



European  
Commission



# THE 2021 EU JUSTICE SCOREBOARD

*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  
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Justice  
and Consumers

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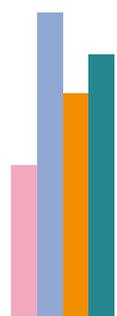


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**2021**  
**EU JUSTICE**  
**SCOREBOARD**



# Foreword



*The ninth edition of the EU Justice Scoreboard comes at a time of increased attention on the rule of law across the European Union. During a year marked by a profound global health crisis, EU justice systems have been put to the test and the importance of effective justice systems for the rule of law and the protection of fundamental rights has been clearly demonstrated.*

*Alongside the annual Rule of Law Report, the second edition of which will be published this year, the EU Justice Scoreboard traces developments in the rule of law in EU Member States. Both initiatives are core elements of the EU's rule of law policy, offering different perspectives. The Rule of Law Report includes a country-specific qualitative analysis of the major developments in Member States. It benefits from the quantitative analysis of the Scoreboard where the reader can zoom in on national justice systems and information about their independence, quality and efficiency.*

*The 2021 Scoreboard follows previous editions with data on these three key elements of national justice systems. However, in response to the current need for more comparative information for the annual Rule of Law Report and for the monitoring of the National Recovery and Resilience Plans, this year's edition goes further. There are new indicators on the digitalisation of justice systems, on the independence of national supreme court judges, on the autonomy of prosecution services and on the independence of lawyers and bars. The 2021 Scoreboard also presents information on how national supreme courts adapted their procedures to respond to the COVID-19 pandemic.*

*As in previous years, the Scoreboard is the result of good collaboration between many different institutions and people. I want to pay tribute here to the excellent cooperation between the European Commission and the group of contact persons for national justice systems, judges and prosecutors in Member States, the Council of Europe's European Commission for the Efficiency of Justice (CEPEJ), the European Network of Councils of the Judiciary (ENCJ), the Network of 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).*

*As the 2021 EU Justice Scoreboard shows, the effectiveness of EU justice systems has once again improved in a large majority of Member States. At the same time, there are challenges in some Member States to ensure the full trust of citizens in their national legal systems, especially where the status, position, and ultimately the independence of judges is at risk. The importance of having this data should not be underestimated. It enriches our understanding of the shortcomings and challenges at the national level, but equally so, it informs us of where there are positive trends and good practices that can be followed by others. This should nourish the dialogue between Member States, support them in learning from and assisting each other and ultimately improve the rule of law in the European Union.*

**Didier Reynders**

European Commissioner for Justice



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# 1. Introduction

Effective justice systems are essential for implementing EU law and for upholding the rule of law and the values upon which the EU is founded. National courts act as EU courts when applying EU law. It is national courts in the first place that ensure that the rights and obligations provided under EU law are enforced effectively (Article 19 of the Treaty on European Union (TEU)).

Effective justice systems are also essential for mutual trust, the investment climate and the sustainability of long-term growth. For this reason, improving the efficiency, quality and independence of national justice systems continues to feature among the priorities of the European Semester – the EU’s annual cycle of economic policy coordination. The 2021 annual sustainable growth strategy <sup>(1)</sup>, which sets out the economic and employment policy priorities for the EU, reiterates the link between effective justice systems and the business environment in Member States. Well-functioning and fully independent justice systems can have a positive impact on investment and therefore contribute to productivity and competitiveness. They are also important for ensuring effective cross-border enforcement of contracts and administrative decisions and dispute resolution, which are essential for the functioning of the single market <sup>(2)</sup>.

Against this background, the EU Justice Scoreboard presents an annual overview of indicators focusing on the essential parameters of effective justice systems:

- efficiency;
- quality; and
- independence.

The 2021 edition (the Scoreboard) further develops the indicators on all three elements, including on the digitalisation of justice, which has been of particular importance to keep the courts functioning during the COVID-19 pandemic as well as more generally to promote efficient and accessible justice systems <sup>(3)</sup>.

## – The European Rule of Law Mechanism –

As announced in the political guidelines of President von der Leyen, the Commission has established a comprehensive European Rule of Law Mechanism to deepen its monitoring of the situation in Member States. The Rule of Law Mechanism acts as a preventive tool, deepening dialogue and joint awareness of rule of law issues. At the centre of the new Mechanism is the annual Rule of Law Report, which provides a synthesis of significant developments – both positive and negative – in all Member States and the Union as a whole. The 2020 Rule of Law Report was published on 30 September 2020 and was based on a variety of sources, including the EU Justice Scoreboard <sup>(4)</sup>. The 2021 EU Justice Scoreboard has been further developed also to reflect the needs for additional comparative information as observed during the preparation of the 2020 Rule of Law Report and with a view to supporting further the annual Rule of Law reports.

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1 COM(2020) 575 final.

2 See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Identifying and addressing barriers to the Single Market’ COM(2020)93 and accompanying SWD(2020)54.

3 See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Digitalisation of justice in the European Union: A toolbox of opportunities’ COM(2020)710 and accompanying SWD(2020)540.

4 [https://ec.europa.eu/info/publications/2020-rule-law-report-communication-and-country-chapters\\_en](https://ec.europa.eu/info/publications/2020-rule-law-report-communication-and-country-chapters_en)

## What is the EU Justice Scoreboard?

The EU Justice Scoreboard is an annual comparative information tool. Its purpose is to assist the EU and Member States improve the effectiveness of their national justice systems by providing objective, reliable and comparable data on a number of indicators relevant for the assessment of the (i) efficiency, (ii) quality and (iii) independence of justice systems in all Member States. It does not present an overall single ranking, but gives an overview of how all the justice systems function, based on indicators that are of common interest and relevance for all Member States.

The Scoreboard does not promote any particular type of justice system and treats all Member States on an equal footing.

Efficiency, quality and independence are essential parameters of an effective justice system, whatever the model of the national justice system or the legal tradition in which it is anchored. Figures on these three parameters should be read together, as all three elements are often interlinked (initiatives aimed at improving one may have an influence on another).

The Scoreboard mainly presents indicators concerning civil, commercial and administrative cases, as well as certain criminal cases, in order to assist Member States in their efforts to create a more efficient investment, business and citizen-friendly environment. The Scoreboard is a comparative tool which evolves in dialogue with Member States and the European Parliament<sup>(5)</sup>. Its objective is to identify the essential parameters of an effective justice system and to provide relevant annual data.

## What is the methodology of the EU Justice Scoreboard?

The Scoreboard uses a range of information sources. The Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) with which the Commission has concluded a contract to carry out a specific annual study provides large parts of the quantitative data. These data cover 2012 - 2019, and have been provided by Member States according to CEPEJ's methodology. The study also provides detailed comments and country-specific factsheets that give more context. They should be read together with the figures<sup>(6)</sup>.

Data on the length of proceedings collected by CEPEJ show the 'disposition time' which is a calculated length of court proceedings (based on a ratio between pending and resolved cases). Data on courts' efficiency in applying EU law in specific areas show the average length of proceedings derived from actual length of court cases. Note that the length of court proceedings may vary substantially between areas within a Member State, particularly in urban centres where commercial activities may lead to a higher caseload.

Other sources of data, which cover the period from 2012 to 2020, are: the group of contact persons on national justice systems<sup>(7)</sup>, the European Network of Councils for the Judiciary (ENCJ)<sup>(8)</sup>, the Network of the Presidents of the Supreme Judicial Courts of the EU (NPSJC)<sup>(9)</sup>, the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU (ACA-Europe)<sup>(10)</sup>, the European Competition Network (ECN)<sup>(11)</sup>, the Communications Committee (COCOM)<sup>(12)</sup>, the European Observatory on infringements of intellectual property rights<sup>(13)</sup>, the Consumer Protection Cooperation Network (CPC)<sup>(14)</sup>, the Expert Group on Money Laundering and Terrorist Financing (EGMLTF)<sup>(15)</sup>, Eurostat<sup>(16)</sup>, and the European Judicial Training Network (EJTN).

5 E.g. European Parliament resolution of 29 May 2018 on the 2017 EU Justice Scoreboard (P8\_TA(2018)0216).

6 [https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard\\_en](https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard_en)

7 To help prepare the EU Justice Scoreboard and to promote the exchange of best practice on the effectiveness of justice systems, the Commission asked Member States to designate two contact persons, one from the judiciary and one from the ministry of justice. This informal group meets regularly.

8 ENCJ unites the national institutions in the Member States that are independent of the executive and legislature, and that are responsible for supporting the judiciaries in the independent delivery of justice: <https://www.encj.eu/>

9 NPSJC provides a forum that gives European institutions the opportunity to request the opinions of Supreme Courts and to bring them closer by encouraging discussion and the exchange of ideas: <http://network-presidents.eu/>

10 ACA-Europe is composed of the Court of Justice of the EU and the Councils of State or the Supreme administrative jurisdictions of each EU Member State: <http://www.juradmin.eu/index.php/en/>

11 The ECN has been established as a forum for discussion and cooperation of European competition authorities in cases where Articles 101 and 102 of the Treaty on the Functioning of the EU are applied. The ECN is the framework for the close cooperation mechanisms of Council Regulation 1/2003. Through the ECN, the Commission and the national competition authorities in all EU Member States cooperate with each other: [http://ec.europa.eu/competition/ecn/index\\_en.html](http://ec.europa.eu/competition/ecn/index_en.html)

12 COCOM is composed of representatives of EU Member States. Its main role is to provide an opinion on the draft measures that the Commission intends to adopt on digital market issues: <https://ec.europa.eu/digital-single-market/en/communications-committee>

13 The European Observatory on Infringements of Intellectual Property Rights is a network of experts and specialist stakeholders. It is composed of public- and private-sector representatives, who collaborate in active working groups. <https://euiipo.europa.eu/ohimportal/en/web/observatory/home>

14 CPC is a network of national authorities responsible for enforcing EU consumer protection laws in EU and EEA countries: [http://ec.europa.eu/internal\\_market/scoreboard/performance\\_by\\_governance\\_tool/consumer\\_protection\\_cooperation\\_network/index\\_en.htm](http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/consumer_protection_cooperation_network/index_en.htm)

15 EGMLTF meets regularly to share views and help the Commission define policy and draft new legislation on anti-money laundering and terrorist financing: [http://ec.europa.eu/justice/civil/financial-crime/index\\_en.htm](http://ec.europa.eu/justice/civil/financial-crime/index_en.htm)

16 Eurostat is the statistical office of the EU: <http://ec.europa.eu/eurostat/about/overview>

Over the years, the methodology for the Scoreboard has been further developed and refined in close cooperation with the group of contact persons on national justice systems, particularly through a questionnaire (updated annually) and collecting data on certain aspects of the functioning of justice systems.

The availability of data, in particular for indicators on the efficiency of justice systems, continues to improve as many Member States have invested in their capacity to produce better judicial statistics. Where difficulties in gathering or providing data continue to exist, this is either due to insufficient statistical capacity or to the fact that the national categories for which data are collected do not correspond exactly to the ones used for the Scoreboard. Only in very few cases is the data gap due to a lack of contributions from national authorities. The Commission continues to encourage Member States to further reduce this data gap.

## How does the EU Justice Scoreboard feed into the European Semester and how is it related to the Recovery and Resilience Facility?

The Scoreboard provides elements for assessing the efficiency, quality and independence of national justice systems and thereby aims at helping Member States to improve the effectiveness of their national justice systems. By comparing information on the justice systems, the Scoreboard makes it easier to identify best practice and shortcomings and to keep track of challenges and progress made. In the context of the European Semester, country-specific assessments are carried out through bilateral dialogue with the national authorities and stakeholders concerned. Where identified shortcomings have macroeconomic significance, the European Semester analysis may lead to the Commission proposing to the Council to adopt country-specific recommendations to improve the national justice systems in individual Member States<sup>(17)</sup>. The Recovery and Resilience Facility (RRF) will make available more than EUR 670 billion in loans and grants, of which each Member State would need to allocate a minimum of 20% to digital transition. The Recovery and Resilience Facility offers an opportunity to address country-specific recommendations related to national justice systems and to accelerate national efforts to complete the digital transformation of justice systems. In this context, the Commission has to assess whether the Member States' recovery and resilience plans are expected to contribute to effectively addressing all or a significant subset of challenges identified in the relevant country-specific recommendations or challenges identified in other relevant Commission documents adopted in the context of the European Semester<sup>(18)</sup>.

## Why are effective justice systems important for an investment-friendly business environment?

Effective justice systems that uphold the rule of law have a positive economic impact. Where judicial systems guarantee the enforcement of rights, creditors are more likely to lend, businesses are dissuaded from opportunistic behaviour, transaction costs are reduced and innovative businesses are more likely to invest. The beneficial impact of well-functioning national justice systems for the economy is supported by a wide range of studies and academic literature, including from the International Monetary Fund<sup>(19)</sup> the European Central Bank<sup>(20)</sup>, the OECD<sup>(21)</sup>, the World Economic Forum<sup>(22)</sup>, and the World Bank<sup>(23)</sup>.

A study has found that reducing the length of court proceedings by 1% (measured in disposition time<sup>(24)</sup>) may increase growth rate of the number of firms<sup>(25)</sup> and that a higher percentage of companies perceiving the justice system as

- 17 In the context of the European Semester, the Council, on the Commission's proposal, addressed country-specific recommendations relating to their justice system to seven Member States in 2019 (HR, IT, CY, HU, MT, PT and SK) and eight Member States in 2020 (HR, IT, CY, HU, MT, PL, PT and SK). Moreover, the Commission monitors judicial reforms in BG and RO under the Cooperation and Verification Mechanism.
- 18 Article 19(3)(b) of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, p. 17.
- 19 IMF, Regional Economic Outlook, November 2017, *Europe: Europe Hitting its Stride*, pp. xviii, pp. 40, 70: <https://www.imf.org/~/media/Files/Publications/REO/EUR/2017/November/eur-booked-print.ashx?la=en>
- 20 ECB, 'Structural policies in the euro area', June 2018, ECB Occasional Paper Series No 210: <https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op210.en.pdf?3db9355b1d1599799aa0e475e5624651>
- 21 See e.g. 'What makes civil justice effective?', OECD Economics Department Policy Notes, No. 18 June 2013 and 'The Economics of Civil Justice: New Cross-Country Data and Empirics', OECD Economics Department Working Papers, No. 1060.
- 22 World Economic Forum, 'The Global Competitiveness Report 2019', October 2019: <https://www.weforum.org/reports/global-competitiveness-report-2019>
- 23 World Bank, 'World Development Report 2017: Governance and the Law, Chapter 3: The role of law', pp. 83, 140: <http://www.worldbank.org/en/publication/wdr2017>
- 24 The 'disposition time' indicator is the number of unresolved cases divided by the number of resolved cases at the end of a year multiplied by 365 (days). It is a standard indicator defined by Council of Europe's CEPEJ: [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default\\_en.asp](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp)
- 25 Vincenzo Bove and Leandro Elia; The judicial system and economic development across EU Member States, JRC Technical Report, EUR 28440 EN, Publications Office of the EU, Luxembourg, 2017: [http://publications.jrc.ec.europa.eu/repository/bitstream/JRC104594/jrc104594\\_2017\\_the\\_judicial\\_system\\_and\\_economic\\_development\\_across\\_eu\\_member\\_states.pdf](http://publications.jrc.ec.europa.eu/repository/bitstream/JRC104594/jrc104594_2017_the_judicial_system_and_economic_development_across_eu_member_states.pdf)

independent by 1% tends to be associated with higher firms' turnover and productivity growth <sup>(26)</sup>. Another study has indicated a positive correlation between perceived judicial independence and foreign direct investment flows <sup>(27)</sup>.

In addition, several surveys have highlighted the importance of the effectiveness of national justice systems for companies. For example, in one survey, 93% of large companies replied that they systematically review the rule of law conditions (including court independence) on a continuing basis in the countries they invest in <sup>(28)</sup>. In another survey, over half of small and medium-sized enterprises (SME's) replied that cost and excessive length of judicial proceedings, respectively, were the main reasons for not starting court proceedings over infringement of intellectual property rights (IPR) <sup>(29)</sup>. The Commission's Communications on 'Identifying and addressing barriers to the single market' <sup>(30)</sup> and the single market enforcement action plan <sup>(31)</sup> also provide insight into the importance of effective justice systems for the functioning of the single market, in particular for businesses.

## How does the Commission support the implementation of good justice reforms through technical support?

Member States can draw on the Commission's technical support available through the Directorate-General for Structural Reform Support (DG REFORM) under the Technical Support Instrument (TSI) <sup>(32)</sup> which has a total budget of EUR 864.4 million for 2021 to 2027. From 2017 to 2020, the Structural Reform and Support programme had a budget of EUR 222.8 million and has supported over 1 000 reform projects in 27 Member States in many areas. In the area of justice, this included for example technical support to improve the efficiency of the court system, to reform the judicial map, on court organisation, on the design or implementation of e-justice programmes and cyber justice, on case-management systems, on the selection and promotion process for judges, for the training of judges, improvement of insolvency frameworks and for the out-of-court resolution of consumer disputes. In addition, the TSI also complements the Commission's measures to address the economic consequences of the COVID-19 pandemic, namely the Recovery and Resilience Facility, as the TSI can support Member States in the preparation and implementation of their Recovery and Resilience plans.

## Why does the Commission monitor the digitalisation of national justice systems?

Digitalisation of justice is key to increasing the effectiveness of justice systems and an obvious tool for enhancing and facilitating access to justice. The COVID-19 pandemic brought to the forefront the need for Member States to accelerate modernisation reforms in this area.

Since 2013, the EU Justice Scoreboard has included certain comparative information with respect to the digitalisation of justice across the Member States, for example for online access to judgments or online claim submission and follow-up.

The Commission's Communication on Digitalisation of justice in the European Union – A toolbox of opportunities <sup>(33)</sup>, adopted in December 2020, represents a strategy aiming at improving access to justice and the effectiveness of justice systems using technology. As outlined in the Communication, a number of additional indicators will be included in the EU Justice Scoreboard as of 2021. The purpose is to ensure comprehensive and timely in-depth monitoring of progress areas and challenges encountered by Member States in their efforts towards the digitalisation of their justice systems.

26 *Idem*.

27 Effect of judicial independence on foreign direct investment in Eastern Europe and South Asia; Büilent Dogru; 2012, MPRA Munich Personal RePEc Archive: [https://mpra.ub.uni-muenchen.de/40471/1/MPRA\\_paper\\_40322.pdf](https://mpra.ub.uni-muenchen.de/40471/1/MPRA_paper_40322.pdf). EU Member States included in the study were: BG, HR, CZ, EE, HU, LV, LT, RO, SK and SI.

28 The Economist Intelligence Unit: 'Risk and Return – Foreign Direct Investment and the Rule of Law', 2015 [http://www.biiic.org/documents/625\\_d4\\_fdi\\_main\\_report.pdf](http://www.biiic.org/documents/625_d4_fdi_main_report.pdf), p. 22.

29 EU Intellectual Property Office (EUIPO), Intellectual Property (IP) SME Scoreboard 2016: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/sme\\_scoreboard\\_study\\_2016/Executive-summary\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/sme_scoreboard_study_2016/Executive-summary_en.pdf)

30 COM(2020)93 and SWD(2020)54.

31 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Long term action plan for better implementation and enforcement of single market rules,' COM(2020)94, see in particular actions 4, 6 and 18.

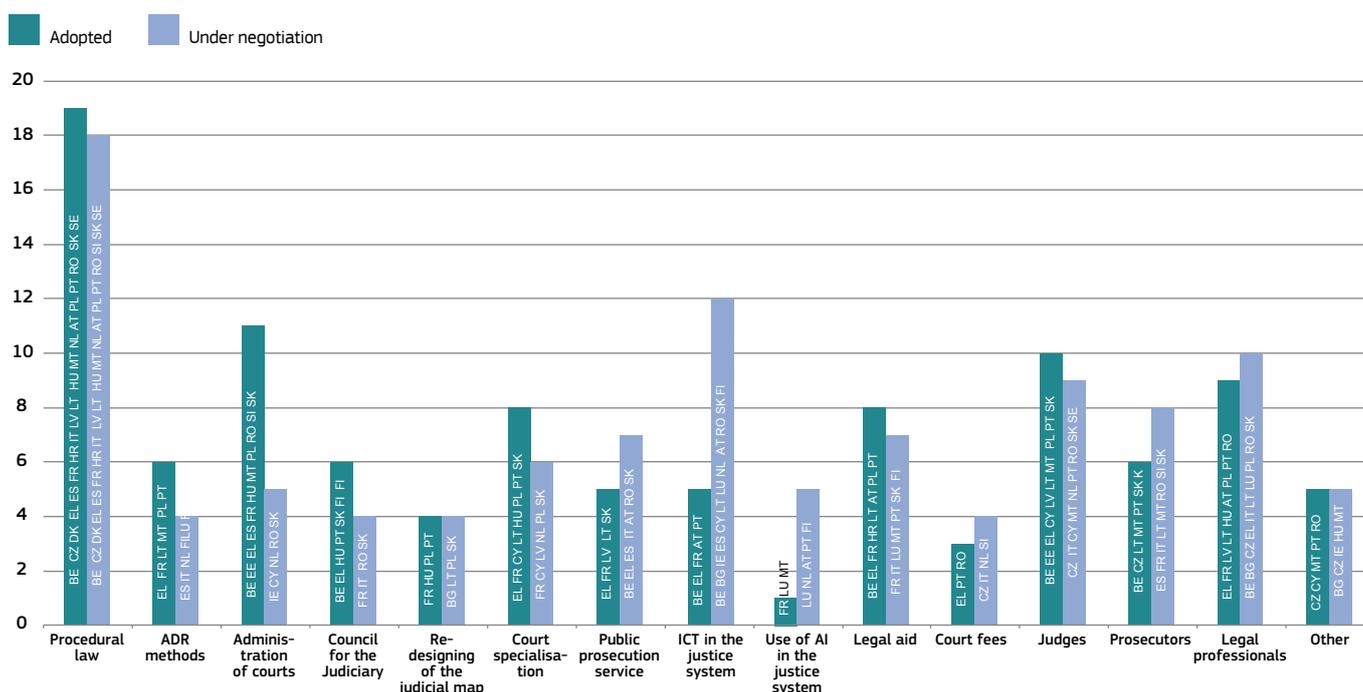
32 [https://ec.europa.eu/info/funding-tenders/funding-opportunities/funding-programmes/overview-funding-programmes/structural-reform-support-programme-srsp\\_en](https://ec.europa.eu/info/funding-tenders/funding-opportunities/funding-programmes/overview-funding-programmes/structural-reform-support-programme-srsp_en)  
TSI regulation was adopted in March 2021 and according to article 5 its aim is to support: "...institutional reform and efficient and service-oriented functioning of public administration and e-government, simplification of rules and procedures, auditing, enhancing capacity to absorb Union funds, promotion of administrative cooperation, **effective rule of law, reform of the justice systems**, capacity building of competition and antitrust authorities, strengthening of financial supervision and reinforcement of the fight against fraud, corruption and money laundering" (emphasis added).

33 COM(2020) 710 final.

## 2. Context: Developments in justice reforms in 2020

In 2020, a large number of Member States continued their efforts to further improve the effectiveness of their justice systems. Figure 1 presents an updated overview of adopted and planned measures across several areas of justice systems in Member States engaged in reform activities.

**Figure 1** Legislative and regulatory activity concerning justice systems in 2020 (adopted measures/initiatives under negotiation per Member State) (source: European Commission <sup>(34)</sup>)

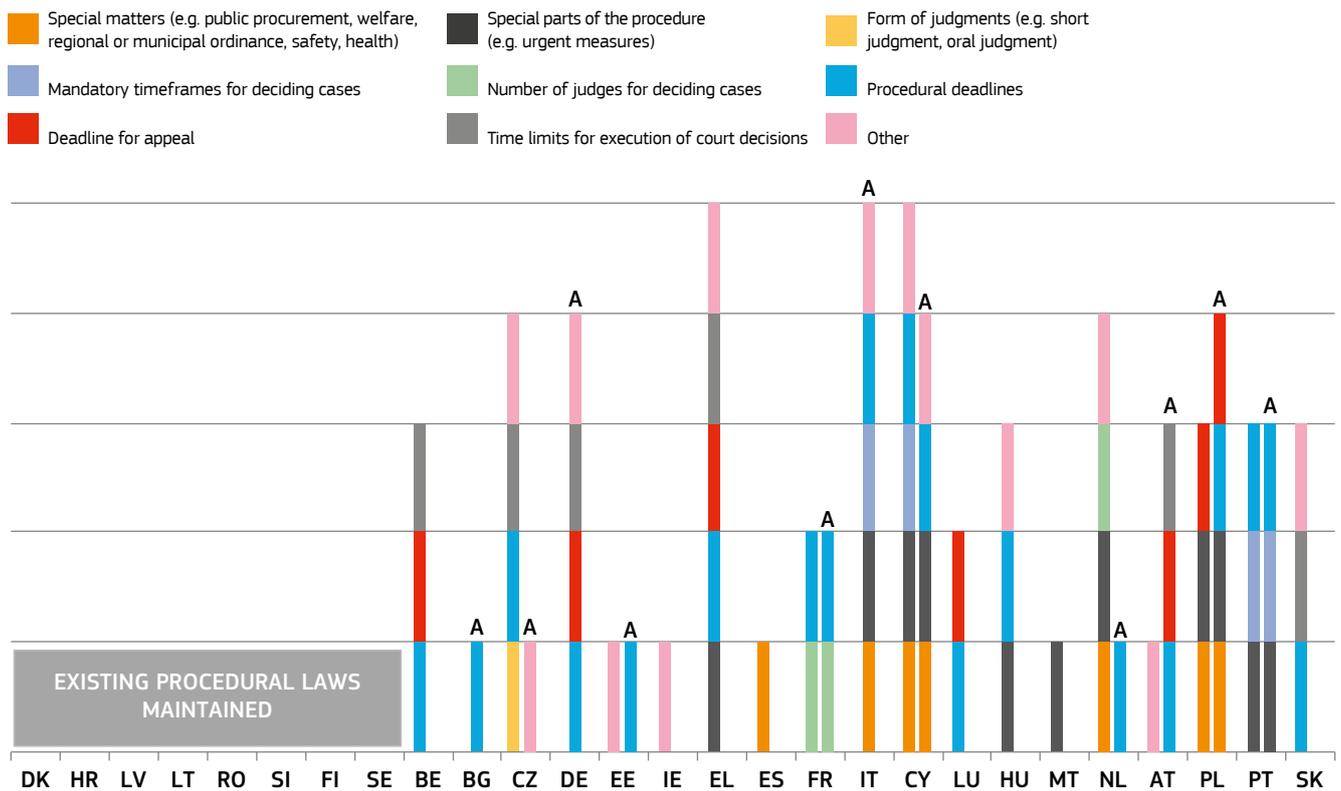


In 2020, procedural law continued to be an area of particular focus in a large number of Member States with a significant amount of ongoing or planned legislative activity. Reforms concerning the status of judges and the rules for legal professionals also saw elevated activity. A number of Member States were in the process of introducing legislation for the use of information and communication technologies (ICT) in their justice systems. The momentum from preceding years for measures concerning the administration of courts continued in 2020. Activity in other areas, such as alternative dispute resolution (ADR) methods, rules regarding prosecutors or court fees slowed down. Some Member States are already actively using or planning to make use of artificial intelligence in their justice systems. The overview confirms the observation that justice reforms require time – sometimes spanning several years – from their announcement until the adoption of the legislative and regulatory measures and their actual implementation on the ground.

The COVID-19 pandemic has also created new challenges that highlighted the importance of accelerating reforms to digitalise the justice system. In this context, several Member States adopted new measures to ensure the regular functioning of courts, while guaranteeing the continued and easy access to justice for all, in particular through the adaptation of procedural rules. The Association of the Councils of State and Supreme Administrative Jurisdictions of the EU (ACA-Europe) developed a questionnaire examining the impact of the COVID-19 pandemic on the professional activity of the supreme courts. Respondents included the Supreme Administrative Courts, and by the Supreme Courts (members of the Network of the Presidents of the Supreme Judicial Courts of the EU (NPSJC)). Without examining the substantive measures taken to deal with the COVID-19 pandemic, Figure 2 presents the changes to procedural law adopted by the Member States to facilitate judicial functions of the courts, either through new legislation, Supreme Court rulings, court regulations or practices.

34 The information has been collected in cooperation with the group of contact persons on national justice systems for 26 Member States. DE explained that a number of reforms are under way on judiciary, where the scope and scale of the reform process can vary within the 16 federal states.

**Figure 2** Changes in procedural rules in Supreme Courts due to COVID-19 pandemic (source: ACA-Europe and NPSJC <sup>(35)</sup>)



(\*) For each Member State, left column presents the practices in Supreme Courts, and right column presents the practices in Supreme Administrative Courts (column marked with letter 'A'). The Member States appear in the alphabetical order of their geographical names in the original language. **BE:** Conseil d'Etat (Council of State) and Cour de Cassation (Supreme Court). **BG:** Върховен административен съд (Supreme Administrative Court). **CZ:** Nejvyšší správní soud (Supreme Administrative Court) and Nejvyšší soud (Supreme Court). **DE:** Bundesverwaltungsgericht (Federal Administrative Court). **EE:** Riikohus (Supreme Court). **IE:** Chúirt Uachtarach (Supreme Court). **EL:** Συμβούλιο της Επικρατείας (Council of State). **ES:** Tribunal Supremo (Supreme Court). **FR:** Conseil d'Etat (Council of State), Cour de Cassation (Supreme Court). **HR:** Visoki upravni (Supreme Administrative Court). **IT:** Consiglio de Stato (Council of State). **CY:** Supreme Court. **LV:** Augstākā tiesa (Supreme Court). **LT:** Vyriausiasis Administracinis Teismas (Supreme Administrative Court). **LU:** Cour administrative (Administrative Court) Cour de Cassation (Supreme Court). **HU:** Kúria (Supreme Court). **MT:** Court of Appeal. **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), Personalssenat (special evaluation panel) of the superior court, Oberster Gerichtshof (Supreme Court). **PL:** Naczelny Sąd Administracyjny (Supreme Administrative Court). **PT:** Supremo Tribunal Administrativo (Supreme Administrative Court). **RO:** Înalta Curte de Casație și Justiție (Supreme Court). **SI:** Vrhovno sodišče (Supreme Court). **SK:** Najvyšší súd (Supreme Court). **FI:** Korkein hallinto-oikeus (Supreme Administrative Court). **SE:** Högsta förvaltningsdomstolen (Supreme Administrative Court). No data from: **BG:** Върховен касационен съд (Supreme Court); **HR:** Vrhovni sud (Supreme Court); **IT:** Corte Suprema di Cassazione (Supreme Court); **SE:** Högsta domstolen (Supreme Court).

35 Two questionnaires have informed this chart, one from ACA Europe and one from the Network of the Presidents of the Supreme Judicial Courts of the EU (NPSJC). For some Member States, there is only one column present in the chart. In these cases, there is no Supreme Administrative Court, or no answers were provided to the survey sent to the NPSJC.

# 3. Key findings of the 2021 EU Justice Scoreboard

Efficiency, quality and independence are the main parameters of an effective justice system, and the Scoreboard presents indicators on all three.

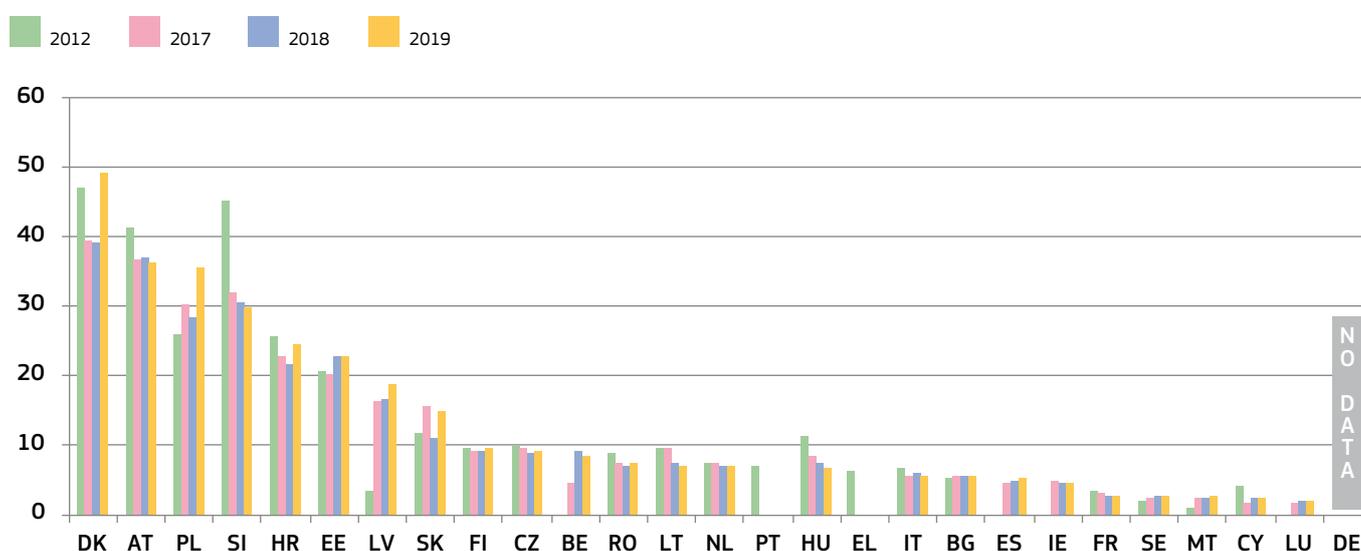
## 3.1. Efficiency of justice systems

The Scoreboard presents indicators for the efficiency of proceedings in the broad areas of civil, commercial and administrative cases and in specific areas where administrative authorities and courts apply EU law <sup>(36)</sup>.

### 3.1.1. Developments in caseload

The caseload of national justice systems increased in several Member States, compared to the previous year, while decreasing or remaining stable in others. Overall it continues to vary considerably between Member States (Figure 3). This shows the importance of remaining attentive to caseload developments to ensure the effectiveness of justice systems.

