



EUROPEAN SEMESTER THEMATIC FACTSHEET

EFFECTIVE JUSTICE SYSTEMS

1. INTRODUCTION

The European Union is built on respect for fundamental values, for the rule of law and for democracy. These values must be protected. For the EU to function properly all Member States need to have effective justice systems.

Quality, independence and efficiency are the key components of an 'effective justice system'. Effective justice systems are a prerequisite for creating an environment that is investment- and business-friendly as they instil confidence throughout the entire business cycle. They are also essential for protecting individual rights, in particular social rights. They are crucial for implementing all EU law, in particular economic laws, and for strengthening mutual trust and the fight against corruption. The latter has a direct impact on public budgets and the business environment.

Whatever the model of the national justice system or the legal tradition in which it is anchored, efficiency, quality and independence are central to an 'effective justice system'.

The European Semester, the annual cycle of economic policy coordination at EU level¹, has identified improving the

¹ The European Commission's 2017 Annual Growth Survey underlined that 'effective justice systems are necessary to support economic growth and deliver high quality services for firms and citizens' [COM(2016) 725 final, p. 8]. The 2016 Annual Growth Survey had already specified that 'It is necessary to ensure swift

effectiveness of Member States' justice systems as a key component of structural reforms. For the same reason, national judicial reforms have also become an integral part of the structural components in Member States subject to economic adjustment programmes². Any justice reform should uphold the rule of law and comply with EU law and European standards of judicial independence.

This document is structured as follows. Section 2 presents the developments in the efficiency, independence and quality of the justice systems. Section 3 gives examples of measures that can improve the performance of the justice systems. Section 4 gives the policy state of play.

Other European Semester thematic factsheets of relevance to the issue at stake include the thematic factsheets on the Quality of Public Administration and on the Regulation of professional services.

proceedings, address 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' [COM(2015) 690 final, p. 13].

² The economic adjustment programmes in Greece, Portugal (ended in June 2014) and Cyprus (ended in April 2016) included conditionality on justice reform.

2. IDENTIFICATION OF CHALLENGES

The EU Justice Scoreboard³ contributes to the European Semester by providing objective, reliable and comparable data on the quality, independence and efficiency of justice systems in all Member States.

An evolving information tool, it helps the EU and Member States identify potential shortcomings, improvements, good practices and trends over time.

This examination of how well national justice systems function is complemented by a country-specific assessment which takes account of the context and particularities of each Member State and of its legal system. The assessment is presented in the European Semester country reports.

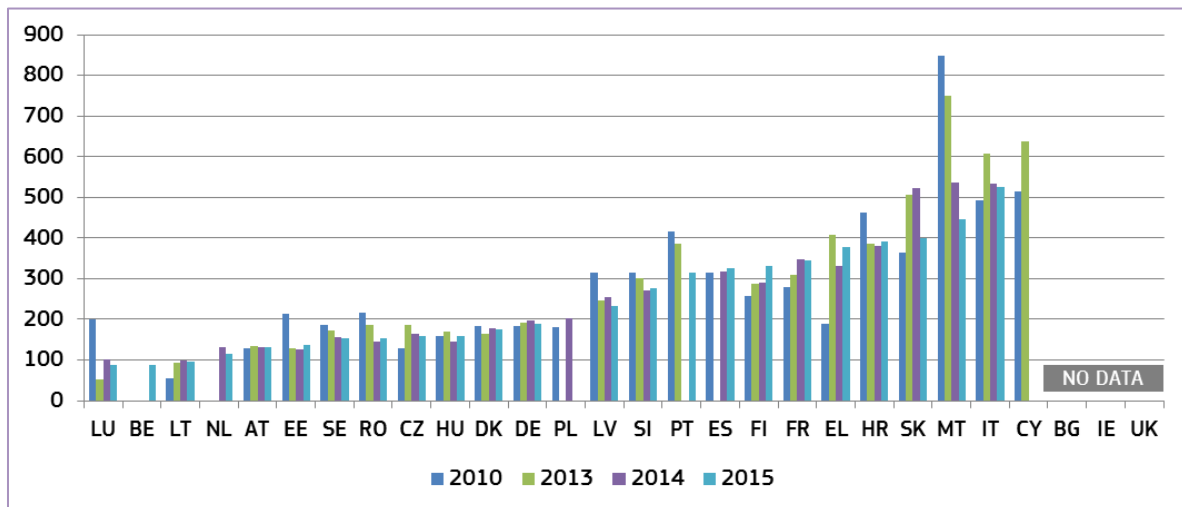
2.1. Improving the efficiency of justice systems

Timely decisions are essential for businesses, investors and consumers. In their investment decisions, companies take into account the risk of being involved in commercial disputes, labour or taxation disputes or insolvencies. The efficiency with which a judicial system handles litigation is hence an important factor.

The 2017 EU Justice Scoreboard shows that the situation varies considerably depending on the Member State and indicator concerned⁴.

