

# **FOURTH ACTIVITY REPORT**

**Of the panel provided for by Article 255  
of the Treaty on the Functioning  
of the European Union**



*~ Report published 10 February 2017 ~*

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# INTRODUCTION

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The panel provided for by Article 255 of the Treaty on the Functioning of the European Union (hereinafter 'the panel') was established by the Treaty signed at Lisbon on 13 December 2007, which entered into force on 1 December 2009. The panel's mission, pursuant to the provisions of Article 255 of the Treaty on the Functioning of the European Union (TFEU), is to *'give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court before the governments of the Member States make the appointments referred to in Articles 253 and 254'* of that Treaty<sup>1</sup>.

In accordance with Article 255 TFEU, the panel comprises seven persons chosen from among former members of the Court of Justice and the General Court of the European Union, members of national supreme courts and lawyers of recognised competence, one of whom is proposed by the European Parliament.

The panel began its work immediately after the entry into force on **1 March 2010** of the two Decisions No 2010/124/EU and No 2010/125/EU of 25 February 2010 whereby the Council of the European Union established the operating rules of the panel (hereinafter 'the operating rules') and appointed the members of the first panel. By Decision No 2014/76/EU of 11 February 2014, which entered into force on 1 March 2014, the composition of the panel was partially renewed<sup>2</sup>.

Since that date, these members have been: Mr Luigi Berlinguer, first Vice-Chair of the European Parliament's Committee on Legal Affairs, Ms Pauliine Koskelo, Judge of the European Court of Human Rights and former President of the Supreme Court of Finland, Lord Mance, Judge of the Supreme Court of the United Kingdom, Mr Jean-Marc Sauvé, Deputy President of the Council of State of France, Mr Christiaan Timmermans, former President of the Chamber of the General Court of the European Union, Mr Andreas Vosskuhle, President of the Federal Constitutional Court of Germany, and Mr Mirosław Wyrzykowski, former Judge of the Constitutional Court of Poland, appointed by Council Decision of 29 February 2016 (No 2016/296)<sup>3</sup> to replace Mr Péter Paczolay, former President of the Constitutional Court of Hungary, who resigned from office. The panel is chaired by Mr Jean-Marc Sauvé. Since November 2014, Ms Slavka Cholakova, an administrator at the General Secretariat of the Council, has been responsible for the panel's secretariat, succeeding Ms Csilla Fekete and Mr Anthony Bisch.

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<sup>1</sup> Annex 1 to this report.

<sup>2</sup> Annexes 2 and 3 to this report.

<sup>3</sup> Annex 4 to this report.

**This report recounts the work of the second panel** provided for by Article 255, in the composition established by the abovementioned Decision of 11 February 2014, from its entry into force on 1 March 2014 to the end of 2016. The second panel followed on from the work carried out by the first panel, which was reflected in the previous activity reports. However, it chose to amend the selection procedure and, in particular, the list of documents that candidates may be requested to provide and the format of the CVs to be submitted with their candidature (see paragraph II.2 below).

The purpose of this fourth report, as of the preceding reports, is not only to give account of the panel's activities, but also to allow the Union's institutions, the governments of the Member States and, where appropriate, future candidates for the duties of Judge and Advocate-General of the Court of Justice and the General Court to become better acquainted with the procedures established for examining candidatures and with the panel's interpretation of the provisions it is required to apply. In other words, this report not only **provides a summary of the panel's work**, but also **informs the reader about how the Treaty's criteria have been interpreted and which working methods have been used** during these last three years of activity (2014-2016).

# I. SUMMARY OF WORK DONE

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## *1. - General overview of the panel's work*

In 2014, 2015 and 2016, the panel held 19 meetings and examined 64 candidatures. It had a limited amount of work in 2014: it held three meetings, two of which for establishing the newly constituted panel, and examined three candidatures. In 2015, the panel held five meetings and examined 24 candidatures, in the framework of the partial renewal of members of the Court of Justice and the General Court. The terms of office of eighteen Judges and Advocates-General of the Court of Justice ended on 6 October 2015. The panel also examined five candidatures of Judges of the General Court whose terms of office ended on 31 August 2016. Lastly, the panel was required to examine a candidature following the resignation of a Judge of the General Court. In 2016, the panel had a very substantial amount of work owing to the reform of the General Court (Regulation (EU, Euratom) 2015/2422 of 16 December 2015)<sup>4</sup> and to the partial renewal of the Judges of the General Court. Over the course of the year, the panel held 11 meetings and examined 37 candidatures, including one candidature in the framework of the partial renewal of the Court of Justice and 15 candidatures in the framework of the partial renewal of the General Court. Twenty candidatures were examined under the first and second stages of the reform of the General Court. It should be noted, however, that of these 20 candidatures, five were for the renewal of Judges appointed by the Council on 25 March 2016 whose terms of office ended on 31 August 2016. The panel was also required to examine a candidature following the resignation of a Judge of the General Court.

The panel's work is **cyclical**, dictated by the duration of the terms of office. It has a heavy workload in years in which a partial renewal of members of the Court of Justice or General Court takes place; but the workload is lighter outside these periods, as it was in 2014. Given that the terms of office of the members of these two courts are for six years and half of them are renewed every three years, the panel has a heavy workload **two years out of three** on average. The reform of the General Court had a significant impact on the panel's workload in 2016, but the reform is now almost complete and the panel therefore expects the cyclical pattern of its workload to resume in line with the experience of the first panel.

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<sup>4</sup> Annex 5 to this report.

Each of the panel's meetings generally lasted a day, during which the panel conducted hearings with the candidates, where required, and discussed its opinions. The opinion was delivered on the same day as the hearing and discussion in all but one case. The opinion was always signed by all members of the panel who had discussed it. Prior to the panel's meetings, the secretariat provided each member with all the elements of the dossiers relating to the candidatures on the agenda for examination (see paragraph II.2 below – Candidatures for a first term of office or for renewal: distinct procedures for consideration), so that each member of the panel could study these in advance. **Between 2014 and 2016, the panel delivered 64 opinions.** The breakdown of its work per year is as follows:

<b>Year</b>	<b>Number of meetings</b>	<b>Number of opinions delivered</b>
<i>2014</i>	3	3
<i>2015</i>	5	24
<i>2016</i>	11	37
<i>Total</i>	<b>19</b>	<b>64</b>

## *2. - Examination of candidatures*

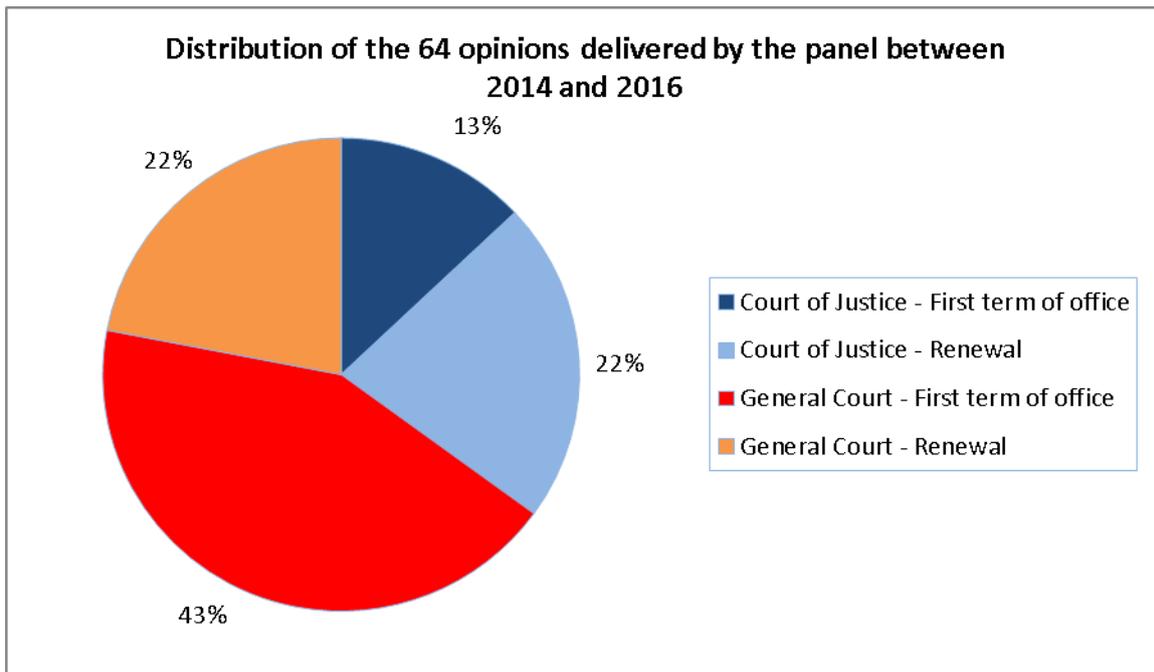
In 2014, the panel examined three candidatures for the office of Judge of the Court of Justice of the European Union. Of these candidatures, two were for the renewal of a term of office as Judge of the Court of Justice. A candidature for a first term of office was also submitted following the resignation of a Judge of the Court of Justice.

