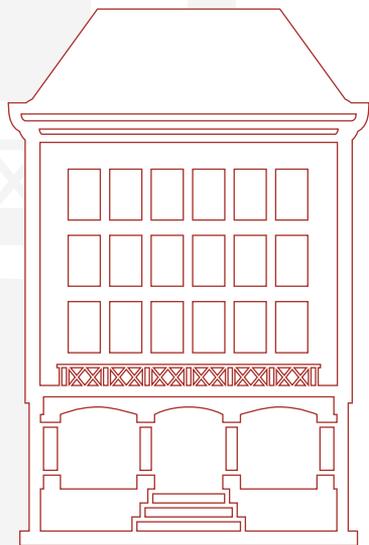


The Council of State { OF THE GRAND DUCHY OF LUXEMBOURG





Conseil d'État 5, rue Sigefroi • L-2536 Luxembourg

Tel.: (+352) 47 30 71 • Fax: (+352) 46 43 22 • E-mail: info@conseil-etat.public.lu • www.conseil-etat.public.lu



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The Council of State

OF THE GRAND DUCHY
OF LUXEMBOURG

The Council of State, the creation of which dates back to the revision of the Constitution of 27 November 1856, is an institution called upon “to give its opinion on all government and parliament bills and possible related amendment proposals, as well as on all other issues referred to it by the Government or by law”.¹

Its organic law explicitly invests the Council of State with the *a priori* examination of the compliance of government and parliament bills with the Constitution, with international conventions and treaties as well as with general principles of law, and invites it to state this in its opinion. The *a posteriori* review of the constitutionality of the laws is nevertheless reserved to the Constitutional Court, referred to for preliminary rulings in the event of a dispute pending before the jurisdictions.

In Luxembourg’s unicameral system, all laws are subject to a second vote by Parliament (Chamber of Deputies), with an interval of at least 3 months required between the two votes. Nevertheless, Parliament may decide in agreement with the Council of State, at a public sitting, that this second constitutional vote is not required. However, the Council of State may use its right of suspensive veto, by which it then refuses to grant an exemption from the second constitutional vote.

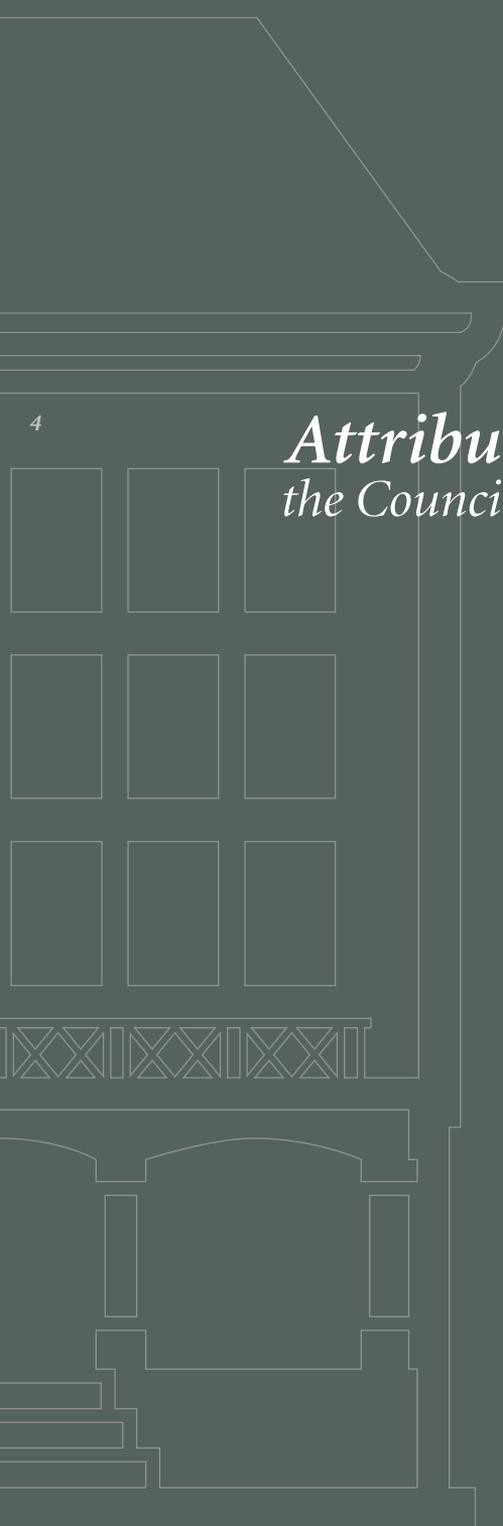
Each draft regulation implementing laws and treaties is submitted to the Grand Duke only once the Council of State has been consulted for its opinion, except in cases of emergency to be evaluated by the Grand Duke. As part of its examination, the Council of State shall also verify the compliance of the bill with regard to the higher-ranking laws.

Since the constitutional revision of 12 July 1996, the Council of State no longer exercises any judicial powers. Its mission “of settling administrative litigation issues” has been referred to the Administrative Tribunal and the Administrative Court.

The Council of State consists of 21 councillors, appointed by the Grand Duke and nominated alternatively by the government, Parliament and the Council of State. Furthermore, members of the grand-ducal family may be part of the Council of State.

The organisation and the functioning of the Council of State are governed by the amended law of 12 July 1996 reforming the Council of State.

¹ All citations listed in this brochure have been freely translated from the original French texts.



4

Attributions of the Council of State

The Council of State issues an opinion on all government and parliament bills, related amendments as well as all other issues referred to it by the government or by law.

Insofar as the Council of State may draw the attention of the government to the appropriateness of new laws or new regulations or changes to be introduced to existing laws and regulations, it has *sui generis* power in legislative and regulatory matters.

Furthermore, the Prime Minister has the right to convene conferences between the government and the Council of State on issues of legislation and higher administration. These conferences are then chaired by the Prime Minister.

IN LEGISLATIVE MATTERS

{ In principle, the opinion of the Council of State is requested by the government before a government bill is presented to Parliament. In cases of emergency, a bill may be referred to Parliament without the Council of State having been previously consulted for its opinion. Nevertheless, in this case, Parliament must be advised of the opinion of the Council prior to casting a definitive vote.

Parliament bills on the subject of which Parliament has declared itself in favour of continuing legislative procedure are also passed on via the government to the Council of State for an opinion.

