1. INTRODUCTION

The European Union is built on respect for fundamental values, for the rule of law and for democracy. These values must be protected. An effective functioning of the EU requires effective justice systems in all Member States. Quality, independence and efficiency are the key components of an 'effective justice system'. Effective justice systems are both a prerequisite for an investment and business friendly environment by instilling confidence throughout the entire business cycle as they are also essential for protecting individual rights, including in particular social rights. They are crucial for the implementation of all EU law, in particular EU economic laws, for the strengthening of mutual trust and the fight against corruption, which has a direct impact on public budgets and the business environment.

Whatever the model of the national justice system or the legal tradition in which it is anchored, efficiency, quality and independence are central to an 'effective justice system'.

It is against this background that the improvement of the effectiveness of justice systems in Member States has been identified as a key component for structural reforms in the European Semester, the annual cycle for the coordination of economic policies at EU level\(^1\). For the same reason, national judicial reforms have also become an integral part of the structural components in Member States subject to economic adjustment programmes\(^2\).  

2. IDENTIFICATION OF CHALLENGES

The EU Justice Scoreboard\(^3\) is an evolving information tool which contributes to the European Semester by providing objective, reliable and comparable data on the quality, independence and efficiency of justice systems in all Member States. It assists the EU and Member States in identifying potential shortcomings, improvements, good practices and trends over time. This cross examination of the functioning of national justice systems is complemented by a country specific assessment, presented in the country reports, which take into account the particularities of the legal system and the context of the Member State concerned.

\(^{1}\) The 2016 Annual Growth Survey of 26 November 2015 underlined that "enhancing the quality, independence and efficiency of Member States' justice systems is a prerequisite for an investment and business friendly environment. [...] It is necessary to ensure swift proceedings, address court backlogs, increase safeguards for judicial independence and improve the quality of the judiciary, including through better use of ICT in courts and use of quality standards.", COM(2015) 690 final, p.13

\(^{2}\) The Economic Adjustment Programmes in Greece, Portugal (ended in June 2014) and Cyprus (ended in April 2016) included conditionality on justice reform.

2.1. Improving the efficiency of justice systems

Timely decisions are essential for business, investors and consumers. In their investment decisions, companies take into account the risk of being involved in commercial disputes, labour or taxation disputes or insolvencies.

The efficiency with which a judicial system in a Member State handles litigation is hence an important factor.

The 2016 EU Justice Scoreboard shows that the situation may vary considerably, depending on the Member State and indicator concerned4.

A number of Member States continues to face particular challenges with regard to the efficiency of their justice systems, i.e. lengthy first instance proceedings together with low clearance rates or a large number of pending cases.

Figure 1 – Time needed to resolve litigious and commercial disputes (first instance/in days)

Source: The 2016 EU Justice Scoreboard5.

Note: Litigious civil and commercial cases concern disputes between parties, for examples disputes regarding contracts.

4 Length of proceedings, clearance rate and number of pending cases are standard indicators defined by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp

5 Based on data provided by CEPEJ. The length of proceedings expresses the 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. The original figure in the 2016 EU Justice Scoreboard contains additional specific contextualised information relating to the situation in certain Member States.
Figure 2 – Rate of resolving litigious civil and commercial cases (first instance/in %)

Source: the 2016 EU Justice Scoreboard⁶.

Note: When the clearance rate is about 100% or higher it means the judicial system is able to resolve 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. The original figure in the 2016 EU Justice Scoreboard contains additional specific contextualised information relating to the situation in certain Member States.

Figure 3 – Number of litigious civil and commercial pending cases (first instance/per 100 inhabitants)

Source: The 2016 EU Justice Scoreboard⁷.

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⁶ Based on data provided by CEPEJ. 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. The length of proceedings is linked to the rate at which the courts can resolve cases, the 'clearance rate', and to the number of cases that are still waiting to be resolved, 'pending cases'.

⁷ Based on data provided by CEPEJ. The number of pending cases represents the number of cases that still need to be handled at the end of a period. The number of pending cases influences the disposition time. The original figure in the 2016 EU Justice Scoreboard contains additional specific contextualised information relating to the situation in certain Member States.
Data over the years show that there is some volatility in the results, which may improve or deteriorate in Member States from one year to another. For litigious civil and commercial cases the length of proceedings has improved in more countries than it has not. As regards the clearance rates, most Member States for which data is available have a clearance rate above 100% and regarding pending cases, there is overall stability.

