



# THE 2022 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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**THE 2022  
EU JUSTICE  
SCOREBOARD**

## Country codes

BE Belgium

BG Bulgaria

CZ Czechia

DK Denmark

DE Germany

EE Estonia

IE Ireland

EL Greece

ES Spain

FR France

HR Croatia

IT Italy

CY Cyprus

LV Latvia

LT Lithuania

LU Luxembourg

HU Hungary

MT Malta

NL Netherlands

AT Austria

PL Poland

PT Portugal

RO Romania

SI Slovenia

SK Slovakia

FI Finland

SE Sweden

# Foreword



*This edition of the EU Justice Scoreboard marks its 10<sup>th</sup> anniversary.*

*Over these ten editions, we have developed the Scoreboard from an overview of essential indicators from outside sources into a rich collection of high-quality data, often specifically gathered for this purpose by the Commission in collaboration with judicial networks and other sources. Specifically in recent years, the EU Justice Scoreboard and its information on judicial independence played an increasingly important role with the attention focussing on the rule of law across the European Union. The vital role of the Scoreboard was clear during the global health crisis, which further highlighted the importance of digitalisation of justice as one means to keep courts open and providing access to justice. The detailed indicators on digitalisation, now presented for the second time, are an essential monitoring tool showing Member States where there is room for improvement. The evolution of the Justice Scoreboard over these last ten years is remarkable.*

*Together with the annual Rule of Law Report, the EU Justice Scoreboard traces developments in the rule of law in EU Member States. Both initiatives are essential elements in the EU's rule of law toolbox, offering different perspectives on these issues. The EU Justice Scoreboard provides a quantitative and visual analysis of national justice systems and informs the Rule of Law Report, which includes a country-specific qualitative analysis of the major developments in Member States.*

*The 2022 Scoreboard maintains previous editions' general structure by analysing data on independence, quality and efficiency of national justice systems. At the same time, it is an evolving tool. This 10th edition responds 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, and deepens the analysis in relevant sub-areas. For efficiency, monitoring is extended to cover length of proceedings of administrative authorities in specific areas of EU law. For quality, new figures are available on specific arrangements for access to justice (in particular for persons with disabilities and for child-friendly proceedings), and on legal safeguards regarding decisions or inaction of administrative authorities. For independence, readers can find new charts on companies' perceptions of the effectiveness of investment protection by the law and the courts. Innovations in structural independence indicators include information on authorities involved in security checks on judges and safeguards relating to the temporary employment of judges or prosecutors in political posts – both sensitive issues that require appropriate safeguards for independence and impartiality.*

*As in previous years, the Scoreboard is the result of extensive and long-term 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 Expert Group on Money Laundering and Terrorist Financing (EGMLTF), 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).*

*The 2022 EU Justice Scoreboard has clearly shown that the effectiveness of EU justice systems continues to improve in a large majority of Member States, even when faced with the difficult circumstances experienced over the last years. At the same time, challenges remain in some Member States, that still have much to do 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 data presented in the Scoreboard 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 others can follow.*

*The 10-year anniversary of the Scoreboard shows us that the EU and its Member States remain committed to improving their justice systems and upholding the rule of law even during times of hardship. This should be a strong encouragement to continue to nourish the dialogue between Member States, support them in learning from and assisting each another, and ultimately improving 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 the application and enforcement of EU law and upholding the rule of law and other values the EU is founded on and which are common to the Member States. 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 set in EU law are enforced effectively (Article 19 of the Treaty on European Union (TEU)).

In addition, effective justice systems are also essential for mutual trust and for improving the investment climate and the sustainability of long-term growth. This is why 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 2022 annual sustainable growth survey <sup>(1)</sup>, which sets out the economic and employment policy priorities for the EU, confirms the link between effective justice systems and Member States’ business environment. Well-functioning and fully independent justice systems can have a positive impact on investment and are key for investment protection, and therefore contribute to productivity and competitiveness. They are also important for ensuring the effective cross-border enforcement of contracts, administrative decisions and dispute resolution, essential for the functioning of the single market <sup>(2)</sup>.

