners of justice, which has been affecting former court bailiffs for at least a decade. As of 30 May 2023, there were just under 3,382 commissioners of justice working in 2,183 offices;

- the profession is undergoing significant mergers, with the creation of companies holding several offices. Today, these companies represent 494 offices, or more than a quarter of all offices;

- margin rates are falling, from an average of 36% over the 2010-2014 period, to approximately 33% in 2014-2018, finally dropping below 30% in 2017-2021. This last period was marked by the health emergency, which hit professionals hard;

- in 2023, even though most professionals will be qualified as commissioners of justice, a minority will be exercising their new skills.

On the demand side, this investigation confirms previous findings. Demand is structurally declining, due in particular to the promotion of alternative dispute resolution methods, changes in the structure of corporate assets (more intangible assets, more leasing, etc.) and the abolition of mandatory recourse to commissioners of justice for a growing number of proceedings.

B. A fourth opinion on the freedom of establishment of notaries

1. Review of previous maps

Since 2016, notary offices have been established in three waves on the basis of the *Autorité's* recommendations:

Opinion by the Autorité	Biennial recommendations for appointments	Date of the decree adopting the map proposal
Opinion 16-A-13 of 9 June 2016	+1,650 notaries in 247 green zones	September 2016
Opinion 18-A-08 of 31 July 2018	+700 notaries (7) in 230 green zones	December 2018
Opinion 21-A-04 of 28 April 2021	+250 notaries (8) in 112 green zones	August 2021

The Chancellery is currently making the final appointments for the third map. The target of 250 new notaries will therefore be reached before the end of the map's validity, unlike the targets of previous maps, which were not fully achieved. The remainder was 33 notaries for the first map and around 87 for the second.

2. Overview of the supply and assessment of office creation

The notarial profession recorded excellent results for the period 2020-2021. The health emergency did not have the feared negative impact, thanks in particular to the buoyant property business during this period. In effect, the *Autorité* also notes that:

- the reform has increased notarial density, with the median number of notaries per 100,000 inhabitants rising from 14 to 17 between 2016 and 2023;

- newly created offices have generally had a successful start-up, especially those created in 2017 and 2018, which are experiencing very strong economic growth. The average turnover per notary more than doubled between 2017 and 2021. In 2021, their average turnover was 482,000 euros per notary, for a margin rate of around 40%;

- the impact of the offices created under the reform on those existing prior to the Growth and Activity Law is very small. In 2021, the average turnover per notary exceeded one million euros (+23% on 2016), and the average net income was 330,000 euros (+40% on 2016).

The *Autorité* notes, however, that the dynamism of the property market began to slow down during 2022, notably due to the tightening of bank lending conditions and rising interest rates. The contraction of the property market is likely to continue over the period 2023-2025, which will have a negative impact on the activity of notaries.

2. Quantitative recommendations by the autorité for the period 2023-2025:
600 new notaries and 33 new commissioners of justice

To draft its quantitative recommendations, the *Autorité* repeated the methodology developed in its previous opinions, which has been validated twice by the Council of State and remains fully relevant. In the case of commissioners of justice, the *Autorité* recalls that the method defined in 2016 anticipated the merger of the professions.

