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PART 2/2

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

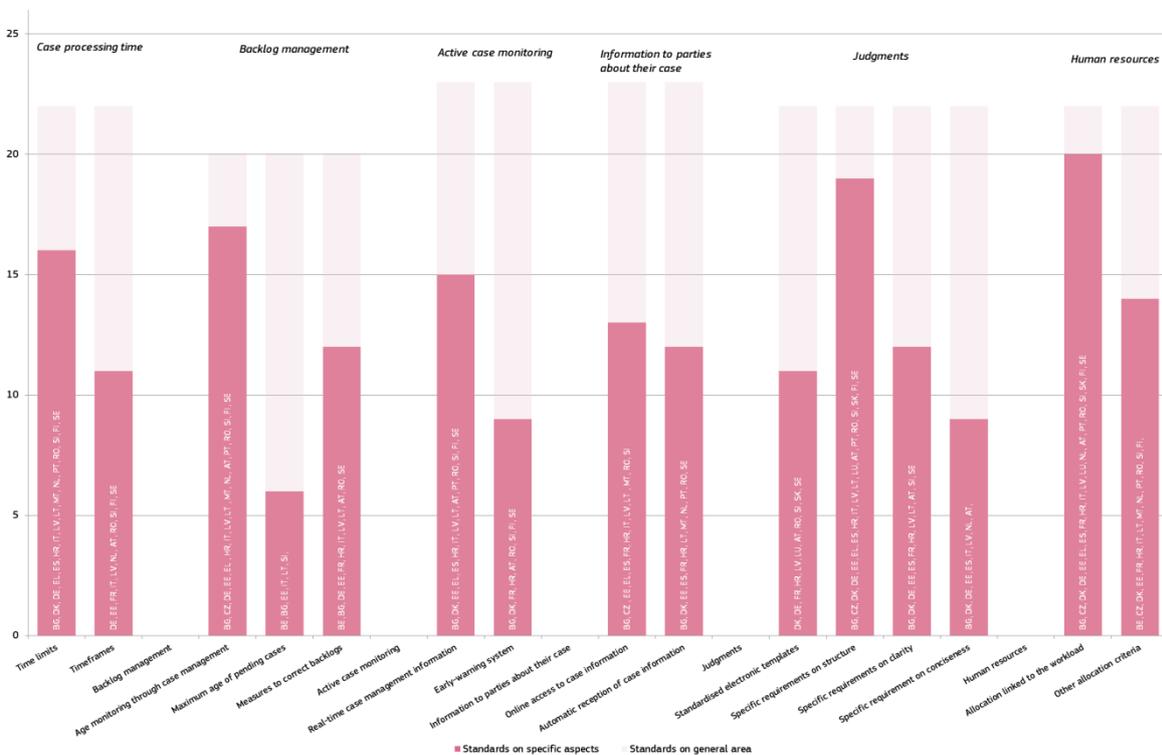
The 2016 EU Justice Scoreboard

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* (source: European Commission⁷²)



* 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.

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

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.

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 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 Member 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: Eurobarometer⁷⁶)

