

**REPORT IN THE FORM OF A DISCUSSION PAPER:
APPOINTMENT OF ADVOCATE GENERALS AT THE CJEU**

By Prof. Stéphanie Laulhé Shaelou and Jacquelyn Veraldi*

EXECUTIVE SUMMARY

In light of the upcoming opportunity for Cyprus and other Member States to appoint by rotation an Advocate General ('AG') to the Court of Justice ('ECJ') in 2020-21, the objective of the present report taking the form of a discussion paper is to clarify the law and practice related to such appointments and set out recommendations accordingly. It does so by looking in particular into the relevant provisions of the Treaty on the Functioning of the European Union ('TFEU'), namely the Article 253 TFEU requirements themselves, the reports of the Article 255 TFEU Panel, and the selection processes carried out at the national levels.

Article 253 TFEU requires only that such nominees are persons whose independence is beyond doubt and who either meet the requirements for highest national judicial office or who are jurisconsults of recognised competence. An Article 255 TFEU Panel was established with the Treaty of Lisbon and is responsible for advising the Council of the EU on the suitability of candidates appointed to the Court of Justice of the European Union. The Panel has elaborated upon the Article 253 TFEU requirements, taking six considerations into account in their assessment: i. legal capabilities; ii. professional experience; iii. ability to perform duties of a judge (or Advocate General); iv. language skills; v. ability to work in a team in an international environment in which several legal systems are represented; and vi. whether their independence, impartiality, probity and integrity are beyond doubt.¹ In a 2018 report, the Panel stated that '[i]t considers all professional paths in the field of law to be equally legitimate to apply for the office of Judge or [AG]', 'in particular, those of judge, university professor, jurisconsult, lawyer or senior official specialised in the field of law.'² The Panel is further elaborated upon in **Part I**, including through its latest report published in January 2020.

To further assist in understanding the nature of Advocate General appointments in the EU, a study was undergone into the law and practice at the national level related to ECJ appointments (**Part II** and the Tables in the Annex), and also into the characteristics of the profiles of the AGs that have been successfully appointed to date (**Part III**).

At the Member State level, there are significant divergences in whether and if so, which requirements have been formally adopted for appointing Advocate Generals and Union judges.

* Respectively Professor of European Law and Reform and Head, School of Law, University of Central Lancashire, Cyprus campus, and PhD candidate at University of Cambridge, Trinity College. This report was written at our initiative, hence it takes the form of a discussion paper. This report is up to date until 31 January 2020 and includes an initial consideration of the consequences of the UK withdrawal from the EU on the AG position at the CJEU. Any errors remain our own.

¹ 'Sixth Activity Report of the Panel Provided for by Article 255 of the Treaty on the Functioning of the European Union' (2019) 17
<<https://comite255.europa.eu/documents/5642886/5678369/6eme+Rapport+d%27activit%C3%A9+du+D255+-+EN.pdf/>> accessed 31 January 2020.

² Ibid.

Relying on answers to a 2012 questionnaire of the Network of the Presidents of the Supreme Judicial Court of the EU, and national legislation, ECJ vacancy postings, and other publications, the research underlying this report compares the substantive and procedural requirements governing national selection processes.

14 Member States with both substantive criteria and procedural rules governing ECJ selections were identified, while 4 have selection procedures but do not seem to have adopted substantive requirements and 10 have indicated neither. A total of at least 18 Member States have thus to some degree formalised the selection process for new ECJ appointments, with 16 of them using selection committees which usually have an advisory capacity.³ Additionally, whether criteria or procedures are laid down in legal instruments or established on an ad hoc basis also significantly varies, as does the intensity of the substantive criteria. What is evident is that there is a clear trend toward formalisation (as seen more recently in Estonia, Italy, and Portugal for instance), likely due to the more recent possibility of having an unfavourable opinion issued by the Article 255 Panel.

Of the profiles of the AG successfully nominated to the ECJ to date, their backgrounds generally include a law degree and professional experience in either legal practice (eg judges and lawyers), academia, or the civil service. Language skills are always emphasised in vacancy notices, as is usually knowledge of EU law. Of the Advocate Generals appointed to date identified in this study, 34 of 51 have experience in legal practice as judges or lawyers, while 17 do not, having worked as senior academics or in the civil service.

Based on the findings of this report, it is advisable to incorporate the following considerations in an AG selection exercise:

Recommendations

1. Use of a national selection committee to ensure transparency and independence: the use of a selection committee assists in guaranteeing the independence and impartiality of the individual nominated for the position, one of the conditions of Article 253 TFEU for CJEU appointments. For further transparency to instill confidence in the selection process, it is also advisable that the rules under which the committee operates be public. In their most recent 2019 Sixth Activity Report, the Panel strongly emphasised the ‘importance of the role that an open, transparent and rigorous national selection procedure led by an independent and impartial panel can play’.⁴

2. Strict adherence to Article 253 TFEU requirements on qualifications: the double, non-cumulative criterion in Article 253 TFEU, providing that persons should ‘possess the qualifications required for appointment to the highest judicial offices in their respective countries *or* who are jurisconsults of recognised competence’ (emphasis added), should be considered *pari passu* and given equal weight during the nomination process at the national level, thereby ensuring fairness, equal opportunities and due process for all categories of eligible candidates, whether judges, lawyers, academics, civil servants, etc. This also emanates from the 255 Panel 2019 Report.

³ The 255 Panel note that 18 Member States hold open calls for applications, and nine Member States have national panels ‘in which the majority of its members are independent and qualified persons’: ‘Sixth Activity Report of the Panel Provided for by Article 255 of the Treaty on the Functioning of the European Union’ (n 1) 11.

⁴ *ibid.*

3. 255 Panel criteria assessment at the national level: the six general criteria assessed by the EU-level Panel should also be assessed by the national selection committee to avoid an unfavourable opinion being issued.

Based on those criteria, Member State requirements, and the backgrounds of AGs appointed to date, the following factors seem appropriate to assist in ensuring a candidate meets the 255 Panel's six criteria:

- a. **Legal education**: Since a successful nomination is required by Article 253 TFEU to either be someone who meets the requirement to hold high national judicial offices or be jurisconsults, requiring applicants to have a law degree is deemed necessary. Holding a higher or doctoral degree can be said to be (very) desirable. This is reflected across national rules and practice as well as in the backgrounds of the AGs appointed thus far.
- b. **Knowledge of EU law**: this was one of the frequently included criteria amongst those Member States that have published them as identified in this study,⁵ including Cyprus. EU law knowledge is also assessed by the EU's Article 255 Panel as an element of professional experience,⁶ emphasised in the literature on EU judicial selection,⁷ and was found in the profiles of the candidates themselves, who often had experience in EU legal academic careers.⁸ EU legal academic experience or experience as a legal scholar could therefore be deemed to constitute a (highly) desirable characteristic for the candidates to possess. In 2011 Lord Mance noted that, '[t]he CVs set out in the Court's annual report indicate for the Court of Justice itself a professorial bias among [AGs] and a mix of backgrounds among the judges.'⁹
- c. **Language skills**: Language skills are assessed by every Member State that have substantive criteria for ECJ appointments,¹⁰ and since French is the official operating language of the CJEU, this is often the language that is emphasised in requirements laid down by Member States. Good (immediate) knowledge of the French language can therefore be deemed to constitute a strongly desirable characteristic for the candidates to possess.

⁵ See Part II s. 1.

⁶ 'Sixth Activity Report of the Panel Provided for by Article 255 of the Treaty on the Functioning of the European Union' (n 1) 15.

⁷ Iyiola Solanke, 'Diversity and Independence in the European Court of Justice' (2008–2009) 15 CJEL 89, 106. See also Lord Mance, 'The Composition of the European Court of Justice' 15 <https://www.supremecourt.uk/docs/speech_111019.pdf>.

⁸ Part III.

⁹ Lord Mance (n 7) 15.

¹⁰ Table 1 Annex.

INTRODUCTION

In light of the upcoming opportunity for Cyprus and other Member States to appoint by rotation an Advocate General to the Court of Justice in 2020-21, the present report taking the form of a discussion paper seeks to shed light on the EU-level requirements and comparative Member State law and practice related to AG appointments. The requirements for members of the ECJ – *ie* Judges and Advocates General – and the General Court are different and separated into Articles 253 and 254 TFEU, respectively; this piece will focus only on the former.