**Figure 3** Number of incoming civil, commercial, administrative and other cases in 2012, 2017 – 2019 (\*) (1<sup>st</sup> instance/per 100 inhabitants) (source: CEPEJ study <sup>(37)</sup>)

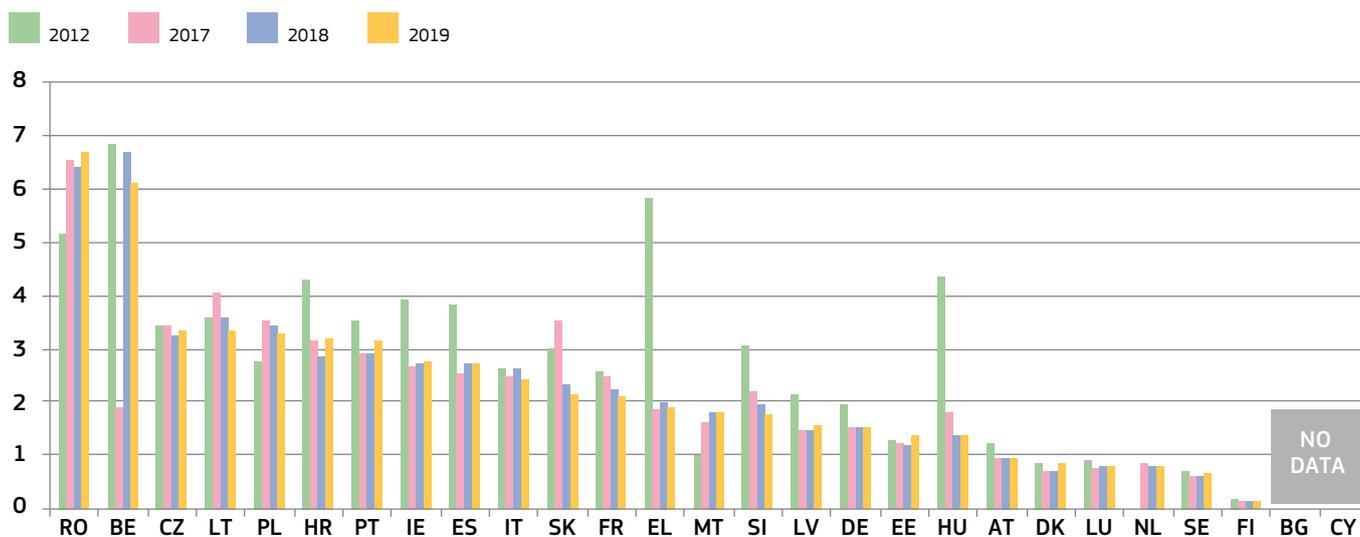


(\*) Under the CEPEJ methodology, this category includes all civil and commercial litigious and non-litigious cases, non-litigious land and business registry cases, other registry cases, other non-litigious cases, administrative law cases and other non-criminal cases. Methodology changes in **LV** (applied retroactively to 2017), **SK** and **SE** (data for 2017 has been adapted to include migration law cases as administrative cases, in line with CEPEJ methodology).

36 The enforcement of court decisions is also important for the efficiency of a justice system. However, comparable data are not available in most Member States.

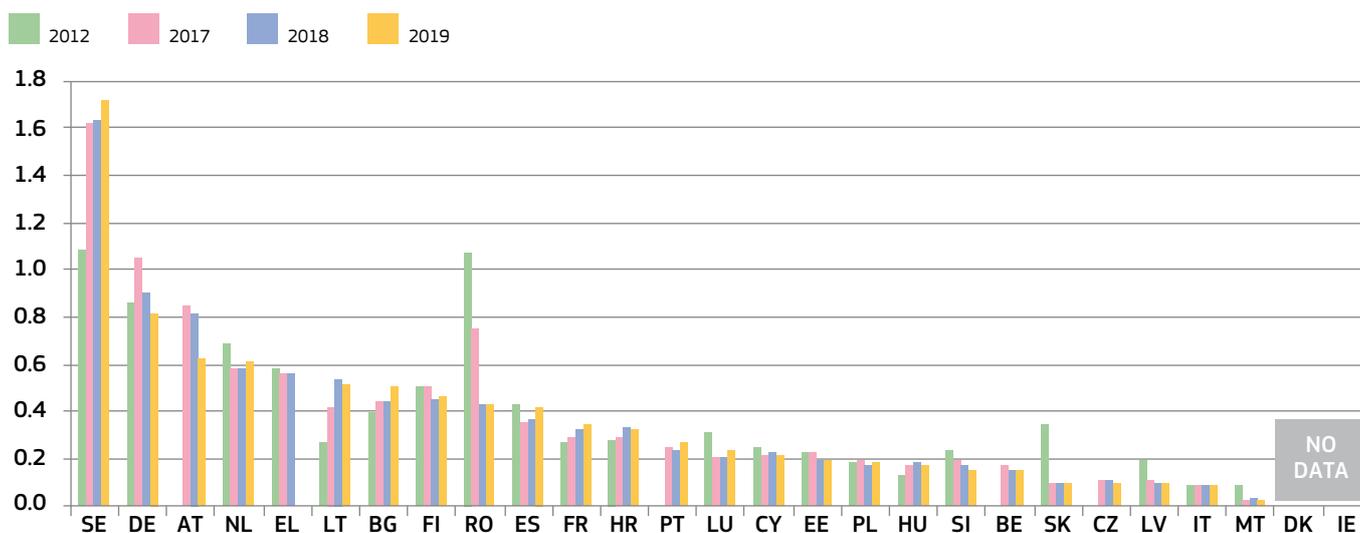
37 2020 study on the functioning of judicial systems in the EU Member States, carried out by the CEPEJ Secretariat for the Commission: [https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard\\_en](https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard_en)

**Figure 4** Number of incoming civil and commercial litigious cases in 2012, 2017 – 2019 (\*) (1<sup>st</sup> instance/per 100 inhabitants) (source: CEPEJ study)



(\*) Under the CEPEJ methodology, litigious civil/commercial cases concern disputes between parties, e.g. disputes about contracts. Non-litigious civil/commercial cases concern uncontested proceedings, e.g. uncontested payment orders. Methodology changes in **EL** and **SK**. Data for **NL** include non-litigious cases.

**Figure 5** Number of incoming administrative cases in 2012, 2017 – 2019 (\*) (1<sup>st</sup> instance/per 100 inhabitants) (source: CEPEJ study)



(\*) Under the CEPEJ methodology, administrative law cases concern disputes between individuals and local, regional or national authorities. **DK** and **IE** do not record administrative cases separately. Dejudicialisation of some administrative procedures have occurred in **RO** in 2018. Methodology changes in **EL**, **SK** and **SE**. In **SE**, migration cases have been included under administrative cases (retroactively applied for 2017).

### 3.1.2. General data on efficiency

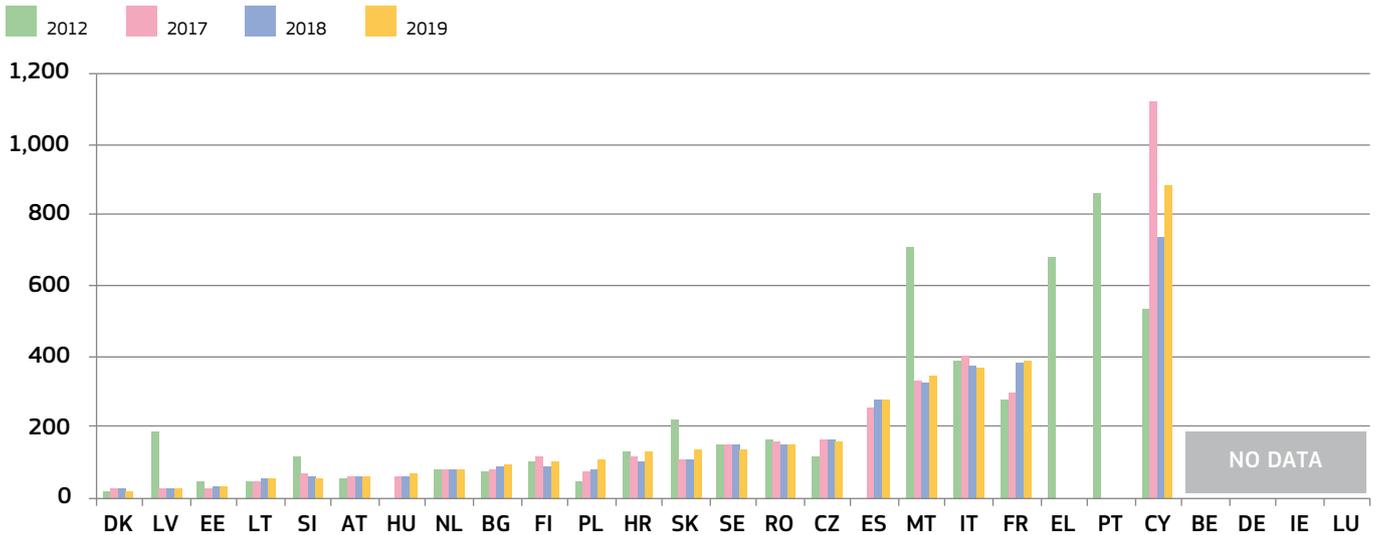
The indicators on the efficiency of proceedings in the broad areas of civil, commercial and administrative cases are: (i) estimated length of proceedings (disposition time), (ii) clearance rate, and (iii) number of pending cases.

#### – Estimated length of proceedings –

The length of proceedings indicates the estimated time (in days) needed to resolve a case in court, meaning the time taken by the court to reach a decision at first instance. The ‘disposition time’ indicator is the number of unresolved cases divided by the

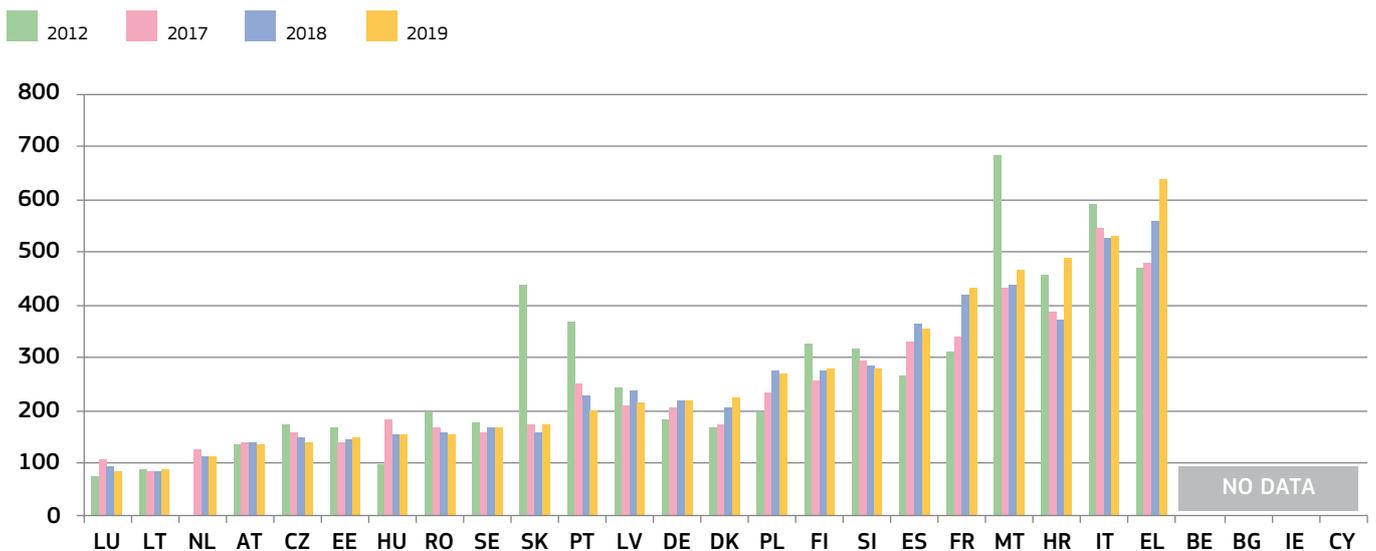
number of resolved cases at the end of a year multiplied by 365 (days) <sup>(38)</sup>. It is a calculated quantity that indicates the estimated minimum time that a court would need to resolve a case while maintaining the current working conditions. The higher the value, the higher is the probability that it takes the court longer to reach a decision. Figures mostly concern proceedings at first instance courts and compare, where available, data for 2012, 2017, 2018 and 2019 <sup>(39)</sup>. Figures 8 and 10 show the disposition time in 2019 in civil and commercial litigious cases, and administrative cases at all court instances, and Figure 22 shows the average length of proceedings in money laundering cases at first instance courts.

**Figure 6** Estimated time needed to resolve civil, commercial, administrative and other cases in 2012, 2017 – 2019 (\*) (1<sup>st</sup> instance/in days) (source: CEPEJ study)



(\*) Under the CEPEJ methodology, this category includes all civil and commercial litigious and non-litigious cases, non-litigious land and business registry cases, other registry cases, other non-litigious cases, administrative law cases and other non-criminal cases. Methodology changes in **SK**. Pending cases include all instances in **CZ** and, until 2016, in **SK**. **LV**: the sharp decrease is due to court system reform, and error checks and data clean-ups in the Court's information system.

**Figure 7** Estimated time needed to resolve litigious civil and commercial cases at first instance in 2012, 2017 – 2019 (\*) (1<sup>st</sup> instance/in days) (source: CEPEJ study)

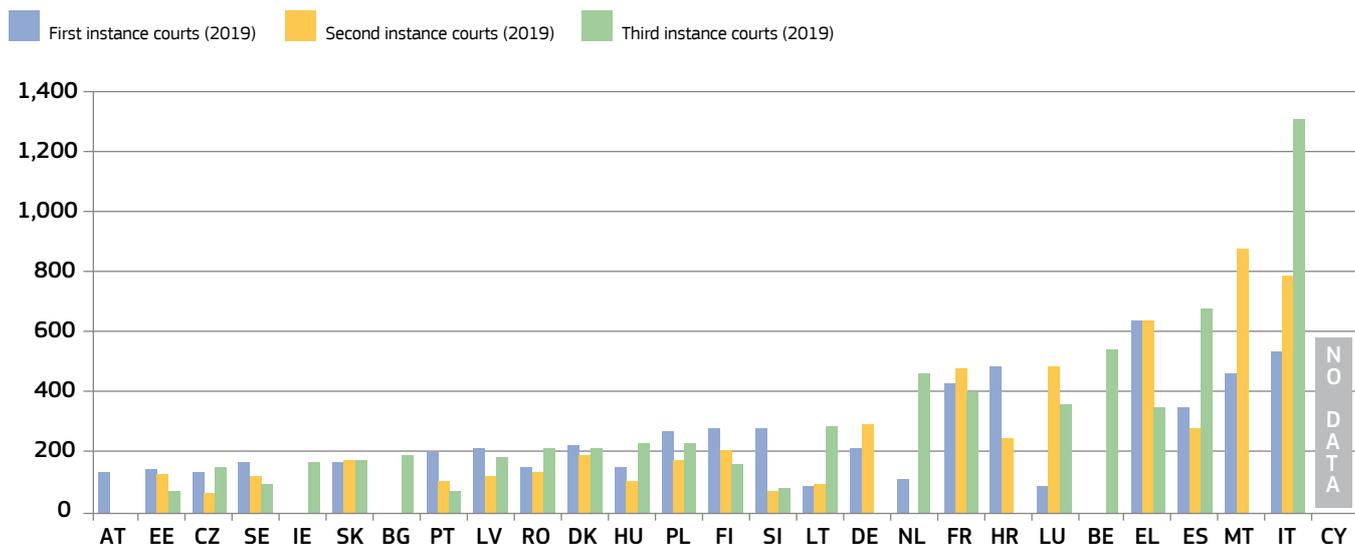


(\*) Under the CEPEJ methodology, litigious civil/commercial cases concern disputes between parties, e.g. disputes about contracts. Non-litigious civil/commercial cases concern uncontested proceedings, e.g. uncontested payment orders. Methodology changes in **EL** and **SK**. Pending cases include all instances in **CZ** and, until 2016, in **SK**. Data for **NL** include non-litigious cases.

38 Length of proceedings, clearance rate and number of pending cases are standard indicators defined by CEPEJ: [http://www.coe.int/t/dgh/cooperation/cepej/evaluation/default\\_en.asp](http://www.coe.int/t/dgh/cooperation/cepej/evaluation/default_en.asp)

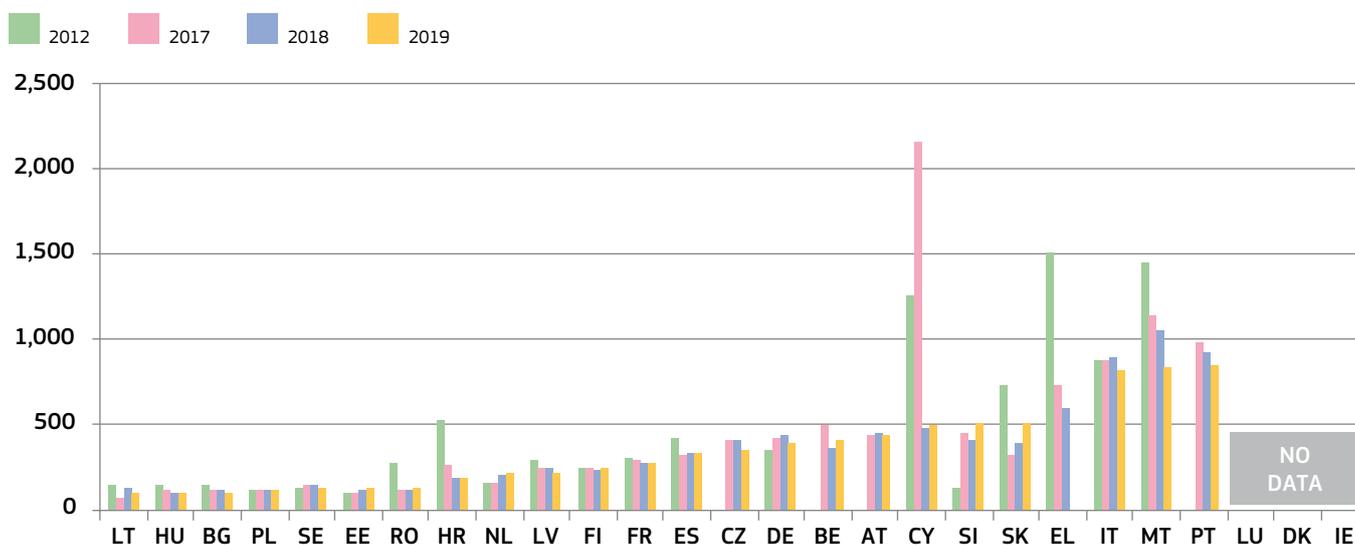
39 The years were chosen to keep the eight-year perspective with 2012 as a baseline, while at the same time not overcrowding the figures. Data for 2010, 2013, 2014, 2015 and 2016 are available in the CEPEJ report.

**Figure 8** Estimated time needed to resolve litigious civil and commercial cases at all court instances in 2019 (\*) (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> instance/in days) (source: CEPEJ study)



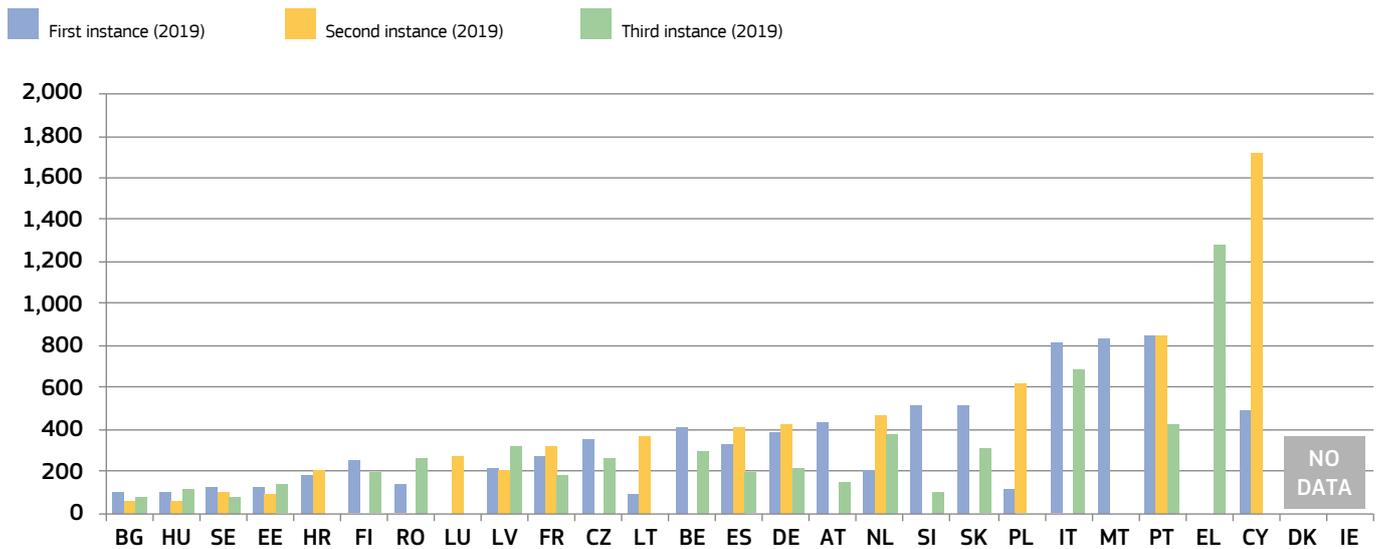
(\*) The order is determined by the court instance with the longest proceedings in each Member State. No data are available for first and second instance courts in **BE**, **BG** and **IE**, for second instance courts in **NL**, for second and third instance courts in **AT** or for third instance courts in **DE** and **HR**. There is no third instance court in **MT**. Access to a third instance court may be limited in some Member States.

**Figure 9** Estimated time needed to resolve administrative cases at first instance in 2012, 2017 – 2019 (\*) (1<sup>st</sup> instance/in days) (source: CEPEJ study)



(\*) Administrative law cases concern disputes between individuals and local, regional or national authorities, under the CEPEJ methodology. Methodology changes in **EL** and **SK**. Pending cases include all court instances in **CZ** and, until 2016, in **SK**, **DK** and **IE** do not record administrative cases separately. **CY**: in 2018, the number of resolved cases has increased as a consequence of cases being tried together, the withdrawal of 2 724 consolidated cases and the creation of an Administrative Court in 2015.

**Figure 10** Estimated time needed to resolve administrative cases at all court instances in 2019 (\*) (1<sup>st</sup> and, where applicable, 2<sup>nd</sup> and 3<sup>rd</sup> instance/in days) (source: CEPEJ study)

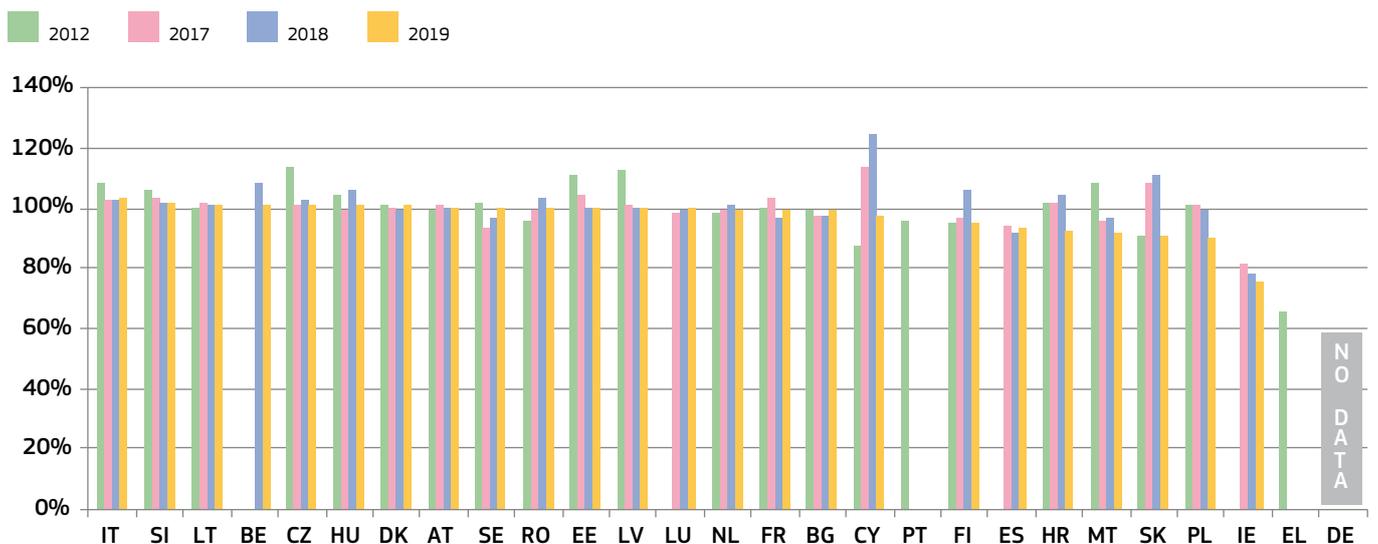


(\*) The order is determined by the court instance with the longest proceedings in each Member State. No data available: for the first instance court in **LU**, and for the second instance courts in **MT** and **RO**, and for the third instance court in **PL**. The supreme or another highest court is the only appeal instance in **CZ**, **IT**, **CY**, **AT**, **SI** and **FI**. There is no third instance court for these types of cases in **HR**, **LT**, **LU** and **MT**. The highest Administrative Court is the first and only instance for certain cases in **BE**. Access to third instance court may be limited in some Member States. **DK** and **IE** do not record administrative cases separately.

### – Clearance rate –

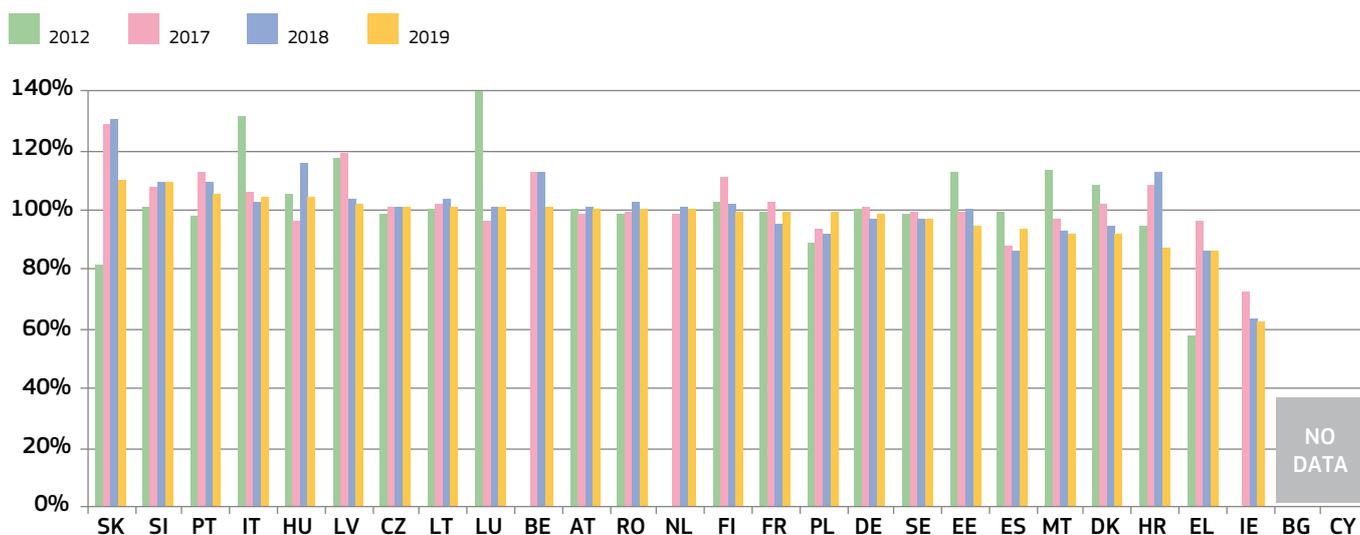
The clearance rate is the ratio of the number of resolved cases over the number of incoming cases. It measures whether a court is keeping up with its incoming caseload. When the clearance rate is around 100% or higher, it means the judicial system is able to resolve at least as many cases as come in. When the clearance rate is below 100%, it means that the courts are resolving fewer cases than the number of incoming cases.

**Figure 11** Rate of resolving civil, commercial, administrative and other cases in 2012, 2017 – 2019 (\*) (1<sup>st</sup> instance/in % — values higher than 100 % indicate that more cases are resolved than come in, while values below 100 % indicate that fewer cases are resolved than come in) (source: CEPEJ study)



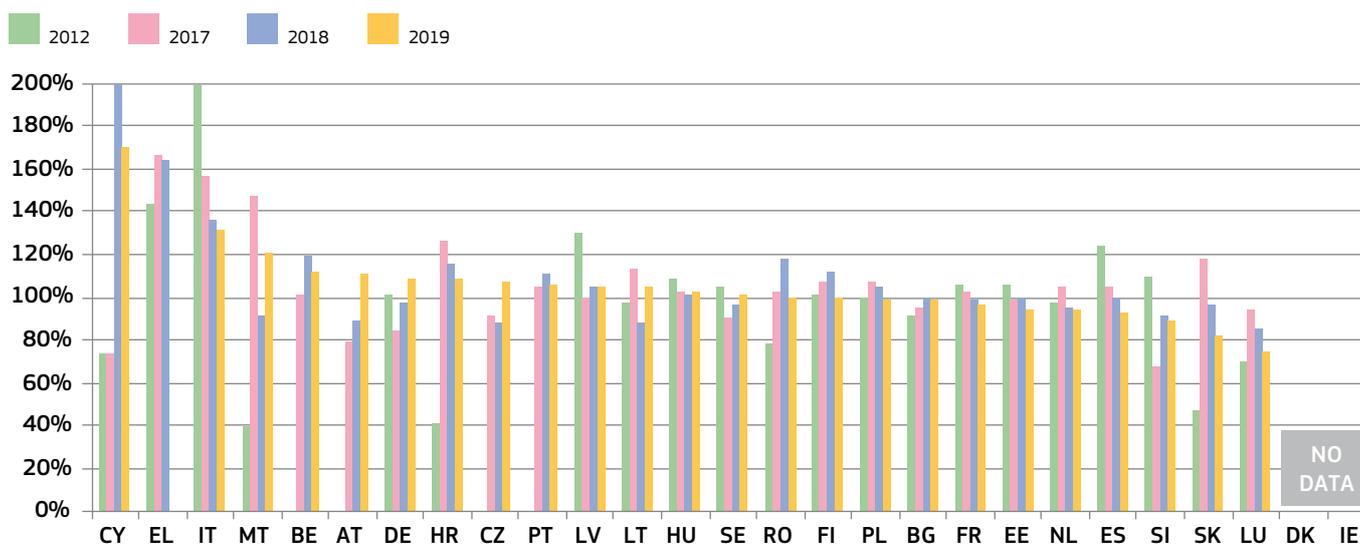
(\*) Under the CEPEJ methodology, this category includes all civil and commercial litigious and non-litigious cases, non-litigious land and business registry cases, other registry cases, other non-litigious cases, administrative law cases and other non-criminal cases. Methodology changes in **SK**, **IE**: the number of resolved cases is expected to be underreported due to the methodology. **IT**: different classification of civil cases introduced in 2013.

**Figure 12** Rate of resolving litigious civil and commercial cases in 2012, 2017 – 2019 (\*) (1<sup>st</sup> instance/in %) (source: CEPEJ study)



(\*) Methodology changes in **EL** and **SK**. **IE**: the number of resolved cases is expected to be underreported due to the methodology. **IT**: different classification of civil cases introduced in 2013. Data for **NL** include non-litigious cases.

**Figure 13** Rate of resolving administrative cases in 2012, 2017 – 2019 (\*) (1<sup>st</sup> instance/in %) (source: CEPEJ study)

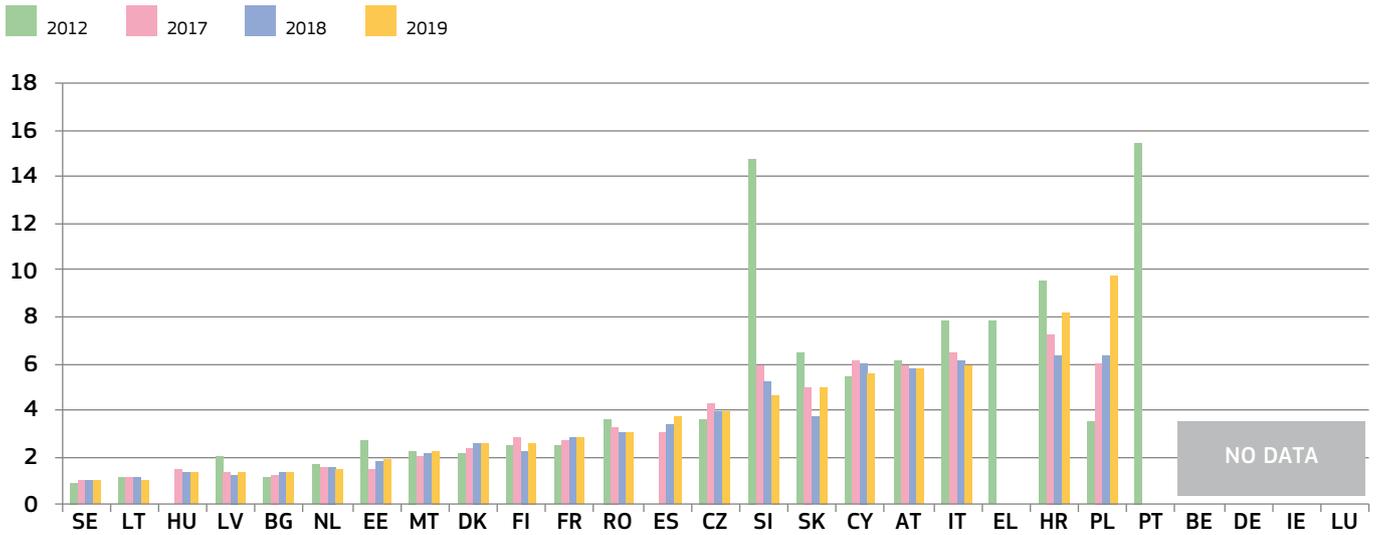


(\*) Past values for some Member States have been reduced for presentation purposes (**CY** in 2018 = 219%; **IT** in 2012=279.8%); Methodology changes in **EL** and **SK**. **DK** and **IE** do not record administrative cases separately. In **CY** the number of resolved cases has increased as a consequence of cases being tried together, the withdrawal of 2 724 consolidated cases and the creation of an administrative court in 2015.

