

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 1<sup>st</sup> March 2017

DH-SYSC-I (2017)R3

**STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)**

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**COMMITTEE OF EXPERTS ON THE SYSTEM OF THE EUROPEAN  
CONVENTION ON HUMAN RIGHTS  
(DH-SYSC)**

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**DRAFTING GROUP I  
ON THE FOLLOW-UP TO THE CDDH REPORT  
ON THE LONGER-TERM FUTURE OF THE CONVENTION  
(DH-SYSC-I)**

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**MEETING REPORT**

**3<sup>rd</sup> meeting**

**27 February – 1<sup>st</sup> March 2017**

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**Item 1 :     Opening of the meeting, adoption of the agenda and order of business**

1.     The Drafting Group I on the follow-up to the CDDH Report on the longer-term future of the system of the European Convention on Human Rights (DH-SYSC-I) held its 3<sup>rd</sup> meeting in Strasbourg, from 27 February to 1 March 2017, with Mr Vít A. SCHORM (Czech Republic) in the Chair. The list of participants appears in Appendix I. The agenda, as it was adopted, appears in Appendix II.

**Item 2 :     Exchanges of views**

2.     The Group held an exchange of views with Judge Ganna YUDKIVSKA, President of the Fourth Section of the Court, following her presentation of the contribution of the Court to its work (doc. DH-SYSC-I (2017)011) as adopted by the Court sitting in plenary session. The Group welcomed the thorough contribution of the Court at an important stage of its work and warmly thanked Judge Yudkivska for all her clarifications regarding the content of the contribution.

3.     Furthermore, the Group discussed the questions relating to the role of the Advisory Panel of Experts on Candidates for Election as Judges at the Court as well as those relating to the election procedure before the Parliamentary Assembly with Mr Wojciech SAWICKI, Secretary General to the Parliamentary Assembly, accompanied by Mr Günter SCHIRMER, Head of the Legal Affairs and Human Rights Department of the Secretariat of the Parliamentary Assembly, and Mr Jörg POLAKIEWICZ, Director of Legal Advice and Public International Law and Secretary to the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights.

**Item 3 :     Work on the selection and election process of judges of the European Court of Human Rights**

4.     The Group proceeded to the examination of all the questions addressed in the working document DH-SYSC-I(2017)010. It decided that the document will be revised following the procedure set under Item 4 below. The Group gave a general guidance to the Secretariat regarding the revision of the working document with a view to the submission of a draft report to the DH-SYSC for its 3<sup>rd</sup> meeting (10–12 May), under the responsibility of the Chair and the Secretariat. The Group approved the overall structure (challenges, responses within and outside the existing structures indicating, where necessary, which responses would require an amendment to the Convention).<sup>1</sup> It instructed the Secretariat to make the whole text as succinct as possible. However, all the conclusions reached should be preceded by an analysis of the non-retained proposals.

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<sup>1</sup> As requested by the CDDH Bureau at its 96<sup>th</sup> meeting, see doc. CDDH-BU (2016)R96, § 7 ii).

5. The Group gave the following specific guidance for the revision of the draft report:

*i) As regards the national selection procedures*

6. The Group reiterated the conclusions of the DH-SYSC, underlining the importance of the full implementation of the Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights. In particular, as it has also been envisaged by the CDDH,<sup>2</sup> follow-up work should be conducted.

7. This follow-up should take into account the fact that it is necessary to preserve the particularities of the national system. A first step could be to update the examples of good practices of the Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights. This work could be carried out in cooperation with the Secretariat of the Parliamentary Assembly.

8. The update of the guidelines or the elaboration of a recommendation stating the essential characteristics which every national selection procedure should present could constitute an additional step, only if it is found necessary.