In 2015, the panel examined 24 candidatures for the offices of Judge and of Advocate-General, 18 of which were for the Court of Justice of the European Union and six for the General Court of the European Union. Of these candidatures, six were submitted for the office of Advocate-General of the Court of Justice, four of which were for a first term of office. Of the 12 candidatures for the office of Judge of the Court of Justice, two were for a first term of office. For the General Court, five candidatures were for the renewal of terms of office as Judge and one followed the resignation of a Judge.

In 2016, the panel examined 37 candidatures for the offices of Judge and of Advocate-General, one of which was for the Court of Justice of the European Union for a first term of office as Advocate-General. Of the 36 candidatures for the office of Judge of the General Court, nine were for the renewal of terms of office as Judge. Five of the opinions delivered on these renewals related to Judges appointed on 23 March 2016 in the framework of the first stage of the reform of the General Court whose term of office ended on 31 August 2016. Twenty-seven candidatures for a first term of office as Judge of the General Court were also submitted, one of which following the resignation of a Judge of the General Court.

Since beginning its work in March 2014, the second panel has examined **64 candidatures** for the offices of Judge or Advocate-General, of which **22 were for the Court of Justice** and **42 for the General Court**. Of these candidatures, 28 were for the renewal of a term of office at the Court of Justice (14) or the General Court (14). Thirty-six candidatures for a first term of office were also examined: eight at the Court of Justice and 28 at the General Court.

	<b>Number of opinions delivered</b>	<b>Court of Justice</b>	<b>General Court</b>
<b>2014</b>	3	3 <i>1 first term of office 2 renewals</i>	0
<b>2015</b>	24	18 <i>6 first terms of office 12 renewals</i>	6 <i>1 first term of office 5 renewals</i>
<b>2016</b>	37	1 <i>1 first term of office</i>	36 <i>27 first terms of office 9 renewals</i>
<b>Total</b>	<b>64</b>	<b>22</b> <i>8 first terms of office 14 renewals</i>	<b>42</b> <i>28 first terms of office 14 renewals</i>



### *3. - Tenor of the opinions*

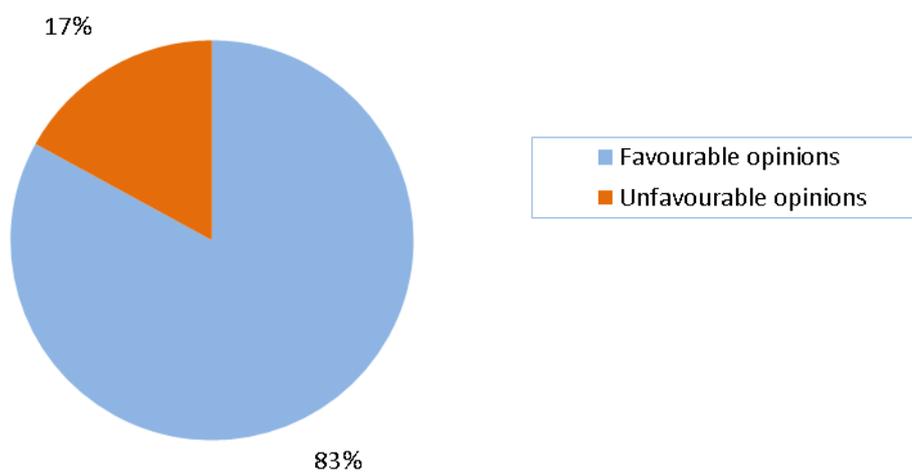
In total, **six of the 64 opinions** delivered since the second panel started working **have been unfavourable**. No unfavourable opinions were delivered on **candidatures for the renewal of a term of office**.

This means that just over 16.6 % (six out of 36) of the opinions on candidatures for a first term of office were unfavourable.

Of the six unfavourable opinions delivered by the second panel since March 2014, five related to first terms of office as Judge of the General Court, and the sixth to a first term of office at the Court of Justice.

	<b>Number of opinions delivered</b>	<b>Favourable opinions</b>	<b>Unfavourable opinions</b>
<b>2014</b>	3	3	0
<b>2015</b>	24	23	1 <i>1 first term of office at the Court of Justice</i>
<b>2016</b>	37	32	5 <i>5 first terms of office as Judge of the General Court</i>
<b>Total</b>	<b>64</b>	<b>58</b>	<b>6</b> <i>6 first terms of office</i>

**Distribution of the 36 opinions delivered on candidatures for a first term of office at the Court of Justice and the General Court**



#### ***4. - Outcome of the opinions***

The panel's opinions, whether favourable or otherwise, **have always been followed** by the governments of the Member States.

#### ***5. - Time taken to examine candidatures***

Since its establishment, the panel has strived to ensure that the proper functioning of the courts of the European Union is not hampered by an over-lengthy examination procedure.

For the 64 opinions delivered by the second panel, there were on average 86 days between the receipt of the candidatures and the date of the panel's opinion. 47 % of the candidatures were examined within a period of between 45 and 90 days, and in 22 % of cases, the panel reached a decision in less than 45 days. The panel's examination took longer than 90 days in only 20 cases. The longest periods were caused by the early proposal of candidates by some countries, well before the end of an ongoing term of office, and did not therefore impede the proper functioning of the Union's courts in any way.

	<b>Average duration</b>	<b>Examination &gt; 90 days</b>	<b>45 days &gt; Examination &lt; 90 days</b>	<b>Examination &gt; 45 days</b>
<b><i>2014</i></b>	82 days	0 candidatures	3 candidatures	0 candidatures
<b><i>2015</i></b>	95 days	11 candidatures	9 candidatures	4 candidatures
<b><i>2016</i></b>	82 days	9 candidatures	18 candidatures	10 candidatures
<b><i>Total</i></b>	<b>85 days</b>	<b>20 candidatures (31 %)</b>	<b>30 candidatures (47 %)</b>	<b>14 candidatures (22 %)</b>

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Since 2010, the panel has delivered a total of 131 opinions, 67 of which were delivered by the first panel. Of the 131 candidatures examined, 47 were for the office of Judge or Advocate-General of the Court of Justice and 84 for the office of Judge of the General Court. Of these candidatures, 63 were for the renewal of a term of office at the Court of Justice (28) or the General Court (35). 68 candidatures for a first term of office were also examined, including 20 at the Court of Justice and 48 at the General Court.

In total, 13 of the 131 opinions delivered since the panel started working in 2010 have been unfavourable. No unfavourable opinions have been delivered on candidatures for the renewal of a term of office. This means that 19.1 % (13 out of 68) of the opinions on candidatures for a first term of office were unfavourable.

## II. CONSIDERATION AND EXAMINATION OF CANDIDATURES

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### *1. General principles of consideration and examination of candidatures*

Under Article 255 TFEU the panel's mission is to give an opinion, favourable or otherwise, on the suitability of each candidate proposed for appointment to the offices of Judge or Advocate-General at the Court of Justice or the General Court. It is therefore not the task of the panel to choose between several candidates. The **fundamental responsibility in the appointment of Judges and Advocates-General of the Court of Justice and the General Court lies with the Member States** which, in particular, must propose the best candidates, with regard to the criteria laid down by Articles 253, 254 and 255 TFEU.

