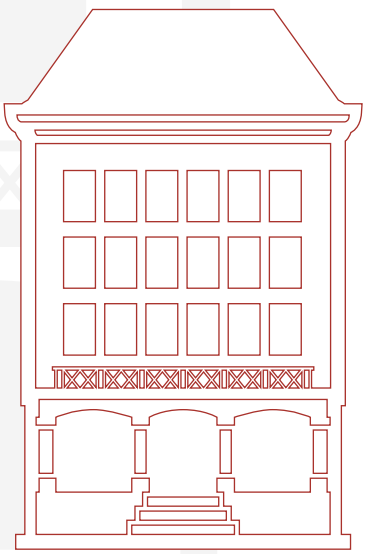
The Council of State

OF THE GRAND DUCHY OF LUXEMBOURG



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The Council of State

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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 review of the Constitution on 27 November 1856, is a constitutional institution called on "to give its opinion on all draft or proposed laws and amendments which might be proposed, as well as all other matters which might be referred to it by the Government or by the laws".

Its organic law explicitly invests the Council of State with the a priori task of examining the conformity of draft or proposed laws with the Constitution, international conventions and treaties, as well as the general principles of law and invites it to mention them in its opinion. The a posteriori review of the constitutionality of laws is, however, reserved for the Constitutional Court, which is referred to for a preliminary ruling when there is a dispute pending before the courts.

In the single-chamber Luxembourg system, all laws are submitted for a second vote by the Chamber of Deputies, with a mandatory interval of three months between the two votes. Nonetheless, the Chamber may decide in agreement with the Council of State sitting in public session, that it is not necessary to proceed with a second vote. On legislative matters, the Council of State has a suspensive right of veto, which it may exercise through its refusal to grant a dispensation from the second constitutional vote.

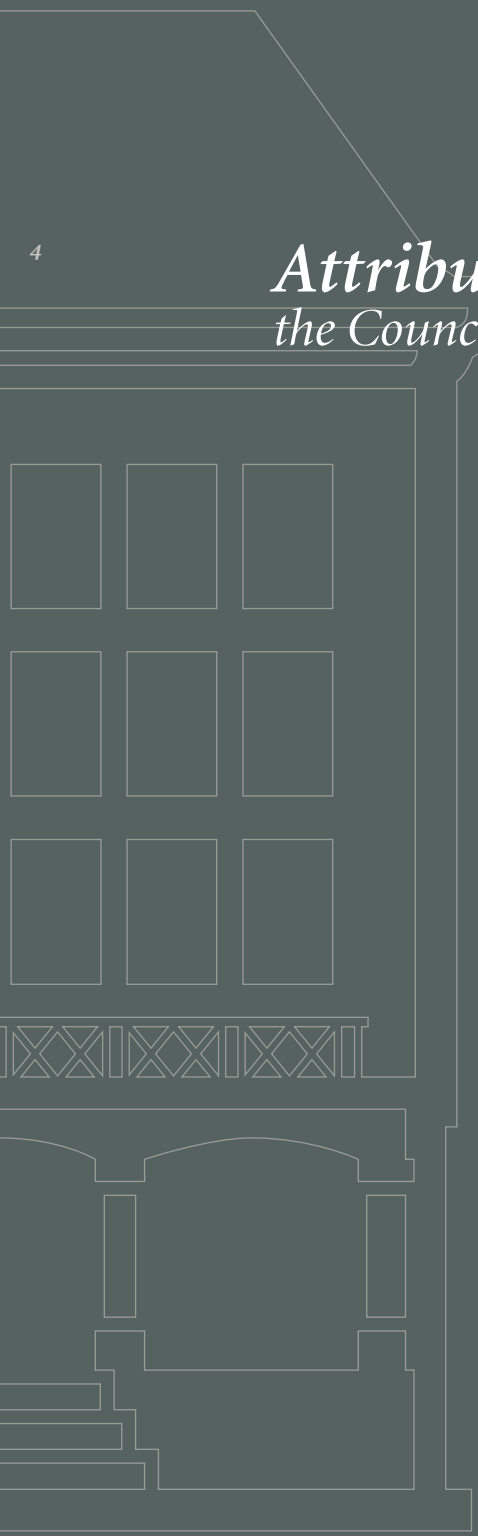
Each draft regulation for the execution of laws and treaties is only submitted to the Grand Duke after the opinion of the Council of State has been heard, except in the event of urgency, to be assessed by the Grand Duke. When it makes its examination, the Council of State will in particular examine the conformity of the draft to higher legal standards.

Since the constitutional review of 12 July 1996, the Council of State has no longer performed a jurisdictional function. Its task "to settle cases of administrative dispute" has been referred since then to the Administrative Tribunal and to the Administrative Court.

The Council of State is composed of twenty-one councillors, appointed by the Grand Duke on the proposal alternatively of the Government, the Chamber of Deputies and the Council of State. Furthermore, the Hereditary Grand Duke may be member of the Council of State.

The organisation and the operation of the Council of State are governed by the Law of 16 June 2017 on the organisation of the Council of State.

Attributions of the Council of State



The Council of State gives an opinion on all draft or proposed laws, on amendments which might be proposed, and all other matters which might be referred to it by the Government or by the laws.

Insofar as the Council of State may draw the Government's attention to the opportunity of new laws or regulations, or amendments to existing laws and regulations, it has power ***sui generis*** in legislative and regulatory matters.

Moreover, before submitting a draft or proposed law or draft regulation to the Council of State, the Government may ask for its opinion in principle.

IN LEGISLATIVE MATTERS

Matters are referred to the Council of State at the latest concomitantly with the lodging of the draft or proposed law with the Chamber of Deputies.

Government draft or proposed laws and draft amendments are sent to the Council of State by the Prime Minister, Minister of State.

Parliamentary draft or proposed laws and draft amendments are sent directly to the President of the Council of State by the President of the Chamber of Deputies.

If the Chamber of Deputies has already voted article by article on a draft or proposed law and all the articles have not yet been sent to the Council of State for its opinion, the latter must give its opinion within a deadline of three months at the latest as from the communication of its provisions to the Council. If no opinion is given within that deadline, the Chamber may move to a vote on the law as a whole.

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In principle, all draft or proposed laws must be submitted to two successive votes by the Chamber of Deputies on the law as a whole. Between the two votes, there must be an interval of at least three months. Nevertheless, the Chamber may dispense texts from the second vote, but such a dispensation will only become effective with the agreement of the Council of State, which in practice is most frequently the case. In general, the Council of State only refuses dispensation from the second constitutional vote if it considers that there are major grounds, such as an incompatibility of the text with provisions of a constitutional order, with international treaties, including European directives and regulations as well as the jurisprudence of international jurisdictions, or an incompatibility with the general principles of law, such as that of legal protection, justifying is non-refusal, which is in principle stated in advance by the formulation of a "formal objection" in its opinion. In the case of refusal to grant the dispensation, the President of the Council of State brings the grounds in writing to the notice of the Chamber of deputies and the Government.

