

17 June 2016**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 2016 Justice Scoreboard****COM(2016) 199 final**

At its 946th session on 17 June 2016, pursuant to Sections 3 and 5 EUZBLG, the Bundesrat adopted the following position:

1. The Bundesrat refers to its opinions on the EU Justice Scoreboard for 2013 - BR document 244/13 (Decision), for 2014 - BR document 171/14 (Decision) and for 2015 - BR document 92/15 (Decision) - and reiterates the fundamental criticism it expressed in those opinions.
2. On the positive side, it notes that the number of comments on the diagrams in the 2016 Justice Scoreboard has further increased, thereby drawing more attention to the specific features of individual justice systems. However, in the Bundesrat's opinion, individual pointers do not make up for the basic weakness of the scoreboard, namely the lack of comparability of the justice systems. On the contrary, it suggests, by an incorrect *argumentum a contrario*, that the justice systems are otherwise comparable in their current forms. The residual value, after taking account of the numerous differences, of a primarily quantitative comparison is not, in the opinion of the Bundesrat, great enough to justify the time and money spent on collecting the data.

Substantial importance is attached, and not only by specialists, to the graphs in section 3.1.1 of the EU Justice Scoreboard, concerning the efficiency of the national justice systems. However, the data on administrative cases (Figures 6, 7, 9 and 12) should be viewed with the major reservation that no adjustment has been made to take account of the different types of subject matter treated as administrative cases. It remains unclear to the Bundesrat how the efficiency of a justice system can be deduced from the number of pending cases (Figure 12). The Justice Scoreboard takes no account at all of the internal administrative pre-proceedings available in Germany for certain cases, which offer the parties a simple and rapid review of the administrative action in

question.

Another example of what concerns the Bundesrat is the presentation of the financial requirements for the award of legal aid in Figure 20 of the 2016 Justice Scoreboard. For instance, regarding Germany, the data on legal aid are presented in contracted form without even showing the system of (pre-proceedings) advisory services in any differentiated way. Forcing the data into the pre-set categories completely obscures the differences that undoubtedly exist between systems. Legal aid covering part of the costs is available in Germany only in the broader sense of legal costs being taken over during the proceedings and then repaid in instalments. In the Bundesrat's opinion, the many (pertinent) qualifications applied to Figure 20 and its explanatory comments show how little meaningful basis it provides for a substantiated comparison. The generalising form of the graph is also conducive to misinterpretation.

3. The Justice Scoreboard aims to measure efficiency and quality on the basis of quantitative indicators and the availability of quality management instruments. The extent of judicial independence is measured on the basis of public and business perceptions. The Bundesrat agrees with the Commission that the values shown must be viewed primarily as mere indicators. The effectiveness of the guarantee of judicial independence is determined above all by how the protected judiciary exercises its independence. The quality of a justice system is demonstrated first and foremost by the quality of the courts' rulings on substance; 'good justice', seen in this way, is a value in itself, which cannot be expressed in figures.

Perceived poor performance of a Member State on the EU Justice Scoreboard is therefore from the outset only an (at best) limited indication that there is really a problem. The statement - advocated by the Bundesrat - in the introduction to the 2016 Justice Scoreboard that it is not a ranking of justice systems, and the call for more in-depth analysis in the case of poor performance are not enough, given the overall graphic presentation of the Justice Scoreboard and the individual graphs, to dispel the Bundesrat's impression that the indicators are presented in a way that suggests that they are more significant than they really are. The inclusion of the EU Justice Scoreboard in the European Semester only serves to underline the significance attached to it, despite the reservations expressed.

For instance, Figure 1, under the heading 'Context: Continued Efforts to

Improve Justice Systems’, shows only the legislative activity of the Member States, and the other graphs under this heading do not provide a basis for qualitative evaluation of the reforms referred to. The graph does not provide sufficient meaningful information to provide a basis for Member States to learn from one another, which is the aspiration.

In the 2015 Justice Scoreboard the Commission, in its efforts not to create a ranking, showed countries in alphabetical order in Figures 14, 16 and 17 on the duration of litigation in consumer and competition cases. To the Bundesrat's regret, this restraint was abandoned in the 2016 Scoreboard and now the countries are again ordered according to their scores, despite the Commission's own acknowledgement that the data on which the scores are based are relatively weak.

The survey of training and quality management instruments (Figures 34, 35, 37 and 38) provides only a superficial account of whether the relevant institutions are in place; this is necessarily the case, given the lack of comparability between the different justice systems. Since the suitability and quality of these instruments are by their nature not measurable and not comparable, the indicators presented also have very limited significance.

Although the Bundesrat considers that a comparative listing of quality management instruments could go some way towards comparing the justice systems in their efforts at improvement, it has reservations about the presentation in Figure 38, which ranks the Member States quantitatively according to the number of different types of monitoring and evaluation systems. It mixes indicators on the type of quality management instruments with indicators on the regularity of their use. This cumulative type of presentation ultimately gives the impression of a ranking. There is no recognisable clear separation of the individual indicators. In terms of content, the instruments taken into consideration give grounds for concern. In view of the fact that judicial independence is constitutionally guaranteed in Germany, the value of having specialised court staff for quality assurance seems doubtful. In the Bundesrat's opinion, the ‘number of postponed cases’ indicator is also of questionable value for assessing quality, particularly as this again implies that the cases falling within this category are all comparable. The Bundesrat considered the type of presentation in Figure 42 to be more appropriate, and would like to see the Commission stick to this approach.

4. In the light of these factors, the Bundesrat still takes the view that the

Commission must make further efforts in order to satisfy its own aspiration to provide objective, reliable and comparable data. The Bundesrat would like the data collected to be carefully reviewed and validated with reference to comparative law definitions of the terms used and thorough explanation of the systemic differences, produced with the help of national justice administrations, before the EU Justice Scoreboard is published. The Bundesrat recommends that the Commission publish the Scoreboard every two years, following the CEPEJ's methodology.

5. 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.
6. The Bundesrat is submitting this position directly to the Commission.