In addition, besides ensuring, as it does, the personal suitability of each candidate, it is not the panel's job to take part in determining the composition of the Court of Justice or of the General Court. It therefore does not give preference to any particular professional path nor any one field of legal competence more than another, in its assessment of the suitability of the candidatures for the duties for which they are proposed. **It considers all professional paths in the field of law to be equally legitimate** in applying for the office of Judge or Advocate-General in the Union's courts and, in particular, those of judge, university professor, jurisconsult, lawyer or high-level official specialised in the field of law.

To assess whether the candidates fulfil the criteria laid down in Articles 253, 254 and 255 TFEU, the panel **takes as its basis the elements in the dossier forwarded to it** by the government proposing the candidature and by the candidate him- or herself as well as, if applicable, **publications** by that candidate which members have had the opportunity to consult.

The panel may, under the second paragraph of point 6 of its operating rules, decide to ask the government making the proposal 'to send **additional information** or other material which the panel considers necessary for its deliberations'. It does not rule out, particularly with a view to assessing the utility of making such a request, taking account of **publicly available and objective information** (e.g. easily accessible publications by a candidate).

The panel emphasises that it does not ask for documents or assessments concerning the candidates, except those sent to it, unasked or at its request, by Member State governments or by the candidates themselves. If factual information on a candidate, whether or not publicly available, of a kind that would support an unfavourable assessment comes to the knowledge of the panel, the panel would take it into account only after the candidate and the government proposing the candidature have first been given the opportunity to comment on its pertinence and accuracy. Since its appointment in 2014, the second panel has used this procedure on two occasions where information on the personality or profile of a candidate was submitted to it by third parties. The candidates and governments concerned were given a reasonable period of time in which to discuss the information and submit their comments, either in advance of or following the hearing.

While the above general principles apply to the examination of all candidatures proposed to the panel, the panel has nevertheless seen fit to establish distinct procedures for considering and examining candidatures depending on whether they concern the renewal of a Judge's term or proposals for a first term.

## ***2. Candidature for a first term or for renewal of a term: distinct procedures for consideration and examination***

On the basis of point 7 of its operating rules established by the Council Decision of 25 February 2010, which provides that only candidates for a first term of office as Judge or Advocate-General are heard in a private hearing, the panel laid down **distinct procedures for examining candidatures**, depending on whether they were for the renewal of a term of office as Judge or for a first term of office.

The procedures, which were defined in 2010 and maintained throughout the term of office of the first panel, were supplemented by the second panel at its meeting on 25 April 2014. The members of the panel adopted a harmonised CV template containing a number of mandatory fields.<sup>5</sup> The adopted template must contain the following information:

- ◆ the candidate's personal details and the nature of the post applied for;
- ◆ the candidate's professional experience (current and previous posts held and any additional positions held during his or her career);
- ◆ the candidate's educational background and academic career, with a particular focus on the qualifications obtained;
- ◆ details of language skills;
- ◆ a presentation of the reasons why the candidate feels suited to perform judicial duties (ability to analyse and solve legal issues; ability to work in a team in an international environment; ability to manage a team; computer skills);
- ◆ additional information on the candidate's professional background (academic activities, legal honours, publications and other writings, and participation in conferences);

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<sup>5</sup> Annex 6 to this report.

- ◆ other information which the candidate would like to bring to the attention of the panel.

The panel also decided to clarify the section in the CV on language skills by referring to the levels defined in the Common European Framework of Reference for Languages (A1, A2, etc.). It also chose to limit the number of publications and the number of legal cases which may be presented by the candidate to three. Lastly, the panel considered that the hearings for candidates for a first term of office should be conducted in two stages: a presentation by the candidate of the reasons for his or her candidature and a description of a legal case, followed by a discussion with the members of the panel.

Both for renewals and for first terms of office, the panel endeavoured to obtain all the information it needed to perform its duties, by availing itself fully, where necessary, of the option under the second paragraph of point 6 of its operating rules, to ask the government making the proposal 'to send additional information or other material which the panel considers necessary for its deliberations'.

**a. As to applications for a renewal of a term of office**, the panel essentially based itself on the elements forwarded by the governments of the Member States, i.e. the CV in the format defined by the panel on 25 April 2014, listing in particular published texts written by the candidate. The panel also asks candidates for the office of Judge of the Court of Justice or of the General Court to provide a list of the closed cases for which they acted as Rapporteur at the Court of Justice or at the General Court, distinguishing between judgments and orders, as well as any pending cases on which they are acting as Rapporteur. Similarly, for candidates for the office of Advocate-General of the Court of Justice, the panel examines the list of cases in which they delivered an opinion, again distinguishing between judgments and orders. On the basis of these elements, the panel was able to conduct an effective assessment of the candidates' suitability for a new term of office. It should be noted that the panel does not refrain in principle from giving an unfavourable opinion in exceptional cases, if it considers that a candidate proposed for renewal of his or her term of office does not have, or no longer has, the ability required to exercise high-level or very high-level judicial functions and therefore does not meet the requirement, laid down in Article 255 TFEU, of suitability for performing the duties of the office he or she is applying for. However, **the panel has yet to make use of this possibility, so while it cannot be completely ruled out, it nevertheless remains a largely theoretical option.**

**b. As to candidates for a first term of office as Judge or Advocate-General**, the panel systematically requested the **most comprehensive information**. Thus, for each candidature for a first term of office, the panel took account of:

- ◆ the essential reasons which led the government to propose the candidate;
- ◆ information on the national procedure that led to the candidate being selected, if there was one;
- ◆ a letter from the candidate explaining the reasons for the application;
- ◆ a CV in the harmonised format defined by the panel at its meeting on 25 April 2014;
- ◆ the text of one to three recent publications, of which the candidate is the author, written in or translated into English or French;

- ◆ the presentation of one to three sensitive legal cases which the candidate has handled in his or her professional practice, which must not exceed five pages per case.

Whenever any of these elements are not in the dossier forwarded to the panel, the panel automatically requests them.

Candidates for a first term of office are also heard by the panel. The purpose of the **hearing** is to supplement the examination of the content of the dossier. It enables the panel to assess, in particular, the candidate's professional experience, legal expertise, aptitude for working in an environment in which a number of legal traditions are represented, language skills, reasons why the candidate considers that he or she is suited for performing the duties of an Advocate-General or Judge at the Court of Justice or General Court and how he or she envisages doing so. The hearing, which lasts an hour, begins with a ten-minute **introductory presentation** in which the candidate presents his or her candidature and describes a legal case handled in the course of his or her professional practice. The candidate may speak in English, French or any other official language of the European Union. Next, the members of the panel put **questions** to the candidate, in English or French, for 50 minutes, on the various aspects of the candidature in a way that enables all of the candidate's aptitudes and skills, as well as his or her analytical abilities and capacity for reflection, to be assessed with a view to the post he or she is applying for. The candidate is asked to respond in the language in which the question was asked. If the candidate considers his or her mastery of both English and French inadequate, he or she may respond in any other official language of the European Union.

### ***3. Information concerning certain requests for information***

As in its previous report, the panel considers it useful to provide information on two types of request for information concerning the national selection procedure and the examination of the candidate's publications.

a. Since the start of its work, the panel has requested information on the **national selection procedure** whenever this information was not provided directly by the Member State proposing the candidature. The purpose of the request is to know whether there was a call for applications, whether an independent body had decided on the merits, i.e. the professional merits of the candidature proposed with regard to the post to be filled, or whether any other selection procedure offering at least equivalent guarantees, such as choice of the candidate by a Member State's highest court, had been used. Lastly, it wishes to know what conclusions the government drew from such a procedure, if it exists.

The panel specifies that the method for selecting the candidate chosen at national level **may in no circumstances be prejudicial to him or her**. In particular, the lack of a procedure enabling candidates' merits to be assessed in an independent and objective manner may not in itself constitute a handicap. In addition, the panel is aware that the selection procedure is the sole responsibility of Member States and is not framed by the TFEU. As a result, the panel naturally gave favourable opinions on suitable candidatures within the meaning of the Treaty, even in the absence of a public call for applications or an independent national procedure for assessing the merits of candidates.