The present report is divided into three main parts. **Part I** focuses on the Union-level requirements laid down in Article 253 TFEU for the appointment of an Advocate General. Sections 1 and 2 give a brief overview of those criteria – *i.e.* independence and being either qualified to hold the highest national judicial office or be a jurisconsult of recognised competence. Section 3 then elaborates on the role and guidance of the Article 255 TFEU Panel, which advises the Council of the EU on a candidate’s suitability. **Part II** gives a comparative overview of the requirements for ECJ appointments established at the Member State-level, which are generally also applicable to AG selections. The national regimes are categorised accordingly into three sections. Section 1 gives an overview of those Member States (14/28) that have published substantive criteria that must be fulfilled by the candidate as well as procedural rules governing the selection process. **The requirements used for Cyprus’ last ECJ appointment in 2014 are discussed in depth, followed by a brief overview of the practice in other Member States, as detailed in Table 1 of the Annex.** Subsequently, Section 2 describes the situation in those Member States that have opted to use selection procedures but have not indicated an established list of substantive criteria (4/28), elaborated upon in Table 2 of the Annex, while Section 3 discusses the countries in which there appear to be neither any formalised substantive nor procedural requirements (10/28). **Part III** then provides an overview of the profiles of the Advocate Generals appointed to date.

The report concludes by drawing on the findings presented in this report in order to provide a set of recommendations of those factors which could be considered instrumental in the upcoming AG appointment.

PART I: UNION REQUIREMENTS FOR ADVOCATE GENERAL APPOINTMENTS

Article 253 TFEU lays down the basic Union-level criteria that must be fulfilled by the appointee of the relevant Member State for the position of Judge or Advocate-General of the ECJ. The Article does not lay down different criteria for the two positions. The first paragraph reads that such persons, ‘...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...’.

1. Independence

Judicial ‘independence’ stems from the principle of the separations of powers requiring the distinct operation of State legislatures, executives, and judiciaries.¹¹ In general terms, it requires a

¹¹ Committee of Ministers of the Council of Europe, ‘Judges: Independence, Efficiency and Responsibilities : Recommendation CM/Rec(2010)12’ 19.

judge be free of influence in the making of their decisions.¹² In the EU context, it is enshrined in Article 19(2) TEU and considered by the Court to be ‘inherent in the task of adjudication’ and required at both the EU and Member State level – it is hence also encompassed in Article 47 EU Charter of Fundamental Rights (‘CFR’) on the right to an effective remedy and fair trial. Most recently, the ECJ ruled that:

*The concept of independence presupposes, in particular, that the body concerned exercises its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and that it is thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions...*¹³

2. Qualified to hold highest judicial office or ‘jurisconsults of recognised competence’

In light of the fact that the requirements to hold the highest national judicial offices may differ considerably per Member State, there is evidently room for great variance in the profiles of the nominees of the different Member States.¹⁴

Moreover, in light of the uncertain meaning of the term ‘jurisconsult’ – which does not appear to have been given an authoritative interpretation by any of the transnational courts whose institutions use the expression in their respective rules – this ‘amorphous’¹⁵ term has also been interpreted in divergent ways. Firstly, it seems clear that ‘jurisconsult’ does not simply mean ‘lawyer’; if it did, Article 253 TFEU would presumably use the same expression that is used in the selection criteria for members of the committees set up to scrutinise appointments to the ECJ and the (now defunct) EU Civil Service Tribunal, *ie* ‘lawyers of recognised competence’.¹⁶ Further, if one goes back to the origins of the term ‘jurisconsult’ as a judicial appointment criteria – the 1920 legislative history of the Statute of the Permanent Court of International Justice – one would find that the President of the drafting committee affirmed the term was intended to include someone ‘who had never performed the duties of either judge or arbitrator’.¹⁷ In the same way that this ‘compromise’ was intended to account for the fact that not all the appointing countries’ judges will have the required training to perform the tasks of an *international* judge or equivalent,¹⁸ it is

¹² See eg Case C-503/15, *Margarit Panicello* [2017] EU:C:2017:126, para 37; Case C-506/03 *Wilson* [2006] U:C:2006:587, paras 49-51. On the various mechanisms that should be in place to ensure judicial independence, see: Committee of Ministers of the Council of Europe, ‘Recommendation on the independence, efficiency, and role of judges: Recommendation CM/R(94)12’ (1994).

¹³ Case C-64/16, *Associação Sindical dos Juizes Portugueses* [2018] EU:C:2018:117, para 42.

¹⁴ See eg the varying approaches in: See eg Mary Volcansek, ‘Appointing Judges the European Way’ (2007) 34 *Fordham Urban Law Journal* 1 363. The selection procedures are frequently under development: Carlo Guarnieri, ‘Appointment and Career of Judges in Continental Europe: The Rise of Judicial Self-Government’ (2004) 24 *Legal Studies* 169.

¹⁵ Michal Bobek, ‘Epilogue: Searching for the European Hercules’ in Michal Bobek (ed), *Selecting Europe’s Judges: A Critical Review of the Appointment Procedures to the European Courts* (OUP 2015) note 31.

¹⁶ Respectively, Article 255 TFEU second paragraph and Article 3 Annex I Protocol 3 TFEU.

¹⁷ League of Nations Advisory Committee of Jurists, ‘Procès-verbaux of the proceedings of the Committee, June 16th-July 24th, 1920, with Annexes’ 448 <<https://archive.org/details/procsverbauxof00leaguoft>> accessed 21 December 2019. See also p. 553, 698.

¹⁸ Jeffrey B Golden, ‘The World Court: The Qualifications of the Judges Golden’ (1978) 14 *Columbia Journal of Law and Social Problems* 1, 20.

conceivable that not all EU Member States have legal training programs that sufficiently equip national judges to perform the tasks of a *European Judge* or Advocate General.

In the EU context, some interpret the term 'jurisconsult' as referring to those who are a form of legal expert who do not necessarily meet the qualifications for highest judicial office.¹⁹ Most often, its inclusion is interpreted as intending to enable the selection of academics for ECJ membership. For instance, former French AG Phillippe Léger explicitly noted that '[t]he term jurisconsult allows law professors to be appointed to hold a judicial office'.²⁰ Former ECJ judge Lord Slynn too stated that the aim of including this term in Article 253 TFEU was 'clearly to allow Member States to nominate professors of law experienced in Community law to be appointed'.²¹ Meanwhile, in 2016 former EFTA Judge Carl Baudenbacher gave a more narrow definition by stating that '[i]n the context of the ECJ, the term 'jurisconsult' is understood as referring to the holders of a University chair.'²² Since the 255 Panel has elaborated in detail upon the assessment criteria, it is surprising they have not shed light on this obscure term.²³

Some Member States have also adopted their own definitions of 'jurisconsult' in the Article 253 TFEU context. The Netherlands defines this term as someone known as a skilled legal scholar (*kundig rechtsgeleerde*),²⁴ while in the ECtHR appointment context the UK gave examples of 'jurisconsults' as including 'e.g. practitioners and academic lawyers'.²⁵ The criteria to be considered a jurisconsult of recognised competence in Croatia appear most detailed: 'the applicant must be perceived as a respectable legal professional in the general and scientific public with his/her papers and public contributions, must be a doctor of law and have at least 12 years of work

¹⁹ Plender states for instance that, '[i]n the case of Judge Chloros, the first judge of Greek nationality appointed to the European Court, his qualification appears to have been that of a 'jurisconsult of recognized competence', for as an English barrister and a professor at London University he was not eligible for appointment to the highest judicial office in Greece' (Richard Plender, 'Rules of Procedure in the International Court and the European Court' (1991) 2 Eur. J. Int'l L. 1). See also Hermann-Josef Blanke and Stelio Mangiameli, *The Treaty on European Union (TEU): A Commentary* (Springer 2013) 771.

²⁰ Phillippe Léger, 'Law in the European Union: The role of the advocate general' (2004) 10 *The Journal of Legislative Studies* 1, 8.

²¹ Lord Slynn, 'Critics of the Court' in Mads Andenas and Francis Jacobs (eds), *European Community Law in the English Courts* (Clarendon 1998) 8. See more recently Baudenbacher, *The Handbook of EEA Law* (Springer 2016) 141, who states that: '[i]n the context of the ECJ, the term 'jurisconsult' is understood as referring to the holders of a University chair.' See also, Jan Linehan, 'Women and Public International Litigation: Background Paper prepared for the Project on International Courts and Tribunals' (2002) <<http://www.iccnw.org/documents/WomenIntlPublicLitigation.pdf>> accessed 20 December 2019.