In this context, the EU Justice Scoreboard gives an annual overview of indicators focusing on the essential parameters of effective justice systems:

- efficiency;
- quality;
- independence.

The 2022 Scoreboard further develops the indicators for all three aspects, including on accessibility to justice for persons with disabilities, and again on the digitalisation of justice, which has played a major role in keeping the courts functioning during the COVID-19 pandemic, as well as more generally, to promote efficient and accessible justice systems <sup>(3)</sup>. This edition strengthens the business dimension on all three aspects by including new data on administrative efficiency, legal safeguards in relation to administrative decisions and confidence in investment protection. Finally, for the first time the 2022 Scoreboard presents the effects of the COVID-19 pandemic on the efficiency of justice systems.

## - The European Rule of Law Mechanism –

As announced in President von der Leyen’s political guidelines, 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 2021 Rule of Law Report, published on 20 July 2021, drew on a variety of sources, including the EU Justice Scoreboard <sup>(4)</sup>. Moreover, as announced by President von der Leyen in her 2021 State of the Union Speech, the 2022 Rule of Law Report will include recommendations to Member States. The 2022 EU Justice Scoreboard has also been further developed to reflect the need for additional comparative information identified during the preparation of the 2021 Rule of Law Report, so as to support forthcoming Rule of Law reports.

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1 COM(2021) 740 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/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report/2021-rule-law-report-communication-and-country-chapters\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report/2021-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. Rather, it gives an overview of how all Member States' 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 on which it is based. Figures for these three parameters should be read together, as all three are often interlinked (initiatives aimed at improving one may affect another).

The Scoreboard mainly presents indicators concerning civil, commercial and administrative cases, as well as, subject to availability of data, certain criminal cases (i.e. cases concerning money laundering at first instance courts), 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 the course of 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 much of the quantitative data. The data cover 2012-2020, and have been provided by Member States in accordance with the 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 the CEPEJ show the 'disposition time' – a calculated length of court proceedings (based on a ratio between pending and resolved cases). Data on courts' and administrative authorities' efficiency in applying EU law in specific areas show the average length of proceedings derived from the actual length of court cases. Note that the length of court proceedings may vary substantially between areas in a Member State, particularly in urban centres where commercial activities may lead to a higher caseload.

Other data sources, covering the period from 2012 to 2021, 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 Council of Bar and Law Societies in Europe (CCBE)<sup>(11)</sup>, the European Competition Network (ECN)<sup>(12)</sup>, the Communications Committee (COCOM)<sup>(13)</sup>, the European Observatory on infringements of intellectual property rights<sup>(14)</sup>, the Consumer Protection Cooperation Network (CPC)<sup>(15)</sup>, the Expert Group on Money Laundering and Terrorist Financing (EGMLTF)<sup>(16)</sup>, Eurostat<sup>(17)</sup>, and the European Judicial Training Network (EJTN)<sup>(18)</sup>.

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 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 The ENCJ brings together Member States' national institutions that are independent of the executive and legislature, and are responsible for supporting the judiciary in the independent delivery of justice: <https://www.encj.eu/>

9 The NPSJC provides a forum that gives European institutions the opportunity to request the opinions of supreme courts, and brings 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: <https://www.aca-europe.eu/>

11 CCBE represents European bars and law societies in their common interests before European and other international institutions. It regularly acts as a liaison between its members and the European institutions, international organisations, and other legal organisations around the world: <https://www.ccbe.eu/>

12 The ECN has been established as a forum for discussion and cooperation between European competition authorities in cases where Articles 101 and 102 of the Treaty on the Functioning of the EU (TFEU) 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)

13 The COCOM is composed of EU Member State representatives. 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>

14 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://euipo.europa.eu/ohimportal/en/web/observatory/home>

15 The CPC is a network of national authorities responsible for enforcing EU consumer protection laws in EU and EEA countries: <https://single-market-scoreboard.ec.europa.eu/governance-tools/consumer-protection-cooperation-network-cpc>

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

17 Eurostat is the statistical office of the EU: <https://ec.europa.eu/eurostat/web/main/about/who-we-are>

18 The EJTN is the principal platform and promoter for the training and exchange of knowledge of the European judiciary: <https://www.ejtn.eu/en/>

Over the years, the Scoreboard methodology has been further developed and refined in close cooperation with the group of Member States' contact persons on national justice systems, particularly through a questionnaire (updated annually) and by 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. This is because many Member States have invested in their capacity to produce better judicial statistics. Where difficulties in gathering or providing data persist, this is either due to insufficient statistical capacity, or because 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 (RRF)?