IN REGULATORY AND ADMINISTRATIVE MATTERS

In principle, draft Grand Ducal regulations for the execution of laws and treaties may only be submitted to the Grand Duke after the opinion of the Council of State has been heard.

In the event of urgency, to be assessed by the Grand Duke, the Government may however grant a dispensation from the Council's opinion. This is not the case however if the law formally requires that opinion.

Finally, the Government may ask for the opinion of the Council of State on all matters.

The plenary room

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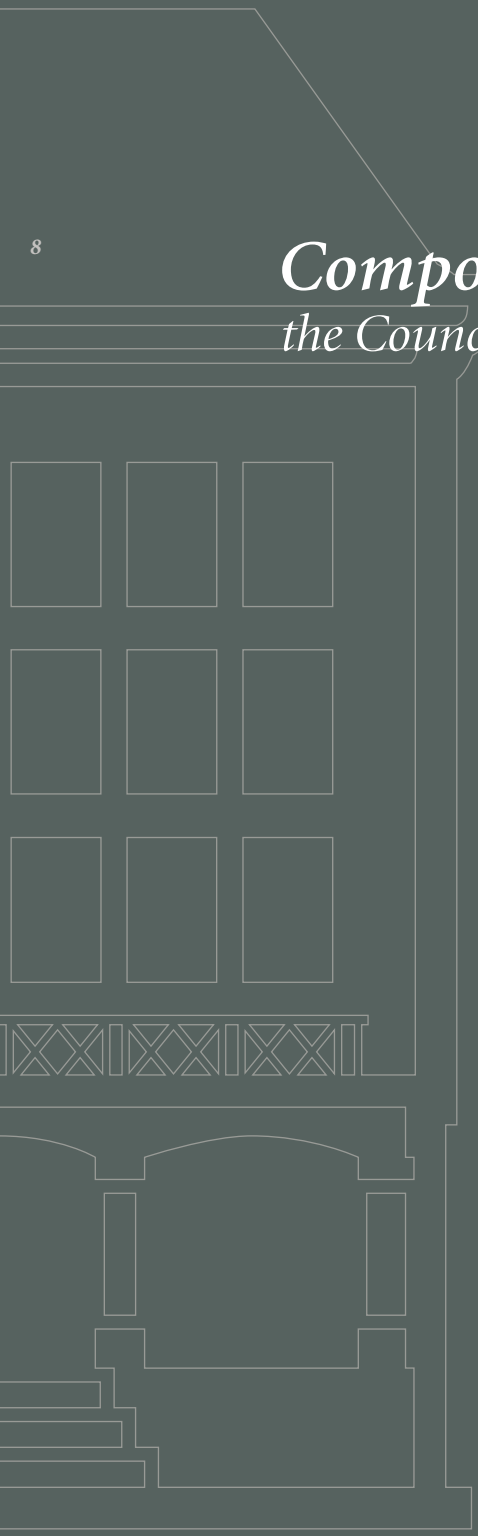
Composition of the Council of State



The Council of State is composed of twenty-one councillors, of whom at least eleven shall hold masterates in law. That number does not include the Hereditary Grand Duke who may be a member of the Council of State.

In order to be appointed a member of the Council of State, they must be a Luxembourg national, in possession of full civil and political rights, reside in the Grand Duchy and be aged at least thirty. The Hereditary Grand Duke may however be appointed once that title has been conferred on him.

The function of a member of the Council of State is compatible with any other function and every profession, except with the function of Member of the Government and mandates of Deputy and Member of the European Parliament, member of a professional chamber or Economic and Social Council and the functions of Judge of the Administrative Court or the Administrative Tribunal and agent of the Secretariat and Committee of Professional Ethics of the Council of State.

Councillors are appointed by the Grand Duke.

If there is a vacancy for the seat of Councillor of State, the replacement is appointed alternative and in the order :

1. on a proposal of a candidate by the Government ;
2. on a proposal of a candidate by the Chamber of Deputies ;
3. on a proposal of a candidate by the Council of State.

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The Hereditary Grand Duke is nonetheless appointed by direct nomination of the Grand Duke. In the cases referred to in points 1 and 2, the Council of State submits to the authority which holds the power of proposal two candidate proposals for each vacant seat, intended to guide the latter in making its choice.

On the appointment of the candidate, the authority which holds the power of proposal:

a. ensures that the composition of the Council of State takes account of the political parties represented in the Chamber of Deputies, provided they have gained at least three seats during each of the last two legislative elections;

b. seeks to ensure a balanced representation of men and women in the composition of the Council of State. The number of the under-represented gender may not be fewer than seven.

In the performance of their functions, the members of the Council of State act solely in the general interest. They do not participate in publishing opinions and deliberations of the Council of State in relation to files in the elaboration of which they took part on another basis than that of a member of the Council of State.

Councillors of State are dismissed by the Grand Duke. They may only be dismissed after the Council of State, in plenary session, has been heard on the grounds for dismissal.

Except for the Hereditary Grand Duke, the function of Councillor of State ends after a continuous or intermittent period of 12 years, or at the time when the person concerned has reached the age of 72. In the case of voluntary departure or when a serious and incurable illness prevents them from performing their functions, the member of the Council of State is dismissed by the Grand Duke, on the proposal of the Council of State.

The Grand Duke appoints from among the members of the Council of State jointly the President and two Vice-Presidents. The functions of the President are performed for a maximum term of three years. A councillor may only be appointed President if they can assume their functions as President for a minimum term of one year. In the event of a vacancy for the post of Vice-President, the new holder of that post is appointed until the end of the President's mandate.

The Secretary General of the Council of State, who has the capacity of a State official, is appointed and dismissed by the Grand Duke, on a proposal from the Council. He performs his function full time.

