

# **FIFTH ACTIVITY REPORT**

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



*~ Report published 28 February 2018 ~*

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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 in 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, the members have been: Mr Luigi Berlinguer, first Vice-Chair of the European Parliament's Committee on Legal Affairs; Ms Pauline Koskelo, Judge of the European Court of Human Rights and former President of the Supreme Court of Finland; Lord Mance, Judge and, since 2017, Deputy President of the Supreme Court of the United Kingdom; Mr Jean-Marc Sauvé, Vice-President of the Council of State of France; Mr Christiaan Timmermans, former President of Chamber of the Court of Justice 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 June 2017, Mr Raphaël Meyer, Legal Adviser at the General Secretariat of the Council, has been responsible for the panel's secretariat, succeeding Ms Csilla Fekete, Mr Anthony Bisch and Ms Slavka Cholakova.

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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 Decisions of 11 February 2014 and 29 February 2016, during 2017 and until the end of its term of office on 28 February 2018. Throughout its 2014-2018 term of office, the 'second panel' followed on from the work carried out by the 'first panel', which was documented in the first three activity reports. However, in March 2014 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 application (see section II.2 below), as reflected in the panel's fourth activity report examining the 2014-2016 period.

The purpose of this fifth 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 office of Judge and Advocate-General of the Court of Justice and the General Court as well as citizens to become better acquainted with the procedures established for assessing candidates 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 the last four years (2014-2018) and, in particular, over the past year (from February 2017 to the end of February 2018).



## I. SUMMARY OF WORK DONE

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

Between 2014 and 2018 the panel held 25 meetings and assessed 80 candidates. In 2017, the panel held four meetings, including one to discuss the panel's position on the assessment of a candidate, and assessed nine candidates, including four candidates for a first term of office and five candidates for renewal. In 2018, the panel held two meetings, and assessed seven candidates, of whom six were proposed for renewal of their ongoing term of office. Of the candidates assessed in 2017 and 2018, two were submitted to the panel in the context of the second stage of the reform of the General Court of the European Union, and 14 proposed in the context of the partial renewal of members of the Court of Justice. The terms of office of 14 Judges and five Advocates-General of the Court of Justice are due to expire on 6 October 2018.

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; the workload is lighter outside these periods, as it was in 2014 and in the first half of 2017. 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 workload of the panel, which assessed 20 new candidates in 2016 as part of the first two stages of the reform of the General Court. Since then, the cyclical pattern of the panel's workload has resumed, in line with the experience of the 'first panel'.

Each of the panel's meetings generally lasted a day, during which the panel conducted hearings with the candidates, where required, and deliberated on its opinions. The opinion was delivered on the same day as the hearing and deliberation in all but two cases. The opinion was always signed by all members of the panel who had deliberated, except in one case due to an impediment on the part of a member. Prior to the panel's meetings, the secretariat provided each member with all the elements of the candidates' files on the agenda for examination (see section II.2 below – Candidates for a first term of office or for renewal of a term: separate procedures for consideration and assessment), so that each member of the panel could examine these in advance.

**Between 2014 and 2018, the panel delivered 80 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>2017</i>	4	9
<i>2018</i>	2	7
<i>Total</i>	<b>25</b>	<b>80</b>



## *2. Candidates assessed in 2017 and 2018*

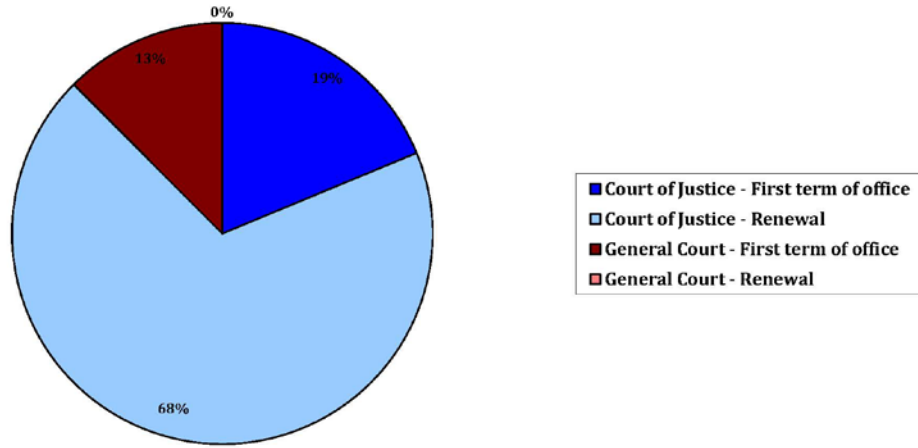
In 2017, the panel assessed nine candidates for the offices of Judge and of Advocate-General, seven of whom were for the Court of Justice of the European Union and two for the General Court of the European Union. Of the seven candidates for the Court of Justice, two were proposed for the office of Advocate-General, including one for a first term of office. Of the five candidates for the office of Judge of the Court of Justice, four were proposed for renewal of their term of office. The two candidates for the General Court were proposed for a first term of office as Judge.

