

COUNCIL OF STATE OF BELGIUM

1. Introduction

The Council of State of Belgium, created by virtue of a law passed on 23 December 1946, was established on 9 October 1948. It has jurisdictional and advisory powers and its existence has been enshrined in the constitution since 18 June 1993.

The Council of State is an administrative court which does not come under any of the three powers -- legislative, judicial or executive -- recognised by the Belgian constitution. However, for purely functional matters (budget and administration), it is answerable to the executive branch. This link, which has no bearing on the tasks assigned to it under the law, do not in any way constitute a form of hierarchy or supervision over the Council of State.

2. Key powers of the Council of State

2.1. In respect of jurisdiction (administration division)

The Council of State:

- rules – by issuing judgements -- on actions to annul and actions to suspend acts and regulations issued by the administrative authorities;
- rules – by issuing judgements -- on actions to quash disputed decisions handed down in the last instance by the administrative courts.

Notes:

- the administration division may not rule on whether or not legislation conforms to the constitution; it must, where necessary, send a preliminary question to the Court of Arbitration, which has certain powers of a constitutional court;
- the judgements handed down by the Council of State are binding;
- judgements are not subject to appeal; however, if the Council of State has declared that it has no jurisdiction on the grounds that the application is a matter for the judicial authorities or if it has dismissed a motion challenging the jurisdiction of the court on the grounds that the application is a matter for the judicial authorities, the judgement may be referred by one of the parties to the Court of Cassation, which will settle this point of law definitively.

2.2. In respect of advisory matters (legislation division)

The Council of State:

- issues an opinion (obligatorily unless the matter is urgent) on draft legislation and regulations initiated by the government;
- issues an opinion on proposed legislation initiated by parliament, when requested to do so by the speaker of parliament.

Notes:

- the legislation division issues opinions of a legal nature only, i.e. it does not rule on advisability;
- opinions issued by the legislation division are not binding, meaning that the authority in question is free to decide whether or not to abide by them and that it does not have to justify its decisions; the absence of an opinion, when such absence is not adequately justified on grounds of urgency, may however justify an action for annulment or an action for suspension;
- opinions are sent to the authority that requested them and therefore are not, in principle, public documents; however, the law provides for their publication in certain cases (for instance at the same time as the draft legislation to which they pertain). Moreover, in so far as they are part of the administrative file, they must be forwarded by the authority in question, by virtue of the provisions on administrative transparency, to any individual who so requests;
- the legislation division rules on the conformity of draft texts to all higher standards (constitution and Community law), but does not have jurisdiction over draft amendments to the constitution.

3. Composition

The Council of State consists of:

- a Council;
- an Auditor's Office;
- a Coordination Office;
- a Registry.

3.1. The Council

The Council has 44 members: a first president, a president, 12 chamber presidents and 30 councillors. The councillors may deliberate within the institution.

The legislation division consists of four chambers (four chamber presidents and eight councillors). Ten assessors, generally professors of law who are not part of the institution, sit in the legislation division in accordance with their speciality.

Notes:

- the members of the Council are appointed to either the administration division or to the legislation division; in any case, the councillor who sat for a draft statutory order in the legislation division may not sit for a dispute in the chamber which is hearing an action against said statutory order;
- when the nature of the problems raised so requires, the legislation division sits in combined chambers or in the General Assembly;
- the administration division may sit in the General Assembly for certain delicate issues or to ensure the consistency of case law;
- the conditions for being appointed councillor include holding a degree or doctorate in law; at least half of the members of the Council must be appointed from among the members of the Auditor's Office or the Coordination Office.

3.2. Auditor's Office

The Auditor's Office consists of an auditor general, an assistant auditor general, 14 first auditors head of division and 64 first auditors, auditors and assistant auditors, making a total of 80 members.

Twenty-four members of the Auditor's Office are appointed on a priority basis to the legislation division.

The other members of the Auditor's Office take part in investigations in the administration division. They draft a report and issue their opinion at the public session at the end of the debates. The Auditor's Office enjoys a high degree of independence and has inquisitorial powers when carrying out its tasks.

In addition to its tasks involving the investigation of cases, the Auditor's Office is responsible for updating, maintaining and making available -- in the form of computerised files -- documentation regarding the case law of the Council of State. A member of the Auditor's Office is responsible for coordinating the institution's documentation.

The members of the Auditor's Office are recruited by competitive examination. They must hold a degree or doctorate in law.

3.3. The Coordination Office

The Coordination Office consists of two first rapporteurs head of division and two first rapporteurs, rapporteurs or assistant rapporteurs, making a total of four members.

The tasks of the Coordination Office include keeping abreast of the status of legislation and making its documentation available to the two divisions of the Council of State. It also makes its documentation available to the general public over the Internet.

The members of the Coordination Office must take the same competitive examination as auditors. They too must hold a degree or doctorate in law.

3.4. The Registry

The Registry consists of a chief registrar and 25 registrars, including one registrar who is an expert in information technology.

The general functions of the registrars consist of assisting members and drafting the minutes of meetings.

4. Consistency of texts

In a federal state such as Belgium, which is divided into three administrative 'communities' and which has three official languages, it is critically important to the Council of State to ensure that the different language versions of its opinions and judgements are as consistent with each other as possible. That is the purpose of the Department for the Consistency of Texts. This department is more than a translation service in that it works together with magistrates who are legally bilingual to ensure total accuracy.

5. Web site

The Council of State's website (<http://www.raadvst-consetat.be>) contains the information which the institution is able to provide regularly for the general public, in particular the full text of judgements handed down by the administration division since 1994 (in .pdf format). The site also includes annual reports, legislative texts and regulatory texts relating to the Council of State, as well as the circular on legislative techniques.

The decision was taken to include on the web site – as from July 2004 -- information from the Coordination Office on the status of legislation.