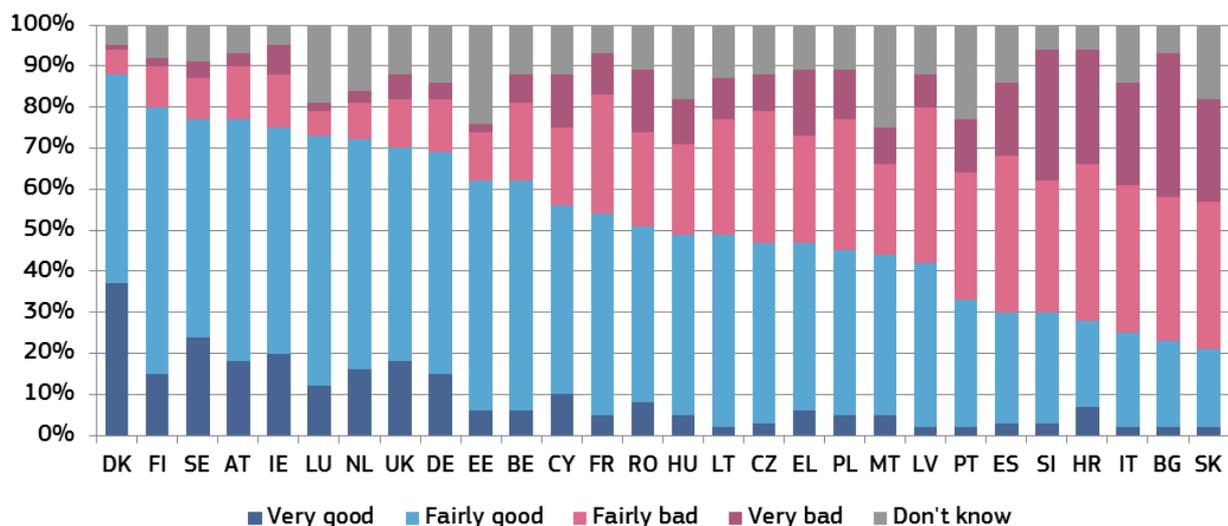


Figure 45: Main reasons among the general public for the perceived lack of independence (share of all respondents — higher value means more influence) (source: Eurobarometer⁷⁷)

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

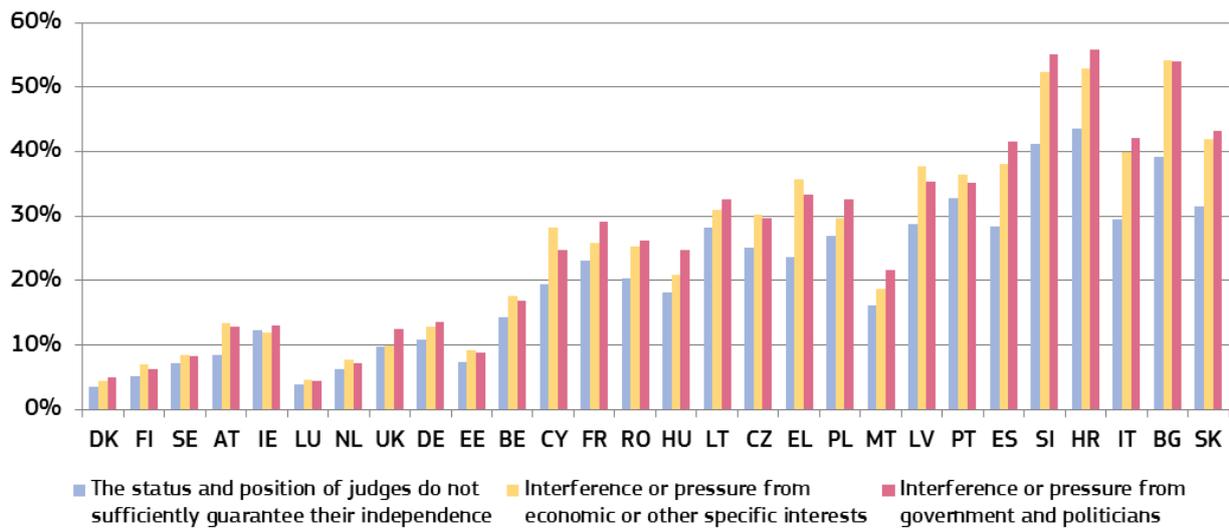
⁷⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>

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

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?’.

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.



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: Eurobarometer⁷⁹)

