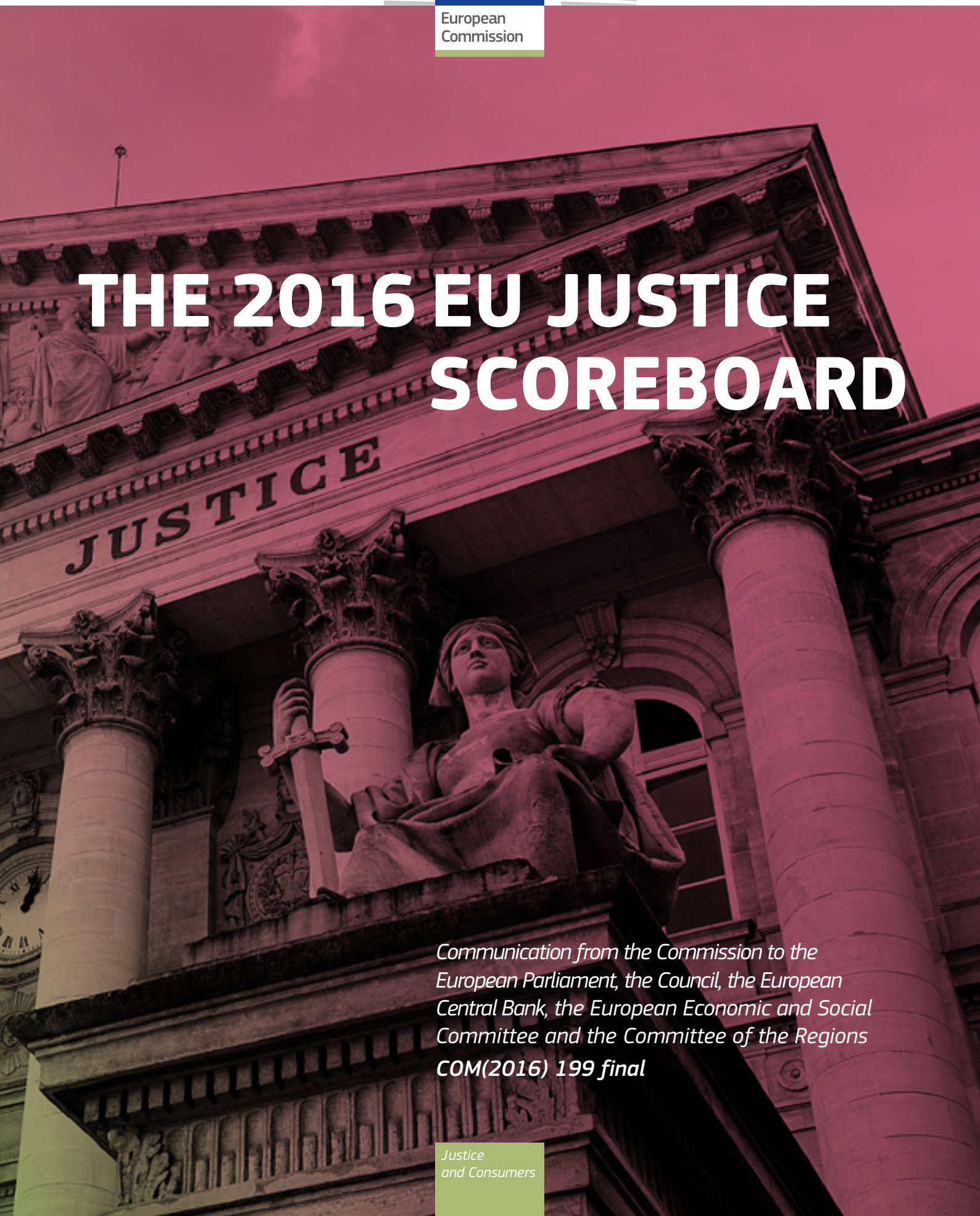
European Commission

THE 2016 EU JUSTICE SCOREBOARD



Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions

COM(2016) 199 final

Justice and Consumers

THE 2016 EU JUSTICE SCOREBOARD

Foreword

Dear Reader,

This fourth edition of the EU Justice Scoreboard develops further the comparative overview of the efficiency, quality and independence of EU Member States' justice systems.

In particular, it uses new quality indicators on training, the use of surveys, the availability of legal aid and the existence of standards. For the first time, Eurobarometer Surveys have been conducted to better examine the perception of judicial independence in the EU among citizens and businesses.

I am pleased to see that the 2016 edition reveals some positive developments, including on the length of judicial proceedings and on the perception of independence. It is also encouraging to observe that most Member States are actively seeking to improve their justice systems with measures ranging from significant reforms of procedural laws, scaling up the use of ICT in the justice system to further promoting the use of Alternative Methods of Dispute Resolution, to name a few areas of activities. An increasing number of Member States are also making use of the European Structural and Investment Funds (ESI Funds) to support their justice reforms.

I am convinced that Europe will reap the reward of these efforts. The key role of national justice systems for upholding the rule of law, enforcing EU law and establishing an investment friendly environment deserve the joint efforts of all EU and national institutions, the judiciary, legal professions and stakeholders.

Learning from each other is the best way to progress for meeting citizens' and businesses' expectations for more effective justice. This is the *raison d'être* of the EU Justice Scoreboard.

Věra Jourová

Commissioner for Justice, Consumers and Gender Equality

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Country codes

BE	Belgium
BG	Bulgaria
CZ	Czech Republic
DK	Denmark
DE	Germany
EE	Estonia
IE	Ireland
EL	Greece
ES	Spain
FR	France
HR	Croatia
IT	Italy
CY	Cyprus
LV	Latvia
LT	Lithuania
LU	Luxembourg
HU	Hungary
MT	Malta
NL	Netherlands
AT	Austria
PL	Poland
PT	Portugal
RO	Romania
SI	Slovenia
SK	Slovakia
FI	Finland
SE	Sweden
UK	United Kingdom
UK (EN+WL)	United Kingdom (England and Wales only)
UK (NI)	United Kingdom (Northern Ireland only)
UK (SC)	United Kingdom (Scotland only)

1. Introduction

Effective justice systems play a crucial role for upholding the rule of law and the Union's fundamental values. They are also a prerequisite for an investment and business friendly environment. This is why improving the effectiveness of national justice systems is one of the priorities of the European Semester – the EU's annual cycle of economic policy coordination. The EU Justice Scoreboard helps Member States to achieve this priority.

The fourth edition of the Scoreboard further develops a comprehensive overview of the functioning of national justice systems: more Member States have participated in the collection of data; new quality indicators have been introduced, for example on standards, training, surveys and legal aid; indicators on independence have been enriched, including with new Eurobarometer surveys; and a deeper insight into certain areas such as electronic communication is provided.

What is the EU Justice Scoreboard?

The EU Justice Scoreboard is an information tool aiming at assisting the EU and Member States to achieve more effective justice by providing objective, reliable and comparable data on the quality, independence and efficiency of justice systems in all Member States.

The Scoreboard contributes to identifying potential shortcomings, improvements and good practices. It shows trends in the functioning of national justice systems over time. It does not present an overall single ranking but an overview of how all the justice systems function, based on various indicators that are of common interest for all Member States.

The Scoreboard does not promote any particular type of justice system and treats all Member States on an equal footing. Whatever the model of the national justice system or the legal tradition in which it is anchored, timeliness, independence, affordability and user-friendly access are some of the essential parameters of an effective justice system.

The Scoreboard focuses on litigious civil and commercial cases as well as administrative cases in order to assist Member States in their efforts to pave the way for a more investment, business and citizen-friendly environment. The Scoreboard is a tool which evolves in dialogue with Member States and the European Parliament, with the objective of identifying the essential parameters of an effective justice system. The European Parliament has called on the Commission to progressively broaden the scope of the Scoreboard and a reflection on how to do so is ongoing.

What is the methodology of the EU Justice Scoreboard?

The Scoreboard uses various sources of information. Large parts of the quantitative data are provided by the Council of Europe Commission for the Evaluation of the Efficiency of Justice (CEPEJ) with which the Commission has concluded a contract to carry out a specific annual study [1]. These data range from 2010 to 2014, and have been provided by Member States according to CEPEJ's methodology. The study also provides detailed comments and country-specific information sheets that give more context and should be read together with the figures.

The other sources of data are the group of contact persons on national justice systems [2], the European Network of Councils for the Judiciary (ENCJ), the Network of the Presidents of the Supreme Judicial Courts of the EU, Association of the Councils of State and Supreme Administrative Jurisdictions of the EU (ACA), the European Competition Network, the Council of Bars and Law Societies of Europe (CCBE), the Communications Committee, the European Observatory on infringements of intellectual property rights, the Consumer Protection Cooperation Network, Eurostat, the European Judicial Training Network (EJTN), the World Bank and the World Economic Forum. The methodology for the 2016 Scoreboard has been enhanced by involving more closely the group of contact persons on national justice systems.

(1) Available at: http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm

(2) In view of the preparation of the EU Justice Scoreboard and to promote the exchange of best practices on the effectiveness of justice systems, the Commission asked Member States to designate two contact persons, one from the judiciary and one from the ministry of justice. Regular meetings of this informal group are taking place.

How does the EU Justice Scoreboard feed into the European Semester?

The Scoreboard provides information on the functioning of justice systems and helps assess the impact of justice reforms. If the Scoreboard reveals poor performance, this always requires a deeper analysis of the reasons why. This country-specific assessment is carried out in the context of the European Semester process through bilateral dialogue with the authorities and stakeholders concerned. This assessment takes into account the particularities of the legal system and the context of the concerned Member States. It may eventually lead the Commission to propose to the Council to adopt Country-Specific Recommendations on the improvement of national justice systems ([3]).

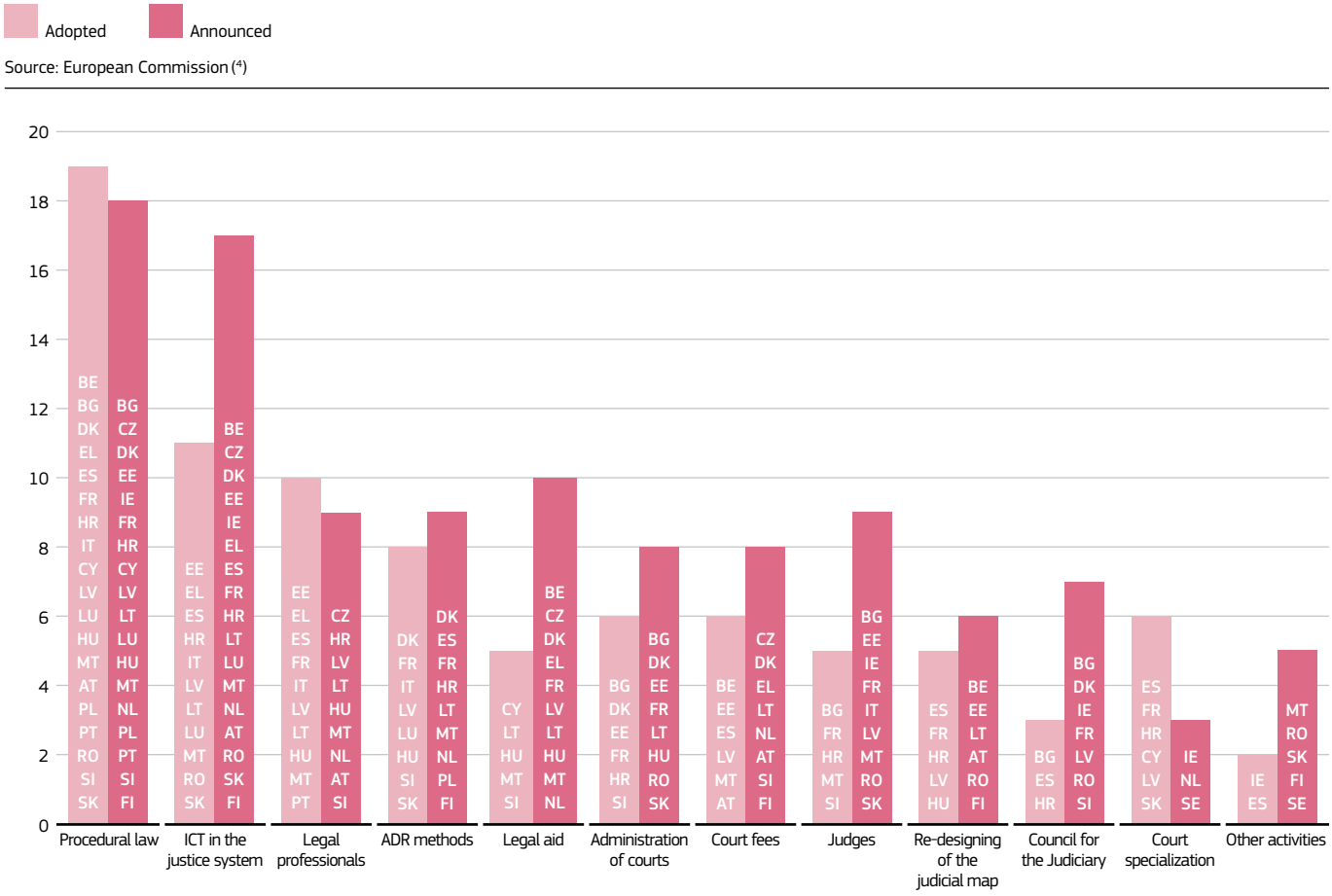
([3]) The reasons for country-specific recommendations are presented on an annual basis by the Commission in individual country reports in the form of Staff Working Documents, available at: http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

2. Context: continued efforts to improve justice systems

This edition of the Scoreboard is being published at a time when a number of Member States are taking measures to improve their justice systems. The figure below shows that in 2015 almost all Member States made, or announced, changes to their justice systems.

Figure 1

Legislative and regulatory activity concerning justice systems in 2015 (adopted measures/announced initiatives per Member State)



Source: European Commission [4]

Figure 1 presents a factual overview of 'who does what', without any qualitative evaluation. It reveals that many Member States are active in the same areas and could therefore learn from each other. It also shows a dynamic of justice reforms across the EU as, in addition to the measures adopted in 2015, further initiatives have been announced in a number of Member States.

The scope, scale and state of play of the different initiatives vary among Member States. A large number of Member States enacted or announced changes to their procedural law. Their activities continued to focus on information and communication technologies (ICT), but Member States also took initiatives concerning the legal professions, alternative dispute resolution (ADR) methods, legal aid, administration of courts, court fees, statute of judges, redesigning judicial maps, court specialization and Councils for the Judiciary.

[4] The information has been collected in cooperation with the group of contact persons on national justice systems for 26 Member States. DE and UK did not submit information. DE stated that it is engaged in reforming its justice system with scope and scale varying within the 16 federal states.

These efforts are part of the structural reforms encouraged in the context of the European Semester. The 2016 Annual Growth Survey underlined that *"enhancing the quality, independence and efficiency of Member States' justice systems is a prerequisite for an investment and business friendly environment. […] It is necessary to ensure swift proceedings, address the court backlogs, increase safeguards for judicial independence and improve the quality of the judiciary, including through better use of ICT in courts and use of quality standards."* ([5]) For the same reason, improving national justice systems is also amongst the efforts needed at national level to accompany the Investment Plan for Europe ([6]).

The findings of the 2015 Scoreboard, together with a country-specific assessment for each of the Member States concerned, fed into the European Semester. The 2015 European Semester shows that certain Member States are still facing particular challenges ([7]). In particular, the Council, on a proposal from the Commission, addressed **Country-Specific Recommendations** to certain Member States highlighting ways in which they could make their justice systems more effective ([8]). Moreover, the justice reforms in the other Member States facing challenges are closely monitored through the **country reports** published during the European Semester ([9]) and in those Member States under an Economic Adjustment Programme ([10]). Furthermore, in the context of the Third Pillar of the Investment Plan for Europe, the justice systems in nine Member States have been identified as a challenge to investment ([11]).

Between 2014 and 2020, the EU will provide up to EUR 4.2 billion through the European structural and investment funds (ESI Funds) to support justice reforms ([12]). 14 Member States ([13]) identified justice as an area to be supported by the ESI Funds in their programming documents. The Commission emphasises the importance of taking a result-oriented approach when implementing the funds: this approach is also required under the ESI Funds Regulation. The Commission is discussing with Member States how best to assess and evaluate the impact of ESI Funds on the justice systems concerned.

The economic impact of fully functioning justice systems justifies these efforts. Effective justice systems play a key role in establishing confidence throughout the business cycle. Where judicial systems guarantee the enforcement of rights, creditors are more likely to lend, firms are dissuaded from opportunistic behaviour, transaction costs are reduced and innovative businesses which often rely on intangible assets (e.g. intellectual property rights - IPR) are more likely to invest. The importance of the effectiveness of national justice systems for SMEs has been highlighted in a 2015 survey ([14]) of almost 9,000 European SMEs on innovation and IPR. The survey revealed in particular that cost and excessive length of judicial proceedings were among the main reasons for refraining from starting an IPR infringement procedure in court. The positive impact of national justice systems on the economy is underlined in literature and research ([15]), including from the International Monetary Fund ([16]), the European Central Bank ([17]), the OECD ([18]), the World Economic Forum ([19]), and the World Bank ([20]).

The relevance of Member States' efforts to improve the effectiveness of their justice systems is also confirmed by the consistently high workload for courts over the years, although the situation varies between Member States, as shown by the figures below.

([5]) Annual Growth Survey 2016, Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Council, the Committee of the Regions and the European Investment Bank of 26 November 2015, COM(2015) 690 final, p. 13.

([6]) Commission Staff Working Document 'Member States Investment Challenges' of 18 December 2015, SWD(2015) 400 final/2.

([7]) BE, BG, IE, ES, HR, IT, CY, LV, MT, PL, PT, RO, SI, SK.

([8]) HR, IT, LV, SI; see Council Recommendation of 14 July 2015 on the 2015 National Reform Programme of Croatia and delivering a Council opinion on the 2015 Convergence Programme of Croatia, (2015/C 272/15); Council Recommendation of 14 July 2015 on the 2015 National Reform Programme of Italy and delivering a Council opinion on the 2015 Stability Programme of Italy, (2015/C 272/16); Council Recommendation of 14 July 2015 on the 2015 National Reform Programme of Latvia and delivering a Council opinion on the 2015 Stability Programme of Latvia, (2015/C 272/17); Council Recommendation of 14 July 2015 on the 2015 National Reform Programme of Slovenia and delivering a Council opinion on the 2015 Stability Programme of Slovenia, (2015/C 272/02).

([9]) The 2015 Country reports are available at: http://ec.europa.eu/economy_finance/eu/index_en.htm

([10]) CY and EL.

([11]) BG, ES, HR, IT, MT, PL, RO, SK, SI; see Commission Staff Working Document 'Member States Investment Challenges' of 18 December 2015, SWD(2015) 400 final/2.

([12]) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ L 347, 20.12.2013.

([13]) BG, CZ, EL, ES (only ERDF), HR, IT, LV, LT, MT, PL, PT, RO, SK, SI.

([14]) Intellectual Property (IP) SME Scoreboard 2015 prepared for the European Observatory on Infringements of Intellectual Property Rights (forthcoming).

([15]) Alves Ribeiro Correia/Antas Videira, "Troika's Portuguese Ministry of Justice Experiment: An Empirical Study on the Success Story of the Civil Enforcement Actions", in International Journal for Court Administration, Vol. 7, No. 1, July 2015 attest the success of reforms drawn in Portugal.

([16]) IMF, "Fostering Growth in Europe Now" 18 June 2012.

([17]) Available at: http://www.ecb.europa.eu/press/key/date/2013/html/sp130516.en.html

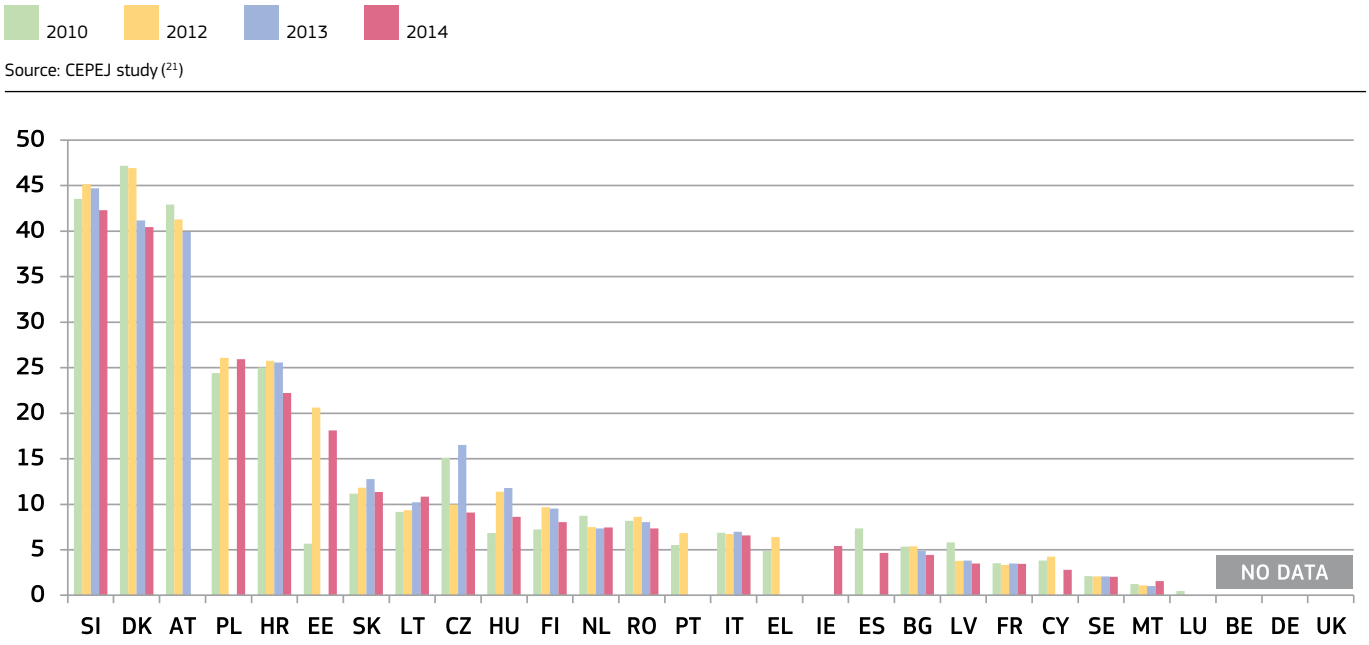
([18]) See e.g. "What makes civil justice effective?", OECD Economics Department Policy Notes, No. 18 June 2013 and "The Economics of Civil Justice: New Cross-Country Data and Empirics", OECD Economics Department Working Papers, No. 1060.

([19]) World Economic Forum, "The Global Competitiveness Report; 2013-2014", available at: http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf

([20]) Available at: http://www.doingbusiness.org/reports/global-reports/~/media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB14-Chapters/DB14-Enforcing-contracts.pdf

Figure 2

Number of incoming civil, commercial, administrative and other cases (*) (first instance/per 100 inhabitants)

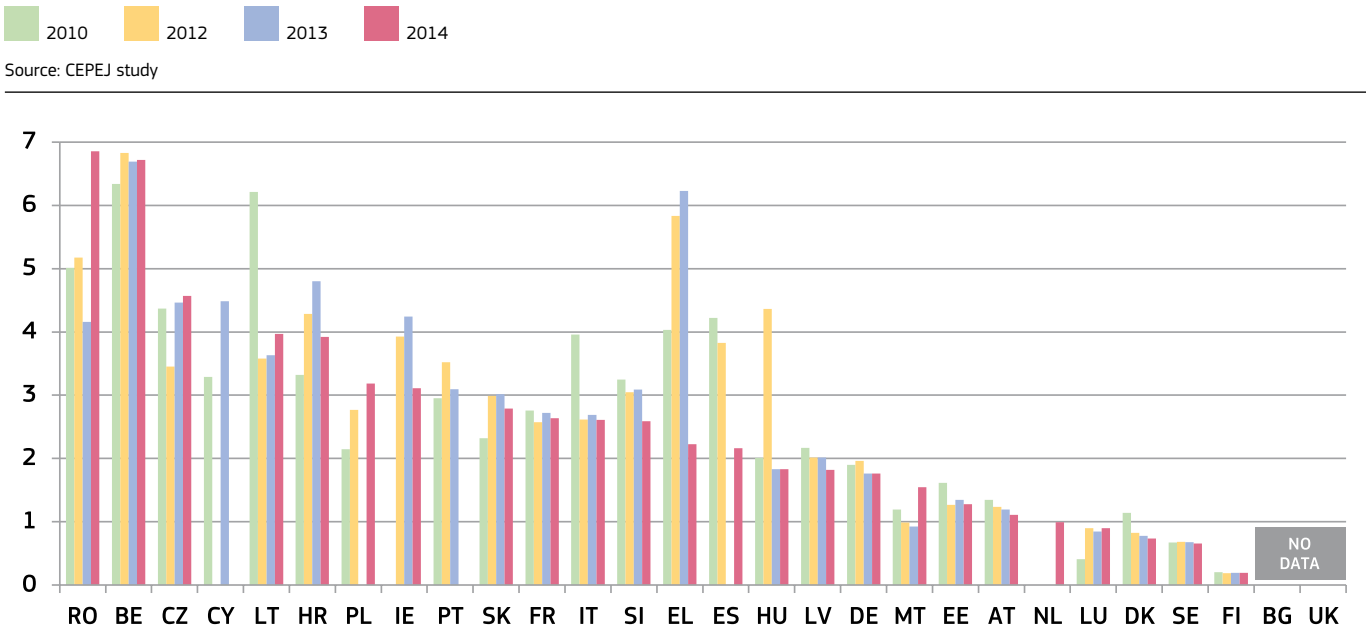


Source: CEPEJ study ([21])

(*) Under the CEPEJ methodology, this category includes all civil and commercial litigious and non-litigious cases, non-litigious land and business registry cases, other registry cases, other non-litigious cases, administrative law cases and other non-criminal cases. IT: A different classification of civil cases was introduced in 2013, so comparing different years might lead to erroneous conclusions. DK: An improved business environment reportedly explains that courts on all levels received fewer cases.

Figure 3

Number of incoming civil and commercial litigious cases (*) (first instance/per 100 inhabitants)



Source: CEPEJ study

(*) Litigious civil and commercial cases concern disputes between parties, e.g. disputes regarding contracts, under the CEPEJ methodology. By contrast, non-litigious civil (and commercial) cases concern uncontested proceedings, e.g. uncontested payment orders. Commercial cases are addressed by special commercial courts in some countries and handled by ordinary (civil) courts in others. ES: The introduction of court fees for natural persons until March 2014 and the exclusion of payment orders reportedly explain variations. EL: Methodological changes introduced in 2014. IT: A different classification of civil cases was introduced in 2013, so comparison between different years might lead to erroneous conclusions.

([21]) 2015 Study on the functioning of judicial systems in the EU Member States, carried out by the CEPEJ Secretariat for the Commission, available at: http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm

3. Key findings of the 2016 EU Justice Scoreboard

Efficiency, quality and independence are the main parameters of an effective justice system, and the Scoreboard presents indicators on all three.

3.1. Efficiency of justice systems

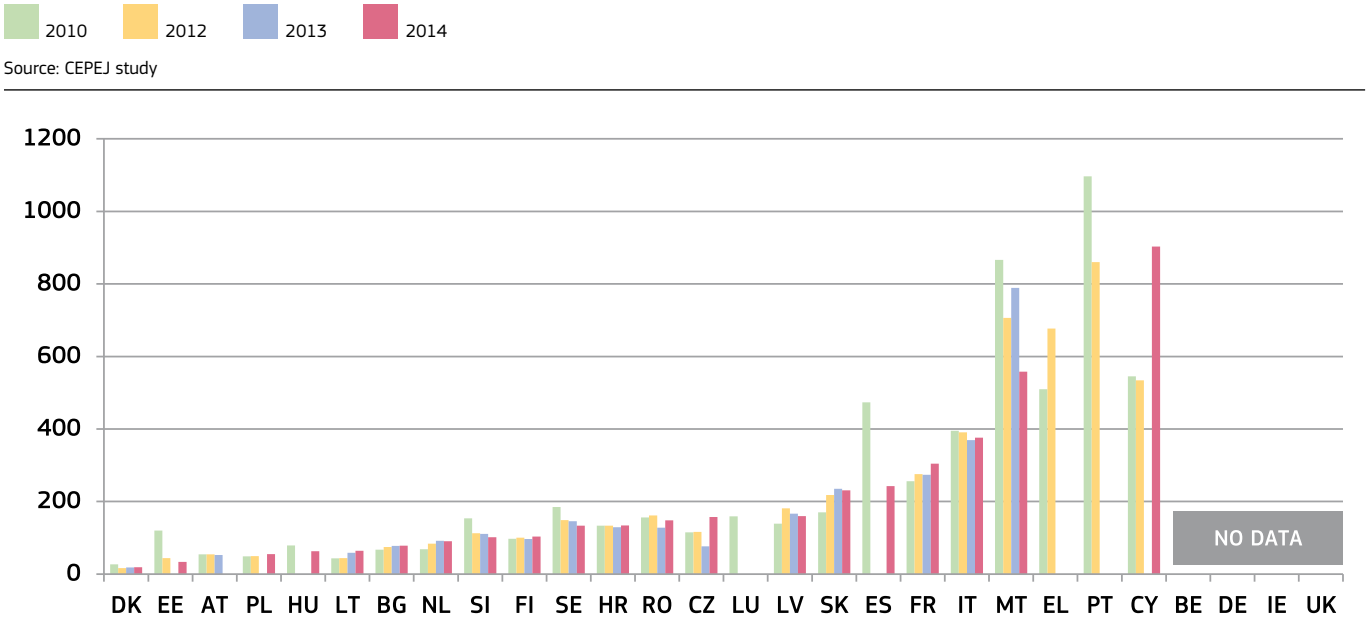
The indicators related to the efficiency of proceedings are: length of proceedings (disposition time); clearance rate; and number of pending cases.