The Scoreboard provides elements for assessing the efficiency, quality and independence of national justice systems. In doing so, it aims to help Member States make their national justice systems more effective. By comparing information on Member States' 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 a bilateral dialogue with the national authorities and the stakeholders concerned. Where the shortcomings identified have macroeconomic significance, the European Semester analysis may lead to the Commission's proposing to the Council to adopt country-specific recommendations to improve the national justice systems in individual Member States<sup>(19)</sup>. The RRF will make available more than EUR 670 billion in loans and non-repayable financial support, of which each Member State would need to allocate a minimum of 20% to the digital transition. The RRF 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. Payments to Member States under the performance-based RRF are contingent on the fulfilment of milestones and targets. In this context, the Commission therefore has to continuously assess whether the Member States' recovery and resilience plans (RRPs) are implemented satisfactorily in order to contribute to effectively addressing all or a significant number 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>(20)</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, which is particularly relevant in the context of the European Semester and the RRF. Where and when judicial systems guarantee the enforcement of rights, creditors are more likely to lend, businesses have higher confidence and are dissuaded from opportunistic behaviour, transaction costs are reduced and innovative businesses are more likely to invest. In fact, an effective justice system is vital for sustained economic growth. It can improve the business climate, foster innovation, attract foreign direct investment, secure tax revenues and support economic growth. The benefits of well-functioning national justice systems for the economy are confirmed by a wide range of studies and academic literature, including from the International Monetary Fund (IMF)<sup>(21)</sup>, the European Central Bank (ECB)<sup>(22)</sup>, the European Network of Councils for the Judiciary<sup>(23)</sup>, the Organization for Economic Cooperation and Development (OECD)<sup>(24)</sup>, the World Economic Forum<sup>(25)</sup>, and the World Bank<sup>(26)</sup>.

- 19 In the context of the European Semester, the Council, on the basis of the Commission's proposal, addressed country-specific recommendations on their justice systems 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). The Commission also monitors judicial reforms in BG and RO under the Cooperation and Verification Mechanism. There were no country-specific recommendations in 2021 due to the ongoing RRF processes.
- 20 Article 19(3)(b) and Article 24(3) and (5) 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.
- 21 IMF, Regional Economic Outlook, November 2017, *Europe: Europe Hitting its Stride*, p. xviii, pp. 40, 70: <https://www.imf.org/-/media/Files/Publications/REO/EUR/2017/November/eur-booked-print.ashx?la=en>
- 22 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>
- 23 European Network of Councils for the Judiciary and the Montaigne Centre for the Rule of Law and Administration of Justice of Utrecht University, 'Economic value of the judiciary – A pilot study for five countries on volume, value and duration of large commercial cases', June 2021: <https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/Reports/Economic%20value%20of%20the%20judiciary%20-%20pilot%20study.pdf>
- 24 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.
- 25 World Economic Forum, 'The Global Competitiveness Report 2019', October 2019: <https://www.weforum.org/reports/global-competitiveness-report-2019>
- 26 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>

A study has found that reducing the length of court proceedings by 1% (measured in disposition time <sup>(27)</sup>) may increase the growth rate of the number of companies <sup>(28)</sup>, and that a higher percentage – by 1% – of companies perceiving the justice system as independent tends to be associated with higher firms' turnover and greater productivity growth <sup>(29)</sup>. Another study has indicated there is a positive correlation between perceived judicial independence and foreign direct investment flows <sup>(30)</sup>.

