Freedom of establishment for lawyers to the French Administrative Supreme Court (Conseil d'État) and French Supreme Court (Cour de cassation): The Autorité issues its opinion for the years 2025-2027

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The *Autorité de la concurrence* issues its 5th opinion to the government on the freedom of establishment for lawyers to the French Administrative Supreme Court (*Conseil d'État*) and French Supreme Court (*Cour de cassation*) for the period 2025-2027 and recommends the creation of one new office by 2027.

Background

In accordance with Act 2015-990 of 6 August 2015 on Growth, Activity and Equal Economic Opportunities, which provides for a review of the situation at least every two years, the *Autorité* has determined the number of offices that should be created for the period 2025-2027.

The analysis was based on an examination of possible developments in jurisdiction before the high courts, the French Administrative Supreme Court (*Conseil d'État*) and the French Supreme Court (*Cour de cassation*), and of the activity of professionals currently practising. The financial situation of the offices created since 2017 confirms the finding of the previous opinions that the business model of the newly established professionals allowed them to start up successfully, without disrupting the business conditions of the existing offices.

At the end of its examination, in light of the various parameters taken into account and the objectives of the reform, including the gradual increase in the number of offices, the *Autorité* recommended **the creation of one new office of lawyers at**

the French Administrative Supreme Court (*Conseil d'État*) and French Supreme Court (*Cour de cassation*)[1] by 2027, which will be added to the eleven offices already created since 2017, bringing the total number of offices to 72.

Schedule

This opinion of the *Autorité* will shortly be published in the *Official Journal* (OJ).

The *Autorité* draws the attention of interested candidates to the fact that this publication in the OJ will launch the two-month period during which interested persons may submit their application for appointment to an office created for the French Administrative Supreme Court (*Conseil d'État*) and French Supreme Court (*Cour de cassation*)[2].

Assessment of the reform implementation

After four opinions that led to the creation of four offices[3] in 2016, four offices[4] in 2018, two offices[5] in 2021 and one office in 2023[6] (taking the total number of offices from 60 to 71 today), the *Autorité* is now issuing a fifth opinion on the freedom of establishment of lawyers at the French Administrative Supreme Court (*Conseil d'État*) and French Supreme Court (*Cour de cassation*) (lawyers to the courts). Of the 132 lawyers to the courts in the profession today, 14 have set up in an office created since the implementation of the reform.

In its new opinion, the *Autorité* assesses the implementation of the reform and provides an updated overview of the level and future trend in supply and demand. Consequently, it examines the development in the activity of the *Cour de cassation* (French Supreme Court) and the litigation section of the Court as well as the economic activity of the lawyers to the French Administrative Supreme Court (*Conseil d'Etat*) over the last five years.

To draw up this assessment, the *Autorité* conducted a public consultation, in accordance with Article L. 462-4-2 of the French Commercial Code (*Code de commerce*), open on 19 September 2024.

Potential for developing supply

The analysis of supply and demand for the activity of lawyers to the courts confirms the very good economic performance of the profession. Over the 2019-2023 period, the profession's margin rate remained stable and high, slightly above 40%, and the average profit per private lawyer was approximately €439,000. This situation, which distinguishes the profession of lawyer to the courts from other legal and judicial activities, is explained in particular by the concentration of the market on a small number of professionals who benefit from both a legal monopoly and a great deal of freedom in terms of setting fees and management.

Furthermore, the offices created since 2017[7] have enjoyed continuous growth and show no signs of financial fragility. For these offices, the average turnover per private lawyer grew by 18% between 2021 and 2023, exceeding €245,000 in 2023, and their margin rate was over 15 points above that of the profession as a whole.

The *Autorité* therefore considers that there is potential to increase supply, without this undermining the quality of the services provided before the courts of cassation, or jeopardising the viability of existing offices.