²² Baudenbacher, 'The EFTA court: structure and tasks', in *The Handbook of EEA Law* (Springer 2016).

²³ This could be for a range of reasons: perhaps it is to leave Member States a wide margin of discretion in their selection of ECJ members or because its meaning is considered obvious. Alternatively, it could simply be that the Panel does not want to speculate as to its meaning without an official definition.

²⁴ Parlementaire Monitor, 'Vragen van het lid Jurgens (PvdA) op 16 mei 2000 medegeedeeld aan de Minister van Justitie' (no. KVR12092) <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmjl1ey0/vi3e894euprw#p1> accessed 20 December 2019

²⁵ House of Commons note by Vaughne Miller, 'The European Court of Human Rights: the election of judges' (2011) Standard Note SN/IA/5949, 9.

experience or a master of law with at least 15 years of work experience.’²⁶ By contrast, the Czech Republic apparently considers a jurisconsult as someone who is a ‘wellknown lawyer’.²⁷

3. The Article 255 TFEU Panel

Upon the enactment of the Treaty of Lisbon,²⁸ a panel was provided for in Article 255 TFEU tasked with assessing and consulting the Council on a proposed CJEU candidate’s suitability (‘the Panel’). It has seven members, decided by the Council on the initiative of the ECJ President, which include: former CJEU members, members of national supreme courts (SCs), and lawyers of recognised competence. One member is appointed by the EU Parliament.²⁹ An analysis of the Panel’s assessments is not possible because they do not disclose their opinions for privacy reasons; which has been subject to repeated criticism.³⁰ Although the procedure is arguably lacking in transparency, it has made the Court’s selection procedure more objective.³¹ The opinions of the Panel are non-binding but they are followed in practice: a 2019 analysis found that of the 7/41 (first-term) appointments given unfavourable recommendations by the Panel, all of them were followed by the appointing MS governments *via* a withdrawal of the nomination.³² **In terms of the general profile of the candidates, in their 2018 report the Panel stated that ‘[i]t considers all professional paths in the field of law to be equally legitimate to apply for the office of Judge or [AG]’, ‘in particular, those of judge, university professor, jurisconsult, lawyer or senior official specialised in the field of law.’³³** In their activity reports, the Panel has provided six considerations/criteria they use in their overall assessment to verify whether nominees ‘meet the conditions required for appointment to the highest judicial offices’.³⁴

²⁶ Council of Europe Parliamentary Assembly, ‘Election of judges to the European Court of Human Rights’ (2012) Doc. 12936, available at <assembly.coe.int/Documents/WorkingDocs/2012/COE.PACE.WD.COM.12936.2012.EN.pdf>. Again, this statement was made in relation to judicial appointment in the ECtHR context, but since the term is identical in EU law they would presumably define it in the same way.

²⁷ CoE Doc. 12936 (*supra*) 18.

²⁸ See Article 224a Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] C306/1.

²⁹ Article 255 TFEU. The current panel includes: Christiaan Timmermans (President; former ECJ judge); Simon Busuttill (former EP member, EP nominee); Frank Clarke (Ireland SC Chief Justice); Carlos Lesmes Serrano (Spanish SC President and General Council of Spanish Judiciary); Maria Eugénia Martins De Nazaré Ribeiro (former GC judge); Andreas Vosskuhle (German FCC President); Mirosław Wyrzykowski (former Polish Constitutional Tribunal judge): Council Decision 2017/2262 of 4 December 2017. This was based on the initiative of Koen Lenaerts, ‘Recommendation for the composition of the panel provided for by Article 255 TFEU’ (Brussels, 24 October 2017) <<http://data.consilium.europa.eu/doc/document/ST-13107-2017-INIT/en/pdf>> accessed 20 December 2019.

³⁰ This follows Access Info Europe and NYU-HEC Law Clinic access requests related to the opinions, which were denied by the Council: Anastasia Eriksson and others, ‘Transparent Selection of Judges for EU Courts: Complaint to the European Ombudsman’ HEC Paris Research Paper No. LAW-2017/1239. In May 2019 this refusal was not found to constitute maladministration by the European Ombudsman: European Ombudsman, ‘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’ (2017) <<https://www.ombudsman.europa.eu/export-pdf/en/114212>> accessed 20 December 2019.

³¹ Francesco Battaglia, ‘The Selection of Judges and Advocate-General at the Court of Justice of the European Union: The Role of the Panel Established Under Art. 255 TFEU’ in Paulo Pinto de Albuquerque and Krzysztof Wojtykczek (eds.), *Judicial Power in a Globalized World* (Springer 2019) 33-45.

³² *ibid.*

³³ ‘Sixth Activity Report of the Panel Provided for by Article 255 of the Treaty on the Functioning of the European Union’ (n 1) 17.

³⁴ *Ibid.* All the information on the Panel criteria elaborated upon in this section are from this report.

i. Legal capabilities: For this criterion, the Panel looks at the individual’s career and publications. The panel does not evaluate legal knowledge per se, but ‘significant gaps’ in knowledge may reflect negatively on their capabilities. They assess in particular the candidate’s ability to ‘analyse and reflect on the conditions and mechanisms for applying the law’ especially in terms of the application of EU law in the domestic systems of the Member States. They also emphasise the importance of rising to the challenges involved in the dialogues between the Court and national supreme courts.

ii. Professional experience: In terms of level and nature, the panel especially looks at whether the candidate has performed ‘high-level duties’ in judicial, administrative, and university contexts. In that respect, no specific profile is preferred so long as the following capacities are shown: to think independently, develop analyses of the challenges inherent in the relevant duties, and to take legally sound decisions consistent with EU law. Candidates that ‘did not demonstrate sufficient knowledge of European Union law’ or the requisite understanding ‘of the major issues that fall within the [Court’s] jurisdiction’ have been rejected. There is a presumption that less than 20 years of high-level duties is likely insufficient, which can be rebutted ‘where candidates demonstrate exceptional legal capabilities’. The panel has rejected candidates where the length was ‘*manifestly* too short’.

iii. Ability to perform the duties of a Judge or AG: the candidate must have full appreciation for the extent of the responsibilities of judge or AG in terms of independence, impartiality, workload, and aptitude. The ability reason and argue is especially important, expecting the candidate to possess ‘the authority, reasoning and maturity’ necessary for the position.

iv. Language skills: The ability to speak (or at least understand) a number of Union languages and acquire proficiency in the Court’s working language (*ie* French) ‘constitutes an important assessment criterion’.

v. Ability to work as part of a team in an international environment in which several legal systems are represented: To assess this requirement the Panel looks at the nominee’s ability to comprehend the ‘broad categories and principles’ of the Member State legal systems and appreciate the special issues that may arise in that connection. An indicator of this is ‘experience or activities in a European or international context’.

vi. Whether their independence, impartiality, probity and integrity are beyond doubt: This criterion is assessed in negative terms – *ie* whether there is anything to suggest that the candidate does not possess these characteristics.

In their 2018 Fifth Activity Report, the Panel announced an additional criterion of ‘physical capacity’ to carry out the relevant duties, and that in that regard they would ask candidates to produce a medical certificate.³⁵ However, they reversed that decision in the subsequent Sixth

³⁵ ‘Fifth Activity Report of the Panel Provided for by Article 255 of the Treaty on the Functioning of the European Union’ (28 February 2018) 22 <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-05/5eme_rapport_dactivite_du_c255_-_en_final_-_public.pdf> accessed 20 December 2019.

Activity Report after doing a comparative analysis of the various Member State approaches in this respect in which they found a large degree of heterogeneity, such that the new criterion could create difficulties ‘on matters of principle’ in some systems.³⁶

PART II: NATIONAL REQUIREMENTS FOR AGs AND ECJ JUDGES

As mentioned, there is room for great variance in terms of the general profiles of candidates proposed to the ECJ in light of the significant differences in the Member State criteria and procedures. There is a demonstrably wide array of additional criteria laid down by Member States in terms of eligibility of appointment to the Court. Although the Article 253 TFEU criteria are apparently exhaustive,³⁷ those criteria are broad enough to allow for substantial variation. This section will look at trends in the profiles of the candidates selected as Advocate Generals, as well as the relevant national substantive and procedural requirements (if any) amongst Member States.