A number of Member States continue to face particular challenges with the efficiency of their justice systems. These problems concern lengthy first instance proceedings together with low clearance rates or a large number of pending cases.

Figure 1 - Time needed to resolve litigious civil and commercial disputes (first instance/in days)



Source: The 2017 EU Justice Scoreboard⁵

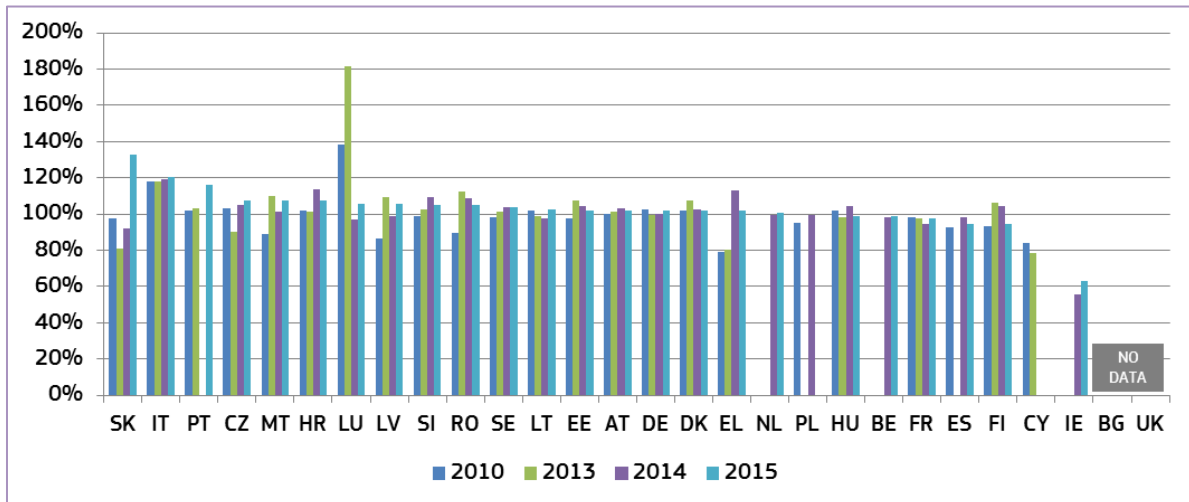
Note: Litigious civil and commercial cases concern disputes between parties, for examples disputes regarding contracts.

³ The 2017 EU Justice Scoreboard, COM(2017)167 final - http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm.

⁴ Length of proceedings, clearance rate and number of pending cases are standard indicators defined by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp.

⁵ Based on data provided by CEPEJ. The length of proceedings expresses the 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. The original figure in the 2017 EU Justice Scoreboard contains additional specific contextualised information relating to the situation in certain Member States.

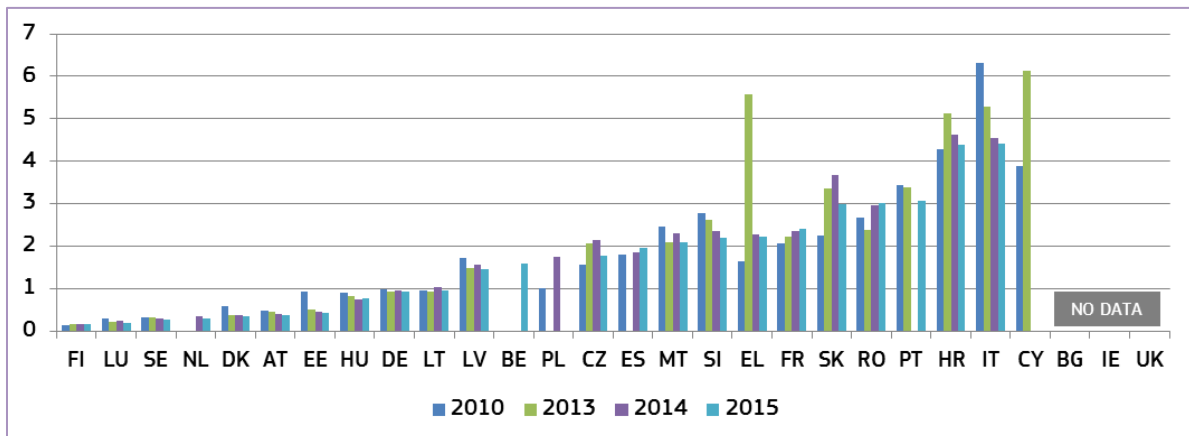
Figure 2 – Rate of resolving litigious civil and commercial cases (first instance/in %)



Source: The 2017 EU Justice Scoreboard⁶

Note: When the clearance rate is about 100% or higher it means the judicial system is able to resolve 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. The original figure in the 2017 EU Justice Scoreboard contains additional specific contextualised information relating to the situation in certain Member States.

Figure 3 – Number of litigious civil and commercial pending cases (first instance/per 100 inhabitants)



Source: The 2017 EU Justice Scoreboard⁷

⁶ Based on data provided by CEPEJ. 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. The length of proceedings is linked to the rate at which the courts can resolve cases, the 'clearance rate', and to the number of cases that are still waiting to be resolved, 'pending cases'.

