



Brussels, 28.5.2018
COM(2018) 364 final

PART 2/2

**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**

The 2018 EU Justice Scoreboard

3.3. Independence

Judicial independence is 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) ⁽⁹⁵⁾. It guarantees the fairness, predictability and certainty of the legal system, which are important elements for an attractive investment environment. In addition to indicators on perceived judicial independence from various sources, the Scoreboard presents a number of indicators on how justice systems are organised to protect judicial independence in certain types of situations where independence could be at risk. Having continued its cooperation with European judicial networks, particularly the European Network of Councils for the Judiciary (ENCJ), the Network of the Presidents of the Supreme Judicial Courts of the EU (NPSJC) and the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU (ACA-Europe), the 2018 EU Justice Scoreboard shows new or updated figures on the appointment and dismissal of judges, court presidents and judges-members of the Councils for the Judiciary, as well as on the organisation of the prosecution services, and powers and the judicial activity of the highest national courts in situations relating to judges.

3.3.1. Perceived judicial independence

Figure 55: Perceived independence of courts and judges among the general public (source: Eurobarometer ⁽⁹⁶⁾) — light colours: 2016 and 2017, dark colours: 2018

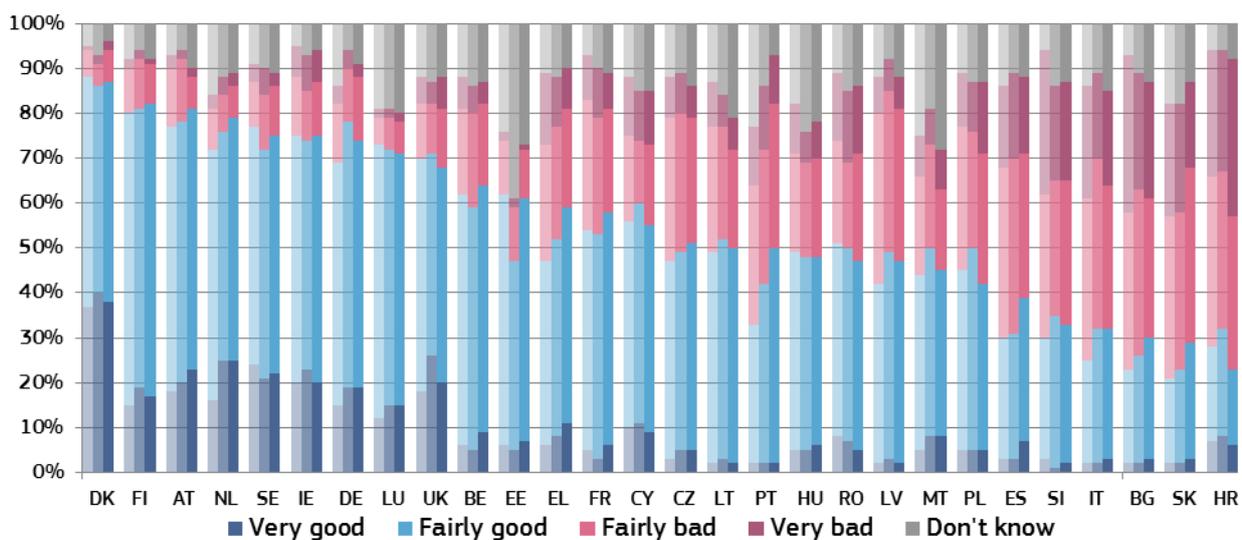


Figure 56 shows the main reasons given by respondents for the perceived lack of independence of courts and judges. Respondents among the general public, who rated the independence of the justice system as being 'fairly bad' or 'very bad', could choose between three reasons to explain their rating. The Member States are listed in the same order as in Figure 55.

⁹⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>

⁹⁶ Eurobarometer survey FL461, conducted between 15 and 16 January 2018. 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?': https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard_en

Figure 56: Main reasons among the general public for the perceived lack of independence (share of all respondents — higher value means more influence) (source: Eurobarometer ⁽⁹⁷⁾)

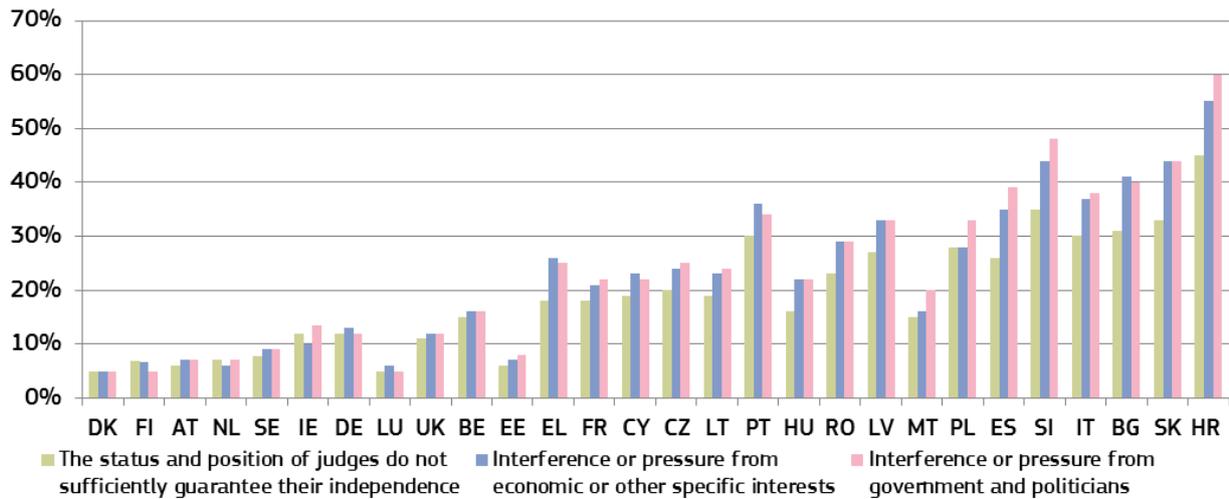


Figure 57: Perceived independence of courts and judges among companies (source: Eurobarometer ⁽⁹⁸⁾) — light colours: 2016 and 2017, dark colours: 2018)

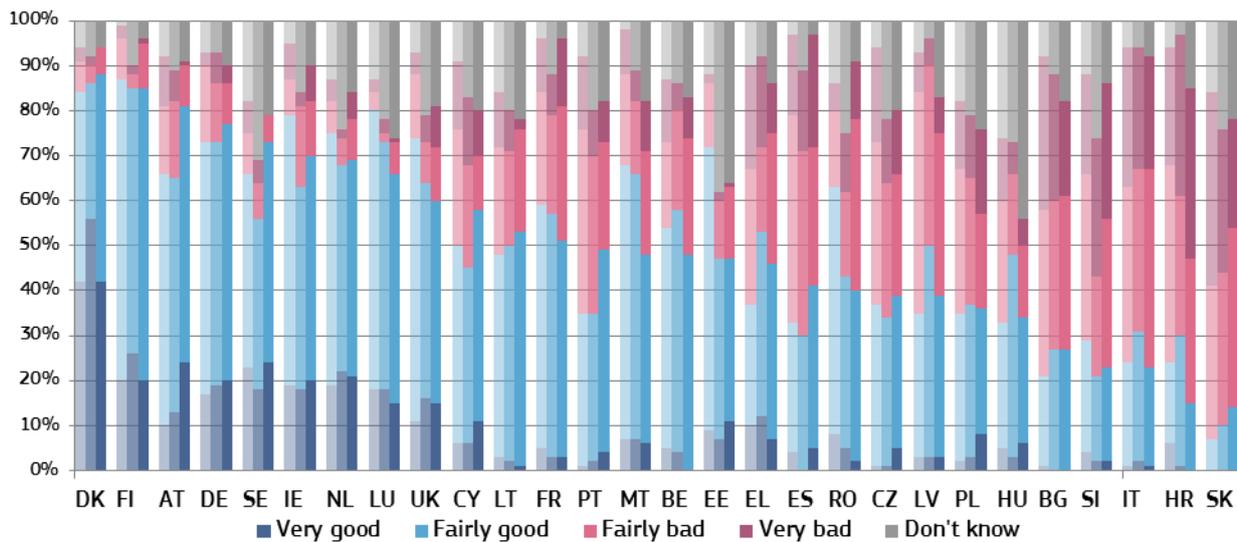


Figure 58 shows the main reasons given by respondents for the perceived lack of independence of courts and judges. Respondents among companies, who rated the independence of the justice system as being ‘fairly bad’ or ‘very bad’, could choose between three reasons to explain their rating. The Member States are listed in the same order as in Figure 57.

