

1st March 2016: Counsels at the French Administrative Supreme Court (Conseil d'Etat) and the French Supreme Court (Cour de cassation)

Published on March 03, 2016

In application of the "Macron law", the *Autorité de la concurrence* is launching a public consultation in the context of the drafting of an opinion on the freedom of establishment of counsel positions (offices d'avocats) at the French Administrative Supreme Court and French Supreme Court.

> [Version française](#)



In brief

In accordance with the provisions of Article L. 462-4-2 of the French Commercial Code (*Code de commerce*), as set out in Article 57 of Law 2015-990, of 6 August 2015, for the growth, activity and equality of economic opportunities, the *Autorité de la concurrence* has been tasked with providing an opinion for the French Ministry of Justice on the freedom of establishment of legal practices at the Administrative Supreme Court and Supreme Court, with a view to achieving a progressive increase in the number of counsel positions available to said practices.

In order to contribute to the drafting of these recommendations, interested stakeholders (consumer protection associations, the French Administrative Supreme Court and Supreme Court Bar Association (*ordre des avocats au Conseil d'Etat et à la cour de cassation*), the professional bodies representing the parties involved, as well as anyone who meets the criteria to be appointed as a counsel at the Administrative Supreme Court and Supreme Court) are invited to submit their comments to the *Autorité de la concurrence* by 31 March 2016.

THE PROVISIONS OF THE MACRON LAW AIM TO INCREASE FREEDOM OF ESTABLISHMENT OF LEGAL PRACTICES AT THE ADMINISTRATIVE SUPREME COURT AND SUPREME COURT

Article 57 of Law 2015-990 envisages a reform of the procedures via which legal practices are established at the Administrative Supreme Court and Supreme Court, aimed at improving access to counsel positions at the Administrative Supreme Court and Supreme Court.

In application of newly-enacted Article L. 462-4-2 of the French Commercial Code, as resulting from Article 57, section I of Law 2015-990, the *Autorité's* mission is to provide the Minister of Justice with an opinion on the freedom of establishment of legal practices at the French Administrative Supreme Court and French Supreme Court. This opinion must include recommendations aimed at improving access to counsel positions at the French Administrative Supreme Court and French Supreme Court, with a view to bringing about a progressive increase in their numbers, as well as a gender-based review of access to these

positions. These recommendations must identify the number of new counsel positions at the Administrative Supreme Court and Supreme Court that should be created in order to ensure satisfactory provision of services.

The criteria used by the *Autorité* in drawing up these recommendations are set out in Decree 016-215 of 26 February 2016, which contains a definition of the criteria outlined for use in the implementation of Article L. 462-4-2 of the French Commercial Code (*Code de commerce*). They take into account the level and perspectives of the provision of services: trends in economic activity, changes in the number of lawyers at the French Administrative Supreme Court and French Supreme Court practising on a liberal basis or as salaried lawyers, the number of vacant positions, the number of people qualified to serve in the position of counsel at the Administrative Supreme Court and Supreme Court who are not currently practising in such a role, and turnover of existing positions over the last five years. They also consider prospective changes in demand: how activity at the French Supreme Court and the litigation division of the French Administrative Supreme Court will develop, as well as any changes in the number of judgements passed by the courts dealing with the substantive case issues liable to be appealed over the course of the last five years.

THE MAIN ISSUES IDENTIFIED AT THIS STAGE BY THE AUTORITE, ON WHICH CONTRIBUTIONS WILL BE PARTICULARLY WELCOME

The *Autorité*'s task is of a unique nature. On account of this, the *Autorité* will pay close attention to all remarks submitted by the stakeholders involved.

In the context of its investigation role, the *Autorité* has already identified the following issues on which contributions would be particularly useful:

- How should the criteria established by Decree 2016-215 be taken into account when identifying how many counsel positions should be created at the French Administrative Supreme Court and French Supreme Court in order to ensure a satisfactory service level?
- What information and criteria are relevant in identifying a suitable rate of establishment of counsel positions?
- Which requirements for the proper administration of justice, and which information about the development of litigation before the Administrative Supreme Court and the Supreme Court should be taken into account to ensure a satisfactory service level and to identify a suitable pace of establishment of new counsel positions?
- Is it necessary or relevant to supplement recommendations for the creation of counsel positions with recommendations for increasing the number of lawyers practicing at the Administrative Supreme Court and Supreme Court within these counsel positions?
- What means might be envisaged to allow better access for women to counsel positions at the French Administrative Supreme Court and French Supreme Court?
- How should the impact of the creation of new counsel positions be assessed :
a) on legal professionals currently in place (in particular with regard to the operational conditions of existing counsel positions), and b) on clients (particularly in terms of quality of service)?

**CONTRIBUTIONS TO THE PUBLIC CONSULTATION SHOULD BE SUBMITTED
BY 31 MARCH 2016 AT THE LATEST**

In accordance with the provisions of Article L. 462-4-2 of the French Commercial Code, the aim of this communication is to enable the *Autorité* to gather comments from:

- official consumer protection associations;
- the council of the French Administrative Supreme Court and the French

Supreme Court Bar Association;

- anyone fulfilling the conditions required to practice as a legal counsel at the French Administrative Supreme Court and French Supreme Court¹.

Any professional associations concerned, and professionals aspiring to practise the professions concerned, may likewise submit their remarks for consideration.

Observations should be submitted to the Autorité de la concurrence by 31 March 2016, at the email address available by clicking on this link.

The Autorité de la concurrence specifies that contributions to the public consultation may be treated as confidential and only published with the contributor's agreement.

¹These persons [who must meet the conditions of nationality, aptitude, repute, experience and insurance required in order to be appointed as a lawyer at the Administrative Supreme Court and Supreme Court] are asked to attach to their remarks a copy of the certificate attesting to the fact that they are practising, or likely to be practising in the near future, as a legal counsel at the Administrative Supreme Court and Supreme Court.

Press contact: Aurore Giovannini / Tel +33 1 55 04 01 81 Email