⁷ Based on data provided by CEPEJ. The number of **pending cases** represents the number of cases that still need to be handled at the end of a period. The number of pending cases influences the disposition time. The original figure in the 2017 EU Justice Scoreboard contains additional specific contextualised information relating to the situation in certain Member States.

Data over the years show that there is some volatility in the results, which may improve or deteriorate from one year to another. There have been improvements in particular in the Member States which the European Semester or economic adjustment programmes have identified as facing challenges. Moreover, the length of proceedings and the clearance rates for litigious civil and commercial cases have improved in most Member States over the last 5 years.

There have also been some reductions in pending cases over the last 2 years. However, the number of pending cases remains high in several Member States.

2.2. Improving the quality of justice systems

High-quality institutions, including national justice systems, are a determinant of economic performance. Effective justice requires quality throughout the entire judicial process. Certain factors which are generally accepted as relevant⁸ can help improve the quality of justice systems.

These include:

- modern ICT, in particular case-management systems;
- training of judges and court staff;
- monitoring and evaluation of courts' activities;
- the use of satisfaction surveys; and
- giving justice systems adequate funding and staff.

The 2017 EU Justice Scoreboard confirms that the situation varies significantly across the EU, but also that many Member States are making

particular efforts **to pursue and step up efforts to underpin the quality of their judicial systems.**

For example, while efforts to improve ICT tools for the judicial system have continued, the indicators reveal gaps in a number of Member States (Figure 4). Few Member States follow a comprehensive approach to evaluating court activities, including through surveys.

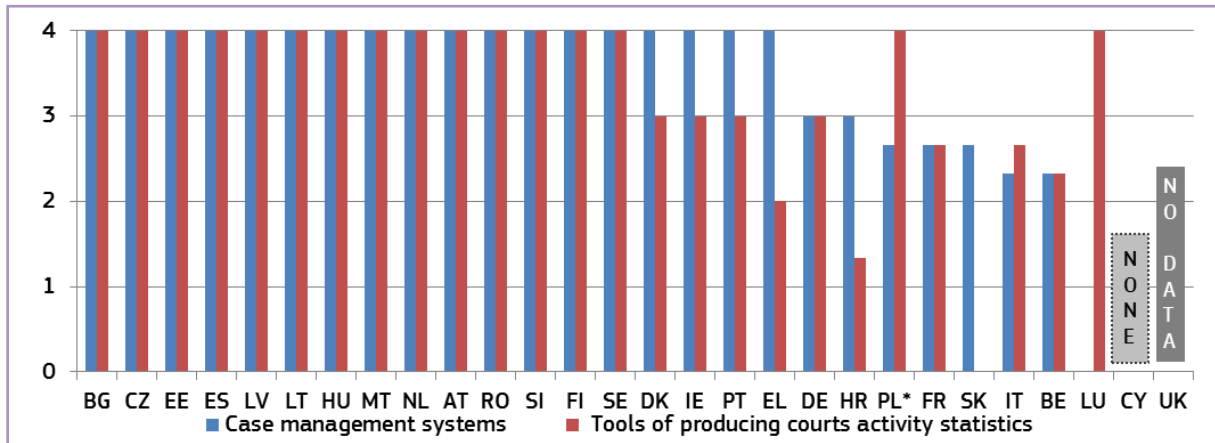
The full potential of **ICT case management systems** still needs to be exploited in many Member States. This includes providing real-time case management, standardised court statistics, management of backlogs and automated early-warning systems.

In terms of financial resources, data show that expenditure on judicial systems in Member States remains rather stable (Figure 5). **Adequate funding is necessary for the justice system to function well** and to have the right conditions at courts and well-qualified staff in place.

Standards can raise the quality of justice systems (Figure 6). Most Member States have standards on how to inform parties about the progress of their case, the court timetable or potential delays, but they use different methods. Automated provision of information by courts is more user-friendly than a system which requires the parties to take action.

⁸ See for example the CEPEJ 'Checklist for promoting the quality of justice and the courts' (2008); Opinion No. 6 (2004) Consultative Council of European Judges (CCJE) available at: <https://rm.coe.int/168074752d>.

Figure 4– ICT used for case management and court activity statistics (weighted indicator- min=0, max=4)



Source: The 2017 EU Justice Scoreboard.