2.2. Improving the quality of justice systems

High-quality institutions, including the national justice systems, are a determinant for economic performance. Effective justice requires quality throughout the entire judicial process. Certain factors which are generally accepted as relevant can help improve the quality of justice systems, such as modern ICT, in particular case-management systems, training of judges and courts' staff, monitoring and evaluating the activities of courts, the use of satisfaction surveys and equipping justice systems with adequate resources, both on the budget and the human resources side.

The 2016 EU Justice Scoreboard confirms that the situation varies significantly across the EU, but also that many Member States are making particular efforts in these areas to pursue and enhance efforts to support the quality of judicial systems. For example, whilst efforts to enhance ICT tools for the judicial system have continued, the indicators reveal gaps in a number of Member States. Few Member States follow a comprehensive approach for the evaluation of court activities, including through surveys.

There remains significant scope for improving online small claims procedures. In terms of financial resources, data show that the expenditure on judicial systems in Member States remains rather stable. The figures below are examples of cross examination of certain parameters which contribute to the quality of the justice systems.

Adequate ICT Tools to support the monitoring and evaluation court activities with a view to improving court performance by detecting deficiencies and needs, in providing real-time case management, standardised court statistics, management of backlogs and automated early-warning systems are indispensable.

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Figure 4 – ICT used for case management and court activity statistics (weighted indicator-min=0, max=4)

Source: The 2016 EU Justice Scoreboard. Note: Data concern 2014. Equipment rate from 100% (device completely deployed) to 0% (device non-existing) indicates the functional presence in courts of the device covered by the graph, according to the following scale: 100% = 4 points if applicable to all matters; 1.33 point per specific matter; 50-99% = 3 points if applicable to all matters/1 point per specific matter; 10-49% = 2 points if applicable to all matters/0.66 point per specific matter; 0-9% = 1 point if applicable to all matters/0.33 point per specific matter. Matter relates to the type of litigation handled (civil/commercial, criminal, administrative or other).

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8 See for example the CEPEJ “Checklist for promoting the quality of justice and the courts” (2008); Opinion No. 6 (2004) Consultative Council of European Judges (CCJE) available at: https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2004)OP6&Sect=secDGHL&Language=lanEng&Ver=original&Bac kColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3
An effective **small claims procedure**, whether at national or European level, is essential for improving citizens’ access to justice and for enabling them to make better use of their consumer rights. The importance of cross-border online small claims procedures is also increasing due to cross-border e-commerce. The figure below measured the quality of small claims procedures online in EU Member States by detecting whether online public service provisions are organised around users’ needs.

**Figure 5 – Benchmarking of small claims procedures online (for each category 100 points, in total maximum 700 points)**

[Graph showing benchmarking results]

*Source: The 2016 EU Justice Scoreboard.*

**Figure 6 – General Government expenditure as a percentage of GDP**

[Graph showing general government expenditure]

*Source: The 2016 EU Justice Scoreboard.*
Adequate resources are necessary for the good functioning of the justice system and to have the right conditions at courts and well-qualified staff in place.

2.3. Independence of judicial systems

Judicial independence is a requirement stemming from the right to an effective remedy enshrined in the Charter of Fundamental Rights of the EU (Article 47). It is a fundamental element of an effective justice system.

It is also important for an attractive investment and business environment, as it assures the fairness, predictability and certainty of the legal system in which businesses operate. The 2016 EU Justice Scoreboard expands the examination of perceived independence with new Eurobarometer surveys of the general public as well as companies.

It confirms results from other surveys, particularly among Member States with the lowest and the highest perceived degree of judicial independence.

The 2016 Scoreboard continues to map legal safeguards for judicial independence in certain types of situations where independence could be at risk, for example the transfer of judges without their consent.

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Figure 7 – Perceived independence of courts and judges among the general public

Source: Eurobarometer survey FL435⁹.