3.1.1. Length of proceedings

The length of proceedings indicates the estimated time (in days) needed to resolve a case in court, meaning the time taken by the court to reach a decision at first instance. The 'disposition time' indicator is the number of unresolved cases divided by the number of resolved cases at the end of a year multiplied by 365 (days) ([22]). All figures ([23]) concern proceedings at first instance and compare, where available, data for 2010, 2012, 2013 and 2014 ([24]).

Figure 4

Time needed to resolve civil, commercial, administrative and other cases (*) (first instance / in days)



Source: CEPEJ study

(*) Under the CEPEJ methodology, this category includes all civil and commercial litigious and non-litigious cases, non-litigious land and business registry cases, other registry cases, other non-litigious cases, administrative law cases and other non-criminal cases. Comparisons should be drawn with care as some Member States reported changes in the methodology for data collection or categorisation (CZ, EE, HR, IT, CY, LV, HU, RO, SI, FI). CZ and SK report it is not possible to single out the number of pending cases at first instance, as cases are considered pending until no further proceeding is possible. PT: Data were not available due to technical constraints.

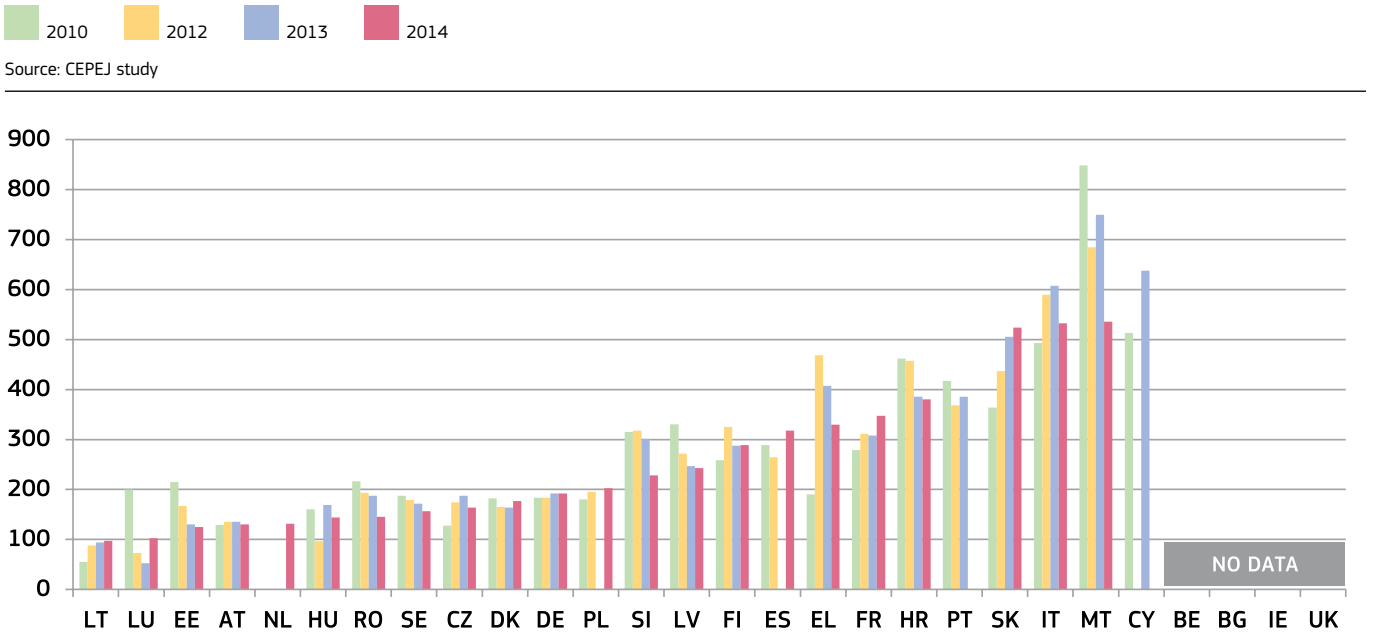
([22]) Length of proceedings, clearance rate and number of pending cases are standard indicators defined by CEPEJ: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp

([23]) CEPEJ data on second instance and Supreme Court proceedings and on specific categories of cases (e.g. insolvency) are not available for a sufficient number of Member States.

([24]) Data include updates made by CEPEJ after the publication of their studies as submitted to the Commission.

Figure 5

Time needed to resolve litigious civil and commercial cases (*) (first instance / in days)

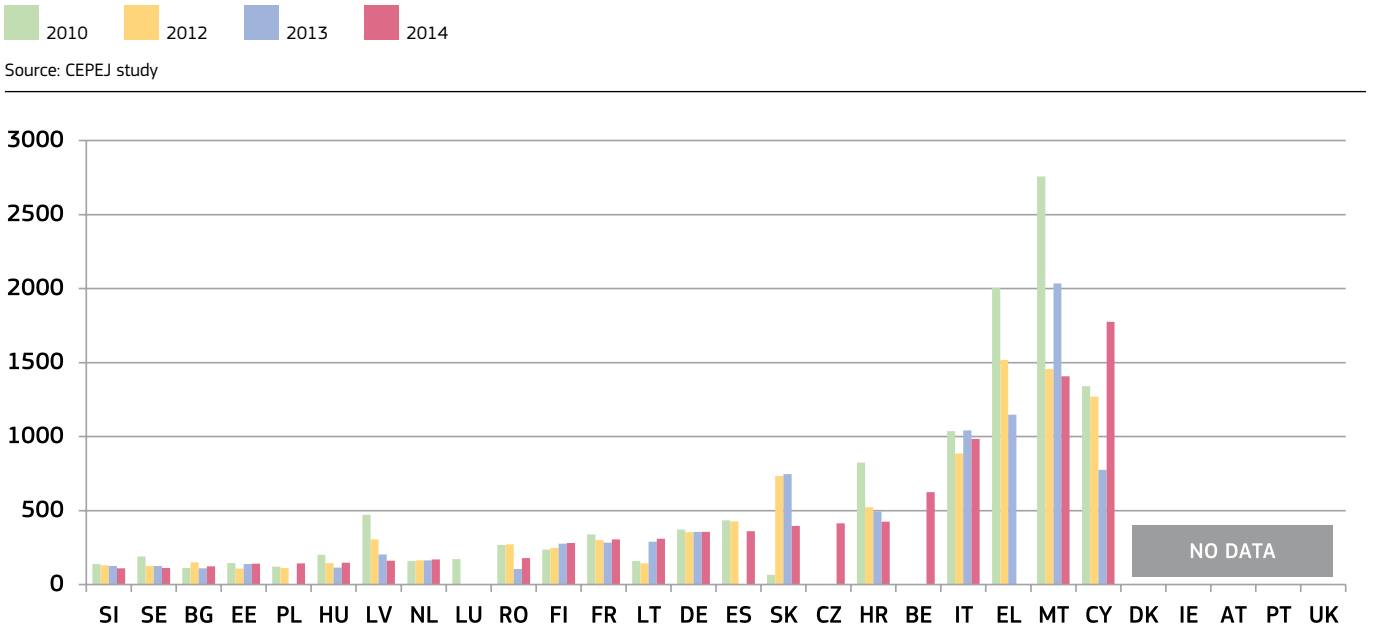


Source: CEPEJ study

(*) Litigious civil (and commercial) cases concern disputes between parties, e.g. disputes regarding contracts, under the CEPEJ methodology. By contrast, non-litigious civil (and commercial) cases concern uncontested proceedings, e.g. uncontested payment orders. Commercial cases are addressed by special commercial courts in some countries and by ordinary (civil) courts in others. Comparisons should be drawn with care, as some Member States reported changes in the methodology for data collection or categorisation (CZ, EE, EL, ES, HR, IT, CY, LV, LU, HU, RO, SI, FI) or made caveats on completeness of data that may not cover all federal states or all courts (DE, LU). CZ and SK report it is not possible to single out the number of pending cases at first instance, as cases are considered pending until no further proceeding is possible. Before 2014, NL provided a measured disposition time, not calculated by CEPEJ. PT: Data for 2014 were not available due to technical constraints.

Figure 6

Time needed to resolve administrative cases (*) (first instance / in days)



Source: CEPEJ study

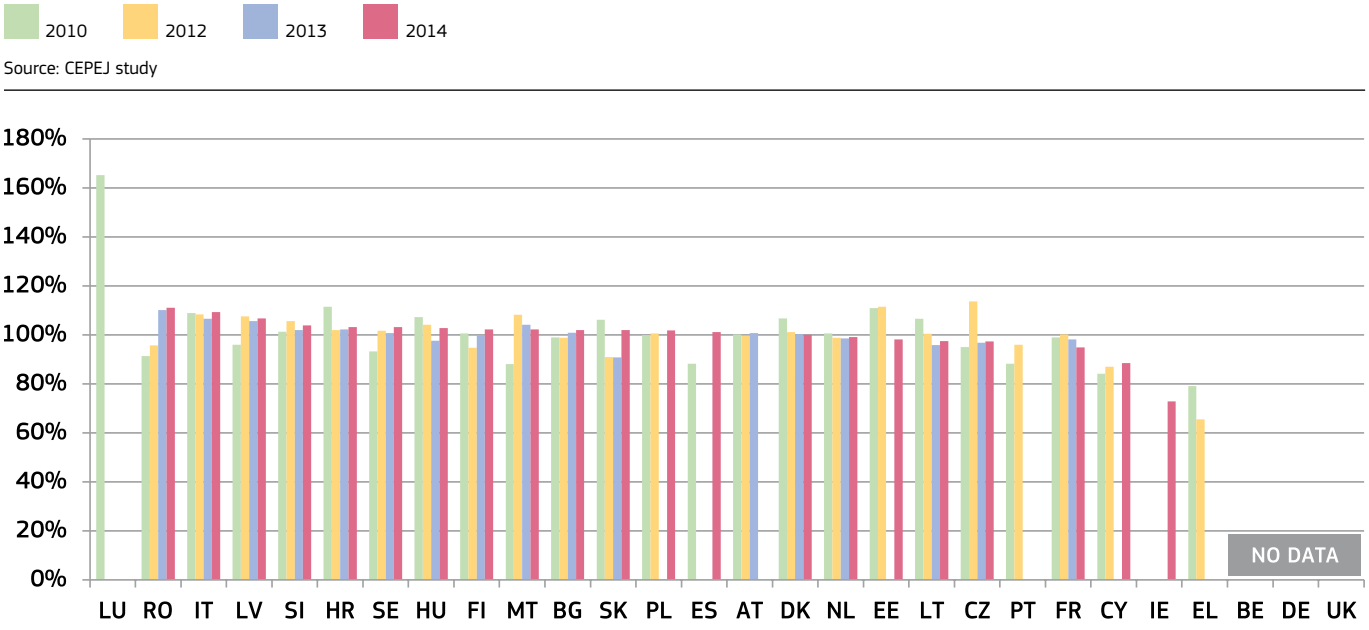
(*) Administrative law cases concern disputes between citizens and local, regional or national authorities, under the CEPEJ methodology. Administrative law cases are addressed by special administrative courts in some countries and by ordinary (civil) courts in others. Comparisons should be drawn with care as some Member States reported changes in the methodology for data collection or categorisation (HU, FI), a reorganisation of the administrative court system (HR in 2012) or made caveats on completeness of data that may not cover all federal states or all courts (DE, LU). CZ and SK report it is not possible to single out the number of pending cases at first instance, as cases are considered pending until no further proceeding is possible. CY: The increase in cases related to the bail and their joint resolution reportedly explain variations. MT: An increase in the number of judges reportedly explains variations.

3.1.2. Clearance rate

The clearance rate is the ratio of the number of resolved cases over the number of incoming cases. It measures whether a court is keeping up with its incoming caseload. When the clearance rate is about 100% or higher, it means the judicial system is able to resolve at least as many cases as come in. When the clearance rate is below 100%, it means that the courts are resolving fewer cases than the number of incoming cases.

Figure 7

Rate of resolving civil, commercial, administrative and other cases (*) (first instance / in % - values higher than 100% indicate that more cases are resolved than come in, while values below 100% indicate that fewer cases are resolved than come in)

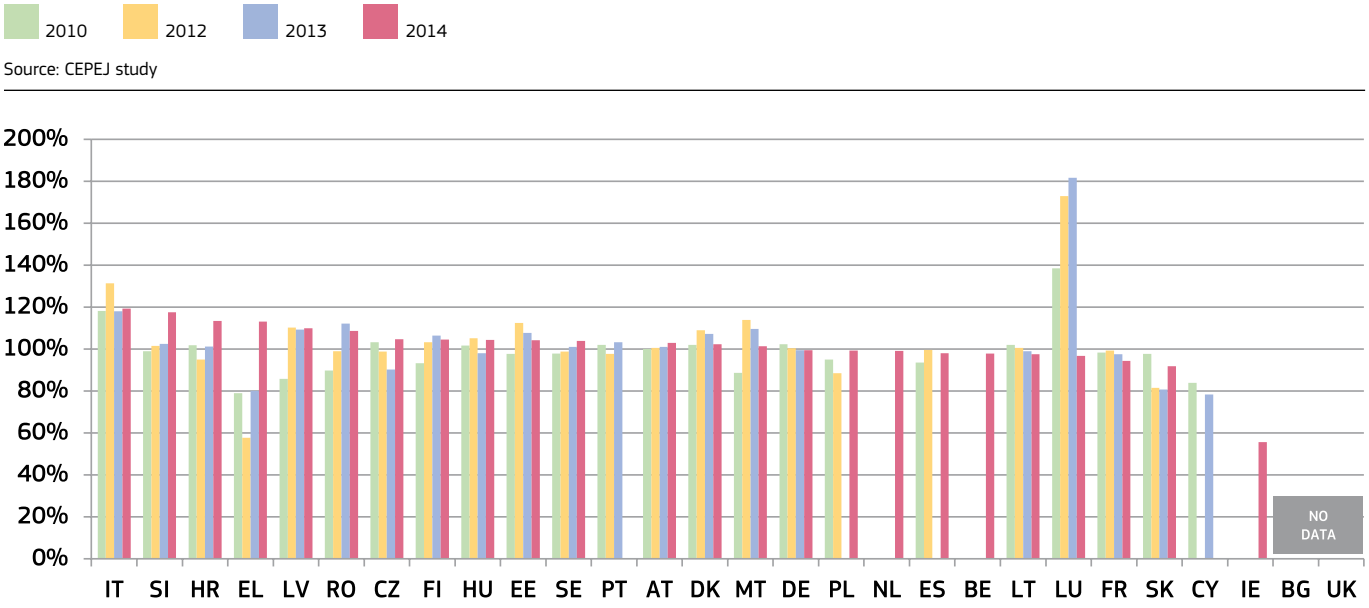


Source: CEPEJ study

(*) Comparisons should be drawn with care as some Member States reported changes in the methodology for data collection or categorisation (CZ, EE, IT, CY, LV, HU, SI, FI). Changes in incoming cases reportedly explain variations in LT and SK. LV: External and internal factors such as new insolvency proceedings reportedly had an impact in variations. PT: Data were not available due to technical constraints.

Figure 8

Rate of resolving litigious civil and commercial cases (*) (first instance / in %)

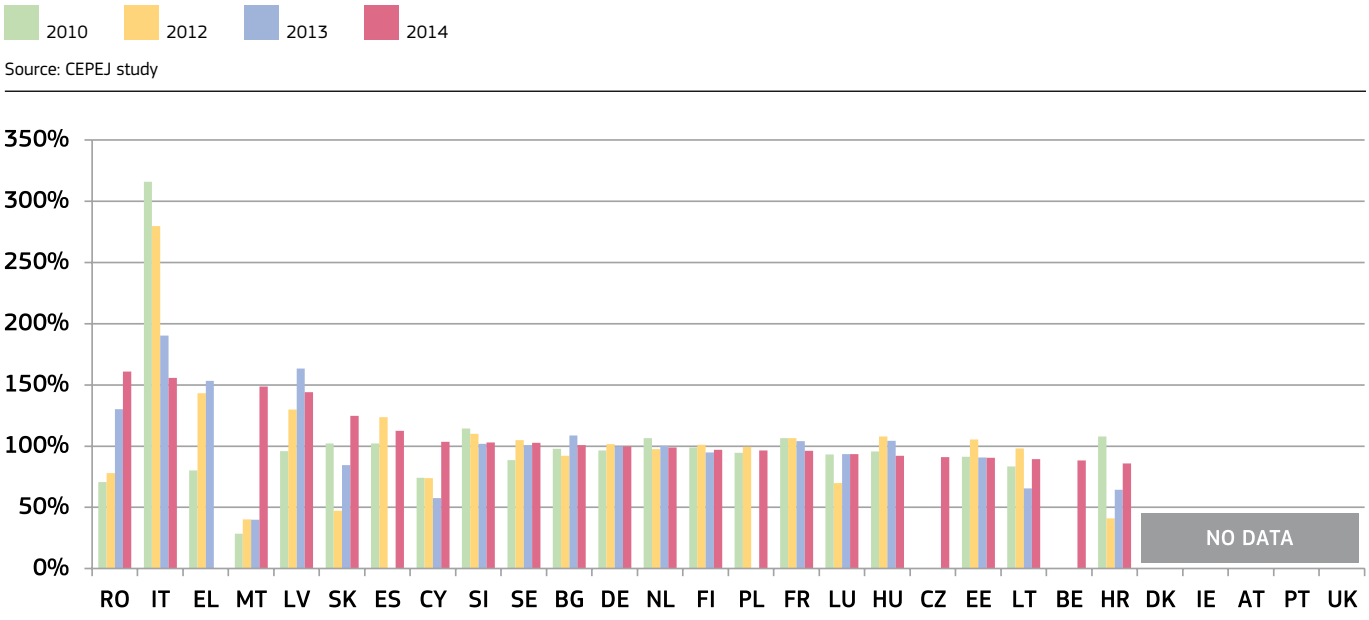


Source: CEPEJ study

(*) Comparisons must be drawn with care, as some Member States reported changes in the methodology for data collection or categorisation (CZ, EE, EL, IT, CY, LV, HU, SI, FI) or made caveats on completeness of data that may not cover all federal states or all courts (DE, LU). NL: Before 2014 a measured disposition time was provided, not calculated by CEPEJ. LU: The introduction of new statistical methods reportedly explains the variations. IE: Historical practices in recording pending civil cases reportedly explain the low results. PT: Data for 2014 were not available due to technical constraints.

Figure 9

Rate of resolving administrative cases (*) (first instance / in %)



Source: CEPEJ study

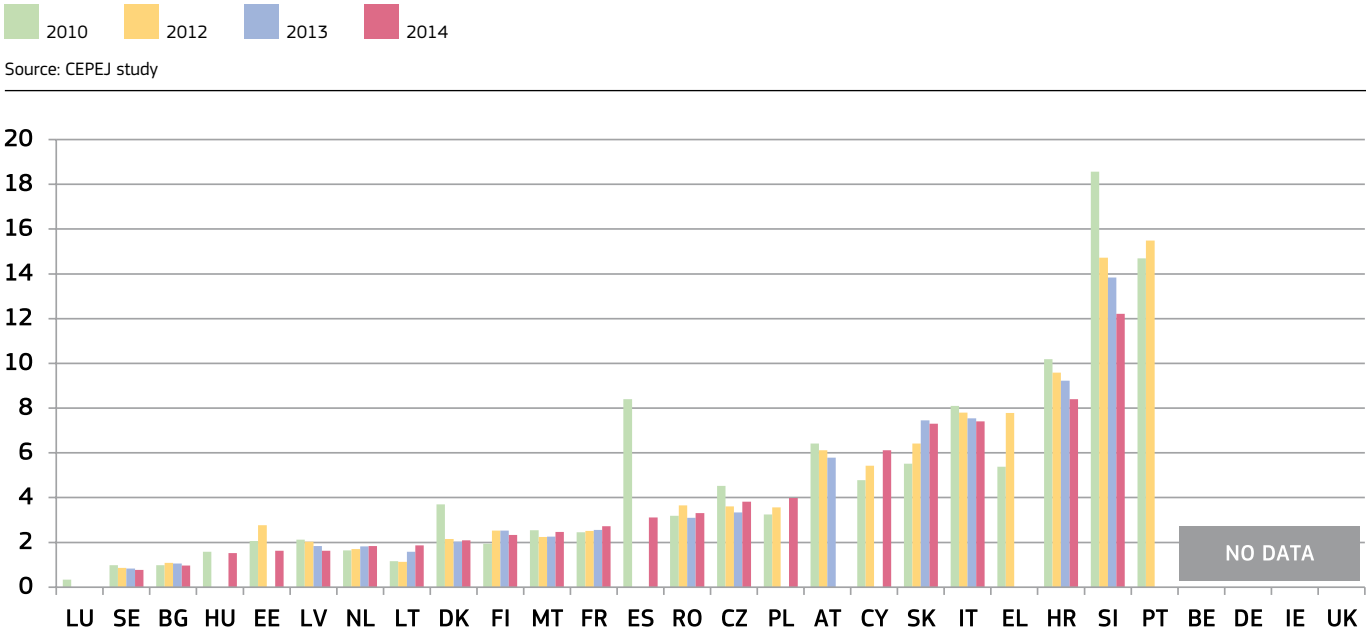
(*) Comparisons should be drawn with care as some Member States reported changes in the methodology for data collection or categorisation (HU, FI), a reorganisation of the administrative court system (HR in 2012) or made caveats on completeness of data that may not cover all federal states or all courts (DE, LU). LT: Changes in incoming cases reportedly explain variations. MT: An increase in the number of judges reportedly explains variations.

3.1.3. Pending cases

The number of pending cases expresses the number of cases that remains to be dealt with at the end of a period. It also influences the disposition time.

Figure 10

Number of civil, commercial, administrative and other pending cases (*) (first instance / per 100 inhabitants)

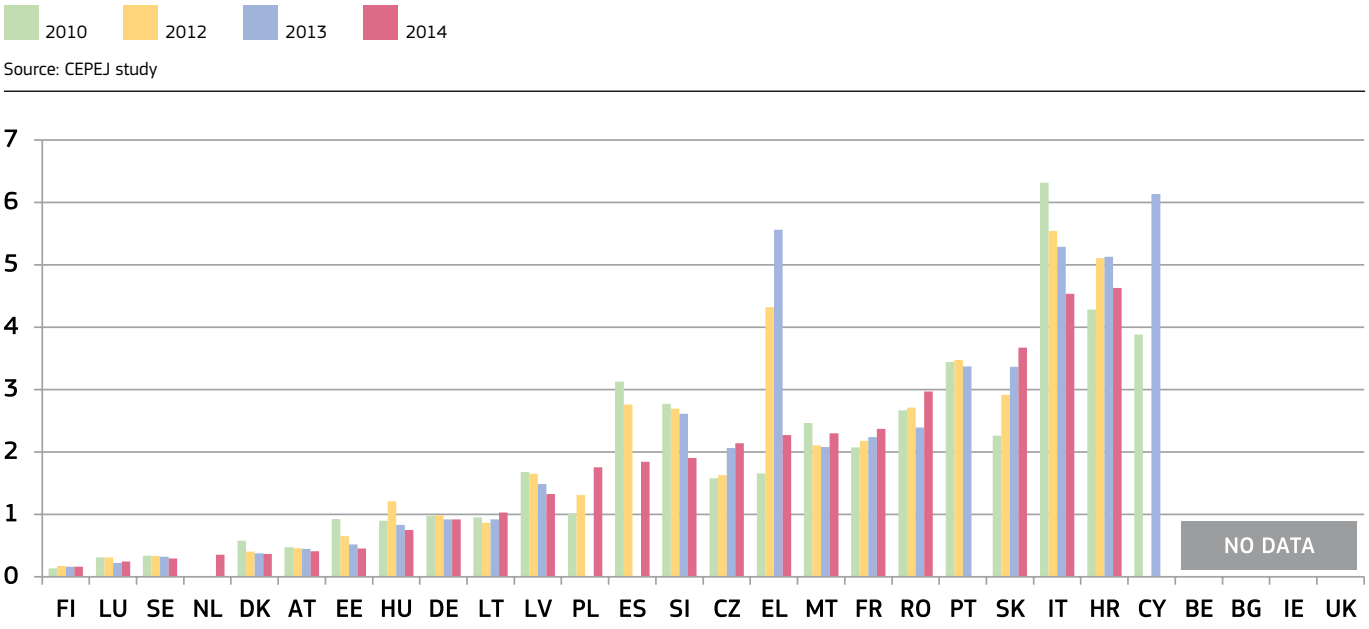


Source: CEPEJ study

(*) Comparisons should be drawn with care as some Member States reported changes in the methodology for data collection or categorisation (CZ, EE, IT, CY, LV, HU, RO, SI, FI). CZ and SK report it is not possible to single out the number of pending cases at first instance, as cases are considered pending until no further proceeding is possible. ES: Changes in incoming cases reportedly explain variations. PT: Data were not available due to technical constraints.

Figure 11

Number of litigious civil and commercial pending cases (*) (first instance/per 100 inhabitants)

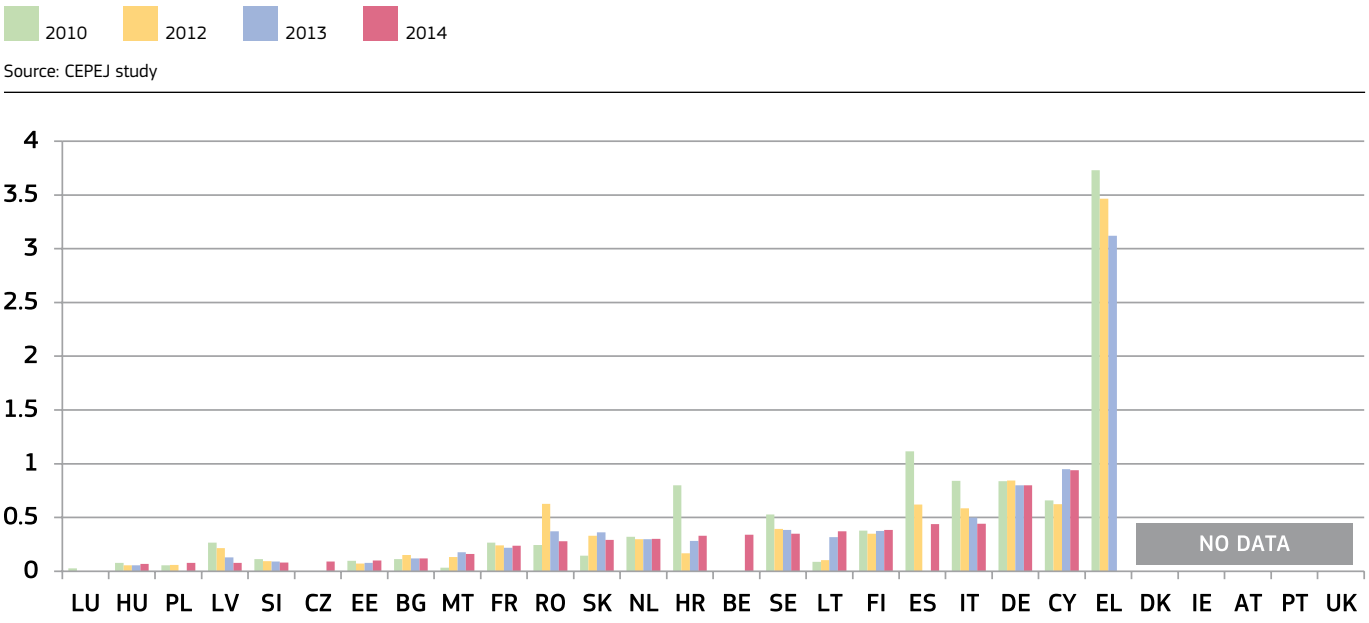


Source: CEPEJ study

(*) Comparisons should be drawn with care as some Member States reported changes in the methodology for data collection or categorisation (CZ, EE, EL, IT, CY, LV, HU, RO, SI, FI) or made caveats on completeness of data that may not cover all federal states or all courts (DE, LU). Changes in incoming cases reportedly explain variations in DK, EL, and ES. CZ and SK report it is not possible to single out the number of pending cases at first instance, as cases are considered pending until no further proceeding is possible. PT: Data for 2014 were not available due to technical constraints.

