Association des Conseils d'Etat et des Juridictions administratives suprêmes de l'Union européenne a.i.s.b.l.

Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

Council of State of Belgium

Magistrate Assessment

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Introductory statement

This questionnaire has been drawn up for member courts and observers of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union which have set up an assessment system for their magistrates. Member countries which do not have such a system are asked to provide any observations and thoughts regarding the principle of assessing magistrates and the methods used to do so.

I. a) Does your country have an assessment system covering all its magistrates (judicial and/or administrative?

1. a) Italy does not have an assessment system covering all its magistrates. Instead, there is an assessment system which covers ordinary judges (as detailed here below).

Assessment system for ordinary judges- (taken from a document on the Italian Judiciary System prepared by the Superior Council of the Judiciary, pages 91-93)
The reform of the judicial system by Legislative Decree no.160/2006, as amended by Law no. 111/2007, provides for all ordinary judges to be appraised every four years, until they pass their seventh professional appraisal, after 28 years of employment.

These recurring appraisals stress that the professionalism of ordinary judges, under its various profiles, is repeatedly and thoroughly monitored during their whole professional career.

Assuming that a magistrate's independence, impartiality and balance are indispensable conditions for a proper exercise of the judicial functions, these professional appraisals mostly concern: professional capacity, hardworking-ness, diligence and commitment.

The indicators used for assessing magistrates are: legal expertise, mastery of the techniques used in the different judicial sectors; the outcome of the judicial decisions issued in subsequent instances of the proceedings; the quantity and quality of judgements issued; compliance with deadlines for drafting and filing provisions; degree of participation and actual contribution to the proper operation of the office (if available for replacing colleagues, frequency of attendance of refresher courses, contribution to solving organisational issues, etc.). In particular, the reform provides for the identification of average standards for settling proceedings to which to compare the activity carried out by every individual magistrate.

In order to safeguard the autonomy and independence of magistrates, in no case can a professional appraisal reconsider the law applied to individual cases.

When collecting information needed to make a professional appraisal, particular importance is given to the reports drafted by the heads of the judicial offices.

The Superior Council of the Judiciary (CSM) makes professional assessments on the basis of the opinion expressed by the Judicial Council and the documents acquired.

The CSM expresses a favourable professional appraisal when the assessed magistrate is given a pass mark on each of the above mentioned parameters. In that case, the magistrate gets the professional appraisal corresponding to his seniority.

A "non favourable" appraisal is expressed when there are shortcomings in respect of one or more of the above parameters.

An "adverse appraisal" is expressed when there are serious shortcomings in respect of one or more of the above parameters.

The law provides for specific consequences, both professional and economic, as a result of a "non favourable" or "adverse" appraisal; in particular, the law provides for a magistrate to be released from service in case of a double adverse appraisal.

The CSM, by its own circular letter no. 20691 issued on 4 October 2007, has implemented the primary legislation, and has regulated criteria, sources and parameters of assessment that will serve as guidelines for the four-year professional appraisals.

Assessment of members of Council of State and of judges of the Administrative Regional Tribunals (TARs)-

There is no general assessment system for administrative judges. There is a disciplinary control and a kind of assessment is made when an administrative judge is to be promoted or appointed to a higher post. All decisions which regard administrative judges and members of the Council of State are taken after the deliberation of a representative body called *"Consiglio di Presidenza della Giustizia Amministrativa"* [Council of Presidency of Administrative Justice] (which is analogous to the Superior Council of the Judiciary for ordinary judges) whose members are: a) the President of the Council of State who presides over the Body; b) four Members of the Council of State, elected by and among the in-service members of the Council of State; c) six judges of the TARs, elected by and among the in-service judges of the TARs; d) four elected experts (two elected by the Chamber of Deputies and two by the Senate of the Republic); and e) four alternate judges (two elected by and among the Council of State and two elected by and among the TARs).

The fact that there is no real assessment system for administrative judges depends mainly on two connected factors: the small number of administrative judges (110 members of the Council of State and 392 judges of the TARs compared with the approximately 9000 ordinary judges, and the guarantee of independence (which means that assessments could affect the independence of the administrative judges). Control and assessment is necessary but it must be balanced with the independence of the judges.