Glass-roofed atrium

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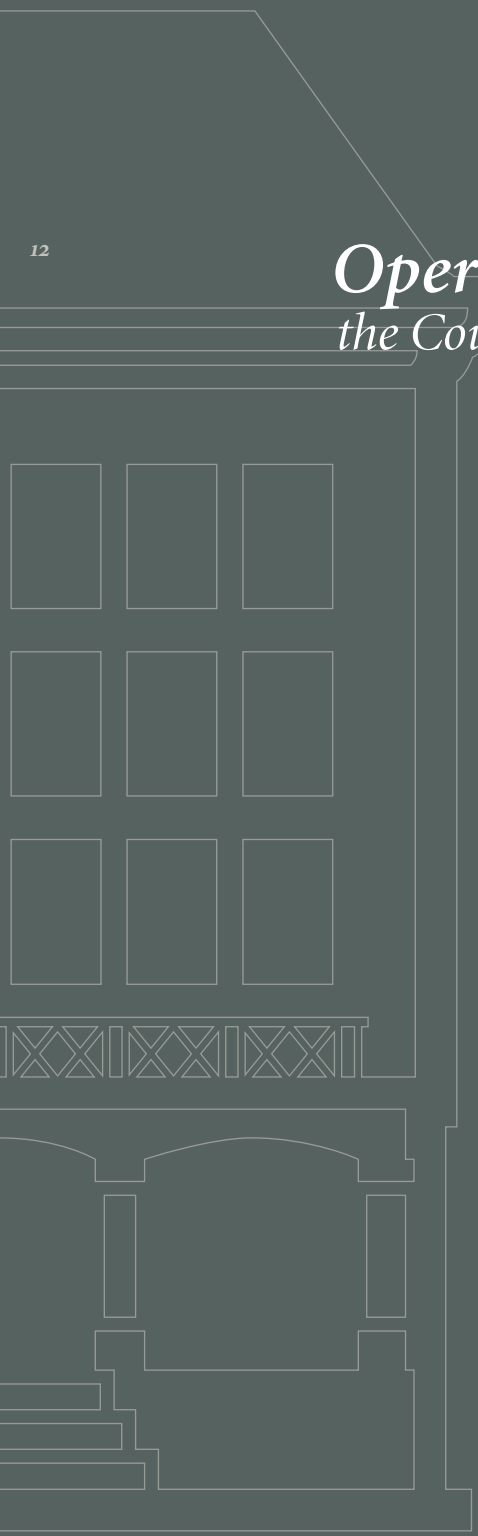
Operation of the Council of State



THE PRESIDENT

The President of the Council of State represents the institution, sees to its good operation and ensures observance of the rules of professional ethics. He convenes the Council to public and plenary sessions, whenever he deems it necessary for the requirements of the institution. He sets its agenda and chairs debates.

The President is appointed by the Grand Duke, for three years, from among the members of the Council of State. A councillor may only be appointed President if he can assume his functions as President for a minimum term of one year.

If the President is unable to attend, the chair will be taken by one of the two Vice-Presidents or by the most senior Councillor of State.

THE EXECUTIVE

The Executive of the Council of State is composed of the President and the two Vice-Presidents, who are appointed jointly by the Grand Duke from among the members of the Council of State. The Secretary General is called on to attend meetings of the Executive.

The tasks of the Executive are:

- to decide on matters relating to the organisation of the work of the Council of State;
- to establish the list and composition of committees;
- to examine the opportunity for new laws or new regulations concerning the organisation and the operation of the institution;
- to elaborate the budget proposals of the Council of State;
- to examine all matters in relation to the institution which the Councillors of State submit to it, particularly those relating to the Secretariat.

Glass-roofed atrium with a view of the passageways

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THE COMMITTEES

The permanent committees of the Council of State are established by the Executive, which sets their composition and appoints their chairman.

Seven permanent committees are established:

- the "Constitutional Affairs" Committee;
- the "Legal Affairs" Committee;
- the "Social Affairs" Committee;
- the "Culture, Education, Research and Media" Committee;
- the "Sustainable Development and Infrastructure" Committee;
- the "Economics and Finance" Committee;
- he "Institutions and Public Administration" Committee.

The President of the Council of State may establish special committees to examine matters which are of a specific nature, and appoint its members.

Each Councillor of State may attend with a right to vote, either on their own initiative or on the request of a committee chairman, at meetings of a committee of which they are not a member.

The members of the Government and the parliamentary committee responsible for the draft or proposed law must be heard by the committees whenever they so request for the purposes of delivering clarifications of the matters under deliberation. In their turn, the committees may invite to their deliberations those people who appear to them to be able to enlighten the deliberation with their special knowledge. On the appointment of members of the Government, they may also convene public officials and agents in order to obtain clarifications on matters under deliberation.

An agent of the Secretariat is allocated by the Executive to each committee to assist the councillors in their work. The Secretary General may attend each committee meeting.

The tasks of the committees are:

- to examine draft or proposed laws, draft regulations or Grand Ducal Orders, amendments to them and requests for an opinion of any nature referred to the Council of State;
- on their own initiative to study the opportunity for new laws or new regulations or amendments to be made to existing laws and regulations.

Committees appoint from among their number one or more reporters responsible for elaborating a draft opinion or deliberation. The Councillors of State must abstain from participating in the drafting of opinions and the deliberations of the Council of State in relation to matters in the elaboration of which they have participated on another basis than as a member of the Council of State.

A committee may establish a sub-committee, of which it shall determine the composition, instructed to prepare a draft opinion to be submitted for the deliberations of the committee.

Work in committee is not public.

THE PUBLIC AND PLENARY SESSIONS

Meetings in public and plenary sessions are composed of the President, the two Vice-Presidents and all the other members of the Council of State as well as the Secretary General.

Plenary meetings are held behind closed doors and have the competence :

- to approve all draft opinions and deliberations by a majority of votes. Resolutions indicate the number of councillors who have taken part, the number of those who voted for and the number of those who voted against. Each member of the Council of State may submit for deliberation in plenary session a dissenting opinion which may be supported by one or more other councillors. Dissenting opinions are appended to the opinion of the Council of State and indicate the number of councillors who voted in favour of them ;
- to establish the profiles of future Councillors of State, to propose a candidate to the Grand Duke in case of co-opting new members and to propose the Secretary General for appointment by the Grand Duke ;
- to adopt the budget proposals of the Council of State ;
- to examine the substantiated proposals of Councillors of State ;
- to pronounce on the resignation, reprimand, temporary exclusion from functions or dismissal of a Councillor of State.

The meeting decides in public session on the dispensation from the second constitutional vote granted to draft or proposed laws voted by the Chamber of Deputies (Article 59 of the Constitution).

THE SECRETARY GENERAL AND THE SECRETARIAT OF THE COUNCIL OF STATE

The Secretary General collaborates in the work of the members of the Council of State. In that regard, he may attend each meeting and committee. The Secretary General directs the Secretariat of the Council of State.

The Secretariat of the Council of State constitutes the administration of the institution. It assists Councillors of State in their work.