The government passes on the amendments to its government bills to the Council of State. For his part, the Parliament president may directly refer amendments to government or parliament bills to the Council of State.

If Parliament proceeds to a vote article by article of a government bill and if some of the articles have not yet been subjected to an opinion by the Council of State, the latter must issue its opinion within a timeframe of 3 months at the most from the date that the voted text was passed on to the Council. Failing an opinion within this timeframe, Parliament may proceed to vote on the law as a whole.



In principle, all government and parliament bills must undergo two successive votes by Parliament on the law as a whole. There must be an interval of at least 3 months between the two votes. Nevertheless, Parliament may exempt itself from the second vote, but this exemption becomes effective only with the agreement of the Council of State, which in practice is most often the case. In general, the Council of State refuses to grant an exemption from the second constitutional vote only if it deems that there are significant reasons – such as an incompatibility of the voted text with constitutional provisions, international treaties, including European directives and regulations as well as the jurisprudence of international jurisdictions, or an incompatibility with general principles of law, such as that of legal certainty – that justify its disagreement. The latter has in principle already been manifested by means of a “formal opposition” statement in the opinion of the Council of State. In the event of a refusal to grant the exemption, the president of the Council of State may be given the responsibility by its members to advise the government in writing of the motives underlying the refusal.

IN REGULATORY AND ADMINISTRATIVE MATTERS

In principle, grand-ducal draft regulations implementing laws and treaties may be submitted to the Grand Duke only once the Council of State has been consulted for its opinion.

In cases of emergency, to be evaluated by the Grand Duke, the government may nevertheless dispense with the opinion of the Council. This does not apply, however, if the law formally requires said opinion.

Furthermore, the government may request the opinion of the Council of State on issues of higher administration.

✓ *The plenary room*
© SIP / LUC DEFLORENNE



Composition of the Council of State

The Council of State comprises 21 councillors, at least 11 of whom must hold a PhD in law or a foreign title of higher education in law. This number does not include the members of the grand-ducal family who may be part of the Council of State.

To be appointed a member of the Council of State, prospective members must be Luxembourg nationals, enjoy civil and political rights, reside in the Grand Duchy and be over 30 years of age. Nevertheless, the Hereditary Grand Duke may be appointed to the Council of State as soon as this title has been conferred upon him.

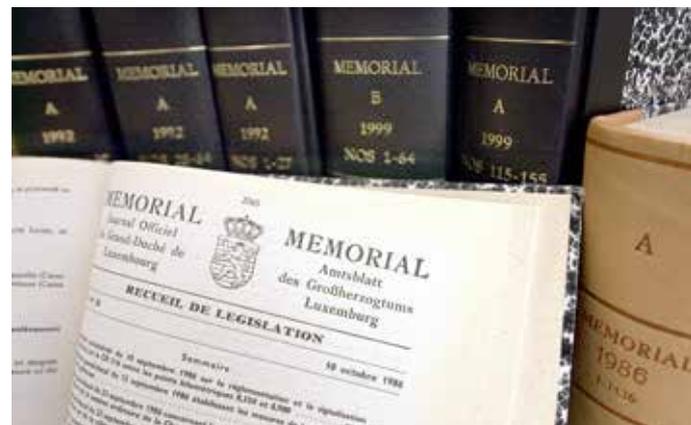
The function of a member of the Council of State is compatible with every other function and every profession, other than that of a member of the government and the mandates of a member of Parliament, a member of a professional chamber or of the Economic and Social Council as well as the functions of magistrate at the Administrative Court or the Administrative Tribunal and of staff member of the Secretariat of the Council of State.

The councillors are appointed by the Grand Duke.

In the event of a vacant seat of a Council of State member, a replacement is provided alternatively and in the following order:

1. direct appointment by the Grand Duke;
2. appointment of one of the three candidates presented by Parliament;
3. appointment of one of the three candidates presented by the Council of State.

By way of derogation from these rules, the members of the grand-ducal family are always designated by direct appointment by the Grand Duke.



Council of State members are dismissed by the Grand Duke. They may be dismissed only once the Council of State, in a plenary sitting, has been heard on the motives for the dismissal.

The function of a Council of State member ends following a continuous or discontinuous period of 15 years or once the person concerned reaches the age of 72.

The Grand Duke may dissolve the Council of State. The only dissolution in the history of the Council of State, however, dates back to the end of the Second World War in 1945. In the event of a total renewal of the Council of State, the Grand Duke proceeds with the direct appointment of seven members to carry out the function of a Council of State member. Seven further members are chosen by the Grand Duke from a list of 10 candidates presented by Parliament. The 7 remaining members to be designated are chosen by the Grand Duke from a list of 10 candidates presented by the Council of State, composed according to the preceding rules.

Each year, the Grand Duke designates from among the councillors the president and the two vice-presidents of the Council of State.

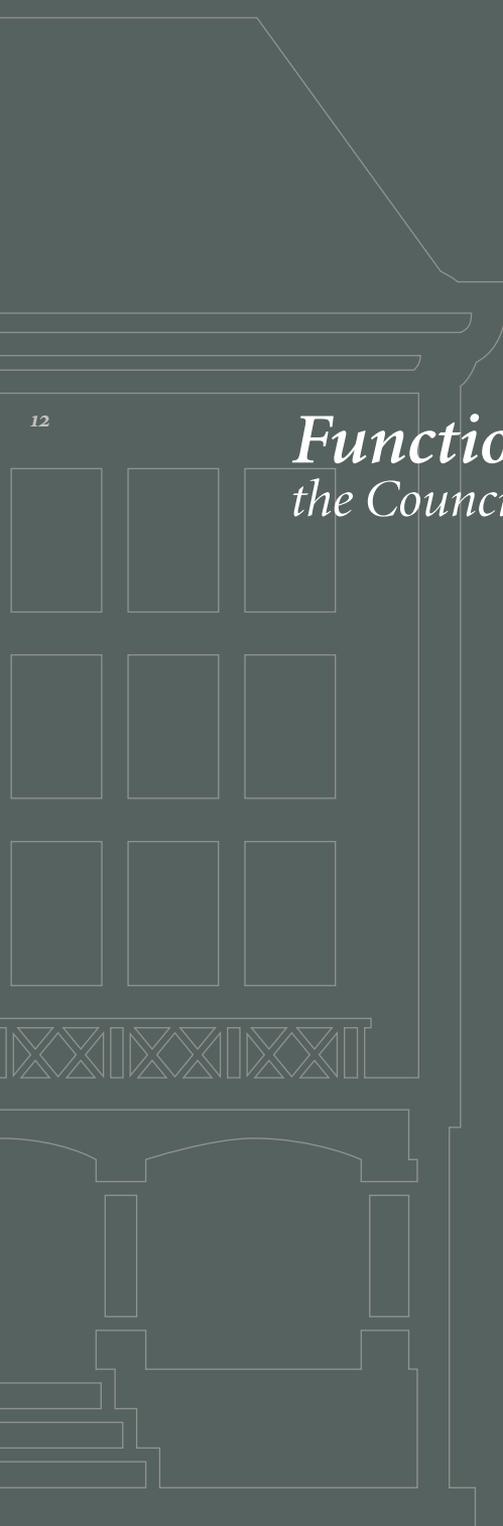
The secretary general of the Council of State, who is a civil servant, is appointed and dismissed by the Grand Duke, upon nomination by the Council. He carries out his function in a full-time capacity.

