Freedom of establishment for lawyers to the French Administrative Supreme Court and French Supreme Court: The Autorité issues its opinion for the years 2023-2025

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The *Autorité de la concurrence* issues its 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 years 2023-2025 (fourth period of application of the Growth, Activity and Equal Economic Opportunities Act) and recommends the creation of two offices by 2025.

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 2023-2025.

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 2021 opinion 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 two offices of lawyers to the French Administrative Supreme Court (*Conseil d'État*) and French Supreme Court (*Cour de cassation*) [1] by 2025**, which will be added to the ten 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 implementation of the reform

After three opinions that led to the creation of four offices [3] in 2016, four offices [4] in 2018 and two offices [5] in 2021 (taking the total number of offices from 60 to 70 today), the *Autorité* is now issuing a fourth opinion on the freedom of establishment of lawyers to the French Administrative Supreme Court (*Conseil d'État*) and French Supreme Court (*Cour de cassation*) (lawyers to the courts). Of the 131 lawyers to the courts in the profession today, 13 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 trends in the economic and health situation of supply and demand affecting the profession.

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 from 14 September to 14 October 2022.

Potential for the development of additional offices

The analysis of supply and demand for the activity of lawyers to the courts confirms the very good economic performance of the profession. The impact of the health emergency is noticeable, but limited in scope. Over the 2017-2021 period, the profession's margin rate remained stable and high, slightly above 40%, and the average profit per private lawyer was approximately €470,000. 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 prices and management.

In addition, an analysis of the financial condition of the eight offices created in 2017 and 2019 [6] indicates that they appear to have had a successful start. For these offices, the average turnover per private lawyer grew by 38% between 2019 and 2021, exceeding 200,000 euros in 2021, and their margin rate was well above that of the profession as a whole, at around 60%.

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

Due to the existence of two uncertain economic factors, the *Autorité* recommends the establishment of two lawyers' offices by 2025

Two main factors justify a cautious approach to increasing the number of offices of lawyer to the courts:

- first, while the demand for services from litigants before the French Supreme Court (*Cour de cassation*) continues to decline, activities before the French Administrative Supreme Court (*Conseil d'État*) also began to decrease in 2022. However, lawyers to the courts do most of their business

(in terms of volume and turnover) before these supreme courts;
- second, the pool of professionals holding the CAPAC who are likely to apply to establish offices remains small, between ten and fifteen, but it could be partly mobilised to compensate for potential retirements (at the end of 2022, 17 lawyers to the courts were 69 years old or older), which limits the prospects for growth in the number of lawyers to the courts in the next two years.

In this context, the Autorité has adopted a cautious approach, recommending the creation of two offices by 2025.

Additional recommendations

The *Autorité* commends 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. Amendments to the texts and changes without affecting current legislation have been made in order to:

- improve transparency and fluidity in the appointment process when applications are made to the Chancellery and in the information available on access to the profession, and;
- improve women's access to the profession. In this respect, 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 the opinion published today, 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 *Cour de cassation* (French Supreme Court).

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

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

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

[6] There is insufficient data on the offices established in 2021 at this time.

Supreme Court

See the full text of the opinion (in French)

Contact(s)

Valentin Py
Communication officer
01 55 04 00 54
Contact us by e-mail