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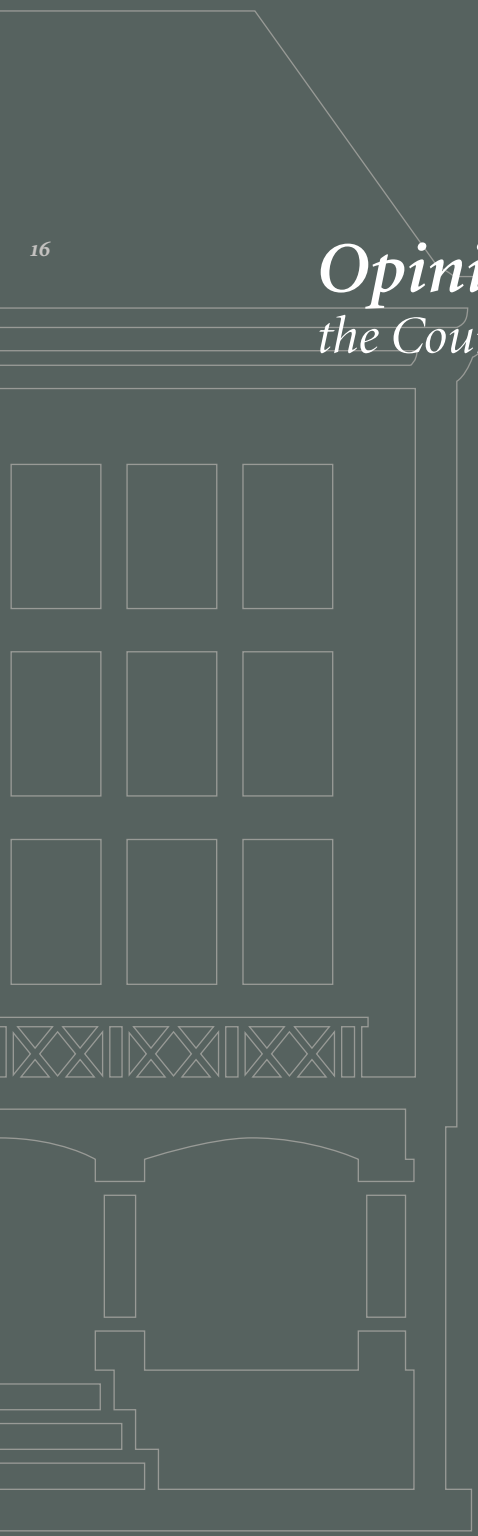
Opinions of the Council of State



Under the terms of Article 20 of the Law of 16 June 2017 on the organisation of the Council of State, the opinions of the Council of State are substantiated and include general considerations, an examination of articles and, as the case may be, text proposals. The Council of State regularly makes text proposals, in order to respond to the observations it makes. If it deems it necessary, the Council of State appends to its opinion a new version of the draft or proposal which includes such text proposals. Thus the role of the Council of State is not limited to making critical observations, but insofar as possible to proposing legal and pragmatic solutions in accordance with the higher standards and general principles of law.

For the case where the Council of State considers a draft or proposed law or a draft Grand Ducal regulation contrary to the Constitution, to the international treaties to which the Grand Duchy of Luxembourg is a party, to the legal acts of the European Union or to the general principles of law, it is obliged by its organic law to indicate this in its opinion.

The President and the Secretary General certify the authenticity of the resolutions passed.

Opinions relating to matters submitted for the deliberations of the Council of State by the Government may only be sent to the Government. Opinions concerning draft or proposed laws which have already been the object of a filing or a communication to the Chamber of Deputies, as well as opinions on draft Grand Ducal regulations, are public.

Recent opinions on draft laws which are the object of a filing with the Chamber of Deputies and proposed laws, and opinions on draft Grand Ducal regulations are published on the web site of the Council of State. All of the opinions of the Council of State issued since 1945 on draft laws filed with the Chamber of Deputies, draft Grand Ducal regulations sent to the parliament and proposed laws may be consulted on the web site of the Chamber.

Spiral staircase dated 1959

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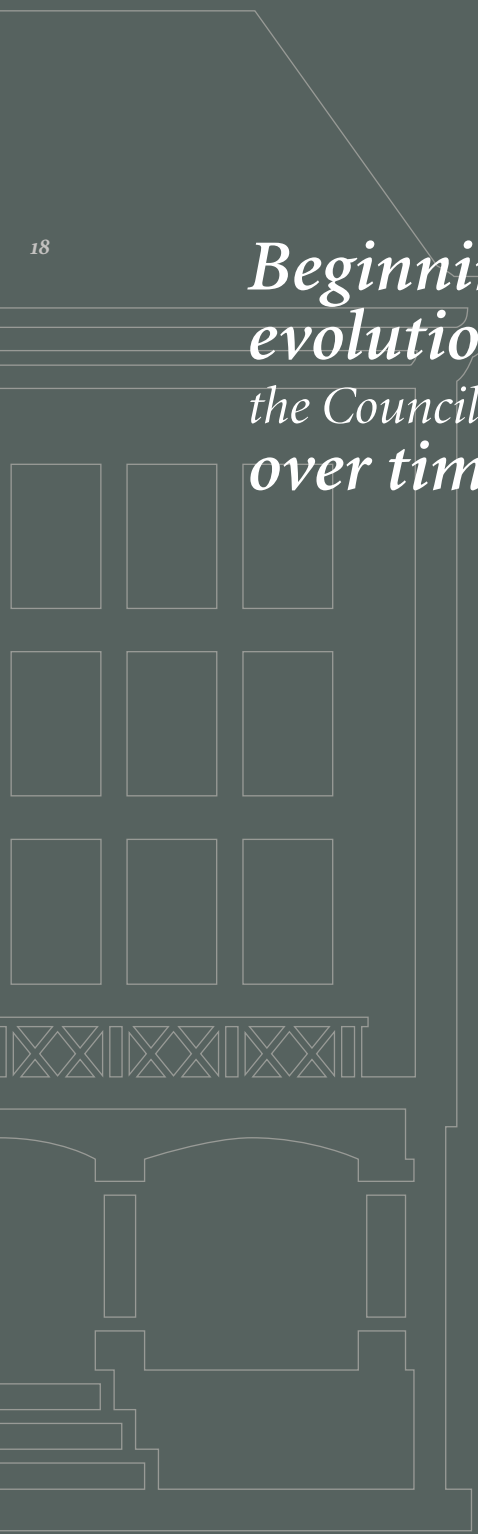
Beginnings and evolution of the Council of State over time



1815-1830
The Dutch Council of State

In 1815, having been elevated to the rank of a Grand Duchy by the Treaty of Vienna, Luxembourg was ceded to the King of the Netherlands and integrated into the German Confederation. Without taking account of the proclaimed independence of the new State, the King Grand Duke Guillaume I incorporated it in the Netherlands, which also included the current Belgium, and had it governed by the Dutch Constitution.