The existence of factors limiting the recommendation on the number of offices created

The increase in the number of offices of lawyers to the Courts is, however, limited by two main factors:

- first, the number of cases registered before the *Cour de cassation* (French Supreme Court) continues to fall, although the decrease is less than for the period previously reviewed (-13% over the 2019-2023 period), while cases registered before the French Administrative Supreme Court (*Conseil d'État*) experienced a slight decline (-6% over the same period). However, lawyers to the courts do most of their business before these supreme courts;

- second, the pool of professionals who are likely to apply to establish offices remains small, slightly fewer than a dozen and it could be partly mobilised to compensate for potential retirements (at the end of 2024, 12 lawyers to the courts were aged 70 or older), which limits the possible candidates for an office which has been created.

In this context, the *Autorité* has adopted a measured approach, recommending the creation of one new office by 2027.

Additional recommendations

The *Autorité* is keen to welcome the significant efforts made by the *Ordre des avocats aux Conseils et la Chancellerie* (Order of Lawyers to the Courts and the Chancellery) to take into account the recommendations it made in its previous

opinions, in particular:

- the establishment by the *Chancellerie* (Order of Lawyers to the Courts and the Chancellery) of ongoing communication providing candidates with regular information about the progress of their application;
- the adoption by the classification commission of the analysis grid formalising the criteria for deciding on candidates and the notification of its opinion to the candidates;
- The publication by the Order of an annual report on the breakdown of collective charges;
- The adoption of three recommendations by the Board of professional conduct clarifying the concepts for which the *Autorité* had asked for clarification.

However, the recurring observation of the narrowness of the pool of candidates must not be an obstacle to achieving the objective enshrined in the law of a gradual increase in the number of offices where the economic situation justifies it. It therefore seems essential to establish measures to encourage the arrival of new professionals, particularly by facilitating the entry of experienced professionals into the profession, especially legal associates to lawyers to the Courts. In the opinion published today, the *Autorité* makes new recommendations on five main objectives:

- promote the use of exceptional access routes to the profession, especially experienced legal associates to lawyers to the courts;
- encourage success at the CAPAC, notably by removing the limit of three exam presentations and one repeat per year;
- clarify the practice conditions for multi-professional companies combining lawyers to the courts and lawyers to the French Supreme Court (*Cour de cassation*);
- remove the obligation for lawyers to the courts to have a professional domicile in Paris or the neighbouring *departements*;
- broaden the possibilities for recruiting salaried lawyers to the courts by increasing the number of salaried lawyers to the courts from 1 to 2 per private lawyer to the courts.

[1] The lawyers to the courts hold an office assigned by the State. They have a monopoly on representing litigants before the French Administrative Supreme Court and the French Supreme Court in appeals on points of law in most matters, a monopoly which accounts for approximately 90% of their activity. The remainder consists of interventions before other jurisdictions (administrative courts, administrative courts of appeal, Constitutional Council, European Court of Human Rights, Court of Justice of the European Union, etc.) and legal advice.

[2] Article 25 of Decree 91-1125 of 28 October 1991 on the conditions for admission to the profession of lawyers at the French Administrative Supreme Court (*Conseil d'État*) and French Supreme Court (*Cour de cassation*).

[3] Consult the first opinion 16-A-18 of 10 October 2016 and the press release.

[4] Consult the second opinion 18-A-11 of 25 October 2018 and the press release.

[5] Consult the third opinion 21-A-02 of 23 March 2021 and the press release.

[6] Consult the fourth opinion 23-A-03 of 7 April 2023 and the press release; the *Autorité* had recommended the creation of two offices but only one office has been created due to the insufficient number of candidates and the fall in demand.

[7] There is insufficient data on the office established in 2023 at this time.

OPINION 25-A-06 OF 16 APRIL 2025

on the freedom of establishment of lawyers at the French Administrative Supreme Court (Conseil d'État) and French Supreme Court (Cour de cassation)

See the full text (in french)

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