- Pending cases -

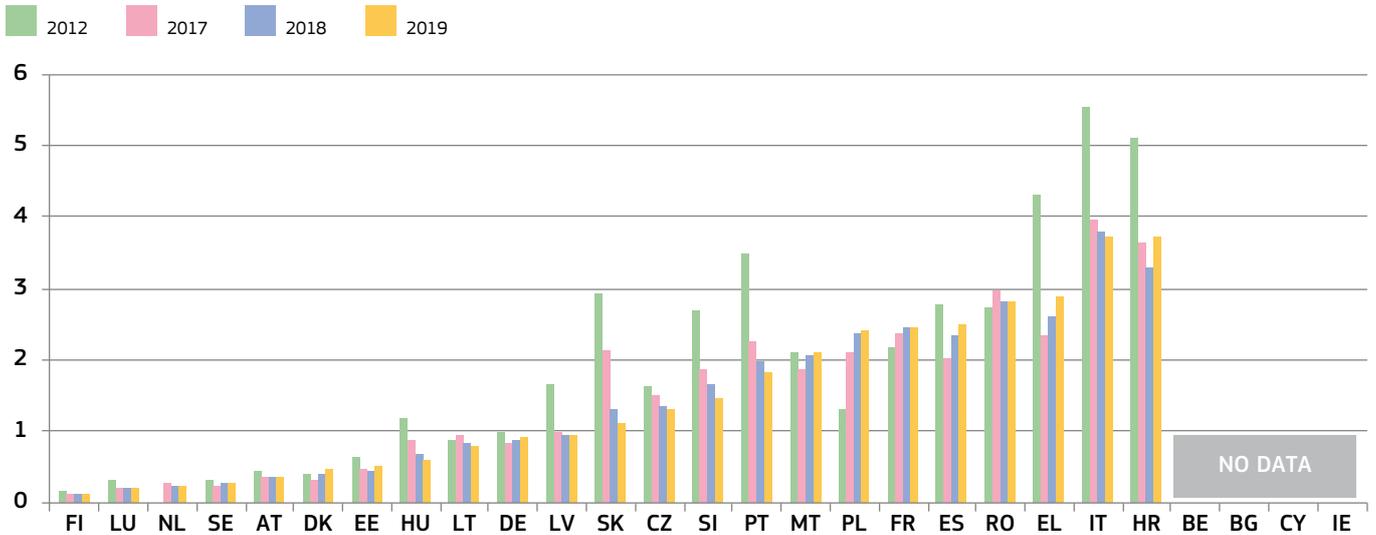
The number of pending cases expresses the number of cases that remains to be dealt with at the end of the year in question. It also influences the disposition time.

**Figure 14** Number of pending civil, commercial and administrative and other cases in 2012, 2017 – 2019 (\*) (1<sup>st</sup> instance/per 100 inhabitants) (source: CEPEJ study)



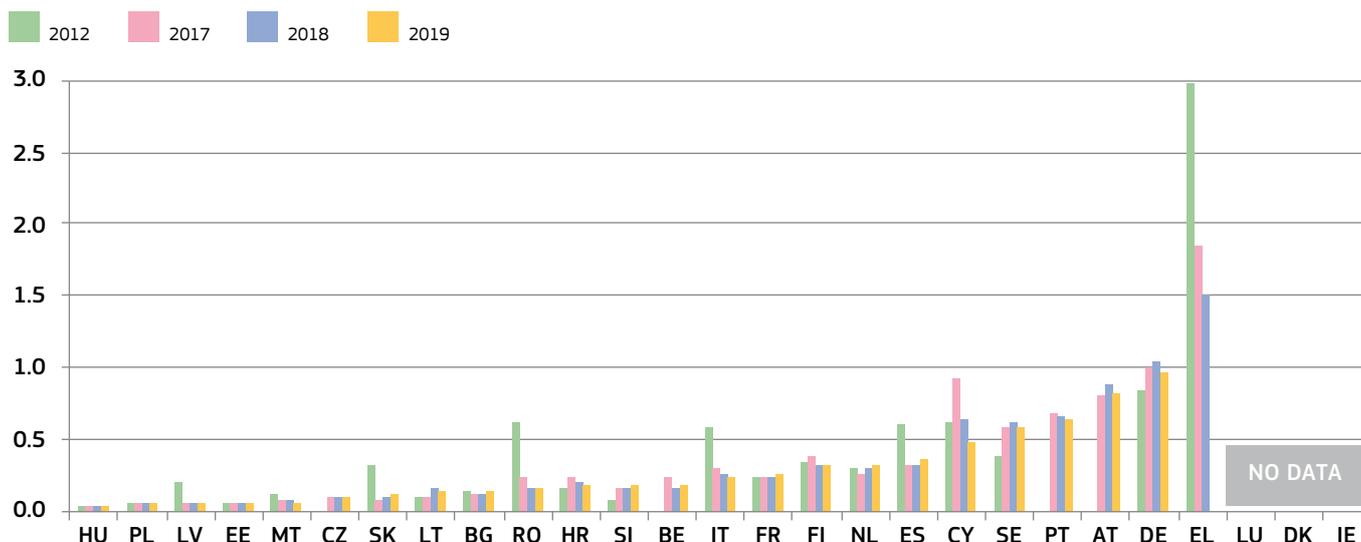
(\*) Under the CEPEJ methodology, this category includes all civil and commercial litigious and non-litigious cases, non-litigious land and business registry cases, other registry cases, other non-litigious cases, administrative law cases and other non-criminal cases. Methodology changes in **SK**. Pending cases include all instances in **CZ** and, until 2016, in **SK**. **IT**: different classification of civil cases introduced in 2013.

**Figure 15** Number of pending litigious civil and commercial cases in 2012, 2017 – 2019 (\*) (1<sup>st</sup> instance/per 100 inhabitants) (source: CEPEJ study)



(\*) Methodology changes in **EL** and **SK**. Pending cases include all instances in **CZ** and, until 2016, in **SK**. **IT**: different classification of civil cases introduced in 2013. Data for **NL** include non-litigious cases.

**Figure 16** Number of pending administrative cases in 2012, 2017 – 2019 (\*) (1<sup>st</sup> instance/per 100 inhabitants)  
(source: CEPEJ study)



(\*) Past values for some Member States have been reduced for presentation purposes (EL in 2012=3.5). Methodology changes in EL and SK. Pending cases include all instances in CZ and, until 2016, in SK. DK and IE do not record administrative cases separately.

### 3.1.3. Efficiency in specific areas of EU law

This section complements the general data on the efficiency of justice systems and presents the average length of proceedings<sup>(40)</sup> in specific areas when EU law is concerned. The 2021 Scoreboard builds on previous data in competition, electronic communications, EU trademark, consumer law and anti-money laundering. The areas are selected because of their relevance for the single market and the business environment. In general, long delays in judicial proceedings may have negative consequences on rights stemming from EU law, e.g. when appropriate remedies are no longer available or serious financial damages become irrecoverable.

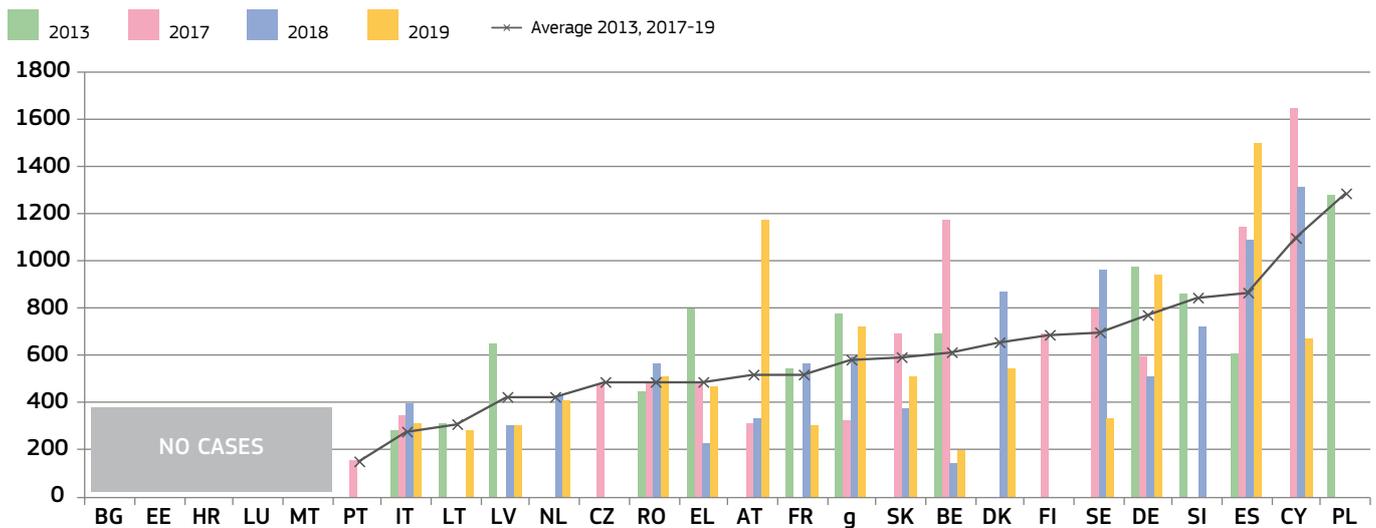
#### – Competition –

Effective enforcement of competition law ensures a level playing field for businesses and is therefore essential for an attractive business environment. Figure 17 presents the average length of cases against decisions of national competition authorities applying Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU)<sup>(41)</sup>.

40 The length of proceedings in specific areas is calculated in calendar days, counting from the day on which an action or appeal was lodged before the court (or the indictment became final) until the day on which the court adopted its decision (Figures 16–21). Values are ranked based on a weighted average of data for 2013 and 2017–2019 for Figures 16–18, data for 2013, 2016, 2018 and 2019 for Figure 19, and data for 2014 and 2016–2019 for Figures 20 and 21. Where data was not available for all years, the average reflects the available data, calculated based on all cases, a sample of cases or estimations.

41 See <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN> and Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance), OJ L 1, 4.1.2003, p. 1–25, in particular Articles 3 and 5.

**Figure 17 Competition: average length of judicial review in 2013, 2017 – 2019 (\*) (1<sup>st</sup> instance/in days)** (source: European Commission with the European Competition Network)

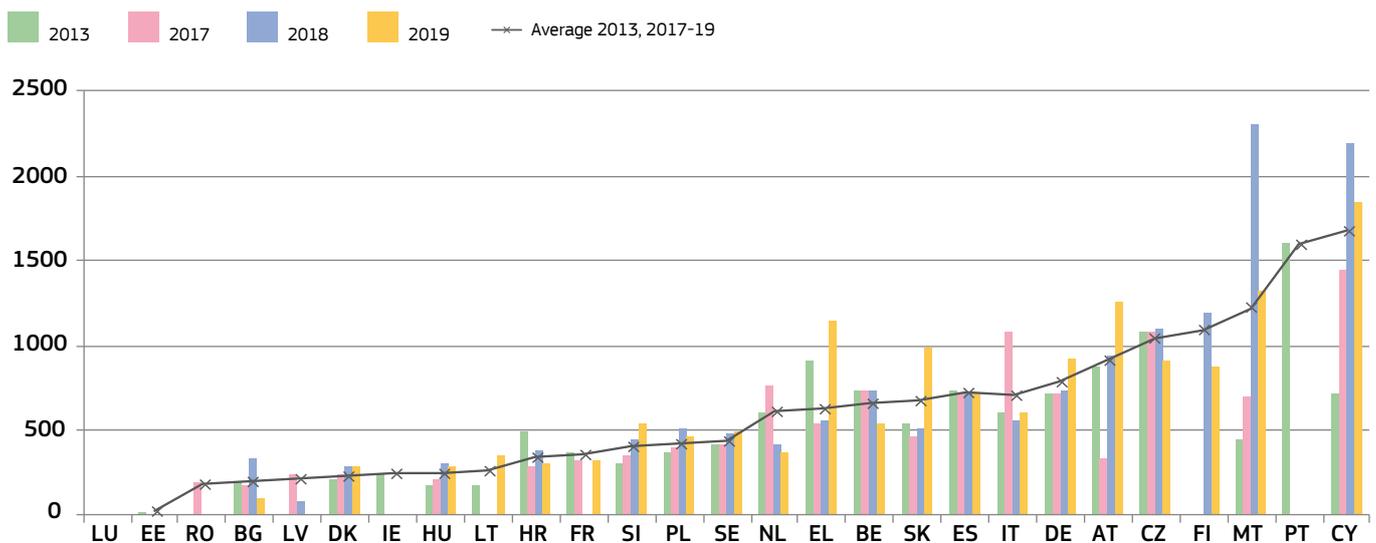


(\*) **IE** and **AT**: scenario is not applicable as the authorities do not have powers to take respective decisions. **AT**: data includes cases decided by the Cartel Court involving an infringement of Articles 101 and 102 TFEU, but not based on appeals against the national competition authority. An estimation of length was used in **IT**. An empty column can indicate that the Member State reported no cases for the year. The number of cases is low (below five per year) in many Member States, which can make the annual data dependent on one exceptionally long or short case.

### – Electronic communications –

The objective of EU electronic communications legislation is to raise competition, to contribute to the development of the single market and to generate investment, innovation and growth. The positive effects for consumers can be achieved through effective enforcement of this legislation which can lead to lower end user prices and better quality services. Figure 18 presents the average length of judicial review cases against decisions of national regulatory authorities applying EU law on electronic communications<sup>(42)</sup>. It covers a broad spectrum of cases, ranging from more complex ‘market analysis’ reviews to consumer-focused issues.

**Figure 18 Electronic communications: average length of judicial review in 2013, 2017 – 2019 (\*) (1<sup>st</sup> instance/in days)** (source: European Commission with the Communications Committee)



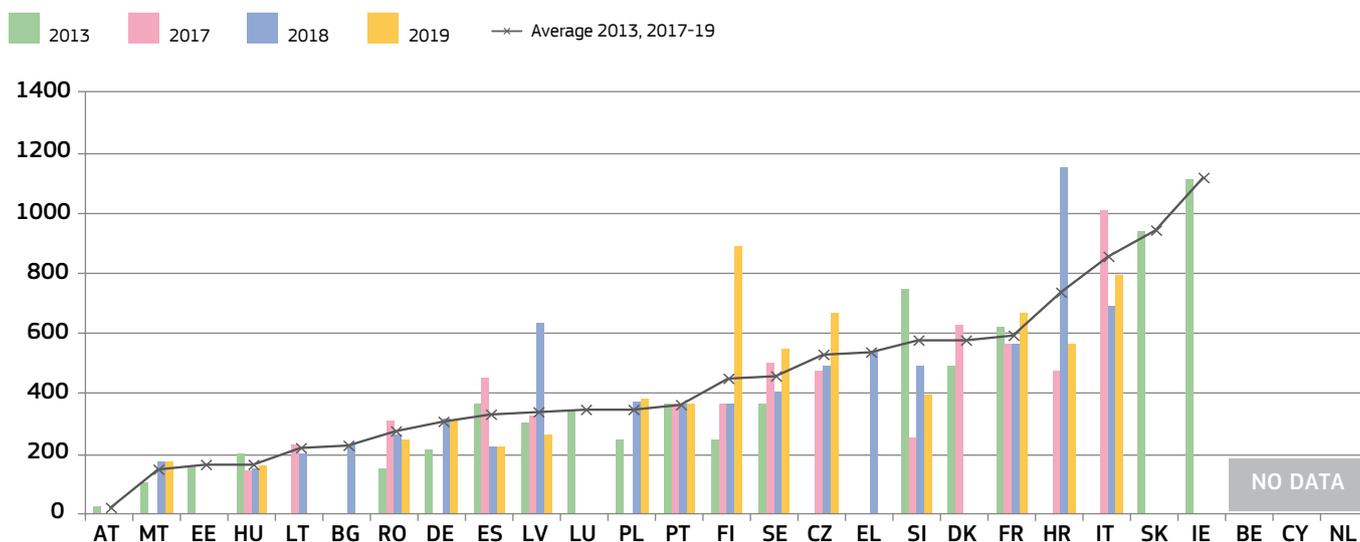
(\*) The number of cases varies by Member State. An empty column indicates that the Member State reported no cases for the year (except **PT** for 2017-19, and **RO** for 2018: no data). In some instances, the limited number of relevant cases (**CY**, **MT**, **SK**, **FI**, **SE**) can make the annual data dependent on one exceptionally long or short case and result in large variations from one year to the other. **DK**: quasi-judicial body in charge of 1<sup>st</sup> instance appeals. **EE**: The average length of judicial review cases in 2013 was 18 days. **ES**, **AT**, and **PL**: different courts in charge depending on the subject matter.

42 The calculation has been made based on the length of cases of appeal against national regulatory authority decisions applying national laws that implement the EU regulatory framework for electronic communications (Directives 2002/19/EC (Access Directive), Directive 2002/20/EC (Authorisation Directive), Directive 2002/21/EC (Framework Directive), Directive 2002/22/EC (Universal Service Directive), and other relevant EU law such as the radio spectrum policy programme, Commission spectrum decisions, excluding Directive 2002/58/EC on privacy and electronic communications.

– EU trademark –

Effective enforcement of intellectual property rights is essential to stimulate investment in innovation. EU legislation on EU trademarks (43) gives a significant role to the national courts, which act as EU courts and take decisions affecting the single market. Figure 19 shows the average length of EU trademark infringement cases in litigation among private parties.

**Figure 19 EU trademark: average length of EU trademark infringement cases in 2013, 2017 – 2019 (\*) (1<sup>st</sup> instance/in days)** (source: European Commission with the European Observatory on infringements of intellectual property rights)



(\*) **FR, IT, LT, LU:** a sample of cases used for data for certain years. **DK:** data from all trademark cases (not only EU) in Commercial and Maritime High Courts; for 2018 and 2019, no data on average length due changes in data collection system. **EL:** data based on weighted average length from two courts. **ES:** cases concerning other EU IP titles are included in the calculation of average length.

– Consumer protection –

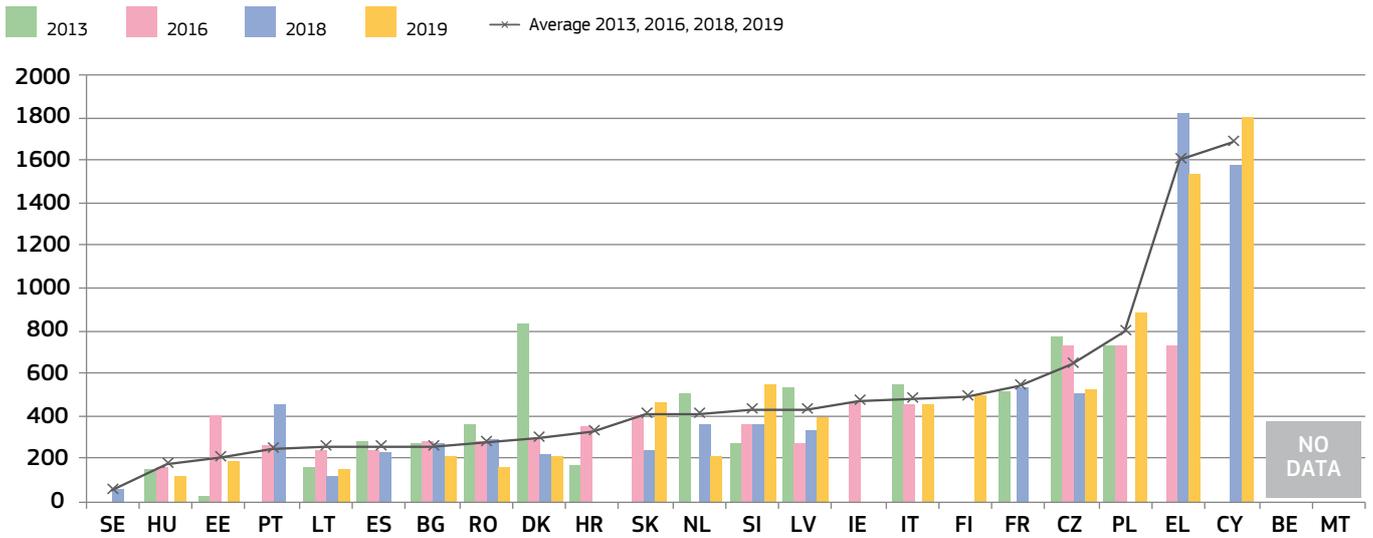
Effective enforcement of consumer law ensures that consumers benefit from their rights and that companies infringing consumer laws do not gain unfair advantage. Consumer protection authorities and courts play a key role in enforcing EU consumer law (44) within the various national enforcement systems. Figure 20 illustrates the average length of judicial review cases against decisions of consumer protection authorities applying EU law.

For consumers or companies, effective enforcement can involve a chain of actors, not only courts but also administrative authorities. To further examine this enforcement chain, the length of proceedings by consumer authorities is presented. Figure 21 shows the average length of administrative decisions by national consumer protection authorities in 2014, 2016, 2018-2019 from the moment a case is opened. Relevant decisions include declaring infringements of substantive rules, interim measures, cease and desist orders, initiation of court proceedings or case closure.

43 Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ L 154, 16.6.2017, p. 1-99).

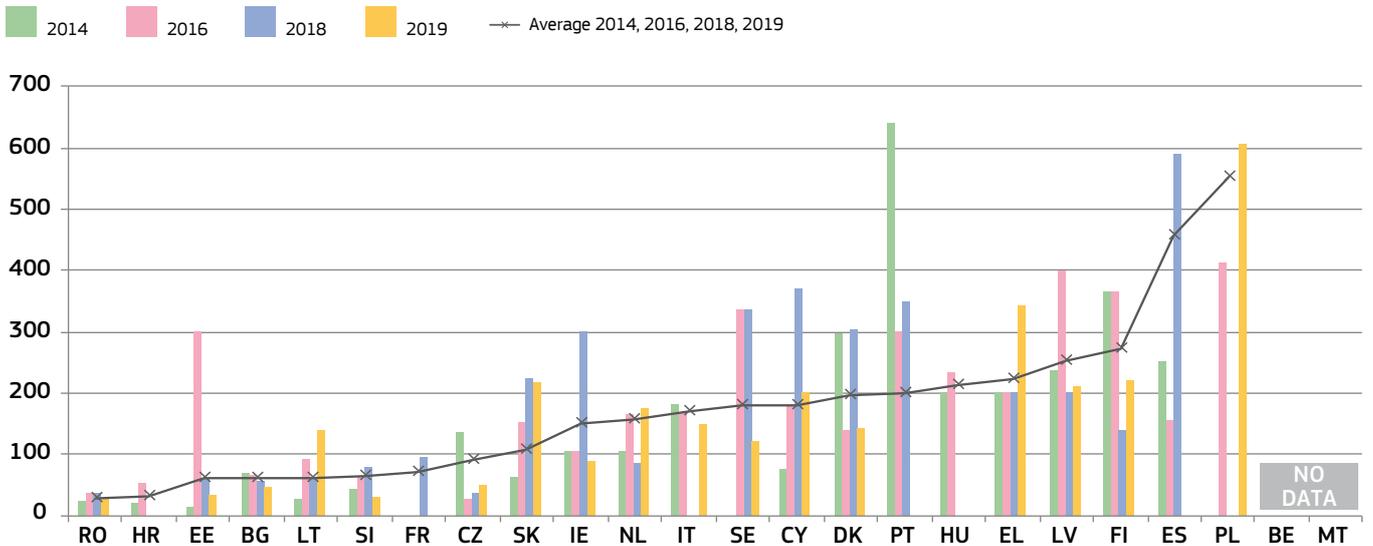
44 Figures 19 and 20 relate to the enforcement of the Unfair Terms Directive (93/13/EEC), the Consumer Sales and Guarantees Directive (1999/44/EC), the Unfair Commercial Practices Directive (2005/29/EC) and the Consumer Rights Directive (2011/83/EC), and their national implementing provisions.

**Figure 20 Consumer protection: average length of judicial review in 2013, 2016, 2018 – 2019 (\*) (1<sup>st</sup> instance/in days)** (source: European Commission with the Consumer Protection Cooperation Network)



(\*) DE, LU, AT: scenario is not applicable as consumer authorities are not empowered to decide on infringements of relevant consumer rules. The number of relevant cases for 2019 is low (less than five) in EE, CY, NL, SI and FI. An estimate of average length was provided by EL and RO for certain years.

**Figure 21 Consumer protection: average length of administrative decisions by consumer protection authorities in 2014, 2016, 2018 – 2019 (\*) (1<sup>st</sup> instance/in days)** (source: European Commission with the Consumer Protection Cooperation Network)

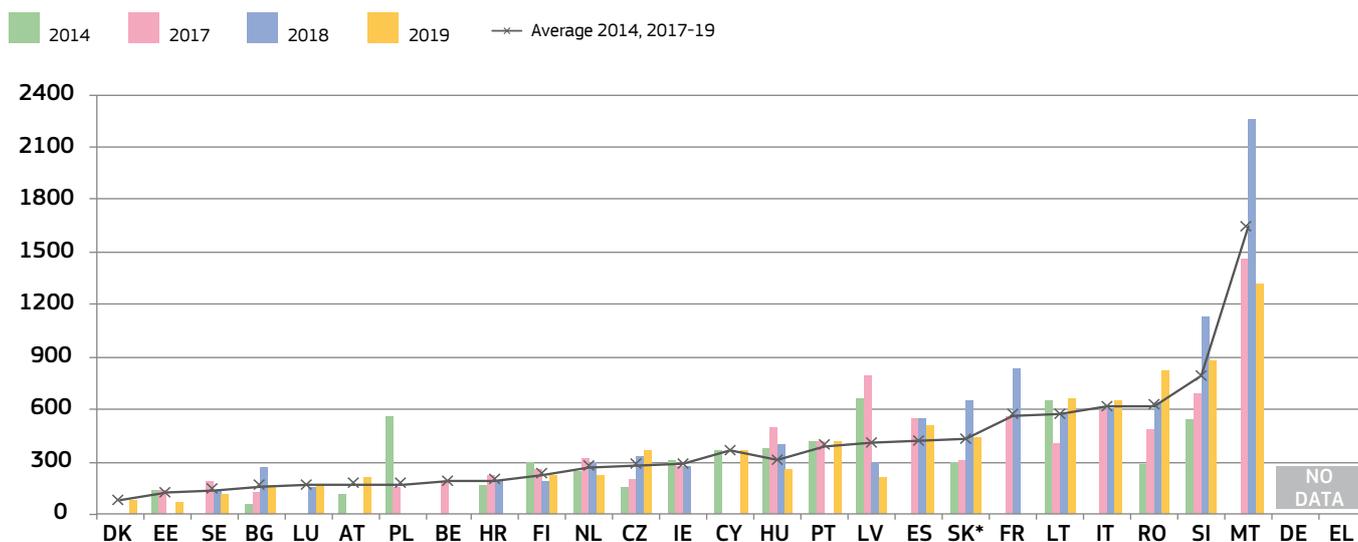


(\*) DE, LU, AT: scenario is not applicable as consumer authorities are not empowered to decide on infringements of relevant consumer rules. The number of relevant cases for 2019 is low (less than five) in CY. An estimate of average length was provided by DK, EL, FR, RO and FI for certain years.

## – Money laundering –

In addition to contributing to the fight against crime, the effectiveness of the fight against money laundering is crucial for the soundness, integrity and stability of the financial sector, confidence in the financial system and fair competition in the single market<sup>(45)</sup>. Money laundering can discourage foreign investment, distort international capital flows and negatively affect a country's macroeconomic performance, resulting in welfare losses, draining resources from more productive economic activities<sup>(46)</sup>. The Anti-money Laundering Directive requires Member States to maintain statistics on the effectiveness of their systems to combat money laundering or terrorist financing<sup>(47)</sup>. In cooperation with Member States, an updated questionnaire was used to collect data on the judicial phases of the national anti-money laundering regimes. Figure 22 shows the average length of first instance court cases dealing with money laundering criminal offences.

**Figure 22 Money laundering: average length of court cases in 2014, 2017 – 2019(\*)** (1<sup>st</sup> instance/in days) (source: European Commission with the Expert Group on Money Laundering and Financing of Terrorism)



(\*) No data for 2019: **BE, DE, IE, EL, FR, HR, CY** and **PL**. **BG**: The average length of the cases is calculated from the day of opening the court case to the day of the court decision in months. **LU**: Median- in 201: 36 days, in 2018: 49 days; Average length in 2018: 57 days (7 cases). **ES, NL**: estimated length. **CZ**: Length in months. **HU**: Average number of days was calculated based only on the number of cases resolved with a conviction. **PT**: Average number of days was calculated based on a sample. **IT**: data refer to the responding courts, covering about 99% in 2017; data refer to both trial and preliminary court hearings **CY**: Serious cases, before the Assize Court, are on average tried within a year. Less serious offences, before the District Courts, take longer to be tried. **SK\***: data correspond to average length of the whole proceedings, including at appeal court.

45 Recital 2 of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

46 IMF factsheet, March 8, 2018: <https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism>

47 Article 44(1) of the Directive (EU) 2015/849. See also the revised Article 44 in Directive (EU) 2018/843, which entered into force in June 2018 and had to be implemented by Member States by January 2020.

### 3.1.4. Summary on the efficiency of justice systems

An efficient justice system manages its caseload and backlog of cases, and delivers its decisions without undue delay. The main indicators used by the EU Justice Scoreboard to monitor the efficiency of justice systems are therefore the **length of proceedings** (estimated or average time in days needed to resolve a case), the **clearance rate** (the ratio of the number of resolved cases over the number of incoming cases) and the number of **pending cases** (that remains to be dealt with at the end of the year).

#### General data on efficiency

The 2021 EU Justice Scoreboard contains data on efficiency spanning eight years (2012–2019). This time-span allows to identify certain trends and to take into account that justice reforms often take time to show their impact.

Looking at the available data since 2012 in civil, commercial and administrative cases, efficiency has improved or remained stable in 10 Member States, while it decreased, albeit often only marginally, in nine Member States.

Positive developments can be observed in some of the Member States that have been identified in the context of the European Semester as facing specific challenges<sup>(48)</sup>:

- Since 2012, and based on the data existing for these Member States, in the majority of them, the **length of first instance court proceedings** in the broad ‘all cases’ category (Figure 6) and the litigious civil and commercial cases (Figure 7) has decreased or remained stable. In administrative cases (Figure 9), the length of proceedings since 2012 decreased or remained stable in almost all of these Member States. Overall, half of the Member States saw an increase in the length of proceedings in 2019.
- The Scoreboard presents data on the **length of proceedings in all court instances** for litigious civil and commercial cases (Figure 8) and administrative cases (Figure 10). Data show that in a number of Member States identified as facing challenges with the length of proceedings in first instance courts, higher instance courts perform in a more efficient manner. However, for some other Member States facing challenges, the average length of proceedings in higher instance courts is even longer than in first instance courts.
- In the broad ‘all cases,’ and the litigious civil and commercial cases categories (Figures 11 and 12), the overall number of Member States where the **clearance rate** is more than 100% has increased since 2012. In 2019, the majority of all Member States, including most of those facing challenges, reported a high clearance rate (more than 97%), which means that courts are generally able to deal with the incoming cases in these categories. In administrative cases (Figure 13), a larger variation of the clearance rate can be observed from one year to another and while it generally remains lower than in other categories of cases, some Member States continue to make good progress. In particular, more than half of the Member States facing challenges report an increase in the clearance rate in administrative cases since 2012.
- Since 2012, progress is continuing in almost all Member States facing the most substantial challenges with their **backlogs**, regardless of the category of cases. Often substantial progress in reducing pending cases has been made for both litigious civil and commercial cases (Figure 15) and administrative cases (Figure 16). Despite these improvements, significant differences between Member States with comparatively few pending cases and those with a high number of pending cases remain.

48 HR, IT, CY, HU, MT, PL, PT and SK which received 2020 European Semester country-specific recommendations, and BE, BG, IE, EL, ES, RO, and SI, for which the challenges have been reflected in the recitals of their 2020 country-specific recommendations and country reports.

Variance in the results over the 8 years analysed may be explained by contextual factors (variations of more than 10% of incoming cases are not unusual) or systemic deficiencies (lack of flexibility and responsiveness or inconsistencies in the process of reform).

## Efficiency in specific areas of EU law

Data on the average length of proceedings in specific areas of EU law (Figures 17-22) provide an insight into the functioning of justice systems in these types of business-related disputes.

Data on efficiency in specific areas of law are collected based on narrowly defined scenarios and the number of relevant cases may appear low. However, as compared to the calculated length of proceedings presented in the general data on efficiency, these figures provide for an actual average length of all relevant cases in specific areas in a year. It is therefore worth noting that several Member States that do not appear to be facing challenges based on general data on efficiency report significantly longer average length of cases in specific areas of EU law. At the same time, the length of proceedings in different specific areas may also vary considerably in the same Member State.

The figures for specific areas of EU law show the following trends:

- For **competition cases** (Figure 17), as the overall caseload faced by courts across Member States decreased slightly, the length of judicial review decreased or remained stable in seven Member States, while it increased in nine other Member States. As in 2018, only two Member States reported an average length exceeding 1 000 days in 2019, continuing the positive trends in this respect.
- For **electronic communications** (Figure 18), the case-loads faced by courts decreased compared to previous years, reversing the negative trend regarding increased length of proceedings observed in 2018. In 2019, most Member States registered a decrease in the average lengths of proceedings or figures remained stable, compared to 2018, with only few showing an increase.
- For **EU trademark infringement cases** (Figure 19), in 2019 trends stabilised compared to previous years. Most Member States managed to cope better with their caseload, registering decreased or stable lengths of proceedings, while few others saw a clear increase in the average length of cases.
- The possible combined effect of the enforcement chain consisting of both administrative and judicial review proceedings is presented in the area of **EU consumer law** (Figures 20 and 21). In 2019, six Member States reported that their consumer protection authorities took on average less than three months to issue a decision in a case covered by EU consumer law, while in six other Member States they took more than six months. Where the decisions of the consumer protection authorities were challenged in courts, in 2019 the trends regarding the length of judicial review of an administrative decision diverged, with increases in six and decreases in six other Member States compared to 2018. In two Member States the average length of judicial review remains at over 1 000 days.
- The effective fight against **money laundering** is crucial in protecting the financial system, fair competition and preventing negative economic consequences. Challenges in length of court proceedings when dealing with money laundering offences may influence the effective fight against money laundering. Figure 22 presents updated data on the length of judicial proceedings dealing with money laundering offences. It shows that while in more than half of Member States the first instance court proceedings take up to a year on average, these proceedings take around two years on average in several Member States <sup>(49)</sup>.

