The Autorité de la concurrence publishes its opinion of 27 July 2023 on a draft decree on various services provided in connection with the register of security interests over movable property and amending certain provisions of the French Commercial Code (code de commerce)

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Background

Having been referred to by the Government, the *Autorité* issued an opinion on 27 July 2023 on a draft decree on various services provided in connection with the register of security interests over movable property and amending certain provisions of the French Commercial Code (code de commerce)

In it, the *Autorité* made four recommendations intended to clarify the draft decree, ensuring that the fees charged by commercial court registrars are clearer.

The decree, which was finally adopted on 3 October 2023, took into account all of the *Autorité*'s recommendations, with the exception of the recommendation to clarify the terms and conditions under which the charge for the total suspension of a security interest on movable property is applied.

The *Autorité de la concurrence* welcomes the Government's efforts to make the subject of security interests over movable property more easily understandable. The creation of a single register, which puts an end to the myriad special regimes, will allow creditors to consult all the securities already established by a debtor looking to secure credit.

On 29 March 2023, in accordance with Article L. 444-7 of the French Commercial Code (code de commerce), the Minister for the Economy, Finance and Industrial and Digital Sovereignty referred a French Administrative Supreme Court (Conseil d'État) draft decree to the *Autorité de la concurrence* (hereinafter the '*Autorité*') on various services provided in connection with the register of security interests over movable property, and amending certain provisions of the French Commercial Code (code de commerce).

In the context of this referral, the role of the *Autorité de la concurrence* is to ensure that any amendment to the fee structure applicable to services provided by commercial court registrars (hereinafter "CCR") envisaged by the draft decree will not jeopardise the overall profitability of the profession.

1. The introduction of a single register of security interests over movable property

In order to modernise the legal texts and bring together the rules of security interests law in the Civil Code, Ordinance 2021-1192 of 15 September 2021, issued pursuant to Article 60 of Law 2019-486 of 22 May 2019 on the growth and transformation of businesses (known as the "PACTE" Law), repeals unnecessary or obsolete security interests and creates a single register of security interests on movable property.

Decree 2021-1887 of 29 December 2021 therefore introduces article R. 521-2 of the French Commercial Code (code de commerce), which lays down the list of security interests on movable property and entrusts the maintenance of the register to the CCRs.

The draft decree submitted for the *Autorité* to examine is intended to overhaul the range of services provided by CCRs in annex 4-7 to article R. 444-3 of the French Commercial Code (code de commerce).

2. The draft decree

The *Autorité* focused its analysis on Articles 1 and 2 of the draft decree, as Articles 3 to 7 are unlikely to affect the fee structure of the services provided by CCRs, and therefore do not fall within the scope of the analysis provided for in Article L. 444-7 of the French Commercial Code (code de commerce).

Article 1 of the draft decree contains 3 points:

- Paragraph **1** replaces the provisions of the current R. 743-142-4 of the French Commercial Code (code de commerce), which has become redundant [1], stipulating that the certified statements issued to the owner of the registration, the creditor or the debtor, be partially free of charge;
- Paragraph **2** annuls paragraph 3 of article R. 743-142-5 of the same code on the reduction of the fee for a mortgage on a river craft, when there are several mortgages;
- Paragraph **3** adds two sections to article R. 743-145 of the above-mentioned code, stipulating that services relating, on the one hand, to initial registrations, amendments or suspensions of criminal seizures of businesses be free of charge and, on the other hand, services relating to suspensions following the transfer of a registration to another register of mortgages for ships and river craft also be free of charge.

Article 2 comprehensively overhauls Table 2, to take account of the reform of security interests on movable property. As such, lines 85 to 136 relating to liens and security interests have been annulled and replaced by new lines.

3. Analysis and recommendations of the Autorité

Essentially, the draft decree submitted to the *Autorité* for opinion generally helps make table 2 of annex 4-7 of article R.4443 of the French Commercial Code (code de commerce) more easily understandable, as regards the services provided by CCRs, in particular those relating to liens and securities.

From an economic perspective, the amendments to the fee structure envisaged by the draft decree are unlikely to jeopardise the overall profitability of the profession.

In this respect, it cannot be ruled out that any residual loss of turnover could be mechanically offset by additional turnover from competencies recently acquired by the CCRs, such as mortgages for ships from 1 January 2022, or agricultural warrants from 1 January 2023.

With a view to clarifying certain provisions of the draft decree, the *Autorité* has made the following four recommendations:

No.1: In paragraph 1 of article 1 of the draft decree: specify that the issuance of certified statements free of charge is not limited to a maximum quantity, and is valid for the entire duration of the registration of the security;

No.2: In paragraph 1 of article 1 of the draft decree, stipulate that the registration fee includes the total suspension of the registration, and consequently delete any reference to the suspension in the table in article 2 of the draft decree;

No.3: In the line on the issuance of certified statements, specify that this pertains to all security interests registered with a registry and attached to a person and no longer to a security interest;

No.4: Specify that the issuance of the receipt provided for in article R. 521-8 of the French Commercial Code (code de commerce) does not entail any additional fee, or is included in the registration fee.

4. Follow-up of the recommendations

Decree no. 2023-916 was published in the Official Journal on 3 October 2023.

The *Autorité* is pleased to note that recommendations 1, 3 and 4 have been acted upon.

However, it notes that Recommendation 2 has not been acted upon. During the investigation, the *Autorité* noted that the phrase "*inscription, y compris radiation totale*" (registration, including total suspension) was confusing and that clarification was needed to confirm that total suspension is included in the registration fee.

The article provided for free entries in the register of notices and objections for warrants other than agricultural warrants. This service was abolished by Decree 2021-1887 of 29 December 2021 on the register of security interests on movable property.

OPINION 23-A-13 OF 27 JULY 2023

on a draft decree on various services provided in connection with the register of security interests over movable property and amending certain provisions of the French Commercial Code (code de commerce)

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DECREE 2023-916 OF 3 OCTOBER 2023

on various services provided in connection with the register of security interests over movable property and amending certain provisions of the French Commercial Code (code de commerce)

View Decree

Contact(s)

Maxence Lepinoy
Chargé de communication,
responsable des relations avec les
médias
06 21 91 77 11
Contact us by e-mail