*ii) As regards the selection criteria, the Drafting Group agreed upon the following:*

– The modification of the duration of the term of office

9. The Group reiterated the conclusions of the DH-SYSC, namely that the duration of the term must preserve the independence of judges and the institutional stability of the Court. It noted that the concerns related to the nine-year term, which could form an obstacle in the career of younger judges, may be diluted in the framework of responses provided as regards the recognition of service as a judge at the Court and future employment perspectives. A long term of office allows the Court to develop a real institutional expertise and judges to develop a genuine career at the Court. While the majority of experts is in favour of the current term, the Group considered that an analysis of an automatically renewable six-year term (see also § 12 of the contribution of the Court) which could *inter alia* guarantee predictability of leaving the Court or the prolongation of the current term to twelve years should be made. This analysis should state the pros and cons of these and other proposals.

– A minimum age for candidates

10. The Group reiterated that the formal introduction of a minimum age for candidates should not be envisaged in the light of the diversity of national systems. As the DH-SYSC noted, focus should be given on the professional (judicial) experience at the domestic level as was also noted by the CDDH in its report on the longer-term future of the system of the Convention (doc. CDDH(2015)R84 Addendum I, § 105). It however decided that this requirement was adequately stipulated in the Convention read in conjunction with the CM 2012 Guidelines and that no amendment of these texts was necessary.

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<sup>2</sup> § 104 of the CDDH report (doc. CDDH(2015)R84 Addendum I).

– The requirement to present a list of three candidates

11. It is recalled that the DH-SYSC decided that the possibility for member States to present a list of less than three candidates for election should be further examined. The Group considered the three possible models (one-candidate list, two-candidate list, three-candidate list) and decided in favour of the current three-candidate model. The Group stressed that any change of the current system would, in fact, require an amendment of the Convention. In addition, the current model constitutes a guarantee for the independence of the list while the two-candidate model needs to respect the gender requirement.

12. However, the Group agreed that consideration should be given to the possibility without changing the Convention to present a list < 3 when a member State advances exceptional circumstances rendering impossible to present three sufficiently qualified candidates. The Group considered that the State concerned would need to provide proper justification that all necessary efforts have been undertaken and to advance objective reasons to justify these exceptional circumstances, including reasons based on characteristics of the national selection procedure concerned. In this regard, the Group stressed that follow up questions of this proposal have not yet been discussed and have to be considered. The Group also noted that according to the Court, “the requirement to submit a list of three candidates should be maintained, without prejudice to consideration being given to possible alternatives that might emerge in due course. It would observe that the issue of the list of three names is closely linked, *inter alia*, to the quality of the national selection procedures.” (§ 10 of the contribution of the Court). The Group instructed the Secretariat to seek the advice of the Directorate of Legal Advice and Public International Law on the modalities of this option and the necessity to amend the Convention.

*iii) As regards the role of the Advisory Panel in the selection and election process*

13. From the outset, the Group welcomed the recent developments aiming to reinforce the communication and interaction between the Advisory Panel and the Committee on the Election of Judges of the Parliamentary Assembly.

14. The Group considered the three proposed functions (enhancement of the current procedure, additional advisory role to the Parliamentary Assembly, full integration into the Assembly’s procedure), in light of the contributions by Belgium and Estonia. It decided that the initial role of the Panel of giving confidential advice to States Parties should be preserved. With a view to the finalisation of the analysis of the Panel’s role, it instructed the Secretariat to recall the criteria for the appointment of its members. It welcomed that the possibility for the Advisory Panel to explain its views on the candidates and participate in the procedure before the PACE Committee on Election of Judges is currently being explored by the latter (see also below).

*iv) As regards the interpretation of the criteria*

15. The Group considered that the guidelines should be the text of reference for all actors in the process with a view to their application, while respecting the diversity of national systems. It decided that no further codification of the interpretation of the criteria was necessary at this stage.

v) *As regards the election process*

16. The Group welcomed the current reflections carried out by the Committee on Election of Judges as presented by the Secretary General of the Parliamentary Assembly and noted that a report would be finalised in 2018.

17. The Group reiterated the conclusions of the DH-SYSC according to which work should concentrate on the improvement of the current system in which the election of judges to the Court falls under the Parliamentary Assembly, in accordance with the Convention. The Group wished to pursue the idea of the democratic legitimacy of the judges but took into account the hazards of the political process and reiterated the need to prevent these hazards to the extent possible, so as to ensure the election of the best judge to the European Court of Human Rights.

