

SN 1118/2014

THIRD ACTIVITY REPORT
OF THE PANEL PROVIDED FOR BY ARTICLE 255
OF THE TREATY ON THE FUNCTIONING
OF THE EUROPEAN UNION



~ Report published 13 December 2013 ~

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INTRODUCTION

The panel provided for by Article 255 of the Treaty on the Functioning of the European Union (hereinafter "the panel") was established by the Treaty signed at Lisbon on 13 December 2007, which entered into force on 1 December 2009. The panel's mission, pursuant to the provisions of Article 255 of the Treaty on the Functioning of the European Union (TFEU), is to *"give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court before the governments of the Member States make the appointments referred to in Articles 253 and 254"* of that Treaty¹.

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 its members².

Since the panel began its work, these members have been: Mr Peter Jann, former Judge of the Court of Justice; Lord Mance, Judge of the Supreme Court of the United Kingdom; Mr Torben Melchior, former President of the Supreme Court of Denmark; Mr Péter Paczolay, President of the Constitutional Court of Hungary; Ms Ana Palacio Vallelersundi, Professor of Law and Member of the Council of State of Spain; Mr Jean-Marc Sauvé, Deputy President of the Council of State of France, and Ms Virpi Tiili, former Judge of the General Court of the European Union. The panel is chaired by Mr Jean-Marc Sauvé. Ms Csilla Fekete and, from 1 October 2012, Mr Anthony Bisch, both administrators at the General Secretariat of the Council, have been responsible for the panel's secretariat.

This report recounts the work of the "first" panel provided for by Article 255, in the composition established by the above-mentioned Decision of 25 February 2010, which took place over a four-year period beginning on 1 March 2010. It focuses more specifically on 2013 and does not repeat all the analysis presented in the first two activity reports, published in February 2011 and December 2012 and available on the website of the Court of Justice of the European Union.

The purpose of this third report, as of the preceding reports, is not only to give account of the panel's activities, but also to allow the Union's institutions, the governments of the Member States and, where appropriate, future candidates for the duties of Judge and Advocate-General of the Court of Justice and the General Court to become better acquainted with the procedures established for examining candidatures

¹ Annex 1 to this report.

² Annexes 2 and 3 to this report.

and with the panel's interpretation of the provisions it is required to apply. In other words, this report not only **provides a summary of the panel's work**, but also **informs the reader about how the Treaty's criteria have been interpreted and which working methods have been used** during these first four years of activity.

I. SUMMARY OF WORK DONE

1. - General overview of the panel's work

In 2013, the panel held **8 meetings** and examined **24 candidatures**. It was therefore very active, due in particular to the triennial renewal of members of the General Court of the European Union, provided for by Article 254 TFEU. The terms of office of fourteen Judges of the General Court ended on 31 August 2013. During the year, the panel also had to examine candidatures from Croatia, a new Member State of the European Union. It was also called upon to examine the candidature of a new Advocate-General of the Court of Justice, proposed by the Polish government.

The panel's work is **cyclical**, dictated by the duration of the terms of office. It has a heavy workload in years in which a partial renewal of members of the Court of Justice or General Court takes place; but the workload is lighter outside these periods, as it was in 2011. 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 panel has met 24 times since its creation. These meetings generally lasted a day, during which the panel conducted hearings with the candidates, where required, and discussed its opinions. The opinion was delivered on the same day as the hearing and discussion in all but six cases. The opinion was always signed by all members of the panel who had discussed it. Prior to the panel's meetings, the secretariat provided each member with all the elements of the dossiers relating to the candidatures on the agenda for examination (see paragraph II.2 below - Candidatures for a first term of office or for renewal: distinct procedures for consideration), so that each member of the panel could study these in advance. **Between 2010 and 2013, the panel delivered 67 opinions and drafted three activity reports.** The breakdown of its work per year is as follows:

Year	Number of meetings	Number of opinions delivered
2010	8	18
2011	2	3
2012	6	22
2013	8	24
Total	24	67