In 2018, the panel assessed seven candidates for the offices of Judge and of Advocate-General of the Court of Justice. Of these candidates, two were proposed for the office of Advocate-General, including one for a first term of office. The five candidates for the office of Judge were all proposed for renewal of their term of office.

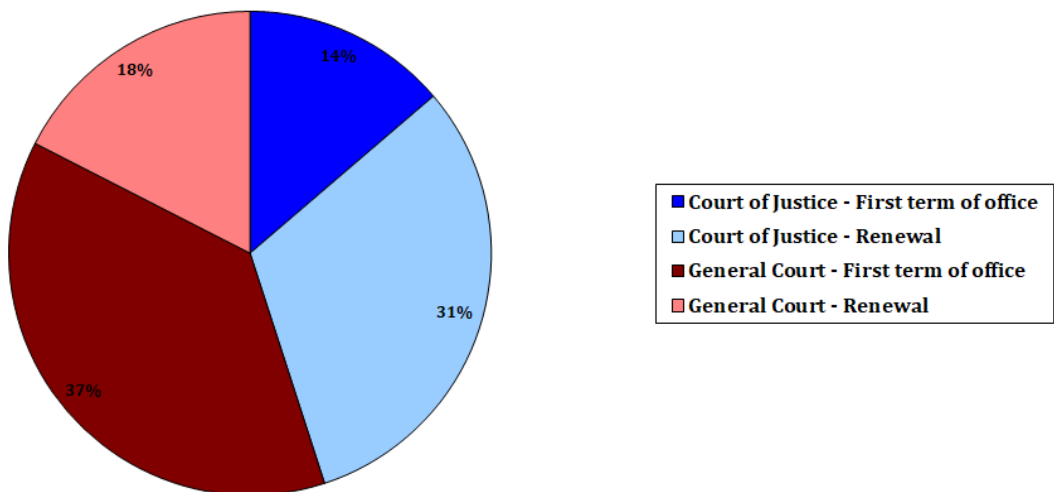
Since beginning its work in March 2014, the 'second panel' has assessed **80 candidates** for the offices of Judge or Advocate-General, of whom **36 were for the Court of Justice** and **44 for the General Court**. Of these candidates, **39 were proposed for renewal of their term of office** at the Court of Justice (25) or the General Court (14). **Forty-one candidates for a first term of office** were also assessed: 11 for the Court of Justice and 30 for 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>2017</b>	9	7 <i>2 first terms of office 5 renewals</i>	2 <i>2 first terms of office</i>
<b>2018</b>	7	7 <i>1 first term of office 6 renewals</i>	0
<b>Total</b>	<b>80</b>	<b>36</b> <i>11 first terms of office 25 renewals</i>	<b>44</b> <i>30 first terms of office 14 renewals</i>