That Constitution created a Council of State composed of 24 members at most, chosen insofar as possible from within all the provinces of the country. Beyond that number, the Hereditary Prince was a member by right and the other princes in the royal house could be called by the King Grand Duke on reaching their majority. From 1815 to 1830, the Barons Guillaume de Feltz, François d'Anethan and Jacques d'Anethan sat on the Council of State of the Netherlands for Luxembourg.

The members of that Council of State were appointed and dismissed by the King Grand Duke, who could also appoint extraordinary councillors. It was also the King Grand Duke who presided over the Council of State.

The King Grand Duke submitted for the deliberation of the Council of State the proposals which he made to the Chamber and to the Senate and those which were made by them as well as all general administrative measures. In addition, he also took the opinion of the Council of State on all general or specific matters of interest which he deemed appropriate to submit.

The Dutch Constitution moreover provided for a Senate, called the "First Chamber of the States General", composed of 40 members at least and 60 at most. They had to be aged at least forty and were appointed for life by the King Grand Duke from among those persons most distinguished for services rendered to the State, their birth or their wealth. This Senate had the same attributions as the Second Chamber composed of elected members.

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

© CHRISTOF WEBER / SIP

1830-1839
The Belgian Senate

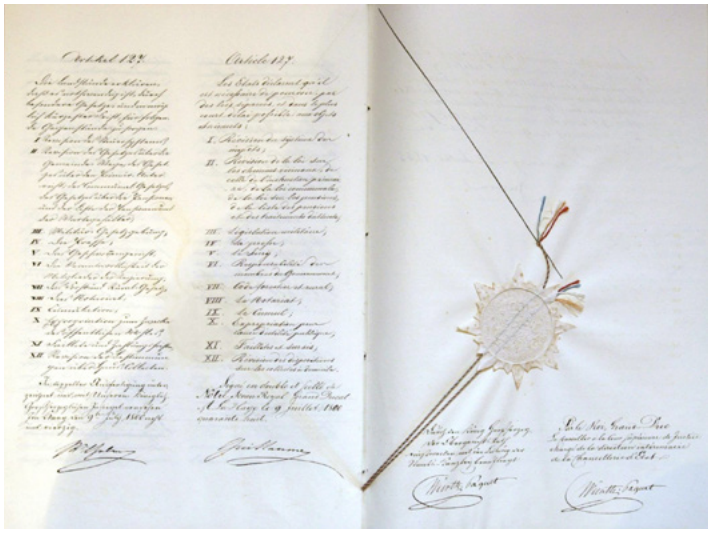
In 1830, the Belgian Revolution broke out and resulted in the secession of the Belgian provinces which constituted an autonomous kingdom. Luxembourg, with the exception of the City of Luxembourg, the Federal German fortress, joined with Belgium and formed an administrative attachment with the latter.

In 1831 the new Kingdom of Belgium gained the most modern and more democratic Constitution in Europe. Luxembourg, except its capital, was thus placed under that fundamental charter.

The fathers of the Belgian Constitution, including a certain number from Luxembourg, like Étienne-Constantin de Gerlache, Jean-Baptiste Nothomb and Jean-Baptiste Thorn, had long discussed the subject of establishing a senate. Finally, the idea of a senate, composed of members representing the various provinces and with the same power as the Chamber of Representatives, became a reality.

The Belgian constituents however dismissed the idea of creating a Council of State, because such an institution evoked the memory of the detested King Grand Duke and moreover was considered to be superfluous considering the state institutions introduced in the new Constitution. Soon however, the absence of a Council of State intervening in the establishment of laws was regretted by some. But it was only in 1946 that Belgium gained such an institution.

The joining of almost all of the territory of Luxembourg to Belgium ceased when the Treaty of London signed on 19 April 1839 came into force. That Treaty split Luxembourg, five districts out of the eight located to the west of the country passing to Belgium. The other districts formed the Grand Duchy of Luxembourg, which would henceforth be an autonomous and sovereign State, placed under the guarantee of the Great Powers, with its monarch the King of the Netherlands.



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

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1848

The Permanent Legislation Committee

From the creation of an autonomous government and the administrative separation decreed by the King Grand Duke in 1830, Luxembourg had known neither senate nor council of state. The first specifically Luxembourg Constitution, decreed by King Grand Duke Guillaume II in 1841, reflecting an autocratic regime, did not mention such institutions.

Discussion of this subject only began again in 1848. In the wake of the events shaking up the Europe of monarchies at that time, Luxembourg finally acquired its first constitution worthy of the name. In view of their democratic nature, the Belgian Constitution and institutions were an ideal influence on the structure of the young Luxembourg State. Thus our constituents adopted the text of the Constitution almost verbatim, with the exception of the provisions relating to the senate.

King Grand Duke Guillaume II, who sought secretly to influence discussion in the constituent assembly, recommended the creation of a senate. He considered that "in a truly constitutional State it is hardly possible to have good laws with a single deliberating assembly". The fathers of the 1848 Constitution nonetheless dismissed the idea of creating a senate after mature reflection, in view of the country's meagre size.

Whilst maintaining the system of a single Chamber, the constituent assembly provided two means "of obviating the inconvenience of the hasty passing of laws which had been sufficiently elaborated":

1. the Chamber of Deputies may decide that, in view of its importance, a law shall be submitted to a second vote during a subsequent session to be set by it;

2. simultaneously, a permanent legislation committee was created, a "sort of Council of State", which should be consulted, except in the case of urgency, prior to presentation of the draft law to the Chamber. That committee was composed of nine members, of which five were appointed annually by the Chamber and four for each specific law by the Government. The committee elected its chairman from among the members appointed by the Chamber.

1856

The creation of the Luxembourg Council of State

When Guillaume II died in 1849, his son Guillaume III succeeded him. The latter was animated by the desire to restore the authority of the monarchy and to reform the too liberal 1848 Constitution. To justify his action, he took as a pretext his obligations to the German Confederation, to which Luxembourg had belonged since 1815. The Chamber of Deputies was hostile to the trends for constitutional reform. The draft constitutional reform, elaborated by the Government in concert with the brother of the King Grand Duke, Prince Henri, his lieutenant-representative, clashed with the objections of the Chamber which lost its trust in the Government. On 27 November 1856, Guillaume III made a proclamation and that same day published the order reforming the Constitution in an autocratic and reactionary manner.