Remuneration of the members of the Council of State is laid down by grand-ducal regulation of 15 May 1997. The law of 29 July 1988 (title VII) regulates the right to pension benefits of the members of the Council of State.

✓ Numerous paintings by Luxembourg artists adorn the walls of the Council of State since the building was extended and redeveloped in 2006

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Functioning of the Council of State

THE PRESIDENT

The president of the Council of State represents the institution, is responsible for the daily business and chairs the public and plenary sittings.

The Grand Duke may, if he deems it appropriate, assume the presidency of the Council of State, a prerogative he has never exercised to date.

In the event of the president's impediment, the presidency is assumed by one of the two vice-presidents or by the most senior-ranking Council of State member.

THE BOARD

{ The Board of the Council of State consists of the president and the two vice-presidents. The secretary general is called upon to attend the meetings of the Board.

The Board has the following missions:

- to decide on issues regarding the organisation of the work performed by the Council of State;
- to draw up the list and the composition of the commissions;
- to examine the appropriateness of new laws or new regulations concerning the organisation and functioning of the institution;
- to draw up the budgetary proposals of the Council of State;
- to examine all issues relating to the institution that Council of State members submit to it, in particular those pertaining to the Secretariat.

*Glass-roofed atrium with a view
of the passageways*

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THE COMMISSIONS

The permanent commissions of the Council of State are instituted by the Board, which lays down their composition and designates the respective presidents. In doing so, it is careful not to choose as a commission member any Council of State member called upon by another function to regularly draw up government bills or draft regulations that this commission is responsible for examining.

Six permanent commissions are instituted:

- the “Institutions and Public Administration” commission;
- the “Sustainable Development and Infrastructure” commission;
- the “Social Affairs” commission;
- the “Economy and Finance” commission;
- the legal commission;
- the “Culture, Education, Research and Media” commission.

The president of the Council of State may form special commissions for the examination of matters of a specific nature and designate the members composing them.

Each Council of State member with voting rights may attend meetings of a commission of which he is not a member, either on his own initiative or upon request of a commission president. The commissions may call to their deliberations, to partake in them in an advisory capacity, any person likely to provide

clarifications on matters being deliberated (e.g. members of the government).

A staff member of the Secretariat is assigned by the Board to each commission to assist the councillors in their work. The secretary general may attend each commission meeting.

The commissions have the following missions:

- to examine government and parliament bills, grand-ducal draft regulations or decrees, related amendments, as well as issues of all kinds referred to the Council of State;
- to study on their own initiative the appropriateness of new laws or new regulations or changes to be introduced to existing laws and regulations.

The commissions designate one or several of their own members to be responsible for drawing up a draft opinion or resolution. Members of the Council of State must abstain from participating in the drafting of an opinion or from taking part in public and plenary sittings in a vote relating to a government or parliament bill, or even a draft regulation, if they have been involved in drawing it up in a capacity other than that of a Council of State member.

A commission may form a subcommission, of which it determines the composition, and which is responsible for preparing a draft opinion to be submitted to the commission for its deliberations.

Commission work is not public.

PUBLIC AND PLENARY SITTINGS

The public and plenary assemblies consist of the president, the two vice-presidents and all the other members of the Council of State as well as the secretary general.

The plenary assemblies are held in camera and have the following competences:

- to approve by majority vote all draft opinions and resolutions. Each Council of State member has the right to propose a separate opinion, which may be supported by one or several other members and which is brought to the attention of the government together with the main opinion;
- to propose candidates to the Grand Duke in the event of cooptation of new members and to propose the secretary general and higher and middle career civil servants for appointment by the Grand Duke;
- to adopt the budgetary proposals of the Council of State;
- to examine the reasoned proposals of the Council of State members;
- to express an opinion on the dismissal of a Council of State member.

The assembly expresses its opinion in a public sitting on the exemption from the second constitutional vote granted to the government or parliament bills adopted by Parliament (article 59 of the Constitution).

THE SECRETARY GENERAL AND THE SECRETARIAT OF THE COUNCIL OF STATE

The secretary general is involved in the work performed by the members of the Council of State. In this capacity, he may attend each meeting and each commission. He also monitors the admission and the follow-up of matters referred to the Council of State as well as all dispatches. The secretary general heads the Secretariat of the Council of State.

The Secretariat of the Council of State represents the administration of the institution. It assists the Council of State members in their work.



^
In the centre, from left to right: Victor Gillen, president of the Council of State, and Marc Besch, secretary general

The opinions of the Council of State

Article 2, paragraph 1 of the amended law of 12 July 1996 reforming the Council of State stipulates that the opinion of the Council of State be stated in a reasoned report containing conclusions and, if need be, an alternative draft. In practice, this opinion is divided into two parts: the first deals with general considerations by the Council of State of a political and legal nature on the subject of a government or parliament bill; the second contains, if need be, other than the examination of the title of the draft act and of the preamble of the draft regulations, an examination of each article. In the second part of this opinion, the Council of State regularly makes text proposals in order to respond to the observations it issues. If it deems it necessary, the Council of State attaches to its opinion a new version of the government or parliament bill that incorporates these text proposals. Thus, the role of the Council of State is not just to issue critical observations, but also to propose, whenever possible, legal and pragmatic solutions in compliance with the higher-ranking norms and principles of law.