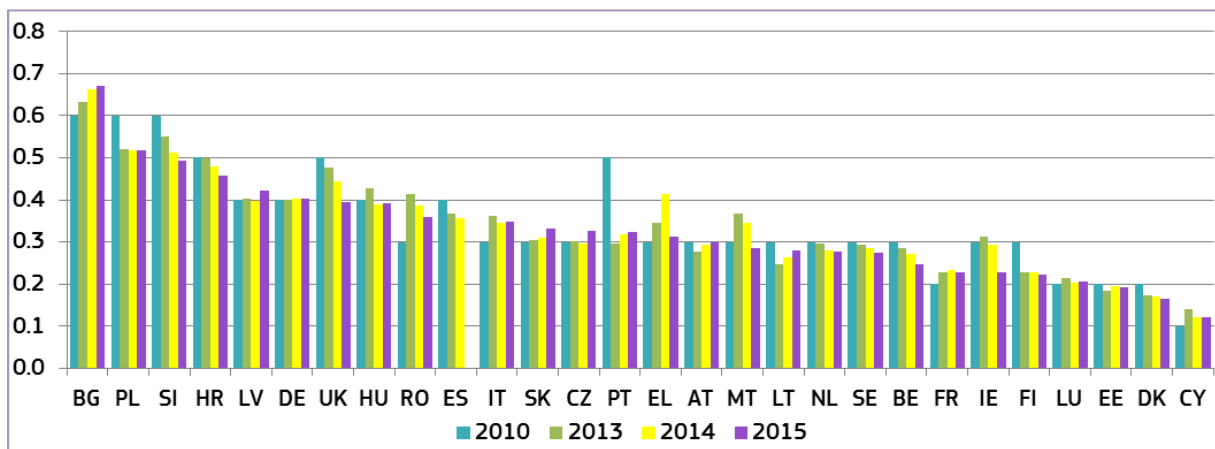
Note: Data concern 2015.

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 point 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 point per specific matter.

Matter relates to the type of litigation handled (civil/commercial, criminal, administrative or other).

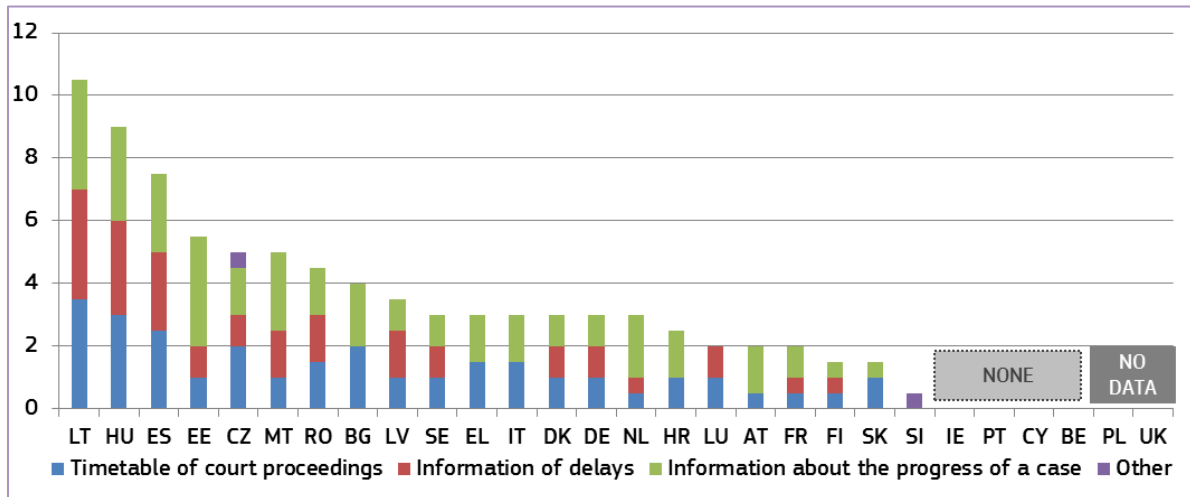
Figure 5 – General government expenditure on law courts as a percentage of GDP



Source: The 2017 EU Justice Scoreboard⁹

⁹ Based on data provided by Eurostat. The original figure in the 2017 EU Justice Scoreboard contains additional specific contextualised information relating to the situation in certain Member States.

Figure 6 – Standards on information about case progress



Source: The 2017 EU Justice Scoreboard¹⁰

2.3. Independence of judicial systems

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). It is a fundamental element of an effective justice system.

