29 October: Freedom of establishment of lawyers at the French Administrative Supreme Court and the French Supreme Court

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**The Autorité de la concurrence issues an opinion on the freedom of establishment
of lawyers at the French Administrative Supreme Court and the French Supreme Court.**

**To improve citizens' access to justice while taking into account changes in cases before the high courts,
the Autorité recommends the creation of four positions by 2020.**

Background

Pursuant to law 2015-990 of 6 August 2015 for Growth, Activity and Equal Economic Opportunities ("Macron" Law), which provides for a review of the situation at least every 2 years, the *Autorité de la concurrence* recommends **the creation of 4 positions at the French Administrative Supreme Court (*Conseil d'Etat*) and the French Supreme Court (*Cour de Cassation*)[1] by 2020,** adding to the four positions already created during the previous two-year period and bringing the number of positions to 68.

The *Autorité* also makes **several qualitative recommendations** designed to improve how this profession operates: changes to the professional rules, which currently restrict the possibility for a lawyer to develop his client base, improvements to the procedure for appointing lawyers to the positions created, the collection of economic information by the lawyers holding these positions and the presence and representation of women in the profession. These modifications are key to the success of the reform and will serve, in particular, to develop all of the positions created since 2017.

The opinion of the *Autorité* will soon be published in the Official Journal (*Journal officiel*).

After a period of two years, the *Autorité* is today issuing a second opinion[2], which assesses the reform of the Counsel positions. This assessment draws in particular on a public consultation launched pursuant to Article L. 462-4-2 of the French Commercial Code (Code de commerce) and run by the Autorité from 7 June to 8 July 2018. A very large number of contributions were received and an in-depth consultation was conducted of holders of the Certificate of Aptitude for the Legal Profession (C*ertificat d'aptitude à la profession d'avocat aux Conseils,* CAPAC), professionals and supreme courts.

Encouraging starts for the new lawyer positions

Without wishing to play down the difficulties involved in any enterprise creation, the feedback from the recently appointed lawyers is positive overall. They made profits from the outset, achieving an average turnover per partner of 53,000 euros in the first six-month period of activity, i.e., an average profit of 27,000 euros (or 4,500 euros gross per month).

The French Administrative Supreme Court and Supreme Court Bar Association (*Ordre des avocats au Conseil d'État et à la Cour de cassation*) have taken on board the recommendations made by the *Autorité* in 2016, the majority of which have been implemented. For example, the conditions for completion of the training at IFRAC[3] (with the option of suspending one's studies at the end of each year) have been made more flexible; a comprehensive communication campaign targeting law students has been run in order to enhance knowledge about and the attractiveness of the lawyer at the French Administratitve Supreme Court and the French Supreme Court profession; a proposal has been submitted to the Minister of Justice to create a board of directors of IFRAC that is independent from the Bar Association; a transparency procedure has been set up for lawyer partnership and succession projects for the existing positions.

The very positive developments are likely to foster the modernisation of the profession of legal counsel.

The Autorité recommends the creation of four positions

The latest opinion of the *Autorité* draws on two types of consideration:

- First of all, an economic analysis of supply and demand on this very specific market, which confirms the very profitable nature of this niche activity. Within the profession, the profit margin was 43% in 2017 and although the average profit per partner was down 0.5% compared to 2014, it was still high: a little over 500,000 euros per partner and per year. This market is still experiencing high levels of concentration in the hands of a few large historical lawyers' offices, which attract a significant share of the institutional client base and where each partner can take on over 1,000

cases per year. The profession is thus marked by a two-tier system, with the smallest structures finding it harder to develop and being penalised by professional rules that hamper client mobility.

- Secondly, a forward analysis of the reforms likely to impact the activity of lawyers at the French Administrative Supreme Court and the French Supreme Court in the years ahead, especially the processing of appeals to the French Supreme Court, which the government is considering changing on a proposal from the French Supreme Court[4], although the scope of this reform has not yet been finally determined.

Against this backdrop, the *Autorité* adopted a cautious approach by recommending the creation of a reduced number of positions: only four between now and 2020, which will be added to the four created in 2017.

In order to assist with the development of these new positions, the *Autorité* is also making recommendations intended to ease a number of ethical rules - which will also benefit the already-established positions -, in order to allow these new players to get themselves known and to attract new clients. The corrections requested are indispensable to ensuring the success of the reform.

[1] *Lawyers at both the Courts hold a position assigned by the State. They enjoy a monopoly in terms of representation of litigants in front of the French Administrative Supreme Court and the French Supreme Court regarding the filing of appeals in the majority of cases, a Monopoly that represents 90% of their activity. These Supreme Court lawyers can also act in other courts (administrative courts, administrative appeal courts, Constitutional Court, European Court of Human Rights, Court of Justice of the European Union, etc.) and work as legal counsels.*
[2] *Consult the first opinion **16-A-18** of 10 October 2016 and the **press release**.*
[3] *The Institut de formation et de recherche des avocats aux conseils ("IFRAC") provides a vocational training course for practitioners who are already registered with the Bar Association and wish to become a lawyer at the French Administrative Supreme Court and the French Supreme Court. See the **dedicated page** on the website of the Bar Association.*
[4] *See the information relating to the **reform of the processing of appeals** published online by the French Supreme Court.*

> Read the Opinion 18-A-11 of 25 October 2018 regarding the freedom of establishment and recommendations for lawyers' positions at the French Administrative Supreme Court and the French Supreme Court

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