Conversely, a national selection procedure, even a very comprehensive and credible procedure, **cannot, of course, by itself constitute grounds for considering as suitable a candidature** deemed unsuitable by the panel. The existence of a national selection procedure can nonetheless help the panel overcome any doubts it may harbour following its examination of the dossier and/or the hearing of the candidate. In other words, the existence of a national procedure enabling the merits of candidates to be assessed in an independent and objective manner **may**, when in the eyes of the panel a candidature could have certain weak points, **work in the candidate's favour** as the panel's doubts and questions can be put aside by the panel's justified trust in the national procedure.

b. The panel also requests information on **any publications the candidate may have and to be sent one to three texts of the candidate's choice**, in French or in English. This information can help the panel shed light on the candidate's interests and above all on his/her reflections on judicial challenges and issues, and thus on the candidate's suitability for performing the duties of Judge or Advocate-General.

The lack of published works or the inability to produce older works cannot however in itself penalise a candidate. The panel takes care not to give preference to certain profiles – academic, for example – compared to (i.a.) judges, lawyers or jurisconsults. However, whenever a candidate has expressed an opinion in public, it is legitimate for the panel to take note of it in order to have the most comprehensive information on the candidate.

Through its requests for information, the panel is in a position to perform its tasks fully.

#### ***4. Reasons for and communication of the panel's opinions***

In accordance with the first paragraph of point 8 of the panel's operating rules, '*Reasons for the opinion given by the panel shall be stated. The statement of reasons shall set out the principal grounds on which the panel's opinion is based*'. Pursuant to these provisions, the panel's opinions, after recapitulating the various stages of examination, set out the reasons underlying their tenor, favourable or otherwise, as regards the candidate's legal capabilities, professional experience, ability to perform the duties of a Judge with independence, impartiality, integrity and probity, knowledge of languages and aptitude for working in an international environment.

In accordance with the second paragraph of point 8 of the operating rules, the opinions given by the panel are '*forwarded to the representatives of the governments of the Member States*'. Having been consulted on a request addressed to the General Secretariat of the Council, the panel considers that requests for its opinions must be regarded as falling within the scope of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents. The opinions issued by the panel, which relate to the fields of activity of the European Union and in particular of the Council, are sent to the Council, with which the panel maintains a functional link. The Council is consequently in possession of these opinions (Article 2(3) of Regulation No 1049/2001), even if it is not the end recipient and merely forwards them to the Member States. Requests for access to the panel's opinions must therefore be dealt with in the framework laid down by Regulation (EC) No 1049/2001. This regulation nevertheless provides for some exceptions to the obligation to disclose documents. On the basis of the judgment of the Court of Justice of the European Union in the case *European Commission v The Bavarian Lager Company*<sup>6</sup>, the panel considers that **the disclosure of its opinions**, which pertain to an assessment of candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court, and therefore contain personal data, **would be likely to undermine the privacy of the candidates** (Article 4(1)(b) of Regulation (EC) No 1049/2001). The panel is also of the opinion that **the full disclosure of its opinions would undermine the aims and quality of the consultation and appointment procedures** provided for in Articles 253 to 255 TFEU, notably because it would jeopardise the secrecy of the panel's deliberations and of the intergovernmental conference at which the Member States nominate the Judges and Advocates-General (Article 4(2) and (3) of Regulation (EC) No 1049/2001).

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<sup>6</sup> CJEU, 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd, European Data Protection Supervisor (EDPS)*, case C-28/08 P.

The panel therefore considers, on the basis of these exceptions, that its opinions **are intended exclusively for Member State governments** and that **positions it takes** on the suitability of candidates for judicial office at European Union level **may not be disclosed to the public, either directly or indirectly**. In line with this position, the General Secretariat of the Council, after having provided those extracts containing only information not protected by Regulation (EC) No 1049/2001, refused the requests for access to all or part of the remainder of the panel's opinions.

# III. ASSESSMENT OF CANDIDATES' SUITABILITY

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Pursuant to Article 255 TFEU, the panel must give its opinion on 'candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court before the governments of the Member States make the appointments referred to in Articles 253 and 254' of that Treaty. Article 253 provides that 'the Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence'. Article 254 of the Treaty provides that 'the members of the General Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office'.

## *1. Assessment criteria*

Although the criteria established by the Treaty on the Functioning of the European Union are exhaustive, the panel nevertheless considers that they could be more clearly and precisely explained. The panel's assessment of whether a candidate for a post at the Court of Justice meets the conditions required for appointment to the highest judicial offices, or its assessment of whether a candidate for a post at the General Court has the ability required for appointment to high judicial office, is therefore made on the basis of **six considerations**:

- ◆ the candidate's legal expertise;
- ◆ his or her professional experience;
- ◆ the candidate's ability to perform the duties of a Judge;
- ◆ language skills;
- ◆ aptitude for working as part of a team in an international environment in which several legal systems are represented;
- ◆ finally, whether his or her independence, impartiality, probity and integrity are beyond doubt.

The panel stresses that its assessment of the candidature is an **overall assessment**. However, if a candidature is clearly lacking in one of these areas, this could be grounds for an unfavourable opinion. The panel draws attention to the fact that it presented a comprehensive analysis of these criteria in its first activity report.

a. The first three of these considerations relate to the ability required for appointment to very high or high judicial office, or to the attribute of being a jurisconsult of recognised competence: the panel takes into consideration, in this connection, a candidate's legal expertise, professional experience, and ability to perform the duties of a Judge.

**Candidates' legal expertise** is assessed on the basis of consideration of candidates' career history and of any texts candidates may have published. For candidates for a first term of office, the hearing conducted by the panel enables the initial analysis of the content of the dossier to be confirmed, supplemented or refuted. It is not the panel's task to evaluate the legal expertise acquired by candidates, although certain expertise might be considered useful and, conversely, the discovery of significant gaps in knowledge might tend to cast serious doubts on a candidate's abilities. In addition to expertise, the panel expects candidates to demonstrate an ability to analyse and reflect on the conditions and mechanisms for applying the law, in particular the application of EU law within Member States' national legal systems. Candidates for the post of Judge or Advocate-General of the Court of Justice are expected to demonstrate **very extensive legal expertise** and candidates for the post of Judge of the General Court are expected to demonstrate **extensive legal expertise**.

To assess **professional experience**, the panel takes into consideration **its level, nature and length**. Although it takes into account all the duties and tasks that candidates have had the opportunity to perform, the panel pays particular attention, when considering career history, to high-level duties performed by the candidate, and this is assessed with due regard to the diverse practices in the different Member States, in particular in their legal, administrative and university systems. The panel **does not favour any specific candidate profile**, as long as the duties performed demonstrate the candidate's capacity for independent thinking and an ability to make analyses and to take decisions on a legal basis. With regard to length of professional experience, by analogy between the office of Judge and positions of an equivalent level in the European Civil Service, as well as with reference to the national practices with which it is familiar, the panel considers that less than **twenty years' experience of high-level duties** for candidates for the office of Judge or Advocate General of the Court of Justice, and less than **twelve or even fifteen years'** experience of similar duties for candidates for the office of Judge of the General Court, would be unlikely to be deemed sufficient.

The panel thus presumes that it would not be able to give a favourable opinion on candidatures submitted that do not comply with this requirement of a minimum length of professional experience. This **presumption can, however, be overridden** where a candidate demonstrates exceptional expertise.

The panel is also particularly concerned with candidates' awareness and internalisation of the **demands of the office of Judge of the Court of Justice or of the General Court of the European Union**. The panel's task is to determine, in the light of experience gained by the panel's members in positions of a judicial nature that they perform or have performed, whether the candidate fully appreciates the extent of the responsibilities which may be entrusted to him or her, and the binding requirements of the profession of Judge, particularly in terms of independence and impartiality, but also in terms of workload and the aptitude to take clear and well-reasoned positions. At a more concrete level, the panel must also assess the candidate's ability to make a **relevant and effective contribution**, within a reasonable time, to the handling of disputes subject to the jurisdiction of the EU courts, bearing in mind the specific respective needs of the Court of Justice and the General Court.

b. The panel also takes into consideration **candidates' language skills** and their **aptitude for working in an international environment** in which several legal systems are represented. The ability to speak, or at least understand, a number of official languages of the European Union, and the ability to acquire proficiency, within a reasonable time, in the working language of the European courts and thus be in a position to contribute to deliberations with other members of the court, constitutes an important criterion considered by the panel. Aptitude for working in an international environment in which several legal systems are represented is assessed in terms of ability to comprehend the broad categories and principles of the legal systems of the Member States of the European Union, in addition to the legal operating system of the country proposing the candidature, as well as the ability to appreciate the issues that may arise there in connection with the application of EU law. In this regard, experience or activities in a European or international context may be considered an asset.

c. **The requirement of impartiality and independence** being beyond doubt is explicitly referred to in the criteria for evaluation of candidatures set out in Articles 253 and 254 of the Treaty. Moreover, the panel attaches particular importance to the **integrity and probity** of candidates for the post of Judge and Advocate-General of the Court of Justice and Judge of the General Court. The fulfilment of this requirement, which is indispensable, is undoubtedly difficult to assess solely on the basis of candidates' dossiers as submitted by Member States' governments and hearings conducted by the panel where appropriate. The panel does, however, endeavour to establish whether there are factors of any kind which are likely to lead the panel to express reservations as to the ability of the candidate to perform the duties of Judge with independence, impartiality, integrity and probity. The panel may therefore need to question the candidate or the government which submitted the proposal on one or more aspects of the candidature which might give rise to doubts that the candidate would be able to perform the duties of Judge completely independently and impartially, or doubts as to the candidate's integrity or probity.