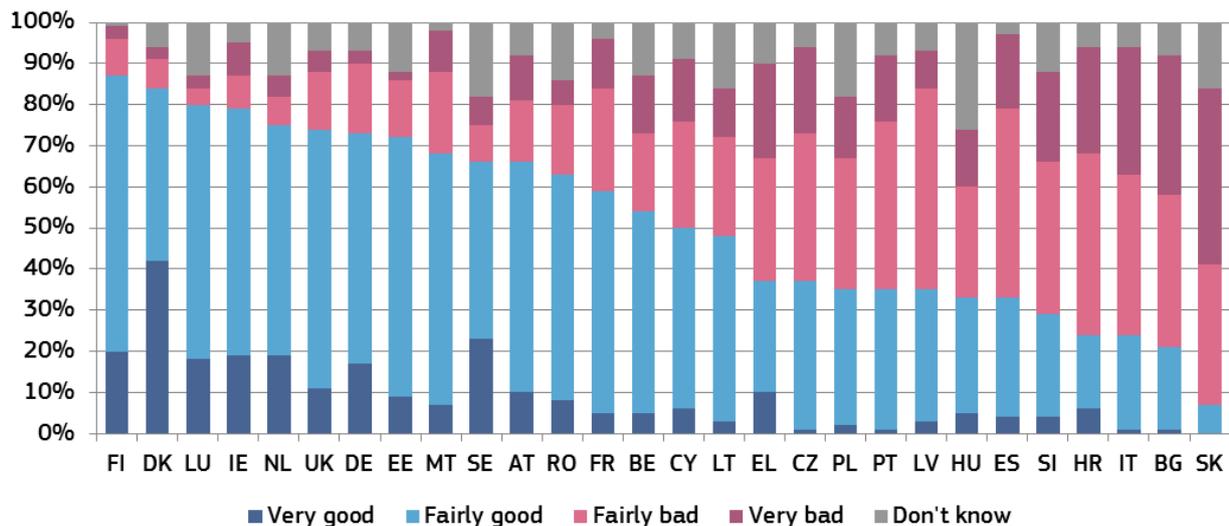


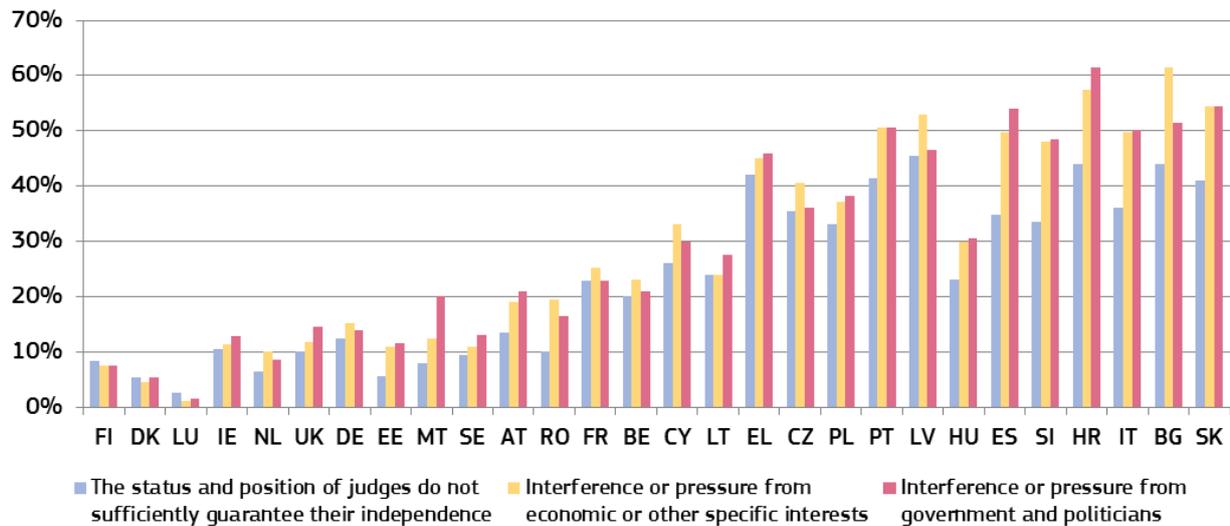
Figure 47: Main reasons among companies for the perceived lack of independence (rate of all respondents — higher value means more influence) (source: Eurobarometer⁸⁰)