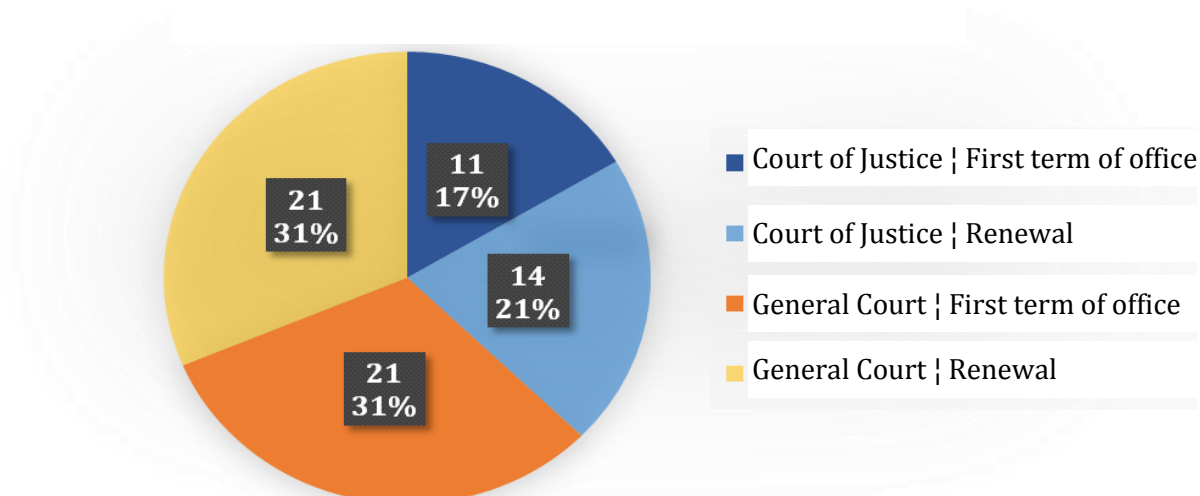
2. - Examination of candidatures

In 2013, the panel examined 24 candidatures for the offices of Judge and of Advocate-General, 4 of which were for the Court of Justice of the European Union and 20 for the General Court of the European Union. Amongst these candidatures, 10 related to the renewal of a term of office at the General Court of the European Union. Fourteen candidatures for a first term of office were also submitted, of which 4 were for the Court of Justice and 10 for the General Court.

Since beginning its work, the panel has examined **67 candidatures** for the offices of Judge or Advocate-General, of which **25 were for the Court of Justice** and **42 for the General Court**. Of these candidatures, 35 were for the renewal of a term of office at the Court of Justice (14) or the General Court (21). Fourteen candidatures for a first term of office were also submitted, of which 11 were for the Court of Justice and 21 for the General Court.

	Number of opinions delivered	Court of Justice	General Court
2010	18 <i>11 renewals 7 first terms of office</i>	2 <i>2 first terms of office</i>	16 <i>11 renewals 5 first terms of office</i>
2011	3 <i>3 first terms of office</i>	1 <i>1 first term of office</i>	2 <i>2 first terms of office</i>
2012	22 <i>14 renewals 8 first terms of office</i>	18 <i>14 renewals 4 first terms of office</i>	4 <i>4 first terms of office</i>
2013	24 <i>10 renewals 14 first terms of office</i>	4 <i>4 first terms of office</i>	20 <i>10 renewals 10 first terms of office</i>
Total	67 <i>35 renewals 32 first terms of office</i>	25 <i>14 renewals 11 first terms of office</i>	42 <i>21 renewals 21 first terms of office</i>