The draft constitutional reform inter alia recommended the creation of a Council of State, specifying that "for legislation, the Council of State will meet in a second Chamber; its action would become a guarantee of the maturity of laws. … for administration, it will form the Grand Council of Government, at the same time as an Administrative Tribunal. Lending the Government precious support on the examination of all matters of general interest, it would protect private interests against arbitrary and administrative errors." The authors of this draft claimed to be convinced that the establishment of such a Council would be one of the more fruitful results of the reform they proposed.

It was thus that Article 76 of the new Constitution provided that alongside the Government there would be a "council" with the task of giving an opinion on all draft laws and amendments which might be proposed, of settling matters of administrative dispute and of giving its opinion on all other matters submitted to it by the King Grand Duke or by the laws.

This new Council therefore replaced the Permanent Legislation Committee established by the 1848 Constitution. That committee had furthermore been the object of much criticism within the Chamber of Deputies in view of its changing composition and its lack of unity. Finally, it had never had the prestige of a political body, so that, during the last years of its existence, no real importance was attached any longer to its opinions.

As under the regime of the 1848 Constitution, the parliament could decide that in view of its importance a draft law would be submitted to a second vote during a subsequent session to be set by it.

The first organisation of the Council of State, decreed by Grand Ducal Order in 1857, was inspired by a draft law of that time aimed at reforming the Dutch Council of State. The Luxembourg Council of State was then composed of nine members at least and fifteen at most, appointed and dismissed by the King Grand Duke. A special committee, the Litigation Committee, composed of five to seven of those members, was instructed to deal with administrative disputes. Two former Presidents of the Government and five former ministers were among the first eleven members appointed to the Council of State. The first plenary meeting of that new institution was held one year after its constitutional creation.

A second organic law of the Council of State of 1866 set the number of Councillors of State at fifteen of which seven formed the Litigation Committee. The councillors who were not members of the Litigation Committee, as under the early organisation, were appointed and dismissed directly by the King Grand Duke, but any member of the Council of State could only be dismissed after the Council had been heard. The members of the Litigation Committee were appointed by the King Grand Duke, on a proposal from the Chamber, for a term of six years.

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

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1868

The introduction of dispensation from a second constitutional

Portrait of Emmanuel Servais, president of the Council of State from 1874 to 1887, hanging in the conference room of the same name

International developments, such as the dissolution of the German Confederation and the neutral status of Luxembourg introduced by the Treaty of London dated 11 May 1867, necessitated a reform of the Constitution. The constituent assembly thus took the opportunity to eliminate the authoritarian principle introduced in 1856 and amended the constitutional text in a more progressive and liberal manner.

However, there was no return purely and simply to the 1848 Constitution and the ideas of the Belgian Constitution. Indeed, the institution of the Council of State was maintained. The idea of creating a senate, suggested by the Council of State itself, was still dismissed by the constituent assembly on the same ground as was raised in 1848, i.e. the meagre size of the territory. To overcome the absence of a senate, the authors of the 1868 Constitution provided however that all laws were to be submitted to a second vote within an interval of at least three months, unless the Chamber, with the agreement of the Council of State sitting in public session, decided otherwise.

If, under the terms of Article 59 of the Constitution, the double constitutional vote was the norm and the single vote should remain the exception, it was the opposite situation which in practice became the rule from 1868. The Council of State in fact reserved exercise of the right of veto which had been devolved to it particularly for texts contrary to higher standards of law.

1919
In-depth institutional reforms

During the First World War, the German occupiers barely respected the Constitution and the laws of the country, by allowing the existence of an autonomous Luxembourg administration.

At the end of the War, Luxembourg suffered social tensions due to the dramatic situation regarding fresh supplies and rising prices. The country was plunged into a deep political crisis which raised questions as to the operation of its institutions. The Council of State, like the dynasty of the Chamber of Deputies, was not spared from criticism.

In 1919, the Constitution was substantially reformed. Henceforth, sovereignty resided in the Nation. The introduction of universal suffrage for all Luxembourg citizens, men and women, aged at least 21, and proportional representation, sustainably altered the political landscape. Universal suffrage definitively ended the regime of notables governing under the guise of the census system and entered into an era dominated by political parties.

The legitimacy of the monarchic regime was strengthened by the referendum held on 28 September 1919, on the occasion of which a large majority of the population voted in favour of maintaining the monarchy and the Nassau-Weilbourg dynasty, which in 1890 replaced the sovereigns of the Netherlands. The constituent assembly provided however that the Grand Duke no longer had powers other than those formally attributed to him by the Constitution and the laws.

The Council of State survived this institutional disruption unchanged.

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

© PHOTOTHÈQUE DE LA VILLE DE LUXEMBOURG

1945

The dissolution and the 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.

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On 10 May 1940, German troops invaded Luxembourg territory. The Council of State continued to sit until the "Gauleiter" Gustav Simon decided to dissolve it in October 1940.

In September 1944, the members of the Government who had retired abroad when the German invasion took place took up their posts once more. Grand Duchess Charlotte was welcomed home by the people of Luxembourg in jubilation on 14 April 1945, after almost five years in exile.

Although the institutions which had existed prior to the invasion resumed their activities, the Council of State was dissolved on 16 November 1945 by Grand Ducal Order on the ground that its composition "no longer corresponded to the requirements of the current situation". Only four Councillors of State out of twelve who sat on the Council of State before the War were nominated again.

The first plenary session of the Council of State after the Liberation was held on 18 December 1945.

1961

The reform of the composition of the Council of State

At the end of the Fifties, a general debate on the subject of the composition and tasks of the Council of State took place between the Government, the Chamber of Deputies and the Council of State. The opinion of the Council of State on the subject of a proposed law in relation to it was followed by the legislator. The resulting law passed in 1961 more particularly altered the composition of the Council of State and the mode of appointing its members.

Henceforth, the Council of State would be composed of 21 councillors, including 11 forming the Litigation Committee.

The old procedure, enabling the Chamber of Deputies to put forward a list of three candidates to the Grand Duke for each appointment to the Litigation Committee, was abolished. But it served as a model for the appointment of all the members of the Council of State.

Thus the Councillors of State were always to be appointed by the Grand Duke. If it was a matter however of filling a vacancy in the Council of State, the replacement was to be made alternatively and in the order, by direct appointment by the Grand Duke, by appointment of one of three candidates put forward by the Chamber of Deputies or by appointment of one of three candidates put forward by the Council of State. This new mode of appointment was considered by its authors to be a "democratisation" of the institution.

In 1972, the age limit for Councillors of State, who until then had been appointed for life, was set at 72.

