

12.06.15

Decision
Of the Bundesrat

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 EU Justice Scoreboard 2015**COM(2015) 116 final**

In its 934th session on 12th June 2015 the Bundesrat adopted the following Opinion pursuant to §§ 3 and 5, of the Act on Cooperation between the Federation and the Federal States in European Union Affairs (EUZBLG):

1. The Bundesrat refers to its Opinions on the EU Justice Scoreboard 2013 - BR-Official Document 244/13 (Decision) - and the EU Justice Scoreboard 2014 - BR-Official Document 171/14 (Decision) - and reiterates the fundamental criticism it expressed in these Decisions.
2. The Bundesrat welcomes the inclusion of short comments under numerous illustrations providing more information on the indicators examined and highlighting differences in how data is collected in the various Member States or on difficulties pertaining to the comparability of the data.
3. Particularly in the light of these additional points, the Bundesrat continues to take the view that the EU Justice Scoreboard is not a sound basis for a viable comparison of national judicial systems. The Bundesrat therefore considers that it would not be helpful to extend the EU Justice Scoreboard to new parameters, which in some cases are underpinned by even less adequate data sets. The Commission's further endeavours should concentrate instead on the requisite improvements to the completeness and quality of data for the existing parameters.

4. These fundamental shortcomings become apparent in respect of appraisal of administrative law cases. The Bundesrat therefore finds the figures for the length of proceedings indicated in Figures 4 to 6 unconvincing. Figure 4 indicates a value of over 400 days for Germany. In contrast, according to Figure 5 the length of proceedings in civil and commercial law cases is less than 200 days and in Figure 6 the figure indicated for administrative cases is (considerably) less than 500 days. Based on these figures and given the ratio of civil and commercial law proceedings to administrative law cases, it is not logical that the average value for all proceedings is indicated as more than 400 days.

The EU Justice Scoreboard 2015 is based on the CEPEJ study: “Study on the functioning of judicial systems in the EU Member States”. The statistics concerning “Administrative law cases” provided on pp. 72 ff. of this study can however not be plausibly explained simply as a consequence of differing population figures in the various Member States of the EU or of differences in the degree to which the existing means of legal recourse are deployed. A more likely explanation of these statistics is to be found in insufficient comparison of the specific types of subject-matter that fall within the category of administrative law cases in the various Member States. That means that there are fundamental misgivings concerning the data on administrative law proceedings provided in the EU Justice Scoreboard 2015.

Furthermore the Bundesrat would call into question the appraisal of the Commission as presented in Section 3.1.3, which states that the number of pending cases would necessarily be reduced if the duration of proceedings was shortened. Viewed in isolation, the figures (per 100 inhabitants) for cases pending in the courts do not afford scope to make any statement on the duration of proceedings or on how efficiently such proceedings are processed. The key factors that determine whether there is a large or small number of administrative law cases (per 100 inhabitants) pending in the courts of a particular country are the question of which cases are considered to be administrative law cases, and the range of types of legal recourse that a Member State affords its inhabitants to take administrative disputes to court. The Bundesrat therefore takes the view that the rather below-average performance of Germany indicated in figure 12 of the EU Justice Scoreboard 2015 is not of relevance in the context of any further development of the German judicial system.

5. The Bundesrat agrees in principle with the Commission that further training options for judges and state prosecutors can influence how well judicial systems function in the long term.

However, the Bundesrat has doubts concerning the correctness, completeness and significance of the data on which the EU Justice Scoreboard 2015 is based. The questionnaire for collecting data on further training for judges was not clear in places and required interpretation. This has occasioned uncertainties even within Germany in terms of the comparability of data for the German federal states, and this difficulty is likely to be exacerbated when considering the 25 participating Member States. One clear example of the questions that needed interpretation was the notion of a “link to EU law”. It was not made sufficiently clear how strong such a link to EU law must be for an event to be categorised as falling under this heading. There is reason to believe that the German judicial administrations in the federal states were very conservative in their evaluation of this point and included only events that dealt predominantly with points related to EU law.

In addition, the data collected are not comparable. Figure 37 for example does not seem suited to making any significant contribution to quality comparison for judicial systems. It provides no information at all about the duration, number of participants or methodology of the further training events implemented in the Member States and thus does not take account of any of the parameters that are relevant for the quality of an event. As a result, in the figure a half-day further training measure with 140 participants and exclusively teacher-delivered instruction is, for example, appraised as being equivalent to an interactive seminar with small groups that runs for several days.

The scope of the knowledge of EU law acquired by judges and state prosecutors during their initial training is also not taken into account. Initial training is however the foundation underpinning further training. If such initial training is of a high quality, there is less need for further training measures to convey fundamental knowledge. In this respect, it is crucial to take into account the knowledge acquired during initial training when collecting data to be used for comparisons of training measures. For decades, classes covering the fundamentals of EU law, the sources of law, EU bodies and the ways in which they function, the fundamental freedoms and how EU legislation relates to national law have been part of the mandatory course modules in German law

degrees and the subsequent legal traineeship period; consequently, in Germany further training on European Union law is to a large extent highly specific and specialised.

6. Finally, the Bundesrat takes the view that budget data are only a weak indicator with little informative value for appraisal of the quality of a judicial system. It is already virtually impossible to conduct a comparative analysis of budgets for judicial systems of the federal states in Germany due to differing budget structures in the federal states. There are considerable differences in the provisions for entering items into the budget in statements of revenue and expenditure for each institution or section, as well as in the General Financial Management budget, particularly in the case of building measures. This is likely to be even more the case at the European level. Expenditure on legal aid is of limited value as a parameter for quality measurements. Such expenditure is decisively influenced by the economic situation of the parties potentially involved in legal proceedings.
7. In the light of these considerations, the Bundesrat takes the view that clear efforts by the Commission are required if it is to fulfil its own ambition of making objective, reliable and comparable data available. One significant aspect here is careful review and validation of the data collected, with the national judicial administrations involved in this process. To that end, the draft of the EU Justice Scoreboard should be sent to national judicial administrations before publication, also to allow scope to correct any discrepancies in the presentation of the data.
8. The Bundesrat requests the Federal Government to take its position into account during negotiations in the Council and to ensure that the EU Justice Scoreboard does not give rise to any additional burdens for the justice system.
9. The Bundesrat will transmit this Opinion directly to the Commission.