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

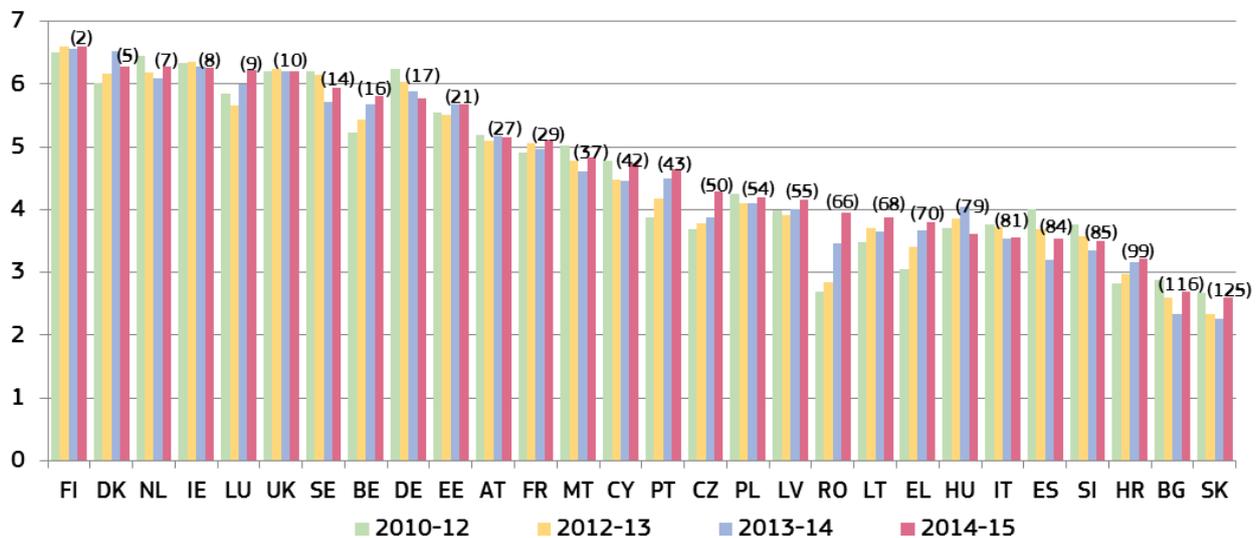
⁸⁰ Eurobarometer survey FL436; replies to the question: ‘Could you tell me to what extent each of the following reasons explains your rating of the independence of the justice system in (our country): very much, somewhat, not really, not at all?’.

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.



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 Forum⁸²)



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

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://www.weforum.org/reports/global-competitiveness-report-2015-2016>

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

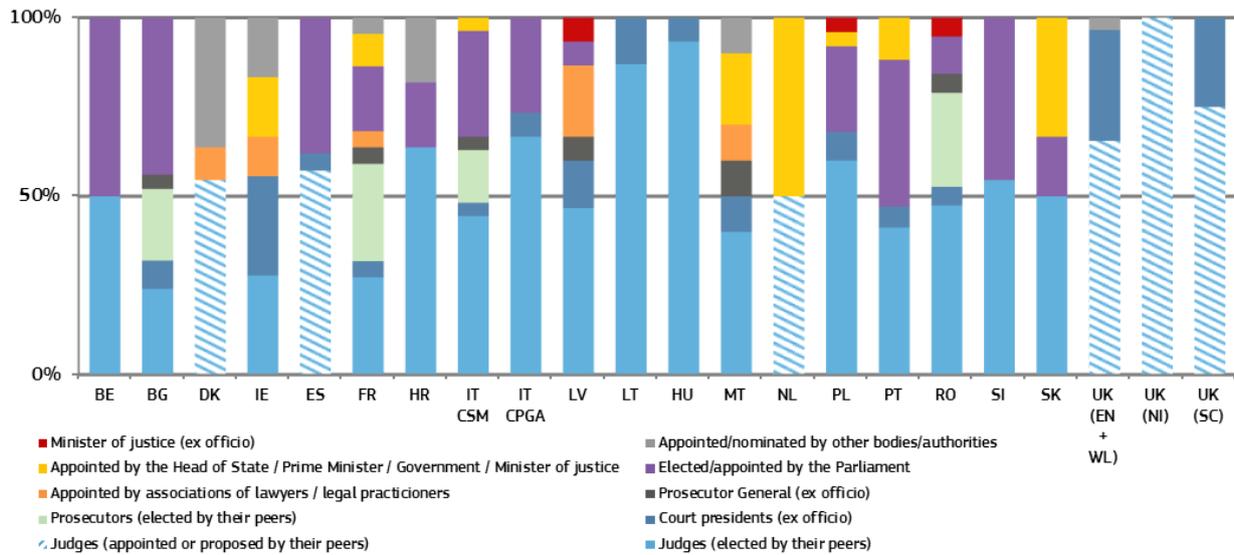
⁸³ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities.