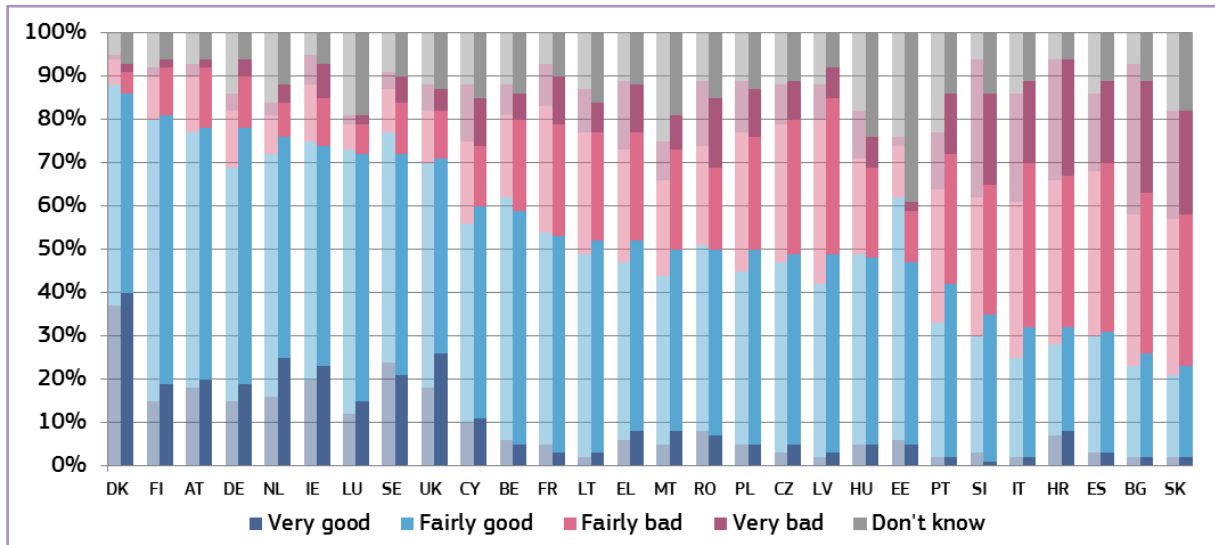
It is also important for an attractive investment and business environment as it assures the fairness, predictability and certainty of the legal system in which businesses operate. The 2017 EU Justice Scoreboard shows the changes in perceived independence based on surveys of the public and companies.

It confirms results from other surveys, particularly among Member States with the lowest and the highest perceived degree of judicial independence.

The 2017 Scoreboard continues to map the legal safeguards of judicial independence that exist in certain types of situations where independence could be at risk. One example is the transfer of judges without their consent.

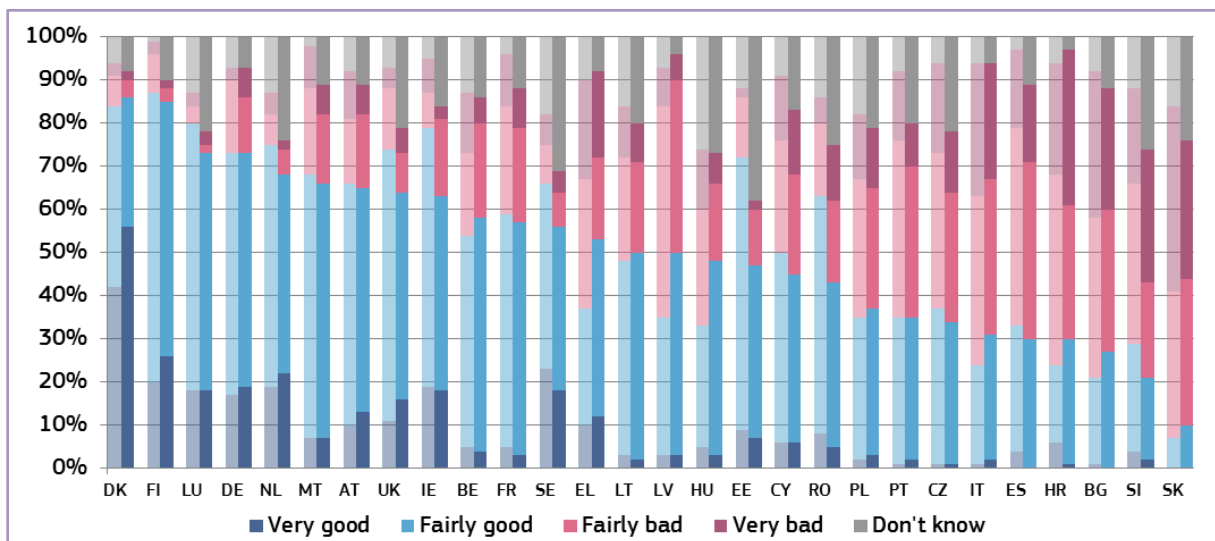
¹⁰ Member States were given points depending on the method used to provide each type of information. 1.5 point for automatic notification by e-mail or SMS, 1 point for online access throughout the case, 0.5 point each for information upon request by parties, court discretion or any other method used.

Figure 7 – Perceived independence of courts and judges among the general public¹¹