On the same occasion, the legislator introduced the option for the Grand Duke directly to appoint members of his family beyond the established number of 21 Councillors of State. Since 1897, all the Hereditary Princes have been members of the Council of State.

1989

The formal independence of the Council of State

It was in 1989 that the independence of the Council of State was formally confirmed in the Constitution. The text relating to the Council of State, having appeared until then in the chapter of the Constitution relating to the Government, was moved to a separate chapter.

If the constitutional text on the Council of State was revised, it was to designate it by name, to underline its own character, to mark its independence from the Government and to indicate its attributions more precisely, in particular as an administrative jurisdiction.

The authors of this constitutional reform had moreover concluded that the wording of the new constitutional text would not be opposed to a complete separation, regarding the people concerned, between the Councillors of State performing the consultative function and those performing a jurisdictional function.

1996
A capital reform of the Council of State

The most incisive reform since its creation was made to the Council of State in 1996.

On the basis of that reform came the Procola Order of the European Court of Human Rights dated 28 September 1995.

In this case, dealing with milk quotas, the Judges in Strasbourg in fact considered that the composition of the Litigation Committee of the Council of State did not meet the requirement of impartiality arising from the European Convention on Human Rights and Fundamental Liberties. In fact, four Councillors of State out of the five who sat on the Procola case applied a legal text on the subject of which they had already contributed previously to issuing an opinion within the framework of the consultative task of the Council of State. According to the European Court of Human Rights, the agricultural association Procola had legitimately feared that the members of the Litigation Committee felt themselves to be bound by the opinion given previously. This simple doubt was sufficient to alter the impartiality of the Litigation Committee.

By retaining the proposals made by the Council of State itself in the opinion on the draft law to reform the Council of State, the constituent assembly thus took on the jurisdictional function as from 1 January 1997, by abolishing the Litigation Committee, to entrust it to an Administrative Tribunal at first instance and to an Administrative Court on appeal. By proposing this solution, the Council of State went beyond a simple structural separation of the institution into the Councillors of State performing the consultative function and those performing the jurisdictional function, as envisaged in the constitutional reform of 1989.

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In the light of this constitutional reform of 12 July 1996, the jurisdiction of the Council of State as a consultative body was strengthened. The legislator in fact explicitly entrusted the Council of State with a task which it had in fact assumed from its creation, namely the a priori checking of the compliance of draft laws and regulations to the Constitution, international conventions and treaties and the general principles of law. The a posteriori checking of the constitutionality of laws was entrusted, by another law, to a Constitutional Court.

This in-depth reform again introduced two additional novelties. Indeed, the term of the function of Councillor of State was henceforth limited to 15 years, non-renewable, and the Council of State may exceptionally be given a deadline of three months in which to issue its opinion within the framework of the legislative procedure.

2017

The strengthening of the legitimacy of the Council of State

Following a large consultation of the groups and political sensitivities represented in the Chamber of Deputies on the subject of a possible reform of the Council of State, the Law of 16 June 2017 on the organisation of the Council of State replaced the amended Law of 12 July 1996 reforming the Council of State.

One of the main innovations of this new Law consisted of adjusting the composition of the Council of State so as to guarantee that a fair representation of political current sat in the Chamber of Deputies.

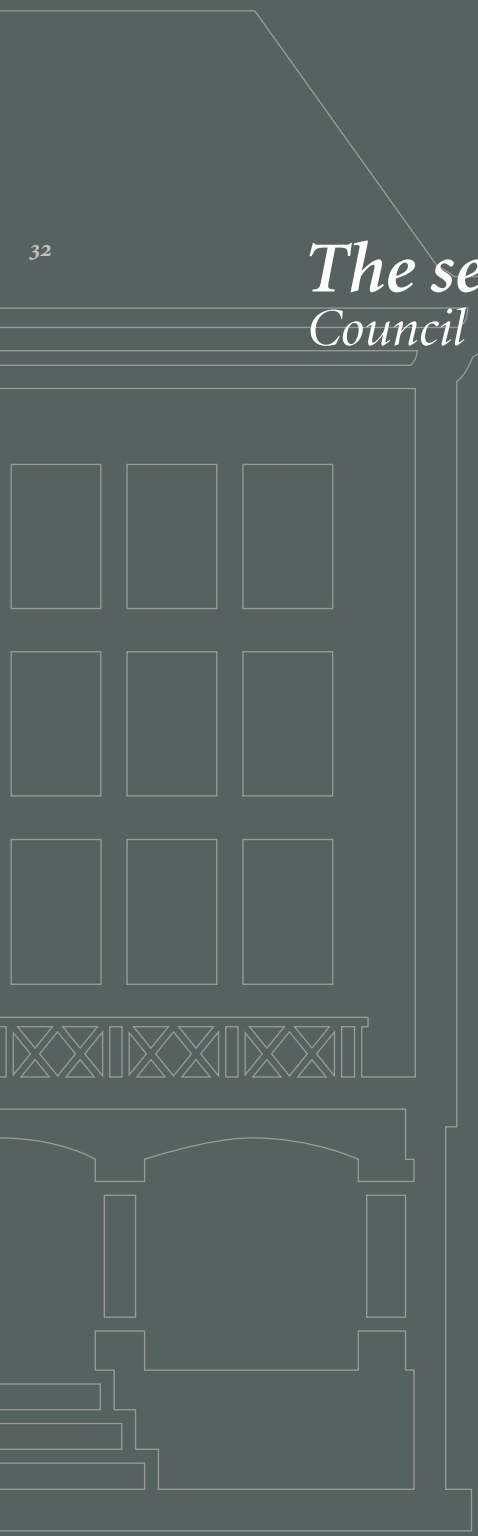
The system of appointments introduced in 1961 was maintained, with two amendments: direct appointment by the Grand Duke was replaced by appointment on a proposal from the Government and the list of three candidates presented by the Chamber of Deputies and appointment by the Council of State was replaced by the proposal of a single candidate to the Grand Duke. Furthermore, in view of the appointment of a new Councillor of State, the Council of State would draw up two profiles, which indicated to the authority invested with the power to propose the qualifications of the candidate to be proposed. At least one third of councillors should henceforth be of the under-represented gender.

The term of the mandate of Councillor of State was reduced to a continuous or intermittent period of twelve years.

The legislator also intended to give greater transparency to the position taking of the Council of State by requiring that it indicate the number of members who took part in the vote on the resolutions passed by the Council of State, that of the members who voted in favour or against a resolution.

In addition to the provisions relating to the organisation of the institution, the Law of 16 June 2017 granted the Council of State the power to set rules of professional ethics, provide disciplinary sanctions and establish a professional ethics committee.