Figure 12

Number of administrative pending cases (*) (first instance/per 100 inhabitants)



Source: CEPEJ study

(*) Comparisons should be drawn with care, as some Member States reported changes in the methodology for data collection or categorisation (HU, FI), a reorganisation of the administrative court system (HR in 2012) or made caveats on completeness of data that may not cover all federal states or all courts (DE, LU). Changes in incoming cases reportedly explain variations in ES and CY. CZ and SK report it is not possible to single out the number of pending cases at first instance, as cases are considered pending until no further proceeding is possible.

3.1.4. Efficiency in specific areas

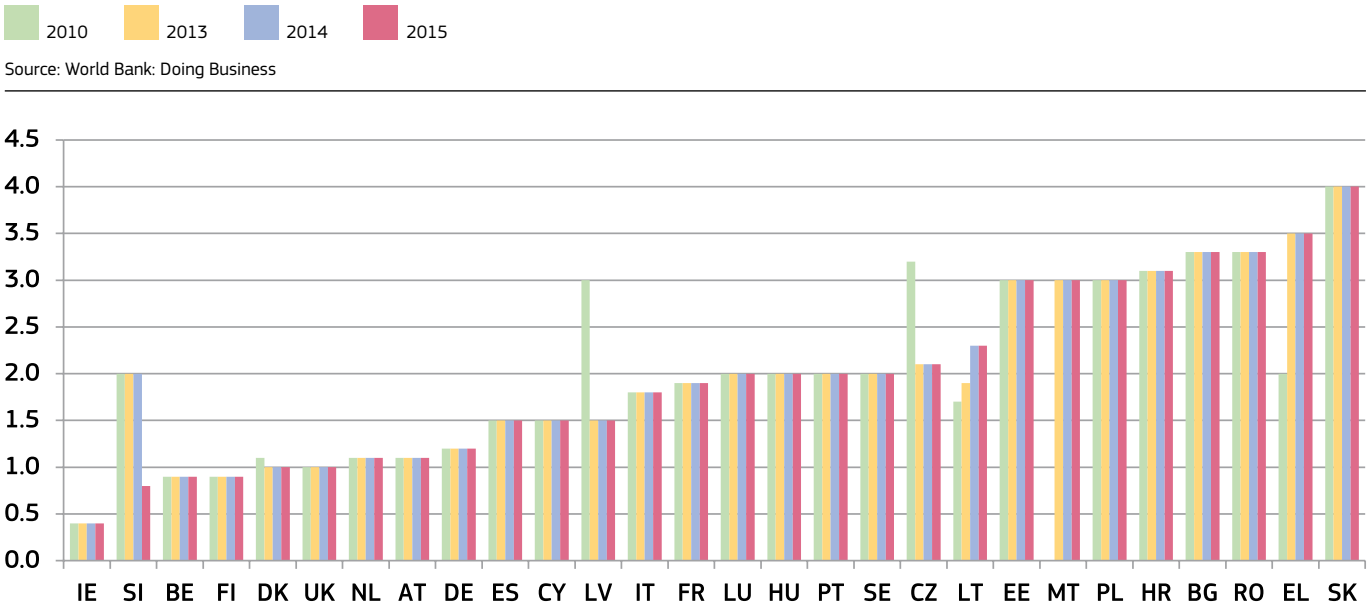
This section sets out more detailed information on the time needed for courts to resolve disputes in specific areas of law, and complements the general data on the efficiency of justice systems. The areas are selected on the basis of their relevance for the single market, the economy and the business environment in general. Data on the average length of proceedings in these specific areas provide for a more nuanced understanding on how a national justice system functions. The 2016 Scoreboard builds on previous data collection exercises and looks into the areas of insolvency, competition law, consumer law, intellectual property rights, electronic communications law and public procurement.

A closer look at the functioning of courts when applying EU law in specific areas ([25]) is particularly relevant. EU law forms a common basis in the legal systems of the Member States and litigation based on EU law is therefore particularly suitable for obtaining comparable data. When applying EU law, national courts act as Union courts and ensure that the rights and obligations provided under EU law are enforced effectively. Zooming in on specific areas of EU law sheds light on how effectively EU law is enforced. Long delays in judicial proceedings may have negative consequences on the enforcement of rights stemming from the EU law in question, e.g. when appropriate remedies are no longer available or serious financial damages become irrecoverable.

Insolvency

Figure 13

Insolvency: Time needed to resolve insolvency (*) (in years)



Source: World Bank: Doing Business

(*) Time for creditors to recover their credit. The period of time is from the company's default until the payment of some or all of the money owed to the bank. Potential delaying tactics by the parties, such as the filing of dilatory appeals or requests for extension, are taken into consideration. The data are derived from questionnaire responses by local insolvency practitioners and verified through a study of laws and regulations as well as public information on insolvency systems. Data collected in June of each year.

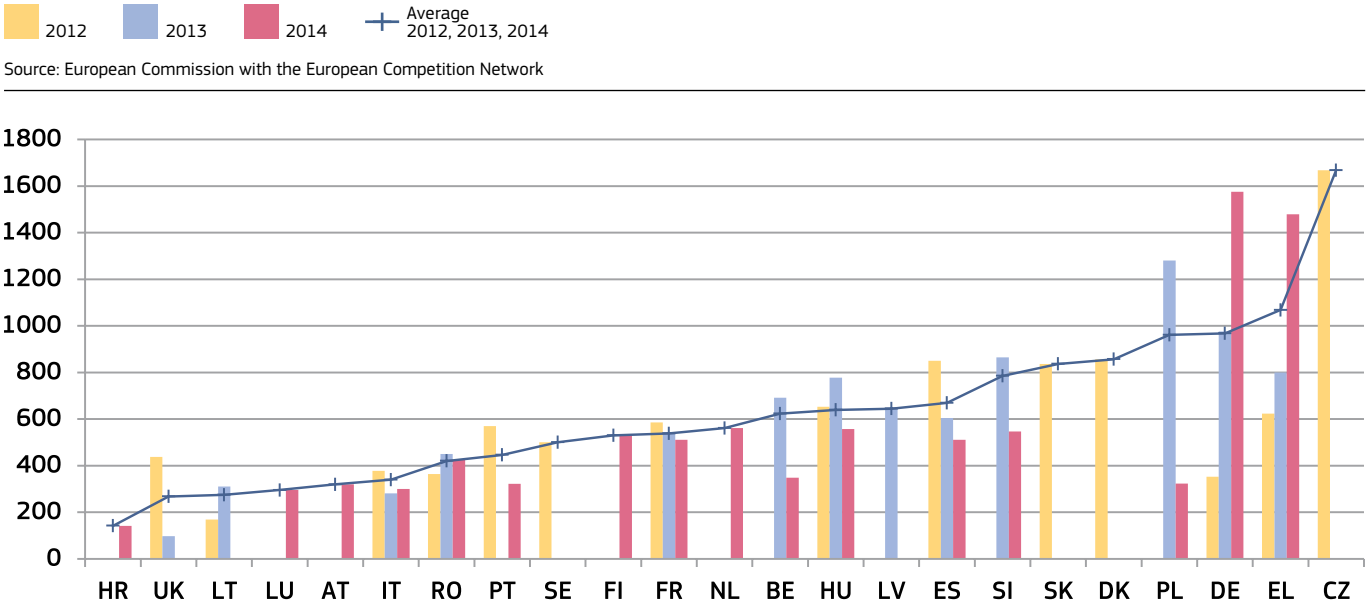
([25]) For specific areas, the Scoreboard concentrates on the data for first instance cases covering three years (two years for electronic communications). Data on the second and, where applicable, the third instance, have been collected, but are not presented in this Scoreboard, since the number of Member States which provided the data is too low.

Competition

Figure 14

Competition: Average length of judicial review cases against decisions of national competition authorities applying Articles 101 and 102 TFEU (*) ([26]) (first instance / in days)

One of the main aspects of an attractive business environment is the correct application of competition law. This is essential to ensure that businesses can compete on a level playing field. Judicial review of national competition authorities' decisions at first instance appears to take longer when compared with the disposition time in administrative cases (Figure 6) or in the overall civil, commercial, administrative and other cases (Figure 4). Most likely, these results indicate the complexity and the economic importance of the cases where EU competition law has been applied.



Source: European Commission with the European Competition Network

(*) No cases were identified within this period in BG, EE, CY, MT. IE: The scenario defined for obtaining the data in this figure does not apply (the national competition authority does not have powers to take decisions applying Articles 101 and 102 TFEU). AT: The scenario does not directly apply; data include all cases decided by the Cartel Court involving an infringement of Articles 101 and 102 TFEU. The time needed to resolve judicial review cases was calculated on the basis of the length of cases where a court decision was taken in the year of reference. Member States are presented on the basis of the weighted average length of the judicial proceedings during these three years ([27]). The number of relevant cases per Member State varies, but in many instances this number is low (fewer than three per year). This can make the average length dependent on the length of one exceptionally long or short case and results in large variations from one year to another (e.g. BE, DE, PL, UK). Some of the longest cases involved a reference for preliminary ruling to the Court of Justice of the European Union (e.g. CZ).

([26]) See http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN

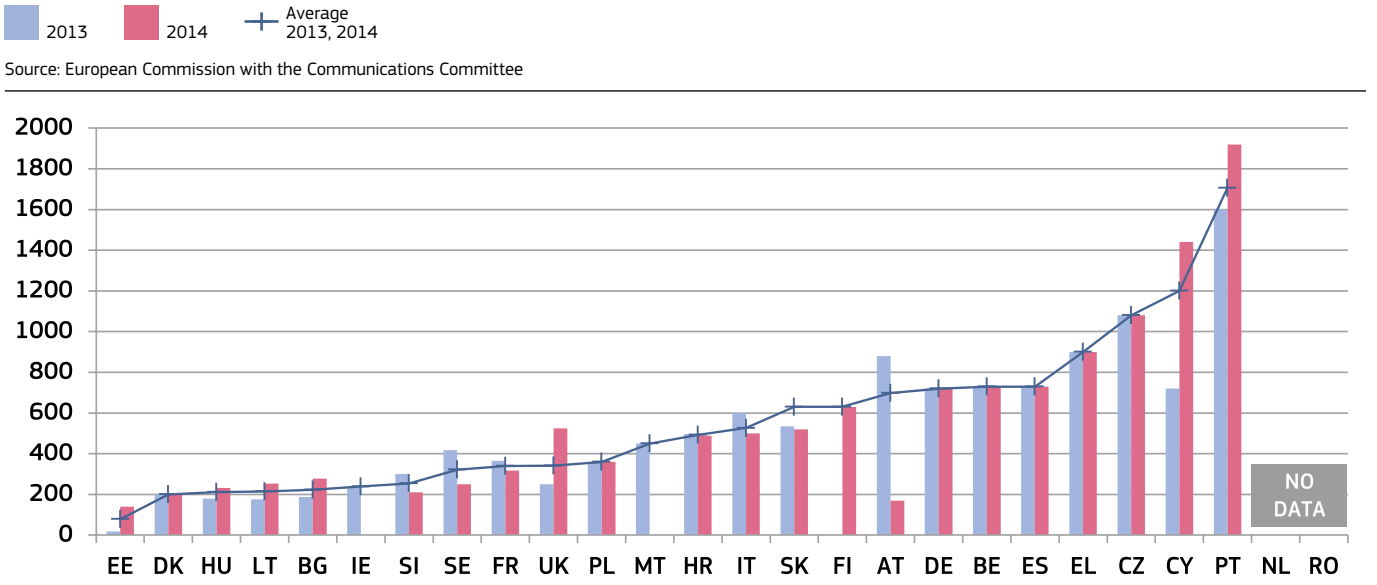
([27]) This approach allows for a more balanced reflection of the average length of cases to account for fluctuations between years in Member States where the number of cases is low.

Electronic communications

Figure 15

Electronic communications: Average length of judicial review cases against decisions of national regulatory authorities applying EU law on electronic communications (*) (first instance / in days)

Electronic communications legislation aims to make the related markets more competitive and to generate investment, innovation and growth. The effective enforcement of this legislation is also essential to achieve the goals of lower prices for citizens, better quality services and increased transparency. In general, the average length for resolving judicial review cases in electronic communications law ([28]) at first instance appears longer than the average length for resolving civil, commercial, administrative and other cases (Figure 4). A comparison with competition (Figure 14) and consumer protection law (Figure 17) cases reveals greater divergences in the average length within the group of cases concerning electronic communications. Most likely, this is due to the broad spectrum of cases covered by this category, ranking from extensive 'market analysis' reviews to consumer-focussed issues.



Source: European Commission with the Communications Committee

(*) No cases were identified in this period in LU and LV, no cases in FI for 2013, no cases in IE and MT for 2014. The number of relevant cases of judicial review varies by Member State. In some instances, the limited number of relevant cases (BE, EE, IE, CY, LT, UK) means that cases with a very long duration can considerably affect the average. AT: In 2013, there were an unusually high number of complex market analysis cases to be decided by the relevant court. DK: A quasi-judicial body is in charge of first instance appeals. In ES, AT, PL different courts are in charge depending on the subject matter of the case.

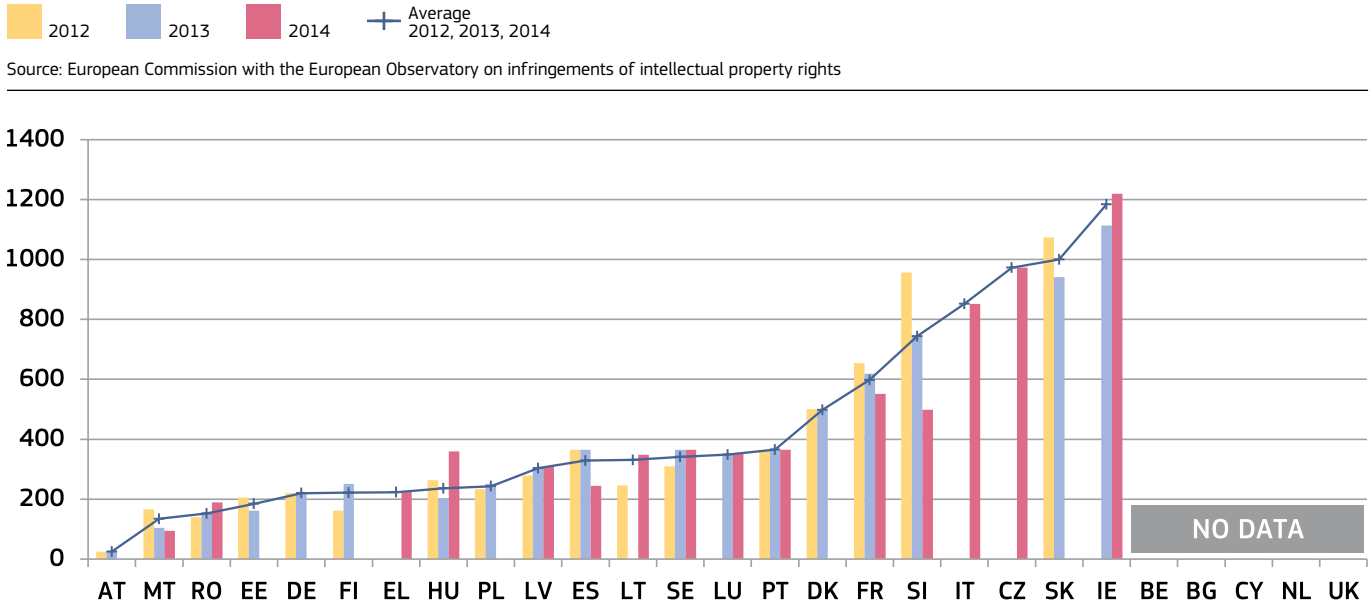
([28]) The calculation has been made based on the length of cases of appeal against national regulatory authority decisions applying national laws that implement the Regulatory Framework for Electronic Communications (Directives 2002/19/EC (Access Directive), Directive 2002/20/EC (Authorisation Directive), Directive 2002/21/EC (Framework Directive), Directive 2002/22/EC (Universal Service Directive), and other relevant EU law such as the Radio Spectrum Policy Programme, Commission Spectrum Decisions, excluding Directive 2002/58/EC on privacy and electronic communications).

Community trademark

Figure 16

Community trademark: Average length of Community trademark infringement cases (*) (first instance / in days)

Intellectual property rights are essential to stimulate investment into innovation. Without effective means of enforcing intellectual property rights, innovation and creativity are discouraged and investment dries up. Therefore, Figure 16 presents data on the time needed for national courts to take a decision in cases concerning an infringement of the most common EU intellectual property title – a Community trademark. EU legislation on Community trademarks ([29]) gives a significant role to the national courts, which act as Union courts and take decisions affecting the single market territory. Data show differences in the average length of these cases in different Member States, which may have an impact on the Community trademark holders seeking judicial redress in cases of alleged infringements.



Source: European Commission with the European Observatory on infringements of intellectual property rights

(*) HR: No cases were identified in this period. No cases were identified in LU and IE in 2012, in LT in 2013 and in EE and FI in 2014. The average length of cases has been calculated on the basis of statistical data, where available, or a sample of cases. Member States are organised on the basis of the weighted average length of the judicial proceedings during these three years. DK: Data provided for 2012 and 2013 include all cases related to trademarks. EL: Data for 2014 are a calculated average based on data from different courts. Estimate by courts were used for data in DE, ES, PT, SE. The number of relevant cases by Member State varies. The number of relevant cases was limited (fewer than five) in LT in 2012, in EE and FI in 2012 and 2013, in IE and LU in 2013 and 2014, in HU in 2012 and 2014. This can make the average length dependent on the length of one exceptionally long or short case and results in large variations from one year to another.

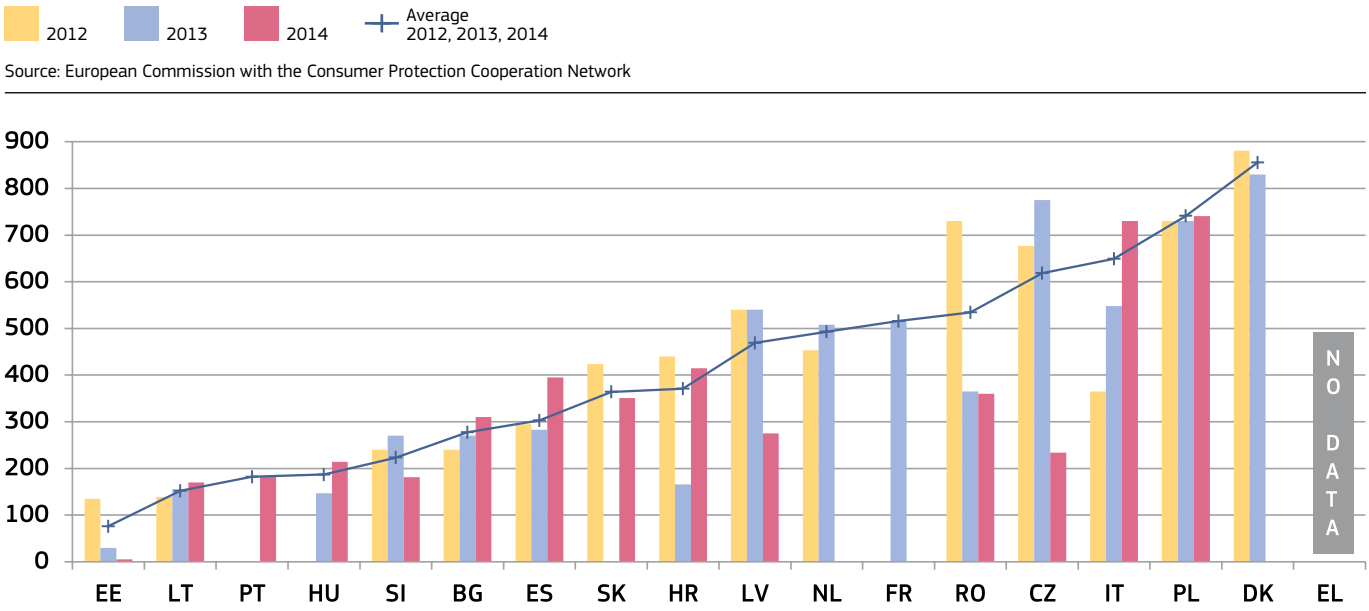
([29]) Community Trade Mark Regulation (207/2009/EC).

Consumer protection

Figure 17

Consumer protection: Average length of judicial review cases against decisions of consumer protection authorities applying EU law (*) (first instance/in days)

Effective enforcement of EU consumer law ([30]) ensures that consumers benefit from their rights and that companies infringing consumer rules do not gain unfair advantages. Consumer protection authorities and courts play a key role in enforcing EU consumer law. The scenario below covers Member States where consumer protection authorities are empowered to adopt decisions declaring infringements of consumer law ([31]). Cases taken up by consumer authorities often concern important consumer issues. Long-lasting judicial review could prolong the resolution of possible consumer law infringements, which may seriously affect consumers and businesses.



Source: European Commission with the Consumer Protection Cooperation Network

(*) The scenario does not apply to BE, LU, AT, FI, SE, UK. No relevant cases occurred in IE, CY, MT during the period for which data were available. DE: The administrative authorities have competence to adopt decisions in cross-border cases only and no relevant cross-border cases occurred in this period. FR: Cases of appeal are marginal and data were only available for 2013. ES: The data show the average of four autonomous communities each year, and the average may vary for other autonomous communities. The number of cases in DK, EE, FR, HR, LT, NL, SI for the period covered is low, which means that one case with a very long or short duration can considerably affect the average and may lead to bigger variations for each year. Some Member States provided an estimate (IT, PL, RO for 2013). In general, data do not cover financial services and products. The average length is calculated in calendar days, counting from the day when an action or appeal was lodged before the court and to the day on which the court adopted the final decision.

Other specific areas

In 2015, the Commission explored ways to collect data with ACA-Europe - the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU in the area of public procurement. EU law on public procurement ([32]) is economically important, as it provides for rapid and effective remedies for actual and potential tenderers who contest the award of public contracts. The data obtained from 17 Member States show that in 2013-2014 the EU average length of substantive proceedings in public procurement cases at last instance courts ([33]) was below one year (268 days) ([34]). Effective judicial review ensures that tenderers can benefit from the full scope of remedies under EU law on remedies in public procurement and that society at large is not affected by delayed performance of public contracts.

([30]) The figure illustrates the average length of appeals to decisions of consumer protection authorities in judicial proceedings relating to the Unfair Contract Terms Directive (93/13/EEC), Consumer Sales and Guarantees Directive (1999/44/EC), Unfair Commercial Practices Directive (2005/29/EC), Consumer Rights Directive (2011/83/EC) and their national implementing provisions.

([31]) In BE, AT, FI, SE, UK certain administrative consumer protection authorities are not empowered to adopt decisions declaring an infringement of the relevant consumer rules and the scenario in Figure 17 is not considered applicable. The competences of some consumer protection authorities include only parts of the EU consumer legislation covered (e.g. data for PT only cover Directive 2005/29/EC and Directive 99/44/EC).

([32]) Directive 89/665/EEC and Directive 92/13/EEC (the Remedies Directives), as amended by subsequent legal acts, in particular Directive 2007/66/EC.

([33]) These data do not reflect the duration of proceedings at lower instance courts before filing an appeal.

([34]) BE, BG, CZ, EL, ES, IE, FR, HR, CY, LV, LT, HU, NL, AT, SI, FI, SE. The data cover the length of substantive proceedings in public procurement cases at Supreme Administrative Courts and final instance courts between the day on which the appeal is filed and the day on which the decision is issued calculated in working days.

3.1.5. Summary on the efficiency of justice systems

Timeliness of judicial decisions is essential to ensure the smooth functioning of the justice system. The main parameters used by the Scoreboard for examining the efficiency of justice systems are the length of proceedings (estimated time in days needed to resolve a case), the clearance rate (the ratio of the number of resolved cases over the number of incoming cases) and the number of pending cases (that remains to be dealt with at the end of the year). The 2016 Scoreboard reveals some positive signs.

> In comparison with the previous edition of the Scoreboard, data show that:

- **The length of litigious civil and commercial cases has in general improved** (Figure 5). However, for the broad 'all cases' category ([35]) (Figure 4) and for administrative cases (Figure 6), the length of proceedings has worsened in more countries than it has improved.
- In most Member States for which data are available courts have **clearance rates above 100%** in the 'all cases' category (Figure 7) and for litigious civil and commercial cases (Figure 8). This means that they are able to deal with incoming cases in these areas. However, as regards administrative cases (Figure 9), most Member States have a clearance rate below 100% which shows that they are facing difficulties in coping with incoming cases.
- Regarding **pending cases, there is overall stability** but improvements can be observed in several Member States that faced particular challenges with a high number of pending cases, both in the 'all cases' category (Figure 10) and for administrative cases (Figure 12).

> Data over the years show that:

- There is some **volatility** in the results, which may improve or deteriorate in Member States from one year to another. This variance may be explained with contextual factors such as a sudden increase of incoming cases – as variations of more than 10% of incoming cases are not unusual. Varying results may also stem from systemic deficiencies such as lack of flexibility and responsiveness of the justice system, insufficient capacity to adapt to change or inconsistencies in the process of reform.
- Where trends over the last three years can be observed, it appears that for litigious civil and commercial cases and the 'all cases' category the **length of proceedings has improved** in more countries than it has not. However, for administrative cases the situation has deteriorated. In countries where the **clearance rate is below 100%**, more negative than positive trends can generally be observed for all cases. As regards **pending cases**, there has been a **slight overall reduction** in all categories of cases.

> Data for specific areas provide a deeper insight into the length of proceedings in certain situations where EU law is involved (e.g. legislation on competition, electronic communications, consumer rights, and intellectual property). The aim of these figures is to better reflect the functioning of justice systems in concrete types of business-related disputes, even if the narrow scenarios used for obtaining the data mean that conclusions must be drawn with some care. The figures show that:

- The length of proceedings in the same Member States **may vary considerably depending on the area of law** concerned. It also appears that certain Member States do less well in these specific areas than in the broader categories of cases presented above. This can be explained by the complexity of the subject matter, specific procedural steps or by the fact that a few complicated cases can affect the average length.
- Litigation between private parties is on average **shorter than litigation against state authorities**. For example, in only a few Member States will a first instance judicial review of national authorities' decisions applying EU law (e.g. competition, consumer or electronic communication authorities) take less than one year on average. This finding highlights the importance for companies and consumers of a smooth functioning of the entire **enforcement chain of EU law**, from the competent authority to the final instance court. It also confirms the key role that the judiciary plays for the effectiveness of EU law and the economic governance.

([35]) All civil and commercial litigious and non-litigious cases, non-litigious land and business registry cases, other registry cases, other non-litigious cases, administrative law cases and other non-criminal cases, under the CEPEJ methodology.

3.2. Quality of justice systems

Effective justice systems do not only require timely decisions but also quality. A lack thereof may increase business risks for large companies and SMEs and affect consumer choices. Although there is no single agreed way of measuring the quality of justice systems, the Scoreboard focuses on certain factors that are generally accepted as relevant ([36]) and which can help to improve the quality of justice. They are grouped in four categories: (1) accessibility of justice for citizens and businesses; (2) adequate material and human resources; (3) putting in place assessment tools; and (4) using quality standards.

3.2.1. Accessibility

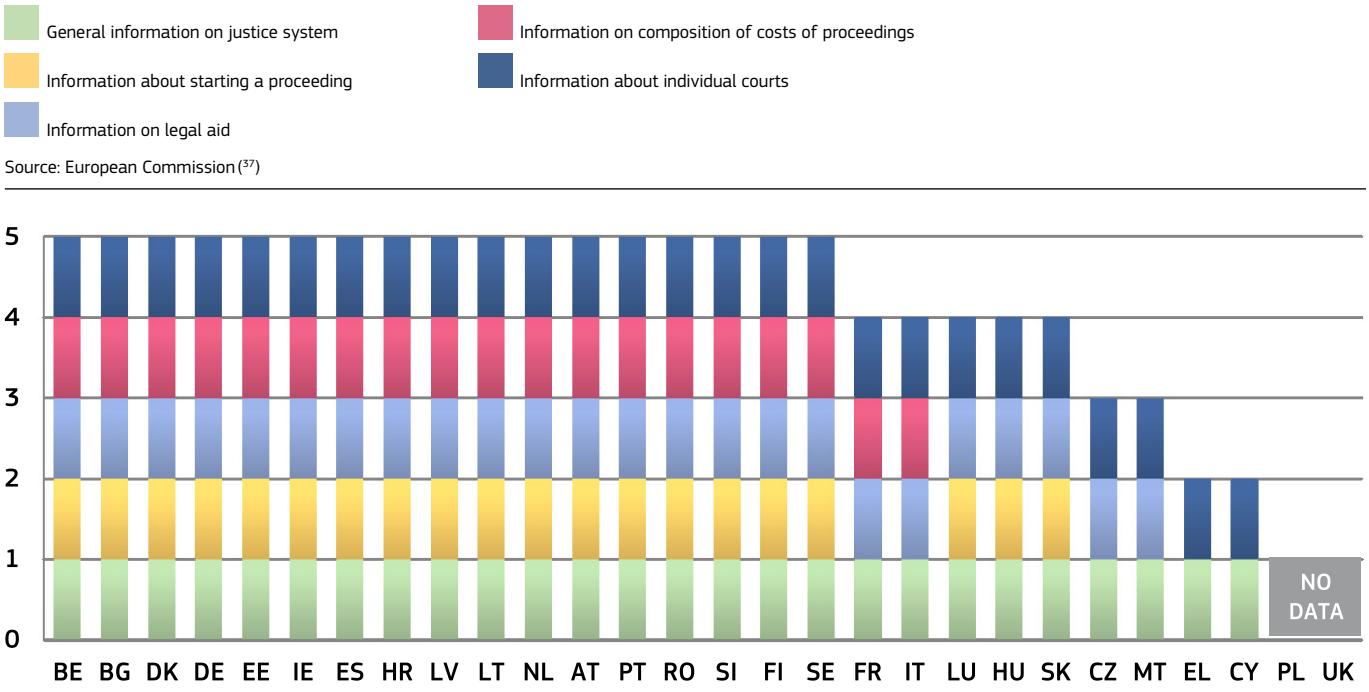
Accessibility is required throughout the entire justice chain to facilitate obtaining information – about the justice system, about how to initiate a claim and the related financial aspects, and about the state of play of proceedings up until the end of the process – so that the judgment can be swiftly accessed online.

