

Decision of the Bundesrat

Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: the 2015 Justice Scoreboard

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At its 934th session on 12 June 2015, the Bundesrat adopted the following position pursuant to Sections 3 and 5 EUZBLG (Act on Cooperation between the Federation and the Länder in European Union Affairs):

1. The Bundesrat refers to its Opinions on the 2013 EU Justice Scoreboard – BR Document 244/13 (Resolution) - and the 2014 EU Justice Scoreboard – BR Document 171/14 (Resolution) - and reiterates its fundamental criticism expressed therein.
2. The Bundesrat welcomes the inclusion of brief comments below the various diagrams, providing more detailed information about the indicators examined and pointing out differences in the way data is collected in the individual Member States or the problems with comparability of the data.
3. Particularly in the light of this additional information, the Bundesrat maintains its opinion that the EU Justice Scoreboard does not provide a reliable basis for a usable comparison of national justice systems. The Bundesrat does not therefore consider that extending the EU Justice Scoreboard to include new parameters, some of which are based on even more inadequate data, would serve any useful purpose. The Commission would be better advised to concentrate on the much-needed improvement in the completeness and quality of the data used for the existing parameters.

4. These fundamental shortcomings are apparent for example in the assessment of administrative cases. Thus the Bundesrat finds the values given in Figures 4 - 6 for the length of proceedings unconvincing. In Figure 4 a value of over 400 days is given for Germany. In contrast, Figure 5 gives the length of proceedings in civil and commercial cases as 200 days, and Figure 6 gives the length of proceedings in administrative cases as (well) below 500 days. The conclusion that the resulting average for all cases is more than 400 days cannot be drawn from this given the ratio of civil and commercial cases to administrative cases. .

The 2015 EU Justice Scoreboard is based on the CEPEJ document 'Study on the functioning of judicial systems in the EU Member States'. However, the statistics on administrative law cases set out on pages 72 et seq. of the study cannot plausibly be explained solely by the differences in the size of the populations of the individual EU Member States and differing levels of use of existing means of redress. They must rather be the result of the fact that no adequate concrete comparison of the subject matter dealt with as administrative cases in the individual Member States took place. The data on administrative cases provided in the 2015 EU Justice Scoreboard are therefore viewed with fundamental reservations.

The Bundesrat would also question the Commission's view, expressed in point 3.1.3, that the number of pending cases would have to be reduced in order to shorten the length of proceedings. It is not possible to draw any conclusions regarding the duration of cases or the quality of case-handling merely from the number of cases (per 100 inhabitants) pending before the court, viewed in isolation. Whether there are more or fewer administrative cases (per 100 inhabitants) pending before the court depends predominantly on which cases are classified as administrative, and the range of possibilities for legal redress which a Member State makes available to its residents for bringing administrative proceedings. The Bundesrat does not therefore attach any significance to

Germany's somewhat below average performance according to Figure 12 in the 2015 EU Justice Scoreboard as regards the future development of the German justice system.

5. In principle, the Bundesrat agrees with the Commission that further training opportunities for judges and prosecutors could influence the long-term effectiveness of justice systems.

However, it has doubts about the accuracy, completeness and meaningfulness of the data on which the 2015 EU Justice Scoreboard is based. The questionnaire used for gathering information on further training for judges was in places unclear and open to interpretation. This led to uncertainty in answering even within the context of the German Länder, and this uncertainty must have been even greater in relation to the 25 participating Member States. Typical of a question that required interpretation was the concept of the connection with EU law. This did not make it sufficiently clear how close the connection had to be for the training to be included. There are some indications that the German regional judicial authorities were over-cautious and only recorded training which focussed primarily on questions of European law.

Moreover, the data collected are not comparable. Figure 37, for example, seems unlikely to make a significant contribution to a comparison of the quality of the justice systems; it contains no information on duration, the number of participants, and methods used in the further training courses organised in Member States and thus ignores all the parameters which are relevant to the quality of such training. In this way, for example, a half-day training course with 140 participants and a simple oral presentation is given the same value in the Figure as an interactive seminar involving a small group of people held over several days.

The extent of the knowledge of EU law already acquired by the judges and prosecutors in their basic training is also ignored. Further training builds on basic training, however. The better the basic training, the less a person needs further training on basic knowledge. In order to compare further training measures, therefore, it is absolutely essential when gathering data to take account

of the knowledge already acquired in basic training. In Germany, basic training in EU law, legal sources, bodies and forms of action, the fundamental freedoms and the links between all these and national law, has for decades been provided along with the compulsory course elements and subsequent in-service training, and for this reason further training in European law is largely highly specific and technical.

6. Finally, the Bundesrat considers budget data to be only a weak indicator, with little relevance for the quality of a justice system. It is already virtually impossible to compare budgets for the justice system at national level because of differences in budget structure. There are significant differences in the way items are entered in individual sections of the budget or in overall financial management, especially in the case of building work. This must happen even more at European level. The data on legal aid are of only limited use in measuring quality. They are influenced to a considerable extent by the financial situation of those who might potentially be involved in legal proceedings.
7. In the light of these factors, the Bundesrat takes the view that the Commission must still make significant efforts in order to meet its own requirement to provide objective, reliable and comparable data. An essential aspect of this is the careful checking and validation of the data collected, with the involvement of the national judicial authorities. To this end, a draft of the EU Justice Scoreboard should be sent to the national judicial authorities prior to publication so that any inaccuracies can be put right.
8. The Bundesrat asks the Federal Government to take account of its position at negotiations in the Council and to ensure that the EU Justice Scoreboard does not lead to additional burdens for the justice system.
9. The Bundesrat is sending this opinion directly to the Commission.