



EUROPEAN COMMISSION

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C(2021) 38 final*

*Mr Reiner HASELOFF
President of the
Bundesrat
Leipziger Straße 3 – 4
D-10117 BERLIN*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the 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 2020 EU Justice Scoreboard” {COM(2020) 306 final}.

The Commission welcomes the Bundesrat’s continued attention to the EU Justice Scoreboard and appreciates the specific comments expressed in its Opinion.

The Commission is pleased to note that the Bundesrat continues to share the Commission’s view that independent, high-quality and efficient justice systems are indispensable for the rule of law. Upholding the rule of law is essential to guarantee fundamental rights and values, to ensure the uniform application of EU law, and to support an investment-friendly business environment. In particular, the Commission welcomes the support expressed by the Bundesrat for the Commission’s work in the context of the new European Rule of Law Mechanism. The Commission fully agrees that the analysis made in the context of the Mechanism needs to be based on objective comparable data and is committed to continue its cooperation with Member States, including in the context of the EU Justice Scoreboard, for the purpose of collecting such data.

On 30 September 2020, the Commission published its first annual Rule of Law Report¹. It presents both a synthesis of the rule of law situation in the European Union and, in its 27 country chapters, Member State specific-assessments of significant developments related to the rule of law. The Rule of Law Report is at the centre of the new European Rule of Law Mechanism, which aims at addressing challenges in a manner to prevent them from emerging or deepening. The Report relies on a diversity of sources, including data from the EU Justice

¹ COM(2020) 580 final

Scoreboard, which provides important comparative information on the efficiency, quality and independence of national justice systems. The Commission is grateful for the continued close collaboration with Member States to collect these data, which is at the foundation of the EU Justice Scoreboard.

The Commission appreciates the concrete proposals by the Bundesrat which aim at further improving the informative value and readability of the EU Justice Scoreboard. The EU Justice Scoreboard is an evolving tool and the Commission is constantly striving to improve it. As the Bundesrat recognises in its Opinion, progress has already been made in this regard, with a stable and lower number of charts in the 2020 edition, following a significant reduction in the number of charts when comparing the 2018 and 2019 Justice Scoreboard.

In response to the more technical comments, the Commission would like to refer the Bundesrat to the attached annex. The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing the dialogue with the Bundesrat in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

*Didier Reynders
Member of the Commission*

Annexe

The Commission welcomes the detailed assessment of the 2020 EU Justice Scoreboard undertaken by the Bundesrat. The comprehensive work that the Bundesrat has carried out provides an important contribution to the open dialogue with Member States on the improvement of national justice systems. This dialogue is one of the core objectives of the EU Justice Scoreboard.

As regards the points to which the Bundesrat has drawn the Commission's particular attention, the Commission would like to make the following comments:

The Bundesrat encourages the Commission's efforts to step up its action to uphold the rule of law within the Union and underlines the importance for this work to be based on thorough data. The Commission welcomes this support and fully agrees on the importance of basing its work on high-quality comparative data for all Member States. The Commission is committed to continue working with Member States to further improve the data collection in the context of the EU Justice Scoreboard, which is one of the sources of the annual Rule of Law Report.

The Bundesrat reiterates its view that the EU Justice Scoreboard is overly complex, with sometimes overloaded graphics and lengthy footnotes. The Commission appreciates the Bundesrat's proposals to contribute to further improving the readability of the EU Justice Scoreboard. The Commission would like to recall that the footnotes serve to complement the charts and provide further explanations to better reflect the specificities of national justice systems. They are closely coordinated with the Member States' authorities, either with members of the group of contact persons on national justice systems or the representatives of the judicial authorities, depending on the source of data, to best reflect the different national situations, while at the same time keeping the charts themselves as clear and comprehensive as possible. At the same time, as the Bundesrat notes positively in its Opinion, the notable reduction of the number of charts from the 2019 EU Justice Scoreboard compared to the 2018 edition has been maintained also in the 2020 EU Justice Scoreboard. As the Commission continuously tries to improve the EU Justice Scoreboard, it is ready to continue reflections with the Member States on how to further improve its readability and it is grateful for the concrete proposals from the Bundesrat in that respect.

The Bundesrat considers that further streamlining of the EU Justice Scoreboard is possible, (citing figures 1 as well as 49 to 55 as an example) and stresses the need to ensure availability of comparable data for a selection of figures (figures 2 to 6, 8, 10, 16 and 18 to 20).

