

Freedom of establishment for lawyers at the French Administrative Supreme Court and French Supreme Court: the *Autorité* issues its opinion for the years 2021-2023

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In accordance with Law No 2015-990 of 6 August 2015 on Growth, Activity and Equal Economic Opportunities ("Macron Law"), 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 2021-2023. The analysis, following the one carried out for the periods 2016-2018 (four offices created) and 2018-2020 (four offices created), was based on the foreseeable evolution of litigation before the high courts (French Administrative Supreme Court and French Supreme Court), on the activity and economic situation of professionals in place before the reform and those newly established since 2016 within the framework of free establishment (activity of the professionals, income, profitability).

In its analysis, the *Autorité* has taken into account, in particular, the effects of the COVID-19 crisis on the activity of the two supreme courts, on the one hand, and on the activity of lawyers at the Courts, on the other hand.

At the end of this analysis, the *Autorité de la concurrence* suggests that the government **creates two counsel offices at the French Administrative Supreme Court (Conseil d'Etat) and French Supreme Court (Cour de cassation) by 2023**, which will be added to the eight offices already created since 2017, bringing the total number of offices to 70.

Thanks to the flexibility of their business model, the newly established lawyers to the Courts have quickly found their place in the profession, and their turnover

has grown steadily since 2017, without the professionals in place before the reform suffering a significant drop in activity. This corresponds to the objectives stated by the Growth and Activity Law of 2015: to encourage the opening up of the profession, by allowing more lawyers to the Courts to access the private practice of their profession by setting up in new offices, without disrupting the activity conditions of the existing offices.

At the end of its examination, the *Autorité* considers that, in view of the various parameters taken into account and the objectives pursued by the reform, there is potential for the establishment of two additional offices for the period 2021-2023.

[1] The lawyers to the Courts are holders of 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.

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