⁹⁷ Eurobarometer survey FL461, 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?’.

⁹⁸ Eurobarometer survey FL462, conducted between 15 January and 24 January 2018. 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?’: https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard_en

Figure 58: Main reasons among companies for the perceived lack of independence (rate of all respondents — higher value means more influence) (source: Eurobarometer ⁽⁹⁹⁾)

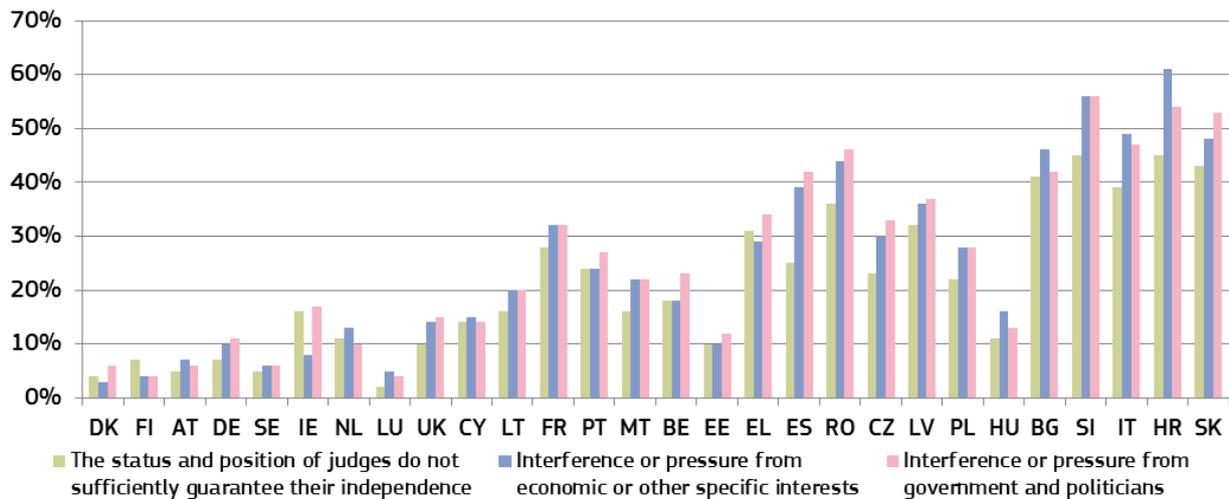
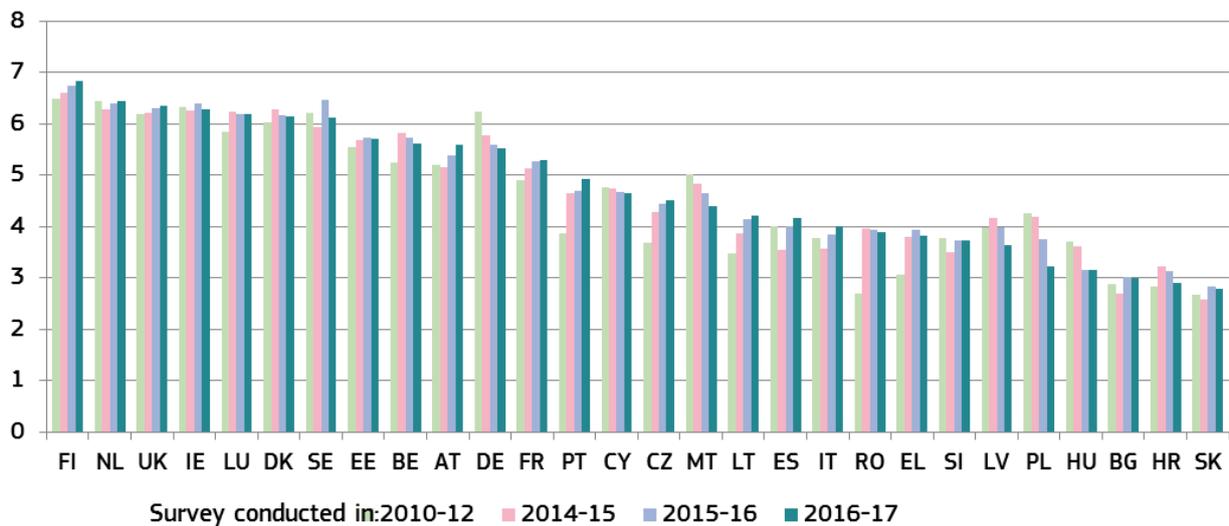


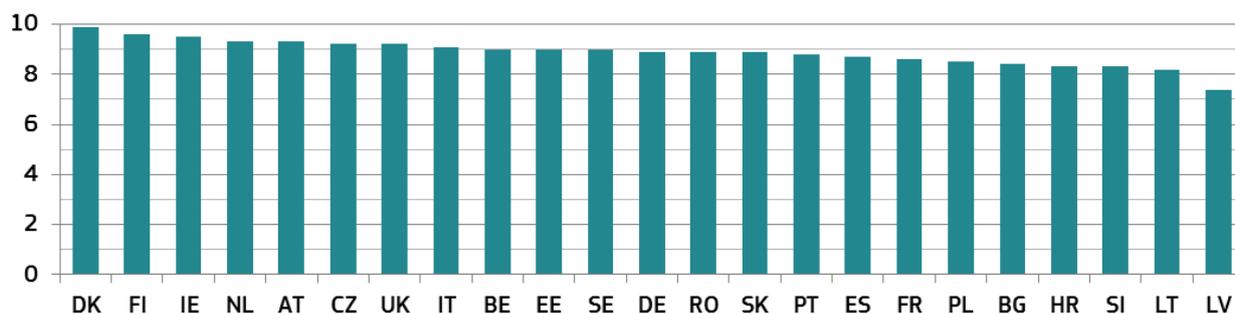
Figure 59: Businesses’ perception of judicial independence (perception — higher value means better perception) (source: World Economic Forum ⁽¹⁰⁰⁾)



⁹⁹ Eurobarometer survey FL462; 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?’.

¹⁰⁰ 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 Member States 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-2017-2018>

Figure 60: Judges’ perception of judicial independence in 2017 (*perception — higher value means better perception*) (source: European Network of Councils for the Judiciary ⁽¹⁰¹⁾)



3.3.2. Structural independence

The guarantees of structural independence require rules, including those on the appointment of judges ⁽¹⁰²⁾. In certain types of situations, where independence may be at risk, European standards have been developed, particularly by the Council of Europe, for example in the *2010 Council of Europe Recommendation on judges: independence, efficiency and responsibilities* (‘the 2010 Recommendation’) ⁽¹⁰³⁾. The Scoreboard presents a number of indicators on how justice systems are organised to safeguard judicial independence in these types of situations.

