Improving the effectiveness of justice systems

Investor Workshop - Investment Protection in the EU

Brussels, 17 December 2018

*This presentation represents the views of the author and does not prejudge the official position of the European Commission
Effective justice systems

- When applying EU law, national courts act as EU courts and ensure that the rights and obligations provided under EU law are enforced effectively (Article 19 of Treaty on European Union).

- Crucial for upholding the rule of law and the Union's fundamental values.

- A prerequisite for an investment and business friendly environment.

- Effective ≠ efficient.
Effective justice systems

- Three main elements of an effective justice system:
  Independence
  Quality
  Efficiency

- Whatever the model of a justice system, these three components must be guaranteed.
EU Justice Scoreboard

- a comparative information tool

- aims to assist the Member States to improve the effectiveness of their national justice systems

- provides objective, reliable and comparable data on the quality, independence and efficiency of justice systems
European Semester

- EU Justice Scoreboard feeds the European Semester – the EU's annual cycle of economic policy coordination

- European Semester country-specific assessments (published each February/March in Country Reports) are carried out through bilateral dialogue with the authorities, and include country visits (e.g. discussions with judges, ministries of justice)

- In May, Commission proposes to the Council country-specific recommendations – adopted in July: in 2018, 5 Member States received CSRs related to justice
EU support for improving the effectiveness of national justice systems

*European Structural and Investment Funds*
- Since 2007, 16 Member States have used ESI Funds to improve the effectiveness of their justice systems. Between 2007 and 2023, these Member States will have spent more than EUR 900 million.
2018 EU Justice Scoreboard: judicial independence

- A requirement stemming from the principle of effective judicial protection referred to in Article 19 TEU, and from the right to an effective remedy before a tribunal enshrined in the Charter of Fundamental Rights of the EU (Article 47).

- Guarantees the fairness, predictability and certainty of the legal system, which are important elements for an attractive investment environment.
2018 EU Justice Scoreboard: judicial independence

Perceived judicial independence

- Figures 55 - 58: General public and companies + reasons (Eurobarometer)
- Figure 59: Businesses’ perception (World Economic Forum)
- Figures 60: Judges’ perception in 2017 (European Network of Councils for the Judiciary)

Structural independence

- Figures 61 and 62: Appointment of judges (ENCJ and NPSJC)
- Figures 63 and 64: Dismissal of judges (ENCJ and NPSJC)
- Figure 65: Appointment and dismissal of court presidents (ENCJ and NPSJC)
- Figure 66: Appointment of judges-members of the Councils for the Judiciary (ENCJ)
- Figure 67: Organisation of the prosecution services (EGMLTF)
- Figure 68: Powers and judicial activity of highest courts in situations relating to judges (ACA-Europe and NPSJC)
Figure 57


Source: Eurobarometer(34)
Figure 58

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

- The status and position of judges do not sufficiently guarantee their independence
- Interference or pressure from economic or other specific interests
- Interference or pressure from government and politicians

Source: Eurobarometer (99)
Figure 59

Businesses' perception of judicial independence (perception — higher value means better perception)

Survey conducted in:

- Green: 2010-12
- Pink: 2014-15
- Blue: 2015-16
- Teal: 2016-17

Source: World Economic Forum (100)
Figure 61

Appointment of judges: proposing and appointing authorities (*) (107)

- Recruitment through a specific exam or a competition for becoming a judge
- Recruitment through a vacancy notice without a specific exam for judges
- Council for the Judiciary/other independent body
- Executive (e.g. Head of State, Government, Minister of Justice)
- Other body on the opinion of the Council for the Judiciary
- Executive on the opinion of the Council for the Judiciary/other independent body
- Court
- Parliament

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Figure 62
Appointment of judges: competence of the executive and the parliament (*) (109)

- Executive/parliament can reject a candidate and choose
  only among the proposed candidates
- No obligation to provide reasons for not appointing
  a candidate judge
- Executive can reject a candidate and choose
  any other candidate
- No judicial review in case of non-appointment

