

**07.07.17****Decision of  
the Bundesrat**

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**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 2017 EU Justice Scoreboard****COM(2017) 167 final**

The Bundesrat adopted the following Opinion in its 959th session on 7th July 2017 pursuant to §§ 3 and 5 of the Act on Cooperation between the Federal Government and the Federal States on Matters Pertaining to the European Union (EUZBLG):

1. The Bundesrat shares the Commission's assessment that an effective justice system is an important basic prerequisite in upholding the rule of law and legal security. The Bundesrat refers to its Opinions on the EU Justice Scoreboard from previous years, c.f. BR Official Document 244/13 (Decision), BR Official Document 171/14 (Decision), BR Official Document 92/15 (Decision), BR Official Document 173/16 (Decision), and reiterates the fundamental critique expressed therein.
2. The Bundesrat welcomes further differentiation in the comments related to the various figures illustrating the text. This helps reduce the risk of misunderstandings and erroneous conclusions. At the same time however it should be noted that these figures rarely offer the ease of reference that would normally be expected from such figures, given the length of the comments, coupled in some cases with the use of several distinct colours for bars in the bar charts. The Commission's wish to present as much information as possible in each diagram means that many of these figures cannot be understood intuitively. In some instances, for example Figures 56, 57, 59 and 60

addressing the appointment, transfer and dismissal of judges, it is questionable whether depicting this information in a diagrammatic format is expedient.

3. The Justice Scoreboard continues to suffer from a dearth of reliable data. For example, statistics on the length of proceedings related to interim measures in certain fields of law have been included in the 2017 Justice Scoreboard for the first time. The Bundesrat concurs with the Commission in as much as proceedings concerning provisional measures can be of great importance for effective enforcement of legal rights. Figure 18 is however not a suitable basis for a comparison. As is also the case for information on the average length of judicial review cases in the fields of competition (Figure 13), electronic communications (Figure 14), the EU trademark (Figure 15) and consumer protection (Figure 16), the comparison is based on an extremely small number of cases in many countries. As a consequence, individual cases can have a substantial impact on the overall statistics. There are therefore significant reservations concerning the ranking that has been produced by grading countries on the basis of case duration. The reliability and validity of the data included in Figure 51, which addresses the perceived independence of courts and judges, also appears questionable. In order to render the compilation of the underlying data transparent, information on the number of companies and individuals ("general public") included in the survey would be required, and also—particularly in the light of administrative jurisdiction—information on authorities and other public bodies questioned, as well as information on how frequently the individuals or bodies included in the survey were involved in legal proceedings during the survey period. The indications pertaining to the data sources given in the 2017 Justice Scoreboard (Footnote 82, 2017 Justice Scoreboard) are not informative in this respect. The extent to which guarantees of judicial independence are effective can be above all be determined by considering the judiciary's own perception of the effectiveness of the guarantees afforded. The Bundesrat has already pointed out in comments in its 2015 Opinion that it is not helpful to extend the Justice Scoreboard to further fields if the data basis is insufficient. The Bundesrat reiterates its proposal that fewer fields should be presented, but that more reliable data should be used for this undertaking.

4. In addition, a figure addressing the average length of court cases dealing with money laundering (Figure 19) has also been included in the Justice Scoreboard for the first time. Consequently, cases pertaining to criminal law have now also been incorporated into what is now the fifth EU Justice Scoreboard. Admittedly, effective prosecution of money laundering cases has a direct positive impact on building a business-friendly and investment-friendly environment that is also citizen-friendly. At the same time however, the inclusion of this figure consolidates the impression that the Commission wishes, with the aid of the Justice Scoreboard, to undertake a general comparison of judicial systems. In addition, the figure does not provide meaningful information, as differing types of data set are "compared": These include samples, data on theoretical maximum case length, and limited data sets (only convictions). As is also the case in respect of numerous other points in the Justice Scoreboard, it has not been ensured at all that data is compared with the same type of data, as can be seen in the notes. It becomes particularly apparent here that a "ranking" of the Member States does not make any sense.
  
5. Furthermore, there are also grounds to criticise the selection and handling of the indicators that the Commission deploys to present the efficiency, quality and independence of judicial systems in the Member States.
  - It is a priori questionable whether certain indicators actually provide an indication of the existence of the circumstances they are supposed to demonstrate. It has already been pointed out repeatedly that the mere number of pending cases (Figures 10, 11, 12) does not allow conclusions on the efficiency of a judicial system to be drawn—particularly when the number of judges dealing with these cases is not taken into account. In other instances, the Commission bases its choice of indicators on a uniform interpretation of terms that does not take national particularities into account. This has already been criticised from the German perspective concerning the terms "administrative case" and "legal aid".
  - Furthermore, the choice of indicators does not take sufficient account of legal traditions in the Member States and the complexity of judicial disputes. This can be illustrated by way of example by Figure 47 in which the existence of certain "standards on timing" is presented in order to appraise the quality of a judicial system. Firstly, it must be emphasised that rigid standards on timing are not compatible with judicial independence as

constitutionally enshrined in the Federal Republic of Germany. The extent to which the introduction of deadlines (deadlines for scheduling hearings, deadlines for making submissions, deadlines for delivery of judgements) and prescribed times frames might be expedient in a legal system based on court proceedings depends to a large extent on the type of subject-matter addressed and the manner in which interactions between the court and the parties are organised when conducting the proceedings (considerations such as statute of repose provisions, judicial obligations to provide information, ex officio examination or party prosecution). It is not possible here to illustrate a viable comparison by means of a diagram that would make it possible to draw sound conclusions on improvements to be made.

- The Bundesrat's reservations concerning the figure chosen to illustrate this point are all the greater if the individual factors are added together in the figure and presented as a ranking. This gives rise to the—incorrect—impression that the presence of the highest possible number of factors creates the best possible prerequisites for attaining the desired goal. This impression is reinforced as points are awarded for the presence of individual factors, which chimes linguistically with the allusion to sporting competitions apparent in the English title (EU Justice Scoreboard). A presentation of this type takes no account at all of the entirely different impact that individual factors may have, particularly in specific instances, such as Figure 30, which draws on up to twelve factors. However, if the respective weighting of each parameter is not considered, it becomes virtually impossible to attain the Commission's stated goal, namely ensuring that Member States can learn from each other. Finally, it is entirely impossible to comprehend which factor gives rise to which result. Instead an incentive is created to perform well in the Justice Scoreboard by introducing as many factors as possible. It is however obvious that a high number of factors does not as such afford any guarantee whatsoever of a high-quality judicial system.
6. The conclusions presented by the Commission after five editions of the EU Justice Scoreboard are of a rather general nature and lack a sound basis. It is scarcely possible to judge the extent to which the improvements in judicial systems described therein arise as a result of the EU Justice Scoreboard. The Bundesrat considers however that further efforts on the part of the

Commission are required in order to fulfil the Commission's stated goal of providing objective, reliable and comparable data. The presentation should be limited to a smaller number of more informative indicators for which a solid data basis is available. This would free up capacity that could be utilised for careful verification and validation of the data collected with the assistance of definitions from comparative law of the terms used, along with detailed explanations.

7. The Bundesrat requests the Federal Government to take its position into account in the negotiations in Council and to ensure that the EU Justice Scoreboard does not give rise to additional burdens for the judicial system.
8. The Bundesrat shall transmit this Opinion directly to the Commission.