This edition includes additional indicators related to the level of involvement of the executive and the parliament in the appointment and dismissal of judges (Figures 61-64), the appointment and dismissal of court presidents (Figure 65), and the appointment of judges-members of the Councils for the Judiciary (Figure 66) ⁽¹⁰⁴⁾. For the first time, the EU Justice Scoreboard provides an overview of how prosecution services are organised in the Member States (Figure 67) ⁽¹⁰⁵⁾, and the powers and judicial activity of the highest courts in situations relating to judges (Figure 68) ⁽¹⁰⁶⁾. The figures present the national frameworks as they were in place in December 2017.

The figures presented in the Scoreboard do not provide an assessment or present quantitative data on the effectiveness of the safeguards. They are not intended to reflect the complexity and details of the safeguards. Having more safeguards does not, in itself, ensure the effectiveness of a justice

¹⁰¹ 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’. When average results in the survey for countries were the same, EU protocol order was used. A total of 11 140 judges participated in the survey conducted at the end of 2017. The following ENCJ members did not take part in the survey: EL, MT, and HU. Ministries of justice and judicial authorities from CZ, DE, EE, AT, SE and FI are ENCJ observers. ENCJ report is available at: <https://www.encj.eu/articles/71>

¹⁰² Paragraph 46 and 47 of the Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities provides that the authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers. However, where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary (without prejudice to the rules applicable to councils for the judiciary contained in Chapter IV) should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice.

¹⁰³ Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities.

¹⁰⁴ The figures are based on the 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, CY, LU, AT and FI) were obtained through cooperation with the Network of the Presidents of the Supreme Judicial Courts of the EU.

¹⁰⁵ The figure is based on responses to an updated questionnaire drawn up by the Commission in close cooperation with the Expert Group on Money Laundering and Financing of Terrorism.

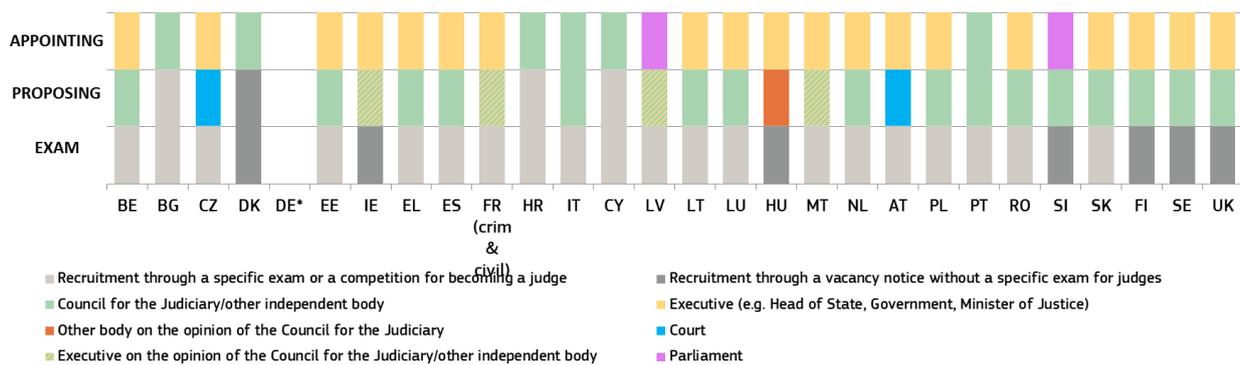
¹⁰⁶ The figure is based on the responses to a questionnaire drawn up by the Commission in close cooperation with ACA-Europe and NPSJC.

system. 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. Ultimately, the effective protection of judicial independence requires a culture of integrity and impartiality, shared by magistrates and respected by the wider society.

– Safeguards relating to the appointment and dismissal of judges and court presidents –

Figure 61 presents an updated overview of the bodies and authorities which propose judges for their first appointment at first instance courts and the authorities that appoint them. It also shows whether the recruitment of judges is done through a specific exam or a competition for judges, or through a vacancy notice without a specific exam.

Figure 61: Appointment of judges: proposing and appointing authorities (*) (107)



(*) In several countries other authorities or bodies (e.g. court presidents, judges) may or should deliberate or be consulted on the candidate judges (e.g. in BE, CZ, DE, EE, LT, HU, NL, AT, UK (EN+WL), and UK (SC)). In some countries (e.g. LT and PL) certain candidates are exempt from taking the special exam for judges because of their previous qualifications or experience. CZ: the president formally appoints judges, the Minister of Justice decides on the assignment of a judge to the particular court. In practice, the candidate judges for appointment are nominated by presidents of regional courts. Afterwards, the list of candidates is forwarded to the Ministry of Justice that forwards the list of candidates (after considering all circumstances) to the Head of State. DE: proceedings at the level of the federal states differ greatly. In half of the 16 federal states, judicial electoral committees participate in the recruitment. In some of the federal states, this matter is dealt with completely by their state Ministry of Justice, whereas in other federal states the authority to decide on recruitment and on the (first) appointment has been transferred to the presidents of the higher regional courts. Some federal states provide for mandatory participation of a council of judges. Others require a joint appointment by the competent minister and a conciliation committee if the council of judges objects. In some federal states, judges are elected by the state parliaments and have to be appointed by the state executive. IE: the Judicial Appointments Advisory Board recommends at least seven candidates to the government for appointment. Following the government's decision, the president formally appoints the judge and cannot refuse to appoint the proposed candidate. FR: candidate judges are selected through a specific exam for becoming a judge and are ranked according to their results. Following a discussion between the candidate and the Ministry of Justice on assignment to a particular court, the Conseil Supérieur de la Magistrature must issue an opinion on the first appointment of these candidates and the Minister of justice then forwards the list of candidates to the President of the Republic, who must formally appoint the candidate judges through a decree without having discretion on the matter. LV: after three years, the Judicial Qualification Board, composed of and elected by judges, provides an opinion in the evaluation of the professional work of a judge. NL: The decision to propose a judge for appointment is formally made by a court president, relying on the recommendation by the Independent Selection Committee. RO: The figure relates to the appointment of senior judges. UK (EN+WL): Different procedures apply for the first appointment of the senior judiciary (High Court Judges and above), which are presented above, and for the appointment of the junior judiciary (Circuit Judges and below).

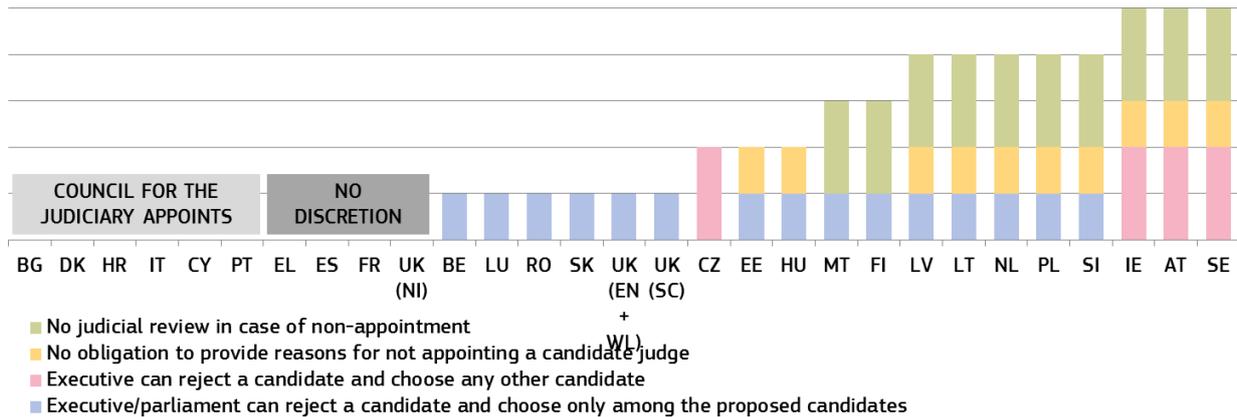
Figure 62 presents the competence of the executive power (e.g. president of the republic, government) and the parliament in appointing judges for their first appointment at first instance courts upon submission from the proposing authorities (e.g. Council for the Judiciary, court) (108). The height of the column depends on whether the executive or the parliament can reject a

¹⁰⁷ Data collected through an updated questionnaire drawn up by the Commission in close association with the 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.