Several surveys have also 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 and continuously review the rule of law conditions (including court independence) in the countries they invest in <sup>(31)</sup>. In another survey, over half of small and medium-sized enterprises (SMEs) replied that the cost and excessive length of judicial proceedings, respectively, were the main reasons for not starting court proceedings over the infringement of intellectual property rights (IPR) <sup>(32)</sup>. The Commission's Communications on *Identifying and addressing barriers to the single market* <sup>(33)</sup> and the *Single market enforcement action plan* <sup>(34)</sup> also provide insights 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>(35)</sup>, with a total budget of EUR 864.4 million for 2021 to 2027. Since 2021, the TSI has been supporting projects directly linked to the effectiveness of justice, such as the digitalisation of justice, reforms of judicial maps or better access to justice. The TSI also complements the measures proposed by the Commission to address the economic consequences of the COVID-19 pandemic, namely the RRF, since it can support Member States in the preparation and implementation of their recovery and resilience plans. The RRFs include actions, among others, related to making justice more effective: digitalising justice, reducing backlogs, and improving the management of courts and cases.

## How does the Justice programme support the effectiveness of justice systems?

With a total budget of EUR 305 million for the period 2021–2027, the Justice programme supports the further development of the European area of Justice based on the rule of law including the independence, quality and efficiency of the justice system, based on mutual recognition and mutual trust, and on judicial cooperation. In 2021, around EUR 45.3 million were provided to fund projects and other activities under the three specific objectives of the programme:

- EUR 12.2 million were provided to promote judicial cooperation in civil and criminal matters and to contribute to the effective and coherent application and enforcement of EU instruments as well as to support to Member States for their connection to the ECRIS-TCN system,

27 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 developed by the Council of Europe's European Commission for the Efficiency of Justice (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)

28 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)

29 *Idem*.

30 'Effect of judicial independence on foreign direct investment in Eastern Europe and South Asia', Bülent 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.

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

32 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)

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

34 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, in particular actions 4, 6 and 18.

35 [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)  
The TSI regulation was adopted in March 2021. 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).

- EUR 17.7 million were provided in support to training of justice professionals on EU civil, criminal and fundamental rights law, legal systems of the Member States and the rule of law,
- EUR 15.4 million were provided to support the development and use of digital tools in complementarity with the Digital Europe Programme as well as the maintenance and extension of the e-Justice portal.

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

Digitalisation of justice is the key to increasing the effectiveness of justice systems and a highly efficient tool for enhancing and facilitating access to justice. The COVID-19 pandemic has 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 on the digitalisation of justice across the Member States, for example in the areas of online access to judgments or online claim submission and follow-up.

