



## **ITSSD: French ‘Authentic Acts’ Proposal Jeopardizes Anglo-American Free Enterprise**

PRINCETON, NJ – February 13, 2009 – In a short article published by the Washington Legal Foundation, international business, trade and regulatory lawyer Lawrence Kogan identifies how France is working to export two central tenets of Napoleonic civil law preventive justice throughout global commerce to ‘change’ the rule of international law and Anglo-American free enterprise.

Arguably, says Kogan, “Were it not for its uncanny resemblance to Monty Python’s timeless skit – *The Ministry of Silly Walks*, the Sarkozy Government’s recent proposal to expand the privileged monopoly long enjoyed by *les notaires de France* and the intrusive and regulation-prone French legal system would likely have been considered more seriously and opposed by Anglo-American businesses and political leaders.”

Civil law notaries are agents of the State who possess the ministerial responsibility for issuing ‘authentic acts’. Authentic acts are drawn up legal instruments that follow a prescribed form, recognize and provide conclusive evidence that specific private agreements have been reviewed and approved by empowered public officials, and render such agreements legally enforceable in a court of law.

From afar, the Sarkozy initiative appears earnest – a regional harmonization effort designed to promote greater economic ‘efficiency’, ‘consumer protection’ and ‘legal certainty’ within the 27-state Eurozone. A closer inspection, however, reveals that it does not guarantee true reciprocity. Also, it indirectly broadens the scope of governmental oversight and control over private business and personal transactions consummated within *and* beyond the region.

“Most troubling of all”, emphasizes Kogan, “is how civil law preventive justice enables governmental use of authentic instruments, as it does Europe’s Precautionary Principle, to undermine common law evidentiary rules and private property rights. Private property owners in contentious justice-based common law jurisdictions depend on substantive and procedural due process to ensure their day in court and the protection of their exclusive rights from government overreach. These fundamental rights will now be jeopardized to the extent civil law judges are required to attach greater probative value to authenticated instruments than to common law notarized private agreements, and are denied the discretion to consider other forms of documentary evidence to resolve legal disputes.”

*The Institute for Trade, Standards and Sustainable Development (ITSSD) is a non-partisan non-profit international legal research and educational organization that examines international law relating to trade, industry and positive sustainable development around the world. This article is accessible at: [http://itssd.org/2-13-09Kogan\\_LegalBackgrounder%20-%20FINAL.pdf](http://itssd.org/2-13-09Kogan_LegalBackgrounder%20-%20FINAL.pdf) and [http://www.wlf.org/upload/2-13-09Kogan\\_LegalBackgrounder.pdf](http://www.wlf.org/upload/2-13-09Kogan_LegalBackgrounder.pdf).*

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