¹⁰⁸ Paragraph 44 of the Recommendation provides that decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity. Paragraph 48 provides that an unsuccessful candidate should have the right to challenge the decision, or at least the procedure under which the decision was made.

candidate judge at all, whether it can choose only among the proposed candidates, or whether it can choose and appoint any other candidate, even they are not proposed by the competent authority. An important safeguard in case of non-appointment is the obligation to provide reasons and the possibility for judicial review. The figure is a factual presentation of the legal system and does not make a qualitative assessment of the effectiveness of the safeguards. For example, it should be noted that in several Member States where the executive or the parliament has the power to reject a candidate judge, that power has either never been exercised (e.g. in HU, NL, AT, SK, SE, UK (EN+WL) and UK (SC)), or has been exercised in very few cases (e.g. in LV, SI and FI).

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



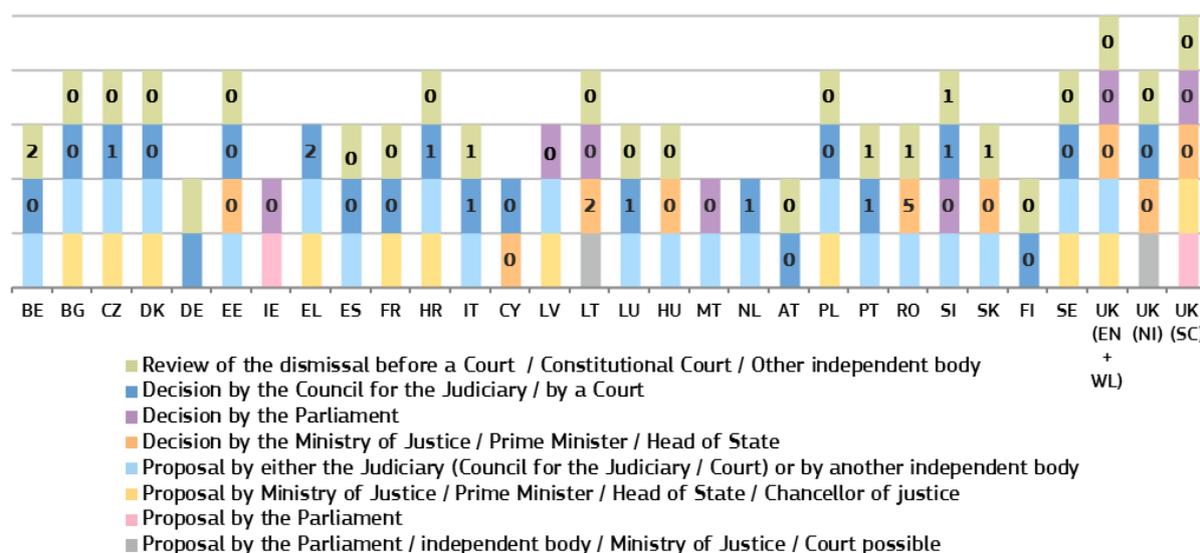
(*) The figure presents the national frameworks as they were in place in December 2017. For each Member State, one point was given if the executive/parliament can reject a proposed candidate and choose another candidate among those proposed, one point was given if there is no obligation by the executive/parliament to state reasons for not appointing a candidate judge, two points were given if the executive can reject a candidate and choose any other candidate, and two points were given if there is no judicial review in case of non-appointment. With the exception of Member States, where first instance court judges are appointed by a Council for the Judiciary, and LV and SI where they are appointed by the parliament, in all other Member States in the figure the executive appoints first instance court judges. DE: No data. See explanations below Figure 61. IE: The Government may appoint a person who is not on the list sent by the Judicial Appointments Advisory Board but in practice does not do so. The final appointment is made by the President, who cannot refuse. The Government is not required to provide reasons to an unsuccessful candidate as to why it has not advised the President to appoint that candidate. There is no appeal/review procedure in relation to a decision by the Government not to recommend/advise the President to appoint a candidate. EL: The final appointment is made by the president, who cannot refuse. ES: The first instance court judges are proposed for appointment by the Council for the Judiciary and are formally appointed through a Royal Decree by the Head of State (the King). The Ministry of Presidency is responsible for drafting the Royal Decree and submitting it to the King and the Minister of Justice. The Minister of Justice must endorse the Royal Decree but neither the King nor the Minister have any power to object the decision of the Council for the Judiciary and must mandatorily sign the Royal Decree. LT: Without advice from the Judicial Council, the President cannot appoint a judge. If the Judicial Council gives positive advice to the president, the president is free to adopt the final decision. If the Judicial Council gives negative advice to the president, then the president must follow this advice when adopting the final decision. LU: There is no binding text on this issue, but until now, the appointing authority has never rejected a candidate judge proposed for appointment by the Commission du recrutement et de la formation des attaches de justice. AT: Under the Constitution, proposals of the courts for candidate judges are not binding. However, it is general practice to appoint only candidates proposed by the relevant courts. PL: The President's decision cannot be appealed to the Supreme Court. RO: The president can refuse the appointment of a senior judge or prosecutor only once. The reasoned refusal is sent to the Superior Council of Magistracy. SK: The president could possibly refuse to appoint a candidate judge but it has never happened. FI: if the president does not appoint the proposed candidate, he/she cannot choose another candidate but remit only once the appointment for further preparation. SE: If the government wants to appoint a candidate that the Judges Proposals Board did not submit, it is legally obliged seek a new opinion by the Board on that other candidate. UK(EN+WL) and UK(NI): the appointing authority referred is the Lord Chancellor (UK Minister of Justice), who recommends a candidate judge for formal appointment by the Queen.

¹⁰⁹ Data collected through an updated questionnaire drawn up by the Commission in close association with the 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.

UK(SC): The appointing authority referred is the First Minister of Scotland, who recommends a candidate judge for formal appointment by the Queen. If the First Minister of Scotland were to reject a candidate judge, the proposing authority (Judicial Appointments Board for Scotland) may propose this candidate judge again to the First Minister. In a situation where an unsuccessful candidate considered that there were any procedural irregularities or that there was irrationality on the part of the panel in making its recommendation under section 19(3) of the Judiciary and Courts (Scotland) Act 2008 or on the part of the First Minister in deciding who to nominate under section 19(5), that person could raise a petition for judicial review in the Court of Session.

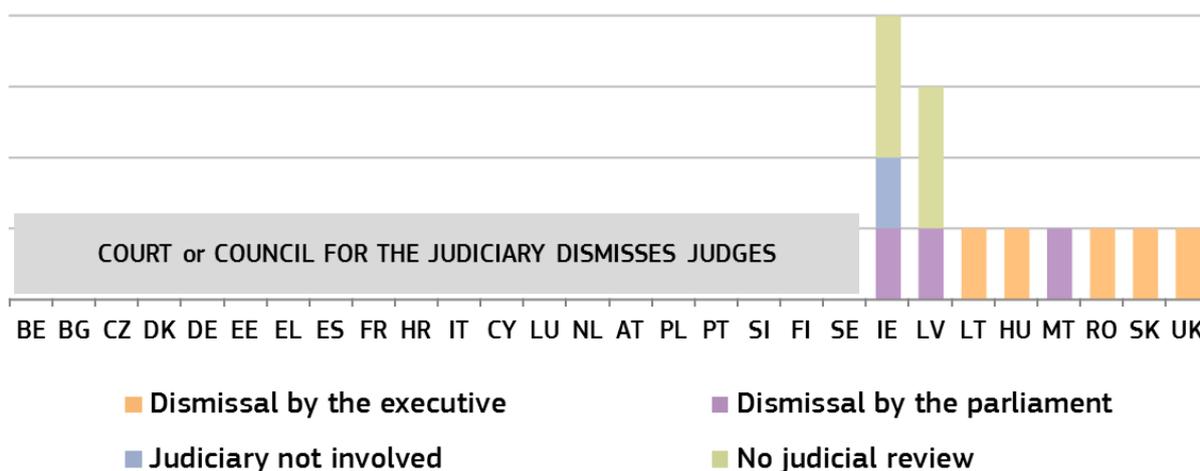
Figures 63 and 64 present frameworks regarding dismissal of judges. They do not show the situation of dismissal of judges due to forced retirement following the lowering of retirement age.