49 Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law will eliminate legal obstacles that may delay prosecution, such as that a prosecution for money laundering can only start when the proceedings for the underlying predicate offence have been concluded. Member States had to transpose the Directive before 8 December 2020.

## 3.2. Quality of justice systems

There is no single way of measuring the quality of justice systems. The 2021 EU Justice Scoreboard continues to examine factors that are generally accepted as relevant for improving the quality of justice. They are grouped into four categories:

- 1) accessibility of justice for citizens and businesses;
- 2) adequate financial and human resources;
- 3) putting in place assessment tools; and
- 4) digitalisation.

### 3.2.1. Accessibility

Accessibility is required throughout the whole justice chain to enable people to obtain relevant information — about the justice system, how to initiate a claim and the related financial aspects, the state of play of proceedings up until their end — and to access the judgment online.

#### – Legal aid, court fees and legal fees –

The cost of litigation is a key factor for access to justice. High litigation costs, including court fees<sup>(50)</sup> and legal fees<sup>(51)</sup>, may hinder access to justice. Litigation costs in civil and commercial matters are not harmonised at EU level. They are governed by national legislation and therefore vary from one Member State to another.

Access to legal aid is a fundamental right enshrined in the Charter of Fundamental Rights of the EU<sup>(52)</sup>. It allows access to justice for those who would not be able to bear or advance the costs of litigation. Most Member States grant legal aid based on the applicant's income<sup>(53)</sup>.

Figure 23 shows the availability of full or partial legal aid in a specific consumer case involving a claim of EUR 6 000. It compares the income thresholds for granting legal aid, expressed as percentage of the Eurostat poverty threshold in each Member State<sup>(54)</sup>. For example, if the threshold for legal aid appears at 20%, it means that an applicant with an income 20% higher than the Eurostat poverty threshold in their Member State will still be eligible for legal aid. However, if the threshold for legal aid appears at below 0, it means that a person with an income below the poverty threshold may not be eligible for legal aid.

Some Member States operate a legal aid system that provides for 100% coverage of the costs linked to litigation (full legal aid), complemented by a system covering partial costs (partial legal aid), the latter applying eligibility criteria different from that of the former. Other Member States operate either only a full or partial legal aid system.

50 Court fees are understood as an amount to be paid to initiate non-criminal law proceedings in a court or tribunal.

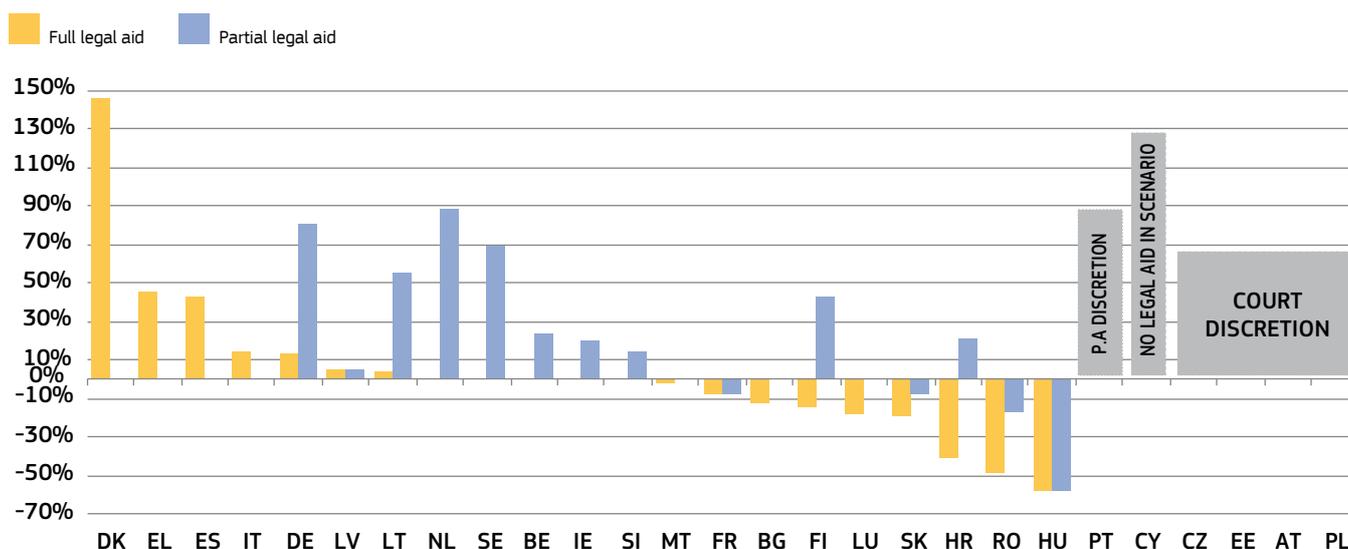
51 Legal fees are the consideration for services provided by lawyers to their clients.

52 Article 47(3) of the Charter of Fundamental Rights of the EU.

53 Member States use different methods to establish the eligibility threshold, e.g. different reference periods (monthly/annual income). About half of the Member States also have a threshold related to the personal capital of the applicant. This is not taken into account for this figure. In BE, BG, IE, ES, FR, HR, HU, LT, LU, NL and PT, certain groups of people (e.g. individuals who receive certain benefits) are automatically entitled to receive legal aid in civil/commercial disputes. Additional criteria that Member States may use, such as the merit of the case, are not reflected in this figure. Although not directly related to the figure, in several Member States (AT, CZ, DE, DK, IT, NL, PL, SI) legal aid is not limited to natural persons.

54 To collect comparable data, each Member State's respective Eurostat poverty threshold has been converted to a monthly income. The at-risk-of-poverty (AROP) threshold is set at 60 % of the national median equivalised disposable household income. European Survey on Income and Living Conditions, Eurostat table ilc\_li01, [https://ec.europa.eu/eurostat/databrowser/view/ilc\\_li01/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/ilc_li01/default/table?lang=en)

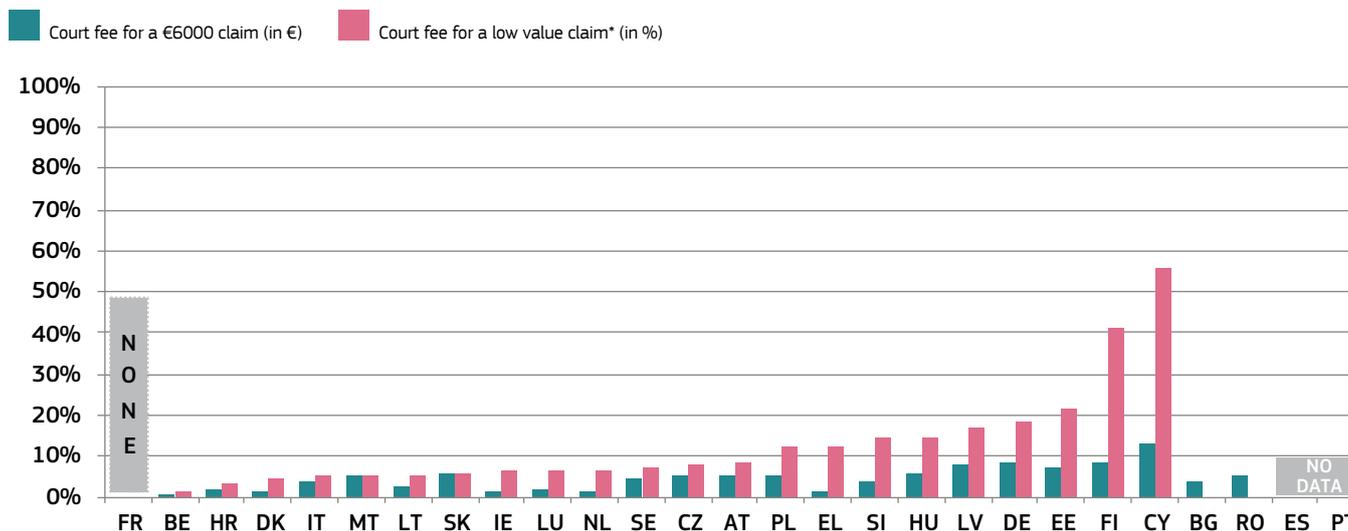
**Figure 23 Income threshold for legal aid in a specific consumer case, 2020(\*)** (differences in % from Eurostat poverty threshold) (source: European Commission with the CCBE<sup>(55)</sup>)



(\*) **EE**: decision to grant legal aid is not based on the level of financial resources of the applicant. **IE**: partial legal aid has to take into account also the disposable assets of the applicant. **LV**: thresholds vary by municipality, upper limit is represented in the chart. **PT**: Legal aid is a decision taken by the Public Administration, with the Social Security Ministry assessing the applicant's financial conditions under the law.

Most Member States require parties to pay a court fee when starting judicial proceedings. Recipients of legal aid are often exempt from paying court fees. Only in Bulgaria, Estonia, Ireland, Netherlands, Poland and Slovenia are recipients of legal aid not automatically exempt from paying court fees. In Czech Republic the court decides on a case-by-case basis whether to exempt a legal aid recipient from paying court fees. In Luxembourg, litigants who benefit from legal aid do not have to pay bailiff fees. Figure 24 compares for two scenarios the level of the court fee presented as a share of the value of the claim. If, for example, in the figure below the court fee appears at 10% of a EUR 6 000 claim, the consumer will have to pay a EUR 600 court fee to start judicial proceedings. The low value claim is based on the Eurostat At-Risk-of-Poverty threshold for each Member State.

**Figure 24 Court fee to start judicial proceedings in a specific consumer case, 2020(\*)** (level of court fee as a share of the value of the claim) (source: European Commission with the CCBE<sup>(56)</sup>)



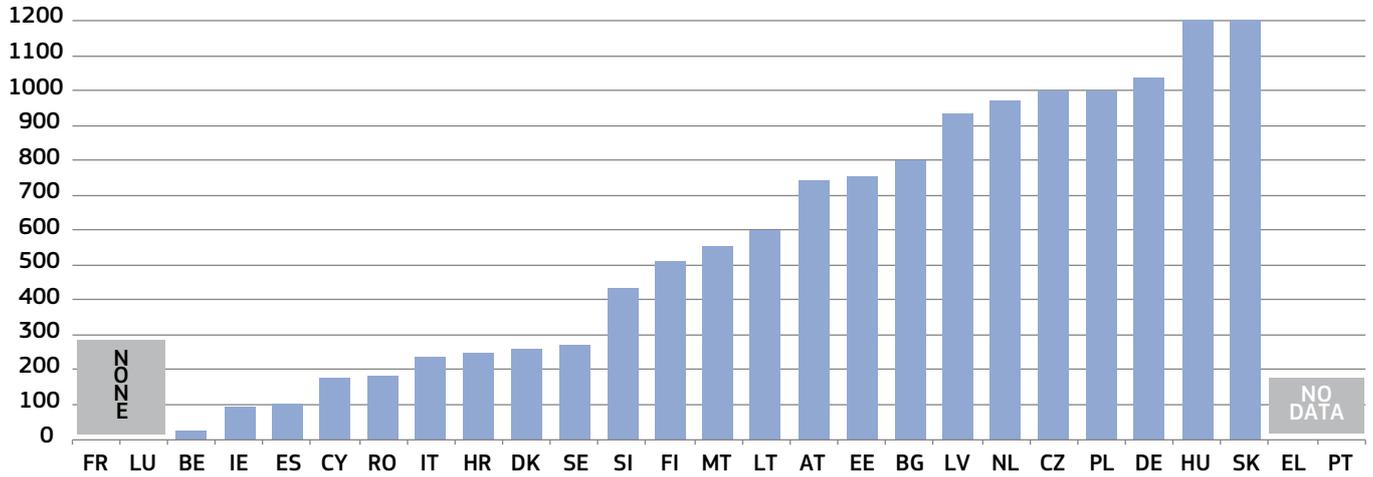
(\*) 'Low value claim' is a claim corresponding to the Eurostat poverty threshold for a single person in each Member State, converted to monthly income (e.g. in 2019, this value ranged from €193 in RO to €1 824 in LU). **ES, PT**: no data were provided. **BG, RO**: no information on court fees for a low value claim was provided. **LU**: Litigants have to pay bailiff fees to start proceedings as a plaintiff unless they benefit from legal aid. **NL**: Court fees for income <€2 325/month. **AT**: The maximum amount of court fee depends on the court's instance. **SE**: Court fees differ in civil matters depending on the type of case. For disputes where the value of the claim is <€2 253, the court fee is €86. In cases where the value of the claim is >€2 253, the court fee is €267. For other types of claims there are other court fees.

55 2020 data collected through replies by CCBE members to a questionnaire based on the following specific scenario: a dispute of a consumer with a company (two different values of the claim have been indicated: €6 000 and the Eurostat At-Risk-of-Poverty threshold in each Member State). Given that conditions for legal aid depend on the applicant's situation, the following scenario was used: a single 35-year-old employed applicant without any dependant and legal expenses insurance, with a regular income and a rented apartment.

56 The data refer to income thresholds valid in 2020 and have been collected through replies by CCBE members to a questionnaire based on the following specific scenario: a consumer dispute between an individual and a company (two different values of the claim have been indicated: EUR 6 000 and the Eurostat At-Risk-of-Poverty threshold in each Member State).

Efficient contract enforcement is essential for the economy. The likelihood of recovering the actual costs of litigation strengthens the position of the creditor seeking to enforce a contract. Typically, the creditor, as plaintiff, is required to pay a court fee for filing a case with the court. The courts generally order the defendant who loses to reimburse in full the court fees advanced by the plaintiff who has won. Figure 25 shows the level of court fee required to start judicial proceedings in a specific commercial case concerning a dispute between two companies in cross-border commercial litigation on enforcing a contract, with a value of the claim at EUR 20 000.

**Figure 25 Court fee to start judicial proceedings in a specific commercial case, 2020 (\*) (in EUR) (source: European Commission with the CCBE<sup>(57)</sup>)**



(\*) Recovery of court fees is decided on a case-by-case basis in **ES and EL**. There is no full recovery of court fees by the winning party in and **HU**.

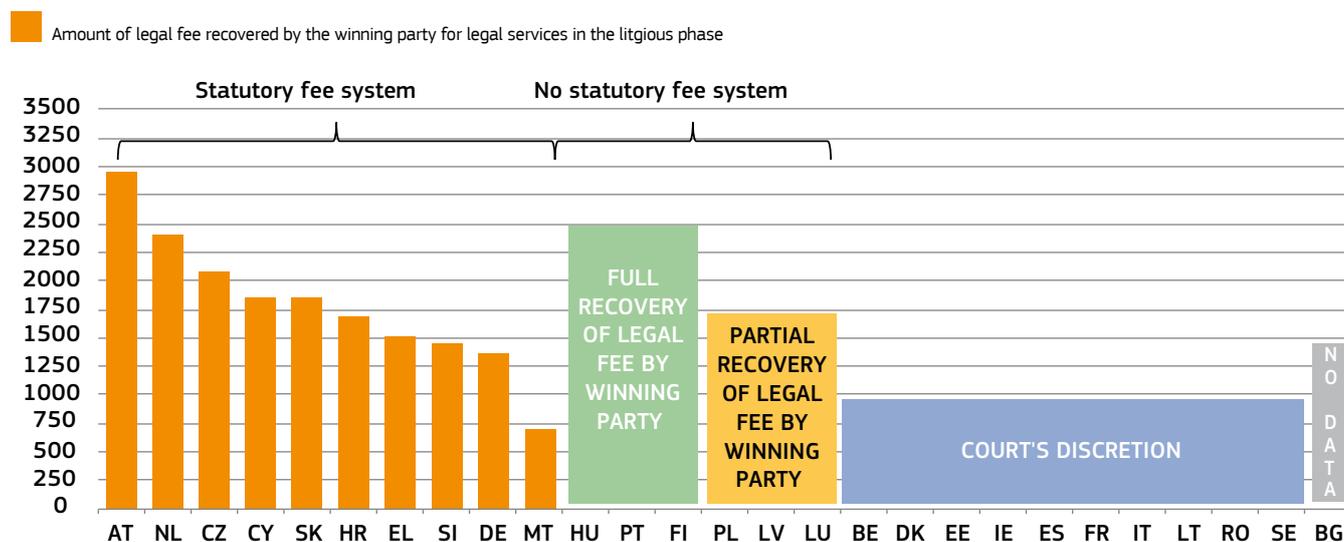
57 The data have been collected through replies by CCBE members to a questionnaire based on the following specific scenario on the scenario described above. CCBE members were asked to provide information on the payable court fee to file the action in the case in the scenario.

It is common for the creditor to advance the fees of their own lawyer not only for the litigious phase but also during the pre-litigious phase. On reimbursement, most Member States apply the rule according to which the losing party is expected to bear not only their own legal costs, but also those of the winning party. Such a fee-shifting rule deters the filing of low-probability-of-winning cases, while it encourages the filing of high-probability-of-winning cases. Figure 26 shows the amount the court would award to the successful plaintiff in a specific commercial case scenario (see Footnote 58).

Three main fee systems can be distinguished:

- (1) in Member States with a statutory fee system, reimbursement of legal fees depends on the level of statutory fee envisaged for the work carried out by the lawyer, which vary significantly between Member States;
- (2) in Member States without a statutory fee system, there is either full (Hungary, Portugal, Finland) or partial (Poland, Latvia, Luxembourg) reimbursement of legal fees; and
- (3) in a number of Member States the reimbursement is decided by the court on a case-by-case basis.

**Figure 26 Recoverability of legal fees in a commercial trial, 2020 (\*)** (in EUR) (source: European Commission with the CCBE<sup>(58)</sup>)



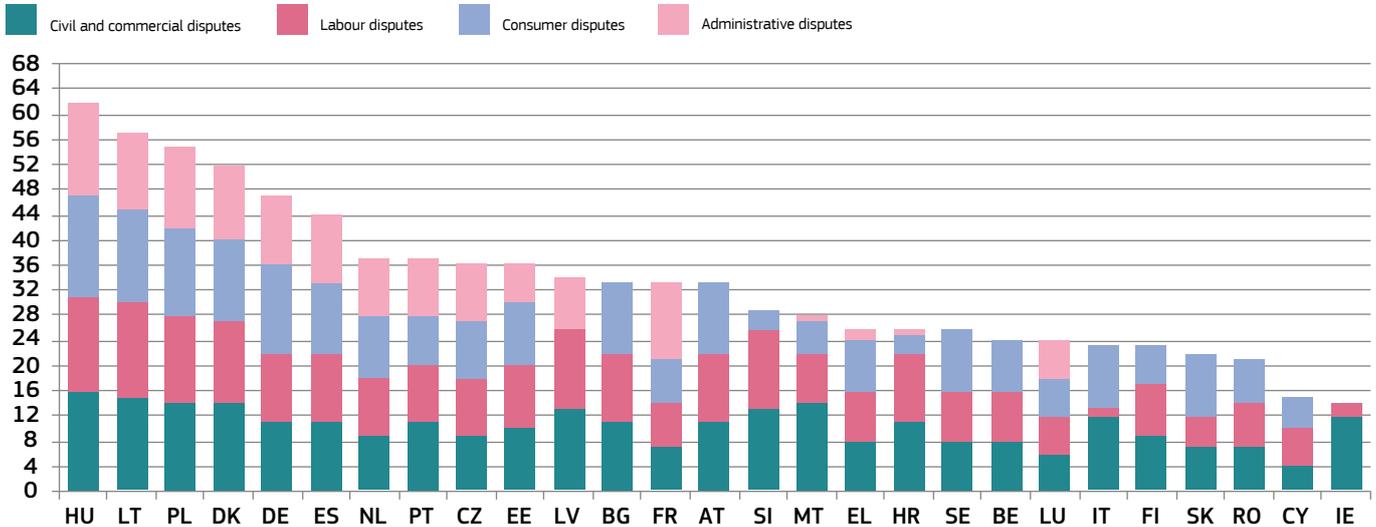
(\*) For this figure, legal fees do not include clerical costs and VAT, if payable. The hypothetical legal fee for the litigious phase provided for in the scenario is €1 650. Full recovery in systems without statutory fee means that this amount (€1 650) can be recovered. Member States with partial recovery (PL, LV, LU) are sorted by order of the recoverable legal fee (highest to lowest, amounts range from €1 275 – €500). The figure does not include information on the recoverability of legal fees for the pre-litigious phase, which is not envisaged in all Member States. **AT**: scenario not fully applicable to ATs system of reimbursement. **MT**: there is no concept of an hourly legal fee in MT, reimbursement is determined based on the value of the claim. **IT**: there is a statutory fee in IT (€3 235 in the scenario), but the court can decide on reimbursement within a set range. **LT**: court decides taking into account guidance by the Ministry of Justice, maximum amount in the scenario would be €3 350.

58 The data have been collected through replies by CCBE members to a questionnaire based on the same hypothetical case as for Figure 25 (see Footnote 62). The following scenario was used as a basis for calculating the legal fees: the company seeking to enforce the contact contracted a specialised and experienced lawyer, who carried out the following work: In the pre-litigious phase: 3 hours of work, one document produced for an hourly legal fee of EUR 200 (overall EUR 600). Litigious phase: 11 hours of work, 3 documents produced, 2 court hearings for an hourly legal fee of EUR 200 net (overall EUR 2 200). CCBE members were asked to provide information on a) the statutory fee foreseen for the work in the (pre-) litigious phase, if existing and b) the amount of legal fee that the court would reasonably order to be reimbursed by the losing party. (To be noted that the hypothetical hourly legal fee has been changed compared to the 2020 EU Justice Scoreboard, therefore the answers are not comparable).

– Accessing alternative dispute resolution methods –

Figure 27 shows Member States' efforts in promoting the voluntary use of alternative dispute resolution methods through specific incentives, which may vary depending on the area of law <sup>(59)</sup>.

**Figure 27 Promotion of and incentives for using ADR methods, 2020 (\*)** (source: European Commission <sup>(60)</sup>)

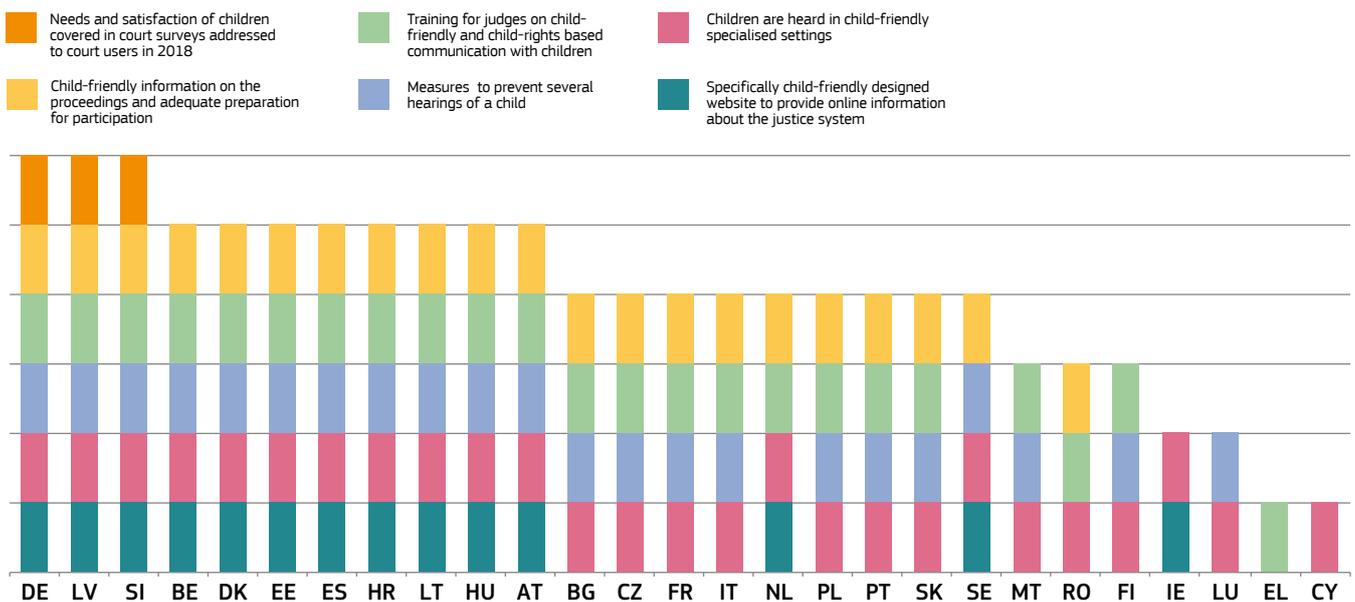


(\*) Maximum possible: 68 points. Aggregated indicators based on the following indicators: 1) website providing information on ADR, 2) Publicity campaigns in media, 3) Brochures for the general public, 4) Court provides specific information sessions on ADR upon request, 5) ADR/mediation co-ordinator at courts, 6) Publication of evaluations on the use of ADR, 7) Publication of statistics on the use of ADR, 8) Legal aid covers (partly or in full) costs incurred with ADR, 9) Full or partial refund of court fees, including stamp duties, if ADR is successful, 10) No lawyer for ADR procedure required, 11) Judge can act as mediator, 12) Agreement reached by the parties becomes enforceable by the court, 13) Possibility to initiate proceedings / file a claim and submit documentary evidence online, 14) Parties can be informed of the initiation and different steps of procedure electronically, 15) Possibility of online payment of applicable fees, 16) Use of technologies (artificial intelligence applications, chatbots) to facilitate submission and resolution of the disputes and 17) Other means. For each of these 17 indicators, one point was awarded for each area of law. **IE:** administrative cases are subsumed within the category of civil and commercial cases. **EL:** ADR exists in the area of public procurement procedure before Administrative Courts of Appeal. **ES:** ADR is mandatory in labour law cases. **PT:** for civil/commercial disputes, court fees are refunded only in case of justices for peace. **SK:** the Slovak legal order does not support the use of ADR for administrative purposes. **FI:** Consumer and labour disputes are also considered to be civil cases. **SE:** judges have procedural discretion on ADR. Seeking an amicable dispute settlement is a mandatory task for the judge unless it is inappropriate due to the nature of the case.

– Child-friendly justice –

Figure 28 shows the various arrangements in Member States that make justice system more accessible for children and suited to their needs, for example by providing child-friendly information on proceedings or undertaking measures to prevent the child having to go through several hearings.

**Figure 28 Child-friendly justice, 2020 (\*)** (source: European Commission <sup>(61)</sup>)



59 The methods to promote and incentivise the use of ADR do not cover compulsory requirements to use ADR before going to court, as such requirements raise concerns about their compatibility with the right to an effective remedy before a tribunal enshrined in the EU Charter of Fundamental Rights.  
 60 2020 data collected in cooperation with the group of contact persons on national justice systems.  
 61 2020 data collected in cooperation with the group of contact persons on national justice systems and the European Judicial Training Network.

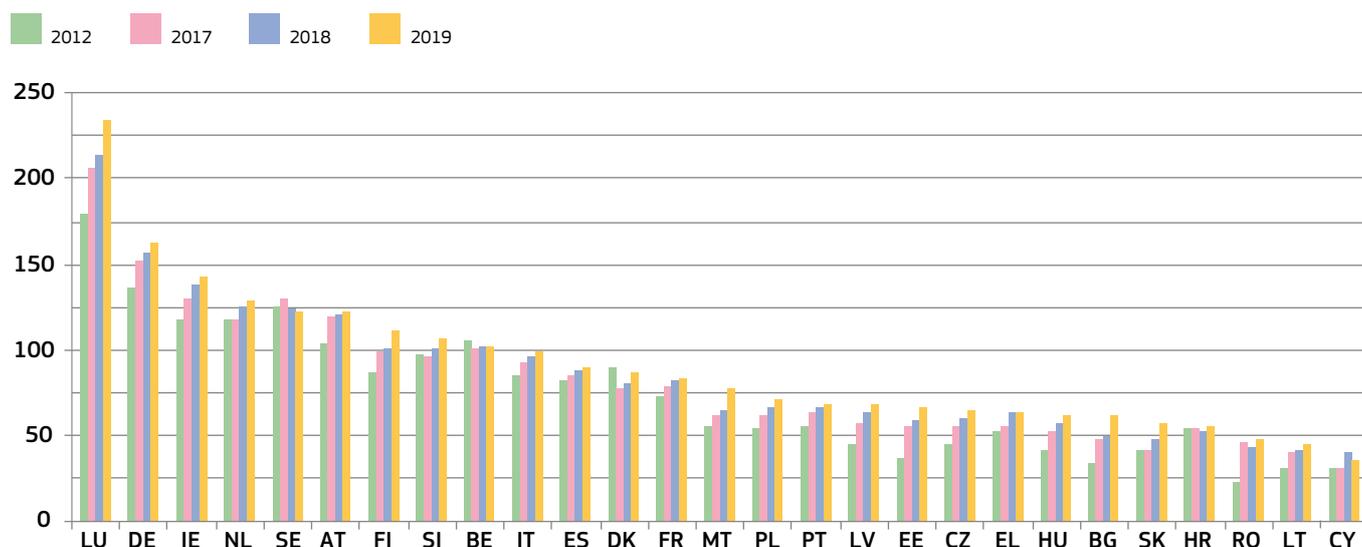
### 3.2.2. Resources

Sufficient resources, including the necessary investments in physical and technical infrastructure, and well-qualified, trained and adequately paid personnel of all categories, are necessary for the good functioning of the justice system. Without adequate facilities, tools or personnel with the required qualifications, skills and access to continuous training, the quality of proceedings and decisions is at stake.

#### – Financial resources –

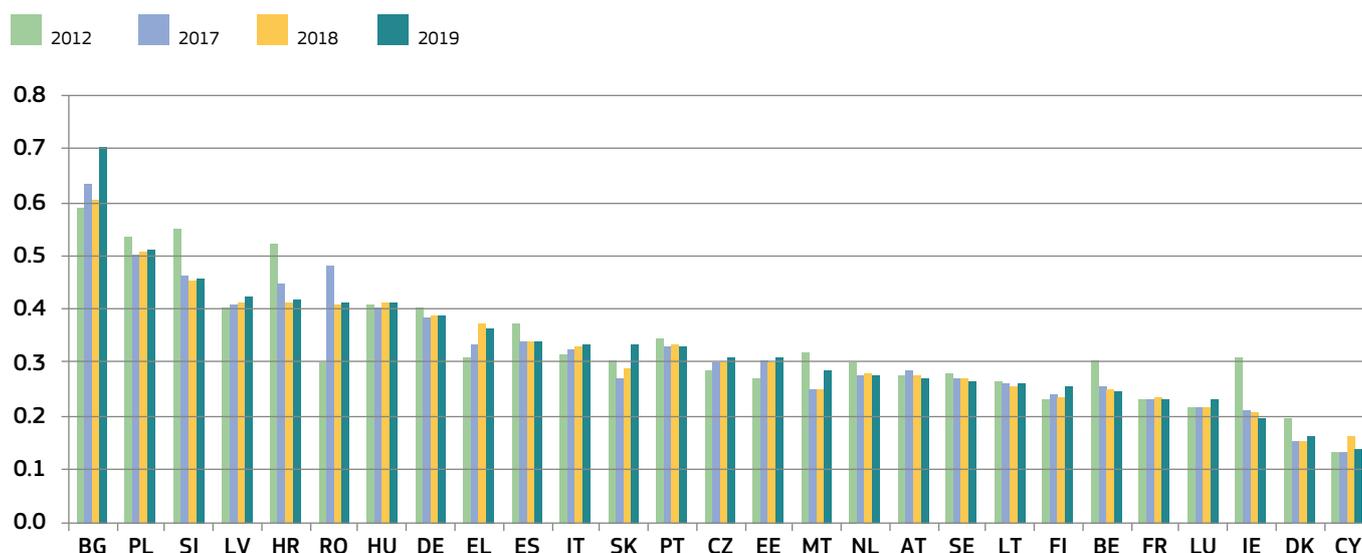
The figures below show the actual government expenditure on the operation of the justice system (excluding prisons), both per inhabitant (Figure 29) and as a share of gross domestic product (GDP) (Figure 30) and, finally, the main categories of expenditure on law courts (Figure 31) <sup>(62)</sup>.

**Figure 29 General government total expenditure on law courts in EUR per inhabitant, 2012, 2017 – 2019 (\*)**  
(source: Eurostat)



(\*) Member States are ordered according to the expenditure in 2019 (from highest to lowest). The following data are provisional: ES (2019), FR (2018, 2019), PT (2019) and SK (all years). Data extracted 08 April 2021.

**Figure 30 General government total expenditure on law courts as a percentage of GDP, 2012, 2017 – 2019 (\*)**  
(source: Eurostat)



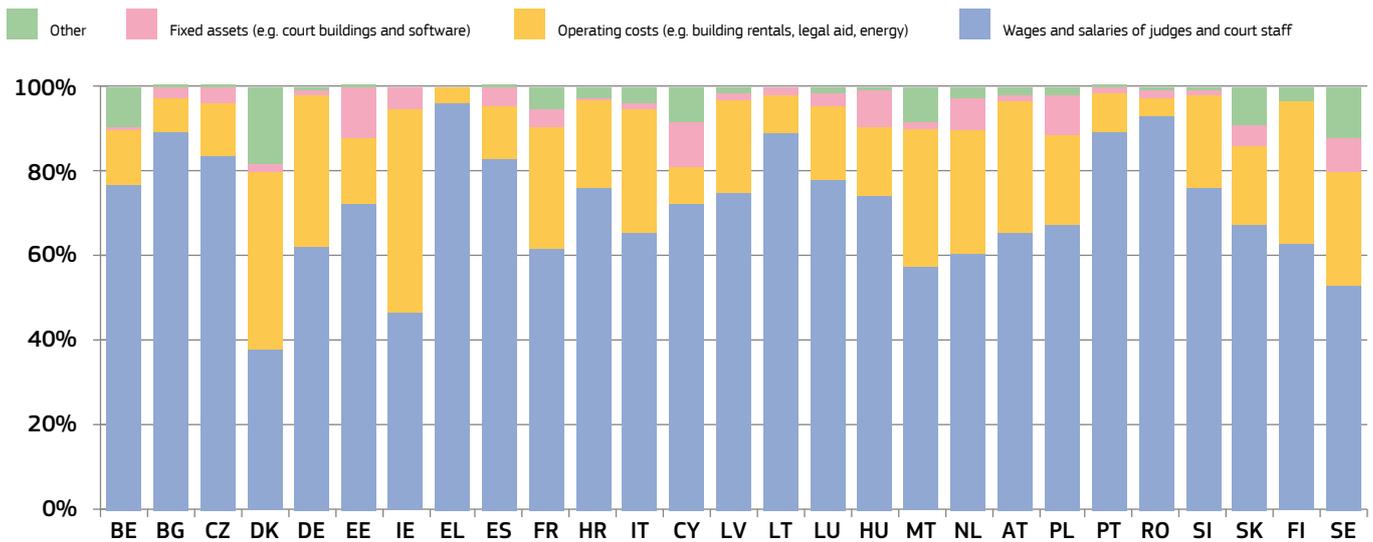
(\*) Member States are ordered according to the expenditure in 2019 (from highest to lowest). The following data are provisional: ES (2019), FR (2018, 2019), PT (2019) and SK (all years). Data extracted 08 April 2021.