Distribution of the 16 opinions delivered by the panel between 2017 and 2018



Distribution of the 80 opinions delivered by the panel between 2014 and 2018



### *3. Nature of the opinions*

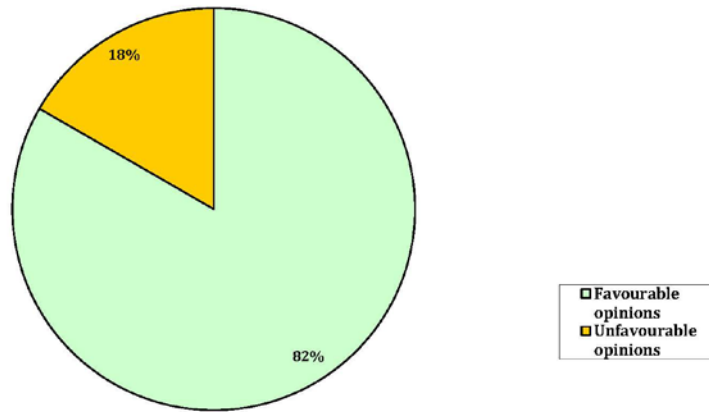
In total, **seven of the 80 opinions** delivered since the 'second panel' started work **in March 2014 have been unfavourable**. No unfavourable opinions were delivered on **candidatures for the renewal of a term of office**.

This means that **17 %** (seven out of 41) of the opinions on candidates for a first term of office were unfavourable.

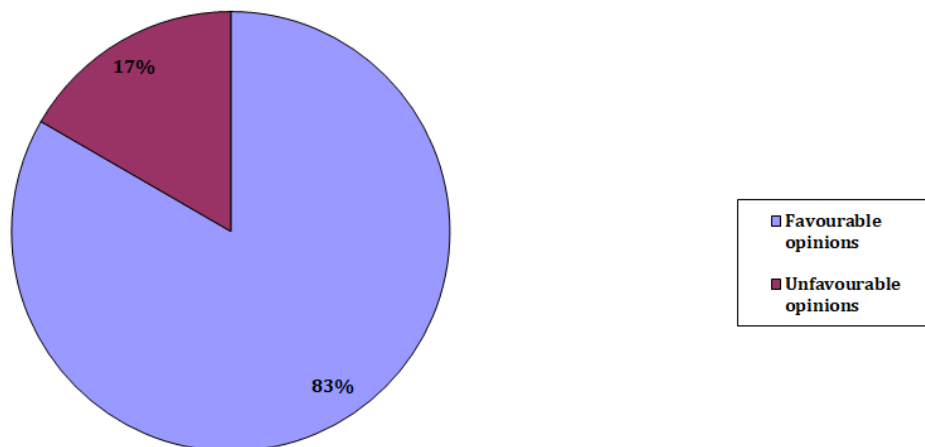
Of the seven unfavourable opinions delivered by the 'second panel' since March 2014, five related to candidates for a first term of office as Judge of the General Court, and two to candidates for a first term of office at the Court of Justice.

	<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>2017-2018</b>	16	15	1 <i>1 first term of office at the Court of Justice</i>
<b>Total</b>	<b>80</b>	<b>73</b>	<b>7</b>

**Nature of the 11 opinions delivered on candidates for a first term of office at the Court of Justice (2014-2018)**



**Nature of the 30 opinions delivered on candidates for a first term of office at the General Court (2014-2018)**



#### ***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 assess candidates***

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 overly lengthy assessment procedure.

For the 16 opinions delivered by the 'second panel' in 2017 and 2018, **there were on average 80 days between the receipt of the candidatures and the date of the panel's opinion**. 43.8 % of the candidates were assessed within a period of between 45 and 90 days, and in 18.7 % of cases, the panel reached a decision in less than 45 days. The panel's assessment took longer than 90 days in only six cases (37.5 %). The longest periods were generally a result of the early proposal of candidates by some Member States, well before the end of an ongoing term of office, and did not therefore impede the proper functioning of the courts of the Union in any way. In one case the length of time was attributable to the candidate, who requested a one-month adjournment of the hearing for professional reasons.

**Between 2014 and 2018, the average time taken to assess candidates was 85 days**. During that time, 46.25 % were assessed within a period of between 45 and 90 days, and in 21.25 % of cases, the panel reached a decision in less than 45 days. The panel's assessment took longer than 90 days in only 32.5 % of cases.