Figure 63: Dismissal of judges at courts of 1st and 2nd instance (*) (¹¹⁰)



(*) 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 numbers indicate how many judges were dismissed in 2016 by particular body and how many appealed dismissal (no number indicates no data available). "Proposal" also covers initiating disciplinary proceedings. In some countries, the executive has an obligation, either by law or practice, to follow the proposal of the Council for the Judiciary to dismiss a judge (e.g. ES and LT). UK (EN+WL): No full-time salaried judges were dismissed. Four part-time (fee-paid) court and tribunal judges were dismissed and also fifteen non-salaried lay magistrates.

Figure 64: Dismissal of judges: competence of the executive and the parliament (*) (¹¹¹)



(*) The Member States appear in the alphabetical order of their geographical names in the original language. The figure presents the national frameworks as they were in place in December 2017. EE: The figure reflects the competence of the Judges Disciplinary Committee to dismiss

¹¹⁰ Data collected through an updated questionnaire drawn up by the Commission in close association with the 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.

¹¹¹ Data collected through an updated questionnaire drawn up by the Commission in close association with the 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.

judges. The Supreme Court en banc (all judges) can also submit a proposal to the President to release a judge from office. The decision of the President is subject to judicial review. SI: The figure reflects the competence of the Disciplinary Court deciding on a disciplinary sanction, and the competence of the Council for the Judiciary to assess that a judge is 'unsuitable for judicial service'. If a judge commits a criminal offence through the abuse of judicial office, the Council notifies the Parliament, which dismisses the judge. UK (EN+WL): In respect of the senior judiciary (High Court Judges and above), removal additionally requires an Address to be presented to Her Majesty the Queen by both Houses of Parliament on the recommendation of the Lord Chancellor and following an investigation by the Judicial Conduct Investigations Office. UK (NI): A judicial office holder (including tribunal presidents) may only be suspended/removed where a statutory tribunal has been convened in accordance with sections 7 and 8 of the Justice (Northern Ireland) Act 2002, as amended. The Prime Minister may suspend a Lord Justice of Appeal or High Court Judge, with the agreement of the Lord Chief Justice, where the Prime Minister and Lord Chancellor are considering the making of motions for the presentation of an address to Her Majesty The Queen. The remaining judicial office holders may be suspended by the Lord Chief Justice where a statutory tribunal so recommends. UK (SC): A judge of the Court of Session and the Chairman of the Scottish Land Court may only be removed from office by Her Majesty the Queen on recommendation by the First Minister of Scotland. The First Minister shall make such a recommendation if (and only if) the Scottish Parliament, on the motion by the First Minister, resolves that such a recommendation should be made and, where the person in question is the Lord President or the Lord Justice Clerk, the First Minister has consulted the Prime Minister.

Court presidents are judges and therefore part of the judiciary. In performing their tasks (which vary between Member States), court presidents protect the independence and impartiality of the court and of individual judges. According to the European standards, in particular the Consultative Council of European Judges (CCJE) Opinion No 19 (2016) on the role of court presidents, the procedures for the appointment of court presidents should follow the same path as that for the selection and appointment of judges. This includes a process of evaluation of the candidates and a body having the authority to select and/or appoint judges in accordance with the standards established in the 2010 Recommendation (¹¹²). The system of selection and appointment of court presidents should include, as a rule, a competitive selection process based on an open call for applications of candidates who meet pre-determined conditions laid down in the law (¹¹³).

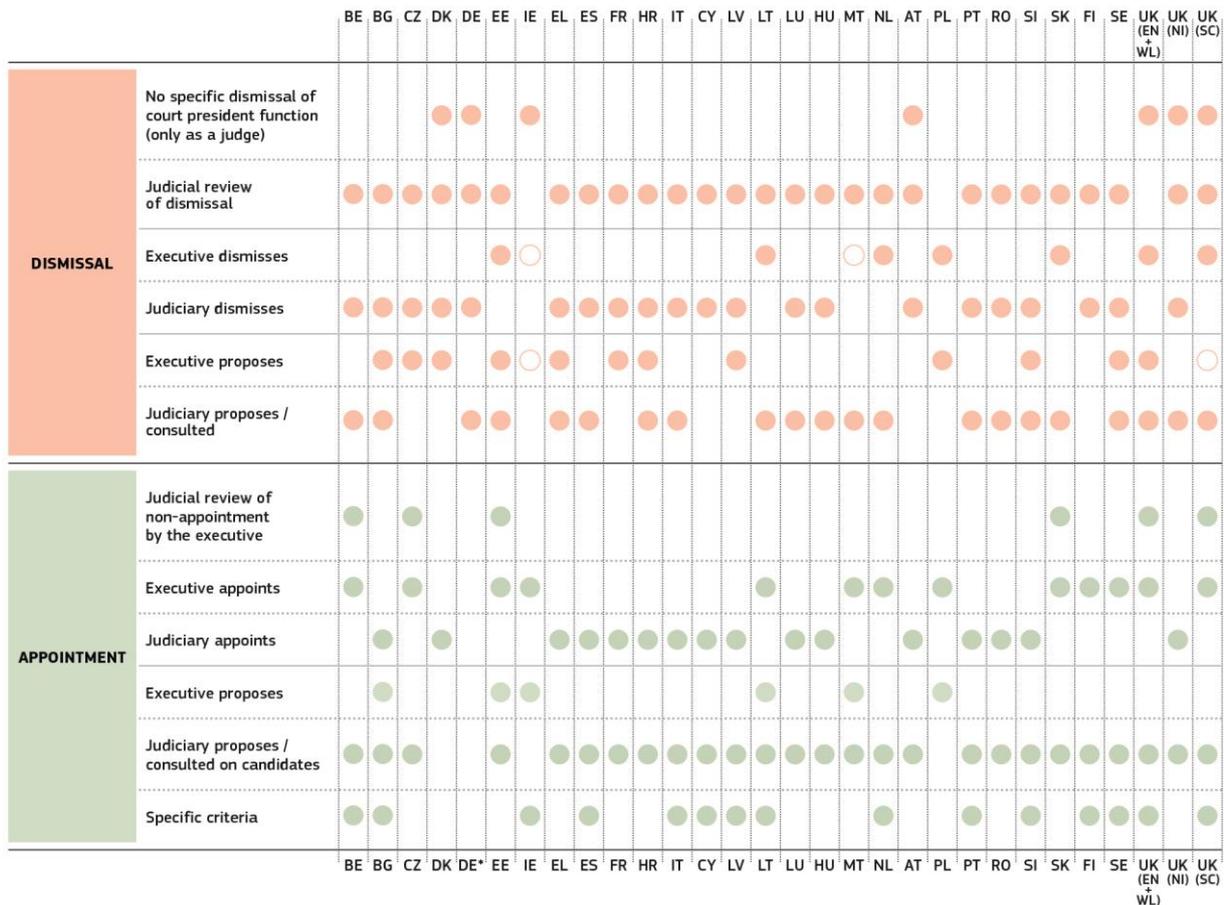
The European standards require that safeguards of irremovability from office as a judge apply equally to the office of court president, that the procedure in the case of pre-term removal of court presidents be transparent, that any risk of political influence should be firmly excluded, and that the participation in this process of the Ministry of Justice should be avoided (¹¹⁴).

