

**255**  
— COMITÉ —

# SIXTH ACTIVITY REPORT

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



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# **SIXTH ACTIVITY REPORT**

October 2019



# TABLE OF CONTENTS

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<b>INTRODUCTORY REMARKS .....</b>	<b>5</b>
Legal framework for the panel .....	5
Mission and composition .....	5
Work of the third panel .....	6
<b>I. SUMMARY OF WORK DONE.....</b>	<b>7</b>
1. General overview of the panel’s work .....	7
2. Candidates assessed in 2018 and 2019.....	8
3. Nature of the opinions .....	8
4. Outcome of the opinions .....	9
5. Time taken to assess candidates.....	9
6. Conclusions on the panel’s work since its creation in 2010.....	10
<b>II. CONSIDERATION AND ASSESSMENT OF CANDIDATES .....</b>	<b>11</b>
1. Procedure under Article 255 TFEU and national procedures .....	11
2. Common procedures for consideration and assessment.....	12
3. Candidates for a first term of office .....	12
4. Candidates for renewal of a term of office.....	14
5. Clarifications concerning information not included in the file .....	15
6. Examination of the follow-up required as concerns a very short term of office.....	15
7. Reasons for and communication of the panel’s opinions .....	16
<b>III. ASSESSMENT OF CANDIDATES’ SUITABILITY .....</b>	<b>17</b>
1. Assessment criteria.....	17
2. Clarification of the concrete assessment of these criteria by the panel.....	19
<b>IV. THE PANEL’S RELATIONS WITH THE INSTITUTIONS OF THE EUROPEAN UNION ..</b>	<b>21</b>
<b>Conclusion.....</b>	<b>23</b>
<b>Annex 1.....</b>	<b>25</b>
<b>Annex 2.....</b>	<b>27</b>
<b>Annex 3.....</b>	<b>30</b>
<b>Annex 4.....</b>	<b>32</b>
<b>Annex 5.....</b>	<b>37</b>



# INTRODUCTORY REMARKS

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The purpose of this sixth report, as of the preceding reports, is not only to give an account of the activities of the panel provided for by Article 255 of the Treaty on the Functioning of the European Union (hereinafter ‘the panel’), but also to allow the Union’s institutions, the governments of the Member States and, where appropriate, future candidates for the offices 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 **provides a summary of the panel’s work and informs the reader of how the criteria set out in the Treaty have been interpreted and which working methods the panel has used.**

## LEGAL FRAMEWORK FOR THE PANEL

The panel provided for by Article 255 of the Treaty on the Functioning of the European Union<sup>1</sup> was established by the Treaty of Lisbon of 13 December 2007, which entered into force on 1 December 2009.

The panel began its work immediately after the entry into force on **1 March 2010** of the two Decisions 2010/124/EU and 2010/125/EU of 25 February 2010 under which the Council of

the European Union established the operating rules of the panel (hereinafter ‘the operating rules’)<sup>2</sup> and appointed the members of the first panel. The second panel, appointed by Decision 2014/76/EU of 11 February 2014, took up its duties on 1 March 2014. The third and current panel was appointed by Decision (EU, Euratom) 2017/2262 of 4 December 2017<sup>3</sup> and took up its duties on 1 March 2018.

## MISSION AND COMPOSITION

The panel’s mission, pursuant to the provisions of Article 255 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<sup>4</sup> of that Treaty.

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, members of national supreme courts and lawyers of recognised competence, one of whom is proposed by the European Parliament. Its members are appointed by the Council, acting on a proposal by the President of the Court of Justice. Panel members do not receive any remuneration in respect of their role and are reimbursed only for their travel expenses.

The members of the current panel, in office since 1 March 2018, are as follows:

- Mr Simon Busuttill, former Member of the European Parliament and Member of Malta’s House of Representatives,
- Mr Frank Clarke, Chief Justice of Ireland and President of the Supreme Court,

- Mr Carlos Lesmes Serrano, President of the Supreme Court and of the General Council of the Judiciary of Spain,
- Ms Maria Eugénia Martins de Nazaré Ribeiro, former Judge of the General Court of the European Union,
- Mr Christiaan Timmermans, former Judge 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 Tribunal of Poland.