Source: Eurobarometer survey FL447¹²

Figure 8 – Perceived independence of courts and judges among companies¹³



Source: Eurobarometer survey FL448¹⁴

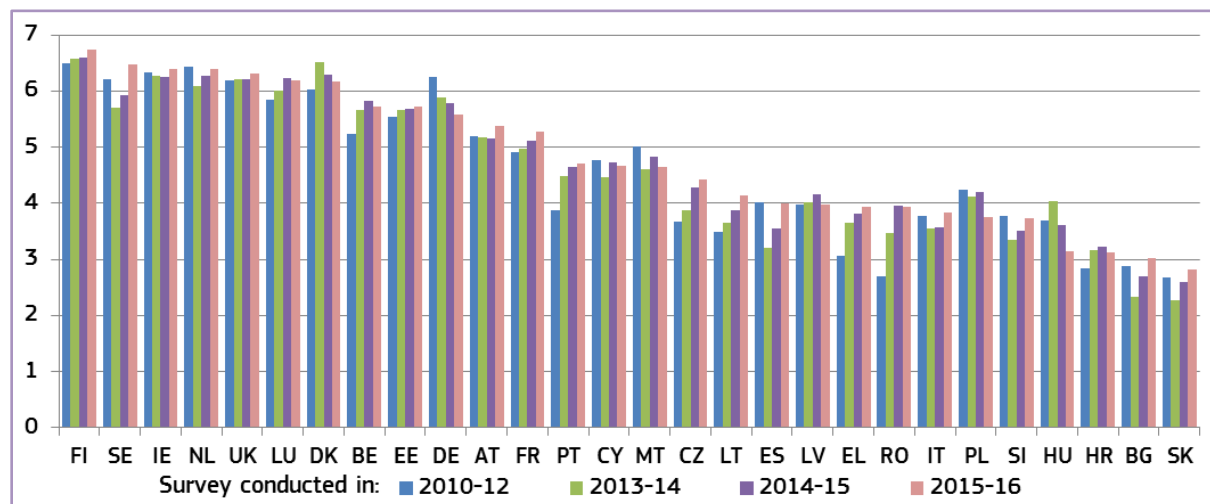
¹¹ Light colours (column on the left for each country) refer to 2016. Dark colours (column on the right for each country) refer to 2017.

¹² Eurobarometer survey FL447, conducted 25-26 January 2017. The question asked was: '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?'

¹³ Light colours (column on the left for each country) refer to 2016. Dark colours (column on the right for each country) refer to 2017.

¹⁴ Eurobarometer survey FL448, conducted between 25 January and 3 February 2017. The question asked was: '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?'

Figure 9 – Perceived judicial independence



Source: World Economic Forum¹⁵ data published in the 2017 EU Justice Scoreboard. A higher value means better perception.

European standards¹⁶ require that judicial independence is effectively protected in the justice system through legal safeguards (structural independence).

For example, judges should not be transferred to another judicial office without their consent, save for cases of disciplinary sanctions or reform of

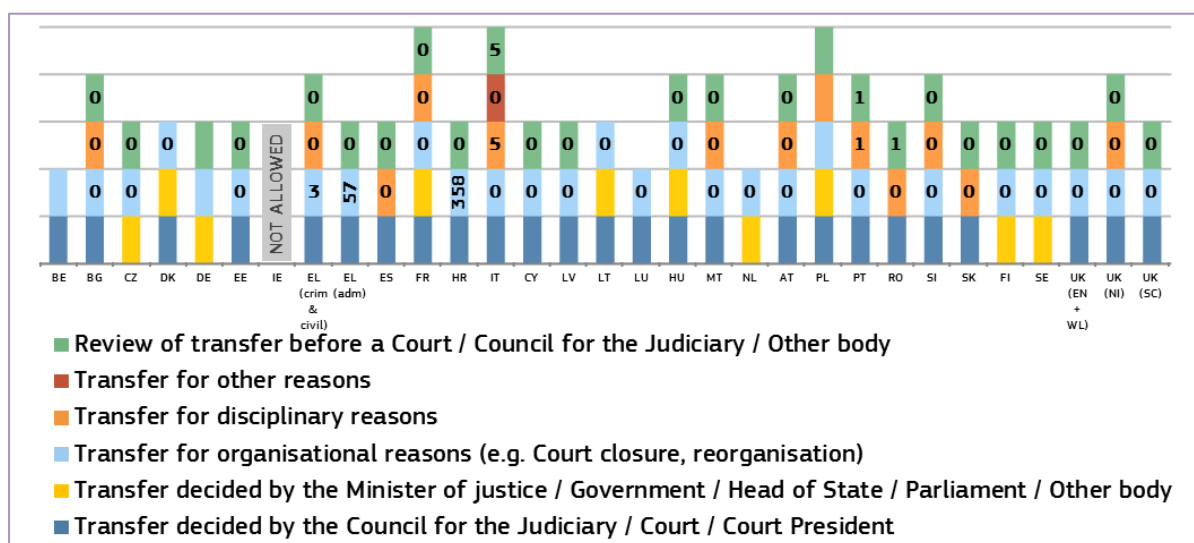
the organisation of the judicial system. This is necessary to avoid undue pressure being brought on a judge. Figure 10 shows whether such a transfer is allowed in the first place, and, if so, which authorities decide on such transfers, the reasons (e.g. organisational, disciplinary) allowing for them and the possibilities of review against transfer decisions¹⁷.

¹⁵ 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: <https://www.weforum.org/reports/the-global-competitiveness-report-2016-2017-1>.

¹⁶ In particular, Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe of 17 November 2010 to member states on judges: independence, efficiency and responsibilities.

¹⁷ Recommendation CM/Rec(2010)12, §52.