This section outlines the different types of rules laid down by Member States related to the selection of AGs. Many Member States do not have express requirements for AG selections and appear to apply the same rules they use for selecting ECJ judges. This makes sense, however, since in Article 255 TFEU itself, ‘[t]he criteria for appointment as a Judge or AG of the ECJ are the same, reflecting their equality of status’.³⁸ **For legal certainty, however, explicit national legal bases for AG appointments would be ideal.** National rules on ECJ appointments may relate to either the requirements that must be met by the individual candidate (substantive criteria) or to the procedure that must be followed (procedural requirements). As will be seen in the sub-sections below, some Member States have substantive and procedural requirements (1), while some only have procedural requirements (2), and others neither (3). No Member States appear to have explicit substantive criteria but no procedures.

1) Substantive criteria and procedure

Cyprus is amongst those States that do have some degree of formalised substantive criteria and procedures, which also include Bulgaria, Croatia, Czech Republic, Estonia, Greece, Hungary, Italy, Latvia, Lithuania, the Netherlands, Slovakia, Slovenia, and the UK. Those requirements used by Cyprus in an ECJ appointment will be discussed in detail, while a full account of the criteria and procedures in the other Member States is provided in Table 1 of the Annex with only a general summary provided in this section.

Cyprus

In terms of the substantive requirements that must be met by candidates, a 2014 call for an ECJ judge position listed the Article 253 TFEU requirements and said that, in that regard, candidates had to be ‘learners in the law of high professional and moral level’. This was measured by the following requirements/criteria expressly provided: legal skills; knowledge of EU law; high level of experience; ability to fulfil the duties of a CJEU judge with a high degree of competence; language skills; ability to work in an international environment in which various legal systems are represented; and ability to speak or at least understand a number of EU official languages, and French, the working language of the Court, to be acquired at sufficient level and within a

³⁶ ‘Sixth Activity Report of the Panel Provided for by Article 255 of the Treaty on the Functioning of the European Union’ (n 1) 6.

³⁷ Ibid.

³⁸ Hermann-Josef Blanke, Stelio Mangiameli, *The Treaty on European Union (TEU)* (Springer 2013) 771.

reasonable period of time. Cypriot citizenship is also required for such appointments.³⁹ These criteria, like those required in the 2015 General Court selection exercise,⁴⁰ appear to replicate those articulated by the EU's Article 255 Panel discussed above.

For the procedure, a selection commission was established by Council of Ministers Decision 42.656.A to nominate candidates for all international legal bodies.⁴¹ It is composed of the Minister of Foreign Affairs (Chair), the Minister of Justice and Public Order of the Republic of Cyprus, the Attorney-General of the Republic of Cyprus, and the President of the Supreme Court of the Republic of Cyprus.⁴² The Commission then makes a recommendation to the President of the Republic, who makes the final decision on the appointment.⁴³ A call for the position is published in the Official Gazette of the Republic and reproduced in various news/open sources.⁴⁴

Other Member States

Table 1 in the Annex gives a comprehensive overview of the substantive and procedural requirements found in Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Italy, Latvia, Lithuania, the Netherlands, Slovakia, Slovenia and the UK. There is great variance in the degree of formality and intensity of the selection requirements from one Member State to another. For instance, several Member States have codified the substantive criteria in legislation – as seen in Bulgaria,⁴⁵ Croatia,⁴⁶ Czech Republic,⁴⁷ Slovakia,⁴⁸ and Slovenia. By contrast, some Member States who do lay down substantive criteria seem to establish them on an *ad hoc* basis while codifying the procedural rules governing the selection (*eg* Bulgaria, Lithuania), while others set out both substantive and procedural requirements *ad hoc* (*eg* Hungary, Italy, Latvia, the Netherlands).

In terms of the criteria themselves in States that do have them, these also vary greatly in nature. While Bulgaria and Slovenia require the candidate be a citizen, the Czech Republic and Slovakia only require permanent residence. Others simply do not address the matter at all (*eg* Latvia, the Netherlands, and the UK). Another significant difference is whether a candidate is

³⁹ ‘Πρόσκληση Για Εκδήλωση Για Υποψηφιότητα Που Θα Προταθεί Από Την Κυπριακή Δημοκρατία Για Πλήρωση Θέσης Δικαστή Στο Δικαστήριο Της Ευρωπαϊκής Ένωσης’ (*Επίσημη Εφημερίδα Της Κυπριακής Δημοκρατίας*, 7 March 2014)

<[https://www.mof.gov.cy/mof/gpo/gpo.nsf/All/EF70F118B23A75F7C2257C94002D9C86/\\$file/4758%207%203%202014%20KYRIO%20MEROS%20TMHMA%20A.pdf](https://www.mof.gov.cy/mof/gpo/gpo.nsf/All/EF70F118B23A75F7C2257C94002D9C86/$file/4758%207%203%202014%20KYRIO%20MEROS%20TMHMA%20A.pdf)> accessed 16 December 2019.

⁴⁰ ‘Θέση Δικαστή Στο Γενικό Δικαστήριο Της Ευρωπαϊκής Ένωσης’ (*Diorismos.gr*, 24 April 2015) <<https://www.diorismos.gr/Dpages/geem/viewitem.php?id=23497&type=procs&position=eur>> accessed 16 December 2019.

⁴¹ Council of Ministers Decision 42.656A (Σύσταση Επιτροπής με αρμοδιότητα την υπόδειξη υποψηφίων της Κυπριακής Δημοκρατίας για θέσεις σε διεθνή νομικά σώματα.) 1995.

⁴² *ibid.*

⁴³ According to the post in: ‘Πλήρωση Της Θέσης Ευρωπαίου Εισαγγελέα’ (*Diorismos.gr*, 3 January 2019) <<https://www.diorismos.gr/Dpages/geem/viewitem.php?id=27753&type=procs&position=eur>> accessed 16 December 2019.

⁴⁴ *eg* a call for a post at the General Court was posted in: ‘Θέση Δικαστή Στο Γενικό Δικαστήριο Της Ευρωπαϊκής Ένωσης’ (n 40). A call for the EPPO was posted in ‘Ανοιξαν Οι Αιτήσεις Για Θέση Ευρωπαίου Εισαγγελέα’ (*Economy Today*) <https://economytoday.sigmalive.com/epiheiriseis/theseis-ergasias/6565_ypex-anoixan-oi-aitiseis-gia-thesi-eyropaioy-eisaggelea> accessed 16 December 2019. Both the GC and EPPO appointments are done via the same committee as is used for the ECJ.

⁴⁵ Decree No 214/21.09.2010 of the Council of Ministers of Bulgaria.

⁴⁶ s. IV Decision on the Establishment of the Commission for the Selection of Candidates of the Republic of Croatia for Judges and an Advocate General at the CJEU (Decision NN 117 /2012-2526).

⁴⁷ Article 3 Annex to Government Resolution No. 525 of 13 July 2011.

⁴⁸ s 27g(2) Act No. 185/2002 on the Judicial Council.

required to have passed a national bar examination or have previous lawyer/judicial experience: while there are requirements of that nature in Czech Republic Slovakia, and the UK, they are not found in Italy, Latvia, the Netherlands, and Slovenia. French language skills are always mentioned as a relevant criterion, and experience with EU law is usually also explicitly referred to.

As for the procedure governing the selection, all the countries in this group use (usually advisory) selection committees as a rule, except Hungary (which uses Parliamentary hearings). Since use of the formalised Judicial Appointments Commission (JAC) in the UK is optional for international courts, the exercises were different for the ECJ and GC appointments in 2012 and 2015, respectively. Otherwise, all of these countries issue a public call and use a committee to make recommendations to the executive, who make the final decision. Some committees are permanent (eg Slovenia) while others are established *ad hoc* (eg the Netherlands, Italy). Finally, for several of these countries it is explicitly stated in the procedural rules that such procedures also apply to AG selections, as found in Bulgaria, Croatia, the Czech Republic, the Netherlands, while in other countries this is likely done in practice.

2) Selection procedures but no substantive criteria

Second, there were four Member States for which substantive criteria could not be identified but that nevertheless have selection procedures. Countries in this category include Austria, Germany, Finland, and Sweden. The latter three all use their permanent judicial selection committees which perform other functions nationally, while Austria does not have a selection committee. The details of the procedures used in these Member States is specified in Table 2 of the Annex.