## ***2. Clarification of the specific assessment of these criteria by the panel***

It would seem appropriate, within the framework of the criteria cited above, to explain what exactly the panel expects from candidatures for posts as important as those to be filled.

The panel endeavours, **on the basis of the candidate's specific professional experience**, to assess the soundness of the candidate's grasp of **key legal issues**, of **issues connected with the principle of the rule of law**, and of the **main aspects of EU law**. It also seeks to evaluate candidates' ability to reflect on the **application of EU law** and on the **relationship between the EU legal system and the respective national legal systems**. It does not, however, seek to assess the scope and comprehensiveness of candidates' legal expertise, particularly with regard to European Union law. Nor does it require the kind of comprehensive knowledge, or even erudition, which one might expect of candidates for other positions, such as that of professor of law, for example. As a result, the panel will not in any way take a negative view of a candidate's failure to answer a precise question relating to some field of Union law with which the candidate

is not familiar since it is outside his or her specialist field. Similarly, it does not require or expect specific and firm answers when inviting a candidate to comment on the current state of legislation or case-law, or on issues that have yet to be resolved or decided. In such cases, its only concern is the candidate's ability to engage, in a thoughtful way, with the conditions and mechanisms of application of EU law and on the current issues in this field of law. **The panel is also open to diverse views**, provided they are properly reasoned and are not founded on erroneous knowledge. The panel thus expects a candidate to have an **adequate basic knowledge** of, and **ability to analyse and reflect on, the general issues in Union law**; these requirements can be met without difficulty by a high-level generalist who is not specialised in Union law.

In most cases, candidates have been able to demonstrate, by means of the information provided in the dossier and at their hearing, that they **fulfil the requirements** for appointment to the offices for which they were proposed. The quality of some candidatures – particularly in terms of legal abilities and professional experience – has even been extremely impressive, if not outstanding.

**In a few cases, the panel has delivered an unfavourable opinion.** This has been the case for instance where a candidate's **length of high-level professional experience**, which the panel found to be **manifestly too short**, was not compensated for by exceptional or extraordinary legal expertise. The panel has also had occasion to note the complete absence of any professional experience relevant to EU law.

The panel has also delivered unfavourable opinions **where the candidates' legal abilities appeared inadequate in the light of the requirements of the office of Advocate-General or Judge of the Court of Justice and the General Court. Unfavourable opinions have likewise been issued where the candidates did not demonstrate sufficient knowledge of European Union law, or appropriate understanding of the major issues that fall within the jurisdiction of the courts.** In such cases, the panel in no way wishes to underestimate candidates' qualifications or the duties they have performed, especially in their country of origin. However, all candidates must be capable of demonstrating, on the basis of their dossier and oral statements, that they have sufficient knowledge of the main challenges relating to the Union's legal system and a sufficient grasp of the broad issues relating to the application of EU law and relationships between legal systems. Certain candidates have shown a clear lack of such knowledge and insufficient familiarity with EU law. In order to assess a candidate's expertise, the panel endeavours to base its hearings not on theoretical and abstract questions, but instead on candidates' actual experience, in order to assess when and in what context they have had to deal with EU law in the performance of their respective duties. The panel also ensures that, in addition to being asked specific questions which often, moreover, relate to matters of principle, candidates are asked more open questions that give them the opportunity to demonstrate their potential. The panel is therefore likely to issue a favourable opinion for candidates who have not been able to give a precise answer to certain technical questions, but who have shown a genuine ability to reason and argue, when the panel believes that they have sufficient potential to effectively carry out the duties of Judge or Advocate-General.

In addition, the panel of course pays attention to the **consistency** of the candidate's statements and ensures there are no discrepancies between these and the content of their dossier. Any inconsistencies in this regard are likely to give an unfavourable impression. The panel may also raise concerns as to whether the candidates' integrity and probity is beyond doubt. Since these qualities are vital in carrying out the duties of Advocate-General or Judge of the Court of Justice or the General Court, an unfavourable opinion has been issued where the panel has serious doubts that have not been allayed during the assessment procedure.

Finally, the panel does of course believe that candidates for appointment as an Advocate-General or Judge of the European Union cannot be expected to possess the same expertise as an Advocate-General or Judge of the European Union in office. However, it also takes the view that a favourable opinion cannot be delivered in respect of candidates unless they demonstrate that they possesses the **ability to make an effective personal contribution**, after a period of adjustment of a number of months, rather than a number of years, **to the judicial role** for which they are being considered. In order to be appointed, candidates must indeed be able, after a reasonable period, to make an effective and relevant contribution in dealing with disputes subject to the jurisdiction of the EU courts.

## IV. THE PANEL'S RELATIONS WITH THE INSTITUTIONS OF THE EUROPEAN UNION

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1. During the panel's second term of office, none of the institutions of the European Union invited the panel to give an account of its activities. The panel itself has not encountered any issues which would have justified its requesting a hearing.

2. Since 2010, several members of the first and second panel have made reference publicly to the work of the panel, either in **publications** or at **conferences**. In most cases they informed their colleagues beforehand about their intended statements so that any comments made by their colleagues could be taken into account before the statements were made. A list of the texts published on panel members' own initiative, and referring inter alia to the panel's work, is annexed to this report<sup>7</sup>. Naturally, only the activity reports represent the panel's views.

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The panel hopes that the fourth activity report, which extends and adds to the information given in its first three reports, will allow a better understanding of the conditions in which candidatures for the offices of Judge and Advocate-General of the Court of Justice and of the General Court have been examined during the first three years of its second term of office (2014-2016). It is the panel's hope that this document will reinforce recognition of the relevance and usefulness of the duties entrusted to it by Article 255 of the Treaty on the Functioning of the European Union.

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<sup>7</sup> Annex 7 to this report.



# ANNEX 1

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**Articles 253 to 255 of the  
Treaty on the Functioning of the European Union**

## **Articles 253 to 255 of the Treaty on the Functioning of the European Union**

### **Article 253**

The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States for a term of six years, after consultation of the panel provided for in Article 255.

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice of the European Union.

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

Retiring Judges and Advocates-General may be reappointed.

The Court of Justice shall appoint its Registrar and lay down the rules governing his service.

The Court of Justice shall establish its Rules of Procedure. Those Rules shall require the approval of the Council.

### **Article 254**

The number of Judges of the General Court shall be determined by the Statute of the Court of Justice of the European Union. The Statute may provide for the Court of First Instance to be assisted by Advocates-General.

The members of the General Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office. They shall be appointed by common accord of the governments of the Member States for a term of six years, after consultation of the panel provided for in Article 255. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.

The Judges shall elect the President of the General Court from among their number for a term of three years. He may be re-elected.

The General Court shall appoint its Registrar and lay down the rules governing his service.

The General Court shall establish its Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council.

Unless the Statute of the Court of Justice of the European Union provides otherwise, the provisions of the Treaties relating to the Court of Justice shall apply to the General Court.

### **Article 255**

A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court before the governments of the Member States make the appointments referred to in Articles 253 and 254.

The panel shall comprise seven persons chosen from among former members of the Court of Justice and the General Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament. The Council shall adopt a decision establishing the panel's operating rules and a decision appointing its members. It shall act on the initiative of the President of the Court of Justice.