**Distribution of the 67 opinions delivered by the panel
in 2010-2013**

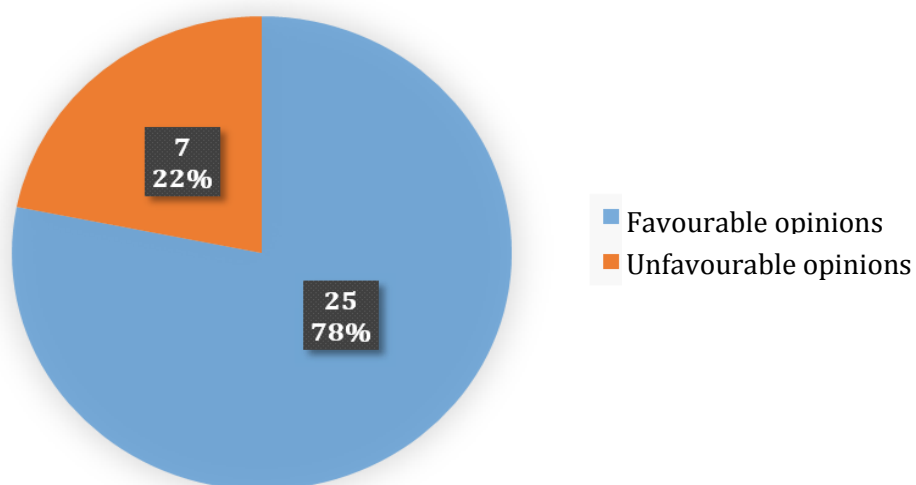


3. - Tenor of the opinions

In total, **7 of the 67 opinions** delivered since the panel started working **have been unfavourable**. No unfavourable opinions were delivered on **candidatures for the renewal of a term of office**.

This means that 22 % (7 out of 32) of the opinions on candidatures for a first term of office were unfavourable.

**Répartition des 32 avis rendus sur les candidatures à
un premier mandat à la Cour de Justice et au Tribunal**



4. - Outcome of the opinions

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

5. - Time taken to examine candidatures

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

For the 67 opinions delivered, there were on average **64 days** between the receipt of the candidatures and the date of the panel's opinion. Over 61 % of the candidatures were examined within a period of between 45 and 90 days, and in over 30 % of cases, the panel reached a decision in less than 45 days. The panel's examination took longer than 90 days in only 6 cases. The longest periods were caused by the early proposal of candidates by some countries, well before the end of an ongoing term of office, and did not therefore impede the proper functioning of the Union's courts in any way.

	Average duration	Examination > 90 days	45 days > Examination < 90 days	Examination > 45 days
<i>2010</i>	68.5 days	0 candidatures	15 candidatures	3 candidatures
<i>2011</i>	62 days	0 candidatures	2 candidatures	1 candidature
<i>2012</i>	65.7 days	2 candidatures	14 candidatures	6 candidatures
<i>2013</i>	59.6 days	4 candidatures	10 candidatures	10 candidatures
<i>Total</i>	64 days	6 candidatures (9 %)	41 candidatures (61 %)	20 candidatures (30 %)

II. CONSIDERATION AND EXAMINATION OF CANDIDATURES

1. General principles of consideration and examination of candidatures

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

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

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

The panel may, under the second paragraph of point 6 of its operating rules, decide to ask the government making the proposal "to send **additional information** or other material which the panel considers necessary for its deliberations". It does not rule out, particularly with a view to assessing the utility of making such a request, **taking account of publicly available and objective information** (e.g. for candidates for the renewal of their term, the number of judgments available in the case-law databases of the European courts).

The panel emphasises that it does not ask for documents or assessments concerning the candidates, except those sent to it, unasked or at its request, by Member State governments or by the candidates themselves. If factual information on a candidate, whether or not publicly available, of a kind that would support an unfavourable assessment comes to the knowledge of the panel, the panel would take it into account only after the candidate and/or the government proposing the candidature has first been given the opportunity to comment on its pertinence and accuracy.