COUNCIL FOR THE JUDICIARY APPOINTS
NO DISCRETION

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### Figure 67

**Organisation of the prosecution services**

Source: European Commission with the Expert Group on Money Laundering and Financing of Terrorism

| Guidance and instructions from the executive / parliament on prosecution | BE | BG | CZ | DK | DE | EE | IE | ES | FR | HR | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | EL | UK |
|-------------------------------------------------------------------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| Instructions in individual cases                                      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| General guidance on prosecution policy                                |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| No power to give guidance or instructions                             |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |

| Management powers over prosecution service (e.g. transfer, evaluation) by: | BE | BG | CZ | DK | DE | EE | IE | ES | FR | HR | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | EL | UK |
|-----------------------------------------------------------------------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| Minister of justice is the Prosecutor General                             |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| Minister of justice                                                        |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| Council for the Judiciary / Prosecutorial Council                         |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| Prosecutor General                                                         |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
2018 EU Justice Scoreboard: efficiency

- Length of proceedings:
  - General data on efficiency
  - Efficiency in specific areas of EU law

- Capacity of courts to handle their workload (clearance rate)

- Pending cases (backlogs)
2018 EU Justice Scoreboard:
Efficiency in specific areas of EU law

- **Competition**: Average length of judicial review
- **Electronic communications**: Average length of judicial review cases
- **EU trademark**: Average length of EU trademark infringement cases
- **Consumer protection**: Average length of judicial review
- **Consumer protection**: Average length of administrative decisions by consumer protection authorities
- **Provisional measures**: Average length of provisional measures in 2015 and 2016
- **Money laundering**: Average length of court cases
Figure 20
EU trademark: Average length of EU trademark infringement cases (*) (1st instance/in days)

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

(*) FR, IT, LT, LU: a sample of cases used for data of certain years. BG: estimation by courts used for 2016. PL: estimation by courts used for 2015. The number of relevant cases was limited (less than 5) in EE, IE, HR, LU and SI. Particularly long cases affecting the average reported in EE, IE, LV and SE. EL: data based on weighted average length from two courts. ES: cases concerning other EU IP titles are included in the calculation of average length.
**Figure 19**

Electronic communications: Average length of judicial review cases (*) (1st instance/in days)

Source: European Commission with the Communications Committee

(*) The number of cases varies by Member State. An empty column indicates that the Member State reported no cases for the year. In some instances, the limited number of relevant cases (LT, MT, SE, LV, SK) can make the annual data dependent on one exceptionally long or short case and result in large variations from one year to the other. DK: quasi-judicial body in charge of 1st instance appeals. ES, AT, and PL: different courts in charge depending on the subject matter. MT: an exceptionally long case of 2,500 days was reported in 2016, which related to a complex issue whereby a local authority, together with several residents, filed proceedings in relation to alleged harmful emissions from base mobile radiocommunications stations.
**Figure 18**

**Competition: Average length of judicial review (*) (1st instance/in days)**

Source: European Commission with the European Competition Network

(EE: no cases. IE and AT: scenario is not applicable as the authorities do not have powers to take respective decisions. AT: data includes cases decided by the Cartel Court involving an infringement of Articles 101 and 201 TFEU, but not based on appeals against the national competition authority. An estimation of length was used in BE, IT. An empty column indicates that the Member State reported no cases for the year. The number of cases is low (below 5 per year) in many Member States, which can make the annual data dependent on one exceptionally long or short case. A number of the longest cases in the dataset included the time needed for a reference to the Court of Justice of the European Union (e.g. LT), a constitutional review (e.g. SK) or specific procedural delays (e.g. CZ, EL, HU).
Figure 21

**Consumer protection: Average length of judicial review (*) (1st instance/in days)**

*2013  2014  2015  2016  Average 2013 - 2016*

Source: European Commission with the Consumer Protection Cooperation Network

(*) BE, LU, AT, FI, SE and UK: scenario is not applicable as consumer authorities not empowered to decide on infringements of relevant consumer rules. In some of these Member States (e.g. FI and SE) consumer authorities can initiate actions in court, or contact the public prosecutor (BE). DE: administrative authorities can adopt decisions in cross-border cases only, but no relevant cases occurred as the Federal Ministry of Justice and Consumer Protection instructed other qualified entities to take enforcement measures. Some Member States have mixed systems (BG, DK, EE, IE, ES and LT) where consumer authorities have to bring court actions on some rules (e.g. unfair contract terms in BG and CY). DE and AT: Mostly civil enforcement in consumer law through consumers or private/semi-private bodies. ES: data covers a limited number of Autonomous Communities. The number of relevant cases is low (less than five) in DK, EE and IE. An estimate of average length was provided by EL, PL and RO. The powers of some authorities include only parts of the relevant EU consumer law.
Figure 22