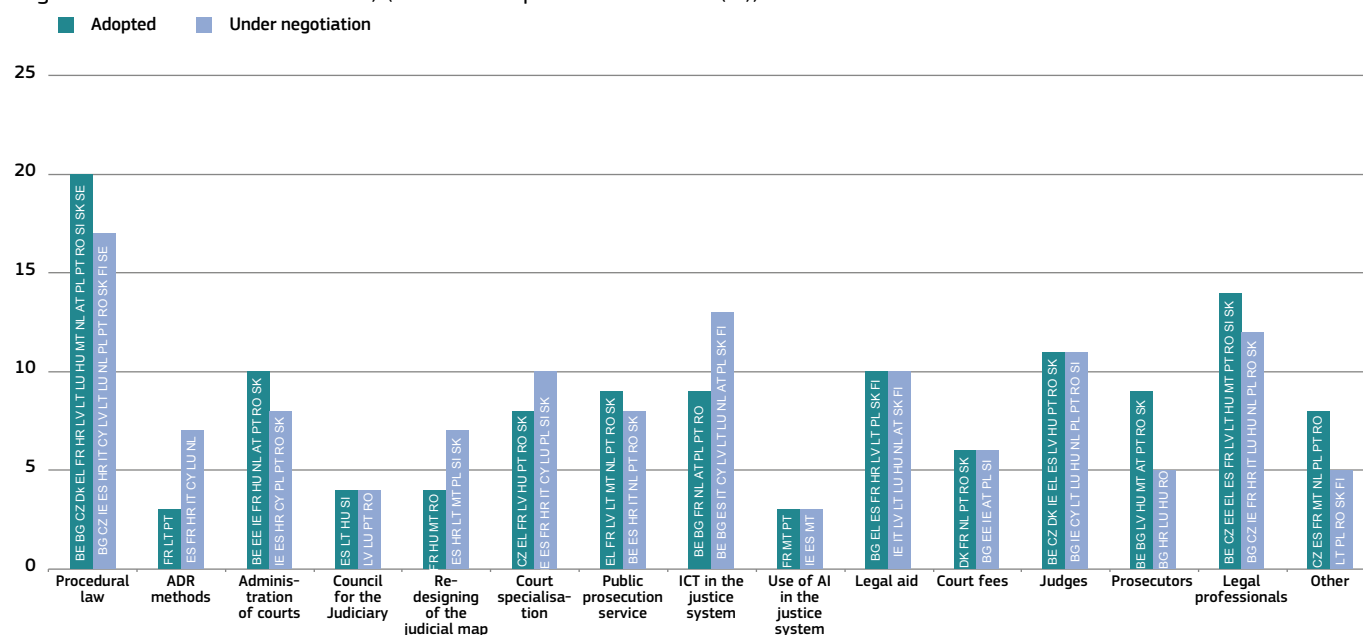
The Commission's Communication on *Digitalisation of justice in the European Union – A toolbox of opportunities* <sup>(36)</sup>, adopted in December 2020, presents a strategy aimed at improving access to justice and the effectiveness of justice systems using technology. As outlined in the Communication, a number of additional indicators were 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.



## 2. Context: Developments in justice reforms in 2021

In 2021, 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 reforming their justice systems.

**Figure 1** Legislative and regulatory activity concerning justice systems in 2021 (adopted measures/initiatives under negotiation in each Member State) (source: European Commission (37))