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

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

On the basis of point 7 of its operating rules established by the Council Decision of 25 February 2010, which provides that only candidates for a first term of office as Judge or Advocate-General are heard in a private hearing, the panel laid down **distinct procedures for examining candidatures**, depending on whether they were for the renewal of a term of office as Judge or for a first term of office. The procedures, which were defined in 2010 in the first year of the panel's activities, were strictly maintained throughout its term of office. In both cases, however, 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. a detailed CV listing, where applicable but not systematically, published texts written by the candidate. On the basis of these elements, the panel was able to conduct an effective assessment of the candidates' suitability for a new term of office. It should be noted that the panel does not refrain in principle from giving an unfavourable opinion in exceptional cases, if it considers that a candidate proposed for renewal of his or her term of office does not have, or no longer has, the ability required to exercise high-level or very high-level judicial functions and therefore does not meet the requirement, laid down in Article 255 TFEU, of suitability for performing the duties of the office he or she is applying for. However, **the panel has yet to make use of this possibility, so while it cannot be completely ruled out, it nevertheless remains a largely theoretical option.**

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

- ◆ the essential reasons which led the government to propose the candidate;
- ◆ letter from the candidate explaining the reasons for the application;
- ◆ a bibliographic list of works (if any) published by the candidate;
- ◆ the text of recent publications, of which the candidate is the author, written in or translated into English or French;
- ◆ information on the national procedure that led to the candidate being selected;
- ◆ other works published by the candidate, if they are publicly available.

Whenever any of these elements, bar the last one, are not in the dossier forwarded to the panel, the panel automatically requests it.

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

3. Information concerning certain requests for information

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

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

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

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

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

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

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

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

In accordance with the first paragraph of point 8 of the panel's operating rules, "Reasons for the opinion given by the panel shall be stated. The statement of reasons shall set out the principal grounds on which the panel's opinion is based." Pursuant to these provisions, the panel's opinions, after recapitulating the various stages of examination, set out the reasons underlying their tenor, favourable or otherwise, as regards the candidate's legal capabilities, professional experience, ability to perform the duties of a Judge with independence and impartiality, 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". The panel would point out that, on the basis in particular of these operating rules as well as of Regulation (EC) No 1049/2001, as interpreted by the Court of Justice of the European Union in its judgment in the *European Commission v. The Bavarian Lager Co. Ltd*³ case, it has held 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**. This position was elucidated in the panel's first activity report.

³ CJEU, 29 June 2010, *European Commission v. The Bavarian Lager Co. Ltd, European Data Protection Supervisor (EDPS)*, case C-28/08 P.

III. ASSESSMENT OF CANDIDATES' SUITABILITY

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

1. Assessment criteria

Although the criteria established by the Treaty on the Functioning of the European Union are exhaustive, the panel nevertheless considers that they could be more clearly and precisely explained. The panel's assessment of these criteria is therefore made on the basis of **six considerations**:

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

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

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

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

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

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

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

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

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

2. - Clarification of the specific assessment of these criteria by the panel

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

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

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

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

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

The panel has also delivered an unfavourable opinion where a **candidate's legal abilities appeared inadequate**. In such cases, the panel in no way wishes to underestimate candidates' qualifications or the duties they have performed, especially in their country of origin. However, all candidates must be capable of demonstrating, on the basis of their dossier and oral statements, that they have sufficient knowledge of the legal system of the Union and a sufficient grasp of the broad issues relating to the application of EU law and relationships between legal systems. Certain candidates have shown a clear lack of such knowledge and insufficient familiarity with EU law. In order to assess a candidate's expertise, the panel endeavours to base its hearings not on theoretical and abstract questions, but instead on candidates' actual experience, in order to assess when and in what context they have had to deal with EU law in the performance of their respective duties. The panel also ensures that, in addition to being asked specific questions which often, moreover, relate to matters of principle, candidates are asked open questions that give them the opportunity to demonstrate their potential.

In addition, the panel of course pays attention to the **consistency** of the candidate's statements and ensures there are no discrepancies between these and the content of their dossier. Any inconsistencies in this regard are likely to give an unfavourable impression.

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

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

1. - During the panel's first term of office, there was one hearing of its President by **COREPER**⁴. The President was also heard by the **European Parliament**⁵ on two occasions, accompanied by Ms Palacio, the panel member proposed by the European Parliament.