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.

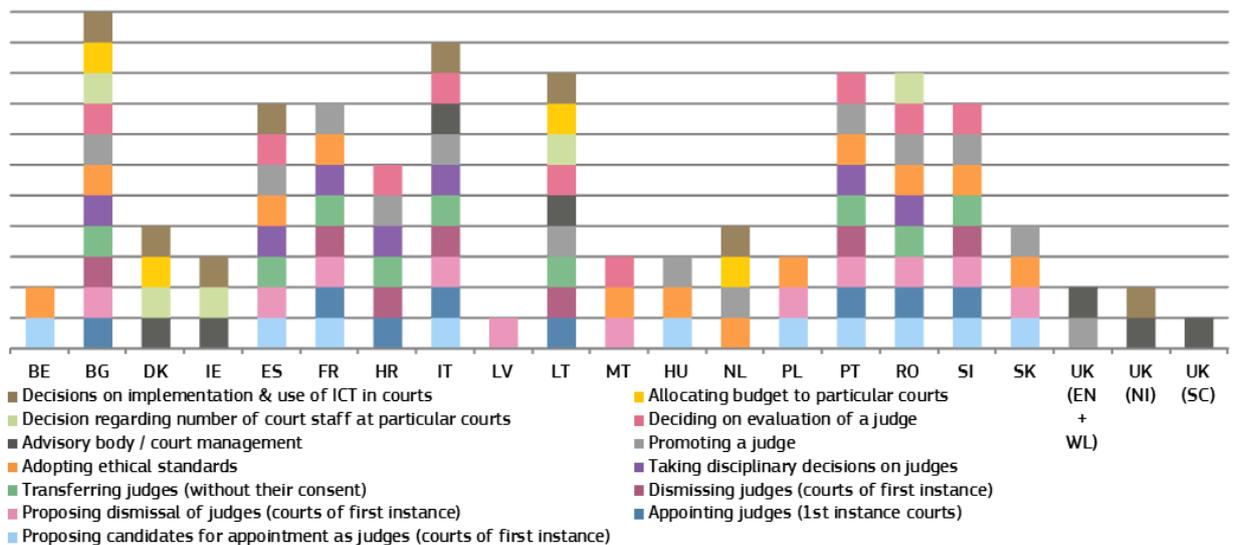
⁸⁷ See Recommendation, §26-27.



* 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.

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.

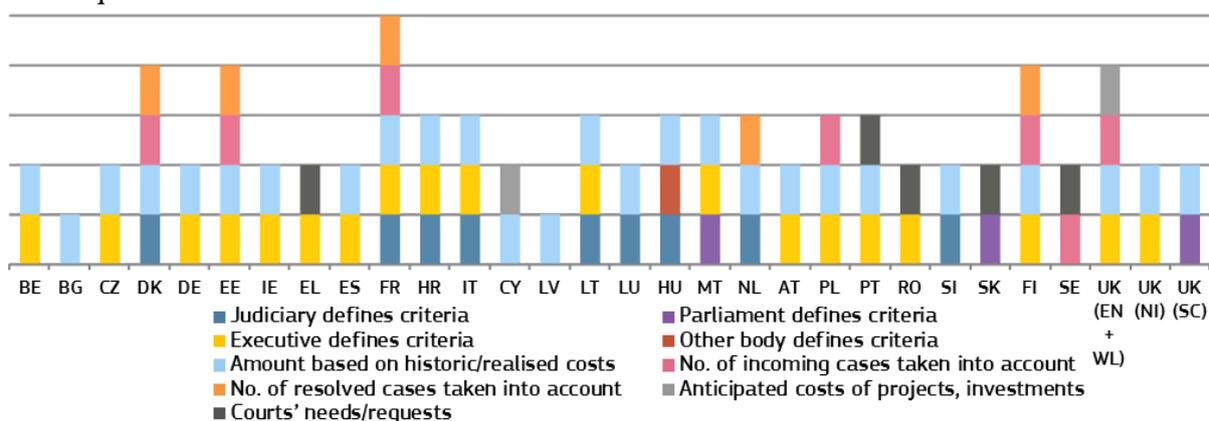


⁸⁸ Based on the ENCJ Guide, October 2015.