Giving information about the justice system

The foundation for access to justice is the information provided to citizens and businesses about general aspects of the justice system.

Figure 18

Availability of online information about the judicial system for the general public (*)



Source: European Commission ([37])

(*) In some Member States (SI, RO) information on the composition of costs of proceedings is made available by publishing the legislation that contains the relevant information. BG: Not every website of each court sets out information on the justice system, starting a proceeding, legal aid and composition of costs of proceedings. CZ: Information about starting proceedings is available at the website of the Supreme Court, the Supreme Administrative Court and the Constiutional Court. DE: Each federal state and the federal level decide which information to provide online.

([36]) See e.g. CEPEJ "Checklist for promoting the quality of justice and the courts"; Opinion n°6 (2004) Consultative Council of European Judges (CCJE) available at: https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2004)OP6&Sector=secDGHL&Language=lanEnglish

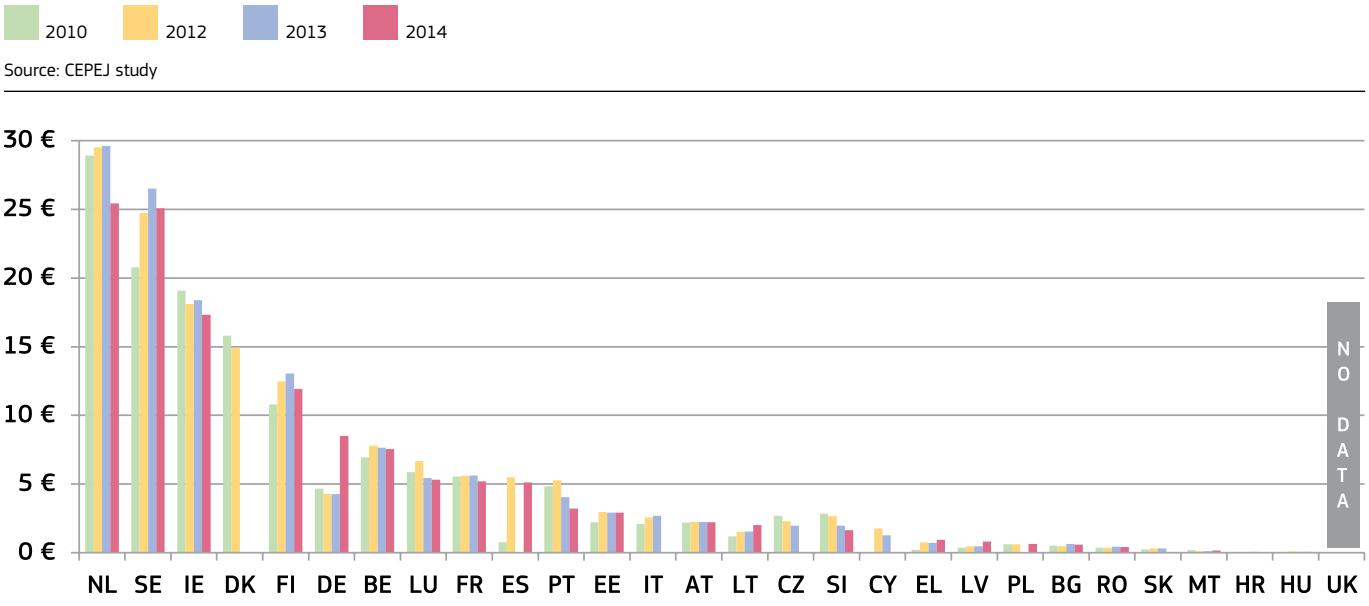
([37]) Data concern 2015 and have been collected in cooperation with the group of contact persons on national justice systems.

Providing legal aid

"Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice" (Charter of Fundamental Rights of the EU, Article 47(3)). Figure 19 sets out Member States' per capita budget allocation to legal aid. All Member States reported the allocation of a budget.

Figure 19

Annual public budget allocated to legal aid (*) (EUR per inhabitant)



Source: CEPEJ study

(*) In certain Member States legal professionals may also cover part of the legal aid; this is not reflected in the figures above.

Figure 20

Income threshold for legal aid in a specific consumer case (*) (differences in % between Eurostat poverty threshold and the income threshold)

Comparing the budgets dedicated to legal aid does not take into account the different macroeconomic conditions that exist throughout the Union. In order to have a better comparison, a specific narrow scenario of a consumer dispute has been explored with CCBE to present the eligibility of individuals for legal aid in the context of each Member State's income and living conditions. The data in Figure 20 relate to this specific scenario. Given the complexity of legal aid regimes in Member States, any comparison should be drawn with care and should not be generalised ([39]).

Most Member States grant legal aid on the basis of the applicant's income ([40]). Figure 20 below compares in % the income thresholds for granting legal aid ([41]) with the Eurostat *at-risk-of-poverty* thresholds (Eurostat threshold) ([42]). For example, if eligibility for legal aid appears at 20%, it means that an applicant with an income 20% higher than the Eurostat threshold can receive legal aid. On the contrary, if eligibility for legal aid appears at -20%, it means that the income threshold for legal aid is 20% lower than the Eurostat threshold. This provides a comparative overview of the income thresholds used by Member States to grant legal aid in this specific scenario.

Some Member States operate a legal aid system that provides for coverage of 100% of the costs linked to litigation (full legal aid), complemented by a system covering parts of the costs (partial legal aid). Some Member States operate either only a full or only a partial legal aid system.

Legal aid covering 100% of the costs Legal aid covering part of the costs

Source: European Commission with the Council of Bars and Law Societies of Europe (CCBE) ([38])

(*) Most Member States use disposable income for setting the threshold for legal aid eligibility, except for DK, FR, NL, PT which use gross income. BG: Legal aid covering 100% of the costs is provided to persons who are eligible for receiving social aid monthly allowances; DE: The income threshold amount is based on the Prozesskostenhilfebekanntmachung 2015 and on the average annual housing costs in DE in 2013 (SILC); IE: In addition to the income, the applicant must be able to show that the payment of a financial contribution would cause him/her undue hardship. LV: A range of income between EUR 128.06 and EUR 320 depending on the place of residence of the applicant. The rate is based on the arithmetic mean. FI: The income threshold amount is based on the threshold for available means of an individual without dependants and on the average annual housing costs in FI in 2013 (SILC). UK (SC): The value of the case (EUR 3 000) would be dealt with under small claims proceedings for which there is no full legal aid available.

([38]) Data concern 2015 and have been collected through replies by CCBE members to a questionnaire based on the following specific scenario: A dispute of an individual against a company (value of the claim is 3 000 EUR). Given that conditions for legal aid depend on the person's situation, the following scenario was used: a single 35-year-old employed applicant without dependants, with a regular income and a rented apartment.

([39]) Member States use different methods in establishing the threshold for eligibility, e.g. different reference periods (monthly/annual income). About half of the Member States apply different financial and non-financial capital thresholds in addition to the income threshold. The capital thresholds set by Member States are not taken into account. Some Member State legal aid systems provide for retroactively claiming back the legal aid granted when the income/capital of the legal aid beneficiary increases above a certain threshold within a specified number of years after the granting of legal aid. In BE, BG, IE, ES, FR, HR, LV, LT, LU, MT, NL, PL, PT, RO and UK (SC), certain categories of persons (e.g. individuals who receive unemployment, incapacity or health care benefits) are automatically entitled to receive legal aid in civil and commercial disputes without the need for demonstrating their financial means.

([40]) Additional criteria that Member States may use to grant legal aid to individuals such as the merit of the case are not reflected in this scenario.

([41]) The data refer to income thresholds valid in 2015.

([42]) Source: European Survey on Income and Living Conditions, Eurostat table ilc_li01, http://ec.europa.eu/eurostat/web/income-and-living-conditions/data/database

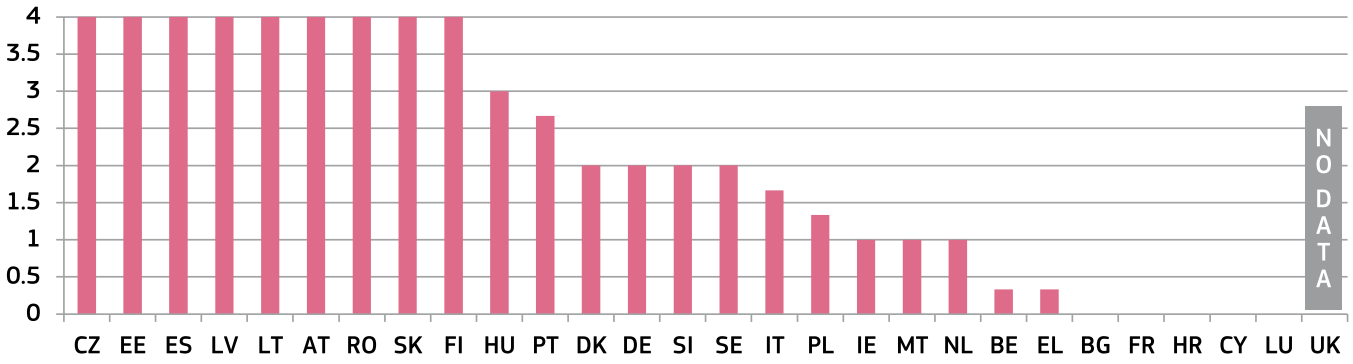
Submitting a claim online

Electronic submission of claims and electronic communication between courts and lawyers is another building block that facilitates access to justice and reduces delays and costs. ICT systems in courts also play an increasingly important role in cross-border cooperation between judicial authorities and thereby facilitate the implementation of EU legislation.

Figure 21

Electronic submission of claims (*) (0 = available in 0% of courts, 4 = available in 100% of courts ([43]))

Source: CEPEJ study

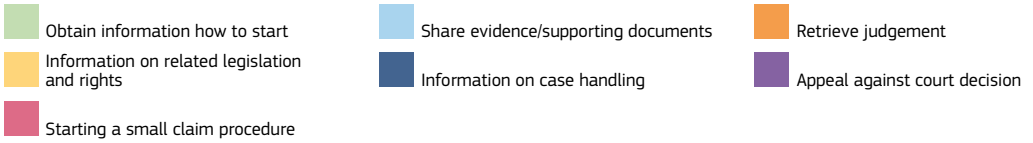


(*) PL: The possibility to bring a case to the court by electronic means only exists for writ of payment cases. RO: A case may be submitted to courts via email. Subsequently, the submission is printed and added to the case file.

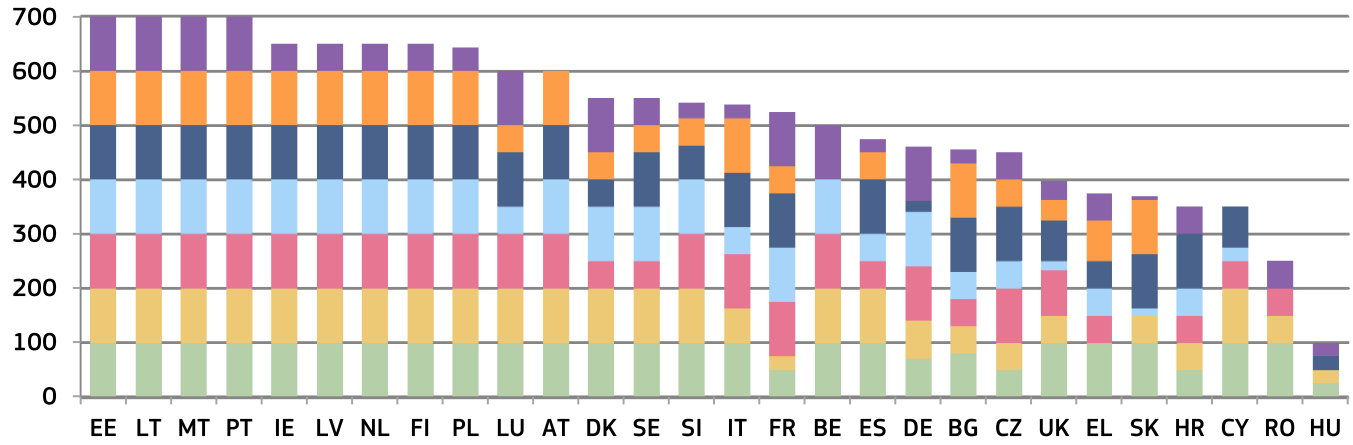
Figure 22

Benchmarking of small claims procedures online (*)

Easy ways to submit small claims, whether at national or European level, are key to improving citizens' access to justice and to enabling them to make better use of their consumer rights. The importance of cross-border online small claims procedures is also increasing in response to cross-border e-commerce. One of the European Commission's policy goals is therefore to simplify and speed up small claims procedures by improving the communication between judicial authorities and by making smart use of ICT. The ultimate goal is to reduce administrative burden for all user groups: courts, judicial actors and end-users. For the 13th eGovernment Benchmarking Report commissioned by the European Commission the assessment of the small claims procedure was carried out by a group of researchers (so-called 'mystery shoppers') ([45]). The purpose was to detect whether online public service provisions are organised around users' needs ([46]).



Source: 13th eGovernment Benchmarking Report, study being prepared for the European Commission, Directorate-General Communications Networks, Content and Technology ([44]).



(*) Member States only received 100 points per category if the service was fully available online through a central portal. They received 50 points if only information on the service as such was available online.

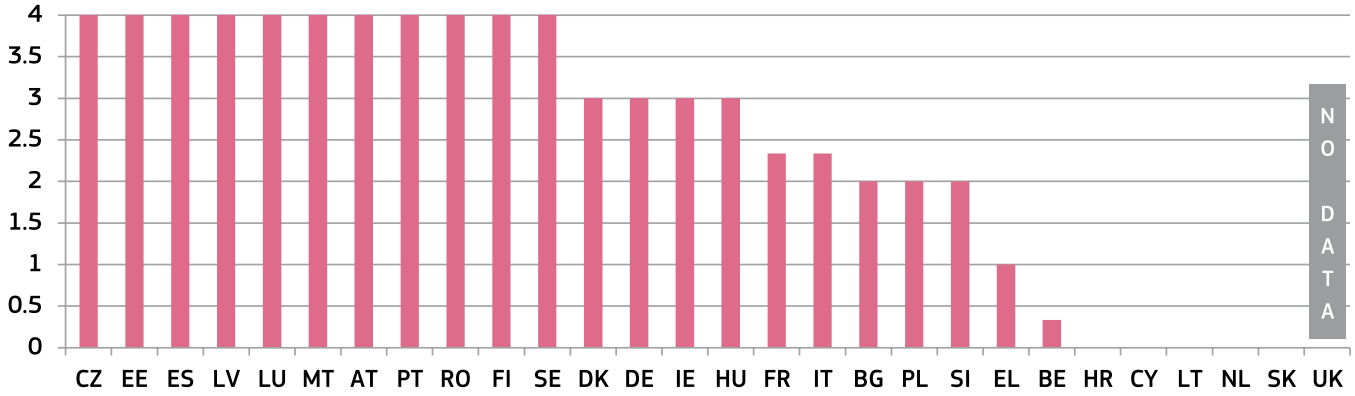
Compared with the figures for the previous year, the chart shows an improvement in the availability in all seven categories. Nineteen Member States showed improvements compared with last year, while none scored less.

Communication between courts and lawyers

Figure 23

Electronic communication (0 = available in 0% of courts, 4 = available in 100% of courts ([47]))

Source: CEPEJ study



Communicating with the media

By receiving and reporting comprehensible and timely information, the media serve as a channel that contributes to the accessibility of justice systems and judicial work.

Figure 24

Relations between courts and the press/media (*)

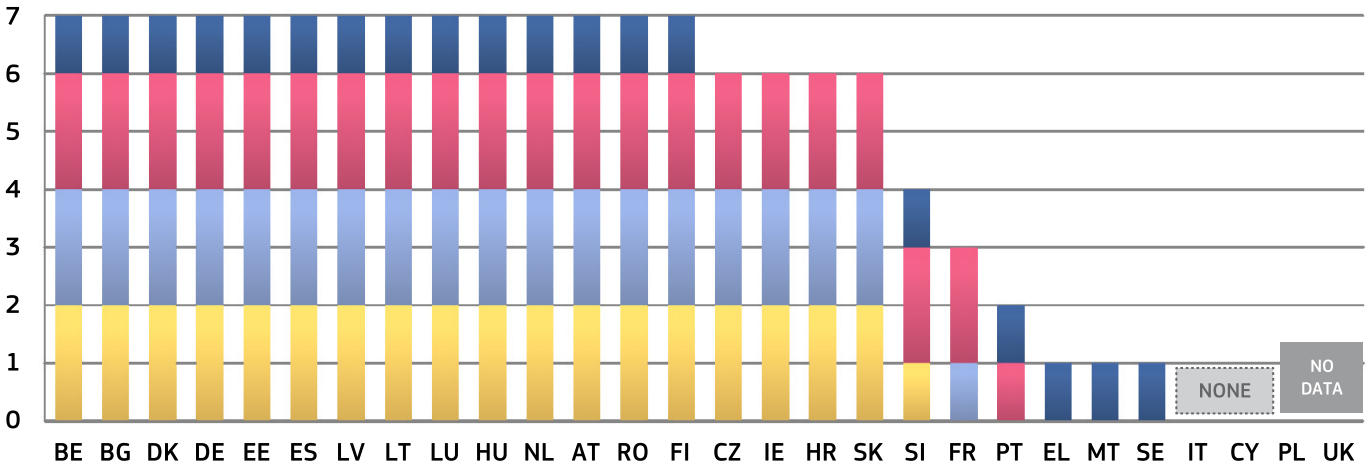
An official is in charge of explaining judicial decisions to the press/media (1st instance)

An official is in charge of explaining judicial decisions to the press/media (Highest instance)

An official is in charge of explaining judicial decisions to the press/media (2nd instance)

Judiciary has established guidelines on communication with the press/media for judges

Source: European Commission ([48])



(*) For each instance (first, second and third), two points can be given if civil/commercial cases and administrative cases are covered. If only one category of cases is covered (e.g. either civil/commercial or administrative), only one point is given. DE: Each federal state has its own guidelines for judges on communicating with the press and media. SE: Judges are actively encouraged to communicate their own judgments to the media. Furthermore, a media group consisting of judges from all three instances has been created.

([43]) Data concern 2014. Equipment rate from 100% (device completely deployed) to 0% (device non-existing) indicates the functional presence in courts of the device covered by the graph, according to the following scale: (100%= 4 points if applicable to all matters / 1.33 points per specific matter; 50-99%= 3 points if applicable to all matters / 1 point per specific matter; 10-49%= 2 points if applicable to all matters / 0.66 point per specific matter; 1-9%= 1 point if applicable to all matters / 0.33 points per specific matter. Matter relates to the type of litigation handled (civil/commercial, criminal, administrative or other).

([44]) Data concern 2015. To be published at: https://ec.europa.eu/digital-single-market/en/newsroom/reports-studies-etc/all

([45]) Mystery shoppers are trained and briefed to observe, experience, and measure a (public service) process by acting as a prospective user.

([46]) For this purpose, each researcher acted as a regular citizen and his/her 'journey' was time-limited, i.e. each mystery shopper had one day to assess one life event. This implies that when a particular feature could not be found within this time, it was answered negatively.

([47]) Data concern 2014. Equipment rate from 100% (device completely deployed) to 0% (device non-existing) indicates the functional presence in courts of the device covered by the graph, according to the following scale: (100%= 4 points if applicable to all matters / 1.33 points per specific matter; 50-99%= 3 points if applicable to all matters / 1 point per specific matter; 10-49%= 2 points if applicable to all matters / 0.66 point per specific matter; 1-9%= 1 point if applicable to all matters / 0.33 points per specific matter. Matter relates to the type of litigation handled (civil/commercial, criminal, administrative or other).

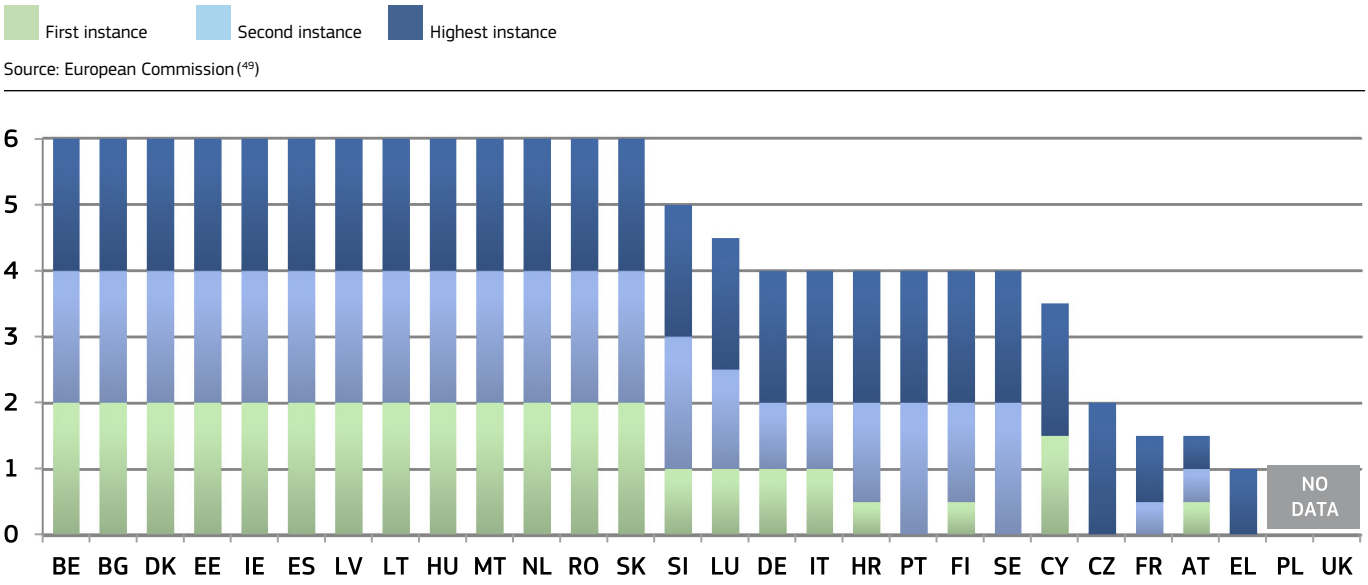
([48]) Data concern 2015 and have been collected in cooperation with the group of contact persons on national justice systems.

Accessing judgments

The provision of judgments online contributes to advancing transparency and understanding of the justice system and helps citizens and businesses to take informed decisions when accessing justice. It could also contribute to increasing consistency of case law.

Figure 25

Access to published judgments online (*) (civil and commercial and administrative cases, all instances)

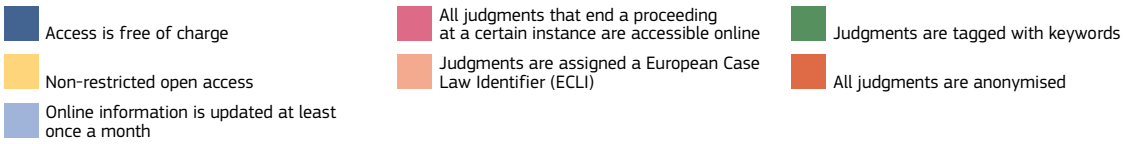


Source: European Commission [49]

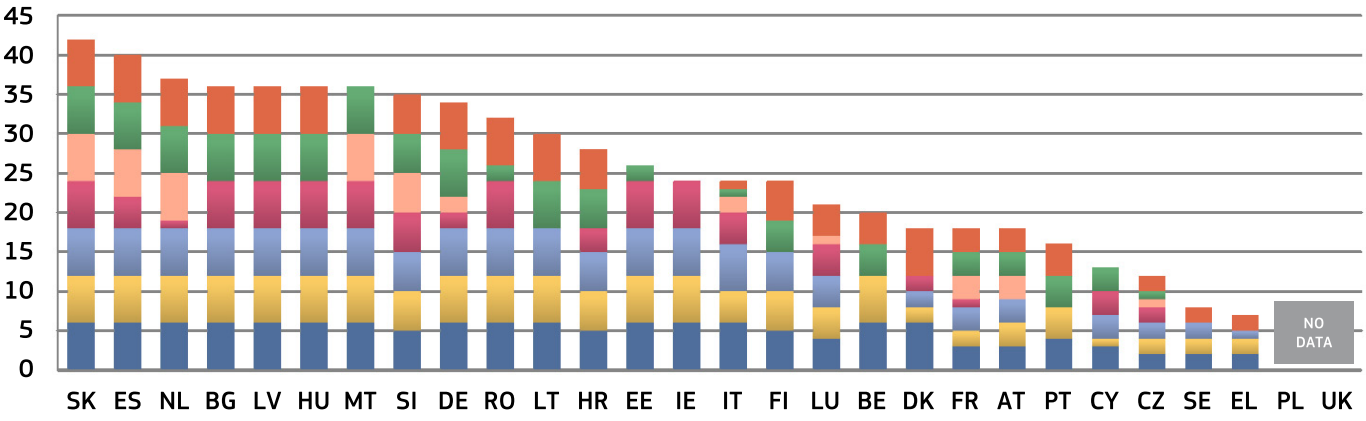
(*) For civil/commercial and administrative cases respectively one point was given for each instance where judgments for all courts are available online to the general public (0.5 points when judgments are available only for some courts). Where a Member State has only two instances, points have been given for three instances by mirroring the respective higher instance of the non-existing instance. For example, if a Member State has only the first and the highest instance – with the highest instance receiving two points, the (non-existing) second instance was also given two points. For those Member States that do not distinguish between administrative and civil/commercial cases, the same points have been given for both areas of law. For some Member States not all judgments are made available online. CZ: Some first instance administrative law judgments are made available on the Supreme Administrative Court's website. DE: Each federal state and the federal level decide on the online availability of judgments of their respective courts. IT: Judgments of first and second instance in civil/commercial cases are available online only to the parties concerned. SE: The public is entitled to read all judgments or decisions to the extent that they are not classified. RO: Online availability of judgments to the general public was put in place in December 2015.

Figure 26

Arrangements for online publication of judgments in all instances (*) (civil/commercial and administrative cases)



Source: European Commission [50]



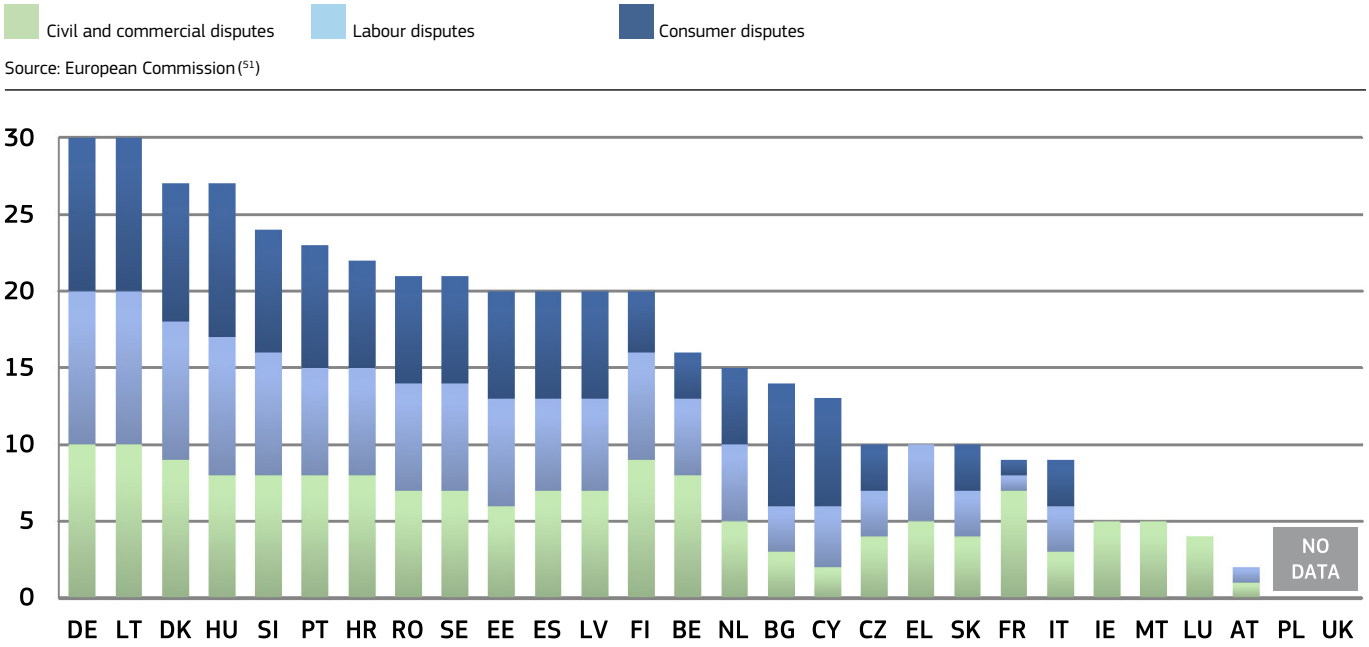
(*) For each instance (first, second and third), two points can be given if civil/commercial cases and administrative cases are covered. If only one category of cases is covered (e.g. either civil/commercial or administrative), only one point per instance is given. In some Member States (IE, MT, EE), judges decide on the anonymisation of judgments. IE: Family law, child care and certain other proceedings where statute requires judgments are anonymised. MT: All family cases are anonymised. DE: Online publication of a selection of judgments in most federal states, tagging of judgments with keywords in some federal states, ECLI system in the Federal Constitutional Court, the Federal Administrative Court and the Federal Labour Court. IT: Judgments of first and second instance in civil/commercial cases are accessible online only to the parties concerned. RO: Online availability of judgments to the general public was put in place in December 2015 and decisions are being gradually uploaded dating back to 2007.