# ANNEX 2

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**Council Decision of 25 February 2010  
relating to the operating rules of the panel provided for in Article 255 of the Treaty on the  
Functioning of the European Union  
(2010/124/EU)**

## DECISIONS

## COUNCIL DECISION

of 25 February 2010

relating to the operating rules of the panel provided for in Article 255 of the Treaty on the Functioning of the European Union

(2010/124/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the second paragraph of Article 255 thereof,

Having regard to the initiative by the President of the Court of Justice on 11 January 2010,

Whereas:

- (1) The Judges and Advocates-General of the Court of Justice and the General Court are appointed by common accord of the governments of the Member States, after consultation of a panel set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General. The panel comprises seven persons chosen from among former members of the Court of Justice and the General Court, members of national supreme courts and lawyers of recognised competence, one of whom is proposed by the European Parliament.
- (2) The operating rules of that panel therefore need to be established,

HAS ADOPTED THIS DECISION:

*Article 1*

The operating rules of the panel provided for in Article 255 of the Treaty on the Functioning of the European Union are set out in the Annex to this Decision.

*Article 2*

This Decision shall enter into force on 1 March 2010.

*Article 3*

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 25 February 2010.

For the Council

The President

A. PÉREZ RUBALCABA

## ANNEX

## OPERATING RULES OF THE PANEL PROVIDED FOR IN ARTICLE 255 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

## 1. Mission

The panel shall give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court before the Governments of the Member States make the appointments referred to in Articles 253 and 254 of the Treaty.

## 2. Composition

The panel shall comprise seven persons chosen from among former members of the Court of Justice and the General Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament.

## 3. Term of office

The members of the panel shall be appointed for a period of four years. A person who is to replace a member before the expiry of that period shall be appointed for the remainder of his predecessor's term.

Members of the panel may be reappointed once.

## 4. Presidency and secretariat

The panel shall be presided over by one of its members, appointed for that purpose by the Council.

The General Secretariat of the Council shall be responsible for the panel's secretariat. It shall provide the administrative support necessary for the working of the panel, including the translation of documents.

## 5. Quorum and deliberations

Meetings of the panel shall be valid if at least five of its members are present. The deliberations of the panel shall take place *in camera*.

## 6. Referral to the panel and request for additional information

As soon as the Government of a Member State proposes a candidate, the General Secretariat of the Council shall send that proposal to the President of the panel.

The panel may ask the government making the proposal to send additional information or other material which the panel considers necessary for its deliberations.

## 7. Hearing

Except where a proposal relates to the reappointment of a Judge or Advocate-General, the panel shall hear the candidate; the hearing shall take place *in private*.

## 8. Statement of reasons for opinion and presentation

Reasons for the opinion given by the panel shall be stated. The statement of reasons shall set out the principal grounds on which the panel's opinion is based.

The panel's opinion shall be forwarded to the Representatives of the Governments of the Member States. Furthermore, at the request of the Presidency, the President of the panel shall present that opinion to the Representatives of the Governments of the Member States' meeting within the Council.

## 9. Financial provisions

Members of the panel required to travel away from their place of residence in order to carry out their duties shall be entitled to reimbursement of their expenses and an allowance on the conditions laid down in Article 6 of Regulation (No 422/67/EEC, 5/67/Euratom) of the Council of 25 July 1967 determining the emoluments of the President and members of the Commission and of the President, Judges, Advocates-General and Registrar of the Court of Justice and of the President, Members and Registrar of the Court of First Instance and of the President, Members and Registrar of the European Union Civil Service Tribunal<sup>(1)</sup>.

The corresponding expenditure shall be borne by the Council.

<sup>(1)</sup> OJ L27, 8.8.1967, p. 1.

# ANNEX 3

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**Council Decision of 11 February 2014  
appointing the members of the panel provided for in Article 255 of the Treaty on the  
Functioning of the European Union  
(2014/76/EU)**

## COUNCIL DECISION

of 11 February 2014

appointing the members of the panel provided for in Article 255 of the Treaty on the Functioning of the European Union

(2014/76/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the second paragraph of Article 255 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,

Having regard to the initiative by the President of the Court of Justice on 25 November 2013,

Whereas:

- (1) Pursuant to the first paragraph of Article 255 of the Treaty on the Functioning of the European Union, a panel is to be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court before the Governments of the Member States make the appointments (hereafter referred to as the 'panel').
- (2) The panel is to comprise seven persons chosen from among former members of the Court of Justice and the General Court, members of national supreme courts and lawyers of recognised competence, one of whom is to be proposed by the European Parliament.
- (3) Account should be taken of a balanced membership of the panel, both in geographical terms and in terms of representation of the legal systems of the Member States.
- (4) The members of the panel and its President should therefore be appointed,

HAS ADOPTED THIS DECISION:

## Article 1

For a period of four years from 1 March 2014, the following shall be appointed members of the panel provided for in Article 255 of the Treaty on the Functioning of the European Union:

Mr Jean-Marc SAUVÉ, President

Mr Luigi BERLINGUER

Ms Pauline KOSKELO

Lord MANCE

Mr Péter PACZOLAY

Mr Christiaan TIMMERMANS

Mr Andreas VOSSKUHLE

## Article 2

This Decision shall enter into force on 1 March 2014.

Done at Brussels, 11 February 2014.

For the Council  
The President  
E. VENIZELOS

# ANNEX 4

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**Council Decision (EU, Euratom) 2016/296 of 29 February 2016  
appointing a member of the panel provided for in Article 255 of the Treaty on the  
Functioning of the European Union**

## DECISIONS

COUNCIL DECISION (EU, Euratom) 2016/296

of 29 February 2016

replacing a member of the panel provided for in Article 255 of the Treaty on the Functioning of the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the second paragraph of Article 255 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,

Having regard to the initiative of the President of the Court of Justice of 27 January 2016,

Whereas:

- (1) Pursuant to the first paragraph of Article 255 of the Treaty on the Functioning of the European Union, a panel was set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court before the Governments of the Member States make the appointments (the 'panel').
- (2) By Decision 2014/76(EU <sup>1</sup>), the Council appointed the seven members of the panel for a period of 4 years, ending on 28 February 2018.
- (3) By letter of 27 January 2016, the President of the Court of Justice informed the President of the Council that Mr Péter PACZOLAY had resigned from his functions as member of the panel with effect from 21 January 2016.
- (4) By the same letter of 27 January 2016, the President of the Court of Justice proposed the appointment of Mr Mirosław WYRZYKOWSKI to replace Mr Péter PACZOLAY for the remainder of his term, in accordance with point 3 of the operating rules of the panel as set out in the Annex to Council Decision 2010/124(EU <sup>2</sup>),

HAS ADOPTED THIS DECISION:

*Article 1*

Mr Mirosław WYRZYKOWSKI is hereby appointed member of the panel provided for in Article 255 of the Treaty on the Functioning of the European Union for a period ending on 28 February 2018.

<sup>1</sup>) Council Decision 2014/76/EU of 11 February 2014 appointing the members of the panel provided for in Article 255 of the Treaty on the Functioning of the European Union. (OJ L 41, 12.2.2014, p. 18).

<sup>2</sup>) Council Decision 2010/124/EU of 25 February 2010 relating to the operating rules of the panel provided for in Article 255 of the Treaty on the Functioning of the European Union. (OJ L 90, 27.2.2010, p. 18).

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*Article 2*

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 29 February 2016.