The seat of the Council of State



Built in the Marché-aux-Poissons district, the oldest part of the City of Luxembourg, the seat of the Council of State is located not far from the Grand Ducal Palace, the Hall of the Chamber of Deputies, the Government district and the Law Courts. It is located a few metres from the site of the former Provincial Council House (built in 1532, and demolished in 1769).

It is an ensemble of buildings joined together in major works of conversion, enlargement and construction which took place from 2004, and of which the perimeter forms a triangle. The point of the triangle, itself located at the point of a promontory overlooking the valley of the River Alzette, has on its first floor a terrace with a panoramic view both over the remains of the fortress and, in the distance, over the birthplace of Robert Schuman and the Kirchberg Plateau with its European institutions. One side with a turret is on the Boulevard Victor Thorn; it is bordered by a tourist footpath along the extension of the Promenade de la Corniche. The other side is on the Rue Sigefroi opposite the Saint-Michel Church the origins of which date back to the year 987.

THE BUILDING OF 1959

Until the end of its tasks as the highest jurisdiction in administrative disputes, the Council of State had held its meetings, inter alia in the premises of the former Law Courts, and finally in the Court of Auditors in the Avenue Monterey. It is only since December 1959 that it has been at 5 Rue Sigefroi, in its own building, with modern architecture for the time (the point of the triangle), located on the site of the former Werling building.

The building housing the Banque Werling, Lambert et Cie was built in 1888. It was a building in eclectic style of which the red bricks contrasted with the cut stone of the windows or quoins, flanked by a tower and a turret, adorned by a ceramic cornice, the whole evoking the architecture of the Middle Ages and the Renaissance. In the Twenties it became the property of Jean Dumont. From November 1931, the first floor was leased to the "Caritas", a humanitarian association helping those who were excluded or in poverty, which first shared its office with the "Frauenbund" and the "weiblicher Jugendverband". After the War, the house was acquired by the State, and then demolished to make room in 1959 for the building of the Council of State. The architectural concept of the new building consisted of a modern construction with characteristics which complemented the old residences of the Marché-aux-Poissons. In addition to the shape of its roof, it had highly symbolic anachronistic elements such as the portico in natural stone fronting the building and composed of three arcades and a balustrade or projecting lateral turret. The relevant plans were drawn up by Constant Gillardin, who worked at the time under the direction of Hubert Schumacher, Chief State Architect. It emerges from documents that the projecting turret was retained to conceal the disproportionate and ugly rear of the Saint-Joseph Clinic, and that the idea of laying out the ground floor as a replica of the colonnade on the "Ënnert de Steiler" building goes back to Grand Duchess Charlotte herself via her Grand Marshal of the Court, an idea which the President of the Council took for himself.

The Council of State, which celebrated its 100th anniversary in 1956, had however to await completion of the construction works which extended from the autumn of 1957 until December 1959 before it was officially opened, on 28 January 1960, the first building reserved for its administration and its meetings. Until then, the Council of State had not possessed premises of its own, but had been forced to share offices and workrooms with other institutions in which to house its administration and to meet.

THE ENLARGEMENT OF THE SITE IN 2006

On the request of the Institution and with the agreement of the Government, from 2004 the Old City Renovation Fund proceeded with a complete redevelopment and extension of the existing building. The desire was to keep the Council of State at the heart of the Old City, not far from the Government district and the Parliament, whilst the increasing tasks of its Secretariat resulted in an increase of the workforce. The Old City Renovation Fund had in the meantime become owner of the buildings adjoining the 1959 building. According to the Fund, the challenge was to "save the building of the Council of State as a unit; firstly at the level of its architecture, but also with regard to its interior décor which could be described as the Art Déco of the Fifties".

It was therefore on this occasion that the seat of the Council of State took over one half of the neighbouring building of the former Saint-Joseph Clinic, which extended to the baroque entrance of 3 Rue Sigefroi, formed of two pilasters, enhanced by a pediment decorated with the coat of arms of the Feller family. In fact, on his marriage, this building (the so-called "Feller House") became the property of Dominique de Feller (1696-1769).

In 1842, the industrialist Gabriel de Marie (1795-1868), who in 1841 with Joseph Noppeney and Hippolyte Barreau formed the company "De Marie, Noppeney et Cie", then "De Marie et Cie" to manufacture gloves, acquired the former Feller House from the Reuter heirs, whilst Barreau became the owner of the adjoining building overlooking the valley. The building served both as a glove workshop and a bank directed by Henri Werling. The Banque Werling, Lambert et Cie purchased the building in 1885 after already having established his offices there from 1882.

In 1911, the Feller House became the property of the Congregation of Franciscan Sisters which joined it to the upper house which today stands on the square of the National Museum of History and Art, the latter having been acquired in 1903, to enlarge the Saint-Joseph Clinic established there.

The rear of the Saint-Joseph Clinic, on the Boulevard Victor Thorn, concealed behind the turret, was torn apart and rebuilt, whilst reducing its height. A part of the new construction was also developed in the interests of the Council of State.

The extension gave continuity with the existing architecture of the seat of the Council of State. In the past, one first crossed a succession of spaces such as the porticus, the hall and the foyer to reach the ground floor at the heart of the building. Today, that layout has been reinforced with an atrium under glass with its surrounding galleries on each floor which highlights over its entire height the helical staircase from 1959, of a rare elegance, and serves the function of a space linking the new building to the old. The plenary hall was enlarged and moved from the first to the third floor in order thus to create a more prestigious space.

The new premises, enlarged to the plans drawn up under the direction of the Old City Renovation Fund were officially opened on 24 November 2006, three days before the ceremony for the 150th anniversary of the Council of State.

› *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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WORKS BY CONTEMPORARY LUXEMBOURG ARTISTS

The interior of the seat of the Council of State is enhanced by a collection of modern sculptures, paintings, engravings and tapestries of outstanding artistic diversity by the Luxembourg artists Roger Bertemes, Marc Frising, Jeannot Lunkes, Isabelle Lutz, Ger Maas, Guy Michels, François Schortgen, Nico Thurm, Raymond Weiland, Lucien Wercollier, Bertrand Ney, Claire Weides, Tom Flick, Armand Strainchamps, Anna Recker, Rafael Springer, Dani Neumann and Robert Brandy. Some of these works are loaned temporarily to the Council of State by the artists themselves, while others are made available to the Council of State by the National Museum of History and Art.

The display of the various art forms has succeeded in instilling new life into the architecture of the building thereby revitalising the ensemble's essence.

Sculptures by Luxembourg artists adorn the entrance area of the Council of State

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