



45TH EUROPEAN PRESIDENTS' CONFERENCE – VIENNA INTERVIEWS

FRANCE REPORT

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1. Law Firms Reform and Creation of the Multi-Professional Company

In 2016, the law firms reform established by law n° 2015-990 of 6 August 2015 – the “Macron Law” or “Growth Law” – continued.

In 2015, the Growth Law made the majority ownership and voting rights used in professional corporations (*Société d'exercice libéral* or S.E.L.) available to all legal and judiciary professions, whether they operate in France, the European Union, or another member state of the European Economic Area or the Swiss Confederation.

The implementing decrees of 29 June 2016, which came into force on 1 July 2016, now allow lawyers to work within a trading company, on the condition that the form of the company does not confer the status of “trader” on its partners: limited liability company (*Société à responsabilité limitée* or S.A.R.L.), Anonymous Company (*Société anonyme* or S.A.), Simplified Joint-Stock Company (*Société par actions simplifiée* or S.A.S.) or a *societas europaea*.

The impact of the reform is significant because the decrees have repealed the principle that lawyers must work exclusively for the benefit of one company. Lawyers are no longer required to devote all their professional activities to a single company, unless it is a professional partnership (*Société civile professionnelle* or S.C.P.).

The regulations on the incompatibility of the profession with trading activities have also been modified: lawyers, and law firms, can now market, as a secondary activity, goods and services relating to the exercise of the legal profession, provided that these goods and services are intended for clients or other members of the profession.

Lastly, pursuant to Article 65 of the Growth Law, the Multi-Professional Company (*Société pluri-professionnelle d'exercice* or S.P.E.) was created by ordinance n° 2016-394 of 31 March 2016. The Multi-Professional Company will allow lawyers, lawyers to the Council of State and the Court of



Cassation, court bailiffs, judicial auctioneers, notaries, official receivers and insolvency practitioners, patent attorneys, certified accountants to practice their professions in collaboration. The entry into force of these provisions depends on the publication of the application decrees, anticipated prior to 1 July 2017.

2. The establishment of lawyers' deeds

Ordinance n° 2016-131 of 10 February 2016 which reforms contract law, the general regime of obligations and proof of obligations introduced the new article 1374 into the Civil Code to establish lawyers' deeds, stipulating that *"A signed instrument countersigned by the legal counsel of each of the parties or by the legal counsel of all the parties provides proof both of the writing and of the signature of the parties, equally as regards themselves and as regards their heirs or successors."*

Law n° 2016-1547 of 18 November 2016 to modernise XXIst century justice stipulates that divorce by mutual consent is to be enacted using a lawyers' deed. As of 1 January 2017, divorce by mutual consent will be enacted using a signed instrument which is countersigned by a lawyer and registered with a notary. The divorce settlement no longer needs to be approved by a judge.

Each spouse is to have their own lawyer, so as to guarantee that their consent is informed and has been freely given. The lawyers of both spouses will prepare the divorce settlement. It will then be signed by the spouses and their lawyers, together. After being signed, the convention, which sets out the full terms of the divorce settlement, is registered with a notary. This registration confers a certain date and binding force.

Lawyers play a central role in this new, mutually consensual divorce procedure – whereas it had previously been the role of a judge to verify that both parties agreed to the divorce, it now falls to lawyers to assess the spouses' genuine wishes and the nature of their consent as well as safeguarding the interests in question, the balance of the convention and its consistency with public policy. When the divorce convention is registered, the notary carries out a purely formal check that the agreement is valid.

3. National examination for competitive entry to bar professional training courses (*Centre régional de formation professionnelle d'avocats* or CRFPA)

On 18 October 2016, the decree and ordinance to reform the entry examination to bar professional training courses (CRFPA) were published in the Official Journal of the French Republic.

As called for by the legal profession through the French National Bar Council resolution of 16 June 2012, the examination organised by universities is to have an increased focus on the skills expected of lawyers. All of the written examinations provided by the various Institutes of Legal Studies (*Instituts d'études judiciaires* or IEJ) will be organised simultaneously and cover the same topic, as determined by a national commission.

This commission, whose secretariat will be managed by the French National Bar Council, is made up of four lawyers and four universities.

It is also responsible for standardising the examination marking schemes.



The reform will make it possible to better identify candidates who possess the skills which are essential for the legal profession, as well as standardising entry procedures for bar professional training courses and thus providing more equal opportunities.

This national entry examination for bar professional training courses (CRFPA) forms part of a wider reform to lawyers' initial training. The reform will also affect the length and content of training in law schools, as well as the examination used for France's Professional Lawyers' Certificate (*Certificat d'aptitude à la profession d'avocat* or CAPA). Work is currently underway.

4. Parity within the French National Bar Council and the French Bars

Ordinance n° 2015-949 of 31 July 2015 on equal access for men and women to professional bodies, pursuant to Article 74 of Law n° 2014-873 of 4 August 2014 for real equality between men and women added new provisions to law n° 71-1130 of 31 December 1971, which governs the legal profession. These provisions are intended to ensure equal access for men and women for elections to the Bar Councils and to the French National Bar Council:

- **Concerning elections to the Bar Council**, the ordinance establishes the mixed majority (1 man and 1 woman) two-round binomial voting system for elections to the Bar Council, accompanied by a random draw mechanism for Bar Councils with an odd number of members.
- **Concerning elections to the French National Bar Council**, the ordinance stipulates that *"The proportion, within the French National Bar Council, of members of the same gender, shall range from 40% to 60%"*.

An appeal was launched against the provisions which establish, for the election of members of the Bar Council, a binomial vote accompanied by a random draw mechanism for Bar Councils with an odd number of members. In a decision rendered on 30 November 2016, the Council of State rejected this appeal.