If the Council of State deems a government bill or a parliament bill, or even a grand-ducal draft regulation, to be contrary to the Constitution, to international conventions and treaties as well as to the general principles of law, given its organic law it has an obligation to state this in its opinion.

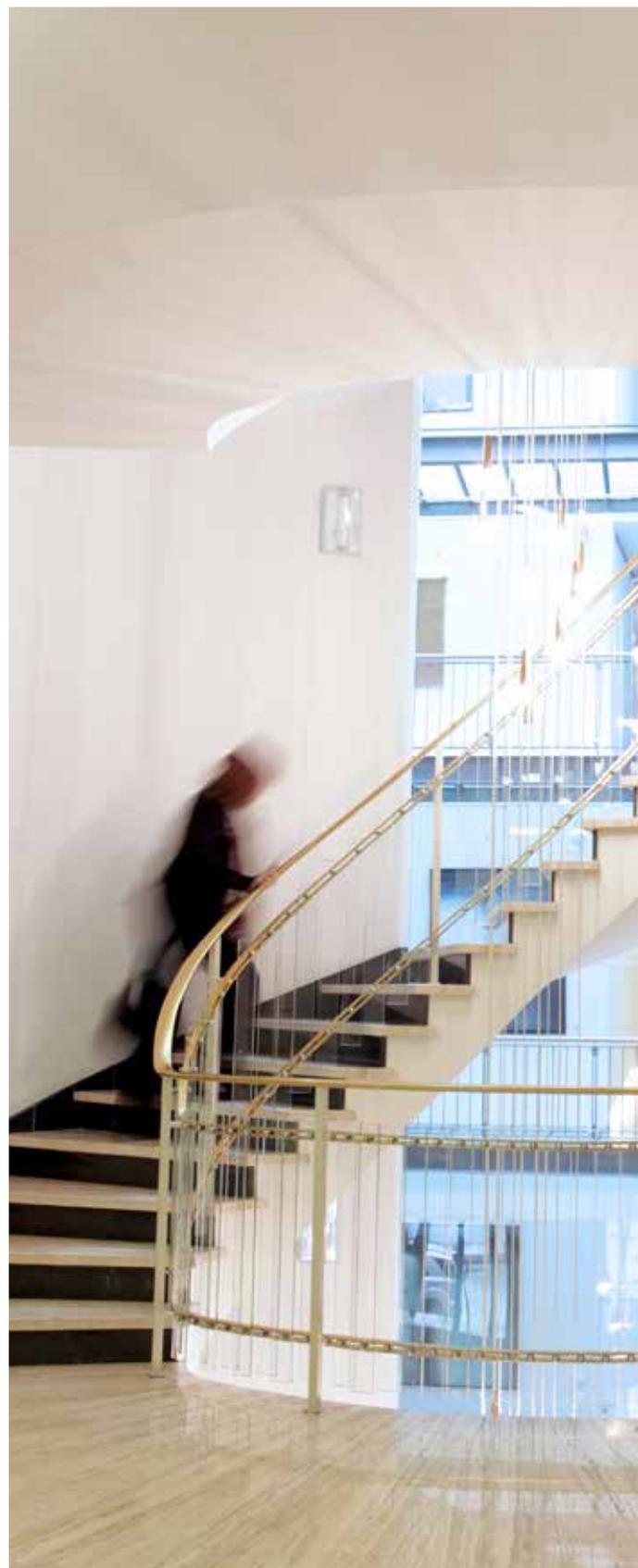
The opinions and, if need be, the separate opinions, adopted in a plenary sitting, are finalised by the secretary general in compliance with the decisions taken during the plenary sitting, then signed by him and the president to certify their authenticity. They are immediately brought to the attention of the government and, if the opinions concern parliamentary amendments, Parliament.

Opinions concerning government bills that have been filed with or communicated to Parliament and opinions concerning parliament bills are published on the Internet site of the Council of State immediately upon their adoption in a plenary sitting. All the opinions of the Council of State issued since 1945 on government and parliament bills as well as the preparatory work pertaining thereto may be consulted on the Parliament site.

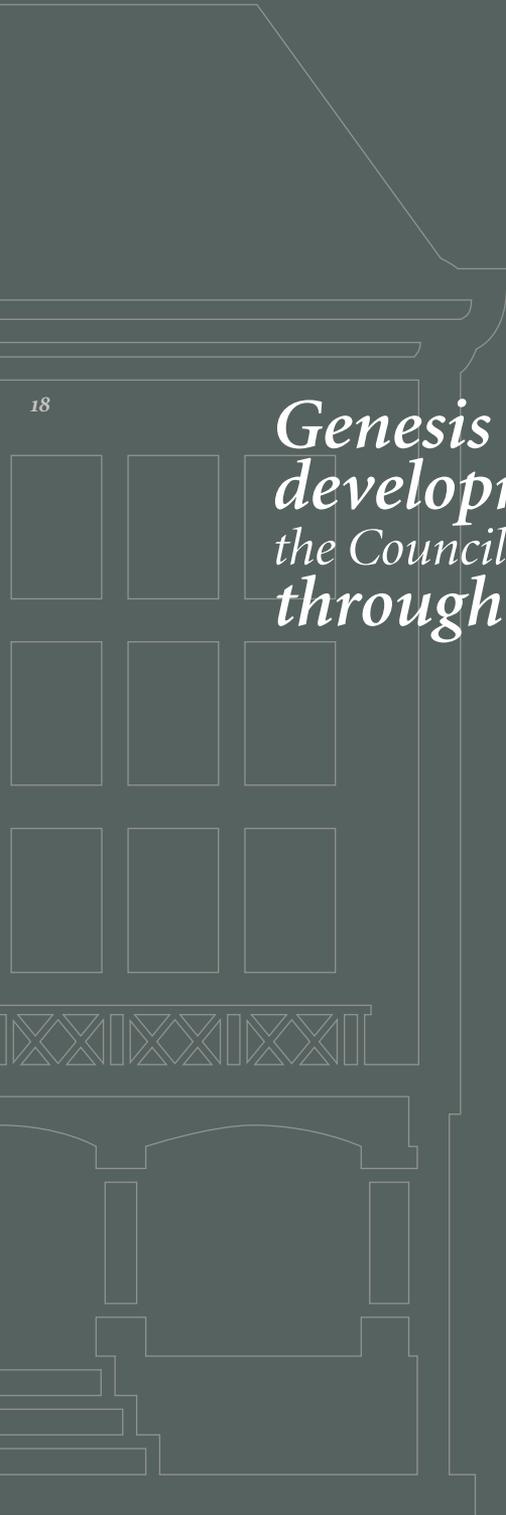
Article 37 of the new internal rule of the Council of State foresees that, subject to the agreement of the government, opinions on grand-ducal draft regulations may be made public. In 2008, the Council of State was granted the authorisation to publish its opinions on these bills in future. At the same time, it was put in charge of simultaneously publishing the texts of the grand-ducal draft regulations to which these opinions pertain on its Internet site.