	<b>Average duration</b>	<b>Assessment &gt; 90 days</b>	<b>45 days &gt; Assessment &lt; 90 days</b>	<b>Assessment &gt; 45 days</b>
<b>2014</b>	82 days	0 candidates	3 candidates	0 candidates
<b>2015</b>	95 days	11 candidates	9 candidates	4 candidates
<b>2016</b>	82 days	9 candidates	18 candidates	10 candidates
<b>2017</b>	83 days	4 candidates	2 candidates	3 candidates
<b>2018</b>	75 days	2 candidates	5 candidates	0 candidates
<b>Total</b>	<b>85 days</b>	<b>26 candidates</b>	<b>37 candidates</b>	<b>17 candidates</b>

## ***6. Conclusions on the panel's work since its creation in 2010***

**Since 2010**, the panel has delivered a **total of 147 opinions**, 67 of which were delivered by the 'first panel'. Of the 147 candidates assessed, 61 were for the office of Judge or Advocate-General of the Court of Justice and 86 for the office of Judge of the General Court. Of these candidates, 74 were proposed for renewal of their term of office at the Court of Justice (39) or the General Court (35). 73 candidates for a first term of office were also assessed, including 22 for the Court of Justice and 51 for the General Court.

In total, 14 of the 147 opinions delivered since the panel started work in 2010 have been unfavourable. No unfavourable opinions have been delivered on candidates for the renewal of a term of office. This means that 19.2 % (14 out of 73) of the opinions on candidates for a first term of office were unfavourable.

## II. CONSIDERATION AND ASSESSMENT OF CANDIDATES

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### *1. General principles of consideration and assessment of candidates*

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 of 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 individual suitability of each candidate, it is not the panel's function 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 candidates for the duties for which they are proposed. **It considers all professional paths in the field of law to be equally legitimate** to apply for the office of Judge or Advocate-General in the courts of the Union and, in particular, those of judge, university professor, jurisconsult, lawyer or senior 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 file forwarded to it** by the government proposing the candidate and by the candidate in question as well as, if applicable, **publications** by the 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 solicit the transmission of documents or assessments concerning 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 candidate 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 assessment of all candidates proposed to the panel, the panel has nevertheless seen fit to establish separate procedures for considering and assessing candidates, depending on whether they were proposed for renewal of their term of office as Judge or for a first term of office.

## ***2. Candidates for a first term of office or for renewal of a term: different procedures for consideration and assessment***

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 established **different procedures for assessing candidates**, depending on whether they were proposed for renewal of their 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>4</sup>. The adopted template requires the following information:

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<sup>4</sup> Annex 6 to this report.

- ◆ the candidate's personal details and the nature of the post applied for;
- ◆ the candidate's professional experience (current and previous positions held and any additional positions held during their career);
- ◆ the candidate's educational and academic background, with a particular focus on the qualifications obtained;
- ◆ details of language proficiency;
- ◆ a presentation of why the candidate feels suited to perform judicial duties (ability to analyse and solve legal issues; ability to work as part of a team in an international environment; ability to manage a team; computer skills);
- ◆ additional information on the candidate's professional background (scholarly activities, legal distinctions, publications and other writings, and participation in conferences);
- ◆ 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 candidates to three. Lastly, the panel decided that the hearings for candidates for a first term of office should be conducted in two stages: a presentation by candidates of their reasons for applying and the 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 asked 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 and clarifying the formation of the court, 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 examined the list of cases in which they delivered an opinion, again distinguishing between different formations of the court. 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 from giving an unfavourable opinion in exceptional cases, if it considers that candidates proposed for renewal of their term of office do not have, or no longer have, the ability required to carry out high-level or very high-level judicial duties and therefore do not meet the requirement, laid down in Article 255 TFEU, of suitability for performing the duties of the office they are applying for. **The panel has yet to make use of this possibility, which nonetheless cannot be ruled out if certain specific circumstances were to arise** such that a candidate appeared unable to continue to perform demanding judicial duties.

**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 candidate for a first term of office, the panel wished to take 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 delicate legal cases which the candidate has handled in their professional practice, which must not exceed five pages per case.

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

In addition, candidates for a first term of office are heard by the panel. The purpose of the **hearings** is to supplement the assessment of the content of the file. They enable the panel to assess, in particular, the candidates' professional experience, legal capabilities, aptitude for working in an environment in which a number of legal traditions are represented, language skills, reasons why the candidates consider that they are suited for performing the duties of an Advocate-General or Judge of the Court of Justice or General Court and how they envisage performing those duties. The hearings, which last an hour, begin with a ten-minute **introductory presentation** in which the candidates set out their candidature and describe a legal case handled in the course of their professional practice. The candidates may speak in English, French or any other official language of the European Union. Next, the members of the panel put **questions** to the candidates, in English or French, for 50 minutes, on the various aspects of their suitability in a way that enables all of the candidates' aptitudes and skills, as well as their analytical abilities and capacity for reasoning, to be assessed with a view to the post they are applying for. The candidates are asked to respond in the language in which the question was asked. If the candidates consider their mastery of both English and French inadequate, they may respond in any other official language of the European Union.