A decree of 22 December 2016 clarified these provisions. Concerning elections to the Bar Council, the regulatory amendments proposed will dispose of the random draw mechanism as of 1 January 2017, ensuring instead that all Bar Councils will be composed of an even number of members, divisible by three.

5. National Consumer Ombudsman for the Legal Profession

Ordinance n° 2015-1033 of 20 August 2015 on alternative consumer dispute resolution and decree n° 2015-1382 of 30 October 2015 on consumer dispute mediation transposed directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes.

These texts now oblige professionals who are bound by contract to a consumer to provide this consumer with free access to a consumer ombudsman so that national or cross-border disputes can be amicably resolved (Consumer Code, Art. L. 152-1).

This provision applies to lawyers in their dealings with consumer clients.



Pursuant to the recently introduced article R. 156-1 of the Consumer Code, all lawyers are now required, like all professionals and under penalty of an administrative fine, to provide consumers with the contact information for the consumer ombudsman or ombudsmen, by presenting this information visibly and legibly on their website, in their General Conditions of Sales or Services, on their purchase orders or any other appropriate material.

To ensure that lawyers can offer their consumer clients the possibility of accessing a mediation service which provides the necessary guarantees, the French National Bar Council has created a “National Consumer Ombudsman for the Legal Profession” which can be contacted by post or online: <https://mediateur-consommation-avocat.fr/>

6. Opening of a new platform for legal advice

On 15 June 2016, the French National Bar Council launched its legal advice platform, which can be accessed from the website www.avocat.fr.

This intermediation and services platform makes it possible for lawyers in France to be contacted directly by a client or internet-user who wants to ask a simple question, request a meeting over the phone or face-to-face, or request legal advice after transmitting the elements of a case. This new online service that the French National Bar Council provides all practicing registered lawyers is **completely free** (excluding bank charges for online payment).

Unlike many existing commercial platforms, this platform devoted to lawyers is linked to the profession’s national directory, which is managed by the French National Bar Council, making it possible to authenticate the referenced lawyer. It is fully secured and ensures that the services provided comply with the profession’s ethical code and requirements.

7. The Sapin 2 Bill: Regulating Lobbying and a Creating a Transparency Register

The bill relating to transparency, the fight against corruption, and the modernisation of the economy (Sapin II) aims to regulate lobbying activities in France by creating a register for interest representatives which is maintained and controlled by the High Authority for Transparency in Public Life.

In 2015, the French National Bar Council adopted the normative decision n° 2015-001 which adds article 6.2.3 to the National Internal Regulations of the Legal Profession (*Règlement intérieur national de la profession d’avocat* or R.I.N.), relating to interest representation activities. The decision was published in Official Journal of the French Republic on 5 August 2015. Under this article, a lawyer may now reveal the name of a client whose interests he or she represents, as well as the fees received for the services in question. Evidently, the client must be notified as to what personal information may be revealed.

It should be noted that the French National Bar Council decided that it would be prudent for a written fee agreement to be obligatory for this specific type of mandate. The nature of the mandate and the terms of payment of the lobbying activity must appear clearly on the agreement.



These provisions are intended to apply both to entries on the register maintained by the European Commission and the register maintained by the French High Authority for Transparency in Public Life.

8. Defending the Defence: The International Observatory for Lawyers in Danger (*Observatoire international des avocats en danger* or OIAD).

The International Observatory for Lawyers in Danger was launched in December 2015 by the French National Bar Council, the Paris Bar and the Italian and Spanish national bar councils with the intention of providing assistance to lawyers whose freedom, professional practice, or very lives have come under threat because they legitimately practise their profession. For this reason, it monitors the situation of lawyers around the world and provides on-the-ground support when necessary.

In 2016, the OIAD came into operation and now has more than 20 member bars. Since the start of 2016, the OIAD has issued 35 statements which relate to 16 countries. The majority of these statements have been accompanied by letters sent to the authorities of the countries in question and the French diplomatic authorities, as well as to the UN special rapporteur and the European Parliament rapporteur. 7 international monitoring operations were carried out at the hearing against lawyers on trial in Turkey. 1 joint declaration was signed at the PALU Conference in Nairobi and 3 letters were co-signed with organisations which defend human rights. On 24 January 2017, the OIAD was one of the organisers of the Day of the Endangered Lawyer, which focused on the situation of lawyers in China.

Membership of the Observatory is open to all bar associations, lawyers' associations, or organisations which defend human rights defenders. Membership applications must be sent to the President of the French National Bar Council, the organisation which currently holds the presidency of the OIAD.

9. Consequences of the State of Emergency and the Fight Against Terrorism

Since the attacks of 6 January 2015, 13 November 2015 and 14 July 2016, various texts have been adopted. They lay out a series of measures which, though they are legitimate in terms of improving collective security in the face of a high and long-lasting risk of terrorist attacks, pose a threat to the exercise of fundamental freedoms.

Among the laws implementing and extending the state of emergency, the last of which dates from 19 December 2016, the law of 3 June 2016 to “strengthen the fight against organised crime and its financing, and improve the efficiency and effectiveness of criminal proceedings” implements a regime that restricts freedoms. It shifts the point of equilibrium between the supervisory, investigatory and administrative powers, on the one hand, and the powers of the judicial authorities on the other. Within the judicial authorities, another point of equilibrium has also been shifted – the point that lies between court judges and public prosecutors – since the prerogatives accorded to the duo made up of the public prosecutor and the liberty and custody judge have been extended. Furthermore, the law provides the judicial and investigatory authorities with new means of action, but without providing the necessary guarantees of the right to defence.

The French National Bar Council has continued its work calling for fundamental guarantees to be safeguarded, in particular the rights of the defence.