Spiral staircase dated 1959

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*Genesis and
development of
the Council of State
through time* }



› 1815-1830

The Council of State of the Netherlands

{ In 1815, Luxembourg was elevated to the rank of grand duchy by the Congress of Vienna. It was ceded to the King of the Netherlands and integrated into the German Confederation. King-Grand Duke William I, failing to take into account the proclaimed independence of the new state, incorporated Luxembourg into the Netherlands, the latter also including modern-day Belgium, and had it governed by the Dutch Constitution.

This Constitution created a Council of State consisting of 24 members at the most, chosen as far as possible from all the country's provinces. Beyond this number, the crown prince was a member by right and the other princes from the royal house could be invited to become members by the King-Grand Duke upon their coming of age. From 1815 to 1830, barons Guillaume de Feltz, François d'Anethan and Jacques d'Anethan represented Luxembourg at the Council of State of the Netherlands.

The members of this Council of State were appointed and dismissed by the King-Grand Duke, who could furthermore designate extraordinary councillors. The King-Grand Duke also chaired the Council of State.

The King-Grand Duke submitted to the deliberation of the Dutch Council of State the proposals that he made to Parliament and to the Senate and those that were made to him by them, as well as all general administration measures. Furthermore, he consulted the opinion of the Council of State on all matters of general or particular interest that he deemed appropriate to submit to it.

The Dutch Constitution furthermore foresaw a senate, known as the "First Chamber of the States General", which consisted of a minimum of 40 and a maximum of 60 members. They had to be over 40 years of age and were appointed for life by the King-Grand Duke from among the most distinguished individuals in terms of services rendered to the state, birth status or wealth. This Senate had the same competences as the second Chamber, which consisted of elected members.

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*Statue of William II on the eponymous square
(place Guillaume), facing the grand-ducal palace*

© CHRISTOF WEBER / SIP



> 1830-1839

The Belgian Senate

20

In 1830, the Belgian Revolution broke out and resulted in the secession of the Belgian provinces, which formed into an autonomous kingdom. Luxembourg, with the exception of the city of Luxembourg, a Germanic federal fortress, joined forces with Belgium and was administratively attached to the latter.

In 1831, the new Kingdom of Belgium was vested with Europe's most modern and most democratic Constitution. Luxembourg, with the exception of the capital, was thus ruled by this fundamental charter.

For a long time, the fathers of the Belgian Constitution, among them a number of Luxembourgers such as Étienne-Constantin de Gerlache, Jean-Baptiste Nothomb and Jean-Baptiste Thorn, debated on whether or not to institute a senate. Finally, the idea of a senate consisting of members representing the different provinces and having the same power as the House of Representatives in Brussels was retained.

The Belgian constituents, however, rejected the idea of the creation of a Council of State, this type of institution being a reminder of the detested King-Grand Duke. It was furthermore considered superfluous when taking into account the institutional components put into place by the new Constitution. Soon, however, the absence of a Council of State that was able to intervene in the making of laws was regretted by some. Yet it was not until 1946 that Belgium acquired such an institution.

The attachment of almost all of Luxembourg's territory to Belgium ceased upon the Treaty of London of 19 April 1839 entering into force. This treaty sanctioned the partition of Luxembourg, with five out of eight districts, situated in the west of the country, going to Belgium. The other districts formed the Grand Duchy of Luxembourg, henceforth an autonomous and sovereign state, placed under the guarantee of the great powers, with the King of the Netherlands as its monarch.



^
Royal seal affixed to the Constitution of the Grand Duchy of Luxembourg of 1848 under the reign of King-Grand Duke William II, on which he took oath on 10 July

© SIP

> 1848

Permanent Commission of Legislation

{ Since the creation of an autonomous government and the administrative separation decreed by the King-Grand Duke in 1830, Luxembourg had been home to neither a senate nor a council of State. The first strictly speaking Luxembourgish Constitution, decreed by King-Grand Duke William II in 1841 and reflecting an autocratic regime, did not mention such institutions.

It was only in 1848 that the debate on this subject was launched once again. As a result of the events shaking monarchical Europe at the time, Luxembourg was finally able to acquire its first constitution worthy of the name. Given their democratic character, the Belgian Constitution and institutions lent themselves perfectly to influencing the structure of the young Luxembourg state. The constituents thus adopted the text of this Constitution almost word for word, with the exception of the provisions relating to the Senate.

King-Grand Duke William II, who tried secretly to influence the proceedings of the constituent assembly, advocated the creation of a senate, believing that “in a truly constitutional state it is hardly possible to have good laws with one single deliberative assembly”. The fathers of the 1848 Constitution, however, rejected the idea of the creation of a senate after careful consideration, this on account of the country’s small size.

While maintaining the system of a single Chamber, the constituent assembly foresaw two means “for countering the disadvantage of the precipitated adoptions of laws that have not been sufficiently drawn up”:

- { 1. Parliament could decide that, as a result of its significance, a law had to be submitted to a second vote during a subsequent session to be determined by Parliament;
- { 2. simultaneously, a Permanent Commission of Legislation was created, “a type of Council of State”, which had to be consulted, except in cases of emergency, prior to the submission of a government bill to Parliament. This commission consisted of nine members, of whom five were to be appointed annually by Parliament and four were to be appointed for each particular law by the government. The commission elected its president from among the members appointed by Parliament.

> 1856

Creation of the Luxembourg Council of State

22

{ When William II died in 1849, he was succeeded by his son William III. The latter wished to restore monarchical authority and to reform the overly liberal Constitution of 1848. To justify his action, he used the pretext of his obligations towards the German Confederation, to which Luxembourg had belonged since 1815. Parliament was hostile to these constitutional review trends. The constitutional reform draft, drawn up by the government in conjunction with the brother of the King-Grand Duke, his lieutenant-representative Prince Henry, met with opposition from Parliament, which withdrew its confidence from the government. On 27 November 1856, William III issued a proclamation and, the same day, published the order on the revision of the Constitution in an autocratic and reactionary move.