The philosophy which governs promotions and appointments to higher posts of administrative judges is that they are promoted according to seniority *"salvo demerito"* [unless proven deficient].

According to the Law of 27 April 1982, n. 186, Article 14 states: the Council of State is made up of the President, Presidents of Section, and Councillors of State. The TARs are made up of the President, Councillors of TARs, First Referendaries and Referendaries.

Article 17 paragraphs 2 and 3 provide that with four years of seniority, a Referendary becomes a First Referendary (except in cases where the Council of Presidency finds them deficient) according to the order of their seniority. They are nominated by decree of the President of the Republic by the proposal of the President of the Council of Ministers.

Article 18 paragraphs 1, 2 and 3 provide that after four years a First Referendary is nominated as a Councillor of TAR (except in cases where the Council of Presidency finds them deficient) by decree of the President of the Republic by the proposal of the President of the Council of Ministers.

According to Article 19, based on available vacancies, a Councillor of TAR can be appointed a Councillor of State by the Council of Presidency after at least four years service (but the actual

average is about 20 years of service), based on the assessment of their jurisdictional activities, their publications and their seniority.

Article 21 paragraphs 1, 2 and 3 provide that Councillors of State and Councillors of the TARs, after eight years in their respective offices, are promoted to President of Section of the Council of State and President of TAR, respectively, according to seniority and availability of posts, after an assessment of their capabilities by the Council of Presidency. This promotion is in name-only (with financial remuneration) until such a time as an actual post becomes available and the judge is selected following a general assessment keeping in mind the overall seniority of the eligible judges.

There have been few exceptions to the rule of seniority, which mainly involved a more senior judge being passed over in favour of a less senior judge due either to the senior judge's deficiency (non compliance with deadlines for drafting and filing provisions) or the less senior judge's superior capabilities (exceptional organizational skills). The rule which the Council of Presidency follows most of the time, regarding appointments according mainly to seniority, is considered the best protection of the judge's independence.

b) Within your court, does the assessment system vary depending on the function of individual magistrates (e.g. President, chamber presidents, members of the public prosecutor's office)?

Please refer to section 1a above.

c) Briefly describe the assessment system or systems used for magistrates in your court (if necessary, please include the relevant texts).

Please refer to section 1a above.

II. What is the nature of the regulations which establish and govern the assessment of magistrates in your court (e.g. constitutional, legislative or regulatory framework, guidelines, regulations determined by the court itself or the president)?

According to Article 100 of the Italian Constitution, the law ensures the independence from the government of the Council of State and its members in its legal-administrative consultative function.

Article 108 of the Italian Constitution provides that *"the law ensures the independence of judges of special courts, of state prosecutors of those courts, and of other persons participating in the administration of justice"*.

The tool by which the judges' independence is ensured is the creation of this body (Council of Presidency of Administrative Justice) which is provided for by the Law of 27 April 1982, n. 186 as well as subsequent changes to that law.

The Council of Presidency can adopt general decisions to implement Articles (such as 17, 18, 19 and 21 mentioned above) which give substance to the concepts listed, such as "deficiency" and "capability". Regardless, the main criterium is seniority.

In the frame of the Constitution, the assessment of members of the Council of State and of judges of the TARs, is governed by the law which can be implemented by general decisions of the Council of Presidency of Administrative Justice.

III. What is/are the goal/s of your court's magistrate assessment system:
- improve the organisation and functioning of the court?
- identify the strengths and weaknesses of individual magistrates?
- compare magistrates against each other?
- other?

As understood from the above passages, the goal of the Italian assessment system for administrative judges is to balance the assessment and control of judges with the prevailing regard for the guarantee of their independence.

IV. a) Against what criteria are magistrates in your court assessed (e.g. productivity, quality of work, organisational skills, willingness to take initiatives, decision-making mindset, interaction with colleagues, relations with litigants, continuing training, ability to train others, level of involvement in the court's operation)?

Please see sections 1 and 2 above.

b) Are these criteria weighted? If yes, please explain.

c) If assessment charts or tables are available, please include them.

