

II-11.5: Decree n°2010-219 relating to the French National Register of Trusts was published on March 2nd, 2010

Wednesday 19 May 2010, by Sophie Schiller, member of the Editorial committee

MAIN INFORMATION

The national register of trusts has finally become a reality thanks to a decree published on March 2, 2010. Its only use will be to inform various government administrations, in order to reinforce the tools available for fighting tax evasion, money laundering, and terrorism financing.

CONTEXT AND SUMMARY

A decree of March 2, 2010 finally implemented the “registre national des fiducies” (the national register of trusts), which was created by Article 2020 of the French Civil Code, itself created by the Act of February 19, 2007. The preparatory documents for this Act had clearly stated that this register was not intended to give third-parties access to trusts, but rather, to centralise this information for use by government administrations, in order to facilitate supervision.

The Decree published on March 2, 2010 confirms this goal. It specifies, from its first article, that automatic processing of personal data in the “Registre national des fiducies,” implemented by the Minister in charge of the Budget (General Directorate of Public Finances), “is intended to centralise the information about trusts necessary to facilitate the supervision necessary to combat fiscal evasion, money laundering, and terrorism financing.” Therefore, this information will also be accessible by prosecutors, investigating magistrates, agents of the “*police judiciaire*” (criminal investigation department), customs officials, and specially-authorized agents of the General Directorate of Public Finance in charge of tax supervision and collection (article 5).

The information collected, enumerated by Article 2, is the following:

1. Surname, name, address, date and place of birth of natural persons constituting the trust, acting as trustee, and if need be, natural persons designated as beneficiaries of the trust;
2. Corporate name, company identification number, address of the corporate headquarters or establishment of all legal persons constituting the trust, acting as trustee, or, if need be, legal persons designated by the trust as beneficiaries;
3. Date and registration number of the trust contract and any amendments, and the identification of the tax office where the formalities were completed;
4. If necessary, the date the obligatory publication of real-estate transactions was completed, the number of publication and the identification of the office where the formalities were completed.

All of this information will be kept for ten years after the extinction of the trust (article 3).

Links with other documents in the same sector

Perspective on older legislation : The Ministerial Order of April 12, 2010 was published in the Official Journal of the French Republic on May 21, 2010. It modifies the Ministerial Order of April 11, 2005, which authorised the ‘Direction générale des impôts’ (French General Directorate of Taxation) to use automatic data processing in a file called ‘base nationale des données patrimoniales’ (national

database of personal asset data). The Order of April 12, 2010 provides that information on trusts will be extracted from this database, which will henceforth be managed by the 'direction générale des finances publiques' (French general directorate of public finances), in order to facilitate its implementation of the national register of trusts. It also specifies that data relative to trust contracts will be saved in the national database of personal asset data for ten years after the trust's expiration.

BRIEF COMMENTARY

This decree implemented a file of purely private data, kept for a very long time after the formation of the trust, since this information will only be deleted ten years after the trust has ended.

We understand the *ratio decidendi*. Truly, trusts can be masks—as are the notions of 'trust' and 'nominee' in Anglo-American law—which is why they have long been considered as illegal according to French international public policy doctrine, because they can allow people dissimulate their identity in their economic transactions. Therefore, the trust—when it is used as an instrument to disguise—can be an instrument that endangers public policy.

However, we must here make a distinction that Law makes less and less often. Truly, when it is question of money laundering or sponsoring of terrorism, the breach of public policy that can be hid by a trust justifies the creation of a file of personal data. On the other hand, tax evasion is, of course, an example of illicit behaviour, but is not an example of an international criminal organisation, as in the two previously cited examples. Therefore, this violation of privacy is weakly justified.

The State, through legislation, has a tendency towards expanding its law enforcement powers, justified by the first example, to the second example, where it is much less justified.