The draft constitutional reform advocated, among others, the creation of a Council of State, specifying that “for the legislation, the Council of State shall act as a second Chamber; its action shall become a guarantee for the maturity of laws. [...] For the administration, it shall form the great council of the Government, at the same time as an administrative tribunal. Lending precious support to the Government for the examination of all issues concerning general interests, it shall protect private interests against arbitrariness and errors of the administration”. The authors of this draft declared themselves convinced that the institution of such a council would be one of the most positive outcomes of the reform they were proposing.

Article 76 of the new Constitution thus foresaw the presence, alongside the government, of “a council” with the mission to issue an opinion on all government bills and possible amendments, to settle administrative litigation issues and to express its opinion on all other issues referred to it by the King-Grand Duke or by law.

This new Council thus replaced the Permanent Commission of Legislation, instituted by the 1848 Constitution. Besides, this commission had been widely criticised within Parliament for its changing composition and lack of unity. Ultimately, it had never achieved the prestige of a political body, such that its opinions no longer held any real significance during the final years of its existence.

As under the regime of the 1848 Constitution, Parliament could decide that, as a result of its significance, a government bill had to be submitted to a second vote during a subsequent session to be determined by Parliament.

The first organisation of the Council of State, decreed by royal grand-ducal order in 1857, was modelled on a government bill of this period aiming to reform the Dutch Council of State. The Luxembourg Council of State then consisted of a minimum of 9 and a maximum of 15 members, appointed and dismissed by the King-Grand Duke. A special committee, the Litigation Committee, consisting of five to seven of these members, was responsible for administrative litigation issues. Two former presidents of the government and 5 former ministers featured among the first 11 members appointed to the Council of State. The first plenary meeting of this new institution was held one year after its constitutional creation.

A second organic law of the Council of State dated 1866 fixed the number of Council of State members at 15, 7 of whom formed the Litigation Committee. Councillors who were not part of the Litigation Committee were, as under the former organisation, directly appointed and dismissed by the King-Grand Duke, but no member of the Council of State could be dismissed until after the Council had been consulted. The members of the Litigation Committee were appointed by the King-Grand Duke, upon proposal by Parliament, for a period of 6 years.



Portrait of Gaspard-Théodore-Ignace de la Fontaine, president of the Council of State from 1857 to 1868, hanging in the plenary room

© COUNCIL OF STATE

> 1868

Introduction of the exemption from the second constitutional vote

24 { International developments, such as the dissolution of the German Confederation and Luxembourg's neutral status introduced by the Treaty of London of 11 May 1867, called for a revision of the Constitution. The constituent assembly thus took advantage of the situation to remove the authoritarian principle introduced in 1856 and to modify the constitutional text in a progressive and liberal sense.

It was not, however, a matter purely and simply of coming back to the Constitution of 1848 and the ideas previously taken over from the Belgian Constitution. For instance, the institution of the Council of State was maintained. The idea of the creation of a senate, suggested by the Council of State itself, was still rejected by the constituent assembly, citing the same grounds invoked in 1848, namely the small size of the territory. To compensate for the absence of a senate, the authors of the Constitution of 1868 nevertheless foresaw that all laws were to be submitted to a second vote within a time interval of at least 3 months, unless Parliament, in agreement with the Council of State, at a public sitting, decided the contrary.

While article 59 of the Constitution stipulated that the double constitutional vote was to be the norm and that a single vote was to remain the exception, it was in fact the reverse situation that, in practice, became the rule after 1868. The Council of State in effect reserved the use of its awarded right of veto in particular for texts contrary to the higher-ranking law.

> 1919

Far-reaching institutional reforms

{ During the First World War, the German occupying forces respected the Constitution and the laws of the country, within certain limits, by allowing an autonomous Luxembourg administration to remain.

At the end of the war, Luxembourg was marked by social tension due to severe food shortages and price increases. The country was gripped by a deep political crisis, which called into question the functioning of the institutions. Like the dynasty and Parliament, the Council of State did not escape criticism.

In 1919, the Constitution underwent a substantial revision. Henceforth, sovereignty resided in the nation. The political landscape was sustainably changed by the introduction of universal suffrage for all Luxembourg citizens – men and women, aged at least 21 – and proportional representation. Universal suffrage put a definitive end to the regime of the notables who ruled under the guise of a voting system based on capitation tax and it heralded an era dominated by political parties.

The legitimacy of the monarchical regime was strengthened following the outcome of the referendum of 28 September 1919, in which a large majority of the population declared itself in favour of maintaining the monarchy and the dynasty of the Nassau-Weilburg, which had replaced the sovereigns of the Netherlands in 1890. Nevertheless, the constituent assembly foresaw that the Grand Duke no longer held any powers other than those formally assigned to him by the Constitution and by law.

The Council of State, for its part, remained unchanged by this institutional upheaval.

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*Popular demonstration before Parliament
on 13 August 1919, a year marked by
political and social unrest*

© PHOTOTHÈQUE DE LA VILLE DE LUXEMBOURG



> 1945

Dissolution and renewal of the Council of State



TRH Grand Duchess Charlotte and Prince Félix in the company of their children. TRH Prince Félix, the Hereditary Grand Duke Jean and Prince Charles (from left to right) have successively been members of the Council of State.

© GRAND-DUCAL COURT / ÉDOUARD KUTTER & FILS

{ On 10 May 1940, German troops invaded the Luxembourg territory. The Council of State continued to sit until gauleiter Gustav Simon ordered its dissolution in October 1940.

In September 1944, the members of the government, who went abroad into exile during the German invasion, returned to Luxembourg and resumed their duties. Grand Duchess Charlotte was welcomed by a jubilant Luxembourg population on 14 April 1945 after 5 years in exile.

Even though institutions that existed before the invasion resumed their activities, the Council of State was dissolved on 16 November 1945 by grand-ducal decree on the grounds that its composition “no longer meets the requirements of the current situation”. Only 4 Council of State members out of the 12 who sat on the Council of State before the war secured a new appointment.

The first plenary sitting of the Council of State following the Liberation was held on 18 December 1945.