18. As highlighted by the DH-SYSC, the Group considered that its suggestions regarding the election process could feed into the work of the Parliamentary Assembly.

19. The Group instructed the Secretariat to consolidate the proposals presented in the working document (doc. DH-SYSC-I(2017)010) taking into account the presentation made by the Secretary General of the Parliamentary Assembly as well as the subsequent discussions held in particular regarding the composition of the Committee on the Election of Judges to the European Court of Human Rights, the holding of interviews, the voting regulations and the quorum, or to the communication and the interaction between the Panel and the Assembly or its Committee on the Election of Judges. In the framework of the finalisation of the exhaustive analysis, the alternative models should also be presented. All the proposals should be analysed taking into account their impact on the candidates as well as on the authority of the Court.

20. With a view to this analysis, the Group considered that an additional question that needs to be addressed is the situation where the Committee of Election of Judges finds that one candidate is not suitable for election but does not wish to reject the list in its entirety. Would it be possible to present to the Plenary a list with less than three candidates without amending the Convention? The Group also considered that the idea of putting only one recommended candidate to the Plenary, which would vote in favour or against that candidate, needs to be addressed.

21. The Group instructed the Secretariat to seek the advice of the Directorate of Legal Advice and Public International Law on the feasibility of these options without amending the Convention.

vi) *As regards the conditions of employment and working conditions at the Court*

22. The Group examined the conditions of employment and working conditions in light of the contribution of the Court, regarding aspects relating to the exercise of the mandate as judge and the situation of judges after the end of their mandate. It endorsed the inclusion in their entirety in its report of the proposals.

23. It instructed the Secretariat to include these elements in the revised document, following the structure of the contribution of the Court without a specific examination of the working conditions (see § 6 of the contribution of the Court).

24. Some experts also noted that questions pertaining to remuneration may constitute a factor to be taken into consideration by the possible candidate.

vii) *As regards ad hoc judges*

25. The Group reiterated the conclusion of the DH-SYSC, namely that a distinct regime for *ad hoc* judges is notably justified by the rarity of the procedure's use. As noted by the DH-SYSC, the Court could envisage prolonging or rendering more flexible the two-year period for the list of *ad hoc* judges. The Group recalled that the DH-SYSC had noted that the designation procedure of the *ad hoc* judge, from a list previously submitted by the concerned State, could be more transparent but did not retain this proposal.

#### **Item 4 : Organisation of future work**

26. As regards the specific modalities of certain proposals (see §§ 11 and 20 of this meeting report), the Group instructed the Secretariat to seek the advice of the Directorate of Legal Advice and Public International Law. The specific wording of the questions would be first approved by the participants of the meeting by written procedure.

27. As regards the preparation of the draft report, the Group decided the following:

- In view of the 3<sup>rd</sup> DH-SYSC meeting (10–12 May 2017), the Secretariat is instructed to prepare a revised version of the working document based on:
  - The contribution of the Court (document DH-SYSC-I(2017)011);
  - Comments formulated during the present DH-SYSC-I meeting;
  - Information provided by the Secretariat of the Parliamentary Assembly and by the Secretariat of the Advisory Panel at the present meeting;
  - New contributions of experts on the relevant parts of the working document (doc. DH-SYSC-I (2017)010), who are invited to send them to the Secretariat ([DGI-CDDH-Reform@coe.int](mailto:DGI-CDDH-Reform@coe.int)) by **Wednesday 5 April 2017**;
- The draft report will be sent to the experts by **Wednesday 3 May 2017**;
- All contributions on the draft report should be sent to the Secretariat before the 3<sup>rd</sup> DH-SYSC meeting.