62 General government total (actual) expenditure on the administration, operation or support of administrative, civil and criminal law courts and the judicial system, including enforcement of fines and legal settlements imposed by the courts and operation of parole probation systems, and legal aid as well as legal representation and advice on behalf of government or on behalf of others provided by government in cash or in services, excluding prison administrations (National Accounts Data, Classification of the Functions of Government (COFOG), group 03.3), Eurostat table gov\_10a\_exp, <http://ec.europa.eu/eurostat/data/database>

Figure 31 shows the main economic categories comprising government expenditure on law courts:

- 1) wages and salaries of judges and court staff, including social contributions ('compensation of employees' <sup>(63)</sup>);
- 2) operating costs for goods and services consumed by the law courts such as building rentals, office consumables, energy and legal aid ('intermediate consumption' <sup>(64)</sup>);
- 3) investment in fixed assets, such as court buildings and software ('gross fixed capital formation' <sup>(65)</sup>); and
- 4) other expenditure.

**Figure 31** General government total expenditure on law courts by category (\*) (in 2019, as a percentage of total expenditure) (source: Eurostat)



(\*) The following data are provisional: **ES** (2019), **FR** (2018, 2019), **PT** (2019) and **SK** (all years). Data extracted 08 April 2021.

63 Compensation of employees consists of wages and salaries in cash or in kind (D.11) and employer's actual and imputed social contributions (D.121 and D.122). See: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Compensation\\_of\\_employees](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Compensation_of_employees)

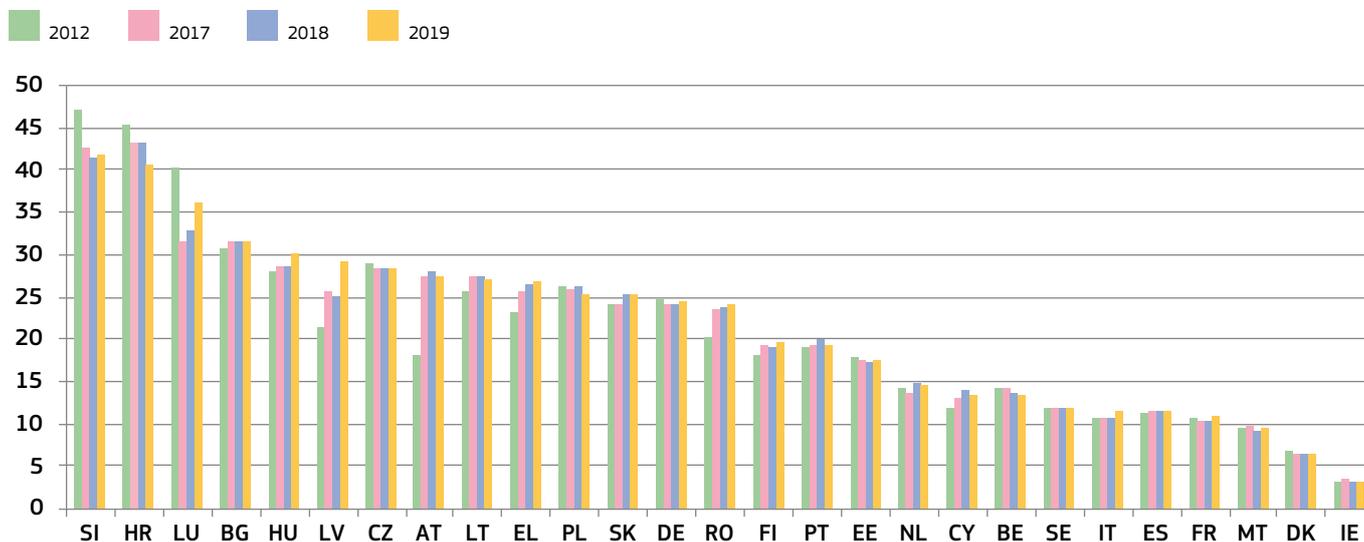
64 Intermediate consumption is a national accounts concept which measures the value of the goods and services consumed as inputs by a process of production. It excludes **fixed assets** whose consumption is recorded as consumption of **fixed capital**. The goods and services may be either transformed or used up by the production process. See [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Intermediate\\_consumption](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Intermediate_consumption)

65 Gross fixed capital formation, abbreviated as GFCF, consists of resident producers' investments, deducting disposals, in fixed **assets** during a given period. It also includes certain additions to the value of non-produced assets realized by producers or institutional units. Fixed assets are tangible or intangible assets produced as outputs from production processes that are used repeatedly, or continuously, for more than one year. See: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Gross\\_fixed\\_capital\\_formation\\_\(GFCF\)](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Gross_fixed_capital_formation_(GFCF))

– Human resources –

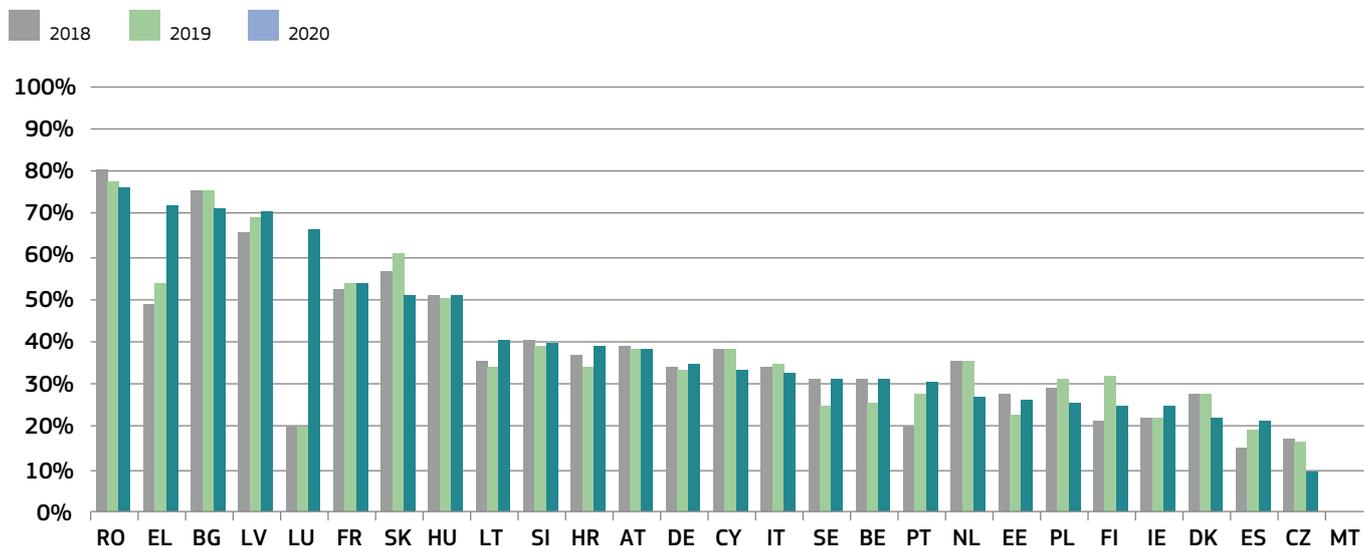
Adequate human resources are essential for the quality of a justice system. Diversity among judges, including gender balance, adds complementary knowledge, skills and experience and reflects the reality of society.

**Figure 32** Number of judges, 2012-2019 (\*) (per 100 000 inhabitants) (source: CEPEJ study)



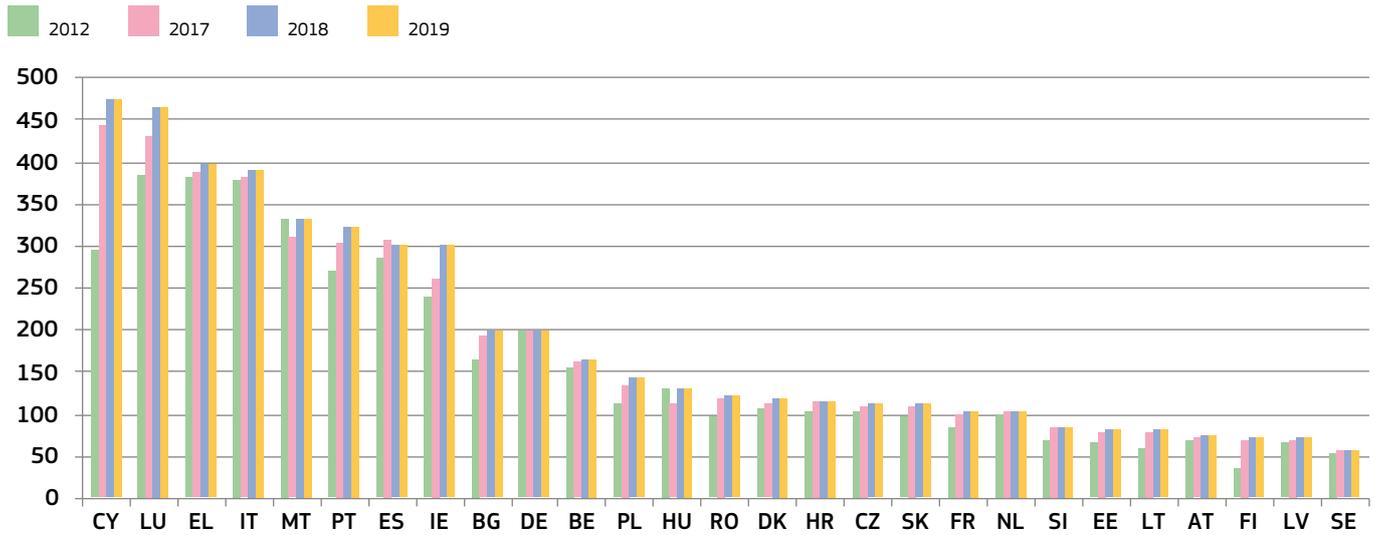
(\*) This category consists of judges working full-time, under the CEPEJ methodology. It does not include the Rechtspfleger/court clerks that exist in some Member States. **AT:** Data on administrative justice is introduced in the data since 2016. **EL:** Since 2016, data on number of professional judges includes all the ranks for criminal and political justice as well as administrative judges. **IT:** The regional audit commissions, local tax commissions and military courts are not taken into consideration. Administrative justice has been taken into account since 2018.

**Figure 33** Proportion of female professional judges at Supreme Courts 2018-2020 (\*) (source: European Commission <sup>(66)</sup>)



(\*) The data are sorted by 2020 values, from highest to lowest.

**Figure 34 Number of lawyers, 2012 - 2019 (\*)** (per 100 000 inhabitants) (source: CEPEJ study)

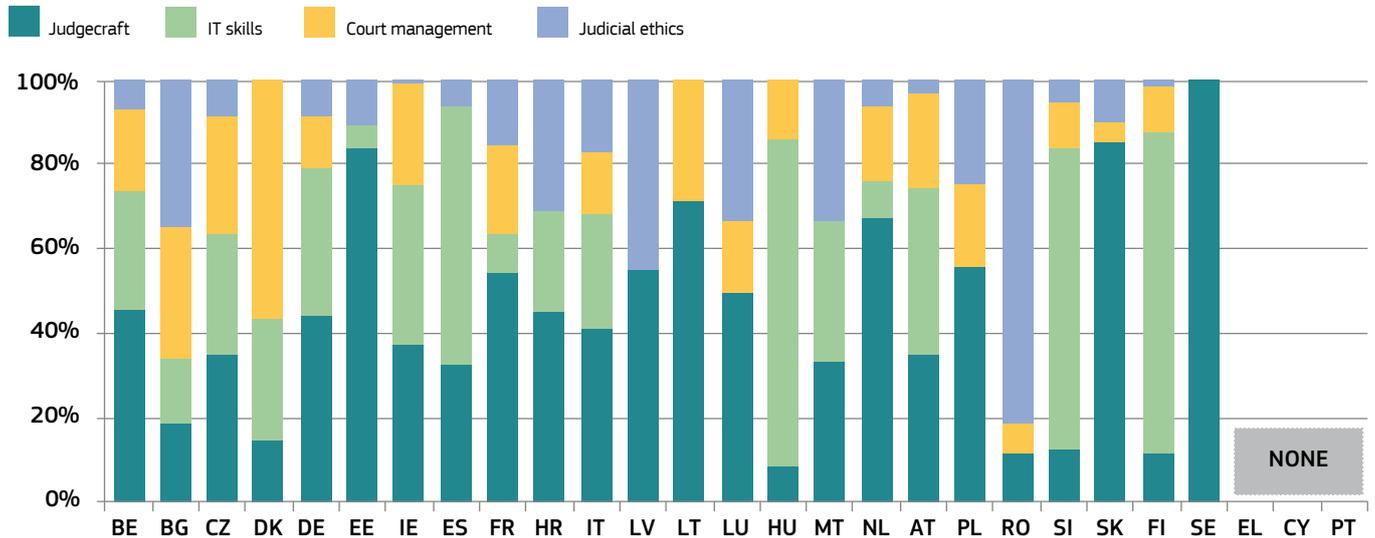


(\*) Under CEPEJ methodology a lawyer is a person qualified and authorised according to national law to plead and act on behalf of his or her clients, to engage in the practice of law, to appear before the courts or advise and represent his or her clients in legal matters (Recommendation Rec (2000)21 of the Committee of Ministers of the Council of Europe on the freedom of exercise of the profession of lawyer). **DE:** no distinction is made between different groups of lawyers in Germany, such as between solicitors and barristers. **FI:** since 2015, the number of lawyers provided includes both the number of lawyers working in the private sector and the number of lawyers working in the public sector.

– Training –

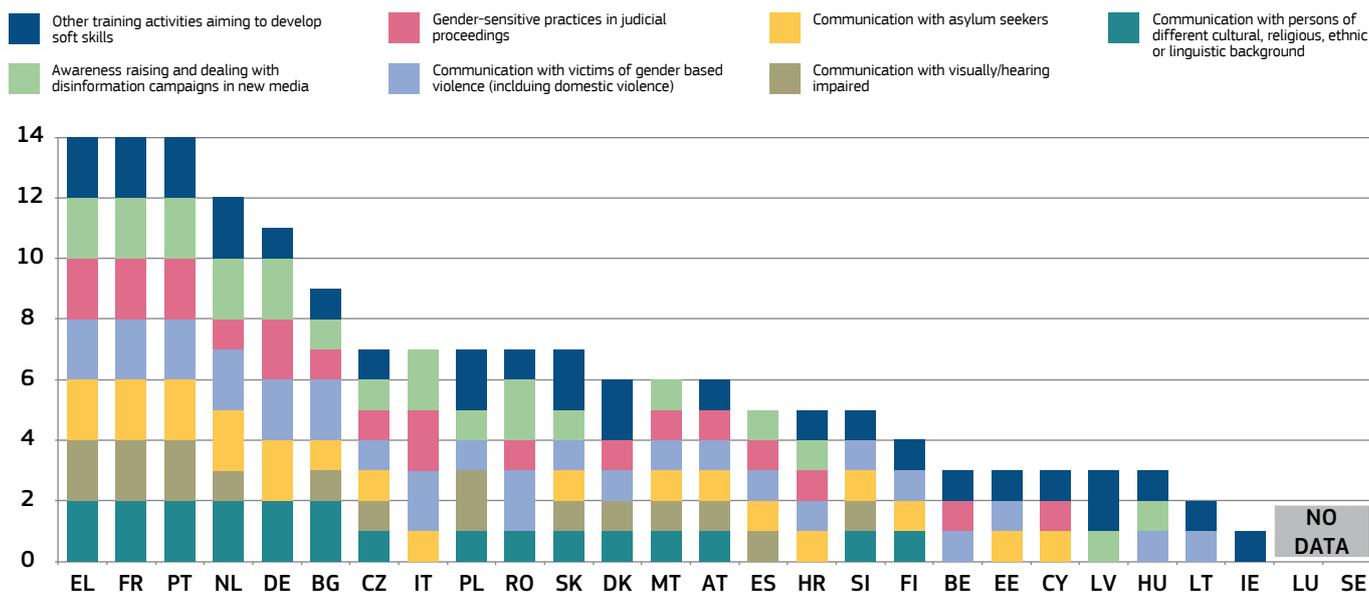
Judicial training is important in contributing to the quality of judicial decisions and the justice service delivered to citizens. The data set out below cover judicial training in a broad range of areas, including communication with parties and the press and judicial skills.

**Figure 35 Share of continuous training of judges on various types of skills, 2019 (\*)** (as a percentage of total number of judges receiving these types of training) (source: European Commission (67))



(\*) Figure 35 shows the distribution of judges participating in continuous training activities (i.e. those taking place after the initial training period to become a judge) in each of the four identical areas as a percentage of the total number of judges trained in these types of training. Legal training activities are not taken into account. Judicial training authorities in **EL**, **MT** and **PT** did not provide specific training activities on the selected skills. **DK:** including court staff. **AT:** including prosecutors.

**Figure 36 Availability of training in communication for judges, 2020 (\*)** (source: European Commission (68))

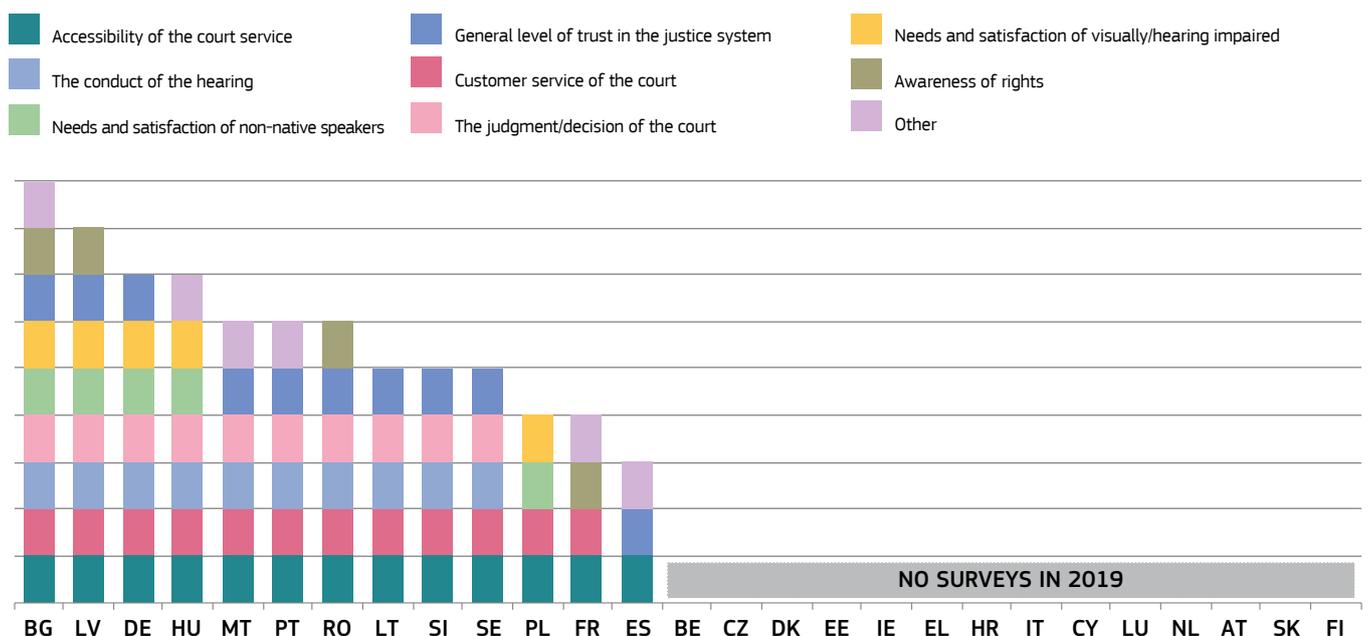


(\*) Maximum possible: 14 points. Member States were given 1 point if they have initial training and 1 point if they have continuous training (maximum of 2 points for each type of training). The source of the data changed as compared to previous editions of the Justice Scoreboard, affecting the comparability of the data. **DK:** Covid-19 pandemic had a major negative effect on the offer of continuous courses and seminars in 2020. **HU:** Some training courses had to be cancelled due to the COVID-19 pandemic.

### 3.2.3. Assessment tools

Regular evaluation could improve the justice system’s responsiveness to current and future challenges and therefore help the justice system increase its quality. Surveys (Figure 37) are essential in assessing how justice systems operate from the perspective of legal professionals and court users. An adequate follow-up on the surveys’ findings (Figure 38) is important to improving the quality of justice systems.

**Figure 37 Topics of surveys conducted among court users or legal professionals, 2019 (\*)** (source: European Commission (69))

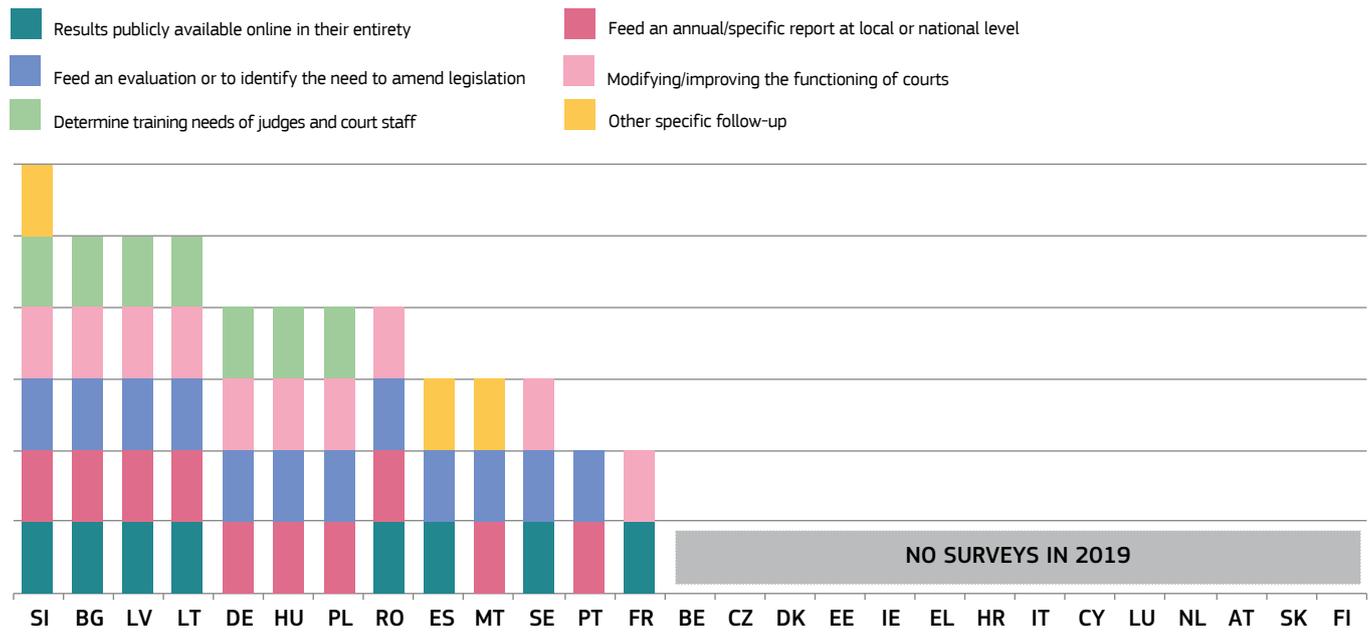


(\*) Member States were given one point per survey topic indicated regardless of whether the survey was conducted at national, regional or court level. ‘Other topics’ include: surveys among lawyers on the functioning of certain courts (ES); surveys among litigants on the work of certain courts (LV); survey among the judiciary and judicial assistants on a range of topics, incl. physical accessibility and facilities offered to children, respectful treatment of parties and the need for a sentencing policy (MT). In DE, a number of different surveys were carried out at the level of the federal states.

68 2020 data collected in cooperation with the European Judicial Training Network.

69 2019 data collected in cooperation with the group of contact persons on national justice systems.

**Figure 38 Follow-up of surveys conducted among court users or legal professionals, 2019 (\*)** (source: European Commission (70))



(\*) Member States were given one point per type of follow-up.

### 3.2.4. Digitalisation

The use of information and communication technologies (ICT) can strengthen the Member States' justice systems and make them more accessible, efficient, resilient and ready to face current and future challenges. The COVID-19 pandemic has also adversely impacted national justice systems and has highlighted a number of challenges affecting the functioning of the judiciary.

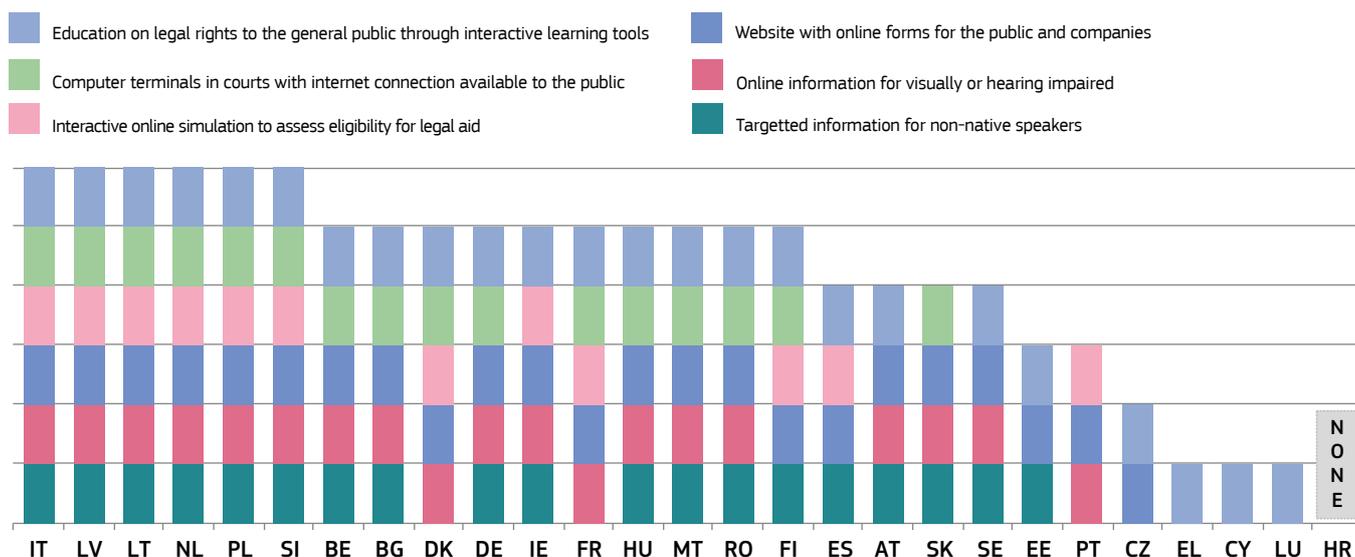
Earlier editions of the EU Justice Scoreboard provided comparative data on certain aspects of the ICT in justice systems. As announced in the Commission's Communication on the digitalisation of justice in the EU of 2 December 2020 (71), the Scoreboard has been substantially augmented with further data on digitalisation in the Member States. This should allow for more in-depth monitoring of progress areas and outstanding challenges.

Citizen-friendly justice requires that information about national judicial systems is not only easily accessible but is also tailored to specific groups of society that would otherwise have difficulties in accessing the information. Figure 39 shows the availability of online information on specific aspects of national judicial systems and for specific groups of society.

70 2019 data collected in cooperation with the group of contact persons on national justice systems.

71 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Digitalisation of justice in the European Union: A toolbox of opportunities' COM(2020)710 and accompanying SWD(2020)540.

**Figure 39 Availability of online information about the judicial system for the general public, 2020(\*)** (source: European Commission (72))



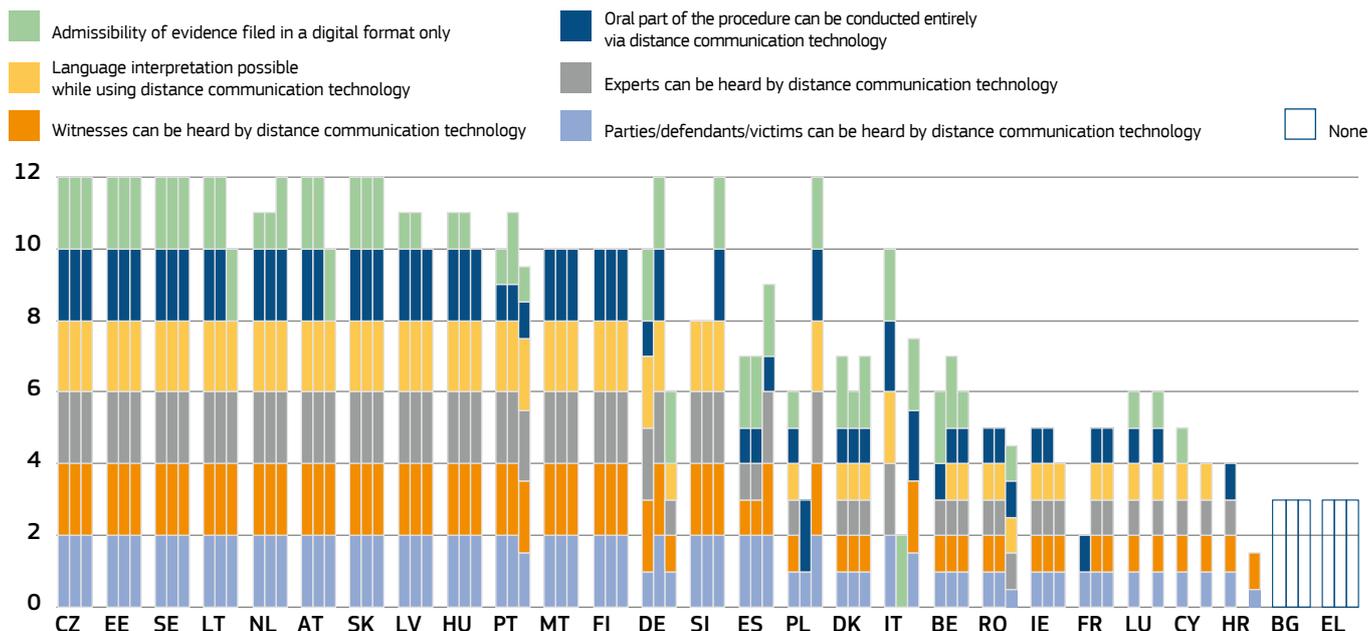
(\*) DE: Each federal state as well as the federal level decide individually which information to provide online.

– Digital-ready rules –

The use of digital solutions in civil/commercial, administrative and criminal cases often requires appropriate regulation in national procedural rules. Figure 40 illustrates the possibility for various actors to participate by distance communication technology (such as videoconferencing), and reflects the current situation with respect to admissibility of digital evidence.

**Figure 40 Procedural rules allowing digital technology in courts in civil/commercial, administrative and criminal cases (\*)**

For each Member State, the three columns represent procedural rules allowing digital technology in courts in the following types of cases (from left to right):  
 1. civil/commercial cases  
 2. administrative cases  
 3. criminal cases.



(\*) Maximum possible: 12 points. For each criterion, two points were given if the possibility exists in all civil/commercial, administrative and criminal cases, respectively (in criminal cases, the possibility of hearing the parties was split to cover both defendants and victims). The points are divided by two when the possibility does not exist in all cases. For those Member States that do not distinguish civil/commercial and administrative cases, the same number of points has been given for both areas. LU, CY and HR: none for administrative cases.

72 2020 data collected in cooperation with the group of contact persons on national justice systems.

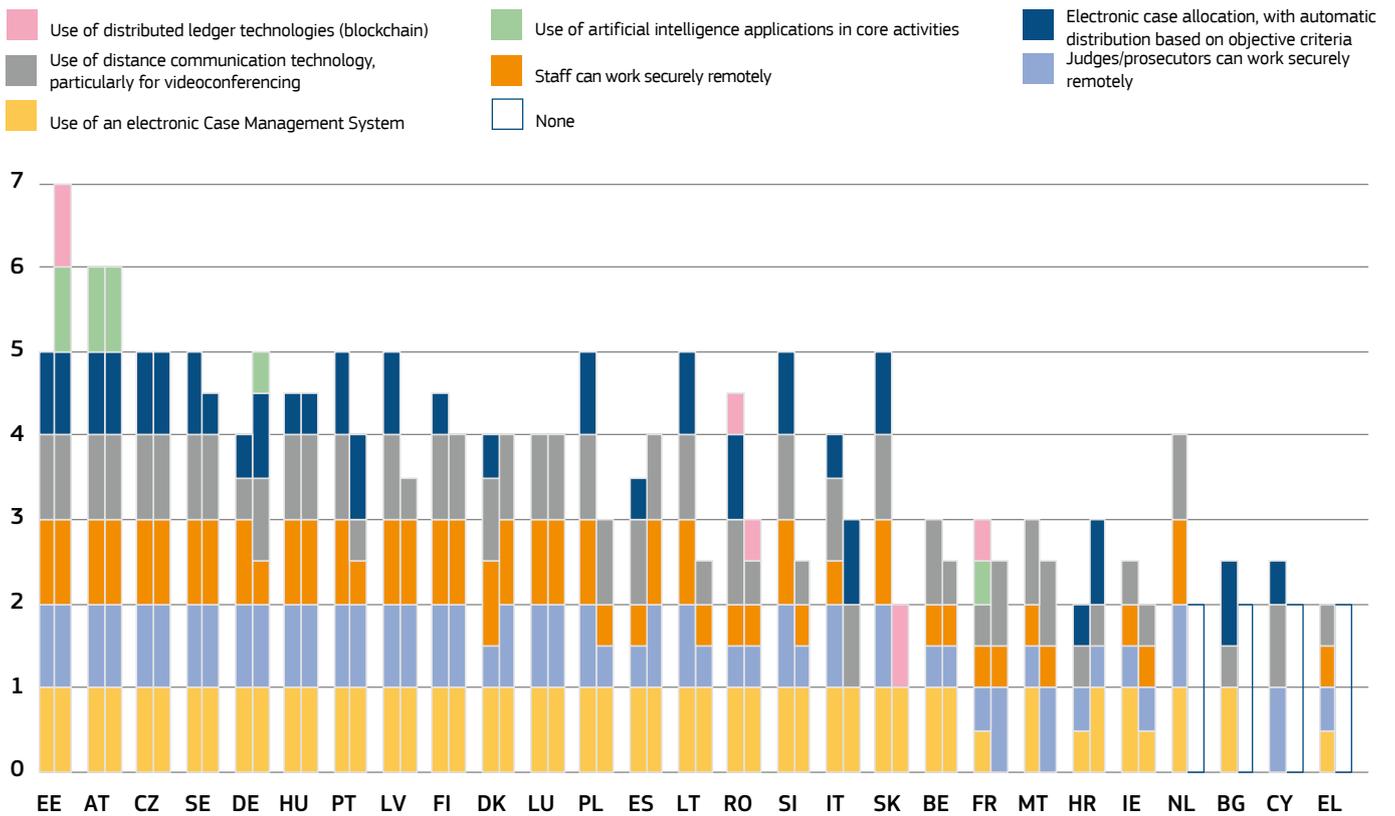
– Use of digital tools –

Beyond digital-ready procedural rules, courts and prosecution services need to have in place the appropriate tools and infrastructure allowing for distance communication and secure remote access to the workplace (Figure 41). Adequate infrastructure and equipment is needed also for the secure electronic communication between courts/prosecution services and legal professionals and institutions (Figures 42 and 43).