The panel is chaired by Mr Christiaan Timmermans.

Since June 2017, Mr Raphaël Meyer, a 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. Since September 2018, Mr Meyer has been assisted by Ms Koralia Pavlaki, also a legal adviser at the General Secretariat of the Council.

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

<sup>2</sup> Annex 2 to this report.

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

## WORK OF THE THIRD PANEL

**This report relates to the work of the third panel in its first 19 months** – from the beginning of its term of office on 1 March 2018 until 1 October 2019.

The **work of the third panel has been a direct continuation of the work carried out by the first two panels**, which was described in the first five activity reports.

In addition to continuing the work of the first two panels, the third panel intends to **develop its assessment methodology for candidates for renewal of their term of office**, commencing with its consideration of candidates in anticipation of the next partial renewal of the Court of Justice in 2021. The panel will take a more analytical approach to assessing the candidates' productivity during their previous term of office, taking into account the duration of proceedings in the cases dealt with by candidates and the expected duration of proceedings in comparable cases, in the context of the indicative internal deadlines of the two courts. It will seek additional explanations from candidates whose

productivity raises questions as to their continued suitability to carry out the duties of Judge or Advocate-General. The details of this assessment are set out later in this report.

On the other hand, and contrary to what was indicated in the fifth activity report, the third panel has decided, after deliberation, **not to implement a new assessment criterion focusing on the physical capacity of candidates** to carry out the duties of Judge or Advocate-General. Indeed, in the course of making operational preparations to implement that criterion, the panel carried out a comparative analysis of the approaches in this area in the 28 Member States. In the light of this analysis, it came to the conclusion that the approaches are very heterogeneous and that implementing a criterion of that type could create difficulties on matters of principle in some legal systems. Having considered the advantages and disadvantages, the panel therefore decided to reverse its initial decision and not require candidates to produce a medical certificate.



# I. SUMMARY OF WORK DONE

## 1. GENERAL OVERVIEW OF THE PANEL'S WORK

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. However, the workload is lighter outside these periods. 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<sup>4</sup> has continued to have a significant impact on the panel's workload. There are now 95 posts at the Union's courts (56 Judges of the General Court, 28 Judges and 11 Advocates-General of the Court of Justice), compared to 65 when the panel was set up in 2010. This leads to the panel being particular-

ly busy in peak periods and also affects periods in which partial renewals are not taking place, taking into account resignations and deaths.

Each of the panel's meetings lasted one or two days, during which the panel conducted hearings with the candidates, where required, and deliberated on its opinions. Every opinion was delivered on the same day as the hearing and deliberation. The opinion was always signed by all members of the panel who had deliberated.

Prior to the panel's meetings, the secretariat provided each member with all of the elements of the candidates' files on the agenda for examination (see section II.2 below – Common procedures for consideration and assessment), so that each member of the panel could examine these in advance.

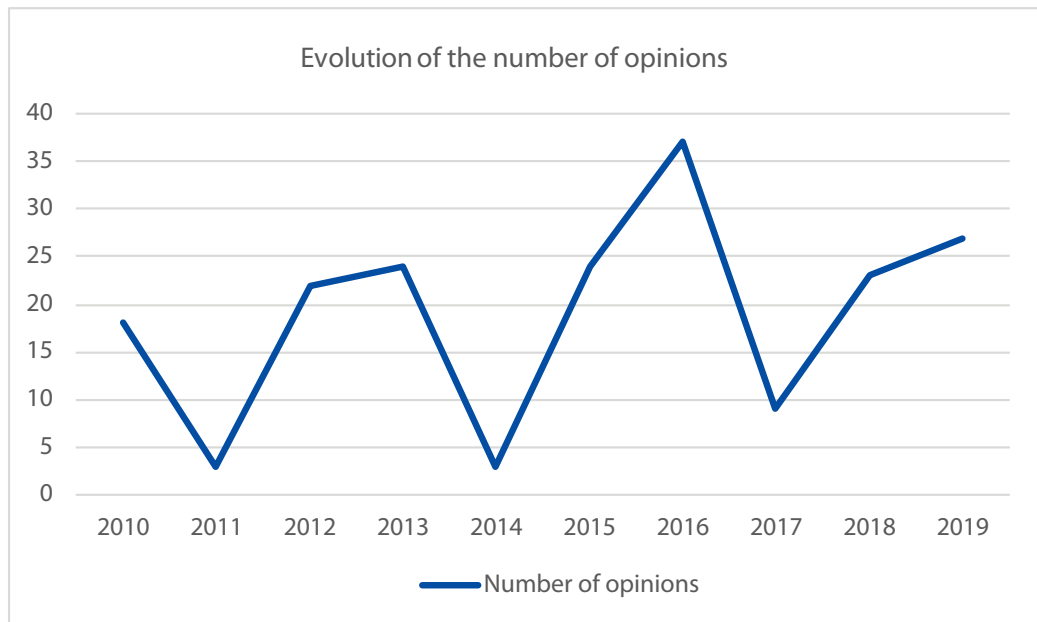
### The third panel delivered 43 opinions between 1 March 2018 and 30 September 2019.