Accessing alternative dispute resolution methods

Access to justice is not limited to courts but applies to other avenues outside courts as well. All Member States that provided data have put in place alternative dispute resolution methods. Promoting and incentivising their voluntary use in order to inform and raise awareness contributes to improving access to justice. Figure 27 covers any method for resolving disputes other than litigation in courts. Mediation, conciliation and arbitration are the most common forms of alternative dispute resolution methods.

Figure 27

Promotion of and incentives for using alternative dispute resolution methods (*)



Source: European Commission ([51])

(*) Aggregated indicators based on the following indicators: 1) website providing information on ADR; 2) Publicity campaigns in media; 3) Brochures to the general public; 4) Court provides specific information sessions on ADR upon request; 5) ADR/mediation co-ordinator at courts; 6) Publication of evaluations on the use of ADR; 7) Publication of statistics on the use of ADR; 8) Legal aid covers costs (in part or in full) incurred with ADR; 9) Full or partial refund of court fees; including stamp duties; if ADR is successful; 10) No lawyer for ADR procedure required; 11) Judge can act as mediator; 12) Others. For each of these 12 indicators, one point was given. For each area of law, a maximum of 12 points could be given. In some Member States (ES, FR, LT), conciliation procedures prior to judicial proceedings are compulsory in labour disputes. In addition in ES, judicial mediation is compulsory once judicial proceedings have started. IE: Promotion and incentives relate only to family proceedings. IT: Judges can act as a conciliator in a proceeding and, if so, the conciliation can be enforced. LV: No court fees are charged in labour disputes.

([49]) Data concern 2015 and have been collected in cooperation with the group of contact persons on national justice systems.

([50]) Data concern 2015 and have been collected in cooperation with the group of contact persons on national justice systems.

([51]) Data concern 2015 and have been collected in cooperation with the group of contact persons on national justice systems.

3.2.2. Resources

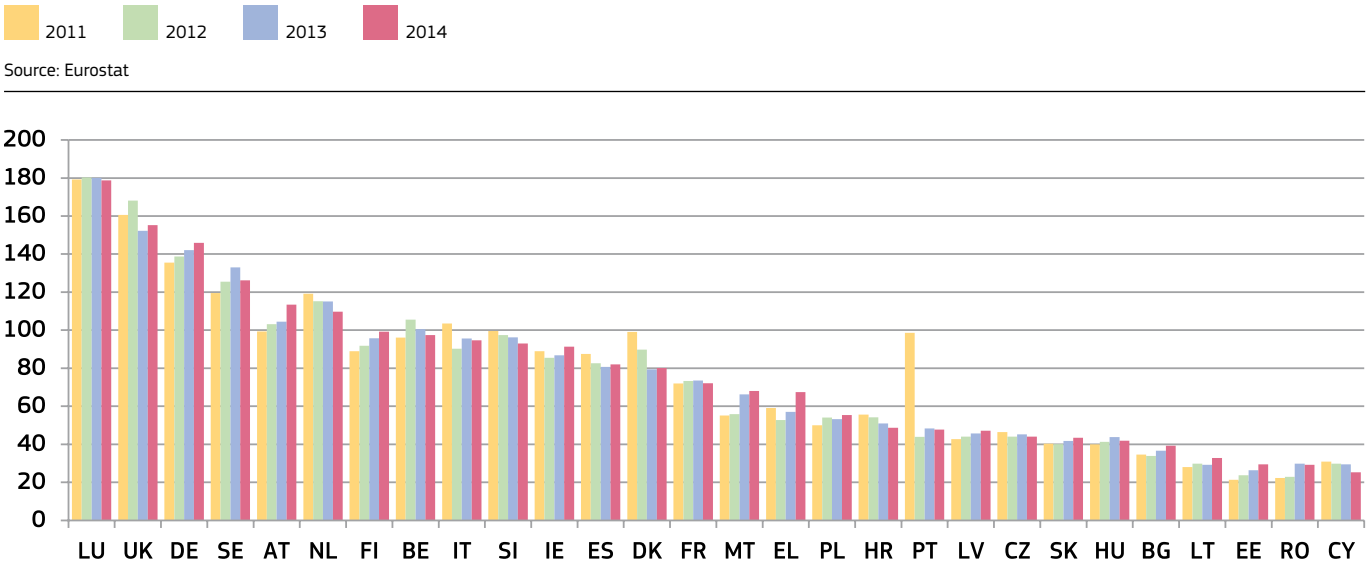
Adequate resources are necessary for the good functioning of the justice system and to have the right conditions at courts and well-qualified staff in place. Without a sufficient number of staff with the required qualifications and skills and access to continuous training, the quality of proceedings and decisions are at stake.

Financial resources

The figures below show the budget actually spent on courts, first by inhabitant (Figure 28) and second as a share of gross domestic product (Figure 29) ([52]).

Figure 28

General government total expenditure on law courts (*) (in EUR per inhabitant)

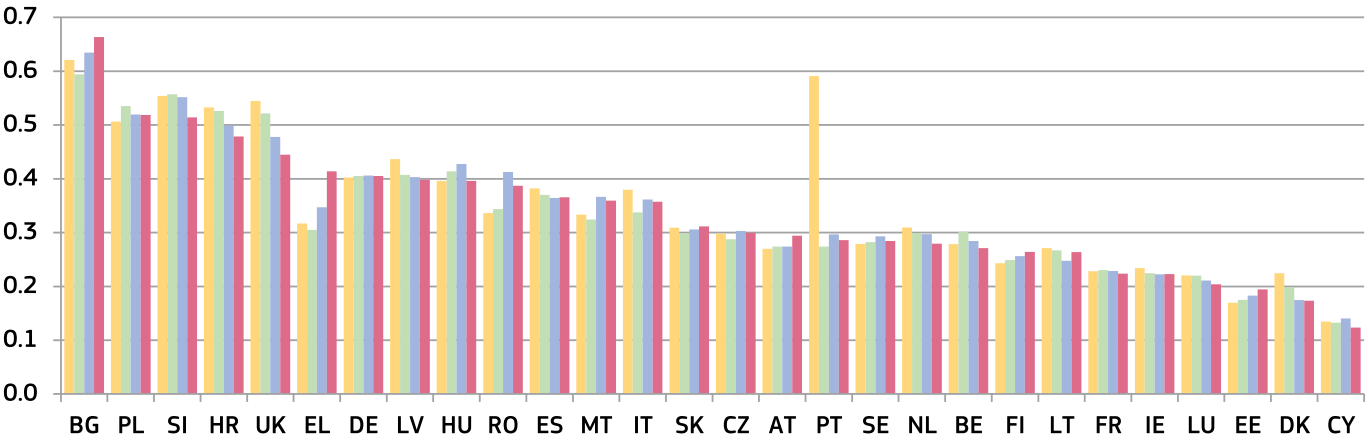


Source: Eurostat

(*) Data for ES, LT, LU, NL and SK are provisional.

Figure 29

General government expenditure on law courts (*) (as a percentage of gross domestic product)



Source: Eurostat

(*) Data for ES, LT, LU, NL and SK are provisional.

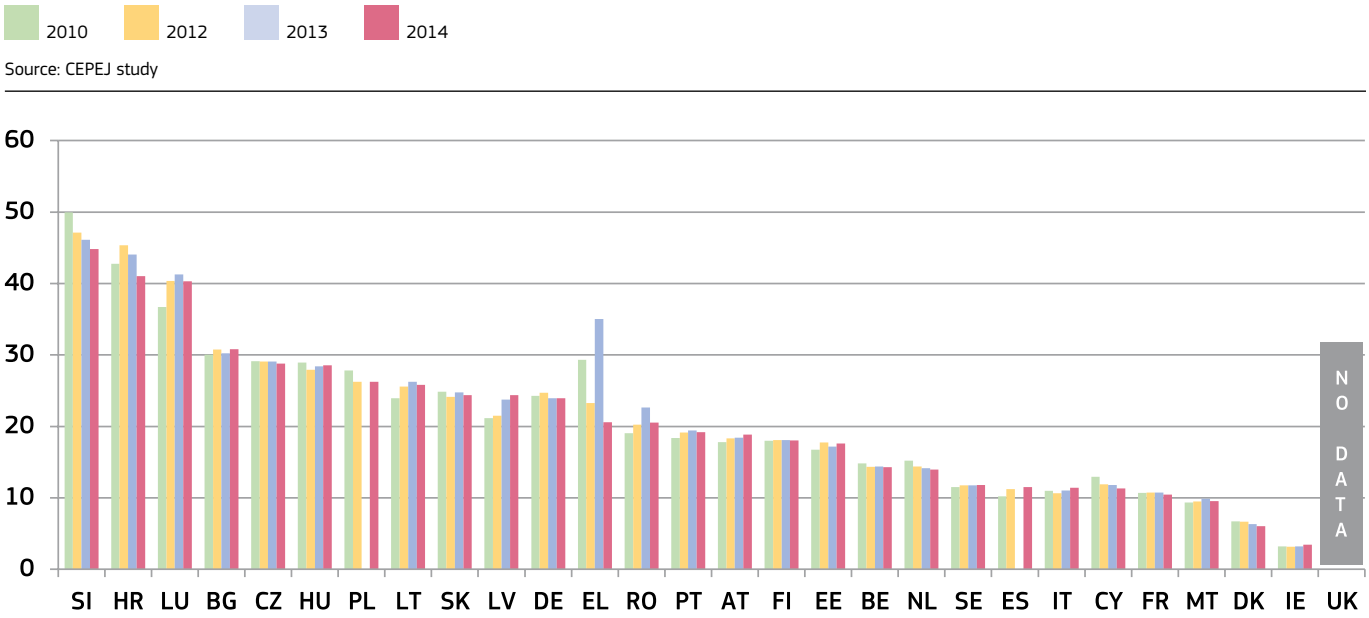
([52]) Source: General government total (actual) expenditure on administration, operation or support of administrative, civil and criminal law courts and the judicial system, including enforcement of fines and legal settlements imposed by the courts and operation of parole probation systems, and legal aid - legal representation and advice on behalf of government or on behalf of others provided by government in cash or in services; excluding prison administrations (National Accounts Data, Classification of the Functions of Government (COFOG), group 03.3), Eurostat table gov_10a_exp, http://ec.europa.eu/eurostat/data/database

Human resources

Human resources are an important asset for the justice system. Gender balance of judges adds complementary knowledge, skills and experience and reflects the reality of society.

Figure 30

Number of judges (*) (per 100 000 inhabitants)



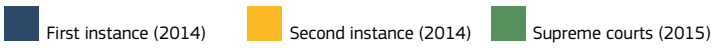
Source: CEPEJ study

(*) This category consists of judges working full-time, under the CEPEJ methodology. It does not include the Rechtspfleger/court clerks that exist in some Member States. EL: The total number of professional judges includes different categories over the years shown above, which partly explains their variation.

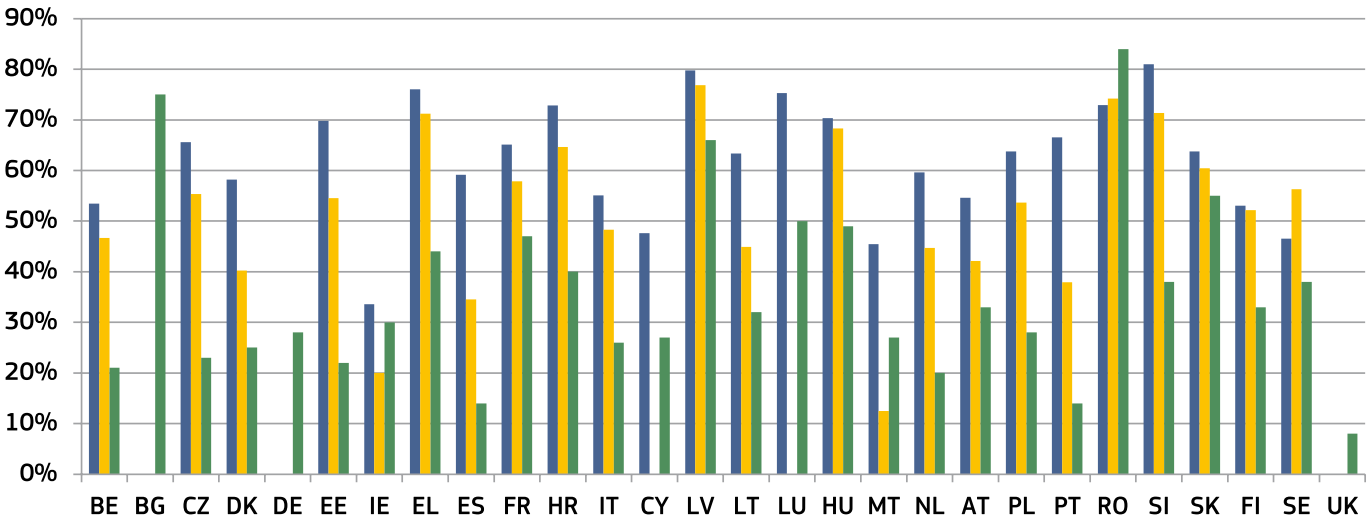
Figure 31

Proportion of female professional judges at first and second instance and Supreme Courts (*)

Seven Member States report a gender balanced ([54]) rate of judges for both instances and 14 report a rate of female judges above the gender balance for at least one of the two instances. At Supreme Court level, however, 19 Member States report rates of female professional judges below – in some cases far below – 40%.



Source: European Commission (Supreme Courts) ([53]) and CEPEJ study (first and second instance)

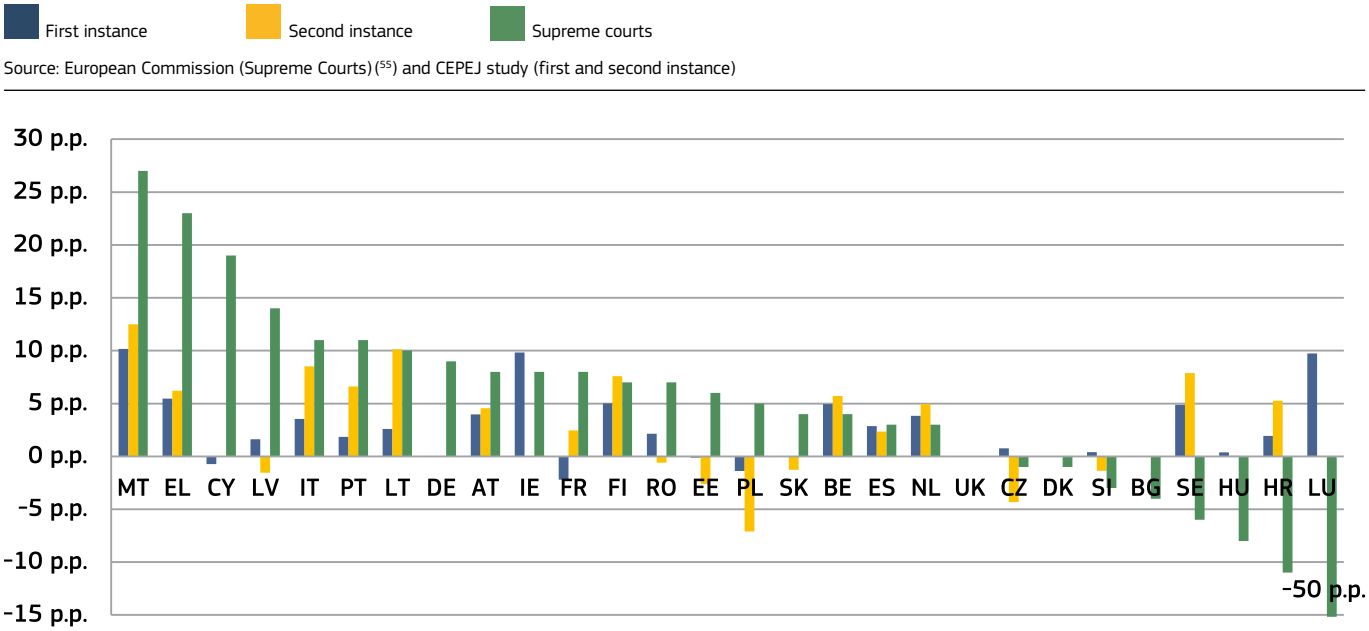


([53]) Source of data for the Supreme Courts: European Commission, Database on women and men in decision-making, available at: http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/index_en.htm

([54]) Between 40-60% of each gender is considered gender balanced. European Commission, Strategic Engagement for Gender Equality 2016-2019, SWD(2015) 278 final, 3 December 2015, available at: http://ec.europa.eu/justice/gender-equality/document/files/strategic_engagement_en.pdf

Figure 32

Variation in proportion of female professional judges at both first and second instance from 2010 to 2014 as well as at Supreme Courts from 2010 to 2015 (*) (difference in percentage points)

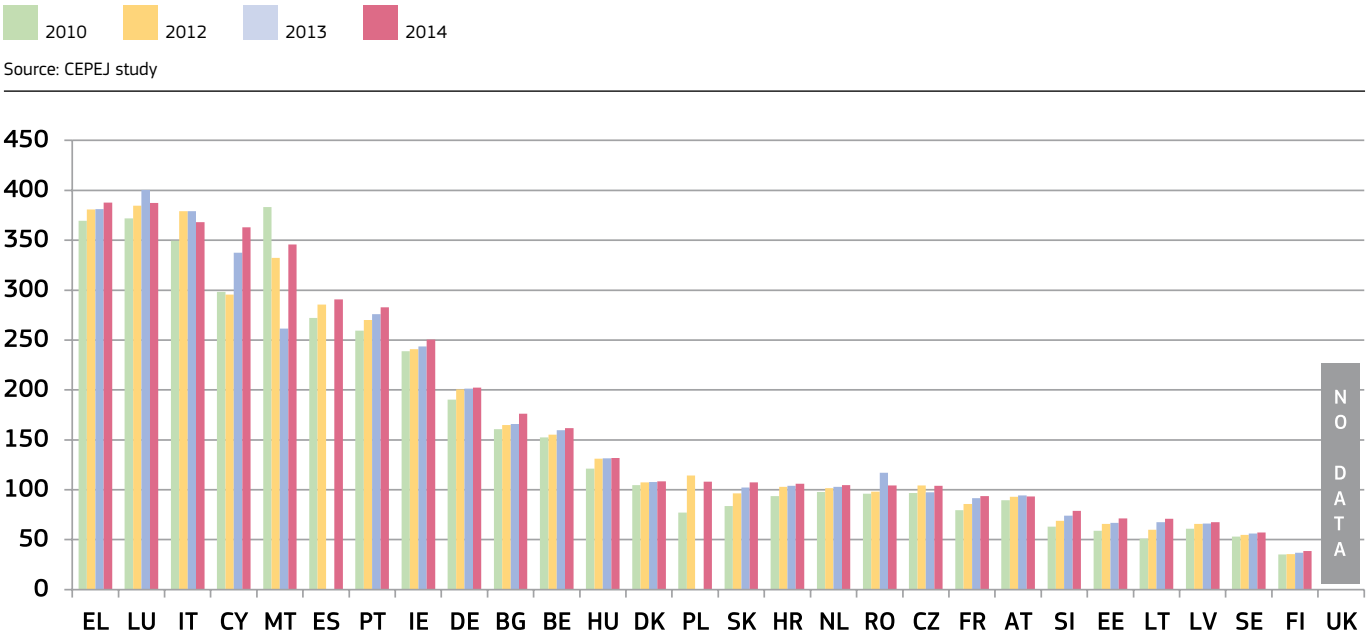


Source: European Commission (Supreme Courts) ([55]) and CEPEJ study (first and second instance)

(*) LU: the proportion of female professional judges in the Supreme Court declined from 100% in 2010 to 50% in 2015.

Figure 33

Number of lawyers (*) (per 100 000 inhabitants)



Source: CEPEJ study

(*) A lawyer is a person qualified and authorised according to national law to plead and act on behalf of his or her clients, to engage in the practice of law, to appear before the courts or advise and represent his or her clients in legal matters (Recommendation Rec (2000)21 of the Committee of Ministers of the Council of Europe on the freedom of exercise of the profession of lawyer).

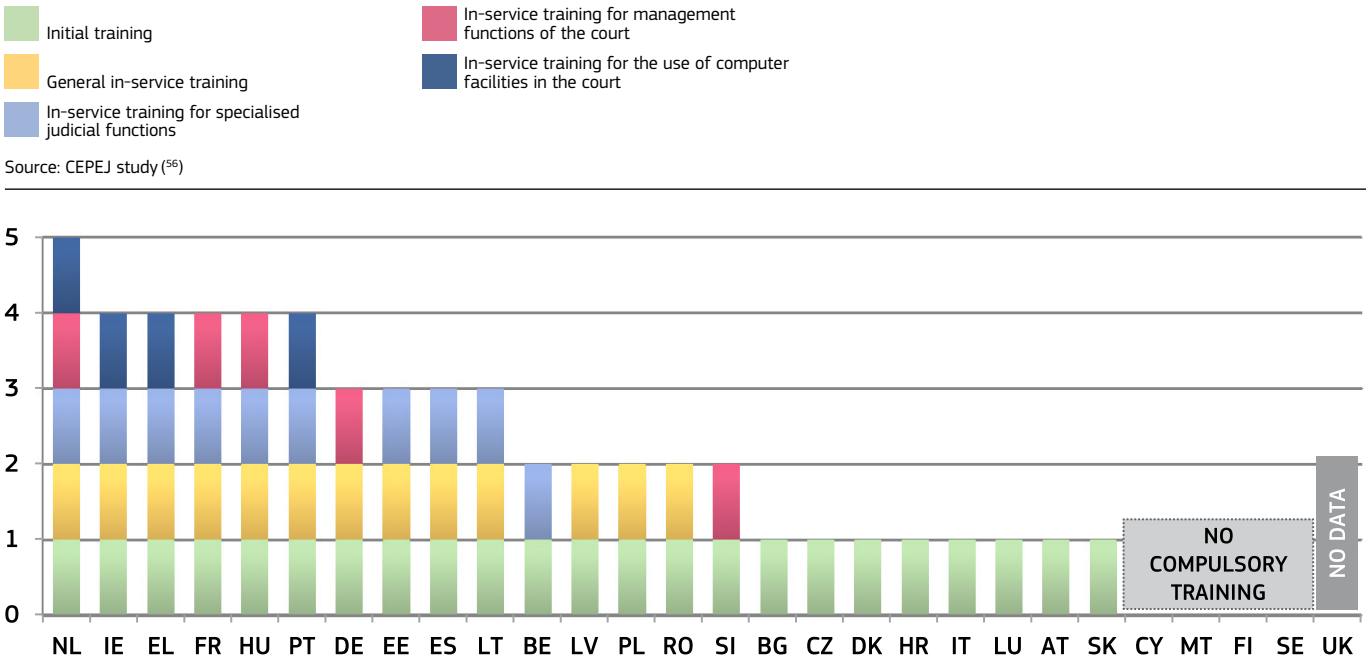
([55]) Source of data for the Supreme Courts: European Commission, Database on women and men in decision-making, available at: http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/index_en.htm

Training

The promotion of training, as part of human resources policies, is a necessary tool to sustain and improve the quality of justice systems. Judicial training, including in judicial skills, is also important in contributing to the quality of judicial decisions and the justice service delivered to citizens. The data set out below cover judicial training in a broad range of areas, including on communication with parties and the press.

Figure 34

Compulsory training for judges (*)



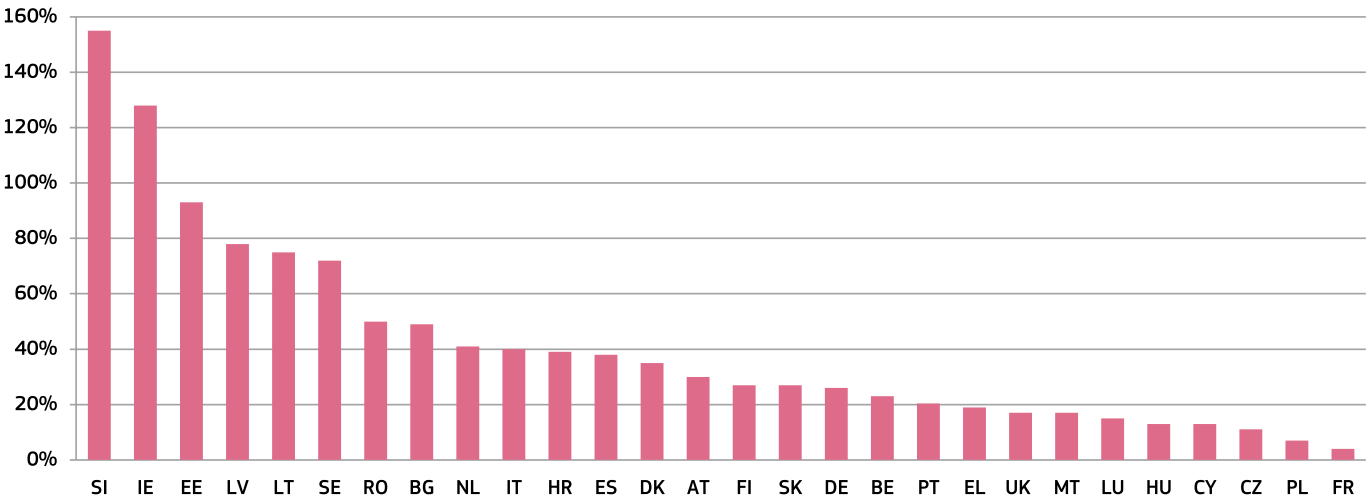
Source: CEPEJ study ([56])

(*) The following Member States do not offer training in certain categories: MT (initial training); DK (specialised functions); EL, IE, MT, ES (management functions); BG, EE, MT (use of computer facilities). In all other cases, training may be provided but it is optional.

Figure 35

Judges participating in continuous training activities in EU law or in the law of another Member State (*) (as a percentage of total number of judges)

Source: European Commission, European judicial training 2015 ([57])



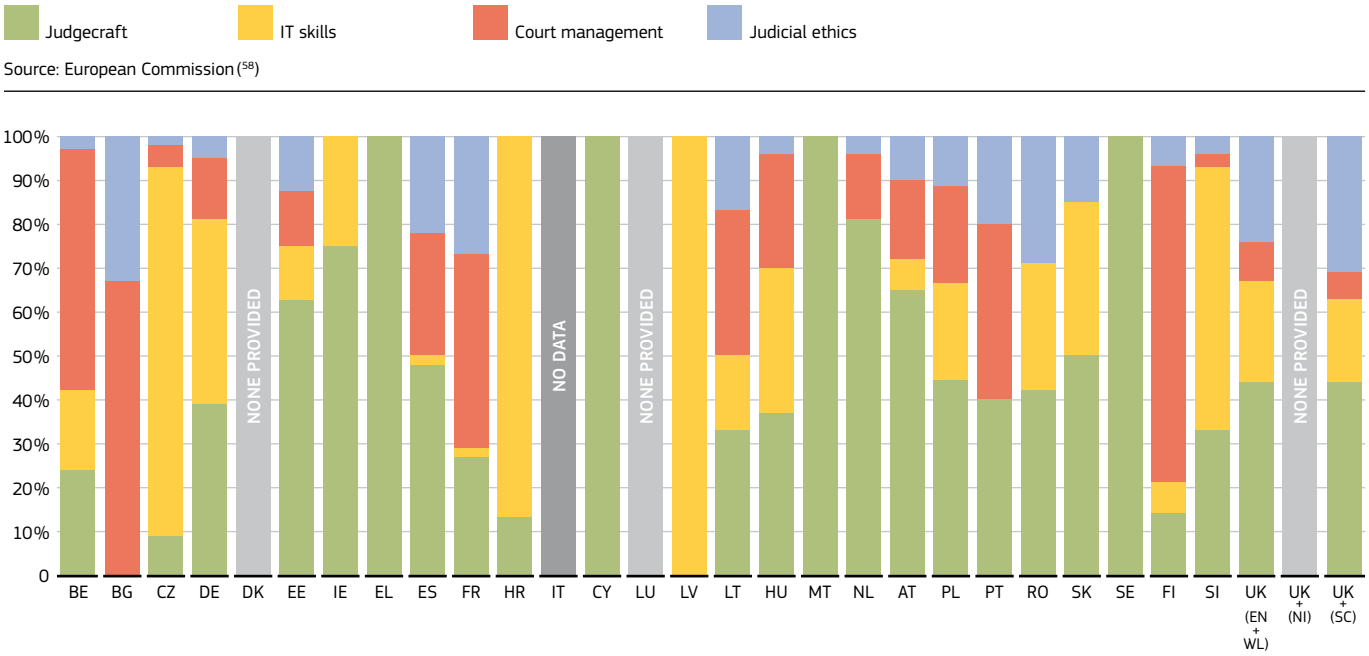
(*) In a few cases reported by Member States the ratio of participants to existing members of a legal profession exceeds 100%, meaning that participants took part in more than one training activity on EU law.