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## Appendix I – List of participants

### MEMBER STATES/ETATS MEMBRES

#### **ALBANIA/ALBANIE**

Ms. Evi SADUSHAJ, Permanent Representative of the Albanian Government Agent to the European Court of Human Rights

#### **ARMENIA/ARMENIE**

Ms. Varduhi MELIKYAN, Second Secretary, Legal Department, Ministry of Foreign Affairs

#### **BELGIUM/BELGIQUE**

Mme. Isabelle MINNON, Co-Agent du Gouvernement de la Belgique auprès de la Cour européenne des droits de l'homme, SPF Justice, Service des Droits de l'Homme

#### **CZECH REPUBLIC / REPUBLIQUE TCHÈQUE**

Mr. Vít A. SCHORM, Chairperson of DH-SYSC-I / Président du DH-SYSC-I, Government Agent of the Czech Republic before the European Court of Human Rights, Ministry of Justice

#### **DENMARK/DANEMARK**

Mr. Rasmus KIEFFER-KRISTENSEN, Head of Department, Danish Ministry of Justice

Mr. Martin BANG, Head of Section, Danish Ministry of Justice

#### **ESTONIA/ESTONIE**

Ms. Katri LÕHMUS, Lawyer, International Law Division of the Legal Department, Ministry of Foreign Affairs

#### **FINLAND/FINLANDE**

Ms. Katja KUUPPELOMÄKI, Legal Officer, Unit for Human Rights Courts and Conventions, Legal Service, Ministry for Foreign Affairs

#### **GERMANY/ALLEMAGNE**

Ms. Kathrin BRUNOZZI, Federal Ministry of Justice and Consumer Protection

#### **LATVIA/LETTONIE**

Ms. Renāte RŪSE-AUZIŅA, Jurisconsult of the Government Agent Office before International Human Rights Organisation, Ministry of Foreign Affairs

#### **LUXEMBOURG**

Mme. Brigitte KONZ, Juge de Paix directrice, Cité judiciaire

#### **MONTENEGRO/MONTÉNÉGRO**

Mr. Ivo ŠOĆ, Advisor of the Representative of Montenegro before the European Court of Human Rights

#### **NETHERLANDS/PAYS-PAS**

Ms. Johanna PALM, Ministry of Security and Justice, Legislation Department

Ms. Noortje VAN RIJSEN, Legal Officer, Ministry of Foreign Affairs of the Netherlands, Legal Affairs Department (DJZ/IR), International Law Division

#### **NORWAY/NORVÈGE**

Mr. Morten RUUD, Vice-Chairperson of DH-SYSC-I / Vice-Président du DH-SYSC-I, Special Adviser, Ministry of Justice

**POLAND/POLOGNE**

Ms. Aleksandra ORR, Specialist, Criminal Proceedings Unit, Department of Proceedings before International Human Rights Protection Bodies, Ministry of Foreign Affairs

**RUSSIAN FEDERATION/FEDERATION DE RUSSIE**

M. Stanislav KOVPAK, Représentant du Ministère de la Justice de la Fédération de Russie, Représentation de la Fédération de Russie auprès du Conseil de l'Europe

Ms. Kseniya ROGOZYANSKAYA, Attaché, Ministry of Justice of Russian Federation, Permanent Representation of Russian Federation to the Council of Europe

**SPAIN/ESPAGNE**

Mr. Alfonso BREZMES MARTÍNEZ DE VILLARREAL, Senior State Attorney of the Constitutional Law & Human Rights Department, Ministry of Justice

**SWEDEN/SUÈDE**

Ms. Helen LINDQUIST, Desk Officer, Department for International Law, Human Rights and Treaty Law, Ministry for Foreign Affairs, Government Offices of Sweden

**TURKEY / TURQUIE**

Mr. Öner AYDIN, Rapporteur Judge, Ministry of Justice

Mr. Selahattin DOĞAN, Deputy to the Director of the Human Rights department, Ministry of Justice

Mme. Aysen EMÜLER, Experte juridique, Représentation permanente de la Turquie auprès du Conseil de l'Europe, 23, boulevard de l'Orangerie, F-67000 Strasbourg

Ms. Sibel ERKAN, Représentante Permanente Adjointe, Ministère des Affaires Etrangères

**UNITED KINGDOM/ROYAUME-UNI**

Mr. Rob LINHAM, Acting Deputy Director for Human Rights and Devolution, Ministry of Justice