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

As in its previous reports, the panel considers it useful to provide clarifications on various types of request for information, particularly concerning the national selection procedure, the examination of candidates' publications and the physical capacity of candidates to carry out the duties of Judge or Advocate-General.

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 candidate. More specifically, the purpose of the request is to know whether there was a call for applications, whether an independent body decided on the merits, i.e. the professional merits of the candidate 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, was used. The panel wishes to know what conclusions the government drew from such a procedure, if one exists. Finally, it attaches the greatest importance to compliance by Member States with national rules, where they have been put in place, for the selection of candidates for the office of Judge of the European or international courts.

The panel specifies that the method for selecting candidates at national level **may in no circumstances be prejudicial to them**. 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 disadvantage. In addition, the panel is aware that the selection procedure is the sole responsibility of Member States and is not regulated by the TFEU. As a result, the panel has naturally given favourable opinions on suitable candidates 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 candidates** 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 file and/or the candidates' hearing.

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 candidate could have certain weaknesses, **work in the candidate's favour** as the panel's doubts and questions can be put aside by its trust in the national procedure. In this regard, the panel highlights the importance of the role that an open, transparent and rigorous national selection procedure led by an independent and impartial panel can play when assessing candidates. A national selection procedure based on an open call for applications is an effective method of collecting useful indications on the quality of candidates when they are assessed and selected by a national panel composed of independent and qualified persons, and in particular by members of national supreme courts or former members of the courts of the Union.

b. The panel also requests information on **any publications candidates may have and asks to be sent one to three texts of the candidates' choice**, in French or in English. This information can help the panel shed light on candidates' areas of interest and above all on their thoughts on legal challenges and issues, and thus on their suitability for performing the duties of Judge or Advocate-General.

A lack of published works or the inability to produce older works cannot in itself penalise a candidate, however. The panel takes care not to give preference to certain profiles – academic, for example – compared to professions such as judge, lawyer or jurisconsult. 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 that candidate.

c. The panel considers it necessary to establish a **new assessment criterion** for candidates for a first term of office or for renewal, focusing on the **physical capacity of candidates to carry out duties which, given their highly demanding nature, require good health**. Consequently, candidates will from now on be **asked to produce a medical certificate** attesting to their physical capacity to carry out very taxing judicial duties. The certificate should be issued by an independent medical authority. The panel is of course aware of the extreme sensitivity and confidentiality of medical information, and that it may only be brought to the panel's attention, in a generic way, to the extent that it reveals a condition that is incompatible with the performance of the duties of Judge or Advocate-General in the courts of the Union. The sole purpose of this additional medical certification procedure is to ensure candidates' suitability for the post in question, in accordance with Article 255 of the Treaty on the Functioning of the European Union.

Through its requests for information, including on physical capacity to carry out the duties of Judge or Advocate-General, the panel thus places itself in a position to fully perform its duties.

#### ***4. Examination of the follow-up required as concerns a very short term of office***

In one case, the panel addressed the issue of the follow-up actions required where a candidate for a first term of office had been proposed by a Member State to replace a Judge who had been appointed for a period of almost five months and whose Member State of origin had not proposed renewal.

Five judges have been appointed to posts for a significantly shorter period than the normal term of office of members of the courts of the Union (six years). The panel had issued a favourable opinion in respect of the renewal of all the candidates in this situation, noting that the non-renewal of their terms of office, which would not be justified either by reference to the legal abilities or professional experience of the holders or on the basis of doubts as to their professional abilities or the requirement of impartiality and independence, could undermine or appear to undermine the independence of Judges of the courts of the Union and call into question the proper functioning and continuity of justice in the European Union. Nevertheless, when it received a proposal for a new candidate to replace a sitting Judge from one of the Member States concerned, the panel took the view that the proposal could not be regarded as inadmissible, even though the Judge had been appointed for a period of only five months, and had proved to be fit to perform the relevant duties. However, the panel voiced serious concerns and drew the attention of the Conference of the Representatives of the Governments of the Member States to this unprecedented situation. Nevertheless, the new candidate withdrew the application, which was therefore not examined by the panel.