3) No substantive nor procedural criteria

It appears that Denmark, France, Ireland, Luxembourg, Poland, Portugal, Malta, Romania, and Spain,⁴⁹ do not have any substantive or procedural requirements for ECJ judge or AG selection. Spain does not even appear to issue public calls for the positions.⁵⁰ In practice, in Portugal the candidates have been submitted to a Parliamentary committee in 2014 and 2018.⁵¹ Finally, it is also worth noting that in Romania and Poland, there are procedures for ECtHR selections, but not for the ECJ.⁵² This is also seemingly the case in Belgium,⁵³ where information could not be found on

⁴⁹ See the following Answers to the questionnaire of the NPSJCEU Fifth Colloquium: ‘Ireland’ (2012) <https://www.stj.pt/wp-content/uploads/2018/04/ireland_answersquestionnaire.pdf> accessed 20 December 2019; ‘Luxembourg’ (2012) <https://www.stj.pt/wp-content/uploads/2018/04/luxembourg_reponsesquestionnaire.pdf> accessed 20 December 2019; ‘Poland’ (2012) <https://www.stj.pt/wp-content/uploads/2018/04/poland_answersquestionnaire.pdf> accessed 20 December 2019; ‘Portugal’ (2012) <https://www.stj.pt/wp-content/uploads/2018/04/portugal_reponsesquestionnaire.pdf> accessed 20 December 2019; ‘Romania’ (2012) <https://www.stj.pt/wp-content/uploads/2018/04/roumanie_reponsesquestionnaire.pdf> accessed 20 December 2019; ‘Spain’ (2012) <https://www.stj.pt/wp-content/uploads/2018/04/spain_answersquestionnaire.pdf> accessed 20 December 2019. On Malta: The Report of The Commission for a Holistic Reform in the Field of Justice (30 November 2013) notes the lack of criteria and procedures for judicial appointment in general: ‘the Executive selects who it wants to appoint as a judge without a call for applications, interview or scrutiny, and no transparency in the selection’ (p. 40).

⁵⁰ They said ‘selection is made by means of contacts and different information’: ‘Spain’ (n 49).

⁵¹ ‘Portugal’ (n 49). In 2018 see: Comissão de assuntos europeus, ‘Audição de Nuno José Cardoso da Silva Piçarra’ (20 February 2018) <<http://artv.livemeans.com/cid/2560>> accessed 20 December 2019.

⁵² On Romania: ‘Romania’ (n 49).

⁵³ See Parliamentary Assembly, ‘Election of a Judge to the European Court of Human Rights’ (CoE, Doc. 12789, 14 November 2011) 4 <<http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=12986&lang=en>>

the appointment eg of Wathelet to their ECJ judge and AG positions other than the nomination by the Federal Cabinet.⁵⁴

PART III: OVERVIEW OF ADVOCATE GENERAL PROFILES

51 AGs appointed by 21 Member States were identified for the purposes of this study. Their backgrounds generally involved having acquired a law degree and pursuing a path either working in the legal practice as lawyers or judges, in academia, or in the civil service. 34 (~66%) had worked as qualified legal practitioners before becoming AGs, some of which were judges (in lower and higher national courts or regional tribunals), prosecutors, or lawyers. Many had come from academia and the civil service as well. 17 (33%) of the AGs were non-practitioners before appointment, being nominated by Austria, Belgium, Germany, France, Italy, Luxembourg, the Netherlands, Portugal, Slovenia, and Sweden.⁵⁵

It is also common for those who had practised law, advocate generals or judges to have also had academic careers, presumably in light of the fact that they would have had greater opportunity in the latter context to gain knowledge in EU law (eg AGs Bobek (Czech Republic); Sharpston, (UK); Szpunar (Poland); and Tanchev (Bulgaria)). Indeed, **it has been noted that proficiency and knowledge ‘in EU law is ‘essential’ and ‘imperative’ for CJEU appointment purposes.**⁵⁶ In 2011 Lord Mance noted that, ‘[t]he CVs set out in the Court’s annual report indicate for the Court of Justice itself a professorial bias among [AGs] and a mix of backgrounds among the judges.’⁵⁷

CONCLUSION

In sum, this report has demonstrated that the flexibility offered by Article 253 TFEU has led to deep variation across the Member States in terms of their respective requirements for Advocate General appointments, as reflected for instance in the profiles of the Advocate Generals appointed to date. As seen above, the Article 253 TFEU requirements (of independence and being either eligible to hold high national judicial office or a jurisconsult of recognised competence) were elaborated upon by the advisory Article 255 Panel, which takes six factors in the form of criteria into consideration. Still, an analysis of the rules that have been adopted at the national level shows the continued deep degree of variation amongst the Member States in their methods of appointing candidates to the ECJ. While 14 Member States have substantive and procedural requirements, procedural but no substantive rules could be found for 4 Member States, and neither were identified in the remaining 10. The backgrounds of the Advocate Generals appointed thus far further demonstrate the differences in the national regimes.

accessed 20 December 2019; Laurence Burgogues-Larsen, ‘Des idéaux à la réalité. Réflexions comparées sur les processus de sélection et de nomination des membres des Cours européenne et interaméricaine des droits de l’homme’ [2014] *La Revue des droits de l’homme*. *Revue du Centre de recherches et d’études sur les droits fondamentaux* <<http://journals.openedition.org/revdh/949>> accessed 20 December 2019 note 18.

⁵⁴ ‘Melchior Wathelet Père Comme Avocat Général à La Cour Européenne?’ (*La Libre*, 16 December 2011) <<https://www.lalibre.be/belgique/melchior-wathelet-pere-comme-avocat-general-a-la-cour-europeenne-51b8e1afe4b0de6db9c4b43f>> accessed 20 December 2019.

⁵⁵ In terms of ECJ judges, it appears that at least Croatia, Denmark, Finland, Hungary, Malta, Portugal and again Austria, Italy, Germany, and the Netherlands, have also appointed non-practitioners to this post.

⁵⁶ Solanke (n 7). Iyiola Solanke, *Diversity and Independence in the European Court of Justice*, 15 *Colum. J. Eur. L.* 89 (2008) 106.

⁵⁷ Lord Mance (n 7) 15.

Nevertheless, a clear trend towards formalisation of ECJ appointments has materialised, while certain patterns have emerged. A total of 18 Member States have to some degree formalised the selection process for new ECJ appointments. For instance, use of selection committees is now widespread for CJEU appointments, having been used in 16 Member States. **The distinct backgrounds of the AGs also point toward the particular suitability of some professions to meet the qualifications required for the position.** The following can thus be recommended:

1. Use of a national selection committee to ensure transparency and independence: the use of a selection committee assists in guaranteeing the independence and impartiality of the individual nominated for the position, one of the conditions of Article 253 TFEU for CJEU appointments. For further transparency to instill confidence in the selection process, it is also advisable that the rules under which the committee operates be public. In their most recent 2019 Sixth Activity Report, the Panel strongly emphasised the ‘importance of the role that an open, transparent and rigorous national selection procedure led by an independent and impartial panel can play’.
2. Strict adherence to Article 253 TFEU requirements on qualifications: the double, non-cumulative criterion in Article 253 TFEU, providing that persons should ‘possess the qualifications required for appointment to the highest judicial offices in their respective countries *or* who are jurisconsults of recognised competence’ (emphasis added), should be considered *pari passu* and given equal weight during the nomination process at the national level, thereby ensuring fairness, equal opportunities and due process for all categories of eligible candidates, whether judges, lawyers, academics, civil servants, etc. This also emanates from the 255 Panel 2018 Report.
3. 255 Panel criteria assessment at the national level: the six general criteria assessed by the EU-level Panel should also be assessed by the national selection committee to avoid an unfavourable opinion being issued.

Based on those criteria, Member State requirements, and the backgrounds of AGs appointed to date, the following factors seem appropriate to assist in ensuring a candidate meets the 255 Panel’s six criteria:

- a. **Legal education**: Since a successful nomination is required by Article 253 TFEU to either be someone who meets the requirement to hold high national judicial offices or be jurisconsults, requiring applicants to have a law degree is deemed necessary. Holding a higher or doctoral degree can be said to be (very) desirable. This is reflected across national rules and practice as well as in the backgrounds of the AGs appointed thus far.
- b. **Knowledge of EU law**: this was one of the frequently included criteria amongst those Member States that have published them as identified in this study,⁵⁸ including Cyprus. EU law knowledge is also assessed by the EU’s Article 255 Panel as an element of professional experience,⁵⁹ emphasised in the literature on EU judicial selection,⁶⁰ and was found in the

⁵⁸ See Part II s. 1.