¹¹² Consultative Council of European Judges (CCJE) Opinion No 19 (2016) The Role of Court Presidents, 10 November 2016 (the 2016 Opinion), para 38: <https://rm.coe.int/opinion-no-19-on-the-role-of-court-presidents/16806dc2c4>

¹¹³ Para 38 of the 2016 Opinion.

¹¹⁴ Paras 45 and 47 of the 2016 Opinion.

Figure 65: Appointment and dismissal of court presidents (*) (115)



(*) The Member States appear in the alphabetical order of their geographical names in the original language. The symbol [O] means that the parliament dismisses (IE and MT) or proposes dismissal of court presidents (IE and UK (SC)). The figure presents the national frameworks as they were in place in December 2017. DK, DE, IE, AT and UK: No possibility for dismissing a court president solely in their function of a court president - the dismissal always includes also the dismissal from the function of a judge. CZ: Figure reflects the framework in place regarding the presidents and vice-presidents of the district courts, regional courts and high courts. DE: Appointment of court presidents varies among the federal states. ES: Although the formal appointment of court presidents is done by a Royal Decree signed by the King (in the capacity of Head of State) and the Minister of Justice, neither the King nor the Minister can object the binding proposal for appointment made by the Council for the Judiciary. LT: The Parliament appoints judges (chairpersons) of the Court of Appeal. HU: Figure reflects the appointment of presidents of district courts, and of labour and administrative courts, who are appointed by the regional court presidents. The President of the National Office for the Judiciary appoints the regional court presidents and the regional appeal court presidents. AT: Figure reflects the appointment of district court presidents (Bezirksgerichte). Federal President, who by law appoints court presidents on advice of the Minister of Justice, has in practice delegated the right to appoint district court presidents to the Minister of Justice, who in turn delegated the power to appoint to higher regional court presidents. Government appoints the higher regional courts presidents.

– Safeguards on the nomination of members of the Councils for the Judiciary –

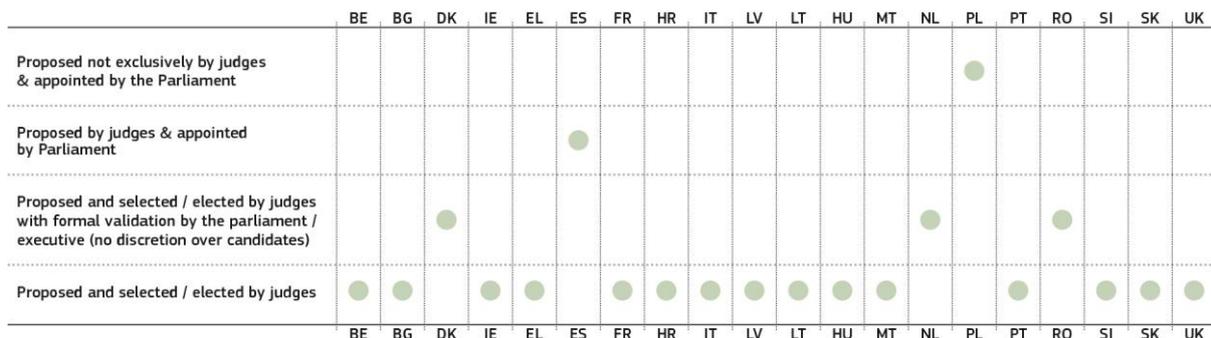
Councils for the judiciary are essential bodies for ensuring the independence of justice. Well established European standards, in particular the 2010 Recommendation, state that ‘not less than half the members of [Councils for the Judiciary] should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary’ (116). It is for the Member States to organise their justice systems, including deciding on whether or not to establish a Council for the Judiciary. However, if a Council for the Judiciary has been established by a

115 Data collected through an updated questionnaire drawn up by the Commission in close association with the 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.

116 Para 27; see also C item (ii) of the 2016 CoE action plan; para. 27 of the CCJE Opinion no. 10 on the Council for the Judiciary in the service of society; and para. 2.3 of the ENCJ ‘Councils for the Judiciary’ Report 2010-11.

Member State, the independence of the Council must be guaranteed in line with European standards.

Figure 66: Appointment of judges-members of the Councils for the Judiciary: involvement of the judiciary (*) ⁽¹¹⁷⁾



(*) The Member States appear in the alphabetical order of their geographical names in the original language. The figure presents the national frameworks as they were in place in December 2017. DK: judges-members of the Council are selected by judges. All members are formally appointed by the Minister of Justice. EL: judges-members are selected by lot. ES: judges-members 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 25 judges. NL: judges-members are selected by the judiciary and are appointed on the proposal of the Council, based among others on the advice of a selection committee (consisting mainly of judges and court staff). All members of the Council are formally appointed by a Royal Decree, an administrative act which does not leave any room for discretion to the executive. PL: Candidate judges-members are proposed by groups of at least 2 000 citizens or 25 judges. From among the candidates, the deputies' clubs select up to nine candidates, from which a committee of the lower chamber of the Parliament (Sejm) establishes a final list of 15 candidates, who are appointed by the Sejm. RO: The campaign and election of judges-members are organised by the Superior Council of Magistracy. Once the final list of elected judges-members is confirmed, the Senate will validate it "en bloc". The Senate may refuse to validate the list only in case of infringement of the law in the procedure for the election of the members of the council and only if the infringement has had an influence over the result of the election. The Senate cannot exercise discretion over the choice of candidates UK: judges-members are selected by judges.

– Safeguards relating to the functioning of the prosecution service –

Public prosecution plays a major role in the criminal justice system as well as in cooperation in criminal matters. The proper functioning of the prosecution service is important for fighting money laundering and corruption. For the purposes of judicial cooperation the public prosecutor's office could be considered a Member State authority responsible for administering criminal justice ⁽¹¹⁸⁾.

Organisation of prosecution services varies throughout the EU and there is no uniform model for all Member States. However, there is a widespread tendency to allocate for a more independent prosecutor's office, rather than one subordinated or linked to the executive ⁽¹¹⁹⁾. Whatever the model of the national justice system or the legal tradition in which it is anchored, European standards require that Member States take effective measures to guarantee that public prosecutors are able to fulfil their professional duties and responsibilities under adequate legal and organisational conditions ⁽¹²⁰⁾ and without unjustified interference ⁽¹²¹⁾. In particular, where the government gives instruction of a general nature, for example on crime policy, such instructions must be in writing and published in an adequate way ⁽¹²²⁾. Where the government has the power

¹¹⁷ Data collected through an updated questionnaire drawn up by the Commission in close association with the ENCJ.

¹¹⁸ C-453/16 PPU, Özçelik, 10 November 2016, EU:C:2016:860, para. 34.

¹¹⁹ CDL-AD(2010)040-e Report on European Standards as regards the Independence of the Judicial System: Part II — the Prosecution Service — Adopted by the Venice Commission — at its 85th plenary session (Venice, 17-18 December 2010), para. 26.

¹²⁰ Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system, adopted by the Committee of Ministers of the Council of Europe on 6 October 2000 (the 2000 Recommendation), para. 4.