* 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).

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.

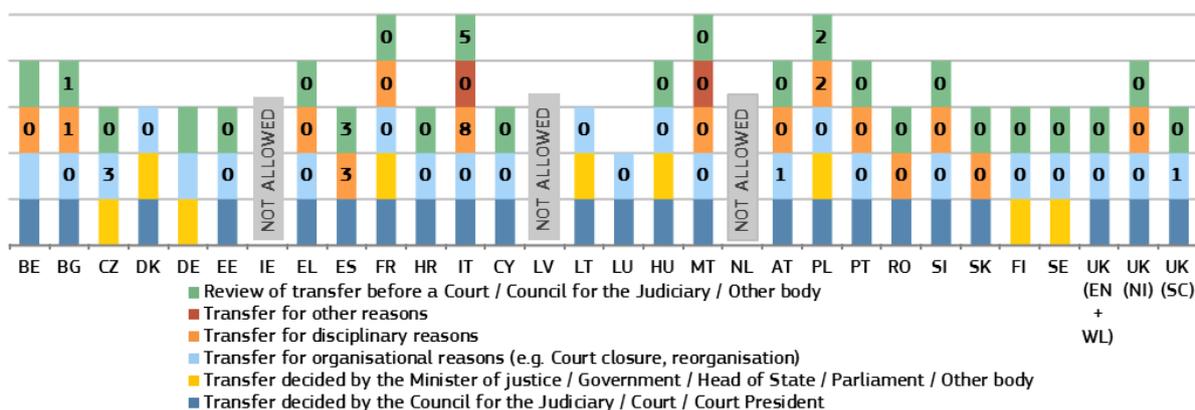
Figure 52: The safeguards regarding the transfer of judges without their consent*⁹⁰ (irremovability of judges)

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

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.

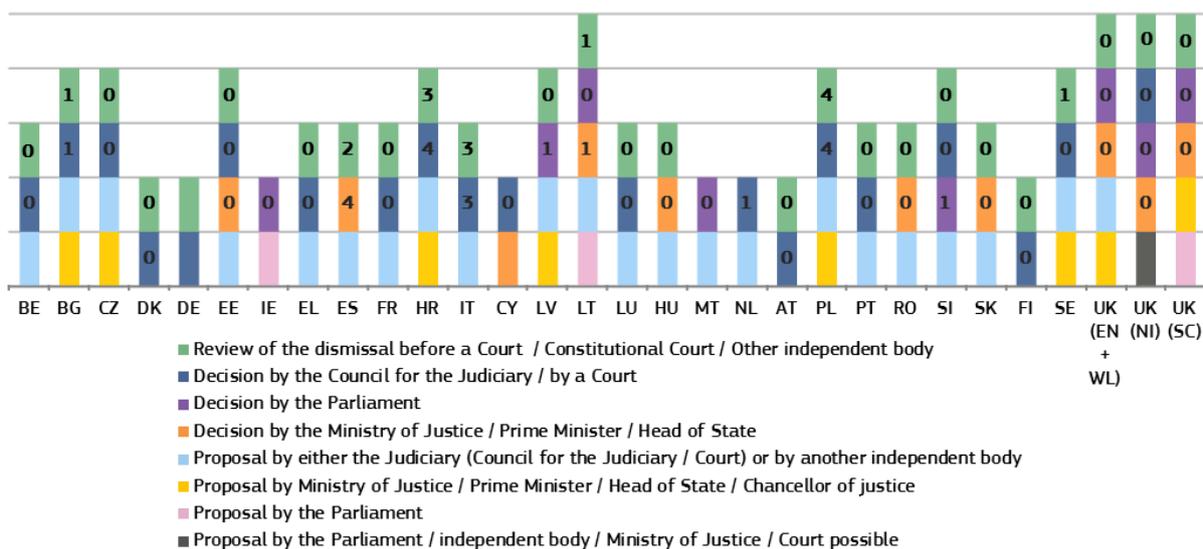
⁹¹ Paragraph 52 of the Recommendation contains guarantees on the irremovability of judges. Judges should not be moved to another judicial office without consent, except in cases of disciplinary sanctions or reform of the organisation of the judicial system.