## ***5. 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 assessment, set out the reasons for which they are favourable or unfavourable based on candidates' 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>5</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, which could be of a medical nature – **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>5</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 accordance with this position, the General Secretariat of the Council has only communicated to those making requests elements that are not likely to contain personal data within the meaning of Regulation (EC) No 1049/2001.



### 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 further clarified and specified. The panel's assessment of whether candidates for a post at the Court of Justice meet the conditions required for appointment to the highest judicial offices, or its assessment of whether candidates for a post at the General Court have the ability required for appointment to high judicial office, is therefore made on the basis of **six considerations**:

- ◆ the candidates' legal capabilities;
- ◆ their professional experience;
- ◆ their ability to perform the duties of a Judge;
- ◆ their language skills;
- ◆ their ability to work as part of a team in an international environment in which several legal systems are represented;
- ◆ whether their independence, impartiality, probity and integrity are beyond doubt;
- ◆ in future, the panel will also take into account the physical capacity of candidates to carry out demanding duties which require considerable personal investment (see section II.3 above, 'Information concerning certain requests for information'). This assessment criterion will be applied to candidates for a first term of office as well as to candidates for renewal.

The panel stresses that its assessment of the candidate is an **overall assessment**. However, if candidates are 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: in this respect the panel takes into consideration candidates' legal capabilities, professional experience, and ability to perform the duties of a Judge.

**Candidates' legal capabilities** is assessed on the basis of consideration of their career history and of any texts they 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 file to be confirmed, supplemented or refuted. It is not the panel's task to evaluate the legal knowledge acquired by candidates, although such knowledge is useful and, conversely, the discovery of significant gaps in knowledge can cast serious doubts on candidates' abilities. In addition to technical knowledge, the panel insists on the need for candidates to demonstrate a genuine ability to analyse and reflect on the conditions and mechanisms for applying the law, particularly as regards the application of Union law within Member States' national legal systems. Given the high standards and the difficulties inherent in the offices to which they aspire, candidates for the offices of Judge or Advocate-General of the Court of Justice of the European Union or the General Court of the European Union must demonstrate that they are capable of rising to the challenges involved in the application of European Union law, the mission of the European courts and, more particularly in relation to candidates for the post of Judge or Advocate-General of the Court of Justice, the necessary and legitimate dialogue between the Court of Justice and the Member States' supreme courts. Candidates for the post of Judge or Advocate-General of the Court of Justice are therefore expected to demonstrate **very extensive legal capabilities** and candidates for the post of Judge of the General Court are expected to demonstrate **extensive legal capabilities**.

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 candidates, a classification made with due regard to the diverse practices in the different Member States, in particular in their judicial, administrative and university systems. The panel **does not favour any specific candidate profile**, as long as the duties performed demonstrate candidates' capacity for independent thinking and their ability to develop a personal and in-depth analysis of the challenges inherent in the duties to which they aspire, and to take decisions which are legally sound and that are consistent with the objectives and principles of Union law. 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 candidates who do not comply with this requirement of a minimum length of professional experience. This **presumption can, however, be overridden** where candidates demonstrate exceptional legal capabilities.

The panel is also particularly attentive as regards the candidates' awareness and internalisation of the **requirements of the profession 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 in the legal area that they perform or have performed, whether candidates fully appreciate the extent of the responsibilities which may be entrusted to them, 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 positions that are clear and well-reasoned in law. On a more concrete level, the panel must also assess candidates' legal, intellectual and physical ability to make a **relevant and effective contribution**, within a reasonable time, to the handling of disputes subject to the jurisdiction of the courts of the Union, bearing in mind the specific respective needs of the Court of Justice and the General Court. It focuses in particular on candidates' capacity to reason and argue, and their ability to offer clear and precise responses to questions asked. In particular, the panel expects candidates, especially candidates for the office of Judge or Advocate-General of the Court of Justice, to have the authority, reasoning and maturity required to enable them to meet the challenges of the high judicial offices to which they aspire. These expectations are in place because of the importance of the responsibilities incumbent upon Union Judges, particularly with regard to the institutions of the Union, the Member States and the national supreme courts.

