



Association Européenne des Magistrats

Groupe régional de l'Union Internationale des magistrats

European Association of Judges

Regional Group of the International Association of Judges

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**STATEMENT FROM THE EUROPEAN ASSOCIATION OF JUDGES (EAJ)
ON THE APPOINTMENT OF JUDGES FOR THE EUROPEAN COURT OF
JUSTICE.**

1. For the European Judges Association, the well-functioning of the European Court of Justice, including the General Court and Specialised Courts, is of utmost importance for the European Union and the European legal system. Based on the Rule of Law, the European Union cannot function without a European Court System, which is furnished with a sufficient number of judges to handle future caseloads with utmost the quality and in an acceptable period of time.
2. The EAJ shares the concerns of the President of the European Court of Justice, expressed in two letters dating from the 4 April 2011 and 13 October 2014, that the present situation is not satisfactory and reform is needed to guaranty the functioning of the European Court system for the future to be.
3. The EAJ wants to emphasise the importance of the forthcoming debate and decision of the European Parliament for the independence of the European Judiciary for the Rule of Law.
4. A significant contribution to the independence of judges are effective procedures to ensure that judges appointed to the Europa Court have appropriate qualifications and experience to perform their job and are independent of the executive of the states who nominate them for membership and will have appropriate security of tenure once appointed.

I - Nomination of Judges

5. In their Recommendation CM/Rec(2010)12 from November 2010, the Committee of Ministers of the Council of Europe have established aspects on the independence of the judiciary in Europe. One of this criteria is that the selection of judges should be based *“on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate case by applying the law while respecting human dignity (no 44)”*.

6. The Magna Charta of the Consultative Council of European Judges (CCJE) from the 17 November 2010 CCJE states in No 5. that *“Decisions on selection, nomination and career shall be based on objective criteria and taken by the body in charge of guaranteeing independence.”*

7. To ensure judicial independence, the Magna Charta further underlines in No 13, *“each State shall create a Council for the Judiciary or another specific body, itself independent from legislative and executive powers, endowed with broad competences for all questions concerning their status as well as the organisation, the functioning and the image of judicial institutions. The Council shall be composed either of judges exclusively or of a substantial majority of judges elected by their peers. The Council for the Judiciary shall be accountable for its activities and decisions.”*

8. The procedure for nomination of a judge for the ECJ does not these recommendations in most member states. Although the EAJ recognises the importance of the panel established under art 255 TEUV as a safeguard against the appointment of inappropriate candidates, it is no guarantee to ensure that member states propose the best qualified candidates available in their jurisdiction. The process of nomination under the TEUV allows member states to propose candidates for judicial office to be chosen by the executive for reasons other than their suitability as judges.

9. The EAJ therefore proposes that the Protocol of the Statute of the Court be amended to reflect that only candidates approved as suitable for appointment by national bodies independent of the executive should be considered for appointment. Such bodies may be the national council for the judiciary or a body such as a judicial appointments commission.

10. Further for similar reasons an extension of tenure of judges ought to be decided by a body independent of the Council.. This could be the national council of the judge concerned.

11. Looking at the casework of the European Court of Justice, the EAJ must notice that an increasing number of preliminary rulings by the ECJ are at the centre of private, commercial and criminal law. The ECJ has become, due to wide range harmonisation in the area of consumer law, company law, intellectual property law, international private law and substantial and procedural criminal law, the final judicial body to rule on important questions in these areas.

12. Taking this into account, judges of the European court have to have an in-depth practical knowledge of the private and criminal law from the legal systems they represent. However, under art 253 sect. 1 TEUV, judges 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 juris consults of recognised competence”. This guaranties a selection of lawyers being appointed as judges who are of high competence and personal standing, but does not necessarily ensure that nominees will have the necessary experience of the areas of law in which they have to work.

13. Following the recommendations of the Committee of Ministers of the Council of Europe and the CCJE, the EAJ asks to establish in the Protocol on the Statute of the Court of Justice of the European Union a system to ensure that the qualifications, skills and capacities of the judges of the ECJ are fit to rule on difficult cases of private, commercial and criminal law. It should be stated that the member states should guarantee that a sufficient number of lawyers with practical background from these legal areas being appointed. These lawyers can be national judges, advocates with high standing or academics with true practical experience.

II - Tenure for Judges

14. The time of office for any judge of the European Court of Justice is fixed to a period of six years, art 253 sect 1 TEUV.

15. Following Recommendation 12(2010) from the Committee of Ministers and Opinion no 5 of CCJE on the law and practice of judicial appointments to the European court of human rights from 27 November 2003, the EAJ is critical of the short period of judicial office held by the judges on the European Court of Justice and the existing mechanism for extension of such tenure.

16. However, the EAJ would propose that judicial independence can be maintained alongside a fixed period term of office in the CJEU if it is understood that appointment of a lawyer who is not already a judge to the ECJ makes that person a judge of the national legal system and national judges who are appointed continue to keep their status as a judge during the period of tenure in Europe. This would mean that in either case on the ending of tenure at the ECJ the judge returns to the national judiciary until compulsory retirement age or whatever other mechanism for terminating the appointment there may be consistent with the principle of judicial independence.