Consumer protection: Average length of administrative decisions by consumer protection authorities* (1st instance/in days)

Source: European Commission with the Consumer Protection Cooperation Network

(*) BE, DE, LU, AT: scenario is not applicable. SE: change in regulation allowed an authority to adopt a relevant decision issuing a conditional fine. CZ: all decisions, including non-final decisions of the authority, were included in the calculation of the average length. PL: data includes only proceedings where a decision was issued and does not include proceedings that were formally discontinued. DK: a variation in average length compared to previous years can be explained by a change in methodology. NL: data covers decisions in which an administrative fine was imposed because of infringement of substantive rules. ES: data covers a limited number of Autonomous Communities. Some Member States indicated that they also use informal instruments to enforce consumer law, which are generally successful (NL, LU) or compliance is reached without a decision of an authority (MT). An estimate or a range of an average length was provided by EL, IE, RO and FI. In case of a minimum and maximum range, the figure shows an average. Some authorities are competent for only parts of relevant EU law.
Figure 23
Provisional measures: Average length of provisional measures in 2015 and 2016 (*) (1st instance/in days)

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

(*) EU trademark: DK reported no cases. BE, DE, FR, HR, CY, MT, LU, AT, UK provided no data. Specific circumstances making the average length longer than usual were reported in EL. Electronic communications: BE, CY, DK, EE, IE, LV, MT, NL, RO, SK and UK reported no cases. LU provided no data. The number of cases is low (less than five per year) for most Member States in each area, which can make the annual data dependent on one exceptionally long or short case.
Figure 24

Money laundering: Average length of court cases (*) (1st instance/in days)

Source: European Commission with the Expert Group on Money Laundering and Financing of Terrorism

(*) ES: estimated length. LV: Due to a relatively low number of cases in 2016, there are various factors possibly impacting the length of proceeding, e.g. a stay in a single case for objective reasons. PL: Calculation of length for 2016 based on a randomly selected sample of cases.
2018 EU Justice Scoreboard: quality

Focus on factors that can help improve the quality of justice systems, such as:

1. easy access to justice
2. adequate resources
3. effective assessment tools
4. appropriate standards
**Figure 30**

**Use of ICT between courts and lawyers (*)**

- Pink: For communication between court and lawyer
- Light blue: For electronic signature of documents
- Green: For submissions to court (**) 

Source: CCBE survey

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Figure 31
Reasons for the (non-)use of ICT between courts and lawyers

- Not allowed
- Not available
- Negative experience
- Lack of trust
- Compulsory
- Positive experience

Source: CCBE survey

(*) Data for DK, NL, LU and MT from 2016.
Figure 47
Availability of monitoring and evaluation of court activities (*)

- Annual activity report
- Performance and quality indicators
- Age of cases
- Regular evaluation system
- Specialised court staff for quality
- Number of postponed cases
- Other elements

Source: CEPEJ study (85)

Graph showing the availability of monitoring and evaluation of court activities across different countries.
**Figure 27**

Court fee to start a judicial proceeding in a specific consumer case (*) (level of court fee as a share of the value of the claim)

- Court fee for a €6,000 claim (in %)
- Court fee for a low value claim (*) (in %)

Source: European Commission with the CCBE (6)

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(*) ‘Low value claim’: see explanation below Figure 26. LU: Litigants have to pay bailiff fees to start proceedings as a plaintiff. NL*: Court fees for income <€2200/month. NL**: Court fees for income > €2200/month.
Figure 53

Backlogs: definition, automatic monitoring and follow-up (*)

- Definition of when a pending case is a backlog
- Automatic system for following backlogs
- Possible follow-up measure: additional resources
- Possible follow-up measure: temporary assistance by special judges
- Possible follow-up measure: reorganisation of the court management process
- Possible follow-up measure: report from judge

Source: European Commission\(^{(2)}\)
Questions?

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European Commission
Directorate-General Justice and Consumers