For the Council  
The President  
H.G.J. KAMP

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# ANNEX 5

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**Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council  
of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the  
European Union**

## REGULATION (EU, Euratom) 2015/2422 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 December 2015

amending Protocol No 3 on the Statute of the Court of Justice of the European Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first paragraph of Article 254 and the second paragraph of Article 281 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,

Having regard to the request of the Court of Justice,

Having regard to the opinions of the European Commission <sup>(1)</sup>,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) As a consequence of the progressive expansion of its jurisdiction since its creation, the number of cases before the General Court is now constantly increasing.
- (2) At present, the duration of proceedings does not appear to be acceptable from the point of view of litigants, particularly in the light of the requirements set out in Article 47 of the Charter of Fundamental Rights of the European Union and in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- (3) The situation in which the General Court finds itself has causes relating, inter alia, to the increase in the number and variety of legal acts of the institutions, bodies, offices and agencies of the Union, as well as to the volume and complexity of the cases brought before the General Court, particularly in the areas of competition, State aid and intellectual property.
- (4) The option of setting up specialised courts as provided for in Article 257 of the Treaty on the Functioning of the European Union (TFEU) has not been taken up.
- (5) Consequently, suitable measures of an organisational, structural and procedural nature, including, in particular, an increase in the number of Judges, should be taken to address this situation. Making use of the possibility provided for by the Treaties of increasing the number of Judges of the General Court would allow for a reduction within a short time of both the volume of pending cases and the excessive duration of proceedings before the General Court.
- (6) Taking into account the evolution of the workload of the General Court, the number of Judges should be fixed at 56 at the end of a three-stage process, two Judges being appointed upon a proposal by each of the Member States, it being understood that at no point of time can there be more than two Judges sitting at the General Court appointed upon a proposal by the same Member State.

<sup>(1)</sup> Opinion of 30 September 2011 (OJ C 335, 16.11.2011, p. 20) and Opinion of 12 November 2015 (not yet published in the Official Journal).

<sup>(2)</sup> Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and position of the Council at first reading of 23 June 2015 (OJ C 239, 21.7.2015, p. 14). Position of the European Parliament of 28 October 2015 (not yet published in the Official Journal) and decision of the Council of 3 December 2015.

- (7) The panel provided for in Article 255 TFEU takes into account, in particular, independence, impartiality, expertise and the professional and personal suitability of the candidates.
- (8) In order to rapidly reduce the backlog of pending cases, twelve additional Judges should take office upon entry into force of this Regulation.
- (9) In September 2016, first instance jurisdiction in European Union civil service cases and the seven posts of the Judges sitting at the European Union Civil Service Tribunal (Civil Service Tribunal) should be transferred to the General Court, on the basis of the legislative request already announced by the Court of Justice. That request will consider the modalities of the transfer of the seven posts of Judges of the Civil Service Tribunal, including staff and resources.
- (10) In September 2019, the remaining nine Judges should take office. In order to ensure cost-effectiveness, this should not entail the recruitment of additional legal secretaries or other support staff. Internal re-organisation measures within the institution should make sure that efficient use is made of existing human resources, which should be equal for all Judges, without prejudice to the decisions taken by the General Court concerning its internal organisation.
- (11) It is of high importance to ensure gender balance within the General Court. In order to achieve that objective, partial replacements in that Court should be organised in such a way that the governments of Member States gradually begin to nominate two Judges for the same partial replacement with the aim therefore of choosing one woman and one man, provided that the conditions and procedures laid down by the Treaties are respected.
- (12) It is necessary to adapt accordingly the provisions of the Statute of the Court of Justice of the European Union on the partial replacement of Judges and Advocates-General that takes place every three years.
- (13) As the Court of Justice of the European Union has already announced, it will, as a follow-up to the reform of the General Court, present yearly figures on its judicial activity and, if necessary, suggest appropriate measures. At the second and third stages of the enlargement of the General Court, an assessment of the situation of the General Court will take place which, if necessary, could lead to certain adjustments, notably in terms of administrative expenditure of the Court.
- (14) Protocol No 3 on the Statute of the Court of Justice of the European Union should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

#### Article 1

Protocol No 3 on the Statute of the Court of Justice of the European Union is hereby amended as follows:

- (1) Article 9 is replaced by the following:

#### Article 9

When, every three years, the Judges are partially replaced, one half of the number of Judges shall be replaced. If the number of Judges is an uneven number, the number of Judges who shall be replaced shall alternately be the number which is the next above one half of the number of Judges and the number which is next below one half.

The first paragraph shall also apply when the Advocates-General are partially replaced, every three years.

[2] Article 48 is replaced by the following:

Article 48

The General Court shall consist of:

- (a) 40 Judges as from 25 December 2015;
- (b) 47 Judges as from 1 September 2016;
- (c) two Judges per Member State as from 1 September 2019<sup>1</sup>.

#### Article 2

The term of office of the additional Judges of the General Court to be appointed pursuant to Article 48 of Protocol No 3 on the Statute of the Court of Justice of the European Union shall be as follows:

- (a) The term of office of six of the twelve additional Judges to be appointed as from 25 December 2015 shall end on 31 August 2016. Those six Judges shall be chosen in such a way that the governments of six Member States nominate two Judges for the partial replacement of the General Court in 2016. The term of office of the other six Judges shall end on 31 August 2019.
- (b) The term of office of three of the seven additional Judges to be appointed as from 1 September 2016 shall end on 31 August 2019. Those three Judges shall be chosen in such a way that the governments of three Member States nominate two Judges for the partial replacement of the General Court in 2019. The term of office of the other four Judges shall end on 31 August 2022.
- (c) The term of office of four of the nine additional Judges to be appointed as from 1 September 2019 shall end on 31 August 2022. Those four Judges shall be chosen in such a way that the governments of four Member States nominate two Judges for the partial replacement of the General Court in 2022. The term of office of the other five Judges shall end on 31 August 2025.

#### Article 3

1. By 26 December 2020, the Court of Justice shall draw up a report, using an external consultant, for the European Parliament, the Council and the Commission on the functioning of the General Court.

In particular, that report shall focus on the efficiency of the General Court, the necessity and effectiveness of the increase to 56 Judges, the use and effectiveness of resources and the further establishment of specialised chambers and/or other structural changes.

Where appropriate, the Court of Justice shall make legislative requests to amend its Statute accordingly.

2. By 26 December 2017, the Court of Justice shall draw up a report for the European Parliament, the Council and the Commission on possible changes to the distribution of competence for preliminary rulings under Article 267 TFEU. The report shall be accompanied, where appropriate, by legislative requests.

#### Article 4

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 16 December 2015.

For the European Parliament  
The President  
M. SCHULZ

For the Council  
The President  
M. SCHMITT

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# ANNEX 6

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**Curriculum vitae template  
adopted by the second panel at its meeting on 25 April 2015**

INFORMATIONS  
PERSONNELLES

Prénom(s) Nom(s)

-  Remplacer par numéro de rue, nom de rue, code postal, localité, pays
-  Remplacer par numéro de téléphone fixe  Remplacer par numéro de téléphone portable
-  Inscrire l'adresse(s) courriel

Sexe - Indiquer sexe | Date de naissance - jj/mm/aaaa | Nationalité - Indiquer nationalité(s)

## POSTE VISÉ

Choisir parmi :

- Juge au Tribunal de l'Union européenne – première candidature / renouvellement
- Juge à la Cour de justice de l'Union européenne – première candidature / renouvellement
- Avocat général à la Cour de justice de l'Union européenne – première candidature / renouvellement

EXPÉRIENCE  
PROFESSIONNELLE

## Poste actuel

Remplacer par dates (Depuis le -)

Remplacer par la fonction ou le poste occupé

Remplacer par le nom et la localité de l'employeur (au besoin, l'adresse et le site web)

- Remplacer par les principales activités et responsabilités

Type ou secteur d'activité : Remplacer par le type ou secteur d'activité

## Postes occupés antérieurement

Remplacer par dates (de - à)

Remplacer par la fonction ou le poste occupé

Remplacer par le nom et la localité de l'employeur (au besoin, l'adresse et le site web)

- Remplacer par les principales activités et responsabilités

Type ou secteur d'activité : Remplacer par le type ou secteur d'activité

## Fonctions accessoires

Remplacer par dates (de - à)

Remplacer par la fonction ou le poste occupé

Remplacer par le nom et la localité de l'employeur (au besoin, l'adresse et le site web)

- Remplacer par les principales activités et responsabilités

Type ou secteur d'activité : Remplacer par le type ou secteur d'activité

ÉDUCATION  
ET FORMATION

Remplacer par dates (de - à)

Remplacer par la qualification obtenue

Inscrire le niveau du  
CEC (ou autre) le  
cas échéant

Remplacer par le nom et la localité de l'établissement d'enseignement ou de formation (au besoin le pays)

- Remplacer par la liste des principales matières couvertes ou compétences acquises

## COMPÉTENCES LIÉES A L'EMPLOI

### Compétences linguistiques

Langue(s) maternelle(s) Remplacer par votre/vos langue(s) maternelle(s)

Autre(s) langue(s)