V. Does the assessment system offer any guarantees designed to safeguard the independence and impartiality of magistrates in your court? If yes, what are these guarantees?

As mentioned above, the independence is guaranteed by the Council of Presidency and by the prevailing criterium of seniority in promotions and appointments to higher posts.

VI. a) How often are magistrate assessments carried out in your court?

The assessments are made at times of promotion or when in competition for higher posts.

b) Describe the various steps in the procedure.

c) Is the assessment preceded by discussions between the assessor/s and the magistrate undergoing assessment? If yes, what is the nature and purpose of these discussions?

There are not usually any discussions between the assessor and the judge undergoing assessment prior to the assessment.

VII. Before the assessment is carried out, is information gathered on the magistrate undergoing assessment? If yes, what information and how is it gathered?

Prior to assessment for promotion or appointment to a higher post, a dossier is compiled for every eligible candidate. This dossier contains a number of decisions, chosen at random, written by the candidate, as well as the general information on the candidates past experiences. The Council of Presidency maintains these files on all candidates.

VIII. Are there any objectives to be attained by the magistrate undergoing assessment? If yes, what are they and how are they set (e.g. productivity and/or qualitative standards)?

The objective of the assessment is to ascertain if there is any reason not to promote or to appoint the candidate to the higher post. Both respect of the average of productivity and compliance with deadlines for drafting and filing provisions are considered in the assessment.

IX. What authority carries out the assessment? Is this an internal or external authority of the court? Is it a collective body? If yes, what is its makeup? What training do assessors receive?

The Council of Presidency, whose members are: a) the President of the Council of State who presides over the Body; b) four Members of the Council of State, elected by and among the in-service members of the Council of State; c) six judges of the TARs, elected by and among the in-service judges of the TAR; d) four elected experts (two elected by the Chamber of Deputies and two by the Senate of the Republic); and e) four alternate judges (two elected by and among the Council of State and two elected by and among the TARs) carries out the assessment. It cannot be considered an internal authority of the court as it is a high administrative body. There is no particular training for the assessors.

X. a) What form does the final decision resulting from the assessment take? Is it a general evaluation (i.e. the magistrate is rated either good or poor) or is a more detailed evaluation provided on a case-by-case basis?

As there is no general assessment process, the final decisions are specific to promotions or appointments.

b) On what is the final decision based (e.g. standard table filled in by the assessor, detailed report)?

c) To what extent does this decision influence the individual situation of the magistrate in question (e.g. positive or negative financial impact, repercussions on career prospects, disciplinary action)?

XI. a) Is the magistrate in question given access to a draft assessment regarding which he or she may make observations before a final assessment decision is taken?

They have access to all documents and decisions which pertain to them.

b) May the magistrate lodge either a judicial or non-judicial appeal against the findings of the assessment? If yes, please briefly describe the various appeal options.

All decisions of the Council of Presidency can be appealed before the administrative judge (first degree TAR, second degree Council of State in its jurisdictional functions) or by appeal to the President of the Republic, who decides according to the advice of the Council of State in its consultative functions.

XII. a) Is an assessment file held on each magistrate? If yes, who holds the file and what does it contain (e.g. activity reports, assessment reports, observations by the magistrate in question, final decision)?

The Council of Presidency maintains these files on all candidates, as detailed above.

b) Who may consult this file?

All candidates may access their own files as well as the files of competing candidates.

c) Is the file confidential? If yes, how is this confidentiality guaranteed?

No, apart from sensitive information which falls under the privacy protection act (e.g. religion, health, et cetera).

XIII. a) Has case law been invoked regarding the legal admissibility of the current assessment system (particularly with regard to the Constitution or the principles of the rule of law)?

No, the main problem of this assessment system is to maintain the compatibility between the judges' independence and the assessment itself.

b) Has case law been invoked regarding compliance of the assessment system with international treaty law, specifically the European Convention on the Protection of Human Rights and Fundamental Freedoms?

No.

XIV. Please provide any additional information you consider to be relevant concerning the current assessment system for magistrates in your country) or regarding the absence of such a system).