ICT, including innovative technology, plays an important role in supporting the work of judicial authorities, thus significantly contributing to the quality of justice systems. The availability of various digital tools at the disposal of judges, prosecutors and judicial staff can streamline work processes, ensure fair workload allocation and lead to a significant time reduction.

**Figure 41 Use of digital technology by courts and prosecution services (\*)**

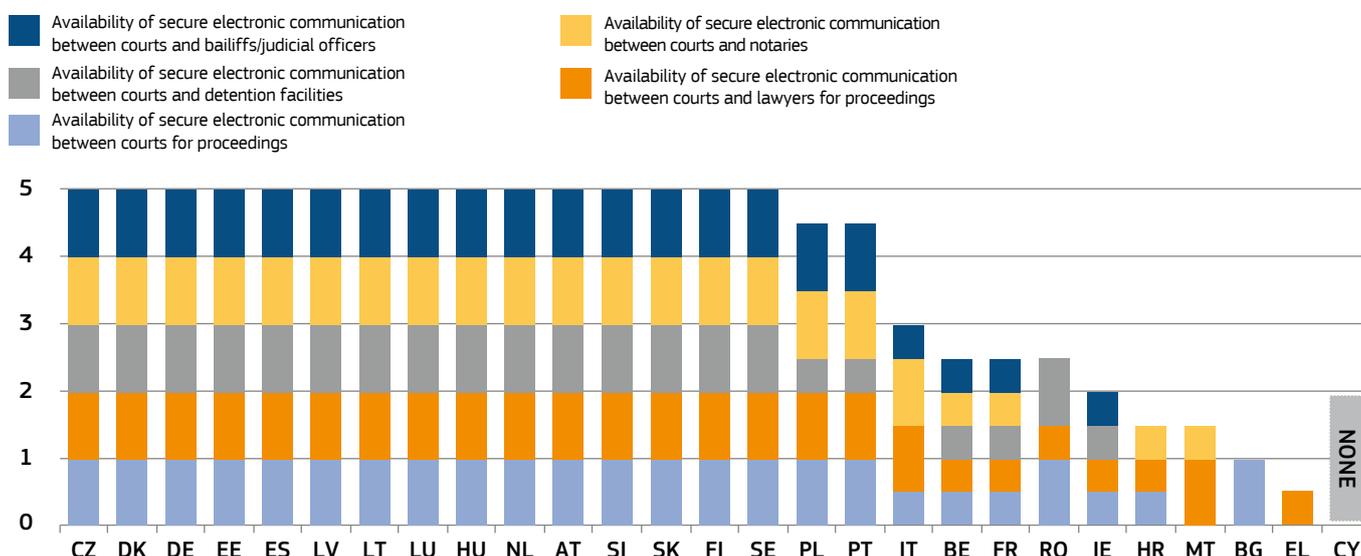
For each Member State, the two columns represent the use of digital technology in the following authorities (from left to right):  
 1. courts  
 2. prosecution service



(\*) Maximum possible: 7 points. For each criterion, one point was given if courts and prosecution services, respectively, use a given technology and 0.5 point was awarded when the technology is not always used by them.

Secure electronic communication can contribute to improving the quality of justice systems. The possibility for courts to communicate electronically between themselves, as well as with legal professionals and other institutions, can streamline processes and reduce the need for paper-based communication and physical presence, which would lead to a reduction in the length of pre-trial activities and court proceedings.

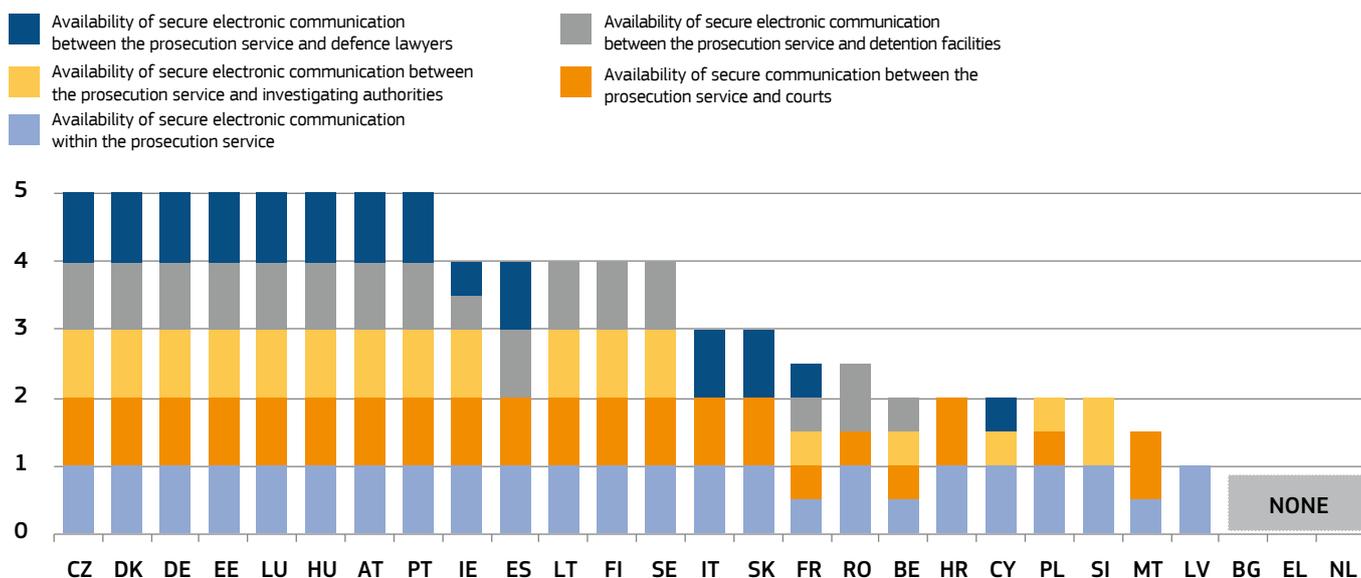
**Figure 42 Courts: electronic communication tools (\*)**



(\*) Maximum possible: 5 points. For each criterion, one point was given if secure electronic communication is available for courts. 0.5 was awarded when the possibility does not exist in all cases.

Prosecution services are essential for the functioning of the criminal justice system. They can also benefit from having access to a secure electronic channel of communication, which could facilitate their work and lead to improved quality of court proceedings. The possibility for secure electronic communication between prosecution services and investigating authorities, defence lawyers and courts would support the more expedient and efficient preparation of the proceedings before the court.

**Figure 43 Prosecution service: electronic communication tools (\*)**



(\*) Maximum possible: 5 points. For each criterion, one point was given if secure electronic communication is available for prosecution services. 0.5 was awarded when the possibility does not exist in all cases. Availability of electronic communication tools within prosecution service includes communication with lawyers employed by the prosecution service.

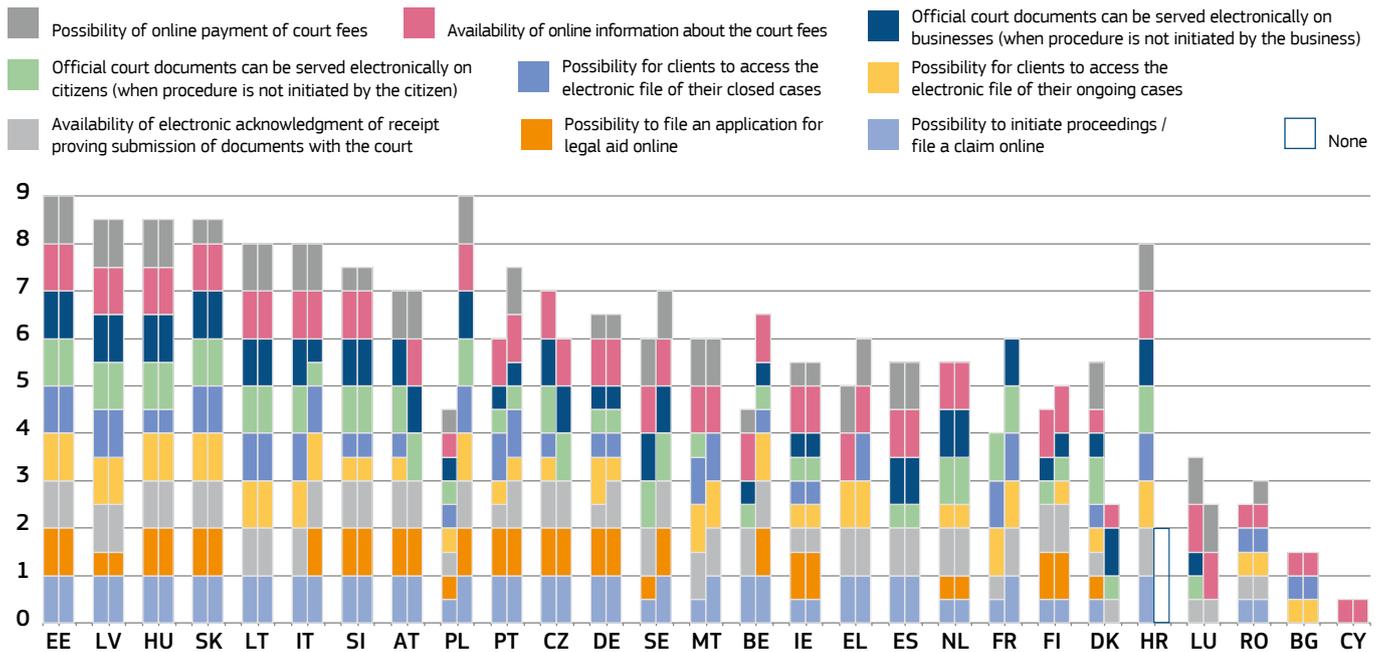
## – Online access to courts –

The ability to complete specific steps in a judicial procedure by electronic means is an important part of the quality of justice systems. The electronic submission of claims, the possibility to monitor and advance a proceeding online, or affect electronic service of document can tangibly facilitate access to justice for citizens and businesses (or their legal representatives) and reduce delays and costs. Availability of such digital public services would assist in taking courts one step closer to citizens and businesses, and by extension lead to an increased trust in the justice system.

**Figure 44 Digital solutions to initiate and follow proceedings in civil/commercial and administrative cases (\*)**

For each Member State, the two columns represent the digital solutions to initiate and follow proceedings in the following types of cases (from left to right):

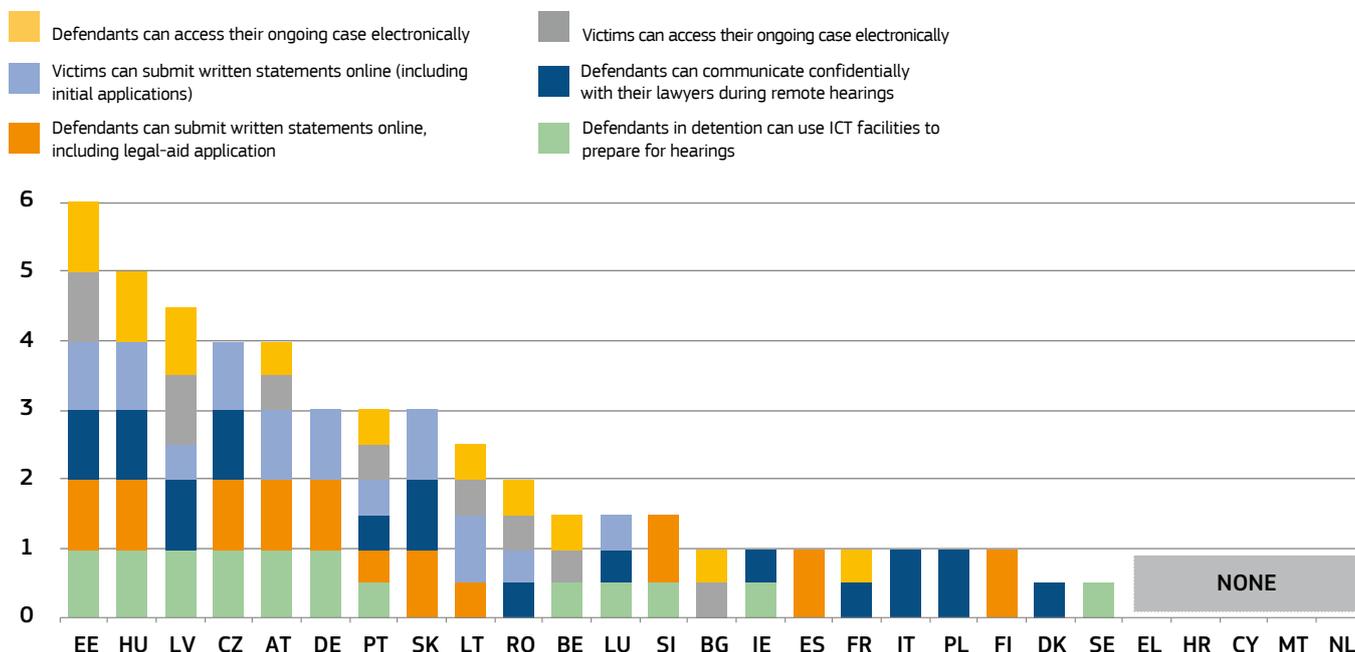
1. civil/commercial cases
2. administrative cases



(\*) Maximum possible: 9 points. For each criterion, one point was given if the possibility exists in all civil/commercial and administrative cases, respectively. 0.5 point was awarded when the possibility does not exist in all cases. For those Member States that do not distinguish civil/commercial and administrative cases, the same number of points has been given for both areas. **HR**: none for administrative cases.

The use of digital tools for conducting and following court proceedings in criminal cases, can also help guarantee the rights of victims and defendants. For example, digital solutions can provide for confidential remote communication between defendants and their lawyers, allow defendants in detention to prepare for their hearing, or assist victims of crime in avoiding secondary victimisation.

**Figure 45 Digital solutions to conduct and follow court proceedings in criminal cases (\*)**



(\*) Maximum possible: 6 points. For each criterion, one point was given if the possibility exists in all criminal cases. 0.5 point was awarded when the possibility does not exist in all cases.

– Access to judgments –

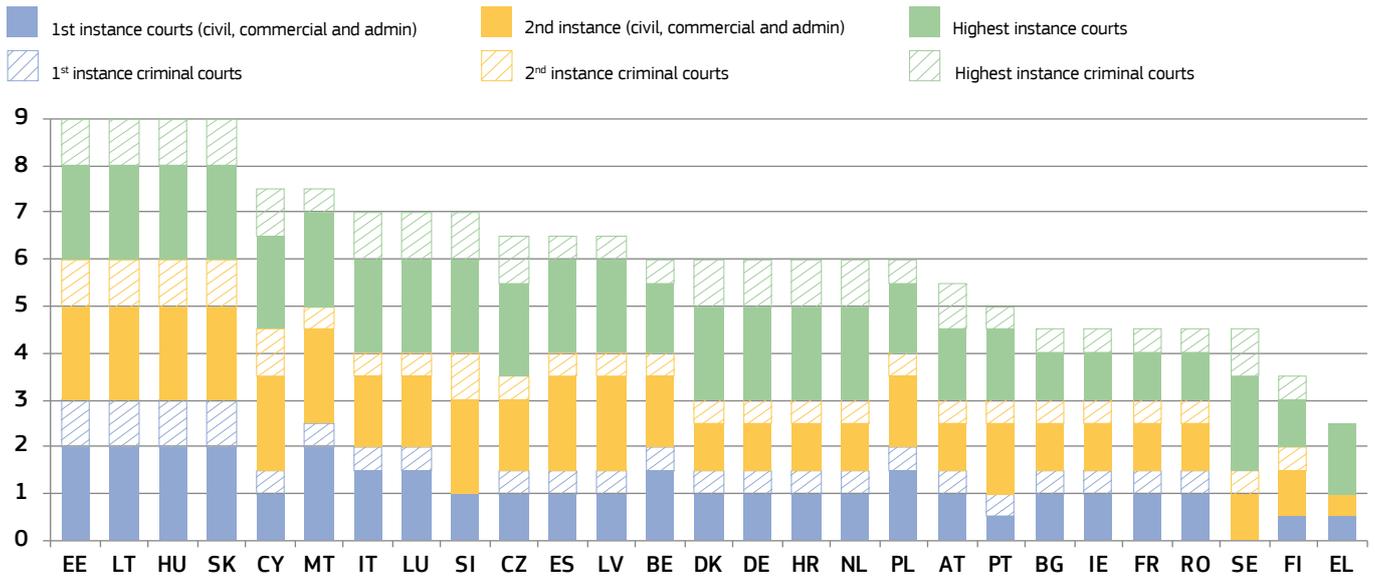
Ensuring online access to judgments increases the transparency of justice systems, helps citizens and businesses understand their rights and can contribute to consistency in case-law. The arrangements for online publication of judicial decisions are essential for creating user-friendly search facilities (73) that make case-law more accessible to legal professionals and the general public. Seamless access to and easy reuse of case-law enables innovative ‘legal tech’ applications supporting practitioners.

The online publication of court decisions requires balancing a variety of interests, within the boundaries set by legal and policy frameworks. The General Data Protection Regulation (74) fully applies to the processing of personal data by courts. A fair balance has to be struck between the right to data protection and the right to publicity of court decisions and transparency of the justice system when assessing what data are to be made public. This is particularly the case where there is prevailing public interest that justifies the disclosure of those data. In many countries, the law or practice requires the anonymisation or pseudonymisation (75) of judicial decisions before publication, either in a systematic manner or upon request. Data produced by the judiciary are also governed by EU legislation on open data and the reuse of public sector information (76).

The availability of judicial decisions in a machine-readable format (77) facilitates an algorithm-friendly justice system (78).

73 See Best practice guide for managing Supreme Courts, under the project Supreme Courts as guarantee for effectiveness of judicial systems, p. 29.  
 74 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).  
 75 Anonymisation/pseudonymisation is more efficient if assisted by an algorithm. However, human supervision is needed, since the algorithms do not understand context.  
 76 Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (OJ L 345, 31.12.2003, p. 90) and Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56).  
 77 Judgments modelled according to standards (e.g. Akoma Ntoso) and their associated metadata are downloadable free of charge in the form of a database or by other automated means (e.g. Application Programming Interface).  
 78 See also Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A European strategy for data, COM(2020) 66 final, Commission White Paper on Artificial Intelligence – A European approach to excellence and trust, COM(2020) 65 final, and Conclusions of the Council and the representatives of the Governments of the Member States meeting within the Council on Best Practices regarding the Online Publication of Court Decisions (OJ C 362, 8.10.2018, p. 2).

**Figure 46 Online access to published judgments by the general public, 2020 (\*) (civil/commercial, administrative and criminal cases, all instances)** (source: European Commission (79))

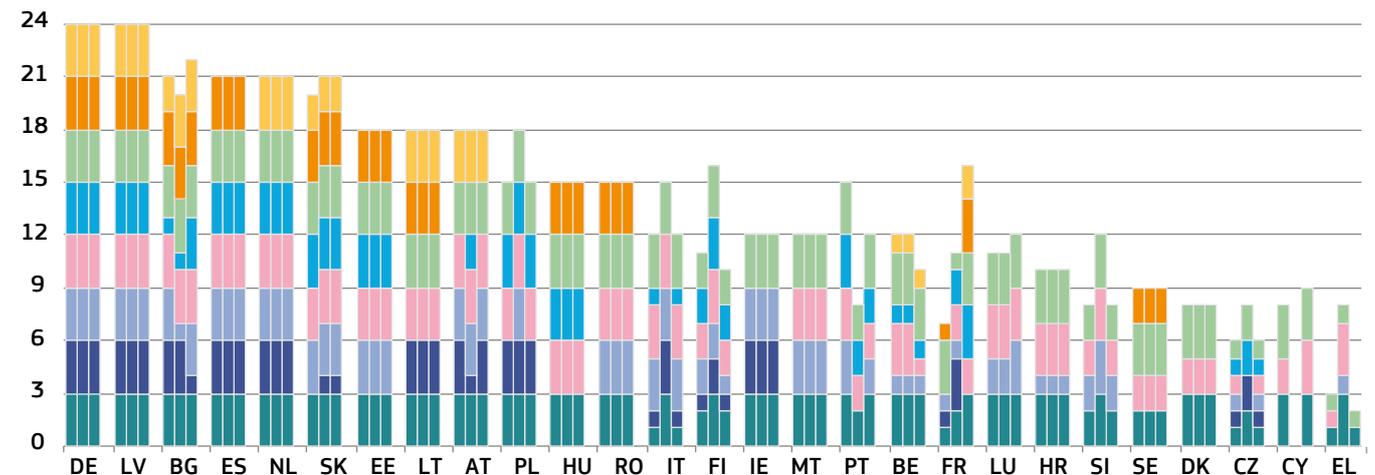


(\*) Maximum possible: 9 points. For each court instance, one point was given if all judgments are available for civil/commercial and administrative and criminal cases respectively and 0.5 points when some judgments are available. For Member States with only two court instances, points have been given for three court instances by mirroring the respective higher instance court of the non-existing instance. For those Member States that do not distinguish the two areas of law (civil/commercial and administrative), the same number of points has been given for both areas. **BE**: for civil and criminal cases, each court is in charge of deciding on the publication of its own judgments. **DE**: each federal state decides on online availability of first instance judgments. **IE**: for criminal cases, summary cases are not generally the subject of a written judgment. **AT**: for first and second instance, judges decide which judgments are published. Decisions of the Supreme Court, that reject an appeal without substantial reasoning are not published. **NL**: courts decide on publication according to published criteria. **PT**: for civil and criminal cases, a commission within the court decides on the publication. **SK**: for civil and criminal cases, decisions given in proceedings in which the public is excluded from trial and payment orders are not published. **FI**: courts decide which judgments are published.

**Figure 47 Arrangements for producing machine-readable judicial decisions, 2020 (\*) (civil/commercial, administrative and criminal cases, all instances)** (source: European Commission (80))

For each Member State, the three columns represent the arrangements in place for the following types of cases (from left to right):

1. civil/commercial cases
2. administrative cases
3. criminal cases.



(\*) Maximum possible: 24 points per type of cases. For each of the three instances (first, second, final) one point can be given if all judicial decisions are covered. If only some judicial decisions are covered at a given instance, only half point is awarded. Where a Member State has only two instances, points have been given for three instances by mirroring the respective higher instance as the non-existing instance. For those Member States that do not distinguish between administrative and civil/commercial cases, the same points have been allocated for both areas of law. **ES**: The use of the General Council for the Judiciary (CGPJ) database for commercial purposes, or the massive download of information is not allowed. The reuse of this information for the elaboration of databases or for commercial purposes must follow the procedure and conditions established by the CGPJ through its Judicial Documentation Centre. **IE**: Anonymising of judgments is done in criminal proceedings (i.e. where statute requires, or a judge has, in accordance with principles established in case-law, directed, that the identities of parties or persons not be disclosed), and the authoring judge is required to indicate the redaction to be made to any content which would tend to identify a person whose identity should be protected.

79 2020 data collected in cooperation with the group of contact persons on national justice systems.

80 2020 data 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, sufficient resources, effective assessment tools and digitalisation are the factors that contribute to a high quality of justice systems. Citizens and business expect high quality decisions from an effective justice system. The 2021 EU Justice Scoreboard develops its comparative analysis of these factors.

#### Accessibility

This edition looks again at a number of elements contributing to a citizen-friendly justice system:

- The availability of **legal aid and the level of court fees** have a major impact on access to justice, in particular for people in poverty. Figure 23 shows that in some Member States, consumers whose income is below the Eurostat poverty threshold would not receive legal aid. Compared to 2019, the accessibility of legal aid has been tightened in about a third of the Member States and widened in five Member States, especially regarding partial legal aid. This development is in line with the longer-term trend, where legal aid has become less accessible in some Member States. The level of court fees (Figure 24) has remained largely stable since 2016, although several Member States have raised the level of court fees for low value claims. The burden of court fees continues to be proportionally higher for low value claims. The difficulty in benefiting from legal aid combined with high levels of court fees in some Member States could have a dissuasive effect for people in poverty to access justice.
- The level of **court fees for commercial litigation** (Figure 25) varies greatly among Member States (ranging from 0.1% to 6% of the value of the claim), with only two Member States having no court fee at all. Figure 26 shows **to what extent legal costs can be recovered** by the winning party in a commercial case. Large differences regarding the recoverability of legal fees for the litigious phase appear both between Member States with and without a statutory fee system as well as within these groups (in particular between more and less generous statutory fee systems). In addition, in many Member States, recoverability of legal costs depends on the courts' discretion. The level of generosity of the system for recovering legal fees can have either incentivising or deterring effects on the probability of filing a case, and therefore on the overall access to justice.
- The 2021 EU Justice Scoreboard extends the analysis of the ways in which the Member States promote voluntary use of **alternative dispute resolution methods** (ADR) (Figure 27) for private disputes, in particular the possibility of using digital technologies. Seventeen Member States provide for a possibility to initiate proceedings or file a claim and submit documentary evidence online in at least certain types of disputes. In 19 Member States, parties can be informed electronically of the initiation and different steps of the procedure and in 12 Member States, they can pay applicable fees online. In 8 Member States, technologies like artificial intelligence applications or chatbots can be used to ease submitting and resolving disputes.
- For the second time, the 2021 EU Justice Scoreboard presents a consolidated overview of the measures taken by Member States for a **child-friendly justice system** (Figure 28). All Member States make at least some accommodations, most frequently having measures for child-friendly hearings (including the settings) and for preventing several hearings of a child. Almost all Member States also provide training courses for judges on child-friendly justice.

#### Resources

High quality justice systems in Member States require sufficient levels of financial and human resources, including the necessary investments in physical and technical infrastructure, appropriate initial and continuous training, as well as diversity among judges, including gender balance. The 2021 EU Justice Scoreboard shows:

- In terms of **financial resources**, the data show that, overall, in 2019, general government total expenditure on law courts continued to remain mostly stable in Member States, with significant differences in actual amounts, both in EUR per inhabitant and as a percentage of GDP between Member States persisting (Figures 29 and 30). Almost all Member States increased their expenditure per capita in 2019 (an increase compared to 2018) and a majority also increased their expenditure as percentage of GDP.
- As in 2020, the 2021 EU Justice Scoreboard also shows the **breakdown of total expenditure into different categories** based on data gathered by Eurostat. Figure 31 shows major differences in spending patterns among Member States. On the one hand, while the wages and salaries of judges and court staff (including social contributions) represent the biggest share in most Member States, investment into fixed assets such as court buildings and software represents a lower share. On the other hand, the expenditure on operating costs (e.g. building

rentals, legal aid and other consumables) is significantly higher in a few Member States than in most others. This breakdown has remained relatively stable year-on-year.

- **Women** still represent less than 50 per cent of judges at the **level of Supreme Courts** in most Member States (Figure 33). The evolution over the three year period from 2018 to 2020 shows that trends diverge between Member States, but the proportion of female judges at Supreme Courts has risen since 2010 in most Member States.
- On the **training of judges**, while almost all Member States provide at least some continuous training on judgecraft, fewer offer training on IT skills, court management and judicial ethics. Compared to the preceding year, the share of judges participating in training on IT skills grew slightly (Figure 35). On training to communicate with vulnerable groups of parties (Figure 36), most Member States provide training concerning victims of gender based violence and more than half of the Member States provide training on gender sensitive practices, asylum seekers or persons with different cultural, religious, ethnic or linguistic background. Training on communication with visually or hearing impaired persons is available in about half of the Member States. Training on awareness raising and dealing with disinformation is available only in slightly more than half of the Member States.

### Assessment tools

- The **use of surveys** among court users and legal professionals (Figure 37) was slightly higher in 2019 than in the preceding years, with a stable number of Member States opting not to conduct any surveys. However, there seems to be some variance as to which Member States did not conduct surveys, indicating that sometimes surveys are conducted only every other/every few years. Accessibility, customer service, court hearings and judgments, as well as the overall trust in the justice system, remain recurring topics for surveys, but only a few Member States inquired about the satisfaction of groups with special needs or about individuals' awareness of their rights. All Member States who used surveys also ensured follow-up (Figure 38), although the extent of this follow-up continued to vary greatly. Results generally fed into annual or specific reports and in many Member States they fed an evaluation or were used to identify the need to amend legislation.

### Digitalisation

- As of its 2021 edition, the EU Justice Scoreboard includes an extended component examining in detail aspects related to the digitalisation of justice. Although most Member States already use digital solutions in different contexts and to varying degree, there is significant room for improvement.
- Almost all Member States provide access to **some online information** about their judicial system, including a centralised web portal with online forms and interactive education on legal rights (Figure 39). Differences appear on the content of the information and how adequate it is to respond to people's needs. For example, only a limited number of Member States (12) enable people to find out whether they are eligible for legal aid through an interactive online simulation. However, a website with online forms for the public and companies or information for non-native speakers are available in the majority of Member States.
- Less than half of the Member States have **digital-ready procedural rules**, which allow for the use of distance communication and for the admissibility of evidence in digital format only. In the remaining Member States this is possible only in limited situations.
- On the **use of digital technology by courts and prosecution services**, the majority of Member States already have different digital tools at the disposal of courts, prosecutors and staff members. While most Member States have in place case-management systems, videoconferencing systems and the possibility for teleworking, there is still a need for further progress in view of making automatic case allocation systems, artificial intelligence and blockchain-based tools more widely available.
- In most Member States courts have at their disposal **secure electronic tools for communication**. However, in a number of Member States courts are able to communicate via secure electronic solutions only with certain legal professionals and/or national authorities. In the case of prosecution services, less than one third of Member States comprehensively provide for secure electronic communication with legal professionals and national institutions.
- In civil/commercial and administrative cases, most Member States provide citizens and businesses (or their legal representatives) with **online access to their ongoing or closed cases**, albeit in various degrees. Nevertheless, in criminal cases in the majority of Member States defendants and victims have very limited possibilities to follow or carry out part of their case using digital solutions, while in some Member States this possibility does not exist.

- Compared to previous years, **online access to court judgments** (Figure 46) has not progressed, particularly for the publication of judgments at the highest instance: 17 Member States publish all civil/commercial and administrative judgments and 15 Member States also publish criminal judgments at the highest instance. These numbers invite all Member States to further improve as decisions at the highest instance play an important role for the consistency of case-law. Publication of judgments at second instance courts has not progressed either. In 2020, only 9 Member States published all civil/commercial and administrative judgments of second instance courts online and 6 Member States did so for second instance criminal judgments, which is less than in 2019.
- The 2021 EU Justice Scoreboard continues to analyse **arrangements in place in the Member States that can help to produce machine-readable judicial decisions** (Figure 47). All Member States have at least some arrangements in place for civil/commercial, administrative and criminal cases where a considerable variance among the Member States can be observed. It appears that administrative courts are relatively more advanced at creating the enabling factors for an algorithm-friendly justice system. In general, a tendency to introduce more arrangements can be observed, particularly for the availability of metadata in judgments on key words, date of decisions and the regulation of personal data in the published judgments. Compared to 2019, most Member States reported an improvement in 2020. Justice systems where arrangements for modelling judgments according to standards enabling their machine readability have been put in place seem to have the potential to achieve better results in the future.

### 3.3. Independence

Judicial independence, which is integral to the task of judicial decision-making, 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 court or tribunal enshrined in Article 47 of the Charter of Fundamental Rights of the EU<sup>(81)</sup>. That requirement presumes:

(a) **external independence**, when the body concerned exercises its functions autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions; and

(b) **internal independence and impartiality**, when an equal distance is maintained from the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings<sup>(82)</sup>.

Judicial independence guarantees that all the rights that individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded<sup>(83)</sup>. Preserving the EU legal order is fundamental for all citizens and business whose rights and freedoms are protected under EU law.

The perceived independence of the judiciary is a growth-enhancing factor, as a perceived lack of independence can deter investments<sup>(84)</sup>. 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. Reflecting the input from the European Network of Councils for the Judiciary (ENCJ), the Network of the Presidents of the Supreme Judicial Courts of the EU (NPSJC), and from the Expert Group on Money Laundering and Financing of Terrorism, the Scoreboard shows indicators on authorities involved and status of candidates for the appointment of Supreme Court judges, an overview of the hierarchical powers within the prosecution services, as well of the possibility to have a review of a decision of a prosecutor not to prosecute a case.