* 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.

Figure 53: Dismissal of judges at courts of first and second instance⁹²

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 decision⁹⁴ 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).



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).

* 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).

Figure 54: Allocation of cases within a court⁹⁵

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

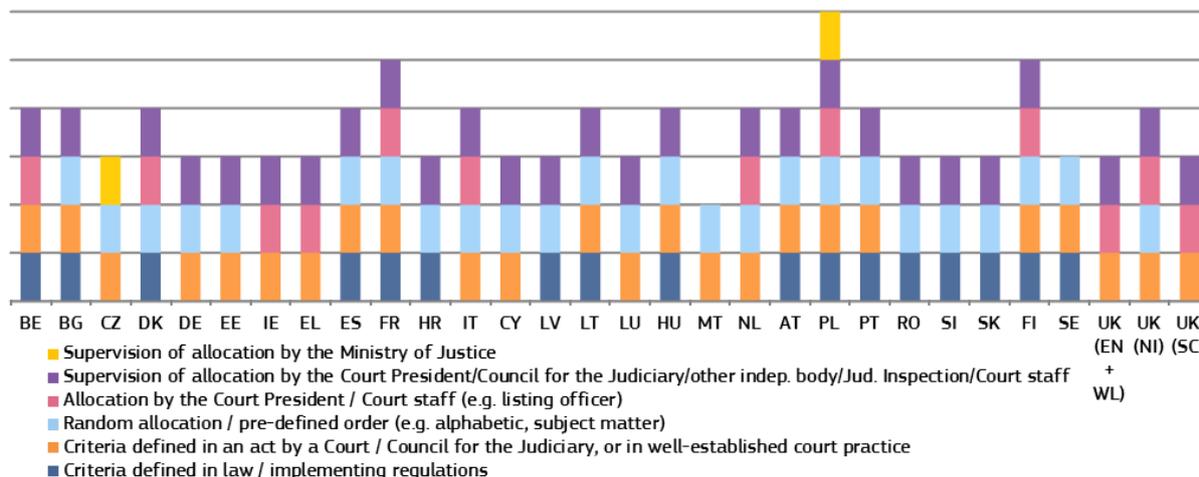


Figure 55: Withdrawal and recusal of a judge⁹⁸

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 authority⁹⁹ 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.

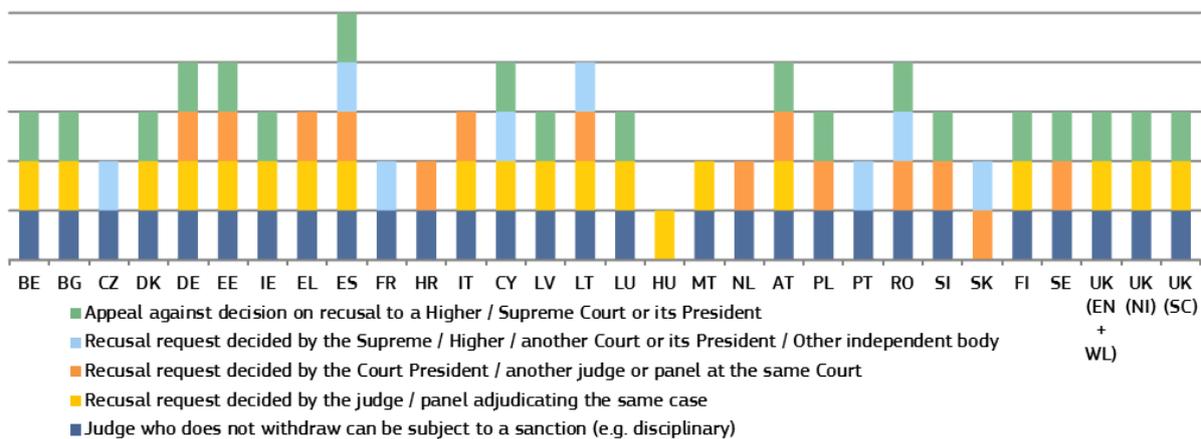
⁹⁶ Paragraph 24 of the Recommendation requires that the systems for the distribution of cases within a court follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge.