The breakdown of the panel's activities per full calendar year<sup>5</sup> is as follows:

		Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
		Number of meetings	8	3	6	8	3	5	11	4	8	7
		Number of opinions	18	3	22	24	3	24	37	9	23	27
Court of Justice	Renewal		0	0	14	0	2	12	0	6	8	0
	First term of office		2	1	4	4	1	6	1	1	6	3
General Court	Renewal		11	0	0	10	0	5	9	0	6	6
			5	2	4	10	0	1	27	2	3	18

<sup>4</sup> See 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 (OJ L 341, 24.12.2015, p. 14).

<sup>5</sup> Note that the 2019 figures only cover the first nine months of the year, from 1st January 2019 until 1st October 2019.



## 2. CANDIDATES ASSESSED IN 2018 AND 2019

**In 2018**, from 1 March onwards, the third panel assessed 16 candidates for the office of Judge or Advocate-General, of whom seven were for the Court of Justice and nine for the General Court. Of the seven candidates for the Court of Justice, three were proposed for the office of Advocate-General for a first term of office. Of the four candidates for the office of Judge of the Court of Justice, two were proposed for renewal of their term of office. For the General Court, three of the nine candidates were for a first term of office as Judge.

**In 2019**, the third panel has assessed 27 candidates for the office of Judge or Advocate-General, three of whom were for the Court of Justice and 24 for the General Court. Of the candidates for the Court of Justice, two were proposed for the office of Advocate-General, for a first term of office. The one candidate for the office of Judge of the Court of Justice was for a first term of office. For the General Court, 18 of the 24 candidates were for a first term of office.

## 3. NATURE OF THE OPINIONS

In total, **eight of the 43 opinions delivered since the third panel began work in March 2018 have been unfavourable**. No unfavourable opinions have been delivered on **candidates for renewal of a term of office**.

This means that 28 % (eight out of 29) of the opinions on candidates for a first term of office have been unfavourable.

Of the eight unfavourable opinions delivered by the third panel since March 2018, six have 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.

		Year	2010	2011	2012	2013	2014	2015	2016	2017	2018 <sup>6</sup>	2019 <sup>7</sup>
	Number of opinions		18	3	22	24	3	24	37	9	23	27
Court of Justice	Favourable opinions		2	1	18	4	3	17	1	7	13	2
	Unfavourable opinions		0	0	0	0	0	1	0	0	1	1
General Court	Favourable opinions		14	1	2	18	0	6	31	2	8	19
	Unfavourable opinions		2	1	2	2	0	0	5	0	1	5
Total	Favourable opinions		16	2	20	22	3	23	32	9	21	21
	Unfavourable opinions		2	1	2	2	0	1	5	0	2	6
	% favourable opinions		89%	67%	91%	92%	100%	96%	86%	100%	91%	78%
	% unfavourable opinions		11%	33%	9%	8%	0%	4%	14%	0%	9%	22%

## 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.

It should be noted that an absolute minimum of approximately three to five weeks is needed from the time at which the candidate is put forward to the delivery of the opinion. This timeframe is necessary in order to give the candidate and the Member State sufficient time to provide the documents requested, to produce any necessary translations and to allow the members

of the panel to examine the file. Moreover, the panel meets when there is a sufficient number of candidates to consider and with due regard to the date of expiry of the terms of office of Judges and Advocates-General.