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

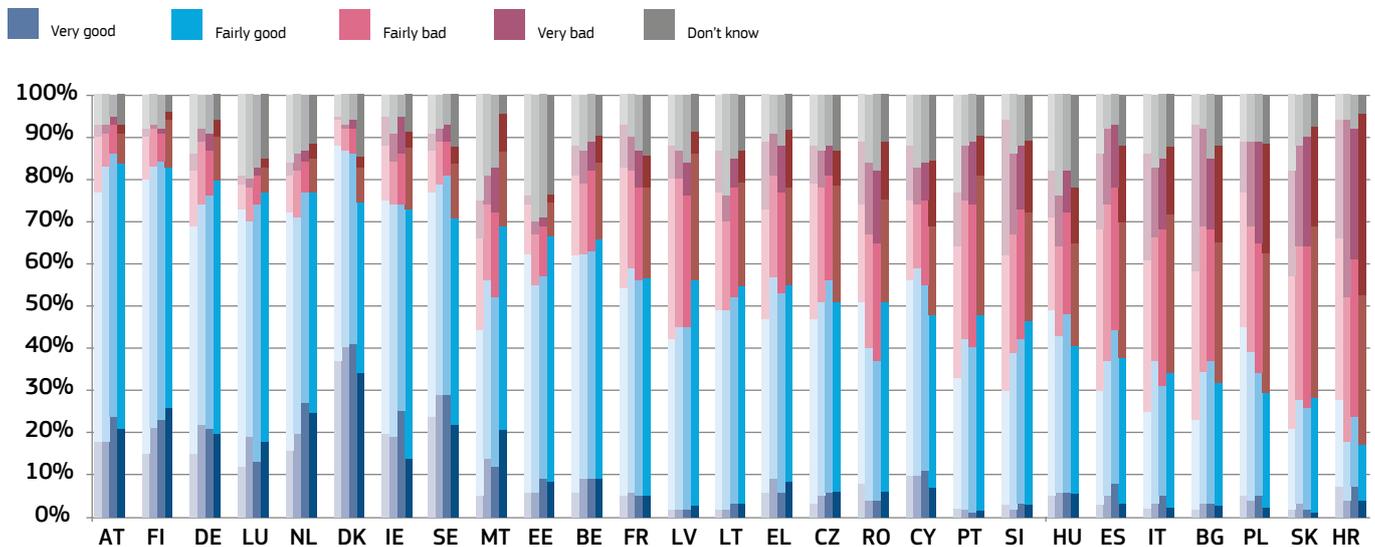
82 Court of Justice, judgment of 19 November 2019, *A. K. and Others*, C-585/18, C-624/18 and C-625/18, ECLI:EU:C:2019:982, paras. 121 and 122; judgment of 24 June 2019, *Commission v. Poland*, C-619/18, ECLI:EU:C:2019:531 paras. 73 and 74; judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117, para. 44; judgment of 25 July 2018, *Minister for Justice and Equality*, C-216/18 PPU, EU:C:2018:586, para. 65.

83 Court of Justice, judgment of 24 June 2019, *Commission v. Poland*, C-619/18, ECLI:EU:C:2019:531 para. 44.

84 In 2020, the World Economic Forum has not published the Global Competitiveness Index (GCI) rankings due to the COVID-19 pandemic.

### 3.3.1. Perceived judicial independence

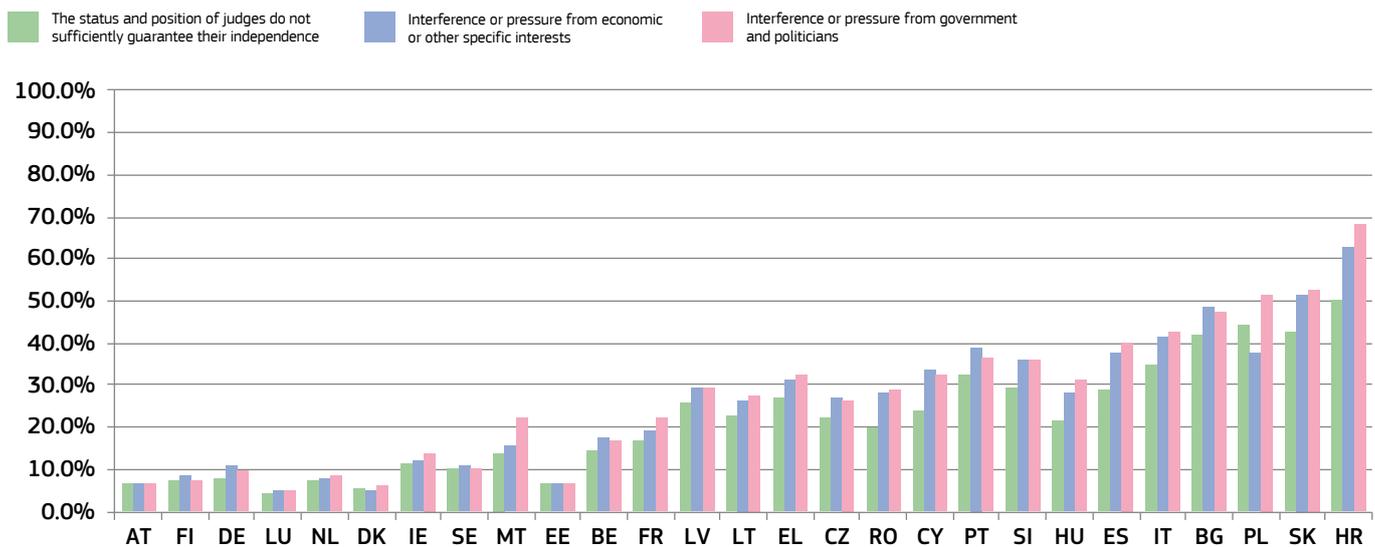
**Figure 48 Perceived independence of courts and judges among the general public (\*)** (source: Eurobarometer <sup>(85)</sup> — light colours: 2016, 2019 and 2020, dark colours: 2021)



(\*) Member States are ordered first by the percentage of respondents who stated that the independence of courts and judges is very good or fairly good (total good); if some Member States have the same percentage of total good, then they are ordered by the percentage of respondents who stated that the independence of courts and judges is fairly bad or very bad (total bad); if some Member States have the same percentage of total good and total bad, then they are ordered by the percentage of respondents who stated that the independence of courts and judges is very good; if some Member States have the same percentage of total good, total bad and of very good, then they are ordered by the percentage of respondents who stated that the independence of courts and judges is very bad.

Figure 49 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 48.

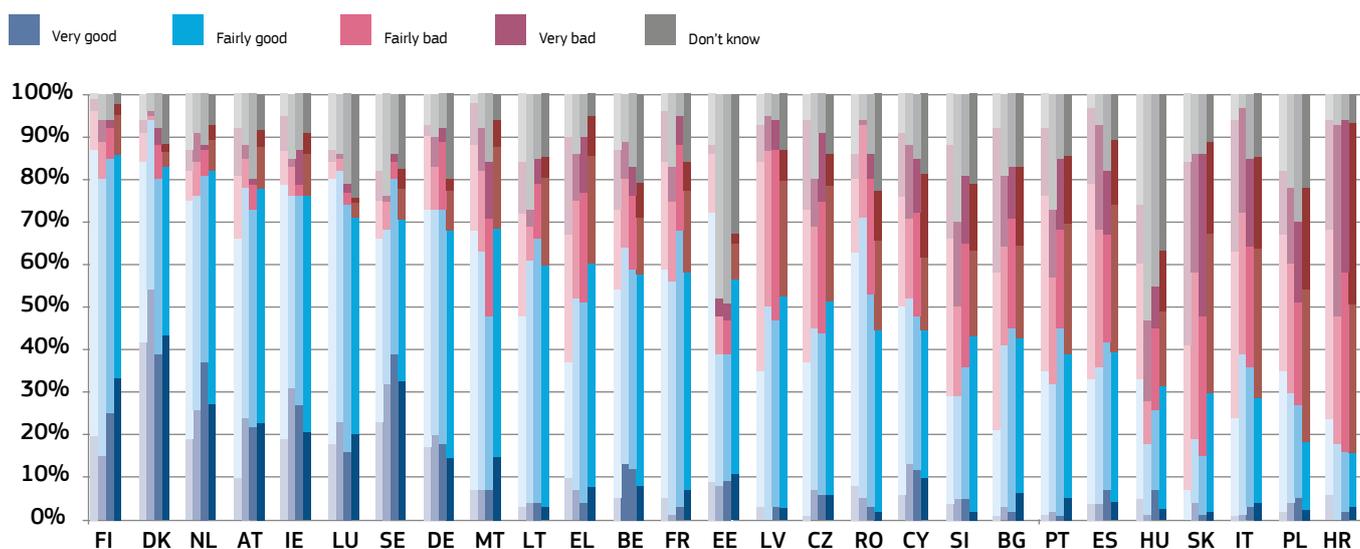
**Figure 49 Main reasons among the general public for the perceived lack of independence** (share of all respondents — higher value means more influence) (source: Eurobarometer <sup>(86)</sup>)



85 Eurobarometer survey FL489, conducted between 29 March and 9 April 2021. 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?’, see: [https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard\\_en](https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard_en)

86 Eurobarometer survey FL489, 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?’.

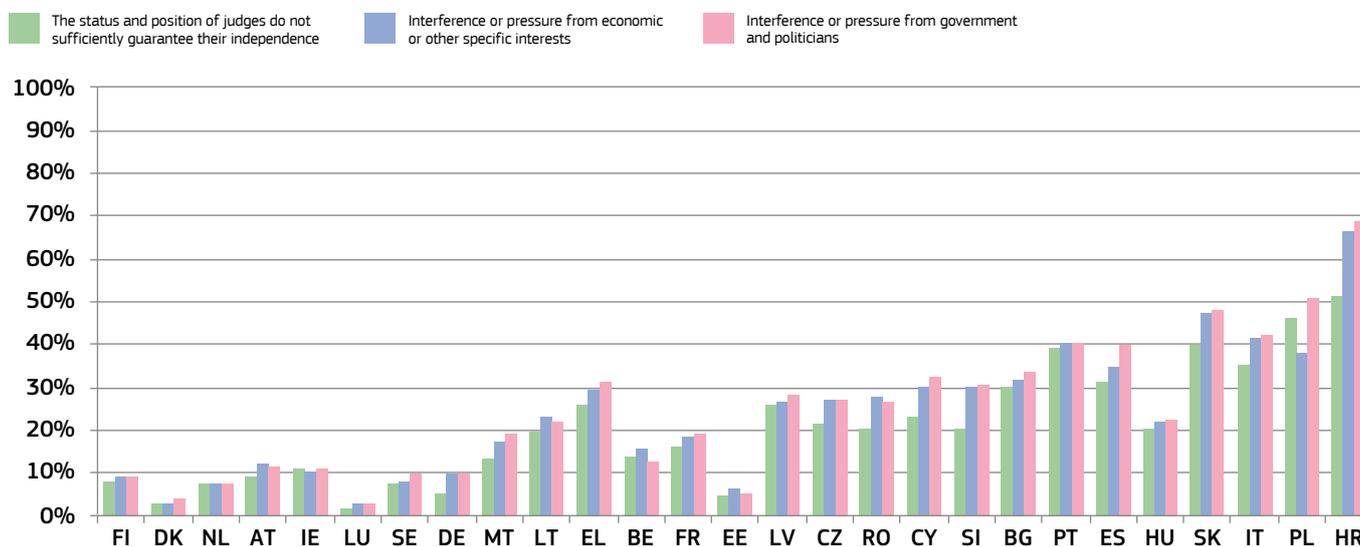
**Figure 50 Perceived independence of courts and judges among companies (\*)** (source: Eurobarometer <sup>(87)</sup>) — light colours: 2016, 2019 and 2020, dark colours: 2021)



(\*) Member States are ordered first by the percentage of respondents who stated that the independence of courts and judges is very good or fairly good (total good); if some Member States have the same percentage of total good, then they are ordered by the percentage of respondents who stated that the independence of courts and judges is fairly bad or very bad (total bad); if some Member States have the same percentage of total good and total bad, then they are ordered by the percentage of respondents who stated that the independence of courts and judges is very good; if some Member States have the same percentage of total good, total bad and of very good, then they are ordered by the percentage of respondents who stated that the independence of courts and judges is very bad.

Figure 51 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 50.

**Figure 51 Main reasons among companies for the perceived lack of independence** (rate of all respondents — higher value means more influence) (source: Eurobarometer <sup>(88)</sup>)



87 Eurobarometer survey FL490, conducted between 29 March and 20 April 2021. 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?’, see: [https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard\\_en](https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard_en); in 2021, the sample size of companies surveyed was enlarged to 500 for all Member States except for MT, CY and LU, where the sample was 250. In previous years the sample size was 200 for all Member States except for DE, ES, FR, PL and IT, where the sample was 400.

88 Eurobarometer survey FL490; 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?’.

### 3.3.2. Structural independence

The guarantees of structural independence require rules, particularly as regards the composition of the court and the appointment, length of service and grounds for abstention, rejection and dismissal of its members, in order to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that court to external factors and its neutrality with respect to the interests before it<sup>(89)</sup>. Those rules must, in particular, be such as to preclude not only any direct influence, in the form of instructions, but also types of influence which are more indirect and which are liable to have an effect on the decisions of the judges concerned<sup>(90)</sup>.

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*<sup>(91)</sup>. The EU Justice Scoreboard presents certain indicators on issues that are relevant when assessing how justice systems are organised to safeguard judicial independence.

Specifically, this edition of the EU Justice Scoreboard contains new indicators on authorities involved and status of candidates for the appointment of Supreme Court judges (Figures 52 - 54)<sup>(92)</sup>. It also presents an overview of the hierarchical powers within the prosecution services, as well of the possibility to have a review of a decision of a prosecutor not to prosecute a case (Figures 55 - 57)<sup>(93)</sup>. The figures present the national frameworks as they were in place in December 2020.

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 system. It should also be noted that implementing policies and practices to promote integrity and prevent corruption within the judiciary are also essential to guarantee judicial independence. Ultimately, the effective protection of judicial independence also requires, beyond whatever necessary norms, a culture of integrity and impartiality, shared by magistrates and respected by the wider society.

#### – Appointment of Supreme Court judges –

Supreme Courts, as final instance courts, are essential to secure the uniform application of the law in Member States. It is for the Member States to organise the procedure of appointment of Supreme Court judges to ensure their independence and impartiality. In that respect, European law requires Member States to ensure that, once appointed, judges are free from influence or pressure from the appointing authority when carrying out their role<sup>(94)</sup>. It is also necessary to ensure that the substantive conditions and detailed procedural rules governing the adoption of appointment decisions are such that they cannot give rise to reasonable doubts, in the minds of individuals, as to the imperviousness of the judges concerned to external factors and as to their neutrality with respect to the interests before them<sup>(95)</sup>. Participation of independent bodies, such as councils for the judiciary, in the process of judicial appointment process may, in principle, be such as to contribute to making that process more objective, provided that such a body is itself sufficiently independent of the legislature and the executive<sup>(96)</sup>.

89 See Court of Justice, judgment of 19 November 2019, *A. K. and Others* (Independence of the Disciplinary Chamber of the Supreme Court), C-585/18, C-624/18 and C-625/18, ECLI:EU:C:2019:982, paras. 121 and 122; judgment of 24 June 2019, *Commission v. Poland*, C-619/18, ECLI:EU:C:2019:531 paras. 73 and 74; judgment of 25 July 2018, *LM*, C-216/18 PPU, ECLI:EU:C:2018:586, para. 66. See also paragraphs 46 and 47 of the Recommendation CM/Rec(2010)12 Judges: Independence, Efficiency and Responsibility (adopted by the Committee of Ministers of the Council of Europe on 17 November 2010) and Explanatory Memorandum, which provide 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.

90 See Court of Justice, judgment of 19 November 2019, *A. K. and Others* (Independence of the Disciplinary Chamber of the Supreme Court), C-585/18, C-624/18 and C-625/18, ECLI:EU:C:2019:982, para. 123; judgment of 24 June 2019, *Commission v. Poland*, C-619/18, ECLI:EU:C:2019:531 para. 112.

91 See Recommendation CM/Rec(2010)12 Judges: Independence, Efficiency and Responsibility, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and Explanatory Memorandum ('the Recommendation CM/Rec(2010)12').

92 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, are not ENCJ members, or their ENCJ membership has been suspended (CZ, DE, EE, CY, LU, AT, and PL) were obtained through cooperation with the Network of the Presidents of the Supreme Judicial Courts of the EU.

93 The figures are 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.

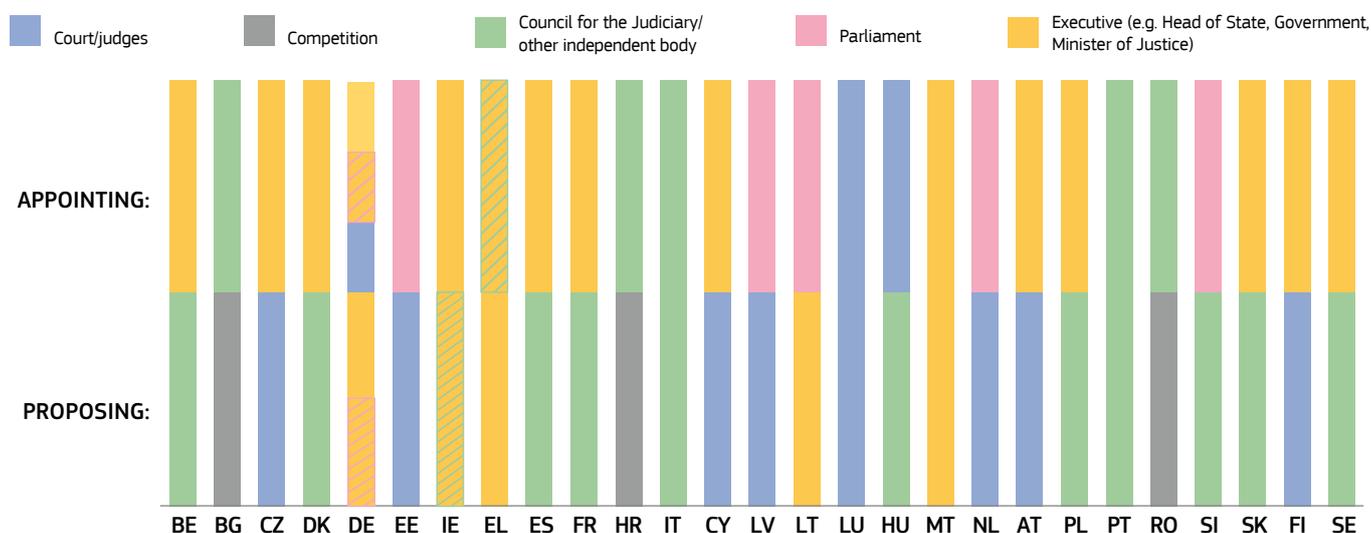
94 Since 2019, the Court of Justice issued a number of rulings concerning judicial appointments and requirements of EU law in that respect (see, to that end, judgment of 20 April 2021 in case C-896/19, *Repubblica and Il-Prim Ministru*, para. 56; judgment of 2 March 2021 in case C-824/18, *AB*, para. 122; judgment of 19 November 2019 in joined cases C-585/18, C-624/18 and C-625/18, *AK et al.*, para. 133.

95 Judgment of 20 April 2021 in case C-896/19, *Repubblica and Il-Prim Ministru*, para. 57; judgment of 2 March 2021 in case C-824/18, *AB*, para. 123; judgment of 19 November 2019 in joined cases C-585/18, C-624/18 and C-625/18, *AK et al.*, paras. 134 and 135.

96 Judgment of 20 April 2021 in case C-896/19, *Repubblica and Il-Prim Ministru* para. 66; judgment of 2 March 2021 in case C-824/18, *AB*, paras. 66, 124 and 125; judgment of 19 November 2019 in joined cases C-585/18, C-624/18 and C-625/18, *AK et al.*, paras. 137 and 138.

Figure 52 shows an overview of the bodies and authorities which propose judges for their appointment as Supreme Court judges and the authorities that appoint them, as well as the authorities which are consulted (e.g. judges).

**Figure 52** Appointment of Supreme Court judges: proposing and appointing authorities (\*) (97)

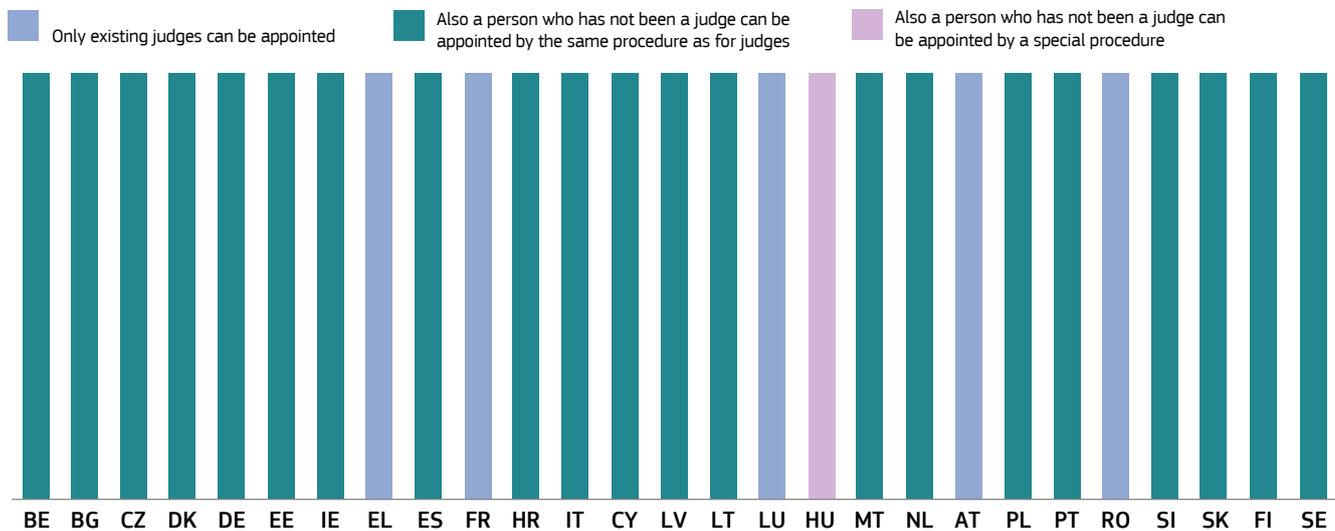


(\*) **AT**: proposal: special chamber of the Supreme Court; appointment: President on advice of Minister of justice. **LU**: proposal and appointment: Cour supérieure de justice. **DE**: proposal: Richterwahlausschuss (Judges Election Committee, consisting of the Ministers of justice of the 16 federal states and 16 members elected by the federal parliament ("Bundestag")) or Ministry of Justice; appointment: Richterwahlausschuss following consultative advice from the Präsidialrat (Presidential Council of the Supreme Court, consisting of its president and judges elected by all the judges of the court provides a reasoned opinion on the personal and professional aptitude of each candidate) and with mandatory consent from Minister of Justice; formal appointment by the President. **SK**: proposal: Court Presidents or Judicial Council; appointment: Head of State on advice of the Judicial Council. **SE**: proposal: the Judges proposals board; appointment: Government. **HR**: proposal: candidates themselves report for the competition. **EE**: proposal: Chief Justice of the Supreme Court after open competition; Chief Justice shall first consider the opinion of the Supreme Court en banc and the Council for Administration of Courts. **NL**: proposal: Supreme Court; appointment: Parliament. **PL**: proposal: National Council of the Judiciary; appointment: President of the Republic. **RO**: no proposal for the appointment: a competition carried out by the Superior Council of Magistracy through the National Institute of Magistracy. **CY**: President appoints on advice of the president of Supreme Court. **EL**: proposal: Minister of Justice; appointment: Council for the Judiciary followed by a presidential decree implementing the decision. **BG**: no proposal: competition procedure; appointment: The respective College of the Supreme Judicial Council. **LT**: The chart reflects the process for Supreme Court. A judge of the Supreme Court shall be appointed by the Seimas (proposal: President of the Republic. The candidates selected by the Selection Commission. The Judicial Council also advises the President; appointment: Parliament. Judges of the Supreme Administrative Court are appointed by the President of the Republic. **LV**: proposal: President of Court with mandatory opinion of the Department of Supreme Court; appointment: Parliament for external candidates and Judicial Council for judges. **IT**: On the proposal by the CPGA, the President of the Republic issues a decree on the appointment of judges of the Council of State. **FR**: The appointing authority is the President of the Republic, who must formally appoint the judges (following advice of CSM) through a decree. **BE**: proposal: Council for the Judiciary on a mandatory advice from the Supreme Court. **DK**: Judicial Appointments Council, with a vetting procedure by the Supreme Court, proposes one candidate to the Minister of Justice (formal appointment by the Head of State). **IE**: proposal: the Judicial Appointments Advisory Board selects candidates not already holding judicial office and recommends them to the Government as being suitable for appointment to judicial office. The Government may select serving judges for appointment to higher judicial office; appointment: the President of Ireland on the advice of the Government. **HU**: The President of the Kúria informs the President of OBH ( National Office for the Judiciary) when a judge's position is vacant. The President of the OBH announces a public call for applications to the empty judiciary position. The competent collegium of the Kúria forms an opinion on each applicant by a secret ballot. It gives 0-20 score to the candidates. The judicial council of the Kúria forms an opinion about the applicants and ranks them by giving scores to evaluate their skills and attributes. The scores are defined by the decree of Minister of Justice. The scores can be the same as to all lower judicial positions. The President of Kúria can decide as following: a) to appoint the first ranked candidate. If the applicant was not a judge before, the President of Kúria must send the application to the President of the Republic to appoint the judge; b) If the President of Kúria wants to appoint 2nd or the 3rd ranked candidate, he/she needs the approval of National Judicial Council (OBT). He/she must justify his reasons to the OBT in the proposal. The 2nd or the 3rd ranked candidate can only be appointed if OBT gives its consent; c) annul the application if: there is no admissible application, the judicial council breached the rules of procedure, the appointment would cause conflict of interest, insufficient justification of the judicial council, change in the workload, budgetary issues occurred since the start of the application procedure or the position needs to be filled without application according to the law due to certain circumstances occurred since the start of the application procedure. **MT**: proposal: Prime Minister with consultative advice from Commission for the Administration of Justice; appointment: Head of state on advice of Prime Minister. **ES**: appointment: Head of state (the King) on advice of Council for the Judiciary.

97 Data collected through 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 are not ENCJ members, or whose ENCJ membership has been suspended, were obtained through cooperation with the NPSC.

Figure 53 shows whether the appointment to Supreme Court judges is possible only for existing judges or if external candidates can be appointed to Supreme Court judges, either according to the same procedure as judges or according to a special procedure applicable only for persons who are not already judges in civil, criminal or administrative courts.

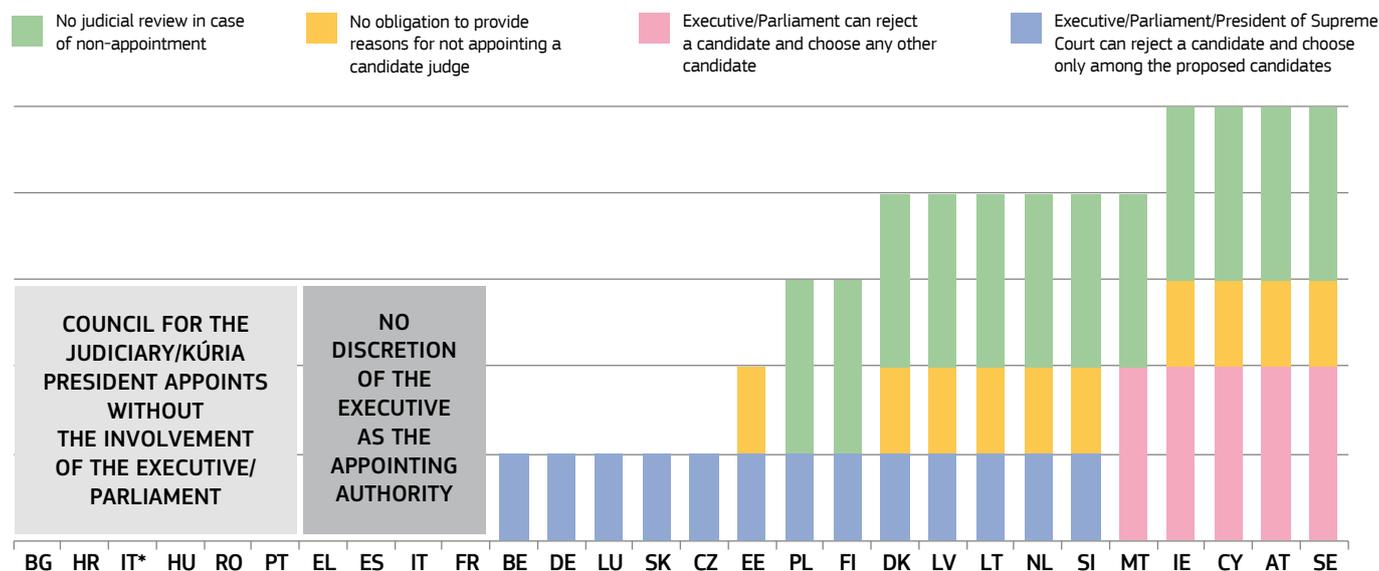
**Figure 53** Status of candidates for appointment as Supreme Court judges (\*)



(\*) **BE:** Apart from minimum requirements for becoming a judge, candidate for Supreme Court judge, must have 15 years of professional experience, the latter 10 years as a magistrate. **BG:** The candidate for a judge at the Supreme Court of Cassation/Supreme Administrative Court must take part in a competition. **CZ:** Candidate has to exercise legal activity for at least 10 years, and show high professional knowledge and experiences. **DK:** Candidate must have demonstrated suitability to seat in court as a test to vote first in at least 4 cases, of which at least one should be civil. **DE:** Apart from requirements becoming a judge, candidates may only be promoted according to their aptitude, qualifications and professional achievements. **EE:** The candidate must have the abilities and personal characteristics necessary for working as a judge, and be an experienced and recognised lawyer. **IE:** High Court: practice as a barrister or a practising solicitor of not less than 12 years, including for a continuous period of minimum 2 years immediately before appointment. A person was during this period of 2 years: a judge of the ECJ, General Court, an Advocate-General at the ECJ, a judge of the ECHR, a judge of the ICJ, a judge of the ICC, a judge of an international tribunal within the meaning of section 2 of the International War Crimes Tribunals Act, 1998 and was a practising barrister or a practising solicitor before appointment to that judicial office, shall qualify for appointment as a judge of the Supreme Court, the Court of Appeal or the High Court. **EL:** At least 15 years of service both in the first and second instance courts, with excellent performance of duties. **ES:** Education, age and merit. **FR:** A candidate cannot be appointed without having experienced another hierarchy position or another first rank position after service to the Supreme Court as a *Conseiller référendaire*, and must have held in the function at least 3 years because of the training needed to master the cassation technique. **HR:** Minimum of 15 years as a judicial official, a lawyer, or a public notary; university professor of law (with a minimum of 15 years of professional experience after passing the judicial examination); a renowned lawyer who passed the judicial examination and has a minimum of 20 years of professional experience, who has proven himself or herself through his or her professional work in a specific area of law, and through the publication of professional and research papers. **IT:** Law university professors and lawyers in service for 15 years can be appointed for extraordinary merits. Judges at the Council of State can be appointed among senior officers. **CY:** At least 12 years of practice (including service in any judicial post) and being of high moral standard. **LV:** A person who has reached the age of 40 years. Judge of the first or second instance: at least 10 years of experience as a judge and a positive opinion of the Department of the Supreme Court; at least 15 years of service as a legal academic personnel at an institution of higher education, a sworn advocate or a prosecutor, and who has passed the qualification examination, and a positive opinion of the Department of the Supreme Court; a person who had been in the office of a Constitutional Court judge, a judge of an international court or a judge of a supranational court, and a positive opinion of the Department of the Supreme Court. **LT:** Judge or a person having a doctorate in law, having at least 10 years standing as a judge or (and) having pedagogical work experience in law. **LU:** Judge who is at least 35 years old, with at least seven years of experience. **HU:** Special procedure: Members of the Constitutional Court can decide to become judges, and after they leave the Constitutional Court they will become Supreme Court judges automatically. Regular procedure: For existing judges, the procedure is similar to the application procedure for any other judge's position, although in practice the applicants are usually senior judges with longer judicial experience. If the applicant was not a judge before, the President of *Kúria* must send the application to the President of the Republic to appoint the judge. **MT:** 12 years experience at the Bar. **NL:** Extensive experience as a legal professional, and must excel in one or more areas of the law. **AT:** No specific formal requirements, apart from those for becoming a judge. Usually, only court of appeal judges or public prosecutors at appeal courts or at the Supreme Court are appointed. **PL:** A person who has completed higher education in law in Poland with the title of master; has carried out the duties of a judge, public prosecutor, president, vice-president, counsel at the General Counsel of Poland for at least 10 years or has worked as an attorney at law, legal counsel or notary for at least 10 years; was not in service, did not work nor was the associate of security authorities listed in the Law on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation; a habilitated doctor in legal sciences who has worked in a Polish higher education school, the Polish Academy of Sciences, a research institute or another academic institution. **PT:** To be judge of second instance and be candidate of the public tender. **RO:** An exam organised by the SCM Judges' Section, among the judges who, during the previous 3 years, held the office of judge within the courts of appeal, received the rating "very well" in their last 3 evaluations, were not disciplinarily sanctioned in the last 3 years, and have at least 18 years length of service as judge. **SI:** Person who fulfils general conditions for being appointed as a judge if he/she has successfully carried out a judicial function for at least 15 years or has at least 20 years of working experience in the legal area after passing the lawyer's state exam. A university associate professor of law may also be elected as a Supreme Court judge. **SK:** Professional judicial exam and all judicial competences that are necessary to become a judge and more than 15 years experience in a legal profession (advocate, judge, academic,...). **FI:** The candidate, by his or her earlier service in court or in another position, has demonstrated that he or she has the knowledge of the field in question and the necessary personal characteristics required for successful performance of the duties of the position to be filled. **SE:** Supreme Court Judges complement each other by being composed of lawyers with different experience from the different legal professions.

Figure 54 presents the competence of the executive power and the parliament in appointing judges to Supreme Court judges upon submission from the proposing authorities (e.g. Council for the Judiciary or court). The size of the column depends on whether the executive or the parliament have the possibility to reject a candidate to Supreme Court judge, whether it can choose only among the proposed candidates, or whether it can choose and appoint any other candidate, even if they are not proposed by the competent authority. In case of non-appointment of a candidate an important safeguard is the obligation to provide reasons <sup>(98)</sup> and the possibility for judicial review of the decision <sup>(99)</sup>.