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⁹ Eurobarometer survey FL435, conducted between 24 and 25 February 2016; 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?’.
Figure 8 - Perceived independence of courts and judges among companies

Source: Eurobarometer survey FL436.¹⁰

Figure 9 – Perceived judicial independence

Source: World Economic Forum¹¹, data published in the 2016 EU Justice Scoreboard. A higher value means better perception. The number in brackets displays the latest ranking among 140 participating countries worldwide.

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¹⁰ Eurobarometer survey FL436, conducted between 25 February and 4 March 2016; 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? The WEF indicator is based on survey answers to the question: "To what extent is the judiciary in your country independent from the influences of members of government, citizens, or firms?" The survey was replied to by a representative sample of firms in all countries representing the main sectors of the economy (agriculture, manufacturing industry, non-manufacturing industry, and services). The administration of the survey took different formats, including face-to-face interviews with business executives, telephone interviews and mailings, with an online survey as an alternative. Available at: http://www.weforum.org/reports/global-competitiveness-report-2015-2016
European standards\(^\text{12}\) require that judicial independence is effectively protected in the justice system through legal safeguards (structural independence). For example, in order to avoid undue pressure on a judge, judges should not be transferred to another judicial office without their consent, save for cases of disciplinary sanctions or the reform of the organisation of the judicial system. Figure 10 shows whether such a transfer is allowed in the first place, and, if so, which authorities decide on such transfers, the reasons (e.g. organisational, disciplinary) allowing for them and the possibilities of review against transfer decisions\(^\text{13}\).

**Figure 10 – The safeguards regarding the transfer of judges without their consent (irremovability of judges)**

![Figure 10](source)

*Source: The 2016 EU Justice Scoreboard\(^\text{14}\). The number above the column indicates the number of judges transferred without their consent in 2014 (no number indicates that no data is available).*

### 3. IDENTIFICATION OF POLICY LEVERS TO ADDRESS THE CHALLENGES

The types of structural reforms that can address the identified challenges range from structural measures to more operational measures, such as:

- restructuring the organisation of courts,
- reviewing the judicial map,
- modernisation and simplification of procedural rules,
- reforming the council for the judiciary,
- reforming judicial and legal professions,
- reforming legal aid,
- improving the enforcement of judgments,
- promoting the random allocation of cases,
- modernising the management process and transparency of proceedings in court,
- promoting the use of new information technology or
- fostering the development of alternative dispute resolution.

\(^{12}\) In particular, Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe of 17 November 2010 to member states on judges: independence, efficiency and responsibilities.

\(^{13}\) Recommendation CM/Rec(2010)12, §52.

\(^{14}\) Data collected through an updated questionnaire elaborated by the Commission in close association with the European Network of Councils for the Judiciary (ENCJ). For those Member States where Councils for the Judiciary do not exist, the replies to the updated questionnaire have been obtained in cooperation with the Network of the Presidents of the Supreme Courts of the European Union. The original figure in the 2016 EU Justice Scoreboard contains additional specific contextualised information relating to the situation in certain Member States.
These structural reforms are key policy levers to ensure the effectiveness of judicial systems and a more investment and business friendly environment.

The economic impact of fully functioning justice systems justifies these efforts. Effective justice systems play a key role in establishing confidence throughout the business cycle.

Where judicial systems guarantee the enforcement of rights, creditors are more likely to lend, firms are dissuaded from opportunistic behaviour, transaction costs are reduced and innovative businesses which often rely on intangible assets (e.g. intellectual property rights - IPR) are more likely to invest.

The importance of the effectiveness of national justice systems for SMEs has been highlighted in a 2015 survey of almost 9,000 European SMEs on innovation and IPR.

The survey revealed in particular that cost and excessive length of judicial proceedings were among the main reasons for SMEs to refrain from starting an IPR infringement procedure in court.

The positive impact of national justice systems on the economy is underlined in literature and research, including from the International Monetary Fund, the European Central Bank, the OECD, the World Economic Forum, and the World Bank. For example, a recent study (2015) on the reforms of the Portuguese civil justice system showed that the length of judicial proceedings dropped by more than one third due to reforms enacted as part of the economic adjustment programme.