**Since March 2018, the average time taken to assess candidates has been 72.5 days.** During that period, 53.33 % of candidates were assessed within 45 to 90 days, and in 20.93 % of cases, the panel reached a decision in less than 45 days. The panel's assessment took longer than 90 days in only 23.25 % of cases.

	Average duration	Assessment longer than 90 days	Assessment within 45 and 90 days	Assessment in less than 45 days
2018	73 days	2 candidates	11 candidates	3 candidates
2019	72 days	8 candidates	13 candidates	6 candidates
<b>TOTAL</b>	<b>72.5 days</b>	<b>10 candidates</b>	<b>24 candidates</b>	<b>9 candidates</b>

<sup>6</sup> The figures for 2018 cover the entire calendar year.

<sup>7</sup> The figures for 2019 only cover the first nine months of the year, from 1<sup>st</sup> January 2019 until 1<sup>st</sup> October 2019.

## 6. CONCLUSIONS ON THE PANEL'S WORK SINCE ITS CREATION IN 2010

Since 2010, the panel has delivered a total of **190 opinions**, 67 of which were delivered by the first panel, 80 by the second panel and 43 by the third panel. Of the 190 candidates assessed, 71 were for the office of Judge or Advocate-General of the Court of Justice and 119 were for the office of Judge of the General Court. Of these candidates, 89 were proposed for renewal of their term of office at the Court of Justice (42) or the General Court (47). 101 candidates for a first term of office were also assessed: 29 for the Court of Justice and 72 for the General Court.

In total, 21 of the 190 opinions delivered since the panel started work in 2010 have been unfavourable. No unfavourable opinions have been delivered on candidates for renewal of a term of office. This means that 20.8 % (21 out of 101) of the opinions on candidates for a first term of office have been unfavourable.

## II. CONSIDERATION AND ASSESSMENT OF CANDIDATES

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### 1. PROCEDURE UNDER ARTICLE 255 TFEU AND NATIONAL PROCEDURES

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 office 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 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 gathering 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.

It is for this reason that, 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 gave its opinion 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 equivalent guarantees, such as choice of the candidate by a Member State's highest court, was used. The panel wishes to be informed of the conclusions which 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 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 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 candidate's hearing.

In other words, when, in the eyes of the panel, a candidate may have certain weaknesses, the existence of a national procedure enabling the merits of candidates to be assessed in an independent and objective manner **may work in the candidate's favour** as the panel's doubts and questions can be put aside by its trust in the national procedure.

At this stage, it is apparent from the information provided by the Member States since 2016 that 18 of them systematically hold open calls for applications. In nine Member States, applications are examined by a national panel in which the majority of its members are independent and qualified persons.



## 2. COMMON 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 are proposed for renewal of their term of office or for a first term of office.

However, there are some common procedures.

In this regard, the members of the panel adopted a harmonised CV template containing a number of mandatory fields<sup>8</sup>. This ensures that all of the information necessary for the assessment of the application is provided, and thereby facilitating consideration of the file.

The adopted template requires the following information:

- 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 duties carried out during their career);
- the candidate's educational and academic background, with a particular focus on the qualifications obtained;

- details of language proficiency, with reference to the Common European Framework of Reference for Languages;
- 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 other elements needed for the file vary depending on the type of application: renewal of a term of office or application for a first term of office.

However, for both renewals and for first terms of office, the panel endeavours to obtain all of the information needed to perform its duties, by availing 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'.

## 3. CANDIDATES FOR A FIRST TERM OF OFFICE

### 3.1. File

**With regard 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 requested that the government provide it with:

- the essential reasons which led the government to propose the candidate;
- any information on the national procedure that led to the candidate being selected, if there was one

In this regard, as mentioned above, the panel wishes to know whether there was a call for

applications, whether an independent body gave its opinion 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 equivalent guarantees, such as choice of the candidate by a Member State's highest court, was used. The panel wishes to be informed of the conclusions the government drew from such a procedure, if one exists.