([56]) Data concern 2014.

([57]) In 2011, the European Commission set the target that, by 2020, half of all legal practitioners in the EU should have attended training in European law or in the law of another Member State, this means 5% per year on average. The 2015 Report on European judicial training (available at: http://ec.europa.eu/justice/criminal/files/final_report_2015_en.pdf) describes the progress towards this target. Data concern 2014.

Figure 36

Percentage of continuous judicial training activities on various types of judicial skills (*)

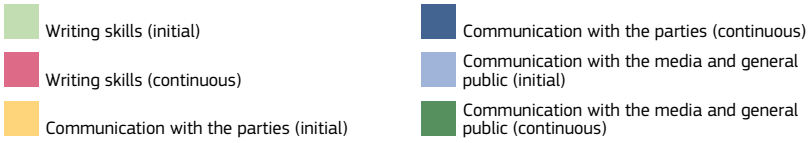


Source: European Commission [58]

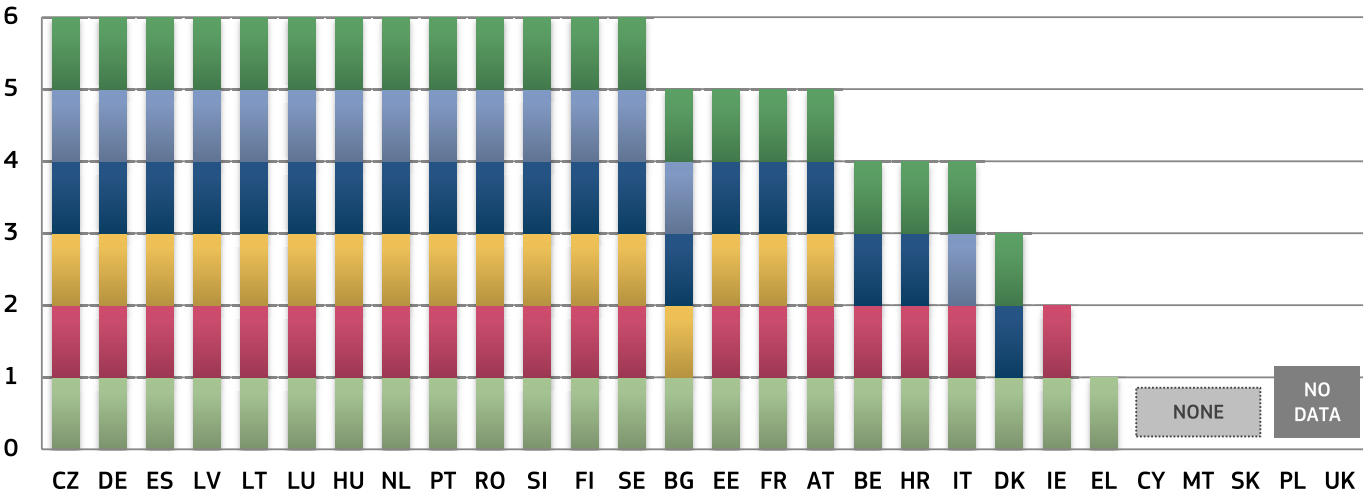
(*) The table shows the distribution of continuous judicial training activities (i.e. those taking place after the initial training period to become a judge) in each of the four identified areas as a percentage of the total. Legal training activities are not taken into account. Judicial training authorities in DK, LU, UK(NI) did not provide specific training activities on the selected skills.

Figure 37

Availability of training for judges on communication with parties and the press



Source: European Commission [59]



([58]) Data concern 2014 and have been collected in cooperation with the European Judicial Training Network, which represents EU Judicial training institutions. Continuous training on "judgecraft" includes activities such as conducting hearings, writing decisions or rhetoric.

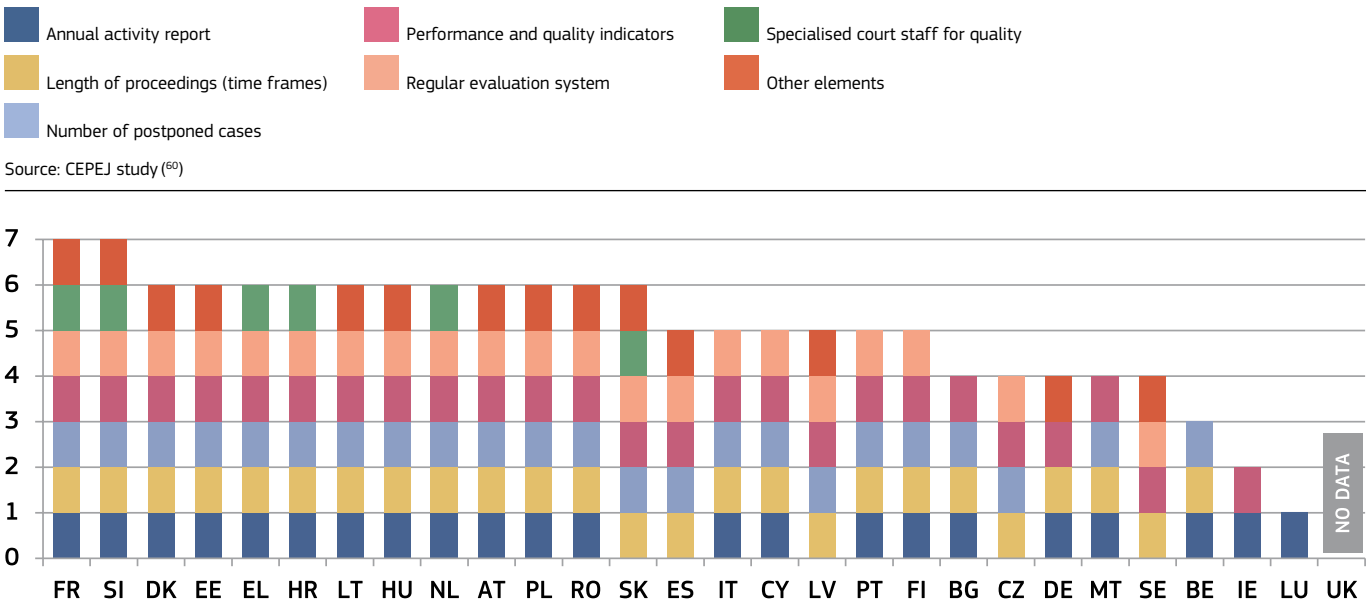
([59]) Data concern 2015 and have been collected in cooperation with the group of contact persons on national justice systems.

3.2.3. Assessment tools

Improving the quality of justice systems requires tools to assess their functioning. Monitoring and evaluation of court activities help to improve court performance by detecting deficiencies and needs, and by making the justice system more responsive to current and future challenges. Adequate ICT tools can provide real-time case management, standardised court statistics, management of backlogs and automated early-warning systems. Surveys are also indispensable to assess how justice systems operate from the perspective of legal professionals and court users. Beyond the mere fact of surveys being conducted, the 2016 Justice Scoreboard has looked deeper into the topics and follow-up of surveys conducted among court users or legal professionals.

Figure 38

Availability of monitoring and evaluation of court activities (*)

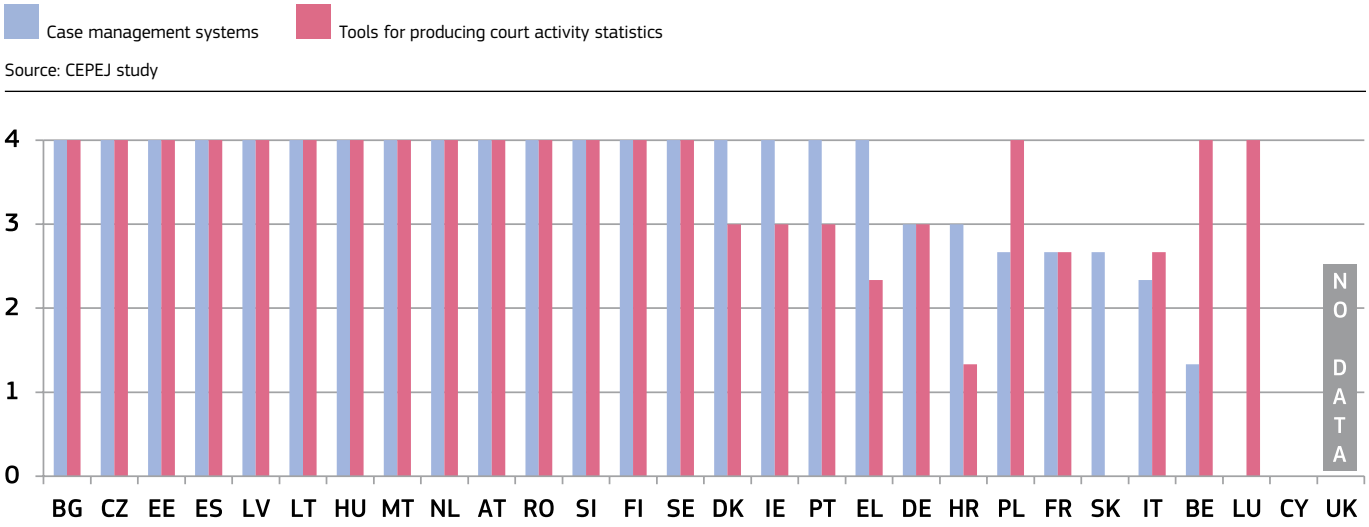


Source: CEPEJ study ([60])

(*) The monitoring system aims to assess the day-to-day activity of courts thanks, in particular, to data collections and statistical analysis. The evaluation system refers to the performance of court systems, using indicators and targets. In 2014, all Member States reported having a system that allows them to monitor the number of incoming cases and the number of decisions handed down, making these categories irrelevant. Similarly, in-depth work drawn in 2015 superseded the mere reference to quality standards as an evaluation category. This has made it possible to merge the remaining categories in a single figure for monitoring and evaluation. Data on 'other elements' include e.g. appealed cases (EE, ES, LV), hearings (SE), or the number of cases solved within certain timeframes (DK).

Figure 39

ICT used for case management and for court activity statistics (*) (weighted indicator: min=0, max=4 ([61]))



Source: CEPEJ study

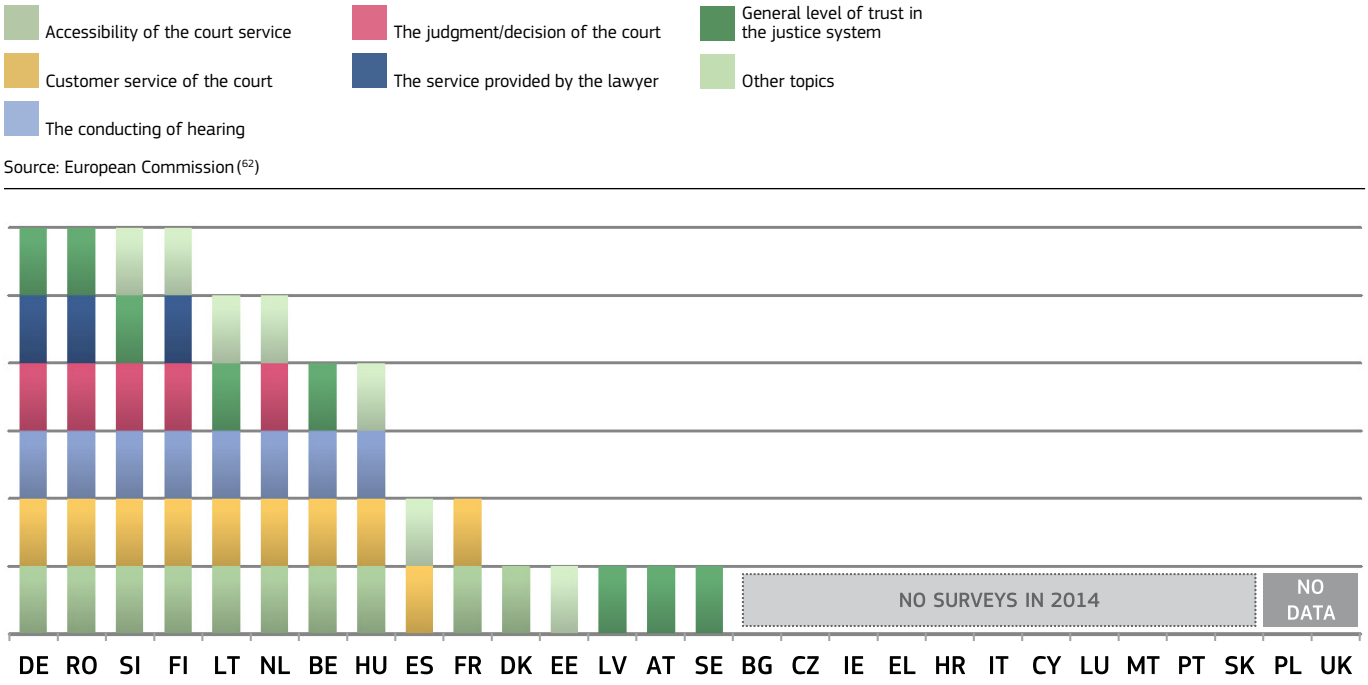
(*) IE: Electronic case filing is mandatory for personal insolvency cases other than bankruptcy and optional for any small claim.

([60]) Data concern 2014.

([61]) Data concern 2014. Equipment rate from 100% (device completely deployed) to 0% (device non-existing) indicates the functional presence in courts of the device covered by the graph, according to the following scale: 100%= 4 points if applicable to all matters / 1.33 points per specific matter; 50-99%= 3 points if applicable to all matters / 1 point per specific matter; 10-49%= 2 points if applicable to all matters / 0.66 point per specific matter; 1-9%= 1 point if applicable to all matters / 0.33 points per specific matter. Matter relates to the type of litigation handled (civil/commercial, criminal, administrative or other).

Figure 40

Topics of surveys conducted among court users or legal professionals (*)

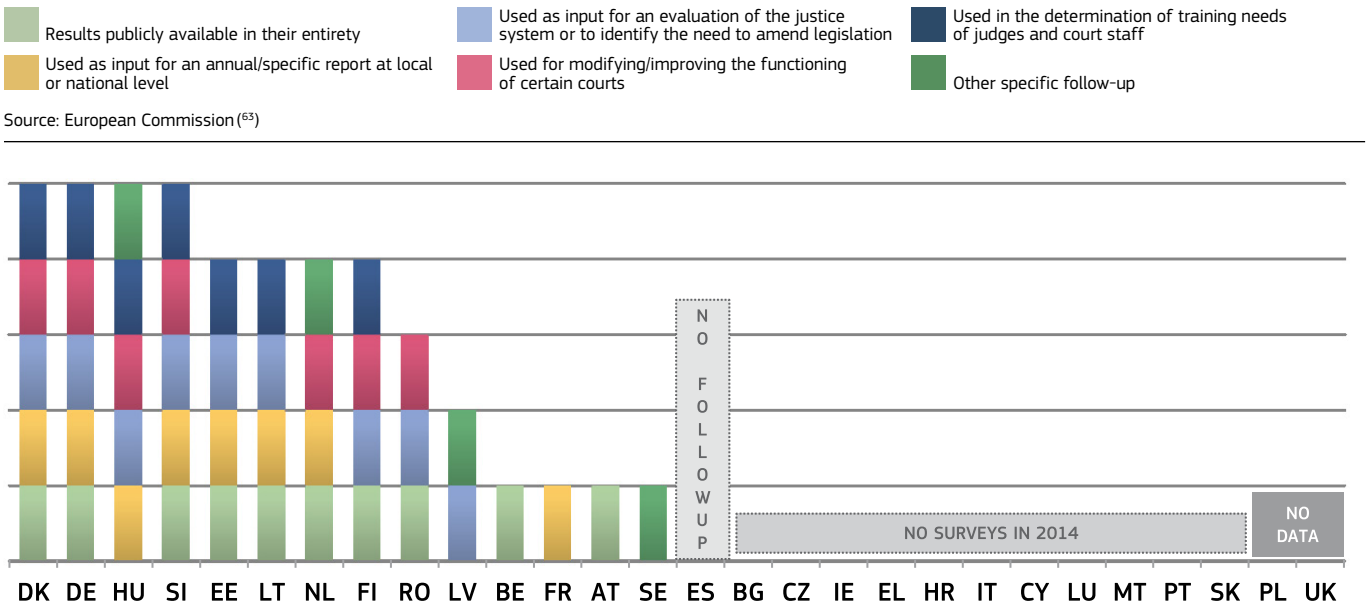


Source: European Commission ([62])

(*) Some Member States that did not carry out surveys in 2014 did so in 2015 (IT) or plan it in 2016 (IE).

Figure 41

Follow-up of surveys conducted among court users or legal professionals



Source: European Commission ([63])

([62]) The data concern 2014 and have been collected in cooperation with the group of contact persons on national justice systems.

([63]) The data concern 2014 and have been collected in cooperation with the group of contact persons on national justice systems.

([64]) The 2016 Annual Growth Survey (see COM(2015) 690 final) refers to the need to improve the quality of the judiciary "including through the use of quality standards".

([65]) Standards can be set up by the law, by courts (including through well-established court practices), by the Council for the Judiciary (or other independent body) or by others (e.g. in CZ standards are, in most cases, formulated by the Ministry of Justice).

([66]) The data concern 2015 and have been collected in cooperation with the group of contact persons on national justice systems.

3.2.4. Quality standards

Standards can drive up the quality of justice systems ([64]). In 2015, the Commission started to work with the group of contact persons specifically on the standards relating to the functioning of justice systems. Quality standards involve a broad range of topics on how justice systems are set up and work. Several actors can play a role in establishing such standards ([65]). Figure 42 presents a general mapping of existing standards. It shows that standards covering many aspects of their justice systems are defined in a large number of Member States. The information collected also reveals that standards are predominantly defined by law. However, issues directly related to the operational functioning of courts are mainly set at court level, including through well-established court practices. This concerns in particular the management of backlogs, monitoring of cases, caseload of courts, services provided to court users, court facilities and information to parties.

Figure 42

Defined standards on aspects related to the justice system (*)

Source: European Commission ([66])

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PT	RO	SI	SK	FI	SE	
Length/processing time for civil and commercial cases		●		●	●	●		●	●	●	●	●		●	●		●	●	●		●	●	●		●	●	19
Length/processing time for administrative cases				●	●	●		●	●		●	●		●	●		●	●	●		●	●	●		●	●	17
Length/processing time between the initial registration of the case and the first hearing	●	●		●	●	●		●	●	●	●	●			●		●	●	●		●	●	●		●	●	19
Length/processing time between the last hearing and delivering the judicial decision	●	●		●	●	●	●	●	●	●	●	●		●	●		●		●	●	●	●	●	●	●	●	22
Management of backlogs	●	●	●	●	●	●		●		●	●	●			●		●	●	●	●	●	●	●		●	●	20
Data collection on civil and commercial proceedings		●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	25
Data collection on administrative proceedings		●	●	●	●	●		●	●	●	●	●		●	●	●	●	●	●		●	●	●	●	●	●	22
Interconnection of IT case-management systems to ensure nation-wide data collection		●	●	●	●	●	●	●	●	●	●	●		●	●	●	●		●	●	●	●	●	●	●	●	23
Interconnection of IT case-management systems to ensure cooperation between national courts		●			●	●	●	●	●	●	●	●		●	●	●	●	●	●	●	●	●	●	●	●	●	22
Active monitoring of case progress		●		●	●	●		●	●	●	●	●		●	●		●		●	●	●	●	●		●	●	19
Workload of courts	●	●	●	●	●			●	●		●	●		●			●		●		●	●	●		●	●	17
Consultation on draft legislation on the justice system	●		●	●	●	●	●	●	●	●	●			●	●		●	●	●	●	●	●	●	●	●	●	22
Service provided to court users		●		●	●	●	●	●	●	●	●	●		●	●		●	●	●	●	●	●	●	●	●	●	22
Court facilities and accessibility to court premises		●		●	●	●		●	●	●	●	●		●	●	●	●	●	●	●	●	●	●	●	●	●	22
Information to parties about progress of their case			●	●	●	●		●	●	●	●	●		●	●		●	●	●	●	●	●	●	●	●	●	21
Planning and conducting of hearings	●		●	●	●	●	●	●	●	●	●	●		●	●		●	●	●	●	●	●	●	●	●	●	23
Handling of complaints from court users related to the functioning of the court	●	●	●	●	●	●	●	●	●	●	●			●	●		●	●	●	●	●	●	●	●	●	●	23
Clarity/reasoning or other aspects concerning the judgment			●	●	●	●		●	●	●	●	●		●	●	●	●	●	●	●	●	●	●	●	●	●	22
Publication of judgments		●		●	●	●		●	●	●	●	●		●	●		●	●	●	●	●	●	●	●	●	●	21
Training of judges	●	●	●	●	●	●		●	●	●	●	●		●	●	●	●	●	●		●	●	●	●	●		22
Training of court staff	●	●	●	●	●	●	●	●	●	●	●	●		●	●	●	●	●	●	●	●	●	●	●	●		24
Allocation of human resources for courts	●		●	●	●	●		●	●		●	●		●	●	●	●	●	●	●	●	●	●	●	●	●	22
Allocation of material resources for courts		●	●	●	●	●		●	●	●	●	●		●	●	●	●	●	●	●	●	●	●	●	●	●	23
Gender diversity in the judiciary				●	●				●	●	●						●								●		7
Other standards																				●							1

(*) Note that blank replies in standards related to administrative cases may be due to the absence of a specific 'administrative case' category (e.g. IE). PL and UK did not provide information on standards. In the highlighted areas, standards are predominantly set by courts, including through well-established court practices. For all other areas, standards are predominantly defined by the law.

Figure 43 below examines six specific aspects: processing time (time limits ([67]) and timeframes ([68])), management of backlogs, active monitoring of cases, information to parties, judgments and allocation of human resources. It shows that, although in most Member States the areas covered by standards appear to be the same, their content may differ significantly.

For example, in a limited number of Member States standards on backlog management provide for a maximum age of pending cases or for measures to correct the backlog ([69]). Standards on information to parties range from informing parties about their case at court premises to parties having online access to the information or being provided with it automatically ([70]). Case monitoring and early-warning systems are seldom automated, although in most Member States it is technically possible to have real-time information by means of case management systems. Standardised electronic templates available to judges in a number of Member States can range from simple formal models to more developed material aimed at facilitating the drafting of decisions.

Finally, it appears that some standards have been defined and implemented nationwide, while others apply only in certain courts or territories or to certain types of case or justice area ([71]).

Figure 43

Specific standards in selected aspects related to the justice system (*)

Standards on specific aspects Standards on general area

Source: European Commission ([72])

(*) CY, IE did not report any standards in the selected areas. PL, UK did not provide information on standards. DE: De-centralized structures mean that standards may differ from federal state to federal state and from court to court. The lighter column corresponds to the total number of Member States that defined other standards in the selected areas. Standards on case processing time include civil, commercial and administrative cases.

([67]) Time limits are quantitative procedural deadlines, generally set in procedural law, for certain types of cases or procedural steps.

([68]) Timeframes are measurable targets/practices to promote the timeliness of court proceedings, e.g. first instance judges must estimate the length of the trial at the start of the proceedings, timeframes are set in negotiations between courts and the Ministry of Justice, courts set up time standards for different categories of cases.

([69]) For example, in certain Member States cases pending 3 years with no action from parties can be removed from the court's case list, or cases pending more than 2 years are considered old and followed closely. Corrective measures may include temporary assistance by a special unit of judges.

([70]) For example, parties can obtain information about their cases through information centres at courts, or be automatically informed of relevant developments by e-mail or SMS or through an automated process for users of the e-file system. In DE the courts keep the relevant parties informed, including without request.

([71]) For example, in some Member States, the scope of online access to information is limited to certain types of case or court or it is not consistently implemented.

([72]) The data concern 2015 and have been collected in cooperation with the group of contact persons on national justice systems.

3.2.5. Summary on the quality of justice systems

Easy access, adequate resources, effective assessment tools and appropriate standards are key factors that contribute to the quality of justice systems. The 2016 Scoreboard confirms that the situation varies significantly across the EU, but also that many Member States are making particular efforts in these areas.

> Accessibility

The Scoreboard examines the accessibility of justice systems throughout the entire justice chain and shows the following:

- **Online information about the justice system** is available in all Member States. However, information on how to start a judicial proceeding and on the composition of costs of proceedings is still not available in some Member States (Figure 18). Certain Member States have developed advanced user-friendly solutions in that respect, e.g. by providing an interactive online tool that allows legal aid applicants to calculate the likelihood of being eligible for legal aid.
- **Legal aid** is essential for guaranteeing equal access to justice. Compared with 2010 it appears that more Member States increased the budget for legal aid than decreased it (Figure 19). When comparing the financial eligibility for legal aid in the specific scenario of a consumer dispute, in most Member States the income threshold for obtaining legal aid covering at least part of the costs is above the respective Eurostat poverty threshold (Figure 20). Some Member States have a system in place that requires an annual review and possibly adaptation of the legal aid threshold.
- **Electronic submission of claims** is not in place in all Member States (Figure 21). However, the quality of small claim proceedings online, e.g. obtaining information on case handling or the possibility to appeal court decisions, has progressed since 2013 (Figure 22). This is a sign that Member States have made efforts to meet the needs of citizens and businesses using the justice system.
- **Electronic communication between courts and parties** is still not possible in some Member States (Figure 23). The lack of ICT tools make judicial proceedings more difficult and costly, both for the courts and the parties; e.g. in one Member State, a reform enabling courts to deliver documents electronically to parties and lawyers saved more than EUR 4.2 million in 2015 (more than 2% of the courts' budget).
- **Online availability of courts' judgments** for civil, commercial and administrative cases could be improved (Figure 25). Following the publication of figures on this issue in the 2015 Scoreboard, certain Member States have started implementing measures to increase online availability of judgments including at first instance.
- **The voluntary use of alternative dispute resolution methods** (e.g. mediation, conciliation) is promoted and incentivised in all Member States. This is more often for civil and commercial disputes than for labour and consumer disputes (Figure 27). This positive development shows that there are means to encourage the voluntary use of alternative dispute resolution methods without affecting the fundamental right to have a remedy before a tribunal. The use of ADR for solving disputes between consumers and traders is expected to increase in the future with the implementation in 2016 of the Consumer ADR Directive and the Online Dispute Resolution (ODR) Regulation ([73]).

> Resources

High-quality justice requires an adequate level of financial and human resources, appropriate training and gender balance among judges. The Scoreboard shows the following:

- **In terms of financial resources**, data show that the expenditure on judicial system in most Member States remains rather stable (Figure 28). When determining financial resources for the judiciary only a few Member States take into account current data on the number of incoming or resolved cases to evaluate the costs incurred (Figure 51).
- **The level of gender balance** among judges in first and/or second instance courts is in general good. In most Member States, each gender accounts for between 40-60%. In Supreme Courts, even if most Member States are moving towards gender balance, progress remains slow in some (Figure 32).
- **As regards the training of judges**, while Member States recognise the importance of continuous and compulsory initial training (Figure 34), efforts are needed to improve the scope of the training offered, in particular on judicial skills. Continuous training on judicial skills (judgecraft), IT skills, court management and judicial ethics

([73]) The Consumer ADR Directive ensures that consumers and traders can turn to an ADR entity for all their contractual disputes in virtually all economic sectors no matter where (domestically or across borders) and how (online/offline) the purchase was made. The Online Dispute Resolution (ODR) Regulation aims at facilitating the use of ADR for disputes stemming from online purchases.

does not exist in all Member States and, where it exists, training activities often fail to cover all such skills (Figure 36). Furthermore, certain Member States do not provide training on communication with parties and with the press (Figure 37), a crucial aspect for end-users and for fostering confidence in the justice system.

