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## European Court of Justice

# EU's top judge defends ECJ against charges of integration agenda

Koen Lenaerts says his role is to uphold the law, 'nothingless and nothing more'



4 HOURS AGO by: **Duncan Robinson** and **Alex Barker** in Luxembourg

What does Europe's top judge think of a full-blooded British tabloid headline casting justices as "[Enemies of the People](http://next.ft.com/content/537a4f56-a2b6-11e6-aa83-bcb58d1d2193)" (<http://next.ft.com/content/537a4f56-a2b6-11e6-aa83-bcb58d1d2193>)?

With a nod to propriety, Koen Lenaerts insists that he "cannot speak about" that Daily Mail [front page](http://next.ft.com/content/cocad18e-a441-11e6-8898-79a99e2a4de6) (<http://next.ft.com/content/cocad18e-a441-11e6-8898-79a99e2a4de6>) or the specifics of a landmark British ruling on parliamentary approval for Brexit.

But the European Court of Justice president is unable to resist making a broader point. "I can say that judges are always vulnerable to outside criticism and if you can't stand the heat, stay out of the kitchen," he said.

To Mr Lenaerts, courts exist to come under fire. Tackling controversy is their function. Yet he is unwilling to accept one charge levelled against the Luxembourg-based ECJ: that it is a politically-driven catalyst for European integration.

The business of his court is "upholding the law, that is it, nothing less and nothing more". The EU legal space it oversees is in parts "less clear than ideally would have been", often

because member state dealmaking on EU treaties and laws relied on imprecision. It makes an umpire even more indispensable and the ECJ is mandated to play that role, however political the question may be.

“We have compulsory jurisdiction. We must answer,” he said, drawing a contrast with the US Supreme Court, which has leeway over its caseload. “The primary law clearly states that the court must decide.”

It is part of the explanation for how the court, in tandem with successive treaties expanding the EU remit, has reached deeper into areas once the preserve of nation states. To the chagrin of Eurosceptics, it rules on everything from asylum policy to whether Muslim women can wear a veil at work. With time, its views will doubtless be sought on Brexit issues too.

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Koen Lenaerts, ECJ president

The ECJ has endured its fair share of political fire. While critics paint it as an opaque, unaccountable body intent on EU integration, its supporters hail its strong independent voice on issues such as privacy and data protection. Its decisions — such as its [“right to be forgotten” ruling \(http://next.ft.com/content/42f4f7fe-da85-11e3-a448-00144feabdco\)](http://next.ft.com/content/42f4f7fe-da85-11e3-a448-00144feabdco), which allows

people to remove irrelevant or outdated search results — have fundamentally changed the way the web operates.

Indirectly acknowledging the precarious political situation faced by the union, Mr Lenaerts says: “I think now there is a consolidation stage again which has started and we’ll see where it leads us.”

He strongly disagrees that the court itself had been a federalist force. “We are not ourselves proactive in this process of deepening as it is oftentimes in the national capital said,” says Mr Lenaerts. “All of what I’m describing here, it’s the member states.”

Educated at Katholieke Universiteit Leuven in Belgium and Harvard, where he shared a class with future chief justice of the US Supreme Court John Roberts, Mr Lenaerts has since 2015 sat atop European courts that he served for 27 years. It puts him in charge of Luxembourg court buildings housing approximately 2,200 staff — just under half of whom are translators, who must turn more than 1,700 cases per year into the EU’s 24 languages.

## European Court of Justice

Facebook privacy case referred to Europe’s

With a tendency to answer questions in fully-formed chapters, Mr Lenaerts describes how the EU single market’s four freedoms have evolved beyond their initial meaning — an analysis

top court (<http://next.ft.com/content/77da4ebc-791e-11e6-97ae-647294649b28>)

Austrian student Max Schrems launched class action suit about site's privacy and data policies



paradoxically championed by Boris Johnson and other Brexiters during Britain's referendum campaign.

The founding “freedoms” of the single market were limited compared with today. “It was the free movement of goods, persons (but only understood as wage workers and self-employed people) establishment (that is, services) and capital,” says Mr Lenaerts.

This status quo lasted for 30 years until 1987, when the EU underwent a rapid deepening, with repeated treaty changes once every five years radically reshaping the bloc into its current form.

The most recent treaty, Lisbon, was formed out of the rubble of the EU's failed constitution, which was scrapped after Dutch and French voters came out against it. Mr Lenaerts admits that Lisbon is “in fact for 90 per cent the constitution treaty”.

Where the court has changed its mind, it has been a consequence of the EU's legislators first altering the law. On access to benefits by foreign nationals, the ECJ's case law until recently “was rather generous”, according to Mr Lenaerts. But from 2014 onwards, a flurry of ECJ judgments gave national governments far more leeway in [restricting benefits](http://next.ft.com/content/25bec884-0d52-11e6-9cd4-2be898308be3) (<http://next.ft.com/content/25bec884-0d52-11e6-9cd4-2be898308be3>) for economically inactive EU migrants.

Although member states altered legislation on benefits in 2006, it took years before a case testing the law's limits appeared before the EU's top court. Changing political priorities in Germany and Britain played no role in the court's thinking, according to Mr Lenaerts. “You say ‘Aha! The court is under pressure of the political mood and therefore they pulled back.’ No, this is absolutely not the case.”

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