In addition, the **panel asks candidates** to provide the following:

- a letter from the candidate explaining their reasons for applying;
- a CV in the harmonised format defined by the panel;

<sup>8</sup> Annex 4 to this report

- the text of one to three recent publications of which the candidate is the author, where possible written in or translated into English or French;
- a presentation of one to three complex legal cases which candidates have handled in their professional practice, which must not exceed five pages per case (size 12 type; single spacing; 1 500 characters per page, without spaces).

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

The panel requests information on **any publications by the candidate and asks to be sent one to three texts of the candidate's choice**, in French or in English. This information may help to shed light on candidate's 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.

However, **a lack of published works or the inability to produce older works cannot of itself penalise a candidate**. The panel takes care not to give preference to certain profiles –, for example academic ones – compared to professions such as judge, lawyer or jurisconsult. However, where a candidate has issued a publication, it appears legitimate for the panel to take cognisance of it in order to have the most comprehensive information on that candidate.

In addition, candidates are welcome to submit other texts that are equivalent to publications, such as reports, if they so wish.

### 3.2. Hearing

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**.

Indeed, the assessment of the panel is carried out, first and foremost, on the basis of the information in the file, submitted by the government and the candidate. Hearings serve to supplement that assessment.

The hearings, which last for an hour, begin with a ten-minute **introductory presentation** in which the candidates present their application and describe one of the complex legal cases in which they were involved presented in their written file. 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 the panel to assess all of the candidates' aptitudes and skills with regard to the post they are applying for, as well as their analytical abilities and capacity for reasoning.

The candidates are asked to respond in the language in which the question was asked. If the candidates consider their mastery of neither English nor French to be adequate, they may respond in any other official language of the European Union.

**More specifically**, the questions may relate to the candidates' training and professional experience, in order to **clarify aspects of their CV**.

They may relate to the **reasons why the candidates consider that they are suited to performing the duties** of an Advocate-General or Judge of the Court of Justice or General Court and how they envisage the performance of such duties. The questions may also relate to how candidates plan to tackle the challenges their new duties may present, especially in the light of their previous personal experience.

Finally, these questions serve to **assess candidates' analytical abilities and capacity for reasoning with regard to the conditions and mechanisms for applying the law, particularly as regards the application of EU law**.

For example, candidates may be asked:

- to expand on one or more aspects of the complex legal cases which they presented or on an issue raised in one of the publications which they provided;
- to provide their views on the general trends of the recent case-law of the Court of Justice or the General Court in matters relating to their professional background and areas of legal interest, as evidenced in the file and the documents they submitted, or on a judgment of their choice that particularly caught their attention;
- to outline their thoughts on the main issues and problems currently facing EU law, in connection with the mission of the European courts;
- more particularly in the case of candidates for the post of Judge of the General Court, to comment on the main elements of the role of the EU courts when exercising their jurisdiction in administrative proceedings;
- in the case of candidates for the post of Judge or Advocate-General of the Court of Justice, to out-

line their thoughts on judicial dialogue and the associated challenges in the Court's mission.

In these hearings, 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 European 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 EU 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 the candidates' failure to answer a specific question relating to some field of Union law with which they are not familiar since it is outside of 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, the only concern of the panel is the 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 that 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, originally is therefore appreciated by the panel.

It thus expects candidates to have an **adequate basic knowledge** of, and in particular a **highly developed ability to analyse and reflect on, the general issues in Union law**. Such 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.

## 4. CANDIDATES FOR RENEWAL OF A TERM OF OFFICE

**As to candidates for renewal of their term of office as Judge or Advocate-General**, the panel relied, in essence, on the elements forwarded by the governments of the Member States, i.e. the CV in the harmonised format defined by the panel, 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 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 indicating the formation of the court, the subject matter concerned, the date on which the document initiating proceedings was lodged and the date of the final judgment, as well as a **list of any pending cases** on which they are acting as Rapporteur, specifying the formation of the court, the subject matter concerned, the date on which the document initiating proceedings was lodged and the status of the proceedings. 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.