⁵⁹ ‘Sixth Activity Report of the Panel Provided for by Article 255 of the Treaty on the Functioning of the European Union’ (n 1) 15.

⁶⁰ Solanke (n 7), 106. See also Lord Mance (n 7) 15.

profiles of the candidates themselves, who often had experience in EU legal academic careers.⁶¹ EU legal academic experience or experience as a legal scholar could therefore be deemed to constitute a (highly) desirable characteristic for the candidates to possess. In 2011 Lord Mance noted that, '[t]he CVs set out in the Court's annual report indicate for the Court of Justice itself a professorial bias among [AGs] and a mix of backgrounds among the judges.'⁶²

c. **Language skills:** Language skills are assessed by every Member State that have substantive criteria for ECJ appointments,⁶³ and since French is the official operating language of the CJEU, this is often the language that is emphasised in requirements laid down by Member States. Good (immediate) knowledge of the French language can therefore be deemed to constitute a strongly desirable characteristic for the candidates to possess.

⁶¹ Part III.

⁶² Lord Mance (n 7) 15.

⁶³ Table 1 Annex.

ANNEX

Table 1: Substantive criteria and procedure

Country	Substantive criteria	Procedure
Bulgaria	1) possessing the moral and professional qualities required by the Ethical Code; 2) Bulgarian citizenship; 3) higher degree in law; 4) acquired juridical qualification; 5) min. 12 years legal experience and standing or be a reputed man of law; 6) excellent command in written and spoken French; 7) never been convicted of a premeditated crime and sentenced to imprisonment; 8) never dismissed for breach of discipline as an elective member of the Supreme Judicial Council for undermining the authority of the Judiciary; 9) not suffer from a mental disease. 10) advantage: previous experience working in an European institution at an office where legal training is required and 11) advantage: command in another EU official language (other than Bulgarian and French) ⁶⁴	The government adopts a resolution to begin the election procedure. The MoJ makes the call announcement and designates an Election Committee. All applicants who appear to meet the basic criteria must sit a written and oral French language exam. Those who pass are interviewed by the Committee which then produces a ranking (later published on the MoJ website). ⁶⁵ The (non-binding) Committee report is sent to the MOJ & MFA who forward it to the Cabinet, which adopts a resolution on the candidate. NGO representatives participates in the Election Committee and NGOs are welcome to attend candidates' interviews. ⁶⁶ While the rules were adopted in 2010, in 2015 a decision was made to apply those same rules to the selection of AGs. ⁶⁷
Croatia	1) independence and impartiality; 2) professional competence; 3) professional experience; 4) knowledge of EU law, especially CJEU practice; 5) knowledge of French and English; 6) ability to understand multiple legal systems and to work in an international environment. ⁶⁸	A selection Commission (est. 2012) launches the relevant public competition, reviews the submitted tenders, and establishes a list of those who applied and fulfil the criteria. They then conduct interviews and submit a proposal on one candidate to the government. ⁶⁹ The relevant legislation applies explicitly to both judges and AGs. ⁷⁰
Czech Republic	a) Czech resident; b) good repute; c) high moral character; d) master's degree; e) min. ten years legal experience; f) guarantees of independence and impartiality in performance of duties after appointment; g) sufficient knowledge of EU law, especially CJEU case-law; h) mastery of the French language; (i) actively speak another official EU language in addition to their mother tongue. ⁷¹	The MoJ issues a public call (specific conditions laid down in law). A selection commission narrows down the potential nominees, composed of: the MoJ (the Chairman); the MFA; the government Commissioner for representation of the Czech Republic before the CJEU; the Presidents of the CC, SC, and the Supreme Administrative Court; representatives of the MoJ and Czech Bar Association; and a member appointed by the Deans of the Faculty of Law. The Commission selects one candidate and two substitutes via majority voting, and must give reasons for its decision. The MoJ introduces this list to Czech Senate Committee for EU Affairs 'for information' and discusses candidates with parallel committee in Lower House 'for consideration'. It is unclear whether the opinions of these Committees are binding: while a translation of the Czech legal rules suggests it requires

⁶⁴ Decree No 214/21.09.2010 of the Council of Ministers of Bulgaria (translated).

⁶⁵ s 13 Resolution amending and supplementing Decree No 214 of the Council of Ministers of 21.09.2010 (translated).

⁶⁶ 'Bulgaria – Answers to Questionnaire of the NPSJCEU Fifth Colloquium' (2012) <https://www.stj.pt/wp-content/uploads/2018/04/bulgaria_answersquestionnaire.pdf> accessed 18 December 2019.

⁶⁷ Resolution amending and supplementing Decree No 214 of the Council of Ministers of 21.09.2010 (translated).

⁶⁸ s. IV Decision on the Establishment of the Commission for the Selection of Candidates of the Republic of Croatia for Judges and an Advocate General at the CJEU (Decision NN 117 /2012-2526) (translated).

⁶⁹ s. III, *ibid.*

⁷⁰ *ibid.*

⁷¹ Annex to Government Resolution No. 525 of 13 July 2011.

		mere consultation (rather than consent), ⁷² the response from the Czech SC for the NPSJCEU Colloquium stated that ‘the [MoJ] and the committees select one of these three candidates’. ⁷³ Finally, the MOJ sends this proposal to the government. If the government disagrees with the nomination the procedure repeats. The rules also apply <i>mutatis mutandis</i> to AGs. ⁷⁴
Estonia	In their 2012 NPSJCEU Colloquium response the SC Chief Justice legal advisor stated that CJEU candidates must meet the same requirements as Estonian SC candidates and have excellent knowledge of English or French (but did not provide a legal basis). ⁷⁵	The Estonian representative also stated they have a procedure where the MFA announces a competition in newspaper, digital media, and ‘informal channels for jurists and lawyers’. ⁷⁶ On approval of the MoJ and consultation of the SC Chief Justice, Chancellor of Justice, and State Secretary, the MFA submits candidates to the government for approval. It appears things may have changed since then – perhaps in light of the rejection of previous AG candidate Madis Ernitsa. ⁷⁷ For the recent appointment of AG Priit Pikamäe the government took a decision on the basis of an advisory committee’s recommendation. ⁷⁸
Greece	In addition to the Art 253 TFEU requirements, the selection committee takes into account the candidates’ morals and integrity, nature and quality of their studies, scientific development, content and duration of their professional experience and career path (in particular relevant to EU law), familiarity with EU law and the EU’s judicial system, knowledge of foreign languages, and ability to work in an international environment. ⁷⁹	A public call is made by the MOJ in the Greek Gazette setting a thirty-day deadline, also posted on the websites of the MFA and MOJ. An advisory selection committee has been in place since 2014 for the selection of AGs and CJEU judges. The committee consists of the Presidents of the Council of State and SC, current or former Greek CJEU judges and AGs, and one of the presidents of the higher education institute law schools (selected by public lottery). The Committee invites qualified applicants for an interview and issues a reasoned opinion to the MOJ on the three most suitable candidates. The successful candidate is selected by decision of the Cabinet on the recommendation of the MOJ. ⁸⁰
Hungary	The only requirement is to know French. ⁸¹	There is no advisory committee. The government selects a candidate and in practice the parliament organises a hearing (though it is unclear whether this is required by law). ⁸²
Italy	As of 2018, the candidate must be either a: magistrate of an ordinary higher court or administrative court; b) State lawyer in the third salary class; c) full university law	A 2018 Decree established an <i>ad hoc</i> five-member preliminary commission for EU GC appointments, appointed by the Prime Minister on consultation with the MFA. It conducted a hearing of the candidates and defined a list of at least six candidates ‘to be

⁷² Articles 7 and 8 Annex to Government Resolution No. 525 of 13 July 2011.

⁷³ ‘Czech Republic – Answers to Questionnaire of the NPSJCEU Fifth Colloquium’ (2012) <https://www.stj.pt/wp-content/uploads/2018/04/czechrep_answersquestionnaire.pdf> accessed 18 December 2019.

⁷⁴ Annex to Government Resolution No. 525 of 13 July 2011.

⁷⁵ ‘Estonia – Answers to Questionnaire of the NPSJCEU Fifth Colloquium’ (2012) <https://www.stj.pt/wp-content/uploads/2018/04/estonia_answersquestionnaire.pdf> accessed 18 December 2019.