Figure 10 – The safeguards regarding the transfer of judges without their consent (irremovability of judges)



Source: The 2017 EU Justice Scoreboard¹⁸. The number above the column indicates the number of judges transferred without their consent in 2014 (no number indicates that no data is available).

3. IDENTIFICATION OF POLICY LEVERS TO ADDRESS THE CHALLENGES

The types of structural reforms that can address the challenges identified above range from structural measures to more operational measures.

They include:

- restructuring the organisation of the courts;
- reviewing the judicial map;
- modernising and simplifying procedural rules;
- reforming the council for the judiciary;
- reforming the judicial and legal professions;
- reforming legal aid;;
- improving the enforcement of judgments;
- promoting the random allocation of cases;
- modernising the management process and transparency of proceedings in court;
- promoting the use of new information technology; and
- fostering the development of alternative dispute resolution.

¹⁸ Data collected through an updated questionnaire drawn up by the Commission in close association with the European Network of Councils for the Judiciary (ENCJ). Responses from Member States that have no Councils for the Judiciary or are not ENCJ members 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. The original figure in the 2017 EU Justice Scoreboard contains additional specific contextualised information relating to the situation in certain Member States.

These structural reforms are **key policy levers to ensure judicial systems are effective and to create a more welcoming environment for business and investment.**

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. Having judicial systems that guarantee the enforcement of rights brings many benefits. Creditors are more likely to lend. Firms are dissuaded from opportunistic behaviour. Transaction costs are reduced. Innovative businesses which often rely on intangible assets, such as intellectual property rights (IPR), are more likely to invest.

For small and medium-sized enterprises (SMEs), the importance of having effective national justice systems was highlighted in a 2015 survey¹⁹ of almost 9 000 European SMEs on innovation and IPR.

The survey revealed in particular that the cost and excessive length of judicial proceedings were among the main reasons for SMEs to refrain from starting court proceedings over infringement of IPR.

The beneficial impact of well-functioning national justice systems for the economy is underlined in a range of literature and research²⁰. This includes publications by the International Monetary Fund²¹, the European Central Bank²², the OECD²³, the

World Economic Forum²⁴, and the World Bank²⁵. For example, a 2015 study on reform of the Portuguese civil justice system showed that the length of judicial proceedings dropped by more than one third due to reforms enacted as part of the economic adjustment programme²⁶.

There is also evidence that having an effective justice system encourages investment in a given country²⁷. Research has established a positive correlation between company size and effective justice systems. By contrast, where there are shortcomings in the functioning of justice weaker incentives to invest and employ are observed²⁸.

Fighting corruption effectively is also important for creating a business-friendly environment.

Finally, trust in well-functioning judicial systems contributes to objectives such as entrepreneurship. Conversely, shortcomings in judicial systems lead to higher borrowing costs²⁹.

¹⁹ European Union Intellectual Property Office (EUIPO), 'Intellectual Property (IP) SME Scoreboard 2016'.

²⁰ *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.

²¹ IMF, 'Fostering Growth in Europe Now', 18 June 2012.

²² ECB, 'Adjustment and growth in the euro area', 16 May 2013; available at: <http://www.ecb.europa.eu/press/key/date/2013/html/sp130516.en.html>.

²³ 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.

²⁴ World Economic Forum, 'The Global Competitiveness Report; 2013-2014', available at: http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf.

²⁵ World Bank, 'Doing Business 2014'; available at: <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB14-Full-Report.pdf>.

²⁶ *Alves Ribeiro Correia/Antas Videira* (2015), *ibid.*

²⁷ See IMF Country Report No. 13/299.

²⁸ See Bank of Spain Working Paper 1303; Bank of Italy Working Paper 898; IMF Country Report 13/299.