With regard to the assessment of the candidates for renewal of a term of office, given the heterogeneity of the portfolios of allocated cases and the sometimes significant differences in members' productivity, the panel considered it necessary to have at its disposal comparative data in order to undertake a more detailed analysis of candidates' activities.

Indeed, it should be noted that the panel would not refrain from giving an unfavourable opinion, in exceptional cases, if it considered that candidates proposed for renewal of their term of office did not have, or no longer had, the ability required to carry out high-level or very high-level judicial duties and therefore did not meet the requirement, laid down in Article 255 TFEU, of suitability for performing the duties of the office for which they were applying.

**The panel has, as of now, never made use of this possibility, which nonetheless cannot be ruled out if certain specific circumstances were to arise**, which made it appear that a candidate was unable to continue to perform demanding judicial duties.

In order to carry out such an assessment, the panel will, beginning **with its consideration of candidates in anticipation of the renewal**

of the Court of Justice in 2021, consider the duration of proceedings in the cases dealt with by candidates in the context of the expected duration of proceedings in comparable cases and the indicative internal deadlines of the two courts. This will enable the panel to identify any

significant discrepancies and provide it with a solid and specific basis for its assessment.

In the event that the panel's examination of a candidate's activity leads it to question their capacity to continue to perform their duties, it will ask the candidate for any explanations they wish to provide, including in the context of a hearing.

## 5. CLARIFICATIONS CONCERNING INFORMATION NOT INCLUDED IN THE FILE

To assess whether the candidates fulfil the criteria laid down in Articles 253, 254 and 255 TFEU, the panel **takes into account the elements in the file forwarded to it** by the government proposing the candidate and by the candidate in question, as well as **publications** by the candidate with which members have had the opportunity to consult, where applicable.

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, the taking into 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 con-

cerning candidates, except for those sent to it, whether unrequested or at its request, by Member State governments or by the candidates themselves.

If the panel becomes aware of factual information concerning a candidate, whether publicly available or not, of a nature that would support an unfavourable assessment, the panel takes 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 its merits.

Since March 2018, the panel has used this procedure on three 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.

## 6. 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 issued a favourable opinion in respect of the renewal of each of the candidates in this situation, noting that the non-renewal of their terms of office, which would not be justified either by any lack of legal abilities or professional experience on their part 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. The panel did, however, voice serious concerns, and drew the attention of the Conference of the Representatives of the Governments of the Member States to this unprecedented situation. However, the new candidate withdrew the application, which was therefore not examined by the panel.

## 7. 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 29 June 2010, *Commission v Bavarian Lager*<sup>9</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 appoint the Judges and Advocates-General (Article 4(2) and (3) of Regulation (EC) No 1049/2001).

The panel therefore considers, on the basis of these exceptions, that its opinions **are intended exclusively for Member State governments** and that the **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 communicated to those making requests only elements that are not likely to contain personal data within the meaning of Regulation (EC) No 1049/2001.

The panel's approach has been supported by the European Ombudsman's decision in case 1955/2017/THH on the Council of the European Union's refusal to grant public access to opinions evaluating the merits of candidates for appointment to the Court of Justice and the General Court<sup>10</sup>.

<sup>9</sup> Judgment of 29 June 2010, *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378.

<sup>10</sup> Decision in case 1955/2017/THH on the Council of the European Union's refusal to grant public access to opinions evaluating the merits of candidates for appointment to the Court of Justice and the General Court of the European Union, paragraphs 22 to 25, available online: <https://www.ombudsman.europa.eu/en/decision/en/114212>.



# 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'.

At the outset, the panel emphasises that it does not give preference to any particular career path or 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 career 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.

## 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 categories of elements**:

- 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.

The panel stresses that its assessment of candidates 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 having the ability required for appointment to very high or high judicial office, or to 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** are 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 conclusions of the initial analysis of the content of their file to be confirmed, supplemented or refuted.

It is not the panel's task to evaluate the legal knowledge acquired by candidates, although a candidates possession of such knowledge can be useful and 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. Candidates are therefore expected to demonstrate that they have sufficient knowledge of the main issues relating to Union law so as to be able

to make a relevant and effective contribution, within a reasonable time, to the handling of the cases entrusted to the courts of the Union.