**OBSERVERS/OBSERVATEURS****SAINT-SIEGE / HOLY SEE**

M. Grégor PUPPINCK

M. Lorenzo BOTRUGNO, c/o Mission Permanente du Saint-Siège auprès du Conseil de l'Europe

**EUROPEAN NETORK OF NATIONAL HUMAN RIGHTS INSTITUTIONS / RÉSEAU EUROPÉEN DES INSTITUTIONS NATIONALES DES DROITS DE L'HOMME**

Mme. Morgane COULON, Chargée de mission au CNCDH

**PARLIAMENTARY ASSEMBLY / ASSEMBLÉE PARLEMENTAIRE**

Mr. Günter SCHIRMER, Head of Department, Legal Affairs & Human Rights Department

**EUROPEAN COURT OF HUMAN RIGHTS/ COUR EUROPÉENNE DES DROITS DE L'HOMME**

Ms. Ganna YUDKIVSKA, President of the Fourth Section

**REGISTRY OF THE EUROPEAN COURT OF HUMAN RIGHTS / GREFFE DE LA COUR EUROPÉENNE DES DROITS DE L'HOMME**

Mr. John DARCY, Deputy Head of the Private Office of the President, European Court of Human Rights

Mr. Taras VAVRYNCHUK, Lawyer, European Court of Human Rights

**SECRETARIAT TO THE ADVISORY PANEL OF EXPERTS ON CANDIDATES FOR ELECTION AS JUDGE TO THE EUROPEAN COURT OF HUMAN RIGHTS**

Mr. Jörg POLAKIEWICZ, Director of Legal Advice and Public International Law and Secretary to the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights

Ms. Katharina LONGIN, Intern, Directorate of Legal Advice and Public International Law

**SECRETARIAT**

DG I – Human Rights and Rule of Law / Droits de l’homme et Etat de droit  
Council of Europe / Conseil de l’Europe, F-67075 Strasbourg Cedex

Mr. Christos GIAKOUMOPOULOS, Director of Human Rights

Mr. Alfonso DE SALAS, Head of the Human Rights Intergovernmental Cooperation Division / Chef de la Division de la coopération intergouvernementale en matière de droits de l’Homme, Secretary of the CDDH / Secrétaire du CDDH

Ms. Irène KITSOU-MILONAS, Head of the Unit on the system of the European Convention on Human Rights / Chef de l’Unité sur le système de la Convention européenne des droits de l’homme, Secretary of the DH-SYSC / Secrétaire du DH-SYSC

Ms. Virginie FLORES, Administrator/Administratrice, Unit on the system of the European Convention on Human Rights / Unité sur le système de la Convention européenne des droits de l’homme

Ms. Simona MARINA, Assistant/Assistante, Unit on the system of the European Convention on Human Rights / Unité sur le système de la Convention européenne des droits de l’homme

**INTERPRETERS/INTERPRÈTES**

Ms. Cynera JAFFREY

Mr. Derrick WORSDALE

Ms. Isabelle MARCHINI

**Appendix II – Agenda (as adopted)****Item 1:       Opening of the meeting, adoption of the agenda and order of business**General documents

- Draft annotated agenda DH-SYSC-I(2017)OJ003REV
- Draft order of business DH-SYSC-I(2017)OT003
- Report of the 86<sup>th</sup> CDDH meeting (6-8 December 2016) [CDDH\(2016\)R86](#)
- Report of the 2<sup>nd</sup> DH-SYSC meeting (8-10 November 2016) [DH-SYSC\(2016\)R2](#)
- Report of the 2<sup>nd</sup> DH-SYSC-I meeting (19-21 October 2016) [DH-SYSC-I\(2016\)R2](#)
- Report of the 1<sup>st</sup> DH-SYSC-I meeting (29 June –1 July 2016) [DH-SYSC-I\(2016\)R1](#)
- Report of the 85<sup>th</sup> CDDH meeting (15-17 June 2016) [CDDH\(2016\)R85](#)
- Report of the 1<sup>st</sup> DH-SYSC meeting (25-27 April 2016) [DH-SYSC\(2016\)R1](#)
- CDDH report on the longer-term future of the system of the European Convention on Human Rights [CDDH\(2015\)R84 Addendum I](#)
- Brussels Declaration [CDDH\(2015\)004](#)
- Brighton Declaration [CDDH\(2012\)007](#)
- Izmir Declaration [CDDH\(2011\)010](#)
- Interlaken Declaration [CDDH\(2010\)001](#)
- Rome Declaration
- Decisions adopted at the 1252<sup>nd</sup> meeting of the Ministers' Deputies on the CDDH Report on the longer-term future of the system of the European Convention on Human Rights (30 March 2016) [DH-SYSC\(2016\)009](#)
- Terms of reference of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC) for 2016-2017 [DH-SYSC\(2016\)003](#)