There is also evidence that the effectiveness of the justice system incentivizes investment in a given country.

Research has established a positive correlation between firm size and effective justice systems, while weaker incentives to invest and to employ are observed in the presence of shortcomings in the functioning of justice.

An effective fight against corruption is also an important element for a business-friendly environment.

Finally, trust in well-functioning judicial systems contributes to higher level objectives such as entrepreneurship. Shortcomings in judicial systems lead to higher borrowing costs.

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15 European Union Intellectual Property Office (EUIPO), 'Intellectual Property (IP) SME Scoreboard 2016'.
17 IMF, "Fostering Growth in Europe Now" 18 June 2012.
4. CROSS-EXAMINATION OF POLICY STATE OF PLAY

The 2016 Country Reports of the European Semester show that a number of Member States continues to face particular challenges as regards the effectiveness of their justice systems. For the 2016 European Semester, the Council adopted, following a proposal from the Commission, country specific recommendations (CSRs) for Croatia, Cyprus Italy, Portugal, Slovenia and Slovakia to render their justice systems more effective.

Figure 11 – Mapping of justice reforms in the EU

Source: The 2016 EU Justice Scoreboard

The cross-examination shows that a number of Member States support their justice reforms through European Structural and Investment Funds (ESIF). For the programming period 2014-2020 the EU is providing EUR 4.2 billion support to institutional capacity of public administration, including justice reform through ESIF. 14 Member States\(^{26}\) identified justice as an area to be supported through ESIF in their programming documents.

The Commission emphasises the importance of taking a result-oriented approach when implementing the funds: this approach is also required under the ESIF Regulation No 1303/2013\(^ {27}\). The Commission is discussing with Member States how best to assess and evaluate the impact of ESIF on the justice systems concerned.

\(^{26}\) Bulgaria, Czech Republic, Greece, Spain (only ERDF), Croatia, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia and Slovenia.

The Commission further assists justice reforms in some EU Member States through technical support via its Structural Reform Support Service (SRSS), through economic adjustment programmes, and through the Cooperation and Verification Mechanism (CVM) in Bulgaria and Romania.

Member States have been implementing innovative tools and practices to strengthen the effectiveness of their justice systems, e.g.:

- **Judicial Data Warehouse and Presidents’ Dashboards Project in Slovenia**\(^{28}\): To generate better quality and more reliable information, the Supreme Court developed a new approach to court management by combining business-intelligence technology with managerial know-how. After first implementing electronic case management systems for individual judicial procedures, a data warehouse project and reporting system were initiated to allow information to be collected electronically, centrally and automatically (and hence up-to-date), to permit enquiries against a range of metrics (such as disposition time, clearance rates, age of pending caseload), and to enable reports to be produced on demand in a user-friendly format.

- **‘Quality Project’ in Rovaniemi courts in Finland**\(^{29}\): Four Working Groups for Quality (WGQs), consisting of judges, court staff and other stakeholders, are set up each year, each of which is given the task of dealing with one of the development themes selected by the judges themselves. The WGQ maps out the problems relevant to the theme, looks into the practices adopted in the different district courts and makes proposals for the harmonisation of court practices, which are followed up by another working group, usually the following year. The annual Report on Quality, distributed to all courts in FI, contains a number of quality objectives, e.g. those relating to civil matters concern the clarity of the lawsuit and the response, the substantive management of the case by the judge, the management of evidence, technical case management, and the drafting of reasons for the court’s findings on evidence.

- **Large-scale training using multiple delivery channels in Romania**\(^{30}\): Reacting to the need to retrain the entire judiciary in four new Codes, i.e. the Civil Code, the Civil Procedure Code, the Criminal Code and the Criminal Procedure Code, the National Institute of Magistracy (NIM) created a continuous training strategy. The first step was to identify trainers who were able to deliver seminars on the new Codes. Once established, the network of trainers organised of decentralised seminars. Training materials were simultaneously developed based upon the lecturers’ presentations and the debates that took place during the conferences. The debates were transcribed and included in handbooks that were published on the NIM’s website. The Handbook on New Civil Code was downloaded 8 036 times and the one on New Civil Procedural Code 10 376 times.

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5. USEFUL RESOURCES