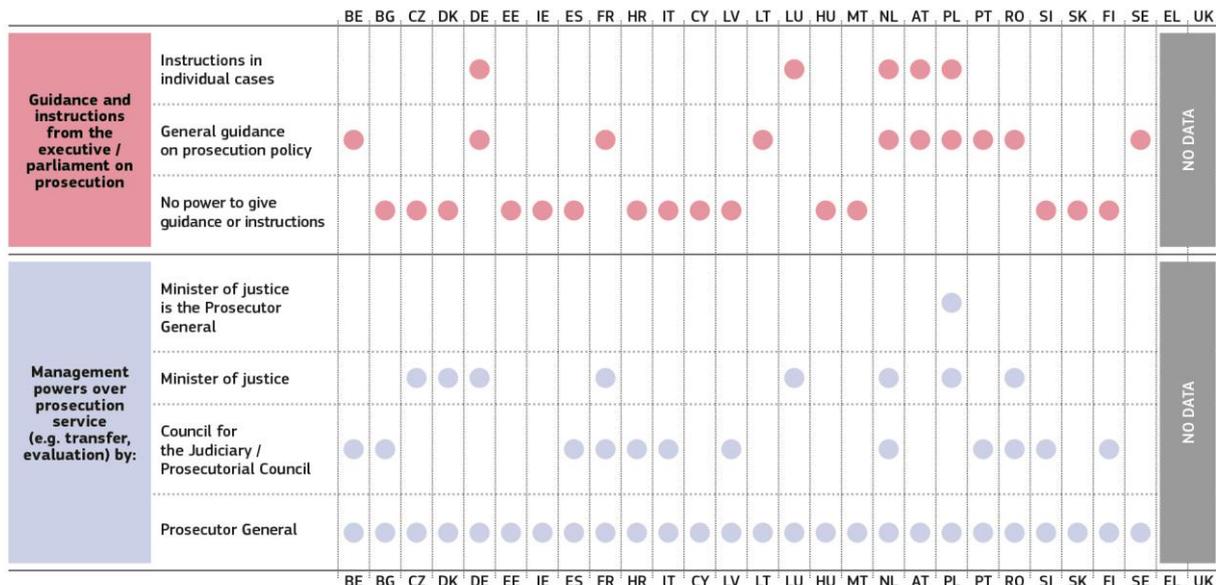
¹²¹ The 2000 Recommendation, paras 11 and 13.

¹²² The 2000 Recommendation, para 13, point c).

to give instruction to prosecute a specific case, such instructions must carry with them adequate guarantees (¹²³). Interested parties (including victims) should be able to challenge a decision of a public prosecutor not to prosecute (¹²⁴).

Figure 67 presents an overview of certain aspects of the organisation of the prosecution services. The figure shows who has the the management powers over the prosecution services, such as the power to decide on a disciplinary measure regarding a prosecutor, the power to transfer prosecutors without their consent, the power to evaluate and promote a prosecutor, and other control powers. The figure presents the authorities in charge of the management of the prosecution service: i) only the Prosecutor General; ii) combination of powers of the Prosecutor General and a Council for the Judiciary/Prosecutorial Council; iii) the role of the Ministry of Justice in the management of the prosecution service. The figure also shows whether the executive or the parliament have the possibility to give general guidance on crime policy or instructions on prosecution in individual cases. The figure does not present the arrangements in place on the internal independence of prosecutors in relation to the Prosecutor General. Figure 67 presents only a factual overview of certain aspects of the organisation of the prosecution services and does not assess their effective functioning, which requires a country-specific assessment (¹²⁵).

Figure 67: Organisation of the prosecution services (*) (source: European Commission with the Expert Group on Money Laundering and Financing of Terrorism)



(*) The Member States appear in the alphabetical order of their geographical names in the original language. BE: Minister of Justice issues the directives on the prosecution and criminal policy on advice of the Board of prosecutors general. BG: Minister of Justice may propose the appointment, promotion, demotion, transfer and release from office of prosecutors CZ: Minister of Justice has the competence to decide promotion of prosecutors. DK: Ministry of Justice has the competence to decide on promotion and on disciplinary measures regarding prosecutors. FR: Minister of Justice has the competence to decide on disciplinary measures for prosecutors, after obtaining an opinion of the Supreme Council of Magistracy. CY: Council for the Judiciary dismisses the Prosecutor General. LT: Parliament (Seimas) sets the operational priorities of the Prosecution Service and conducts parliamentary scrutiny of non-procedural actions. LU: The Minister of Justice may instruct prosecution services to prosecute in a case (but cannot instruct not to prosecute). However, there have not been any such instructions since more than 20 years. There is no legal requirement for the Minister of Justice to consult a prosecutor or seek the opinion of the Prosecutor General on such an instruction. The Grand-Duke, as the Head of State, has the competence to decide on promotion of prosecutors. NL: The Minister of Justice may instruct prosecution services to prosecute or not to prosecute in a case, but needs to beforehand obtain a written reasoned opinion of the Attorney General's Office (College van procureurs-generaal) on the suggested instructions. However, so far, there has only been one such case more than twenty years ago. Minister of Justice has the competence to decide on certain disciplinary measure on prosecutors. AT: The Minister of Justice has to submit any instructions to subordinate prosecutors to an 'Instruction Council' (Weisungsrat) for consultation. PL: The Prosecutor General,

¹²³ The 2000 Recommendation, para 13, point d).

¹²⁴ The 2000 Recommendation, para 34.

¹²⁵ For example, reports relating to BG and RO under the Cooperation and Verification Mechanism, or the country reports in the European Semester.

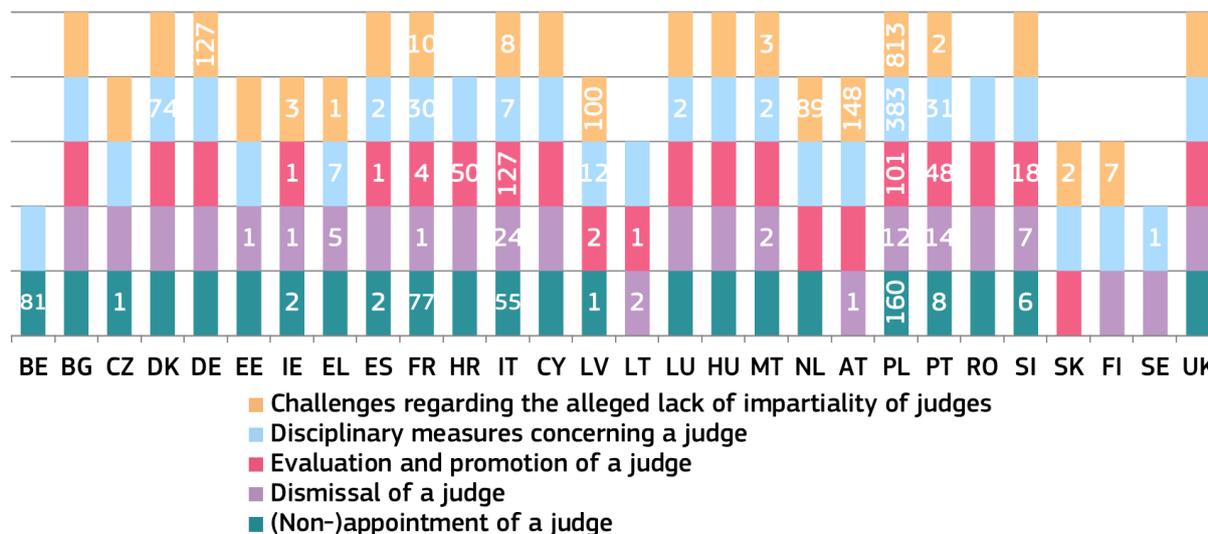
who is also the Minister of Justice, has the competence to decide on the promotion of prosecutors. PT: Parliament can issue general guidance on prosecution policy. RO: Management powers by the Minister of justice consist of checking the managerial efficiency of prosecutors, the manner in which prosecutors exercise their powers and their relations with parties and others. The control cannot consist of checking the measures or decisions taken by prosecutors. The Minister of Justice, when he/she deems it necessary, on his/her own initiative or at the request of the Superior Council of Magistracy, shall exercise his/her control over public prosecutors through prosecutors appointed by the General Prosecutor of the Public Prosecutor's office next to High Court of Cassation and Justice, or, as the case may be, by the Chief Prosecutor of the National Anticorruption Directorate, by the Chief Prosecutor of the Directorate for Investigation of Organized Crime and Terrorism, or by the minister of justice. The Minister of Justice may request information on the activity of the Public Prosecutor's Offices and may issue written guidelines on crime prevention and control. SK: The powers of the Prosecutorial Council do not include direct management over the prosecution service as referred to in the chart. SE: Government can issue general guidance regarding prosecution policy.