> **1961**

Revision of the composition of the Council of State

{ Towards the end of the 1950s, a general debate on the composition and the missions of the Council of State took place between the government, Parliament and the Council of State. The legislator followed the opinion of the Council of State on a parliament bill concerning its composition. The resulting law of 1961 modified more particularly the composition of the Council of State and the method of designating its members.

Henceforth, the Council of State consisted of 21 councillors, 11 of whom formed the Litigation Committee.

The previous procedure, allowing Parliament to propose a list of three candidates to the Grand Duke for each appointment to the Litigation Committee, was abolished. Nevertheless, it continued to act as a model for the designation of all the members of the Council of State.

Council of State members were thus still appointed by the Grand Duke. In the event of a vacant seat at the Council of State, however, the replacement was arranged alternatively and in the following order: direct appointment by the Grand Duke, appointment of one of the three candidates presented by Parliament and appointment of one of the three candidates presented by the Council of State. According to its authors, this new method of designation signalled a “democratisation” of the institution.

In 1972, the age limit of the Council of State members, previously appointed for life, was fixed at 72 years.

At the same time, the legislator gave the Grand Duke the right directly to appoint members of his family beyond the established number of 21 Council of State members. Since 1897, all the hereditary grand dukes have incidentally been members of the Council of State.

> 1989

Formal independence of the Council of State

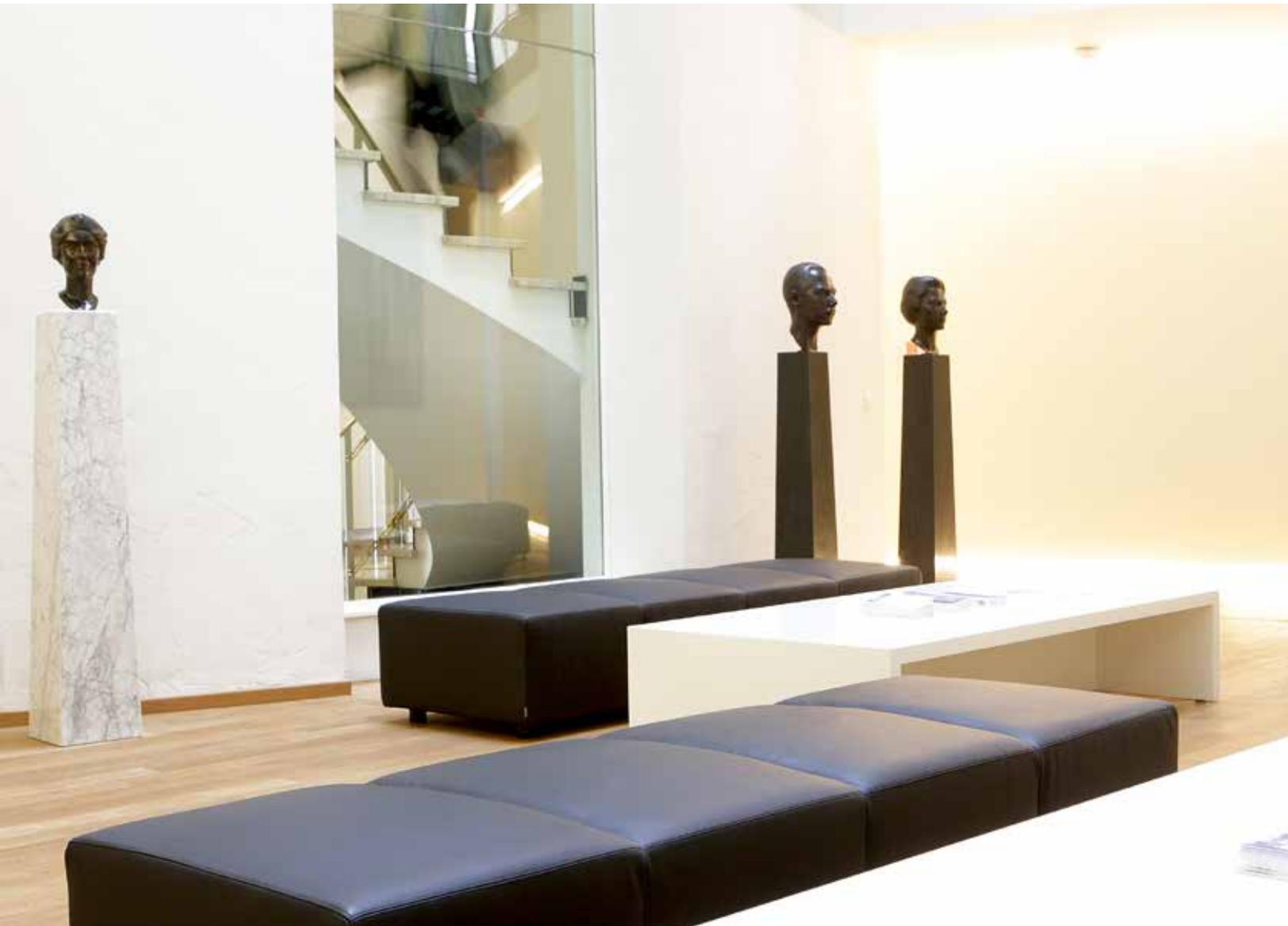
28 { In 1989, the independence of the Council of State was formally established by the Constitution. The text relating to the Council of State, previously featured in the Constitution under a chapter relating to the government, was given its own separate chapter.

The reason for submitting the constitutional text on the Council of State for revision was to designate it by its name, to underline its distinct character, to emphasise its independence with regard to the government and to define its remit more clearly, in particular in its capacity as administrative jurisdiction.

The authors of this constitutional revision had furthermore concluded that the wording of the new constitutional text would not oppose a complete separation, at individual level, between Council of State members performing an advisory function and those performing a judicial function.

✓ Atrium of the Council of State, with in the background the spiral staircase and the busts of TRH Grand Duchess Charlotte, Grand Duke Jean and Grand Duchess Joséphine-Charlotte (from left to right)

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> 1996

*Key reform of
the Council of State*

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{ In 1996, the Council of State underwent its most incisive reform since its creation.

The trigger for this reform was the Procola ruling of the European Court of Human Rights of 28 September 1995.