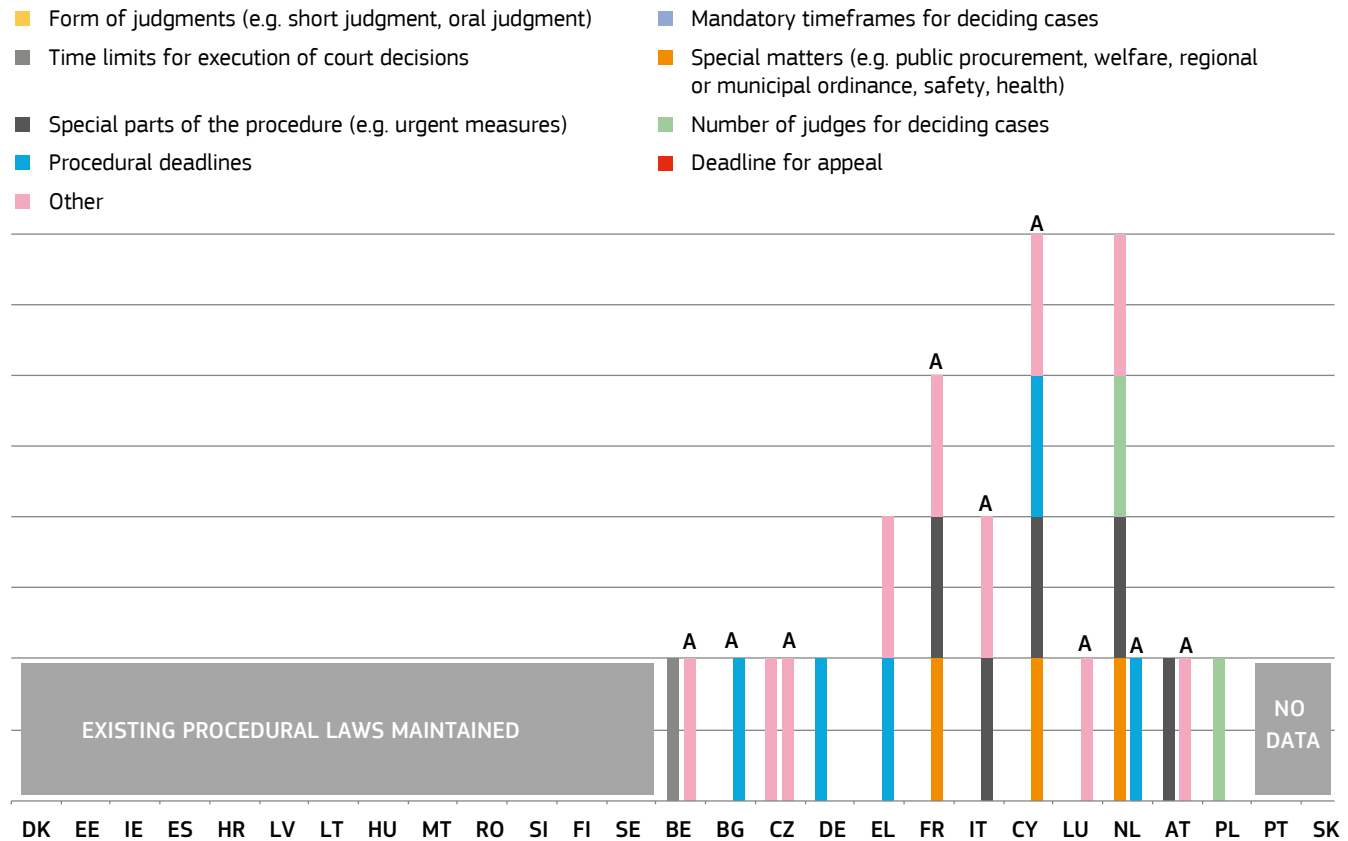


In 2021, procedural law continued to be an area of particular focus in many Member States, with a significant amount of ongoing or planned legislative activity. Reforms concerning the status of judges and the rules for legal professionals also saw significant activity. A number of Member States were 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 2021. Some Member States are already actively using or planning to use artificial intelligence in their justice systems. The overview confirms the observation that justice reforms require time – sometimes several years – from their announcement, until the adoption of the legislative and regulatory measures and their 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 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 an updated overview of 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.

37 This 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 judicial reforms were under way, but that 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>(38)</sup>)



(\* The data covers the period between December 2020 and December 2021. For each Member State, the left column presents the practices in Supreme Courts, and the 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:** Raad van State/Conseil d'Etat (Council of State) and Hof van Cassatie /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 di 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), Personalsenat (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).

38 Two questionnaires have informed this chart, one from the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU (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 2022 EU Justice Scoreboard

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

## 3.1. Efficiency of justice systems

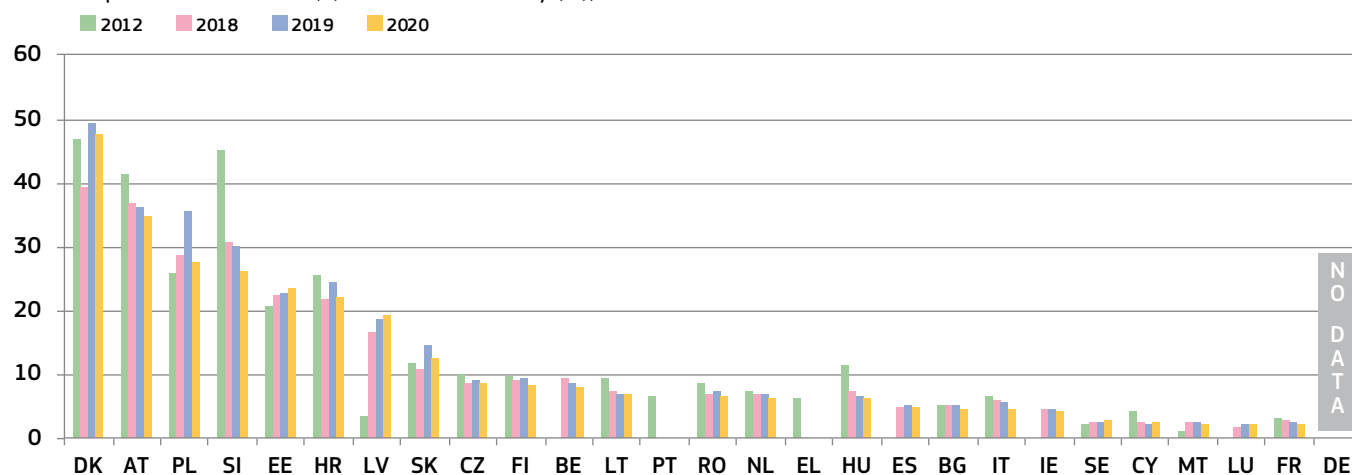
The Scoreboard presents indicators for the efficiency of proceedings in the broad areas of civil, commercial and administrative cases and in specific areas where administrative authorities and courts apply EU law <sup>(39)</sup>.