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 study¹⁰¹ 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 ENCJ¹⁰²

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.

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.ency.eu/images/stories/pdf/workinggroups/independence/ency_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).

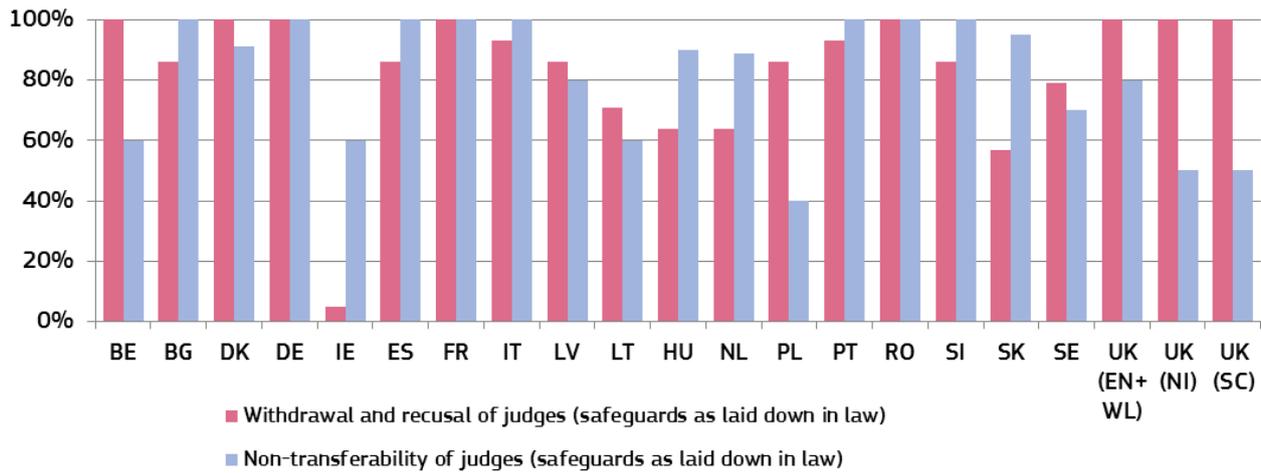
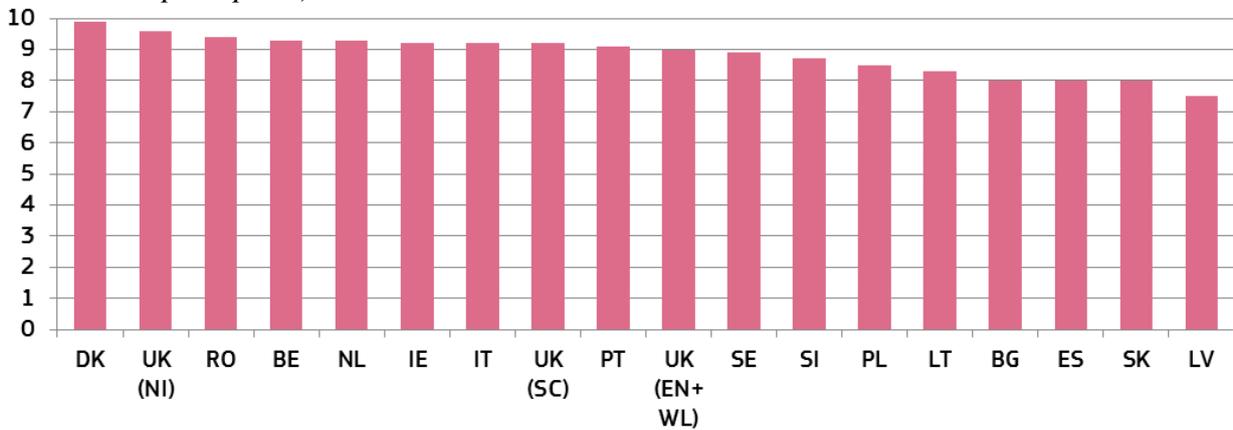


Figure 57: ENCJ's survey of judges' perception of independence (perception — higher value means better perception)¹⁰³



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