– Judicial activity of highest courts –

Highest national courts are important for ensuring the respect of judicial independence in situations relating to judges. In cooperation with the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU (ACA-Europe) and the Network of the Presidents of the Supreme Judicial Courts of the EU (NPSJC), the Commission developed a questionnaire that was replied to by the Supreme Courts and the Supreme Administrative Courts.

Figure 68 presents an overview of the powers and judicial activity of these courts in certain situations relating to judges, where judicial independence could come at risk. Where data are available, the numbers reflect how many such cases were dealt with by the highest courts from 2012 to 2017 or earlier, in case of landmark cases.

Figure 68: Powers and judicial activity of highest courts in situations relating to judges (*) (source: European Commission with ACA-Europe and NPSJC)



(*) The Member States appear in the alphabetical order of their geographical names in the original language. Disciplinary measures concerning a judge include preventive measures. Appeals lodged against the decision delivered by the judge concerned are not taken into account even if they raise issues regarding judicial independence or impartiality. Court instances involved in judicial activity between 2012 and 2017 and earlier landmark cases (in bold are names of the courts the case law of which is expressed in the figure; no number means no cases reported). BE: **Conseil d'Etat** (Council of State). BG: **Върховен административен съд** (Supreme Administrative Court). CZ: **Nejvyšší správní soud** (Supreme Administrative Court). DK: **Højesteret** (Supreme Court). DE: **Bundesverwaltungsgericht** (Federal Administrative Court), **Dienstgerichte** (Service Courts), **Bundesverfassungsgericht** (Federal Constitutional Court), federal court of the relevant jurisdiction. EE: **Riikohus** (Supreme Court). IE: **Chúirt Uachtarach** (Supreme Court). EL: **Συμβούλιο της Επικρατείας** (Council of State), chamber of the judge concerned. ES: **Tribunal Supremo** (Supreme Court), (special) chamber of the given court. FR: **Conseil d'Etat** (Council of State), **Cour de Cassation** (Supreme Court), first president of the court of appeal. HR: **Vrhovni sud** (Supreme Court), **Ustavni Sud** (Constitutional Court), president of the specific higher court, court president. IT: **Consiglio di Stato** (Council of State), **Corte Suprema di Cassazione** (Supreme Court). CY: decisions in these situations are taken by the Supreme Council of Judicature (SCJ), composed of the judges of the Supreme Court; the SCJ's decisions are not subject to judicial review. LV: **Augstākā tiesa** (Supreme Court), **Disciplinārtiesa** (disciplinary court), higher administrative court. LT: **Vyriausybės Administracinis Teismas** (Supreme Administrative Court), **Aukščiausioji Teismas** (Supreme Court). LU: **Cour administrative** (Administrative Court) **Cour de Cassation** (Supreme Court). HU: **Fővárosi Törvényszék** (Budapest Regional Court), **szolgálati bíróságok** (Service Courts), other panel of the same court. MT: **Court of Appeal**, Constitutional Court. NL: **Hoge Raad** (Supreme Court), **Centrale Raad van Beroep** (highest administrative court in social cases), **Raad van State** (Council of State). AT: **Verwaltungsgerichtshof** (Supreme Administrative Court), **Personalsenat** (special evaluation panel) of the superior court, **Oberster Gerichtshof** (Supreme Court). PL: **Naczelny Sąd Administracyjny** (Supreme Administrative Court), other judicial panel of the same court, **Sąd Najwyższy** (Supreme Court); Number of challenges regarding the alleged lack of impartiality of judges reflects the total number of complaints against rejections of recusals in administrative courts, PT: **Supremo Tribunal Administrativo** (Supreme Administrative Court), **Supremo Tribunal de Justiça** (Supreme Court). RO: **Înalta Curte de Casație și Justiție** (Supreme Court). SI: **Vrhovno sodišče** (Supreme Court), court president. SK: **Najvyšší súd** (Supreme Court), **Ústavný súd** (Constitutional Court). FI: **korkein hallinto-oikeus**

3.3.3. 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. For this reason, any justice reform should uphold the rule of law and comply with European standards on judicial independence. The Scoreboard shows trends in perceived judicial independence and overviews on the competence and influence of the executive relating to situations where judicial independence may become at risk.

- The 2018 Scoreboard presents the developments in **perceived independence** from surveys of citizens (Eurobarometer), companies (Eurobarometer and World Economic Forum) and judges (ENCJ):
 - All surveys generally show *similar results*, particularly among the Member States with the lowest and the highest perceived judicial independence.
 - The World Economic Forum survey (Figure 59), presented for the sixth time, shows that businesses' perception of independence has *improved or remained stable* in about two-thirds of Member States, both when compared with the previous year or since 2010. Compared to 2010, there were improvements in several Member States with a low level of perceived independence.
 - Among the reasons for the perceived lack of independence of courts and judges, the *interference or pressure from government and politicians* was the most stated reason, followed by the pressure from economic or other specific interests. Both reasons are still notable for several Member States where perceived independence is very low (Figures 55 and 57).
 - Among the reasons for good perception of independence of courts and judges, nearly four-fifth of companies and of citizens (equivalent to 38 % or 44 % of all respondents, respectively) named the *guarantees provided by the status and position of judges*.
- The 2018 EU Justice Scoreboard presents overviews on the **competence of the judiciary, the executive and the parliament** in the appointment and dismissal of judges, court presidents, selection of judges-members of the Councils for the Judiciary, and some organisational aspects of the prosecution services:
 - Figures 61-64 show the competence of the judiciary, the executive and the parliament in the **appointment and dismissal of judges**. In most Member States, a system of checks and balances exists and an independent body proposes candidate judges for appointment. For this reason, in Member States where a Council for the Judiciary has been established, it is crucial to guarantee its independence in line with European standards.
 - Figure 65 shows the competence of the judiciary, the executive and the parliament in the **appointment and dismissal of court presidents**. In the majority of Member States, there are strong guarantees in the appointment and dismissal of court presidents. In very few Member States, the executive has a strong influence on the appointment and dismissal of court presidents.
 - Figure 66 shows the involvement of the judiciary in the **appointment of judges-members of the Council for the Judiciary**. It is up to the Member States to organise their justice systems, including whether or not to establish a Council for the Judiciary. However, where a Council for the Judiciary has been established by a Member State, the independence of the Council must be guaranteed in line with European standards. In almost all Member States, the judges-members of the Councils are proposed and elected or selected by judges.

- For the first time, Figure 67 presents some elements of the organisation of the **prosecution services**.
- Highest national courts play a vital key role in ensuring judicial independence. For the first time, Figure 68 presents the **powers and judicial activity of highest courts** in certain situations relating to judges where their independence may come at risk. In certain Member States, there was a high level of judicial activity in these areas over the last five years.

4. CONCLUSIONS

The sixth edition of the EU Justice Scoreboard shows the trends in the functioning of the national justice systems more clearly: a number of Member States have shown determination in engaging in justice reforms and managed to further improve the effectiveness of their justice system. However, challenges remain not only in the functioning of the justice systems but also regarding the content of certain reforms carried out in Member States. The Commission is committed to ensure that any justice reform respect the rule of law and European standards on judicial independence.