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 system of the Member State proposing the candidate, 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 candidates 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 essential, is undoubtedly difficult to assess solely on the basis of candidates' files 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 candidates to perform the duties of Judge with independence, impartiality, integrity and probity. The panel may therefore need to question candidates or the government which submitted the proposal on one or more aspects of an application which might give rise to doubts that the candidate concerned 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 candidates for posts as important as those to be filled.

The panel endeavours, **on the basis of candidates' specific professional experience**, to assess the soundness of their grasp of **major legal issues**, of **issues connected with the principle of the rule of law and Europe integration**, 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 knowledge, 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 candidates' failure to answer a precise question relating to some field of Union law with which they are not familiar since it is outside their specialist field. Similarly, it does not require or expect specific and firm answers when inviting candidates 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 candidates' 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 most diverse opinions are, in the eyes of the panel, worthy of interest**, provided they are properly reasoned and are not founded on erroneous knowledge. The capacity of candidates to think in a way that is their own and, where appropriate, original is therefore appreciated by the panel. It thus expects candidates to have an **adequate basic knowledge** of, and especially a **highly developed ability to analyse and reflect on, the general issues in Union law**; these requirements can be met by high-level generalists who are not specialised in Union law, provided that they demonstrate that they understand the challenges inherent in the performance of the duties to which they aspire.

In most cases, candidates have been able to demonstrate, by means of the information provided in the file and at their hearing, that they **fulfil the requirements** for appointment to the offices for which they were proposed. The quality of some candidates – 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 candidates' **length of high-level professional experience**, which the panel found to be **manifestly too short**, was not compensated for by exceptional or extraordinary legal capabilities. 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 capabilities 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 Member State of origin. However, all candidates must be capable of demonstrating, on the basis of their file 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. Yet, certain candidates have shown a clear lack of such knowledge and insufficient familiarity with EU law. The panel is additionally mindful of candidates' shortcomings given that they have had several months in which to prepare for their hearing, to read about European law and to reflect on the case law and missions of the courts of the Union. In this context, if the person heard reveals serious inadequacies in their knowledge or reasoning, it will put them at a clear disadvantage.

In order to assess candidates' knowledge, 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 candidates' statements and ensures there are no discrepancies between these and the content of their file. 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 are 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 in a case where the panel had 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 capabilities 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 possess **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 and in all respects, to make an effective and relevant contribution in dealing with disputes subject to the jurisdiction of the courts of the Union.





## 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 which include references to the panel's work, is annexed to this report<sup>6</sup>. Naturally, only the activity reports represent the panel's views.

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The panel hopes that the fifth activity report, which extends and adds to the information given in its first four reports, will allow for a better understanding of the conditions in which candidates for the offices of Judge and Advocate-General of the Court of Justice and of the General Court have been assessed during the first four years of its second term of office (2014-2018). 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>6</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 General Court 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.

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<sup>(1)</sup> OJ 187, 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,

HAS ADOPTED THIS DECISION:

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 recognized 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,

## 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 VOSSKUHLÉ

## 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  
replacing 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 Miroslaw 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 Miroslaw 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 50, 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 261 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 specialized 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 organizational, 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 organization.
- (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 organized 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.

*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*.



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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*  
N. SCHMIT

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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)

	COMPRENDRE		PARLER		ÉCRIRE
	Écouter	Lire	Prendre part à une conversation	S'exprimer oralement en continu	
Remplacer par la langue	Spécifier niveau	Spécifier niveau	Spécifier niveau	Spécifier niveau	Spécifier niveau
Remplacer par la langue	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 juridiques

- 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

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/past events 46 1935078262.pdf](http://ukael.org/past-events/past%20events%2046%201935078262.pdf).

Lord Mance, 'Judges judged', *European Advocate* (Journal of the Bar European Group), 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/Actualites/Discours-Interventions/Le-role-du-Comite-charge-de-donner-un-avis-sur-l-aptitude-a-exercer-les-fonctions-de-juge-de-l-Union-europeenne>.

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/Actualites/Discours-Interventions/La-separation-des-pouvoirs-l-Union-europeenne-et-le-comite-255>.

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.