> Assessment tools

- **Monitoring and evaluation tools** for assessing the functioning of justice systems are available in most Member States (Figure 38). However, monitoring processes related to backlogs or early-warning systems are seldom automated (Figure 43). Moreover, not all data collection systems provide sufficient information on the functioning of the system, in particular for second and higher instances and for specific categories of cases, such as insolvency. In certain Member States, new generations of ICT tools are sufficiently flexible to meet new needs or to collect data on the impact of particular reforms; e.g. when reforming its ADR legislation, one Member State established a specific regular quarterly collection of data to evaluate its impact.
- **ICT case management systems** still need to be improved in many Member States to ensure that they can serve various purposes and that they are implemented consistently across the whole justice system (Figure 39). In certain Member States, it is still not possible to ensure nationwide data collection across all justice areas. In some Member States, ICT tools do not provide for the real-time monitoring of case progress, or for the management of backlogs, including the identification of particularly old cases. By contrast, certain Member States have early-warning systems to detect malfunctions or comply with case processing standards, which facilitates the finding of timely solutions.
- **The regular use of surveys** is important to better understand the views that users and professionals have on the justice system. However, the use of surveys is still far from being a common practice in all Member States (Figure 40). Furthermore, when surveys are used, only some Member States have systematic follow-up, e.g. for determining the training needs of judges and court staffs or for improving the functioning of certain courts (Figure 41). In one Member State for example, surveys are used to evaluate the four-yearly work programme of the judiciary, feeding into the programme for the following four years.

> Standards

The use of standards is important to raise the quality of justice systems. The 2016 Scoreboard presents in a first mapping a general overview of standards in Member States governing the functioning of justice systems which shows the following.

- **A majority of Member States have standards covering similar aspects of their justice systems**. For example, most Member States have standards on the way judicial proceedings should be conducted, how parties should be informed or how judgments should be drawn up (Figure 42).
- However, there are still **significant differences as regards the content** of these standards and the level of quality they establish (Figure 43). Moreover the implementation of standards is diverse; some have been defined nationwide while others apply only to certain courts or territories or to certain types of cases or justice areas.
- **As regards standards on management of cases and backlogs**, less than half of Member States have standards on measures to reduce existing backlogs and even fewer define the maximum age that pending cases should have. A few Member States have standards on timeframes of proceedings and early-warning systems, like automatic notices for cases that are old, urgent or otherwise require particular attention.
- **Standards on informing parties** about their cases exist in most Member States. However, only in some of them are parties automatically informed or can have online access to this information. For example, in some Member States, parties receive automatic notifications through the e-file system, or are reminded by SMS of the date of court hearings.
- **Standards on the elaboration of judgments** exist in some Member States, in particular those consisting of specific requirements on structure. Standardised electronic templates at the judge's disposal also exist in many Members States. They range from simple models to more advanced material aimed at facilitating the drafting of decisions. In a smaller number of Member States general requirements on clarity and conciseness are provided by procedural laws and some have even developed a specific policy of clear language for written and oral court communication.
- **Standards on the allocation of human resources** are – in most Member States – linked to the workload. However, while in some countries adjustments are not frequent, others have a more flexible allocation system that allows them to adapt annually to changes or take into account expected needs.

3.3. Independence

Judicial independence is a requirement stemming from the right to an effective remedy enshrined in the Charter of Fundamental Rights of the EU (Article 47) ([74]). It is also important for an attractive investment environment, as it assures the fairness, predictability and certainty of the legal system in which businesses operate.

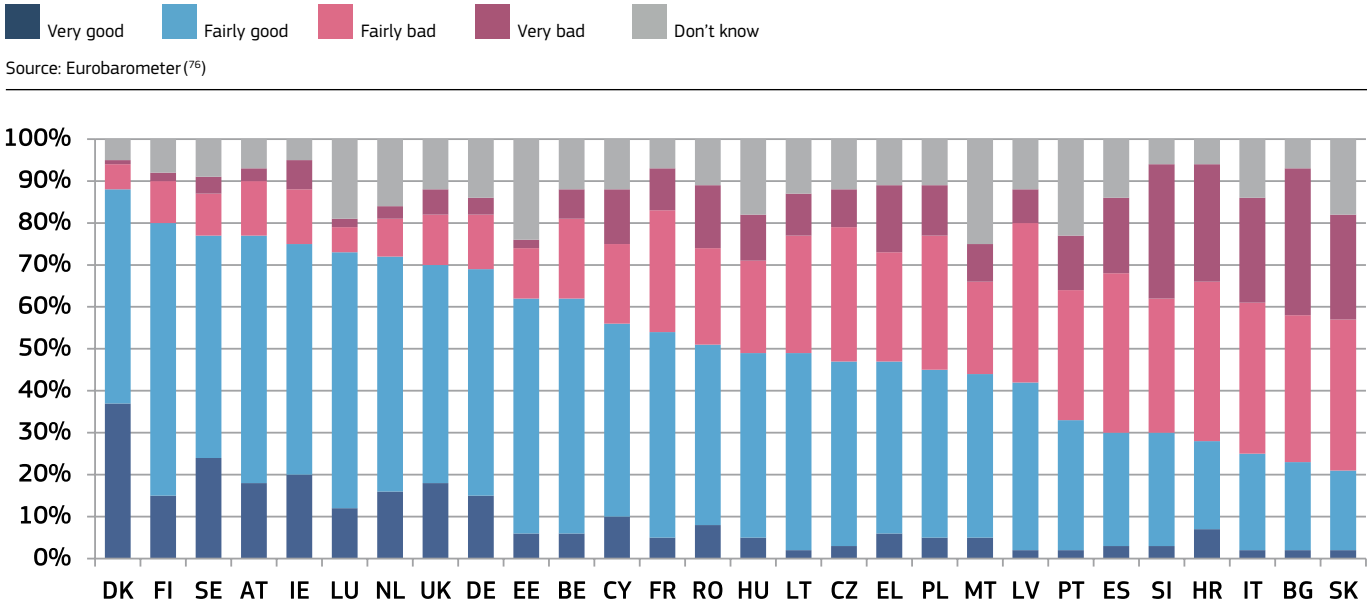
In addition to information about perceived judicial independence, the Scoreboard shows how justice systems are organised to protect judicial independence in certain types of situation where independence could be at risk. Having pursued its cooperation with European judicial networks, particularly the European Network of Councils for the Judiciary (ENCJ), the 2016 Scoreboard shows up-to-date figures on structural independence ([75]).

For the first time, the Scoreboard presents the results of Eurobarometer surveys on perceived judicial independence from the point of view of citizens and businesses.

3.3.1. Perceived judicial independence

Figure 44

Perceived independence of courts and judges among the general public



Source: Eurobarometer ([76])

([74]) http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN

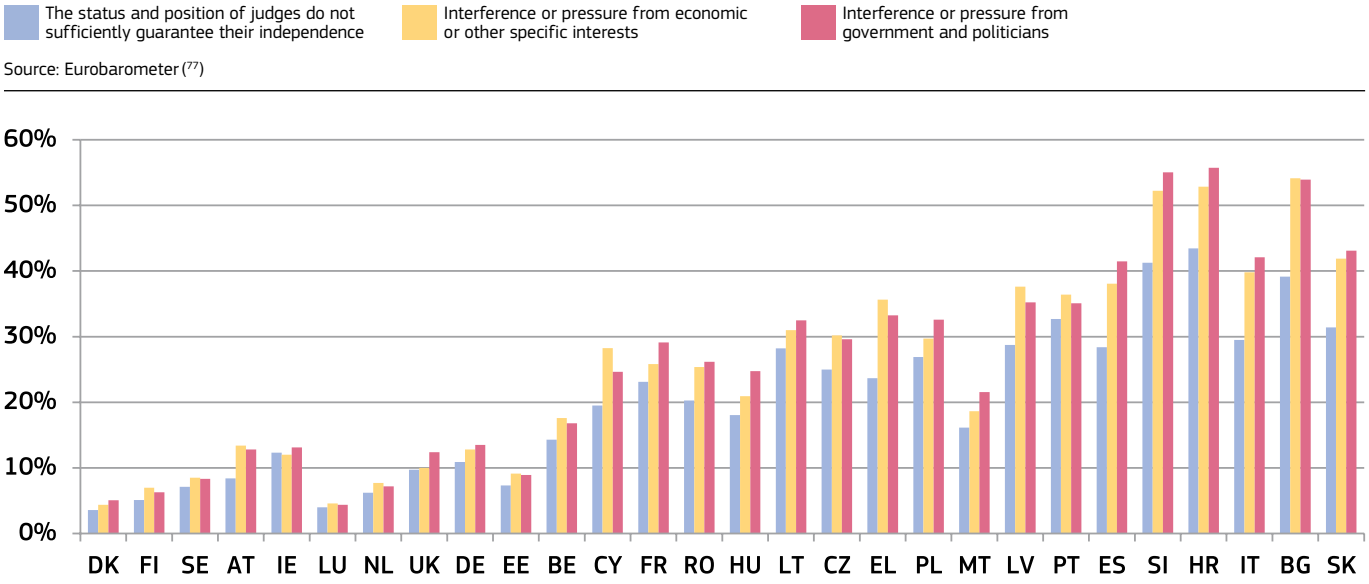
([75]) The figures are based on the ENCJ Guide and responses to an updated questionnaire drawn up by the Commission in close association with the ENCJ. Responses to the updated questionnaire from Member States that have no Councils for the Judiciary or are not ENCJ members (CZ, DE, EE, EL, CY, LU, AT and FI) were obtained through cooperation with the Network of the Presidents of the Supreme Judicial Courts of the European Union. See the Guide to the European Network of Councils for the Judiciary, October 2015, available at: http://www.encj.eu/images/stories/pdf/workinggroups/guide/encj_guide_version_oct_2015.pdf

([76]) Eurobarometer survey FL435, conducted between 24 and 25 February 2016; replies to the question: 'From what you know, how would you rate the justice system in (our country) in terms of the independence of courts and judges? Would you say it is very good, fairly good, fairly bad or very bad?', available at: http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm

Figure 45

Main reasons among the general public for the perceived lack of independence (share of all respondents — higher value means more influence)

This figure shows the main reasons for the perceived lack of independence of courts and judges. The respondents among the general public, who rated the independence of the justice system as being 'fairly bad' or 'very bad', could choose among three reasons to explain their rating. The Member States are in the same order as in the Figure 44.

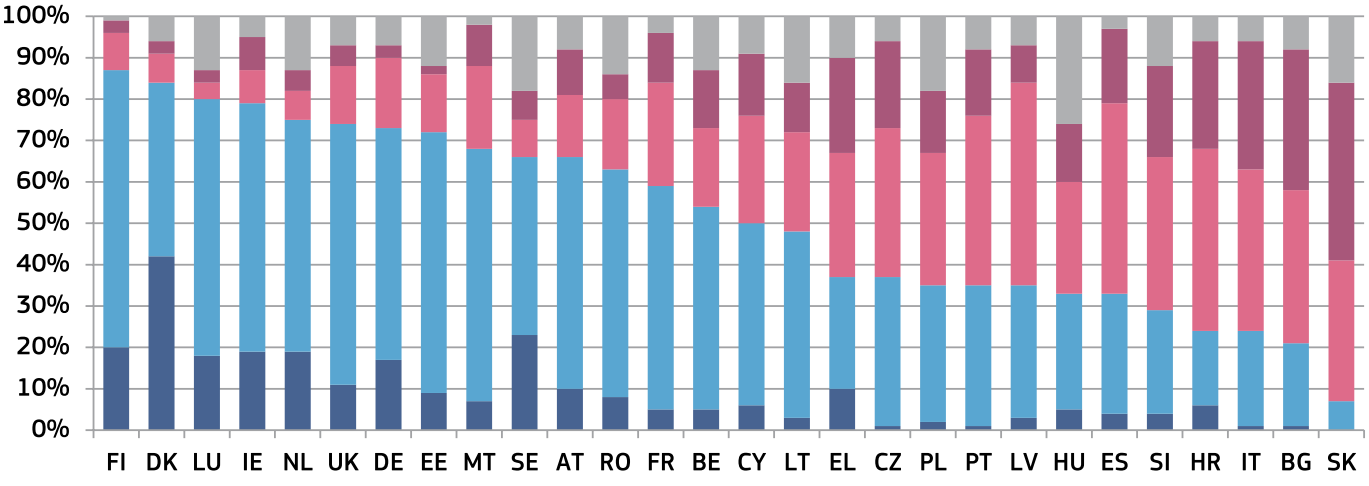


Source: Eurobarometer ([77])

Among the respondents in the general public who rated the independence of the justice system as being 'very good' or 'fairly good', nearly three-quarters (equivalent to 39% of all respondents) gave the guarantees provided by the status and position of judges as a reason for their rating ([78]).

Figure 46

Perceived independence of courts and judges among companies



Source: Eurobarometer ([79])

([77]) Eurobarometer survey FL435, replies to the question: 'Could you tell me to what extent each of the following reasons explains your rating of the independence of the justice system in (our country): very much, somewhat, not really, not at all?'.

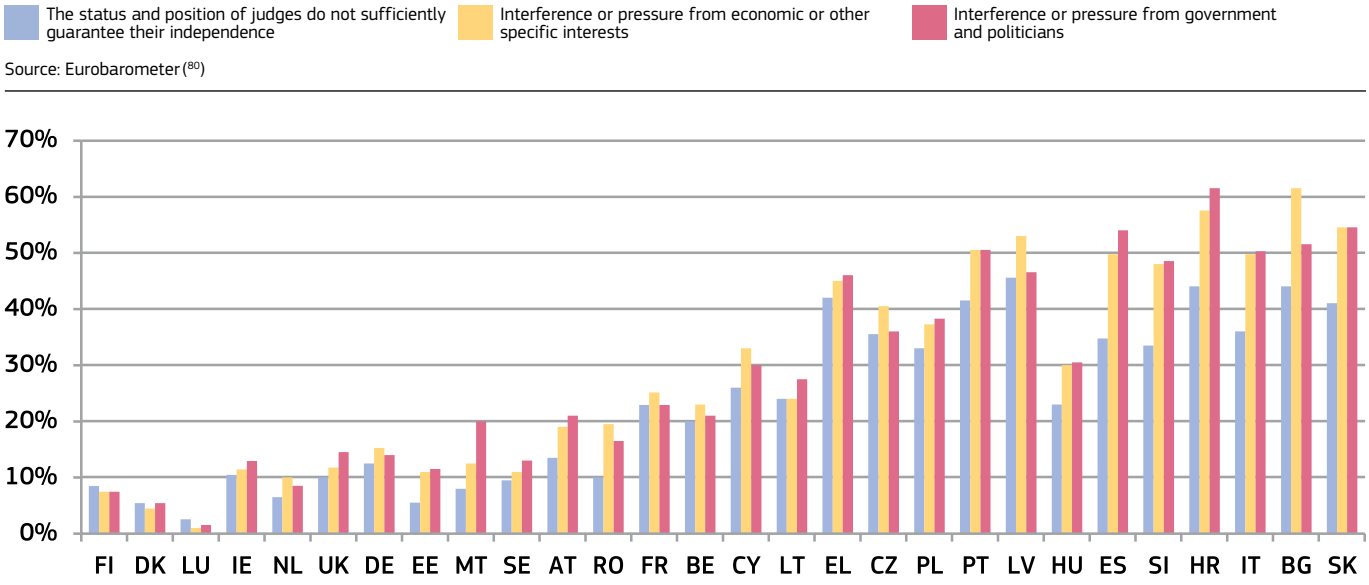
([78]) Eurobarometer survey FL435.

([79]) Eurobarometer survey FL436, conducted between 25 February and 4 March 2016; replies to the question: 'From what you know, how would you rate the justice system in (our country) in terms of the independence of courts and judges? Would you say it is very good, fairly good, fairly bad or very bad?', available at: http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm

Figure 47

Main reasons among companies for the perceived lack of independence (rate of all respondents — higher value means more influence)

This figure shows the main reasons for the perceived lack of independence of courts and judges. The respondents among companies, who rated the independence of the justice system as being 'fairly bad' or 'very bad', could choose among three reasons to explain their rating. The Member States are in the same order as in the Figure 46.

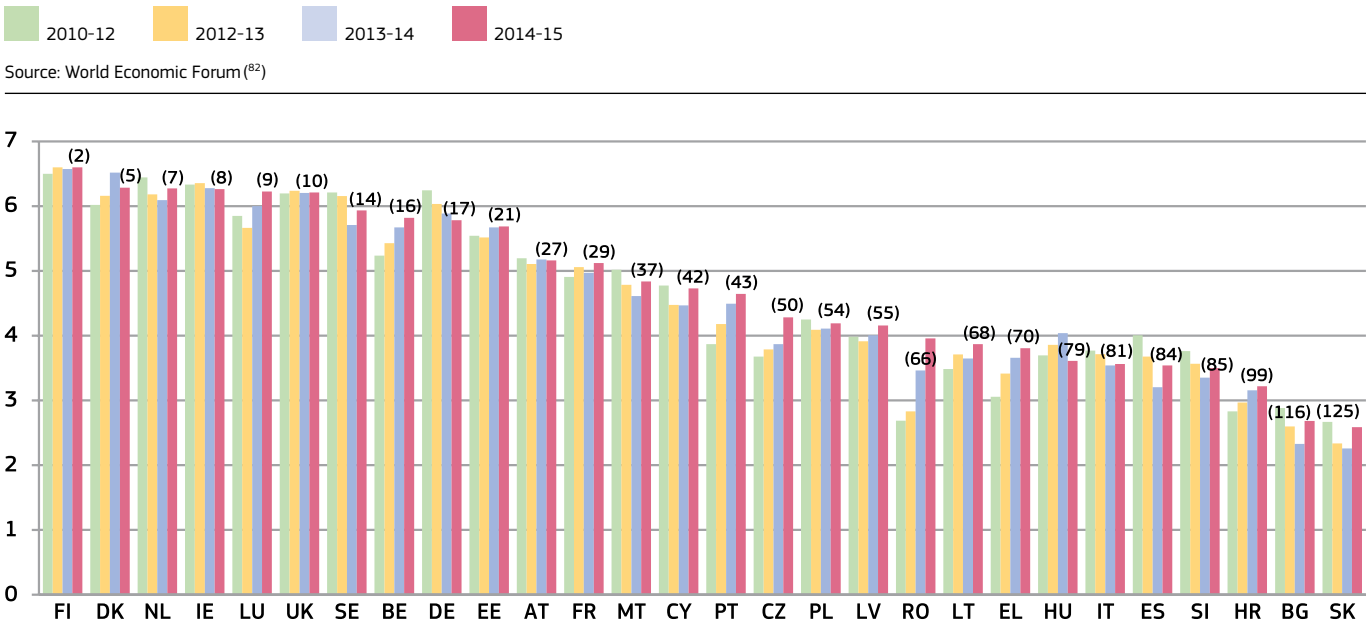


Source: Eurobarometer ([80])

Among the companies who rated the independence of the justice system as being 'very good' or 'fairly good', three-quarters (equivalent to 36% of all responding companies) gave the guarantees provided by the status and position of judges as a reason for their rating ([81]).

Figure 48

WEF: businesses' perception of judicial independence (*) (perception — higher value means better perception)



Source: World Economic Forum ([82])

(*) The number in brackets is the latest ranking among 140 participating countries worldwide.

([80]) Eurobarometer survey FL436; replies to the question: 'Could you tell me to what extent each of the following reasons explains your rating of the independence of the justice system in (our country): very much, somewhat, not really, not at all?'.

([81]) Eurobarometer survey FL436.

([82]) The WEF indicator is based on survey answers to the question: 'In your country, how independent is the judicial system from influences of the government, individuals, or companies? [1 = not independent at all; 7 = entirely independent]' Responses to the survey came from a representative sample of businesses representing the main sectors of the economy (agriculture, manufacturing industry, non-manufacturing industry, and services) in all the countries concerned. The survey is administered in a variety of formats, including face-to-face or telephone interviews with business executives, mailed paper forms, and online surveys, available at: http://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf

3.3.2. Structural independence

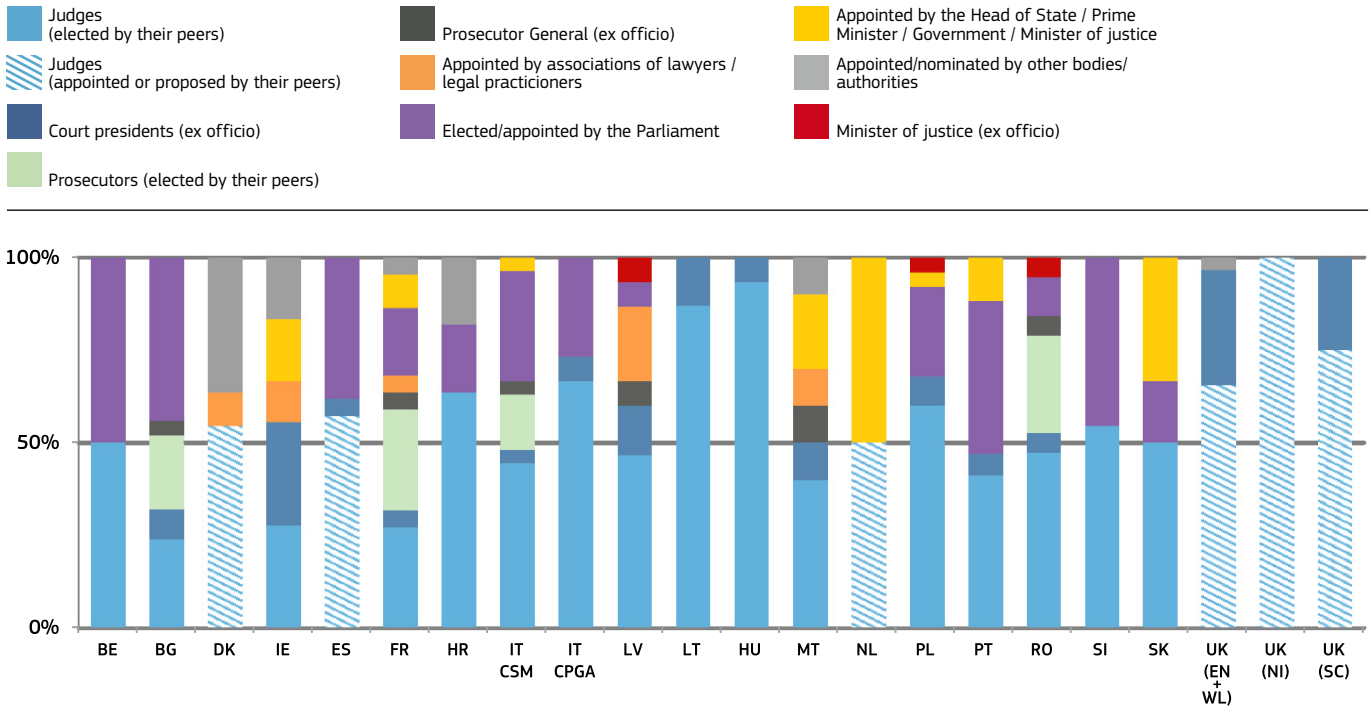
Ensuring structural independence requires legal safeguards. Most Member States have a Council for the Judiciary tasked with safeguarding judicial independence. Figure 49 and Figure 50 present an expanded and updated comparison of the composition (according to the nomination process) and the main powers of existing Councils in the EU. This comparative overview could be useful to Member States adopting reforms to ensure that Councils for the Judiciary work effectively as independent national institutions with final responsibility for supporting the judiciary in its task of dispensing justice independently, while taking account of national justice systems' traditions and specificities.

The Scoreboard also examines how justice systems are organised to safeguard judicial independence in certain types of situation where independence may be at risk. The four indicators show safeguards in such situations: the safeguards regarding the transfer of judges without their consent (Figure 52), the dismissal of judges (Figure 53), the allocation of incoming cases within a court (Figure 54), and the withdrawal and recusal of judges (Figure 55). The *2010 Council of Europe Recommendation on judges: independence, efficiency and responsibilities* ('the Recommendation') sets out standards designed to preserve the independence of the judiciary in such situations ([83]). Figures have been updated in cases where the legal framework or practice in Member States has changed since the publication of the 2015 Scoreboard. They give an overview of legal safeguards in certain types of situations. However, they do not provide an assessment or present quantitative data on the effectiveness of the safeguards and having more safeguards does not, in itself, ensure the effectiveness of a justice system ([84]). It should also be noted that implementing policies and practices to promote integrity and prevent corruption within the judiciary is also essential to guarantee judicial independence.

Figure 49

Composition of the Councils for the Judiciary according to the nomination process (*) ([85])

The figure shows the composition of Councils for the Judiciary ([86]), members of the ENCJ, according to the nomination process, depending on whether the members are judges/prosecutors elected or appointed/proposed by their peers, members nominated by the executive or legislative branch, or members nominated by other bodies and authorities. Not less than half the members of Councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary ([87]).



(*) BE: judicial members are either judges or prosecutors; BG: the 'prosecutors' category includes one elected investigating magistrate; DK: all members are formally appointed by the Minister of Justice; the category 'Appointed/nominated by other bodies/authorities' includes two court representatives (nominated by the union for administrative staff and by the police union); ES: members of the Council coming from the judiciary are appointed by the Parliament — the Council communicates to the Parliament the list of candidates who have received the support of a judges' association or of twenty five judges; FR: the Council has two formations — one with jurisdiction over sitting judges, the other with jurisdiction over prosecutors; the Council includes one member of the Conseil d'Etat (Council of State) elected by the general assembly of the Conseil d'Etat; IT-CSM: Consiglio Superiore della Magistratura (covering civil and criminal courts); the 'judges' category includes two magistrates (judges and/or prosecutors) elected from the Supreme Court; IT-CPGA: Consiglio di presidenza della giustizia amministrativa (covering administrative courts); MT: the Leader of the Opposition appoints one lay member; NL: members are formally appointed by Royal Decree on a proposal from the Minister of Security and Justice; RO: elected magistrates are validated by the Senate; SI: members are elected by the National Assembly on a proposal from the President of the Republic.

([83]) Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities.

([84]) This overview shows how the justice systems are organised. It is not intended to reflect their complexity and details.

([85]) Based on the ENCJ Guide, October 2015.

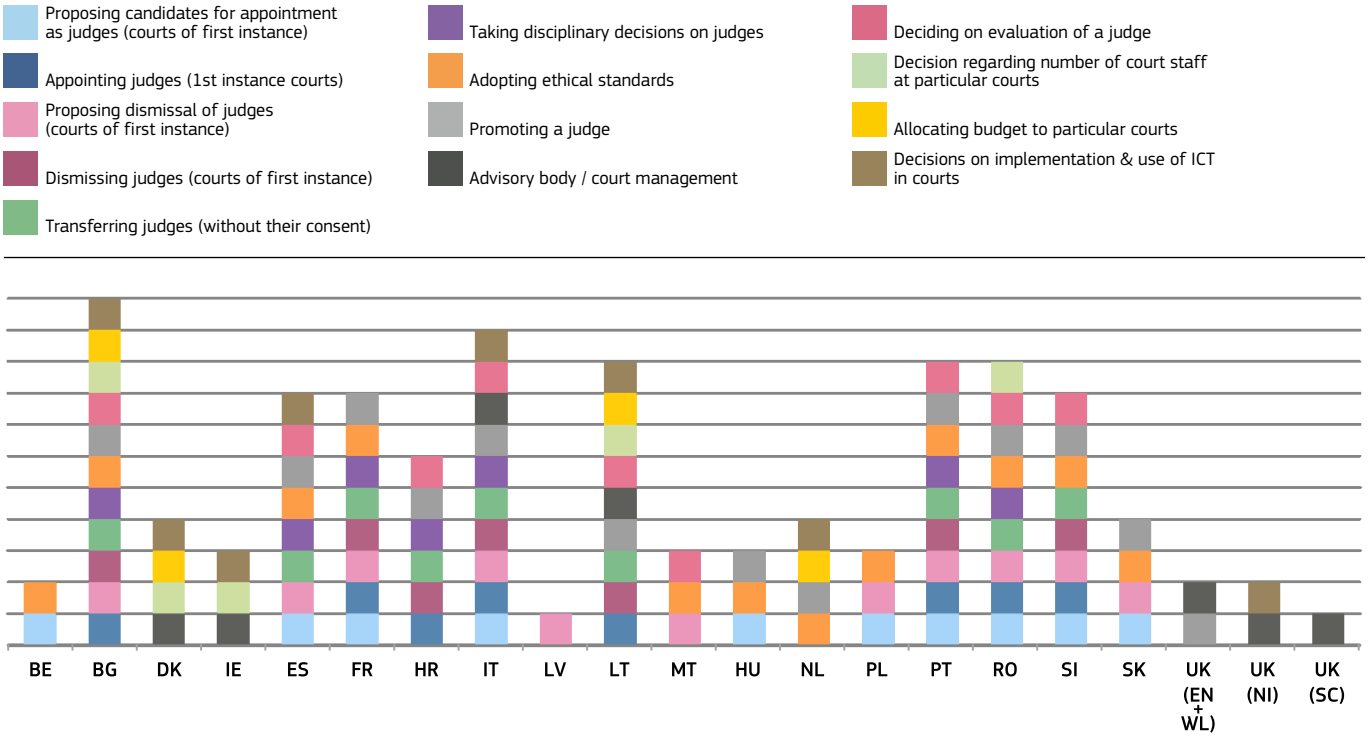
([86]) Councils for the Judiciary are independent bodies, established by law or under the constitution, that seek to safeguard the independence of the judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system. All three UK Councils are included in the overview: UK (EN+WL) - Judges' Council of England and Wales, UK (NI) - Judges' Council for Northern Ireland, and UK (SC) - Judicial Council for Scotland.

