

Lawyers to the courts

Lawyers at the French Administrative Supreme Court (*Conseil d'État*) and French Supreme Court (*Cour de cassation*) (hereinafter "lawyers to the courts") are ministerial officers who essentially intervene before the high courts of the administrative (Council of State - French Administrative Supreme Court) and judicial (Court of Cassation - French Supreme Court) orders. This profession, which operates in a niche market, has a limited number of members.

Evolution of the number of offices since the creation of the profession

Period	Number of offices
1817-2016	60
2016-2018	64 including 4 creations
2018-2020	68 including 4 creations

Period	Number of offices
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2021-2023	70 including 2 creations
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Opinions on freedom of (business) establishment

In accordance with the Law of 6 August 2015, the *Autorité* issues an opinion to the Minister of Justice on the freedom of (business) establishment of lawyers to the courts every two years.

Given the specific nature of this profession, the *Autorité's* approach and analysis are different from those followed for the other professions concerned by freedom of (business) establishment, in that they do not provide for a proposed map.

Moreover, the *Autorité's* opinion is published directly in the Official Journal, which is the starting point for applications for the offices created.

The first opinion (2016–2018)

In its Opinion No. 16-A-18 of 10 October 2016, the *Autorité* de la concurrence recommended the creation of four offices by 2018.

It also made several recommendations to improve access to offices (especially for women) and lower the barriers to entry for future candidates. Among them, the *Autorité* recommended:

- **extending the deadline for applications for the creation of offices** and making the procedure for ranking applicants for the offices created more transparent;
- **reducing the barriers to entry** for these candidates, particularly in terms of training and advertising;
- **making the profession better known** to law students and lawyers at the Court, to broaden the pool of future candidates for establishment;
- **improving women's access to offices**, by strengthening work-life balance arrangements and improving the statistical information available by gender on this issue.

Opinion 16-A-18 of 10 October 2016 was published in the Official Journal on 1 November 2016.

For more information, please refer to:

- Opinion No. 16-A-18 of 10 October 2016
- the press release of 10 October 2016
- the Official Journal of 1 November 2016
- the Order of 5 December 2016 establishing counsel positions at the French Administrative Supreme Court (Conseil d'Etat) and the Cour de cassation (French Supreme Court)

The second opinion (2018-2020)

In its Opinion No. 18-A-11 of 25 October 2018, the *Autorité* reviewed the establishments from the first two-year period and again recommended the **creation of four offices by 2020**.

The *Autorité* noted that the Association of Lawyers at the French Administrative Supreme Court (Conseil d'État) and French Supreme Court (Cour de cassation) followed several of the qualitative recommendations made in its 2016 opinion. In its second opinion, it formulated certain additions aimed at making the selection and appointment of candidates to created offices more transparent, improving the collection of information on the activity of the offices, increasing the presence and representation of women in the profession and allowing for a relaxation of the obstacles to the development of a real competitive emulation in this highly concentrated market.

Opinion No. 18-A-11 of 25 October 2018 was published in the Official Journal on 1 November 2018.

For more information, please refer to:

- Opinion No. 18-A-11 of 25 October 2018
- the press releases of 7 June 2018 (launch of the public consultation) and 29 October 2018 (adoption of the opinion)
- the Official Journal of 1 November 2018
- the Order of 22 March 2019 creating four counsel positions at the French Administrative Supreme Court (Conseil d'Etat) and the Cour de cassation (French Supreme Court) (public or ministerial officers)

The third opinion (2021-2023)

In its Opinion No. 21-A-02 of 23 March 2021, the *Autorité de la concurrence* proposed that the government **create two counsel offices at the French Administrative Supreme Court (Conseil d'Etat) and French Supreme Court (Cour de Cassation) ¹ by 2023**, which will be added to the eight offices already created since 2017, bringing the total number of offices to 70.

The **Autorité** welcomes 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. Several texts have recently modified the legal regime applicable to lawyers to the Courts, in particular with regard to the composition of the examination board for the Bar examination, the governance and conduct of training, the rules governing communication and the ethics of the profession. The adopted measures have enabled significant progress to be made in modernising the profession, as well as real support for the development of the created offices.

However, certain additional measures could still make it possible to improve the arrangements governing the freedom of establishment of lawyers to the Courts. In the opinion published today, the **Autorité** makes new recommendations on the following points:

- introducing greater transparency on the criteria used to rank candidates for the offices created;
- informing the public more widely about the methods of accessing counsel offices to the Courts, by extending measures of communicating about the profession and its training to the whole of France, and by providing for a module on the conditions for setting up in an office created as part of this training.

Opinion No. 21-A-02 of 23 March 2021 was published in the Official Journal on 9 April 2021.

For more information, please refer to:

- Opinion 21-A-02 of 23 March 2021
- the press release of 23 March 2021
- the Decree of 20 April 2021 establishing two offices of lawyer at the French Administrative Supreme Court (**Conseil d'Etat**) and the Cour de cassation (**French Supreme Court**)

The fourth opinion (2023-2025)

In its [Opinion No. 23-A-03](#) of 7 April 2023, the *Autorité de la concurrence* proposed that **the French government create two offices of lawyer at the French Administrative Supreme Court (*Conseil d'État*) and French Supreme Court (*Cour de cassation*) by 2025**, which will be added to the ten offices already created since 2017, bringing the total number of offices to 72.

The *Autorité* welcomes the significant efforts made by the *Ordre des avocats aux Conseils* (Order of Lawyers to the Courts) and the *Chancellerie* (Chancellery) to take into account the recommendations made in its previous opinions. Amendments to the texts and changes without affecting current legislation have been made in order to improve (i) transparency and fluidity in the appointment process when applications are made to the Chancellery and in the information available on access to the profession, as well as (ii) women's access to the profession. In respect of the latter, the *Autorité* welcomes the fact that three of the five senior positions on the Council of the Order are now held by women.

However, certain additional measures could improve the arrangements governing the freedom of establishment of lawyers to the Courts. In its opinion of 7 April 2023, the *Autorité* makes new recommendations on five main objectives:

- broadening the pool of potential candidates by increasing communication about the pathways to the profession and facilitating access for professionals already working in offices;
- introducing greater transparency on the criteria used to rank candidates for the offices created;
- updating information on the status of applications for new offices;
- facilitating the development of the offices created, in particular by making the allocation of the collective charges of the profession more transparent, objective and equitable;

- improving the transmission of information to the *Autorité*, in particular by implementing the platform that will provide the offices with precise statistics on their activity before the French Supreme Court (*Cour de cassation*).

Opinion No. 23-A-03 of 7 April 2023 was published in the Official Journal on 22 April 2023.

For more information, please refer to:

- [Opinion 23-A-03 of 7 April 2023](#)
- the [press release of 7 April 2023](#)
- the [Decree of 15 September 2023](#) establishing an office of lawyer at the French Administrative Supreme Court (*Conseil d'État*) and at the French Supreme Court (*Cour de cassation*)