Remplacer par la langue  
Remplacer par la langue

COMPRENDRE		PARLER		ÉCRIRE
Écouter	Lire	Prendre part à une conversation	S'exprimer oralement en continu	
Spécifier niveau	Spécifier niveau	Spécifier niveau	Spécifier niveau	Spécifier niveau
Spécifier niveau	Spécifier niveau	Spécifier niveau	Spécifier niveau	Spécifier niveau

*Indiquer votre compétence suivant l'échelle de niveau croissant de A 1 à C 2 suivante  
(Cadre européen commun de référence pour les langues) :*  
*utilisateur élémentaire A 1*  
*utilisateur élémentaire A 2*  
*utilisateur indépendant B 1*  
*utilisateur indépendant B 2*  
*utilisateur expérimenté C 1*  
*utilisateur expérimenté C 2*

### Capacité à exercer des fonctions juridictionnelles

- Capacité à analyser et résoudre des questions juridiques • Renseigner les expériences et éléments permettant de montrer au comité votre capacité à analyser et résoudre des questions juridiques
- Capacité à travailler en équipe dans un environnement international • Renseigner les expériences et éléments permettant de montrer au comité votre capacité à travailler en équipe  
• Renseigner les expériences et éléments permettant de montrer au comité votre capacité à travailler dans un environnement international
- Capacité à encadrer une équipe • Renseigner les expériences et éléments permettant de montrer au comité votre capacité à diriger une équipe ou à gérer un service.
- Compétences informatiques • Indiquer votre degré de maîtrise et de pratique des principaux outils informatiques (notamment les logiciels de traitement de texte)  
• Indiquer votre degré de maîtrise et de pratique des bases de données juridiques

### INFORMATIONS COMPLÉMENTAIRES

- Activités scientifiques • Participation effective à des comités de rédaction de revues  
• Participation aux travaux de sociétés savantes  
• Autres activités scientifiques (membre de laboratoires de recherches, etc.)
- Distinctions juridiques • Prix de thèse  
• Ouvrages distingués  
• Doctorat *honoris causa*  
• Autres distinctions juridiques
- Publications, écrits et participations en qualité d'intervenant à des conférences • Ouvrages publiés  
• Articles publiés dans des revues à comité de lecture  
• Autres articles publiés  
• Rapports et études dont le candidat a été le rapporteur, le coordinateur ou le directeur  
• Interventions lors de conférences

### AUTRES INFORMATIONS

- Autres informations que le candidat juge pertinentes de porter à la connaissance du comité

**PERSONAL  
INFORMATION**

First name(s) Surname(s)

-  Replace by street number, street name, postcode, town, country
-  Replace by fixed telephone number  Replace by mobile phone number
-  Enter e-mail address(es)

Gender - Indicate gender | Date of birth - dd/mm/yyyy | Nationality - Indicate nationality(ies)

**POST APPLIED FOR**

Choose from among:  
Judge at the General Court of the European Union - first appointment/renewal  
Judge at the Court of Justice of the European Union - first appointment/renewal  
Advocate-General at the Court of Justice of the European Union - first appointment/renewal

**PROFESSIONAL EXPERIENCE**

**Current position**

Replace by dates (Since -)

**Replace by position or post occupied**  
Replace by the name and place of the employer (address and website, as required)  
• Replace by main activities and responsibilities  
Type or sector of business: Replace by type or sector of business

**Previous posts held**

Replace by dates (from - to)

**Replace by position or post occupied**  
Replace by the name and place of the employer (address and website, as required)  
• Replace by main activities and responsibilities  
Type of business or sector: Replace by type of business or sector

**Additional positions held**

Replace by dates (from - to)

**Replace by position or post occupied**  
Replace by the name and place of the employer (address and website, as required)  
• Replace by main activities and responsibilities  
Type of business or sector: Replace by type of business or sector

**EDUCATION  
AND TRAINING**

Replace by dates (from - to)

**Replace by qualification obtained** Enter the EQF level  
(or similar, as  
appropriate)  
Replace by the name and place of the educational or training establishment (and the country, if required)  
• Replace by the list of main subjects covered or skills acquired

**JOB-RELATED  
SKILLS**

Language proficiency

## Language proficiency

Mother tongue(s) Replace by your mother tongue(s)

Other language(s)

Replace by language

Replace by language

COMPREHENSION		ORAL SKILLS		WRITTEN SKILLS
Aural	Reading	Conversational skills	Oral fluency	
Specify level	Specify level	Specify level	Indicate level	Specify level
Specify level	Specify level	Specify level	Specify level	Specify level

*Indicate your proficiency on an ascending scale from A1 to C2  
(Common European Framework of Reference for Languages):*

*elementary user A1  
elementary user A2  
independent user B1  
independent user B2  
experienced user C1  
experienced user C2*

## Ability to perform judicial duties

Ability to analyse and solve legal issues

- Mention experiences and factors that show the panel your ability to analyse and solve legal issues

Ability to work as part of a team in an international environment

- Mention experiences and factors that show the panel your ability to work as part of a team
- Mention experiences and factors that show the panel your ability to work in an international environment

Ability to manage a team

- Mention experiences and factors that show the panel your ability to lead a team or manage a department

IT skills

- Indicate your familiarity with and practical experience of the main IT tools (particularly word-processing software)
- Indicate your familiarity with and practical experience of legal databases

## ADDITIONAL INFORMATION

Scholarly activities

- Active membership of editorial committees of journals
- Active membership of learned societies
- Other scholarly activities (membership of research laboratories, etc.)

Legal distinctions

- Dissertation prize
- Distinguished works
- Honorary Doctorates
- Other legal distinctions

Publications, articles and lectures given at conferences

- Published works
- Articles published in peer-reviewed journals
- Other published articles
- Reports and studies for which the applicant has been rapporteur, coordinator or director
- Conference participation

## OTHER INFORMATION

- Other information which the applicant considers relevant for the panel

# ANNEX 7

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**List of publications by members of the panel  
relating to its work**

Lord Mance, 'The Composition of the European Court of Justice', October 2011, [http://ukael.org/past events 46 1935078262.pdf](http://ukael.org/past%20events%2046%201935078262.pdf).

Lord Mance, 'Judges judged', *European Advocate* (Journal of the Bar European Society), Spring 2012.

J.-M. Sauvé, 'Les juges européens désormais nommés après avis d'un comité indépendant. Entretien.', *Les Petites Affiches*, 16 March 2011, No 53, pp. 3-7.

J.-M. Sauvé, 'Qu'est-ce qu'un bon juge européen ?', *Dalloz*, 10 May 2011, No 19.

J.-M. Sauvé, 'Le rôle du comité 255 dans la sélection du juge de l'Union', in *La Cour de justice et la construction de l'Europe : Analyses et perspectives de soixante ans de jurisprudence*, Asser Press, Springer, 2013, pp. 99-119.

J.-M. Sauvé, 'Le rôle du Comité chargé de donner un avis sur l'aptitude à exercer les fonctions de juge de l'Union européenne', speech before the European Parliament's Committee on Legal Affairs in Brussels on 30 May 2013, <http://www.conseil-etat.fr/fr/discours-et-interventions/le-role-du-comite-charge-de-donner-un-avis-sur-l-aptitude-a-exercer-les.html>.

J.-M. Sauvé, Interview, *Revue de l'Union européenne*, June 2013, pp. 325-327.

J.-M. Sauvé, 'Le rôle du comité 255 dans la séparation des pouvoirs au sein de l'Union européenne', speech for the 130th anniversary of the Conseil supérieur de la magistrature on 24 October 2013, <http://www.conseil-etat.fr/fr/discours-et-interventions/la-separation-des-pouvoirs-l-union-europeenne-et-le-comite-255-.html>.

J.-M. Sauvé, 'La sélection des juges de l'Union européenne : la pratique du comité de l'article 255', speech at the conference *Selecting Europe's Judges: A critical appraisal of appointment processes to the European courts*, College of Europe in Bruges, 4 November 2013, <http://www.conseil-etat.fr/fr/discours-et-interventions/la-s-k70.html>.

J.-M. Sauvé, 'Selecting EU's Judges: the practice', in *Selecting Europe's Judges: A critical appraisal of appointment processes to the European courts*, Oxford University Press, 2015.