⁷⁶ *ibid.*

⁷⁷ Huko, ‘Priit Pikamäe saab Euroopa Liidu kohtujuristik’ (*ERR*, 11 September 2018) <<https://www.err.ee/860490/priit-pikamae-saab-euroopa-liidu-kohtujuristik>> accessed 18 December 2019.

⁷⁸ *ibid.*

⁷⁹ Άρθρο 7 ΝΟΜΟΣ 4297 Διαδικασία επιλογής υποψηφίων δικαστών και γενικών εισαγγελέων για το Δικαστήριο της Ευρωπαϊκής Ένωσης και υποψηφίων δικαστών για το Γενικό Δικαστήριο της Ευρωπαϊκής Ένωσης και άλλες διατάξεις. 2014.

⁸⁰ ΝΟΜΟΣ 4297 Διαδικασία επιλογής υποψηφίων δικαστών και γενικών εισαγγελέων για το Δικαστήριο της Ευρωπαϊκής Ένωσης και υποψηφίων δικαστών για το Γενικό Δικαστήριο της Ευρωπαϊκής Ένωσης και άλλες διατάξεις. 2014.

⁸¹ ‘Hungary – Answers to Questionnaire of the NPSJCEU Fifth Colloquium’ (2012) <https://www.stj.pt/wp-content/uploads/2018/04/hungary_answersquestionnaire.pdf> accessed 18 December 2019.

⁸² *ibid.*

	professor; d) lawyer with 20 years' experience; or e) person who have already held the position of judge in an international or European judicial body. They must also have: in-depth knowledge of the national legal system, EU law, and the CJEU procedural functioning; b) enjoyment of political rights; c) moral and behavioural qualities required for admission to ordinary judiciary competitions; d) excellent French; English is also preferred. ⁸³	identified preferably on the basis of the principle of gender equality'. On the basis of that list, the Prime Minister (after consulting the MFA and Minister Delegate for European Affairs and informing the Cabinet) identifies the candidate to propose to the Council of the EU. ⁸⁴
Latvia	1) good knowledge of EU law and EU institutional functioning; 2) understanding of the CJEU; 3) ability to formulate opinions and make decisions individually; 4) ability to work in a team; 5) 'understanding of court work; however, experience in field of justice is desirable'; 6) good knowledge of English or French; 7) 'knowledge or preliminary knowledge of second (English or French) language is desirable'. ⁸⁵	An open competition is announced in the Latvian official newspaper and on the websites of the MoJ, MFA, and Cabinet. The MoJ drafts a statute for an open competition, subject to approval by a selection committee. The selection committee, established by the Prime Minister, is composed of the: MoJ (Chair); Chair of Parliament's Legal Bureau; deputy of the Head of the State Chancellery in issues related to legal standards; Chair of the CC; SC Chief Justice; MFA; Prosecutor General; and the secretary of the committee. The Committee evaluates applications and invite eligible candidates for interviews, then select the 'most appropriate' one. The Cabinet then issues a decree officially nominating the candidate for the relevant position.
Lithuania	While a legal basis could not be located, the SC representative to the NPSJCEU Colloquium stated that at they must meet at minimum the criteria required for highest national judicial office, which include: criteria of good repute, independence and impartiality, professional experience, legal training. They stated that linguistic abilities, ability to work in an international environment are also being considered. ⁸⁶	<i>Stage 1:</i> A Selection Working Group (WG) is established by order of the PM, composed of: MoJ (head of WG); MFA; PM's Chancellor; representatives of the Parliament, the President; and the Judicial Council. A public call is then made by the WG as a notice in the OJ. If necessary, interviews are arranged, and then the WG votes on a ranking list of those satisfying the formal criteria. The head of WG presents a (non-binding) recommendation of the top-ranked candidate to government, with minutes of the WG and ranking list attached. The top-ranked candidate is also announced on the MoJ website, and other applicants are also published in alphabetical order. ⁸⁷ <i>Stage 2:</i> In accordance laid down in the parliamentary Statute, the nomination is then deliberated by the Parliament, upon a hearing

⁸³ s 2 and 3 Decreta, Procedura di selezione dei candidati per l'elezione a giudice del Tribunale dell'Unione europea (GU n. 80 del 09-10-2018) (translated). Though GC versus ECJ and AG criteria differ, the decree's requirements were referenced since this was the only instance of formal criteria and procedures being adopted thus far in Italy. Traditionally, there were no formal requirements for selecting CJEU judges in Italy (Tomas Dumbrovsky, Bilyana Petkova and Marijn Van der Sluis, 'Judicial Appointments: The Article 255 TFEU Advisory Panel and Selection Procedures in the Member States' (2014) 51 CMLR 455, 467.). Receiving a negative 255 Panel opinion may have been what prompted the Italian government to adopt a different course of action in the 2018 GC appointments. The cited Decree was issued detailing the criteria and procedures for such appointments, though the instrument itself does not appear to have a legal basis in Italian law and was merely ad hoc.

⁸⁴ See further the Decreta, *ibid*.

⁸⁵ 'Latvia – Answers to Questionnaire of the NPSJCEU Fifth Colloquium' (2012) <https://www.stj.pt/wp-content/uploads/2018/04/latvia_answersquestionnaire.pdf> accessed 18 December 2019.

⁸⁶ 'Lithuania – Answers to Questionnaire of the NPSJCEU Fifth Colloquium' (2012) <https://www.stj.pt/wp-content/uploads/2018/04/lithuania_answersquestionnaire.pdf> accessed 18 December 2019.

⁸⁷ 'Description of the Procedure for the Selection of Judges to the Court of Justice approved by the Order of Minister of Justice of the Republic of Lithuania' No1R-77 of April 16 2010.

		of the nominator and the candidate. The parliament then passes a ‘protocol resolution’ approving or rejecting the candidate. This resolution is forwarded with the Parliament’s opinion to the government. Their opinion appears non-binding: the government, with the consent of the President and upon consultation of the Parliament, does the final nomination. ⁸⁸
Netherlands	Meet the TFEU requirements; thorough knowledge of EU law; ability to express oneself in French and/or English; have relevant international experience and the ability to take account of differences in the legal cultures of the EU Member States. For ECJ judges, it is stated that they ‘in principle’ should have legal experience, but that this can be compensated for with other qualifications. For AGs, judicial experience is ‘recommended’. ⁸⁹	A nomination procedure is used except for in cases of re-appointments. First, a public call is issued by the MoJ in several journals. Individual applications or third-party nominations can be submitted. Recommendation Committees are established on an ad hoc basis, the composition of which depends on the judicial position at issue. It may include: 1. the SC President or SC Attorney General; the Council of State VP or Chairman of the Council of State Administrative Law Division. The Committee gives their recommendation to the MFA and MoJ, and the MFA then submits their nomination to the Council of Ministers, and then to the Council of the EU on behalf of the Dutch government. These criteria and procedure explicitly also apply to AGs. ⁹⁰
Slovakia	Legal education; integrity; full legal capacity and health condition to perform the duties of judges; Slovakian permanent residence; professional judicial examination, prosecutor exam, bar exam or notary exam; min. five years legal practice; demonstrably jurisconsults of recognised competence and of high moral character; language skills; and professional erudition in EU law. ⁹¹	The Judicial Council has the right to submit nominations to the government (which takes the final decision and does not have to give reasons for its decision). The 18-member Judicial Council is composed of: SC President (chair); appointees of the Parliament, President, and government (which must have a university degree in law and min. 15 years professional expression). The latter three bodies will also appoint a non-judge as a member. ⁹² Proposals can be submitted to the Judicial Council by its members, the MoJ, a professional organisation of judges or other legal professional organisations. The Judicial Council conducts (public) interviews of the candidates to verify that they meet the required qualifications and are obliged to accord equal treatment to the candidates in that process.
Slovenia	The candidate must know one of the CJEU official languages and meet the conditions applicable to either SC or CC judges. ⁹³ <i>SC criteria:</i> Slovenian citizenship; active command of Slovenian; capacity to contract and being of generally good health; at least 30 years old; obtained professional title of a graduate lawyer in Slovenia or acquired equivalent education abroad; passed lawyer’s state exam; personally suited to hold	A public call is issued in the OJ by the MoJ, and then the President (with opinions of the government and Judicial Council) sends a proposed list of candidates to the Parliament. The Parliament elects the international judge by secret ballot. The Judicial Council (a permanent body undertaking numerous other functions) is composed of 11 members: five elected by Parliament on the proposal of the President (from amongst university law professors, lawyers, and ‘other jurists’), and six elected by judges holding permanent judicial office. ⁹⁷

⁸⁸ It is unclear whether this opinion/resolution is legally binding on the government.