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 or the General Court 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 **candidates' professional experience**, the panel takes into consideration **its level, nature and length**.

Although it takes into account of 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 offices 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 **20 years' experience of high-level duties** for candidates for the office of Judge or Advocate-General of the Court of Justice, and less than **12 or even 15 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 in a position 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 candidates' awareness and internalisation of the **requirements of the profession of Judge of the Court of Justice or of the General Court**.

The panel's task is to determine, in the light of experience gained by the panel's members in positions that they hold or have held in the legal field, 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 ability to take positions that are clear and well-reasoned in law.

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, in particular 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 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 assessment criterion for 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 assessment 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 it 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 a candidate or the government which submitted the proposal on one or more aspects of an application which might give rise to doubts as to whether 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 CONCRETE 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.

At the outset, it is important to emphasise that the panel's assessment is based primarily on the candidate's file, CV, publications and, in particular, the written statements which they have submitted to the panel, in particular to provide evidence of their ability to carry out legal analysis.

On the basis of an examination of the file and immediately prior to the hearing, in the context of a first round table, the panel carries out an initial assessment of the candidate's ability to perform the duties to which they aspire. The purpose of the hearing is then to enable the panel to ask questions raised by the file and supplement the impression gained from its examination, either invalidating or confirming it. The panel then deliberates on the candidature, and draws up and adopts its opinion.

The panel's assessment is therefore never based solely on the candidate's performance during the hearing. While this is an important aspect of the process, it is always assessed in conjunction with the conclusions arising from an analysis of the file.

That said, in the context of the hearing, the panel does endeavour, **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 European 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**.

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 number of cases, the panel has delivered an unfavourable opinion.** This has been the case, for instance, where the **length of candidates' 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 or the General Court. Unfavourable opinions have likewise been issued where the candidates did not demonstrate sufficient knowledge of European Union law, or appropriate under-**

**standing 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 that 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.

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 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 candidate reveals serious inadequacies in their knowledge or reasoning, it puts him or her at a clear disadvantage.

In order to assess candidates' knowledge, the panel endeavours to base its hearings not on theoretical and abstract questions, but 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 more specific questions inspired by their writings or experience in connection with Union law, candidates are asked more open questions that give them the opportunity to demonstrate their potential.

**The panel may therefore issue a favourable opinion on 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 was issued in a case where the panel had serious doubts that were not 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 cases 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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During the panel's third 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.

Since 2010, several members of the 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 at panel members' own initiative, and which include references to the panel's work, is annexed to this report<sup>11</sup>. Naturally, only the activity reports represent the panel's views.

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<sup>11</sup> Annex 8 to this report





# CONCLUSION

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The panel hopes that the sixth activity report, which extends and adds to the information given in its first five 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. 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.



## **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 (EU, Euratom) 2017/2262 of 4 December 2017  
appointing the members of the panel provided for in Article 255  
of the Treaty on the Functioning of the European Union**

**COUNCIL DECISION (EU, Euratom) 2017/2262****of 4 December 2017****appointing the members 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 by the President of the Court of Justice on 10 October 2017,

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 4 years from 1 March 2018, 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 Christiaan TIMMERMANS, President

Mr Simon BUSUTTIL

Mr Frank CLARKE

Mr Carlos LESMES SERRANO

Ms Maria Eugénia MARTINS DE NAZARÉ RIBEIRO

Mr Andreas VOSSKUHLE

Mr Mirosław WYRZYKOWSKI

*Article 2*

This Decision shall enter into force on 1 March 2018.

Done at Brussels, 4 December 2017.

*For the Council*





*The President*

U. PALO

**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)

	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 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

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

Other language(s)	COMPREHENSION		ORAL SKILLS		WRITTEN SKILLS
	Aural	Reading	Conversational skills	Oral fluency	
Replace by language	Specify level	Specify level	Specify level	Indicate level	Specify level
Replace by language	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

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

Lord Mance, 'The Composition of the European Court of Justice', October 2011.

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.

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 130<sup>th</sup> anniversary of the Conseil supérieur de la magistrature on 24 October 2013.

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.

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.











COMITÉ 255

# SIXTH ACTIVITY REPORT

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



Publications Office  
of the European Union