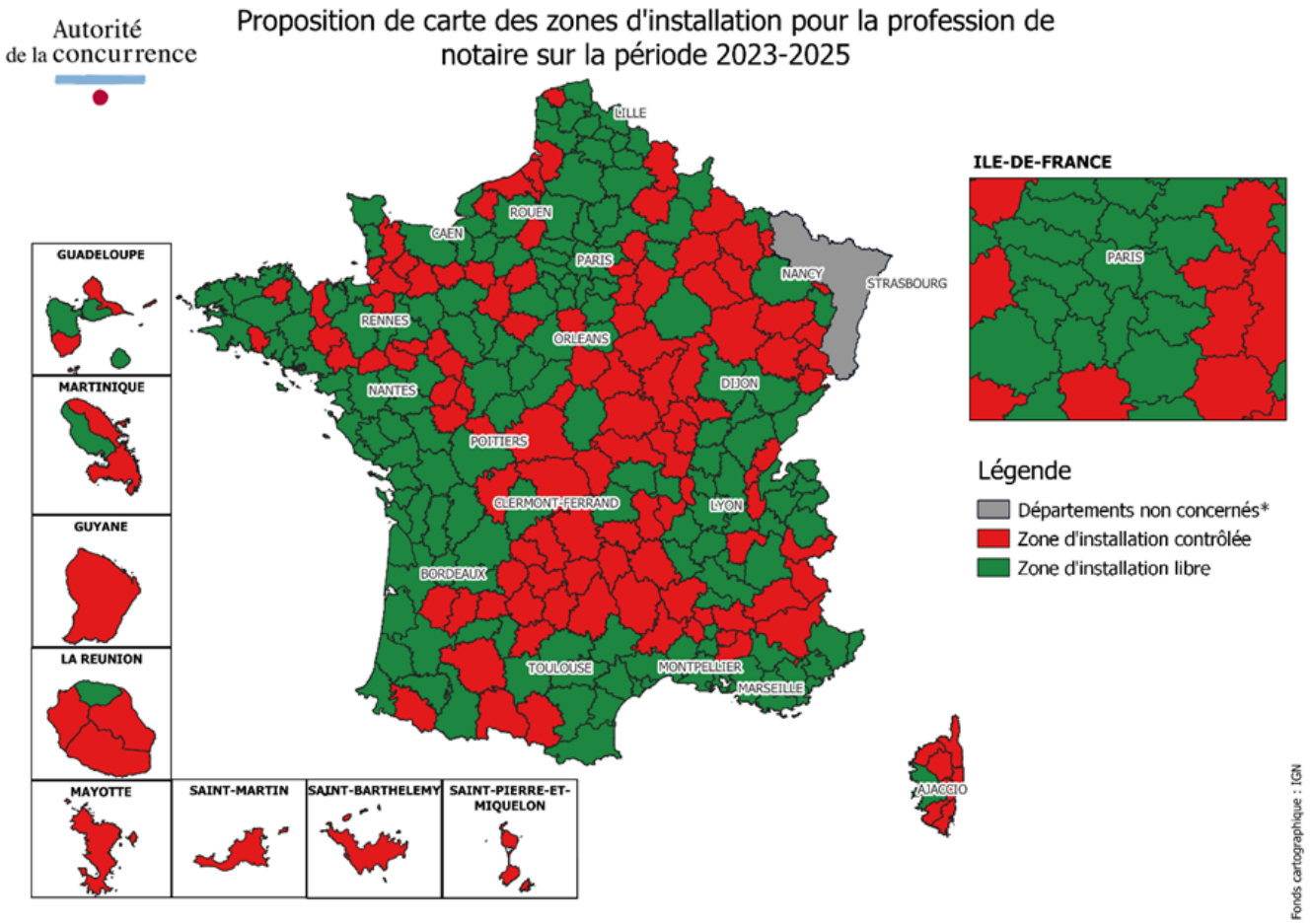
Nevertheless, the *Autorité* has decided to take account of inflation over the 2017-2022 period (+12%), so that the minimum turnover thresholds per private practitioner that it uses to determine the free or controlled nature of an establishment zone remains consistent with the reality of professional activity. As a result, the thresholds defined in 2016 have been increased from:

- 450,000 euros to 502,000 euros for notaries,
- 325,000 to 363,000 euros for former court bailiffs,
- 195,000 euros to 218,000 euros for former judicial auctioneers.

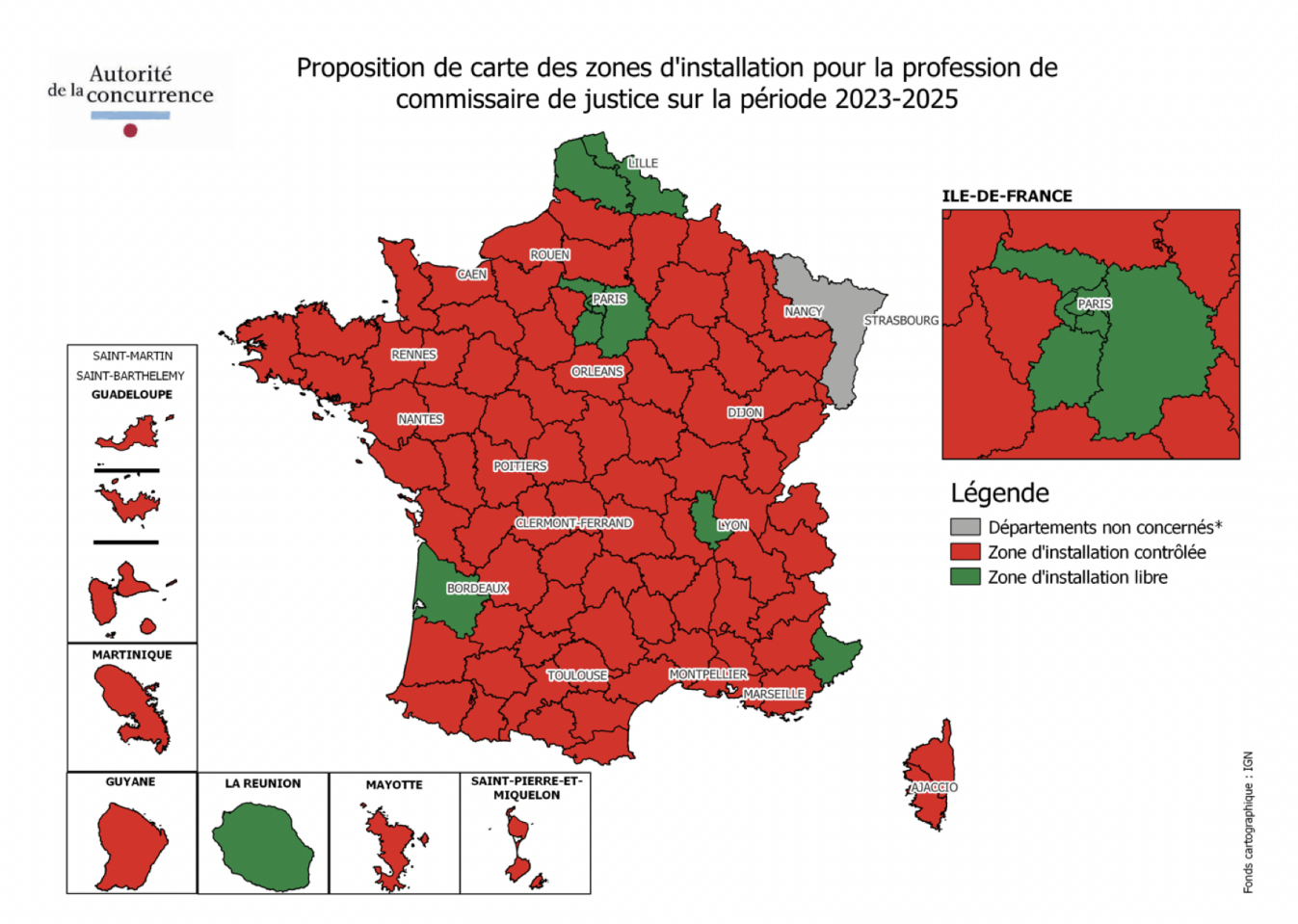
As far as notaries are concerned, the Autor*i*té has also taken into account the uncertainties surrounding the development of their property business. It is proposing to the government that 600 new notaries be established in 168 areas of the country by 2025.