⁸⁹ ‘Questions from the Member Jurgens (PvdA) Communicated to the Minister of Justice’ (16 May 2000) <<https://www.parlementairemonitor.nl/9353000/1/j9vvi5epmj1ey0/vi3e894euprw>> accessed 18 December 2019.

⁹⁰ *ibid.*

⁹¹ 27g(2) Act No. 185/2002 on the Judicial Council. ‘Slovakia – Answers to Questionnaire of the NPSJCEU Fifth Colloquium’ (2012) <https://www.stj.pt/wp-content/uploads/2018/04/slovakia_answersquestionnaire.pdf> accessed 18 December 2019.

⁹² For further requirements see s. 3 Act on the Judicial Council (*supra*).

⁹³ Art 3 Act on the nomination of candidates from the Republic of Slovenia for judges at international courts.

⁹⁷ More details (*eg* time lengths) are available in the English translation of the Act, available at: *ibid.*

	<p>judicial office.⁹⁴ Additionally, the individual must either: 1) have min. 15 years judicial experience or 20 years professional experience in the field of law; or 2) be a university law teacher with at least the title of Assistant Professor.⁹⁵</p> <p><i>CC criteria:</i> Slovenian citizenship; legal expert; at least 40 years old.⁹⁶</p>	
UK ⁹⁸	<p>The eligibility criterion for the 2012 ECJ appointment were: Excellent understanding and experience of EU law, including the wider impact of the ECJ's judgments on Member States; good operational level of French; excellent intellectual ability and drafting skills; legal practice experience; good organisational and case management skills, including an ability to effectively delegate to, and work with, a support team at the Court; excellent interpersonal skills including an ability to communicate effectively and persuasively with colleagues in the Court.⁹⁹ These do not appear to be laid down in law.</p>	<p>It seems the FCO is ultimately responsible for CJEU appointments.¹⁰⁰ There is a permanent Judicial Appointments Commission (JAC),¹⁰¹ which can optionally be requested by the Lord Chancellor to assist with appointments for UK courts and tribunals indicated in the Constitutional Reform Act 2005,¹⁰² by giving non-binding recommendations.¹⁰³ The Lord Chancellor may request JAC assistance for other appointments, including those by other Ministers.¹⁰⁴ This appears to have been done for the 2015 EU General Court appointment (whereby the JAC carried out the selection exercise on behalf of the FCO)¹⁰⁵ but not for selecting an ECJ judge in 2012.¹⁰⁶ The latter process was run directly by the FCO, which established a different selection panel whose membership and procedure was not public.¹⁰⁷</p>

⁹⁴ Citing Article 8 of the Judicial Service Act (JSA) (1994, as amended) in 'Slovenia – Answers to Questionnaire of the NPSJCEU Fifth Colloquium' (2012) <https://www.stj.pt/wp-content/uploads/2018/04/slovenia_answersquestionnaire.pdf>. This response also states: 'Persons for whom it can justifiably be concluded on the basis of their work, action and behaviour to date that they will not perform judicial office with expertise, honesty and conscientiousness or that as judges they will not safeguard the reputation of the judiciary or the impartiality and independence of judging, and persons convicted of a criminal offence providing grounds for the dismissal of a judge are deemed personally unsuited to holding judicial office.'

⁹⁵ Article 12 Judicial Service Act.

⁹⁶ Article 9 Constitutional Court Act or the Constitutional Court, cited in: 'Slovenia – Answers to Questionnaire of the NPSJCEU Fifth Colloquium' (n 93).

⁹⁸ In a recent Brexit-related development, in January 2020 the Council adjusted the rotation system accordingly, adding Greece to the group of countries partially replacing current AGs on 6 October 2021: 'Declaration by the Conference of the Representatives of the Governments of the Member States on the Consequences of the Withdrawal of the United Kingdom from the European Union for the Advocates-General of the Court of Justice of the European Union' (*Council of the EU*, 29 January 2020) <<https://data.consilium.europa.eu/doc/document/XT-21018-2020-INIT/en/pdf>> accessed 1 February 2020.

⁹⁹ 'UK – Answers to Questionnaire of the NPSJCEU Fifth Colloquium' (2012) 3 <https://www.stj.pt/wp-content/uploads/2018/04/uk_fiftcolloquiumanswersquestionnaire.pdf> accessed 19 December 2019.

¹⁰⁰ Constitutional Reform Act 2005.

¹⁰¹ s 61 CRA 2005.

¹⁰² s 87 CRA 2005. The JAC is used for selections in England & Wales and certain UK-wide tribunals and senior positions, indicated in s 85 CRA 2005.

¹⁰³ s 90 CRA 2005.

¹⁰⁴ s 98 CRA 2005.

¹⁰⁵ 'Judge at the General Court of the European Union | Judicial Appointments Commission' <<https://www.judicialappointments.gov.uk/judge-general-court-european-union-0>> accessed 19 December 2019.

¹⁰⁶ JAC, 'Judge of the Court of Justice of the European Union' (25 November 2011) <<https://www.judicialappointments.gov.uk/news/judge-court-justice-european-union>> accessed 19 December 2019.

¹⁰⁷ It was only disclosed several years later on request for research undergone by the think tank Policy Exchange: Michael Pinto-Duschinsky and Lynne Middleton, "Reforming Public Appointments" (2013) Policy Exchange <<https://policyexchange.org.uk/wp-content/uploads/2016/09/reforming-public-appointments-1.pdf>> 41-42.

Table 2: Member States with procedural criteria for CJEU selections

Member State	Procedure
Austria	The federal government appoints ‘members’ of the CJEU (thus likely including AGs), ¹⁰⁸ which has to be approved by the ‘Main Committee of the National Council’ (lower house) or the ‘Federal Council’ (upper house). ¹⁰⁹
Finland ¹¹⁰	A notification of vacancies ‘published in an appropriate manner.’ An Expert Advisory Board responsible for international court appointments is established by the government for a six year period. It is composed of nine members appointed by the government, including: representatives of the PM, MFA, MoJ, SC, Supreme Administrative Court, and Prosecutor General. ¹¹¹ The government takes the ultimate decision on nomination. ¹¹²
Germany	The Judicial Electoral Committee is a permanent body (also performing other functions) whose members are appointed by the Bundestag. The Federal MoJ, Minister of Consumer Protection, and members of the Judicial Electoral Committee may propose candidates for CJEU judges or AGs, and the candidates’ personal files are forwarded by them to the Committee. The Committee examines the materials (it appears there is no hearing) and votes by majority <i>via</i> secret ballot. Then, on the agreement of the Federal government, the latter appoints the elected person to the President. ¹¹³
Sweden	Nominations for European courts are to be prepared in the same way as for ordinary courts. ¹¹⁴ There is a permanent ‘Judges Committee’ composed of: five former or current ordinary judges; two jurists outside the judiciary, one of whom must be a lawyer; two representatives of the public). It is responsible for issuing notices of vacancies, collecting applications, and making (reasoned, non-appealable) nominations to the government. If the government appoints a different candidate, the committee should have the opportunity to comment. ¹¹⁵

¹⁰⁸ Art 23c-1 Constitution

¹⁰⁹ Art 23c-2 Constitution.

¹¹⁰ The Court Act (2016 no. 673) nor the Law on the nomination of candidates for the office of Judge and Member of the International Courts and of the Court of Justice of the European Union (2016 no. 676) seem to lay down any substantive criteria to be fulfilled by the candidate. Neither were any indicated in the ‘Finland – Answers to Questionnaire of the NPSJCEU Fifth Colloquium’ (2012) <https://www.stj.pt/wp-content/uploads/2018/04/finland_answersquestionnaire.pdf>.

¹¹¹ Law no. 676 of 2016.

¹¹² ‘Finland – Answers to Questionnaire of the NPSJCEU Fifth Colloquium’ (n 109) 3.

¹¹³ Richterwahlgesetz (1950, as amended) It is not indicated what happens if the government does not agree.

¹¹⁴ s 2 Act (2014:414) regarding the procedure for selection of candidates to nominate for positions at the Court of Justice of the European Union.

¹¹⁵ Law (2010: 1390) on the appointment of ordinary judges.