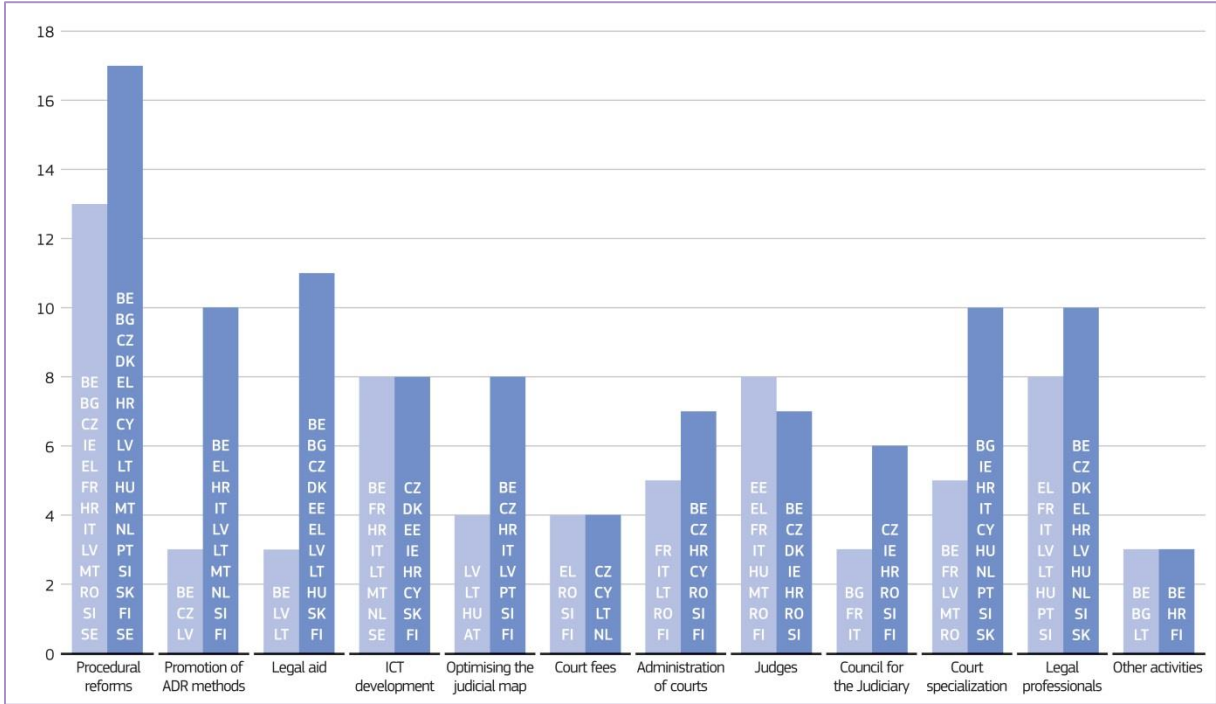
²⁹ IMF Country Report 13/299.

4. CROSS-EXAMINATION OF POLICY STATE OF PLAY

The 2017 European Semester country reports show that a number of Member States continue to face particular challenges over the effectiveness of their

justice systems. In the 2017 European Semester the Council of the EU, following a proposal from the European Commission, addressed country-specific recommendations to Croatia, Cyprus, Italy, Portugal and Slovakia to render their justice systems more effective.

Figure 11 – Mapping of justice reforms in the EU (adopted measures and initiatives under negotiation)



Source: The 2017 EU Justice Scoreboard

The cross-examination shows that a number of Member States are supporting their justice reforms through the European Structural and Investment Funds (ESIF). For the 2014-2020 programming period the EU is providing EUR 4.2 billion in support for increasing the institutional capacity of public administrations, including justice reform, through ESIF. In their programming documents 14 Member States³⁰ have identified justice as an area to be supported through ESIF.

The Commission emphasises the importance of taking an approach oriented at results when implementing the funds: this approach is also required under the ESIF Regulation³¹. The Commission is discussing with Member States how best to assess and evaluate the impact of ESIF on the justice systems concerned.

The Commission is further supporting justice reforms by providing technical support, as well as through its Structural Reform Support Service (SRSS). This is being done in connection with both the economic adjustment programmes, notably in Cyprus and Greece, and the

³⁰ Bulgaria, Czech Republic, Greece, Spain (only ERDF), Croatia, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia and Slovenia.

³¹ Regulation (EU) No 1303/2013, 20.12.2013.

Cooperation and Verification Mechanism in Bulgaria and Romania.

Member States have been implementing innovative tools and practices to strengthen the effectiveness of their justice systems. Examples include the following.

1) A communications hub for distributing court documents in Slovenia (EVIP)³². This acts as a central register of court documents across the entire Slovenian justice system. The hub has significantly shortened the time needed to prepare and ship court documents, and in turn this has shortened the length of court proceedings. Moreover, court staff have been relieved of the administrative work of printing, stuffing envelopes and shipping, leaving them with more time to focus on substantive work.

2) Open access to case law in Romania. The Ministry of Justice and the courts publish information needed for parties to follow their cases in the courts (names of the parties, session dates, object and the decision in brief). In 2015, the Romanian Legal Information Institute Foundation (RoLII Foundation) launched a new portal which provides public access to the full text of all court judgments, in all

instances. It covers all stages of the procedure, including those still open to appeal, while respecting the right to privacy.

3) Court e-services portal in Latvia. To improve information to the public and businesses on court services, the national courts portal (<https://manas.tiesas.lv/eTiesas/>) now provides a more user-friendly interface with electronic services and updated information on courts. The improvements include:

- a platform for submitting court applications online;
- online completion and submission of forms;
- online tracking of court proceedings;
- electronic notifications; and
- a calendar showing the availability of lawyers and prosecutors.

Taken together, these tools are allowing the court system to reduce the number of suspended cases and provide faster trials, including smoother cross-border processes.

Date: 9.11.2017

³² [Quality of Public Administration – A Toolbox for Practitioners](#), European Commission, 2017.

5. USEFUL RESOURCES

- The 2017 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(2017) 167 final
http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm
- Quality of Public Administration — A Toolbox for Practitioners, European Commission (2017)
<http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8055>