**Figure 54** Appointment of Supreme Court judges: competence of the executive and the parliament (\*)



(\*) **DK:** The Judicial Appointments Council recommends one candidate per opening to the Minister of Justice for all judicial appointments except for the Supreme Court President. **DE:** Minister has to give reasons if he/she refuses to give consent to the decision of the Judges Election Committee or if he/she gives consent to an election of a person deemed unqualified by the Präsidialrat (The 'Präsidialrat' (Presidential Council of the Supreme Court), consisting of its president and judges elected by all the judges of the court). **IE:** The figure reflects the competence of the Government. Under Art. 13.9 of the Constitution (i.e. a constitutional requirement rather than a practice), the President's power of appointment is exercisable only on the advice of the Government. **EL:** President of the Republic issues a Presidential Decree upon the proposal of the Minister of Justice following the mandatory Decision of the Supreme Judicial Council. **IT\*:** Supreme Court of Cassation (dealing with criminal and civil cases): the Council for the Judiciary (CSM) appoints judges. **IT:** Council of State (dealing with administrative cases): upon proposal of the Council for Administrative Judges (CPGA), the President of the Republic appoints judges, having no discretion in this regard. **CY:** The President of the Republic, when appointing a judge of the Supreme Court, has no constitutional or legal obligation to follow the opinion of the Supreme Court but as a rule follows it. **HU:** President of Republic needs to continue with the proposal. President of Kúria can annul the application. **MT:** The authority presented is the Prime Minister. **AT:** Under the Constitution, proposals of the Supreme Court are not binding. However, it is a general practice to appoint only candidates proposed by the Supreme Court. As to the President of the Supreme Court, the Federal President may reject the candidate proposed by the Minister of Justice, but he may not appoint a person who had not been proposed. **LU:** There is no binding text on this subject, but so far, the appointing authority has never refused the nomination of a candidate proposed by the Court. **SK:** It never happened that if a candidate for a Supreme Court judge/President is not appointed, the appointing authority/body be required to provide him/her the reasons. **HR:** The Council for the Judiciary can decide not to appoint a candidate for a Supreme Court judge. Only a candidate for Supreme Court judge can appeal or request a review, if they are not appointed. **ES:** The Head of State (the King) as appointing authority must mandatorily follow the proposal of the Council for the Judiciary concerning judicial appointments and promotions. The King has, therefore, no discretion and no obligation to provide reasons. The decision of the King has the form of a Royal Decree, is published in the Official Gazette and may not be challenged as such. It is the previous decision by the Council to propose a candidate for judicial appointment or promotion that can be appealed, initially through an administrative appeal (decided by the Plenary of the Council) and subsequently through judicial review before the Administrative Division of the Supreme Court. **PL:** The President of the Republic is not obliged by law to provide reasons of not appointing a judge and is not obliged by law to appoint a candidate proposed by the Council. His/her prerogatives neither need to be reasoned nor there is any term fixed for making use of his/her prerogative.

### – Safeguards relating to the functioning of national prosecution services in the EU –

Public prosecution plays a major role in the criminal justice system as well as in cooperation between Member States in criminal matters. The proper functioning of the national prosecution service is crucial for the effective fight against crime, including economic and financial crime, such as money laundering and corruption. According to the Court of Justice of the EU case-law, in the context of the European Arrest Warrant Framework Decision <sup>(100)</sup>, the public prosecutor's office can be considered a Member State judicial authority for the purposes of issuing and executing a European arrest warrant whenever it can act independently,

98 Judgment of 20 April 2021 in case C-896/19, *Repubblika and Il-Prim Ministru*, para. 71.

99 Judgment of 19 November 2019 in joined cases C-585/18, C-624/18 and C-625/18, *AK et al.*, para. 145.

100 Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

without being exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice <sup>(101)</sup>.

The organisation of national prosecution services varies across the EU and there is no uniform model for all Member States. However, there is a widespread tendency to have a more independent prosecutor's office, rather than one subordinated or linked to the executive <sup>(102)</sup>. According to the Consultative Council of European Prosecutors, an effective and autonomous prosecution service committed to upholding the rule of law and human rights in the administration of justice is one of the pillars of a democratic state <sup>(103)</sup>. 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 <sup>(104)</sup> and without unjustified interference <sup>(105)</sup>. 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 <sup>(106)</sup>. Where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees <sup>(107)</sup>. According to the 2000 Recommendation of the Committee of Ministers of the Council of Europe, instructions not to prosecute should in principle be prohibited or be exceptional and subject to specific safeguards <sup>(108)</sup>. Interested parties (including victims) should be able to challenge a decision of a public prosecutor not to prosecute a case <sup>(109)</sup>, which also provides a form of accountability of prosecutors <sup>(110)</sup>.

In order to present the autonomy of the prosecution services in the Member States, the figures below provide an overview of the hierarchical powers within the prosecution services, as well of the possibility to have a review of a decision of a prosecutor not to prosecute a case. These figures do not assess the effective functioning of the prosecution services, which requires a qualitative assessment taking into account specific circumstances of each Member State.

Figure 55 presents the main management powers of the Prosecutor General over lower ranking prosecutors to:

- 1) issue general guidance regarding prosecution policy;
- 2) give instructions regarding prosecution in individual cases;
- 3) evaluate a prosecutor;
- 4) promote a prosecutor;
- 5) remove an individual case which was assigned to a prosecutor (transfer a case);
- 6) decide on a disciplinary measure regarding a prosecutor; and
- 7) transfer prosecutors without their consent.

Apart from these selected main management powers, the Prosecutor General or other authorities may have additional powers over national prosecution services <sup>(111)</sup>. It should be noted that other authorities may have a role in the above listed management powers (e.g. a disciplinary court may decide on certain disciplinary measures) <sup>(112)</sup>.

101 Court of Justice, judgment of 27 May 2019, *OG and PI (Public Prosecutor's Office of Lübeck and Zwickau)*, Joined Cases C-508/18 and C-82/19 PPU, paras 73, 74 and 88, ECLI:EU:C:2019:456; judgment of 27 May 2019, C-509/18, para 52, ECLI:EU:C:2019:457; see also judgments of 12 December 2019, *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyon and Tours)*, in Joined Cases C-566/19 PPU and C-626/19, ECLI:EU:C:2019:1077; *Openbaar Ministerie (Swedish Prosecution Authority)*, C-625/19 PPU, ECLI:EU:C:2019:1078, and *Openbaar Ministerie (Public Prosecutor in Brussels)*, C-627/19 PPU, ECLI:EU:C:2019:1079; judgment of 24 November 2020, *AZ*, C-510/19, para 54, ECLI:EU:C:2020:953. See also judgment of 10 November 2016, *Kovalkovas*, C-477/16 PPU, paras 34 and 36, ECLI:EU:C:2016:861, and judgment of 10 November 2016, *Paltorak*, C-452/16 PPU, para 35, ECLI:EU:C:2016:858, on the term 'judiciary', 'which must [...] be distinguished, in accordance with the principle of the separation of powers which characterises the operation of the rule of law, from the executive'. See also Opinion No. 13(2018) Independence, accountability and ethics of prosecutors, adopted by the Consultative Council of European Prosecutors (CCPE), recommendation xii.

102 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.

103 Consultative Council of European Prosecutors (CCPE) Opinion No. 15 (2020) on the role of prosecutors in emergency situations, in particular when facing a pandemic.

104 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.

105 The 2000 Recommendation, paras 11 and 13. See also: Opinion No. 13(2018) Independence, accountability and ethics of prosecutors, adopted by the Consultative Council of European Prosecutors (CCPE), recommendations i and iii; Group of States against corruption (GRECO), fourth evaluation round "Corruption prevention - Members of Parliament, Judges and Prosecutors", a vast number of recommendations ask for the introduction of arrangements to shield the prosecution service from undue influence and interference in the investigation of criminal cases.

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

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

108 The 2000 Recommendation, para. 13, point f). See also Opinion No. 13(2018) Independence, accountability and ethics of prosecutors, adopted by the Consultative Council of European Prosecutors (CCPE), recommendation iv.

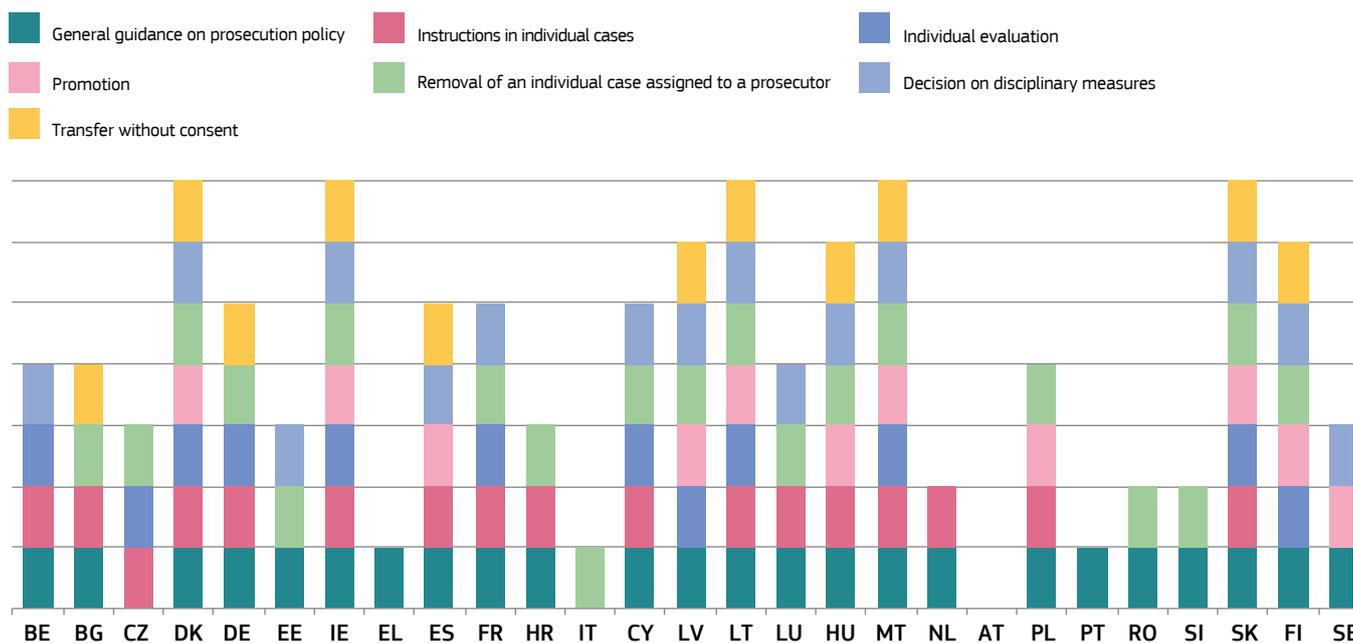
109 The 2000 Recommendation, para. 34.

110 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. 45.

111 For example, the power to solve conflicts of competence between Member States' public prosecution offices; to acquire data and information from lower prosecution offices. Furthermore, the Prosecutor General may play a role in bodies responsible for decisions regarding prosecutors, even if not taking such decisions directly. See also Figure 55 in the 2019 EU Justice Scoreboard, presenting the distribution of management powers over national prosecution services.

112 For an overview of authorities involved in disciplinary proceedings regarding prosecutors, see Figures 53 and 54 in the 2020 EU Justice Scoreboard.

**Figure 55 Management powers of the Prosecutor General (\*)** (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:** A right of injunction to prosecute upon the Prosecutor is provided by the Code of Criminal Procedure. **CZ:** power to give instructions in individual cases only within the Prosecutor General Office and towards high public prosecutor offices. **EL:** General Prosecutor has the right to address to all prosecutors of the country general directions and recommendations, without being bound by the formulation and the expression of their opinion. **ES:** The Attorney General sets internal orders and instructions appropriate to the service and to the exercise of prosecuting functions, which may be general or related to specific matters. The transfer without consent is possible only in cases of high workload. **IT:** Prosecutors General at the Court of Appeal have the powers to remove an individual case in case of inaction; also, they can acquire data and information from the prosecution offices of the district and to send to the Prosecutor General at the Court of Cassation, in order to verify the correct and uniform functioning of the prosecution offices and compliance with the rules on due process. The Prosecutor General at the Court of Cassation is in charge by Law of the control over the National Anti-Mafia Directorate, and of resolving the conflicts of competence between two or more territorial prosecution offices. **CY:** Attorney General decides on minor disciplinary violations. In serious disciplinary offences, the Attorney General does not propose sanctions but recommends the initiation of disciplinary measures by the Public Service Commission. **LT:** As to the instructions on individual cases, the Prosecutor General (PG) cannot instruct on which decision to make; as to the promotion of prosecutors, the PG decides on the conclusions of the Prosecutor Selection Commission or the Chief Prosecutor Selection Commission; as to the decision on disciplinary measure the PG decides on the conclusions of the Prosecutor Ethics Commission or the Internal Investigation Commission. The PG shall not have the right to remove the prosecutor from the pre-trial investigation. **LU:** Prosecutor General has the power to instruct prosecution services to prosecute in a case (but cannot instruct not to prosecute). As to the promotion of a prosecutor, the state prosecutor / Prosecutor General, with a favourable opinion, suggests the promotion to the executive and the Head of State signs the nomination. **AT:** The powers of the Prosecutor General do not include direct management over the prosecution service as referred to in the chart. The Independent Personnel Body, consisting of four prosecutors, evaluates a prosecutor. **PL:** The Prosecutor General is also the Minister of Justice. **RO:** The General Prosecutor has the power to transfer an individual case from a prosecution unit to another prosecution unit and to issue general guidance regarding prosecution policies, in order to guarantee a unitary approach on criminal investigations. **SI:** Both the Prosecutor General and the head of State Prosecutor's Offices have the powers to issue general guidance on prosecution policy and to remove an individual case assigned to a prosecutor.

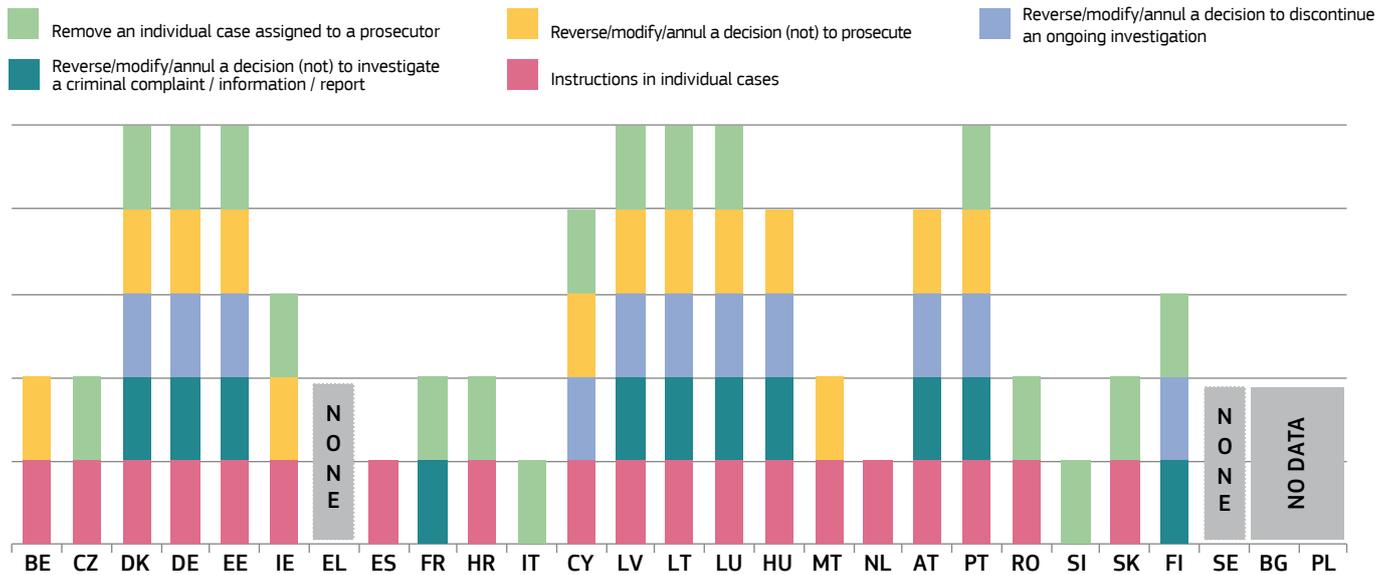
Figure 56 presents a factual overview of the main management powers of the senior prosecutors over lower ranking prosecutors, which are to:

- give instructions regarding prosecution in individual cases;
- reverse, modify or annul a decision (not) to investigate a criminal complaint, information or report;
- reverse, modify or annul a decision to discontinue an ongoing investigation;
- reverse, modify or annul a decision (not) to prosecute; and
- remove an individual case which was assigned to a prosecutor (transfer a case).

Apart from these selected main management powers, the senior prosecutors may have other powers not listed above.

**Figure 56**

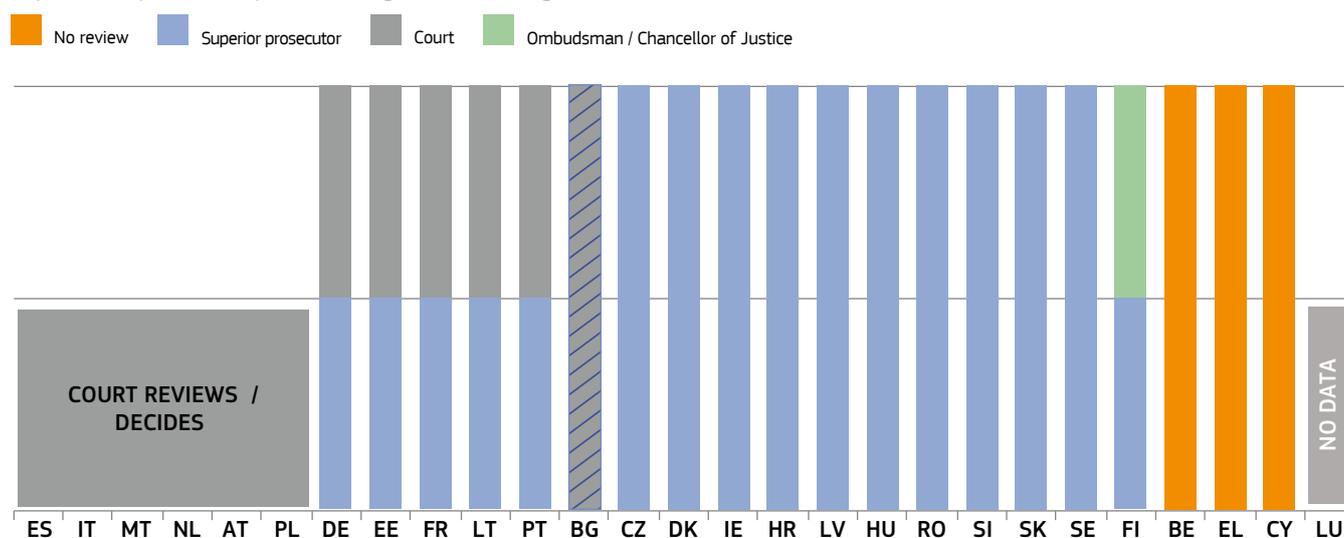
**Management powers of the senior prosecutors (\*)** (Source: European Commission with the Expert Group on Money Laundering and Financing of Terrorism)



(\*) **FR:** Senior prosecutors may give instructions in case of a contestation of a dismissal of a case (*classements sans suite*). **IT:** The removal has to be reasoned and issued in written form. **LT:** Superior prosecutor has no competence to give instructions on the type of the procedural decision that must be made. The superior prosecutor shall not have the right to remove the prosecutor from the pre-trial investigation. **NL:** As regards the instructions in individual cases, the law provides a legal basis for superior prosecutors to give general or specific instructions. The law doesn't specify on what subject (e.g. specific cases). Therefore practice tends to vary between different prosecution sections for superior prosecutors to give instructions for specific cases.

Figure 57 presents the authorities that decide on a request to review a decision of a prosecutor not to prosecute in an individual case. It shows who conducts a check on the work of individual prosecutors, which has an impact on the functioning of the prosecution service. According to European standards, the decision not to prosecute creates an issue in terms of accountability of prosecutors, which is why a legal remedy is important<sup>(113)</sup>. In some Member States, this decision is reviewed by different authorities: either superior prosecutors (including where relevant Prosecutor General), a court or other authorities (Ombudsman, Chancellor of Justice). In some Member States, the decision cannot be reviewed. Where such review exists, it can be initiated by an alleged victim, or by superior prosecutors on their own initiative. In some Member States, the superior prosecutor's review decision can be subject to judicial review. The chart does not present the right to institute private prosecution, where those who consider themselves as victims of a crime have the right to continue prosecution by engaging a private lawyer, who represents them in front of a criminal court in the role of a private prosecutor (existing in Belgium, Germany, Spain, France, Croatia, Lithuania, Luxembourg, Hungary, Austria, Poland, Slovenia, Finland and Sweden<sup>(114)</sup>).

**Figure 57 Authority reviewing a prosecutor's decision not to prosecute (\*)** (Source: European Commission with the Expert Group on Money Laundering and Financing of Terrorism)



(\*) **BG:** The prosecutor decides whether the requirements of the law for initiating preliminary proceedings are present. If not, the prosecutor issues a Decree for refusal to institute preliminary proceedings (the refusal to open an investigation). This refusal is subject to appeal only before the higher-standing prosecutor's office, except for the refusal to open an investigation of the Prosecutor for the investigation of the Prosecutor General or his or her deputies which is subject to a judicial review before the Specialised Crim. Court. If preliminary proceedings were initiated, once concluded, the prosecutor can terminate them or to bring the case to the court (the decision to prosecute). The decree not to start a prosecution for crimes with a victim, is subject to appeal before court within 7 days. If this term is not met, the decision can still be appealed but only before the higher-standing prosecutor's office. In cases of victimless crimes, the decision not to prosecute can only be revoked ex officio by the higher-standing prosecutor's office by a signal or after self-initiation. **DE:** Decisions can be reviewed by the Prosecutor General. In addition, the victim can invoke the Higher Regional Court if the Prosecutor General has approved the decision not to prosecute. **EE:** Not applicable in case of a victimless crime. A victim can file an appeal against the investigative body's decision not to initiate criminal proceedings with the Prosecutor's Office. The decision of the Prosecutor's Office not to initiate or to terminate criminal proceedings can be challenged at the Office of the Prosecutor General. The decision of the Office of the Prosecutor General can be challenged at the District Court. **ES:** Against the refusal of processing orders, only the person who has requested it will be granted to a reform appeal, within 3 days following the notification. The defendants to whom these decisions of the instructor on the reform appeal resolution refer, may use an ordinary appeal, within 5 days following notification of the appealed order or the resolution of the appeal for reform. **FR:** Prosecutor General may review the prosecutor's decision not to prosecute on victim's request. victim may also complain before the investigative judge. **HR:** In victimless crimes, the institution/person who submitted the criminal notification can request, if the anti-corruption prosecution (USKOK) dismisses the notification, review before the collegium at USKOK, and then before collegium of State Attorney's Office (DORH). The victim can initiate private prosecution before the competent court. **CY:** If the Attorney General decided not to prosecute a case (based on the evidence at hand and recommendations of the Attorneys at the Law Office), only the Attorney General can reverse such a decision. **IE:** A victim can request both reasons and a review of the decision not to prosecute, conducted by a lawyer in the Victims Unit in the Office of the Director of Public Prosecutions. In victimless crimes An Garda Síochána can request a review of a decision not to prosecute, conducted by a senior lawyer in the Directing Division of the Office of the Director of Public Prosecutions. **LT:** Decision of a pre-trial investigation officer not to commence a pre-trial investigation is made only with the consent of the head of the pre-trial investigation authority. The resolution not to commence a pre-trial investigation within 24 hours shall be sent to the prosecutor who checks the decision within 10 days. The rejected decision of the prosecutor can be appealed to the court. The resolution of a pre-trial investigation officer can also be appealed to the prosecutor. If rejected, the prosecutor's decision can be appealed to the court. The judge's decision again can be appealed to the superior court. **MT:** Prosecution of criminal offences is being transferred from the police to the Office of the Attorney General. In October 2020, the Attorney General took over the decision to prosecute and the institution of prosecutions before the inferior courts of specified serious crimes. The transition is planned to be completed by the end of 2024. Regulation, entered into effect in October 2020, provides for judicial review (before civil courts) of decisions not to prosecute of the Attorney General on the ground of illegality or unreasonableness. When the decision to prosecute and prosecution is vested in the Commissioner of Police, challenge proceedings may be instituted before the Court of Magistrates. **AT:** Review can be initiated by the victim or in some cases (including victimless crimes of a serious nature) by the Commissioner for Legal Protection. **PT:** A prosecutor's decision not to prosecute can be reviewed either through an autonomous procedural phase, the *instrução* (reopening of the inquiry), which specifically envisages the judicial confirmation of the decision to indict or to file the investigation. This reopening of the inquiry may be requested by an 'assistente,' if the procedure does not depend upon private prosecution, in respect of facts from which the Public Prosecution has not accused. A prosecutor's decision not to prosecute can also be reviewed before an immediate superior of the Public Prosecutor within 20 days from the date in which the opening of the inquiry may no longer be requested. In this case, the immediate superior of the Public Prosecutor may, at their own initiative or upon request, determine that a charge is brought or that the investigations proceeds. **RO:** The superior prosecutor can (ex officio) review any decision not to prosecute; the decision to reopen the investigation must be confirmed by the judge. Everyone whose legitimate interests were affected by the decision not to prosecute can initiate a complaint to the competent judge of the preliminary chamber. In victimless crimes, the superior prosecutor can review the decision not to prosecute. **FI:** Anyone can complain on a decision to the Prosecutor General, the Chancellor of Justice or the Ombudsman of the Parliament. **SI:** State prosecutors cannot dismiss criminal complaints for certain criminal offences without the co-signature of the head of state prosecutor's office. State prosecutors shall inform certain categories of people and state authorities (including the FIU) that filed a criminal complaint, about their intention and reasons to dismiss it, and enable them to give an opinion on the reasons for the dismissal. Once the decision to dismiss a criminal complaint or to discontinue prosecution has been taken it is final, but the injured party may decide to take over the (private) prosecution. **SE:** The decision is public. The victim of a crime as well as the suspect can ask for a review. The request is taken care of by the prosecutor who made the decision. In case of new evidence or circumstances, the prosecutor can decide to take actions. If no new information, the Development Centre decides on revision.

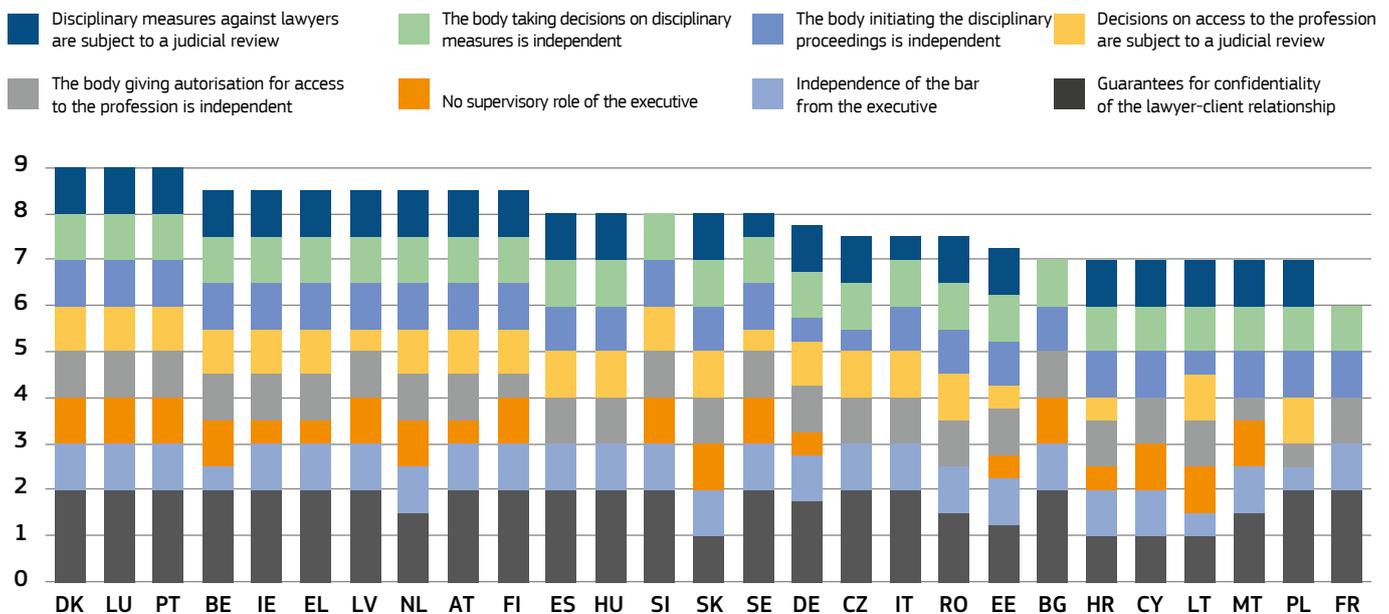
113 CDL-AD(2010)040-e Report on European Standards as regards the Independence of the Judicial System: Part II — the Prosecution Service — Adopted by the Venice Commission — at its 85th plenary session (Venice, 17-18 December 2010), para. 45.

114 Fundamental Rights Agency, <https://fra.europa.eu/en/publications-and-resources/data-and-maps/comparative-data/victims-support-services/prosecution>

## – Independence of Bars and lawyers in the EU –

Lawyers and their professional associations play a fundamental role in ensuring the protection of fundamental rights and the strengthening of the rule of law. A fair system of administration of justice requires that lawyers be free to pursue their activities of advising and representing their clients. The lawyers' membership of a liberal profession and the authority deriving from that membership helps to maintain independence, and bar associations play an important role in helping to guarantee lawyers' independence. European standards require, among others, the freedom of exercise of the profession of lawyer, the independence of the bar associations and lay down the basic principles of disciplinary proceedings against lawyers <sup>(115)</sup>.

**Figure 58 Independence of Bars and lawyers, 2020** (\*) (source: European Commission with the CCBE<sup>(116)</sup>)



(\*) Maximum possible: 9 points. For the question related to guarantees for confidentiality of the lawyer/client relationship 0.5 points were awarded for each of four scenarios (search and seizure of e-data held by the lawyer, search of the premises of the lawyer, interception of lawyer/client communication, surveillance of the lawyer or his/her premises) fully covered. For all other criteria fully met, 1 point was awarded. The points awarded were divided by 2 where the criterion is not fully met.

115 Recommendation No. R(2000)21 of the Committee of Ministers of the Council of Europe.

116 2020 data collected through replies by CCBE members to a questionnaire.

### 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 among the general public and companies. This edition also presents some indicators concerning appointment of Supreme Court judges, and an overview of the hierarchical powers within the prosecution services, as well as the possibility to have a review of a decision of a prosecutor not to prosecute a case. The structural indicators do not in themselves allow for conclusions to be drawn about the independence of the judiciaries of the Member States, but represent possible elements which may be taken as a starting point for such an analysis.

- The 2021 Scoreboard presents the developments in **perceived independence** from surveys of the general public (Eurobarometer) and companies (Eurobarometer):
  - The Eurobarometer survey among the general public (Figure 48), presented for the sixth time, shows that the perception of independence has *improved* in over two thirds of the Member States when compared to 2016. The general public's perception of independence has *improved* in more than three-fifths among the Member States facing specific challenges looking over the five-year period. However, compared to last year, the general public's perception of independence *decreased* in almost half of all Member States and in about half of the Member States facing specific challenges, and in a few Member States, the level of perceived independence remains particularly low.
  - The Eurobarometer survey among the companies (Figure 49), presented for the sixth time, shows that the perception of independence has *improved* in over half of the Member States compared to 2016. However, compared to last year, the companies' perception of independence *decreased* in over half of all Member States (compared to last year this was the case in three thirds of other Member States) and in about three fifths of Member States facing specific challenges. In a few Member States, the level of perceived independence remains particularly low.
  - 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*. Compared to previous years, both reasons remain notable for several Member States where perceived independence is very low (Figures 50 and 51).
  - Among the reasons for good perception of independence of courts and judges, nearly two fifths of companies and of the general public (equivalent to 43% and 38% of all respondents, respectively) named the *guarantees provided by the status and position of judges*.
- Figures 52 to 54 present the situation regarding the appointment of Supreme Court judges in all Member States. Figure 52 shows the authorities proposing candidates for their appointment as Supreme Court judges and the authorities that appoint them. Figure 53 shows whether the appointment to Supreme Court judges is possible only for existing judges or if external candidates can be appointed to the Supreme Court, either according to the same procedure as judges or according to a special procedure applicable only for persons who are not already judges in civil, criminal, or administrative courts. Figure 54 presents the competence of the executive power and the parliament in appointing judges to Supreme Court judges upon submission from the proposing authorities.
- Figures 55 to 57 present the first overview of the internal functioning and review of the work of the prosecution services. Figures 54 and 55 show the management powers of the superior prosecutors, including the Prosecutor General, over lower prosecutors. Figure 56 presents the safeguards in place regarding the decision of a prosecutor not to prosecute.
- Figure 58 shows that although in certain Member States the executive plays some supervisory role as regards the Bar, the independence of lawyers is generally guaranteed, allowing them to be free in pursuing their activities of advising and representing their clients.

## 4. Conclusions

The 2021 EU Justice Scoreboard shows a continued improvement in the effectiveness of justice systems in large majority of Member States. While it is too early in this edition to fully capture the impacts of the COVID-19 pandemic on the efficiency of courts in handling cases, several figures can already provide some initial insights on how the justice systems responded to it, including on how national supreme courts adapted their procedures. In particular, the new dedicated section on the digitalisation of justice systems shows that the majority of Member States already have different digital tools at the disposal of courts, prosecutors and staff members, but significant room for improvement remains. Furthermore, challenges remain to ensure full trust of citizens in the legal systems of Member States where guarantees of status and position of judges, and thereby their independence, might be at risk. The information contained in the EU Justice Scoreboard contributes to the monitoring carried out in the framework of the European Rule of Law Mechanism and feeds into the Commission's annual Rule of Law Report.



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