2. - On 30 May 2013, Mr Sauvé and Ms Palacio reported on the panel's work before the **European Parliament's Committee on Legal Affairs**. This hearing focused on an examination of the planned increase in the number of Judges of the General Court of the European Union, the procedure for appointing additional Judges and the panel's possible role in that procedure. On that occasion it was emphasised that a model based on merit seemed appropriate in terms of achieving the smoother operation of the Union's judicial system, whilst maintaining the Member States' prerogative in the mechanism for appointing Judges. Depending on the method for submitting candidatures chosen, the panel could be required to deliver an opinion, favourable or unfavourable, on the candidates' suitability to perform the duties of Judge, and also to draw up a list of the most suitable candidates, which would represent a new task for the panel. After the hearing, the panel delegation answered questions put by members of the Committee.

3. - A number of 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 on panel members' own initiative, and referring inter alia to the panel's work, is annexed to this report⁶. Naturally, only the activity reports represent the panel's views.

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The panel hopes that the third activity report, which extends and adds to the information given in its first two reports, will allow a better understanding of the conditions in which candidatures for the offices of Judge and Advocate-General of the Court of Justice and of the General Court have been examined during its first term of office (2010-2014). It is the panel's hope that this report 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.

⁴ 3 October 2012.

⁵ 28 February 2011 and 30 May 2013.

⁶ Annex 5 to this report.

ANNEX 1

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

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

Article 253

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

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

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

Retiring Judges and Advocates-General may be reappointed.

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

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

Article 254

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

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

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

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

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

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

Article 255

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

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

ANNEX 2

**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 recognized 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⁽¹⁾.

The corresponding expenditure shall be borne by the Council.

(1) OJ L87, 8.8.1967, p. 1.

ANNEX 3

**Council Decision of 25 February 2010
appointing the members of the panel provided for in Article 255 of the Treaty on the
Functioning of the European Union
(2010/125/EU)**

COUNCIL DECISION
of 25 February 2010
appointing the members of the panel provided for in Article 255 of the Treaty on the Functioning
of the European Union
(2010/125/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 26 January 2010,

Whereas:

- (1) A panel is to be set up pursuant to Article 255(1) of the Treaty, 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 'the panel').
- (2) The panel is to comprise seven persons chosen from among former members of the Court of Justice and the General Court, members of national supreme courts and lawyers of recognised competence, one of whom is to be proposed by the European Parliament.
- (3) Account should be taken of a balanced membership of the panel, both in geographical terms and in terms of representation of the legal systems of the Member States.
- (4) The members of the panel and its President should therefore be appointed,

HAS ADOPTED THIS DECISION:

Article 1

For a period of four years from 1 March 2010, 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 Peter JANN

Lord MANCE

Mr Torben MELCHIOR

Mr Péter PACZOLAY

Ms Ana PALACIO VALLELERSUNDI

Ms Virpi TIILI

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 4

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

Lord Mance, « The Composition of the European Court of Justice », October 2011, http://ukael.org/past_events_46_1935078262.pdf.

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

J.-M. Sauvé, « Les juges européens désormais nommés après avis d'un comité indépendant. Entretien. », *Les Petites Affiches*, 16 mars 2011, n°53, p. 3-7.

J.-M. Sauvé, « Qu'est-ce qu'un bon juge européen ? », *Dalloz*, 10 mai 2011, n°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, p. 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 », intervention devant la Commission des affaires juridiques du Parlement européen à Bruxelles le 30 mai 2013, <http://www.conseil-etat.fr/fr/discours-et-interventions/le-role-du-comite-charge-de-donner-un-avis-sur-l-aptitude-a-exercer-les.html>.

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

J.-M. Sauvé, « Le rôle du comité 255 dans la séparation des pouvoirs au sein de l'Union européenne », intervention lors du colloque pour le 130^{ème} anniversaire du Conseil supérieur de la magistrature le 24 octobre 2013, <http://www.conseil-etat.fr/fr/discours-et-interventions/la-separation-des-pouvoirs-l-union-europeenne-et-le-comite-255-.html>.

J.-M. Sauvé, « La sélection des juges de l'Union européenne : la pratique du comité de l'article 255 », intervention lors du colloque *Selecting Europe's Judges: A critical appraisal of appointment processes to the European courts*, Collège de Bruges, le 4 novembre 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, to be published.