As a general remark, the Commission would like to note that the effectiveness of justice systems is composed of three main elements: the efficiency and the quality of the justice systems as well as the independence of the judiciary. Consequently, the EU Justice Scoreboard aims at providing comparable valid data on indicators related to all three elements. The EU Justice Scoreboard does not promote any particular type of justice system. Whatever the model of the national justice system and the legal tradition, timeliness, independence, and easy access are hallmarks of an effective justice system.

As concerns figure 1 more specifically, it should not be understood as evaluating the quality of the measures adopted or announced. It only intends to give a factual overview of the 'who does what'. A qualitative assessment of reforms proposed or undertaken by a Member State may rather be carried out in the country chapters of the Rule of Law Report or in the country reports of the European Semester. As regards figures 49 to 55, the Commission agrees with the Bundesrat that the existence of institutional safeguards is as such not sufficient to ensure the effectiveness of guarantees for judicial independence. The figures presented in the Scoreboard do not provide an assessment or present quantitative data on the effectiveness of the safeguards on judicial independence. Rather, they aim at showing an accessible overview of the diversity of institutional arrangements in the Member States, taking into account well-established European standards, such as the Council of Europe recommendations on judicial independence and regarding prosecution services. These charts should not be considered in isolation, but be read together with the footnotes as well as with the analysis of how particular national judicial systems function in practice, which is provided in the country chapters of the Rule of Law Report.

The Commission fully agrees with the Bundesrat that the availability of valid data is a key consideration when designing the questionnaires for the EU Justice Scoreboard. As regards the efficiency figures cited by the Bundesrat, figures 2-15 are based on data collected through the Council of Europe's Commission for the Efficiency of Justice (CEPEJ), based on a methodology developed together with the Member States. In only a few cases, large values for a Member States that would go beyond the regular boundaries of a graph are reduced for presentational reasons, however this is always explained in the footnotes and only done in case of clear outliers. As regards figures 16 and 18 to 20, these aim at complementing the general data on the efficiency of justice systems and present the average length of proceedings in specific areas when EU law is involved. The areas are selected because of their relevance for the single market and the business environment. As the number of such cases that occur each year in these areas of law can vary, a weighted average over the years covered is also provided in the graphs to ensure that outliers do not overly influence the overall picture. It should be noted, however, that only in few cases the Member States provided estimated length of proceedings, and those situations are always mentioned in the footnotes under the charts. This ensures the transparency and does in no way reduce the validity of charts in general. The Commission welcomes any proposals by Member States how to further improve the presentation of these data.

The Bundesrat also proposes to focus the EU Justice Scoreboard more on core areas of EU competence and takes a critical approach in view of further extending the EU Justice Scoreboard in sensitive areas such as criminal justice, in particular in reference to the charts concerning the prosecution service. The Commission is fully aware of the sensitivity of this issue. It would like to recall, however, that the effectiveness of national justice systems is key for the implementation of EU law. This applies just as much for civil law resulting from EU law as it does for criminal law or any other area of law following from EU law. Data on the functioning of the criminal justice system are also very relevant for assessing the investment and business environment. The effective fight against money laundering, for example, is crucial in protecting the financial system and ensuring fair competition.

The Bundesrat is in favour of organising the data collection for the EU Justice Scoreboard in a cycle of two years or more. It considers that there are few changes on a year to year basis so that this would be sufficient to show long-term developments in judicial systems. The Commission is aware of the workload caused by filling in the questionnaires, and it takes this opportunity to thank the Länder for their very valuable contribution to this important exercise. At the same time, the Commission would like to recall that the EU Justice Scoreboard provides important information for the Commission's Rule of Law Report, which will be published on an annual basis. The comparative data also feed the analysis produced in the context of the European Semester, the European Union's annual cycle of economic policy coordination, and will feed the work related to the new Recovery and Resilience Facility. Therefore, annual data collection is indispensable. In addition, the Commission would like to note that the EU Justice Scoreboard uses various sources of information. By distributing questionnaires to various sources, the Commission aims to reduce the workload for each individual source and to ensure that the EU Justice Scoreboard does not constitute an undue burden for the judiciary. The methodology for the Scoreboard has been developed in close cooperation with the group of contact persons on national justice systems. The Commission is looking forward to continuing this cooperation, including with the objective to reduce the work based on the questionnaires.