In the case of commissioners of justice, the *Autorité's* particularly cautious approach is dictated by all the challenges facing the new profession. It is proposing to the government that 33 new commissioners of justice be established in 13 areas of the country by 2025.

In view of the above, the *Autorité* proposes the following revised maps (click on the maps to view the interactive version):



> See the interactive version



**In application of the exception provided for in Article 52, VII, of the Law of 6 August 2015*

> See the interactive version

3. Recommendations and observations of the autorité to improve access to offices

The *Autorité* welcomes the reforms undertaken in line with its previous recommendations (greater transparency in the appointment procedure in free establishment areas, introduction of an electronic drawing of lots, etc.) and makes recommendations to be implemented over the next two-year period with a view to improving access to offices.

Firstly, the *Autorité* reiterates a number of recommendations that have not been acted upon. It therefore invites the Government to:

- **clarify and relax the rules applicable to customised requests** to enable professionals to communicate effectively about their services;
- **complete the list of economic data transmitted to the *Autorité* by professional bodies annually,** to improve the map preparation process.

It then formulates new recommendations aimed in particular at improving the procedure for nominating candidates. In this respect, it proposes that the Government:

- **clarify the method for investigating applications**;
- **remove the right of the Chancellery to refer matters to professional bodies to check candidates' good repute**;
- **extend the time between appointment and swearing-in from one to three months**.

Lastly, the *Autorité* makes recommendations specific to each profession.

With regard to the notarial profession, the *Autorité* reiterates two recommendations:

- **ensure that the rules governing subcontracting and pooling** do not unduly restrict notaries' freedom of organisation;
- **ensure better representation of notaries practising in offices created within the profession's bodies**.

With regard to commissioners of justice, it calls for a **significant improvement, as soon as possible, in the quality of data transmitted by the professional bodies to the authorities**, particularly as regards the breakdown of the turnover generated by competitive activities (fees) and monopoly activities (contributions) respectively, and the breakdown by office of the activity of multi-office companies.

[1] Article L. 462-4-1 of the French Commercial Code (Code de Commerce) and Article 52 of the Growth and Activity Law.

[2] The areas concerned cover every département of France, with the exception of Bas-Rhin, Haut-Rhin and Moselle. Furthermore, all French overseas départements are covered, as are the local and regional public authorities of Saint-Barthélemy, Saint-Martin and Saint-Pierre-et-Miquelon.

[3] In areas "*where the establishment of offices appears useful to reinforce the proximity or the offer of services",* the requests of candidates for establishment meeting the envisaged conditions are likely to be accepted, within the limit of the recommended rate of nomination.

[4] In areas where no need for a new office has been identified a priori, the Minister of Justice may only accept a request for appointment to a new office, on the basis of an opinion from the Autorité, if it is not likely to *"jeopardise the continued operation of existing offices and compromise the quality of service provided*."

[5] In 2020, the Government asked the Autorité to formulate new map proposals to take into account the consequences of the health emergency for these professions. See the press release of 28 April 2021 on Deliberations 2021/01 and 2021/02 above.

[6] Against the backdrop of the health emergency, the Autorité decided to exceptionally abandon the remaining appointments that could not be made under the previous map, i.e. around 59 court bailiffs and six judicial auctioneers.

[7] In line with the Autorité's recommendations, the Decree of 3 December 2018 deferred the remainder of the notaries who had been unable to be appointed before the previous map expired. The total number of appointments to be made was therefore increased to 733.

[8] Against the backdrop of the health emergency, the Autorité decided to exceptionally abandon the remaining appointments that could not be made under the 2018-2020 map, i.e. around 87 professionals.

OPINION 23-A-09 OF 07 JULY 2023

Full text of the opinion

See full text of the opinion

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