**Item 2 :       Work on the selection and election process of judges of the European Court of Human Rights**Working document

- Working document in view of the 3<sup>rd</sup> DH-SYSC-I meeting DH-SYSC-I(2017)010  
(*prepared by the Secretariat*)

Main reference documents***Current work***

- Contribution from the European Court of Human Rights DH-SYSC-I(2017)011

- Contributions in view of the 3<sup>rd</sup> DH-SYSC-I meeting [DH-SYSC-I\(2017\)009REV](#)
- Contributions in view of the 2<sup>nd</sup> DH-SYSC-I meeting [DH-SYSC-I\(2016\)005 REV](#)
- Exchange of views with Mr Wojciech Sawicki, Secretary General to the Parliamentary Assembly of the Council of Europe, during the 2<sup>nd</sup> meeting of DH-SYSC-I (summary prepared by the Secretariat) [DH-SYSC-I\(2016\)008](#)
- Information regarding the various opinions and experiences concerning the national processes of selection of the candidates for the post of judge at the Court and of election of the judges of the Court DH-SYSC-I(2016)006  
Restricted
- Relevant provisions relating to other International or Regional Courts or tribunals [DH-SYSC-I\(2016\)004](#)
- Comment from the Court on the report of the CDDH on the longer-term future of the Convention system [#5281071](#)

#### Working documents of previous meetings

- Working document in view of the 2<sup>nd</sup> DH-SYSC-I meeting [DH-SYSC-I\(2016\)007](#)
- Working document in view of the 1<sup>st</sup> DH-SYSC-I meeting [DH-SYSC-I\(2016\)003](#)

#### Meeting reports

- Report of the 86<sup>th</sup> CDDH meeting (6-8 December 2016) [CDDH\(2016\)R86](#)
- Report of the 2<sup>nd</sup> DH-SYSC meeting (8-10 November 2016) [DH-SYSC\(2016\)R2](#)
- Report of the 2<sup>nd</sup> DH-SYSC-I meeting (19-21 October 2016) [DH-SYSC-I\(2016\)R2](#)

#### ***Previous work***

- Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights [CM\(2012\)40-final](#)  
[CM\(2012\)40-addfinal](#)
- Comparative survey on the recognition of service as a Judge of the European Court of Human Rights [DD\(2013\)1321](#)

#### CDDH

- CDDH report on the longer-term future of the system of the European Convention on Human Rights [CDDH\(2015\)R84 Addendum I](#)
- Report of the CDDH on the review of the functioning of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights [CDDH\(2013\)R79 Addendum II](#)
- Contributions submitted in the framework of the GT-GDR-F work [DH-SYSC-I\(2016\)001](#)
- Compilation of information submitted in the framework of the national reports on the implementation of the Brighton Declaration [DH-SYSC-I\(2016\)002](#)

Advisory Panel of Experts on Candidates for Election as Judge to the Court

- Activity Report of the Advisory Panel of Experts on Candidates for Election as Judge to the Court (2010-2013) [Advisory Panel \(2013\)12 EN](#)

- Activity Report of the Advisory Panel of Experts on Candidates for Election as Judge to the Court (2014-2015) [Advisory Panel \(2016\)1](#)

Parliamentary Assembly

- Procedure for electing judges to the European Court of Human Rights Information document prepared by the Secretariat of the Parliamentary Assembly – Committee on the election of judges to the Court [AS/Cdh/Inf \(2017\) 01](#)

- Country-by-country table of progress - Information document prepared by the Secretariat of the Parliamentary Assembly – Committee on the election of judges to the Court

**Item 3 :      **Organisation of future work****

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