([87]) See Recommendation, §26-27.

Figure 50

Powers of the Councils for the Judiciary (*) ([88])

This figure shows some of the key powers of the Councils, members of the ENCJ, such as the powers regarding the appointment of judges and powers affecting their careers. It has been expanded to include the power to evaluate judges and certain managerial powers, such as the power to decide the number of court staff, allocate budget to particular courts and determine the use of ICT in courts.



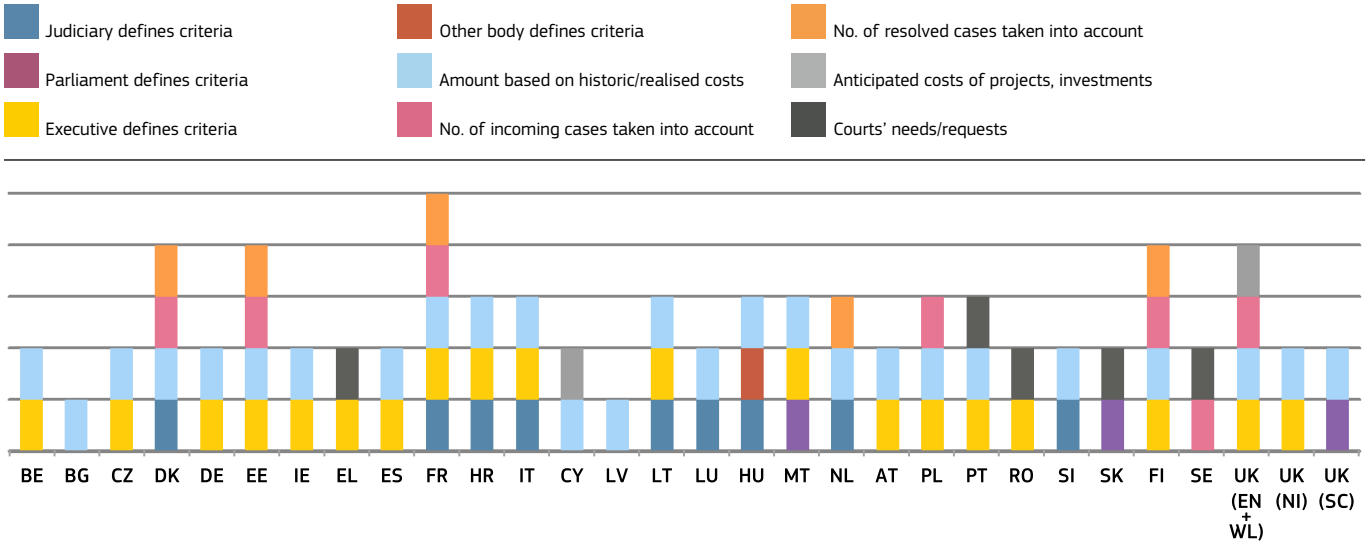
(*) The figure presents only certain powers and is not exhaustive. The Councils for the Judiciary have further powers not mentioned here. IT: column shows powers for both councils — CSM: council for civil and criminal courts and CPGA: council for administrative courts; only the CPGA has powers over ICT in courts and is an advisory body; LV: other self-governing judicial bodies exercise certain powers, e.g. over discipline and ethics; In some countries, the executive is obliged, either by law or in practice, to follow the Council for the Judiciary's proposal to appoint or dismiss a judge (e.g. ES).

([88]) Based on the ENCJ Guide, October 2015.

Figure 51

Criteria for determining financial resources for the judiciary (*) ([89])

The figure shows which branch of government (judiciary, legislature or executive) defines the criteria for determining financial resources for the judiciary. It also presents the following criteria by country: allocations are based either on historic/realised costs - the most common criterion - or, less frequently, on the number of incoming/resolved cases, the anticipated costs or courts' needs/requests.

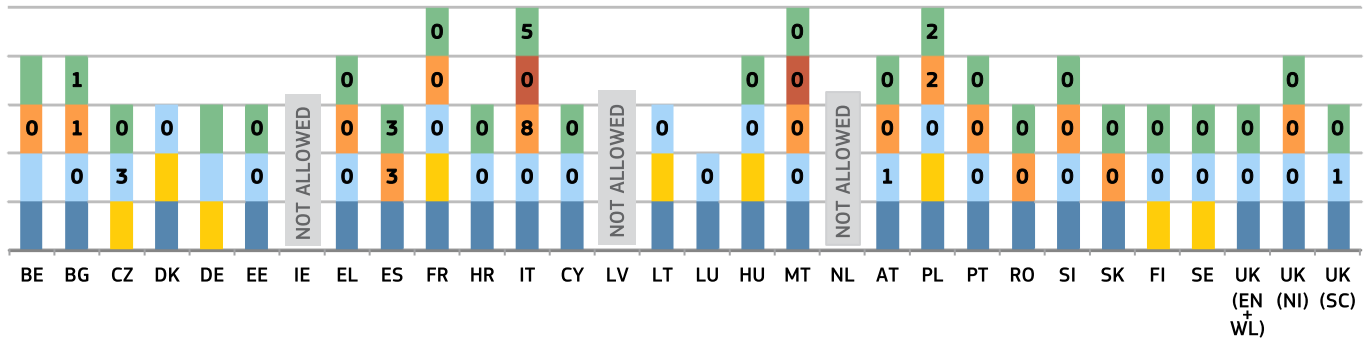


(*) EL and CY: information from 2015 Scoreboard; DK: number of incoming and resolved cases at courts of first instance are taken into account; DE: only for the Supreme Court's budget — as regards courts of first and second instance; judicial systems vary between the federal states; EE: number of incoming and resolved cases for courts of first and second instance; FR: number of incoming and resolved cases for courts of all instances; IT: the Ministry of Justice defines criteria for civil and criminal courts, while the Council for the Judiciary (CPGA) defines criteria for administrative courts; HU: law states that the salaries of judges shall be determined in the act on the central budget in such a way that the amount shall not be lower than it had been in the previous year; NL: the number of resolved cases based on an evaluation of the costs for courts is taken into account.

Figure 52

The safeguards regarding the transfer of judges without their consent (*) ([90]) (irremovability of judges)

The figure shows whether transfer of judges without their consent is allowed, if so, which authorities take the decision, the reasons for such transfers and whether it is possible to appeal against such a decision. The numbers indicate how many judges were transferred without consent in 2014 for organisational, disciplinary or other reasons, and how many appealed (if no number is given, there are no data available) ([91]).



(*) BE: transfer for organisational reasons only within a court; CZ: a judge can be transferred only to the court of the same instance, the court one instance higher or lower (all within the same judicial district); DE: transfer for a maximum of three months and only in cases of representation; FR: Minister of Justice can transfer a judge for organisational reasons in the rare event such as the closure of a court or for legal reasons such as fixed-term appointments (for a court's president or for specialised functions); IT: six judges transferred by CSM (civil and criminal courts' council), three of whom appealed against the transfer; the two judges transferred by the CPGA (administrative courts' council) appealed the transfer; the CPGA can transfer for disciplinary reasons only; LT: temporary transfer in the event of an urgent need to ensure the proper functioning of the court; RO: only temporary transfers of up to a year, for disciplinary sanctions; FI: transfer in case of reorganisation of functions of public administration.

([89]) Data collected through an updated questionnaire drawn up by the Commission in close association with the ENCJ. Responses from Member States without Councils for the Judiciary were obtained through cooperation with the Network of the Presidents of the Supreme Judicial Courts of the EU. The Member States appear in the alphabetical order of their geographical names in the original language. The height of the columns does not necessarily reflect the effectiveness of the safeguards.

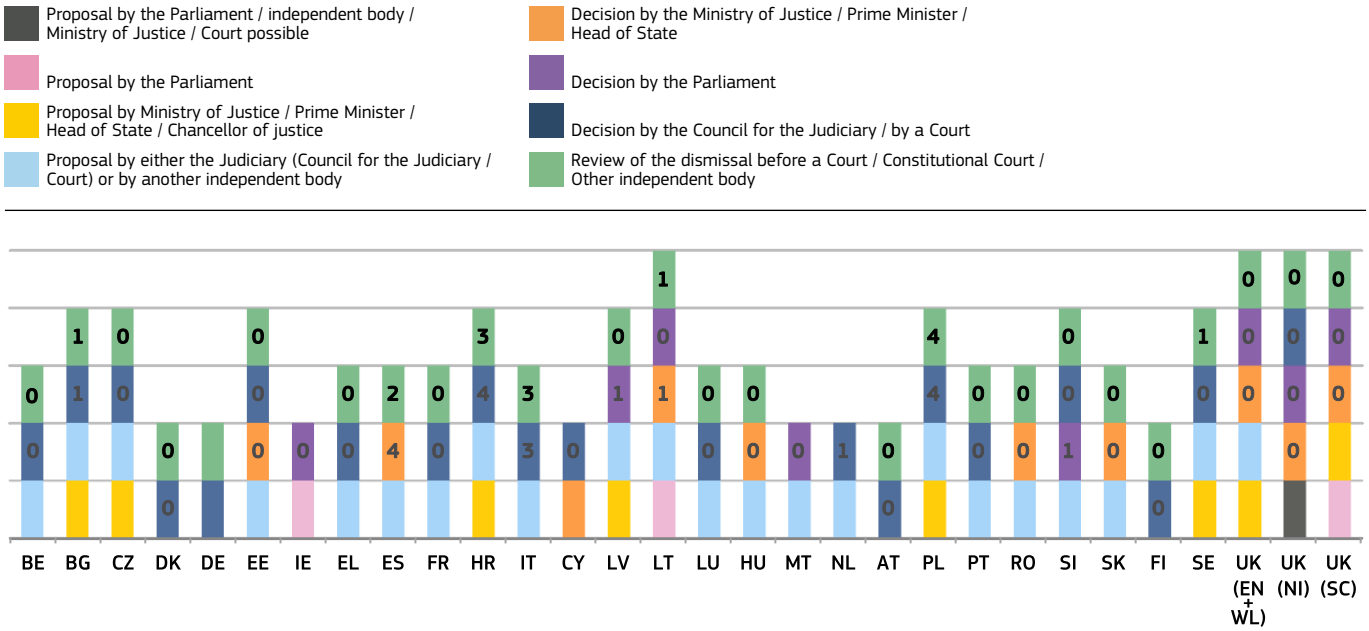
([90]) Data collected through an updated questionnaire drawn up by the Commission in close association with the ENCJ. Responses from Member States without Councils for the Judiciary were obtained through cooperation with the Network of the Presidents of the Supreme Judicial Courts of the EU. The Member States appear in the alphabetical order of their geographical names in the original language. The height of the columns does not necessarily reflect the effectiveness of the safeguards.

([91]) Paragraph 52 of the Recommendation contains guarantees on the irremovability of judges. Judges should not be moved to another judicial office without consent, except in cases of disciplinary sanctions or reform of the organisation of the judicial system.

Figure 53

Dismissal of judges at courts of first and second instance (*) ([92])

This figure shows the authorities with the power to propose and take decision on the dismissal of judges at courts of first and second instance ([93]). The upper part of each column indicates which authority takes the final decision ([94]) and the lower part shows –where relevant– which authority proposes dismissal or who must be consulted before a decision is taken. The numbers show how many judges (from all court instances) were dismissed in 2014 by a given body and how many appealed against dismissal (if no number is given, there are no data available).



(*) IT: CSM (civil and criminal courts' council) dismissed three judges, who appealed; CPGA (administrative courts' council) did not dismiss any judges; PT: no judges were dismissed, but the three who were compulsorily retired appealed against this; SE: appeal concerned a decision of a district court reviewing a decision from the National disciplinary offence board from 2011; UK (EN+WL): no full-time judges, only part-time (fee-paid) judges were dismissed, namely one tribunal judge, five court's judiciary and ten tribunal members (lay members); in some countries, the executive is obliged, either by law or in practice, to follow the Council for the Judiciary's proposal that a judge be dismissed (e.g. ES, LT).

([92]) Data collected through an updated questionnaire drawn up by the Commission in close association with the ENCJ. Responses from Member States without Councils for the Judiciary were obtained through cooperation with the Network of the Presidents of the Supreme Judicial Courts of the EU. The Member States appear in the alphabetical order of their geographical names in the original language. The height of the columns does not necessarily reflect the effectiveness of the safeguards.

([93]) Paragraphs 46 and 47 of the Recommendation require that national systems provide for safeguards regarding the dismissal of judges.

([94]) It can be one or two different bodies depending on the reason for dismissal or the type of judge (e.g. president).

Figure 54

Allocation of cases within a court [95]

The figure shows the levels at which the criteria for allocating cases within a court are defined, how cases are allocated, and which authority supervises allocation [96]. The way systems such as the random allocation of cases are implemented in practice is also essential [97].

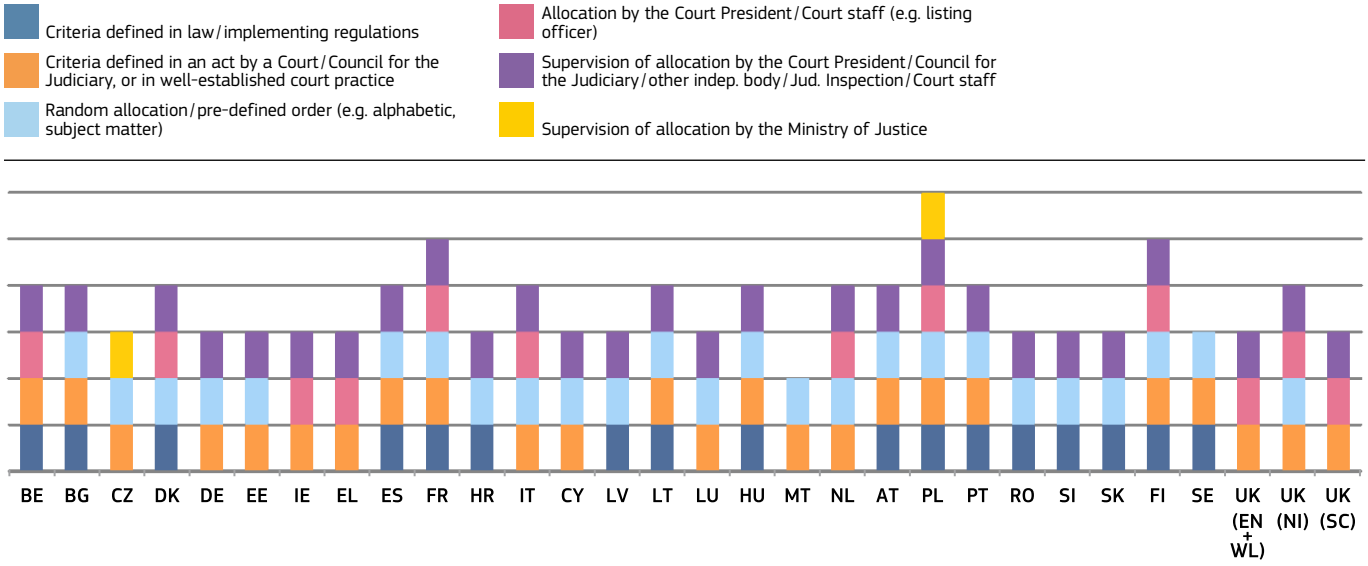
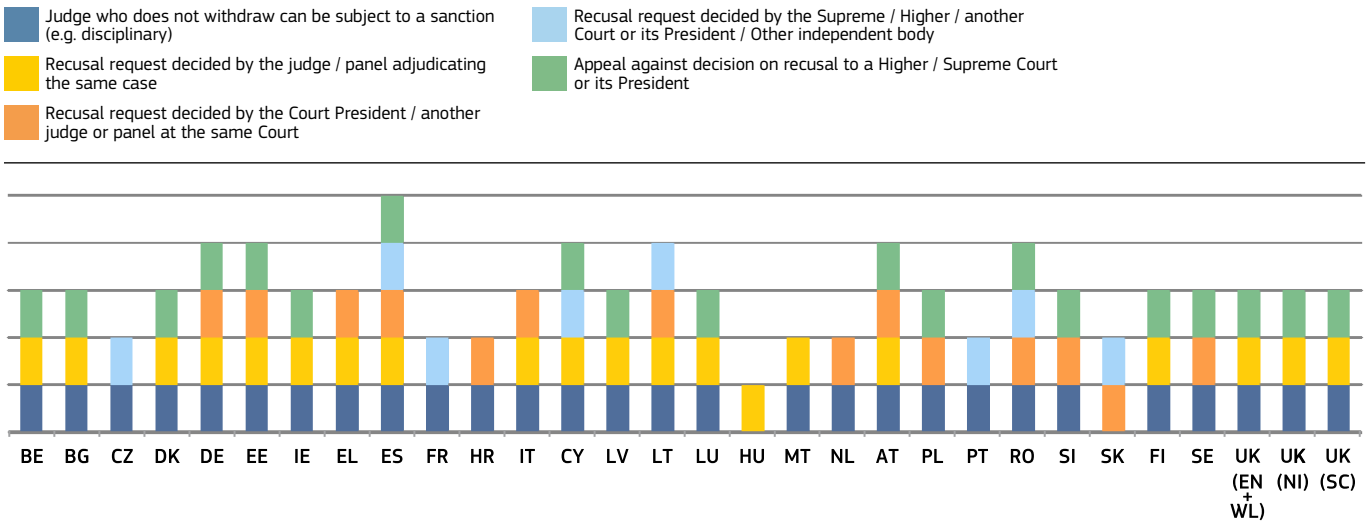


Figure 55

Withdrawal and recusal of a judge [98]

The figure shows whether or not judges may be subject to sanctions for failure to comply with the obligation to withdraw from adjudicating a case in which their impartiality is in question, compromised, or where there is a reasonable perception of bias. The figure also shows which authority [99] is responsible for taking a decision on a request for recusal made by a party intending to challenge a judge [100].



(95) Data collected through an updated questionnaire drawn up by the Commission in close association with the ENCJ. Responses from Member States without Councils for the Judiciary were obtained through cooperation with the Network of the Presidents of the Supreme Judicial Courts of the EU. The Member States appear in the alphabetical order of their geographical names in the original language. The height of the columns does not necessarily reflect the effectiveness of the safeguards.

(96) Paragraph 24 of the Recommendation requires that the systems for the distribution of cases within a court follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge.

(97) For example, the latest Report from the Commission on Progress in Bulgaria under the Co-operation and Verification mechanism invited BG to: 'Establish a capacity within the [Supreme Judicial Council] and the [Judicial Inspectorate] to monitor the application and security of the new system for the random allocation of cases in courts. These institutions must be transparent about the outcome of inspections and the follow-up to problems identified.' COM(2016) 40 final, available at: http://ec.europa.eu/cvm/docs/com_2016_40_en.pdf

(98) Data collected through an updated questionnaire drawn up by the Commission in close association with the ENCJ. Responses from Member States without Councils for the Judiciary were obtained through cooperation with the Network of the Presidents of the Supreme Judicial Courts of the EU. The Member States appear in the alphabetical order of their geographical names in the original language. The height of the columns does not necessarily reflect the effectiveness of the safeguards.

(99) Sometimes more than one authority can take this decision, depending on the level of the court where the recused judge sits.

(100) Paragraphs 59, 60 and 61 of the Recommendation provide that judges should act independently and impartially in all cases and should withdraw from a case or decline to act where there are valid reasons defined by law, and not otherwise.

3.3.3. Work of the judicial networks on judicial independence

The Scoreboard presents a comparative overview of certain legal safeguards aimed at protecting judicial independence but does not provide an evaluation of their effectiveness. In the previous Scoreboards, the Commission encouraged judicial networks to deepen their assessment of the effectiveness of these legal safeguards and indicated that it would reflect on how the findings could be presented in future Scoreboards.

As a first step in this direction, in 2015 the ENCJ carried out a study ([101]) on the independence and accountability of the judiciary which examined legal safeguards as formally laid down in law. The study examined the situation in Member States whose Councils for the Judiciary were ENCJ members. In addition to a survey of judges' perception of independence, the study contains a number of indicators relating to judicial independence, such as organisational autonomy, funding of the judiciary, court management, human resources decision on judges, non-transferability, complaints procedure, periodic reporting, relations with the press, judicial ethics, withdrawal and recusal. Some of these indicators concern situations which are presented in the figures above, for example those regarding the non-transferability of judges and the withdrawal and recusal of judges.

Figure 56

Examples of safeguards examined by the ENCJ ([102])

The figure below concerns the withdrawal and recusal of judges and the non-transferability of judges. It provides an insight into the formal arrangements as laid down in law to address these situations and does not measure their effectiveness in practice or evaluate their use. More specifically, the figure shows arrangements for voluntary withdrawal, breach of an obligation to withdraw, request for recusal, deciding authority and whether it is possible to appeal against a decision on a request for recusal. The figure also shows the arrangement concerning the possibility to transfer a judge (temporarily or permanently; for other-than-disciplinary reasons) to another judicial office (to other judicial duties, court or location) without his or her consent.

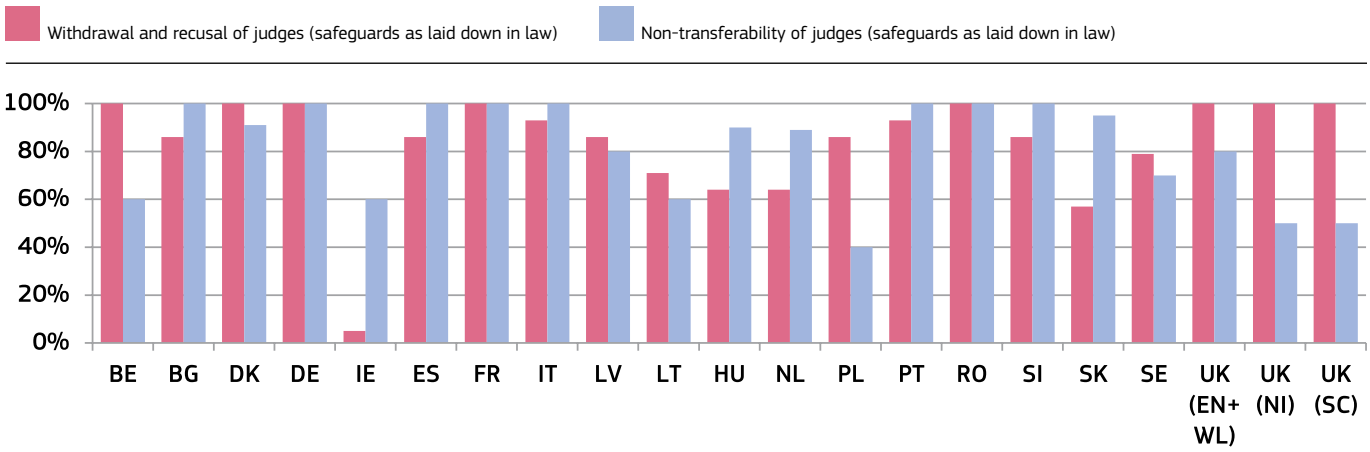
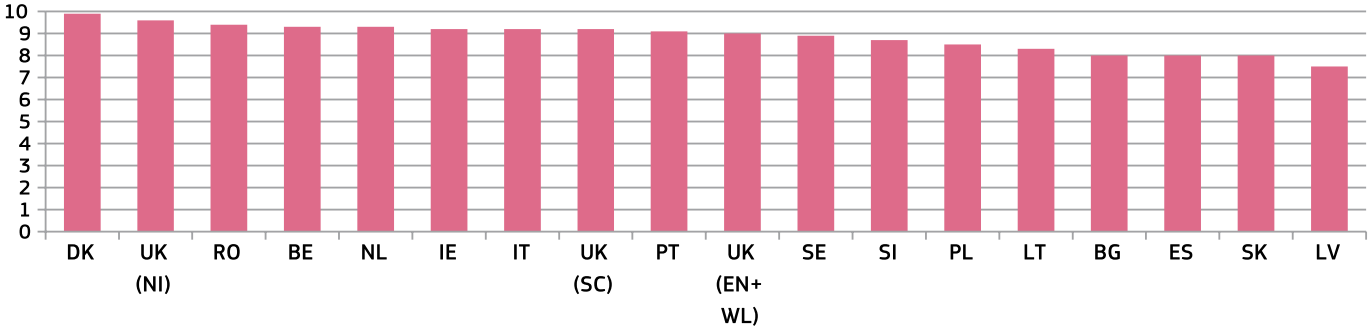


Figure 57

ENCJ's survey of judges' perception of independence (perception — higher value means better perception) ([103])



([101]) ENCJ Report 2014-2015 on Independence and Accountability of the Judiciary and of the Prosecution. The report uses indicators about the legal and other objectively observable aspects of the legal system that are essential for independence and accountability. As to the measurement of these objective aspects, the Councils, or in their absence, other governance bodies, are responsible for scoring and categorisation, using a standardised questionnaire. It is a self-evaluation, but of aspects that can be checked by anyone who is knowledgeable about the legal systems concerned. The indicators present ENCJ's views about how formal arrangements laid down in law for protecting judicial independence should look. See p. 16 and 23, ENCJ Report, available at: http://www.encj.eu/images/stories/pdf/workinggroups/independence/encj_report_independence_accountability_2014_2015_adopted_ga_corr_2016.pdf

([102]) The figure derives from the results presented in the ENCJ Report 2014-2015 on Independence and Accountability of the Judiciary and of the Prosecution (the outcome is presented as a percentage of a standardised maximum score).

([103]) The figure is based on survey answers to the question: 'On a scale of 0 - 10 (where 0 means 'not independent at all' and 10 means 'the highest possible degree of independence'): as a judge I do not feel independent at all or feel completely independent'. A total of 4,874 judges participated in the survey conducted in March 2015. The following ENCJ members did not take part in the survey: FR, MT, HR and HU. SE is an ENCJ observer.

3.3.4. Summary on judicial independence

Judicial independence is a fundamental element of an effective justice system. It is vital for upholding the rule of law, the fairness of judicial proceedings and the trust of citizens and businesses in the legal system. The Scoreboard presents trends on perceived judicial independence, as well as information on legal safeguards for independence and on Councils for the Judiciary (bodies tasked with protecting judicial independence).

> Adding to the World Economic Forum (WEF) survey of companies, the 2016 Scoreboard expands the examination of **perceived independence** with new Eurobarometer surveys of the general public and companies:

- A comparison of all surveys generally shows **similar results**, particularly among the Member States with the lowest and the highest perceived judicial independence.
- The WEF survey, presented for the fourth time, shows that the businesses' perception of independence has **improved or remained stable** in most Member States, when compared with the previous year, with notable improvements in a few Member States with low level of perceived independence (Figure 48).
- Among the reasons for the perceived lack of independence of courts and judges, the **interference or pressure from government and politicians**, and **from economic or other specific interests** are particularly notable for several Member States where perceived independence is very low (Figures 45 and 47).

> The Scoreboard continues to **map legal safeguards** for judicial independence, showing how justice systems are organised to protect judicial independence in certain types of situation where independence could be at risk:

- As regards the **transfer of judges without their consent** and the **dismissal of judges** at courts of first and second instance, the Scoreboard shows that in nearly all Member States, judges transferred or dismissed can appeal or request a judicial review of the decision. The figures show that a low number of judges were dismissed or transferred without their consent and that most transfers were for disciplinary reasons (Figures 52 and 53).
- In a large majority of Member States the incoming cases are **allocated** to judges randomly or according to a pre-defined order, thereby reducing the discretion, provided that the systems are implemented properly and that allocation is subject to monitoring (Figure 54).
- Except in a few Member States, judges who do not **withdraw** from adjudicating a case in which their impartiality is in question can be subject to disciplinary sanctions (Figure 55).

> The Scoreboard presents the European Network of Councils for the Judiciary's (ENCJ) work on judicial independence, which is a first step towards an evaluation of the effectiveness of safeguards in practice (Figure 56).

> In light of an up-to-date overview regarding the **composition and powers of Councils for the Judiciary**, the Scoreboard shows that in most Councils the judges (and prosecutors) are elected by their peers (Figure 49). It also shows that in addition to powers to appoint and dismiss judges and to take decisions affecting their careers, only a few Councils have **managerial powers** to determine court staff numbers at particular courts, court budgets and the use of ICT in courts (Figure 50).

> Only in a minority of Member States is the judiciary involved in **defining the criteria for determining their financial resources**. In a larger group of Member States these criteria are defined solely by the executive and/or legislative branch (Figure 51).

4. Conclusions

The EU Justice Scoreboard in its fourth edition gives a consolidated picture of how national justice systems have progressed with regard to their efficiency, quality and independence. Even if the situation varies significantly, depending on the respective Member State and indicator, the 2016 Scoreboard reveals some positive signs that efforts to improve justice systems seem to bear fruit. The Scoreboard will continue to follow these developments and deepen its comparative overview. The fundamental role of justice systems for upholding the rule of law requires pursuing these efforts with commitment and determination.

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