

The Council of State

The Council of State is an independent court instituted by the law of 23 December 1946.



Composition

**First president
A president**



They are at the head of the Council of State. They are chosen by their peers and from within the Council of State. In certain cases they are called on to take urgent decisions, ruling alone.

**Fourteen presidents
of chamber**



They preside over the different chambers. In theory, each chamber consists of a president and two advisers (councillors). In certain cases (for instance claims for suspension and disputes regarding foreigners), there is only one councillor who sits.

State Councillors



They are the 28 Judges (14 French-speaking and 14 Dutch-speaking) of the Council of State. They are appointed for life by the federal government (King) from a list of three candidates presented by the Council of State itself followed, in certain cases, by a list presented alternately by the House of Representatives and the Senate. The candidates must be aged at least 37, graduates, masters or doctors of law, and have at least ten years of legal experience.

Assessors



They are renowned lawyers, generally university professors specialised in a particular area of law. Depending on the type of text submitted they assist the legislation section. They are appointed for a period of five years by the federal government (King) on the proposal of the Council of State and in certain cases of the House and the Senate.

Auditors



They constitute the "Public Prosecutions Department" at the Council of State. In the administrative litigation section, the members of the prosecutions department are charged with the inquiries into cases. They give their opinion in open court. In the legislative section, they write a report on the text submitted for the opinion of the Council of State.

Coordination office



The task of the members of the Coordination Office is, amongst others, to scrutinize the state of the legislation, to put documentation at the disposal of the two sections of the Council of State, to put documentation about the state of the legislation at the disposal of the general public and to prepare the coordination, the codification and the simplification of the legislation.

The legislation section

This section gives reasoned legal advice on the preliminary draft Bills, Private members' Bills, decrees, ordinances, draft regulations and on certain amendments and verifies

- whether the submitted texts respect the higher legal standards (Constitution, law, etc)
- whether the initiating authority is competent for the subject dealt with
- whether the legal texts are of good quality: clarity of text, absence of contradictions, consistency between the French text and the Dutch text.

The Council of State does not reach a decision on the “appropriateness” of the texts submitted to it for advice. The Council of State gives technical and legal advice but not political advice.

» Compulsory opinion

- ➊ Preliminary draft Bills, decrees or ordinances (submitted by the various governments)

There are two exceptions to this rule:

1. A certain number of preliminary draft texts that are not of a general scope (budgets, accounts, loans, transactions on estates belonging to the State, army quota) do not have to be submitted to the Council of State.
 2. When the government invokes urgency, and justifies it, the Council of State only gives limited advice. It then only verifies the competence of the initiating body, examines the legal base and the formalities to be gone through first and controls the legislative procedure to be followed.
- ➋ Draft royal decrees or community or regional government decrees

Exception: when the government invokes urgency, and justifies it, the advice of the Council of State is not required.

If the advice of the Council of State has not been requested, (except if urgency has been invoked) the decree is illegal. The ordinary courts and tribunals may refuse to apply the decree in the framework of litigation, and the administrative litigation section of the Council of State (see below) may cancel the decree in question.

» Request for optional opinion

The Presidents of the legislative assemblies (House of Representatives, Senate, Community or Regional Parliaments) as well as the members of the various governments (at the federal, community, or regional level), each with regard to matters of their own competence, may request the advice of the Council of State on Bills, Private member's Bills, decrees or ordinances, as well as on the amendments to the texts in question.

Exception

The Presidents of the legislative assemblies must consult the Council of State:

- if one third of the members of the assembly concerned so request
- if the majority of the members of a language group (of the House of Representatives, the Senate or the Brussels-Capital Regional Parliament or the joint Community Commission) so request
- if at least twelve members of the parliamentary concertation committee so request.

The administrative litigation section

The administrative litigation section of the Council of State is the highest administrative jurisdiction in the country. Any citizen or legal personality (companies, non-profit organisations, etc) may request the suspension or cancellation of administrative acts or regulations issued by an administrative authority. Royal decrees, community and regional government decrees, administrative acts of the provincial councils, communal councils, the councils of mayors and deputy mayors, mayors, examination committees are all concerned.

Besides suspension or cancellation, the administrative litigation section may also award compensation as reparation of damages caused by an illegal act.

Finally, the administrative litigation section is also the court of cassation for appeals against the decisions by lower administrative courts (for example, the Aliens Litigation Council).

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