In this affair relating to milk quotas, the judges in Strasbourg ruled that the composition of the Litigation Committee of the Council of State did not fulfil the requirement of impartiality resulting from the European Convention for the Protection of Human Rights and Fundamental Freedoms. Indeed, four out of the five Council of State members who had sat on the Procola affair enforced a law on the subject of which they had already contributed to by issuing an opinion within the context of the Council of State's advisory mission. According to the European Court of Human Rights, the agricultural association Procola had a legitimate reason to fear that the members of the Litigation Committee would feel bound to the previously issued opinion. This simple doubt was sufficient to call into question the impartiality of the Litigation Committee.

By retaining the proposals made by the Council of State itself in its opinion on the government bill reforming the Council of State, the constituent assembly thus relieved it from its judicial role with effect from 1 January 1997, by abolishing the Litigation Committee, to entrust it to the Administrative Tribunal at first instance and to the Administrative Court on appeal. By proposing this solution, the Council of State went beyond a simple structural separation of the institution between Council of State members exercising an advisory function and those exercising a judicial function, as had also been envisaged during the constitutional revision of 1989.

The constitutional revision of 12 July 1996 saw the competences of the Council of State as an advisory body being reinforced. The legislator has in effect explicitly invested the Council of State with a mission that it has in actual fact assumed since its creation, that is to say the *a priori* review of the compliance of government bills and draft regulations with the Constitution, international conventions and treaties as well as general principles of law. The *a posteriori* review of the constitutionality of the laws has been entrusted, by way of a separate law, to the newly created Constitutional Court.

This far-reaching reform introduced two additional new features. Henceforth, the duration of the term of office of a Council of State member is limited to 15 years and is not renewable, and the Council of State may in exceptional circumstances see itself impose a timeframe of 3 months to issue its opinion within the context of the legislative procedure.



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The building of the Council of State

Erected on the so-called Fish Market in the oldest quarter of Luxembourg City, the building of the Council of State is situated close to the grand-ducal palace, the Parliament building, the government quarter and the justice quarter, the Cité judiciaire. The building is in fact only a stone's throw from the location of the former Provincial Council building (erected in 1532, demolished in 1769).

The Council of State is housed in an ensemble of buildings, merged during significant transformation, extension and construction work carried out from 2004 onwards. Its perimeter forms a triangle. The tip of this triangle, located at the extremity of the rocky outcrop dominating the valley of the Alzette, boasts a first-floor terrace offering at the same time a panoramic view over the fortress remains and, in the distance, the birth house of Robert Schuman and the Kirchberg quarter with its European institutions. One side featuring a turret overlooks boulevard Victor Thorn and has a tourist path running alongside it, leading into the promenade of the Corniche. The other side runs up rue Sigefroi and faces the church of St Michael, the origins of which date back to 987.

THE BUILDING OF 1959

Until the end of its mission as the highest jurisdiction in matters of administrative litigation, the Council of State used to hold its sittings, among others, in parts of the former courthouse known as the Palais de justice, and finally in the Court of Auditors building. It was only from December 1959 onwards that it occupied, at 5, rue Sigefroi, a building suited to its needs, featuring contemporary modern architecture (the point of the triangle) and situated on the site of the former Werling house.

The villa that used to house the Banque Werling, Lambert et C^{ie} was erected in 1888. It was acquired by the state after the Second World War, before being demolished to cede its space to the building of the Council of State in 1959. The architectural concept of the new building was a modern construction combining certain characteristics of the former Fish Market dwellings. This included, besides the roof shape, anachronistic elements that were highly symbolic, such as the natural stone portico, forming the building's entrance and featuring three arcades and a balustrade, or else the projecting side turret. The plans were drawn up

by Constant Gillardin, who at the time worked under the supervision of state architect Hubert Schumacher. From the documents it appears as though the projecting turret was kept to hide the disproportional and ugly back building of the St Joseph clinic, and that the idea of developing the ground floor by replicating the colonnade of "Énnert de Steiler" came from Grand Duchess Charlotte herself via her seneschal of the grand-ducal court, an idea subsequently adopted by the president of the Council.

The Council of State, which celebrated its centenary in 1956, nevertheless had to await the completion of construction works, which extended from autumn 1957 to December 1959, before the first building to be dedicated to its administration and its meetings was inaugurated on 28 January 1960.



EXTENSION OF THE SITE IN 2006

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Upon request of the institution itself and with the agreement of the government, the Fonds de rénovation de la vieille ville (Renovation Fund of the Old City) started in 2004 with a complete redevelopment and extension of the existing building. The main concern was to keep the Council of State in the heart of the old city, not far from the government quarter and Parliament, while the increasing workload of its Secretariat called for an increase in staff. The Fonds de rénovation de la vieille ville had in the meantime acquired the buildings adjoining the 1959 structure. According to the fund, the challenge consisted in “safeguarding the building of the Council of State in its unity; firstly in terms of its architecture, but also in terms of its interior design, which can be qualified as fifties’ art deco”.

The building of the Council of State was thus able to merge into half the adjacent building, which used to house the former St Joseph clinic and extends to the baroque entrance at 3, rue Sigefroi, formed by two pilasters and emphasised by a pediment decorated with the Feller family coat of arms. The back building of the St Joseph clinic on boulevard Victor Thorn, hidden behind the turret, was gutted and rebuilt, and its height reduced. Part of this new construction has also been converted for the Council of State.

The extension maintains a continuity with the existing architecture of the Council of State building. In the past, a succession of spaces, such as the portico, the hall and the foyer, had

to be crossed to reach the ground floor at the heart of the building. Today, this arrangement is reinforced by the glass-roofed atrium, which features passageways on each floor and which accentuates over its entire height the spiral staircase of 1959, of a rare elegance. The atrium also acts as a link between the new and the old building. The plenary room was extended and moved from the first to the third floor in order to create a more prestigious space.

The new locations were extended according to plans drawn up under the supervision of the Fonds de rénovation de la vieille ville and inaugurated on 24 November 2006, 3 days before the ceremony commemorating the 150th anniversary of the Council of State.

The interior of the building of the Council of State has been enhanced by a series of modern paintings, engravings and tapestries of great artistic variety. Luxembourg artists have temporarily provided the Council of State with a selection of their artwork, in part created specially for this purpose. Some of these works have in the meantime been acquired by the state.

These various forms of art, which have thus been able to express themselves against an architectural backdrop, have allowed this ensemble of a new essence to come to life.

✓ *Low-angle view of the spiral staircase*
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