The efficiency related indicators in 2020, in particular the number of incoming cases, clearance rate and disposition time, were impacted by the specific circumstances related to the COVID-19 pandemic across the EU, which affected Member States in different ways (e.g. in terms of timing or severity) <sup>(40)</sup>.

### 3.1.1. Developments in caseload

The caseload of national justice systems decreased in several Member States, compared to the previous year, while increasing or remaining stable in others. Overall it continues to vary considerably between Member States (Figure 3). This is testament to how important it is to remain attentive to caseload developments to ensure the effectiveness of justice systems.

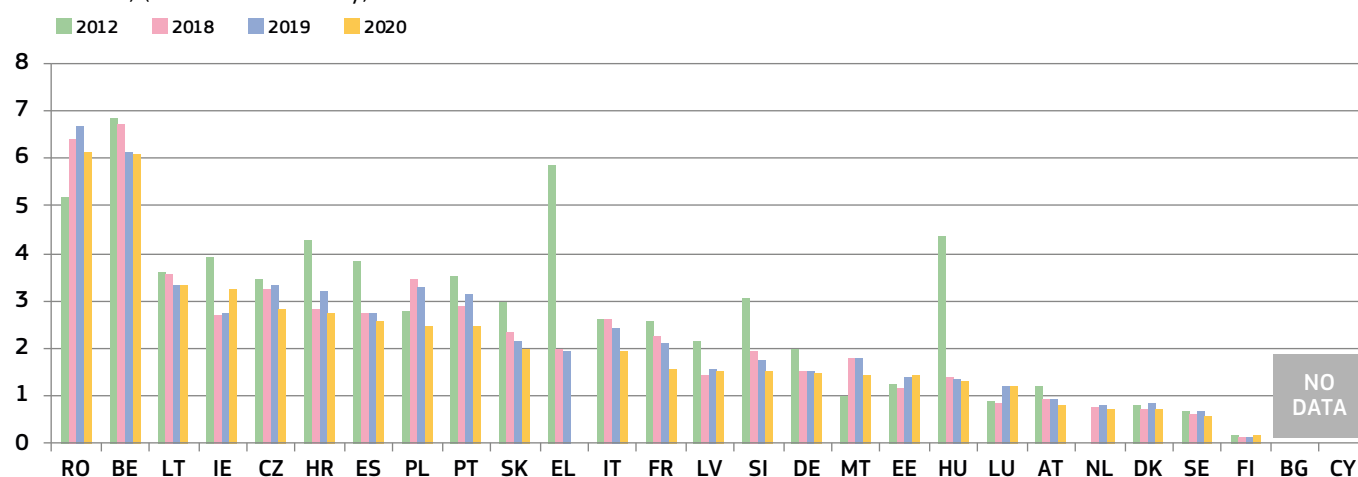
**Figure 3** Number of incoming civil, commercial, administrative and other cases in 2012, 2018 – 2020 (\*) (1<sup>st</sup> instance/per 100 inhabitants) (source: CEPEJ study <sup>(41)</sup>)



(\*) 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.

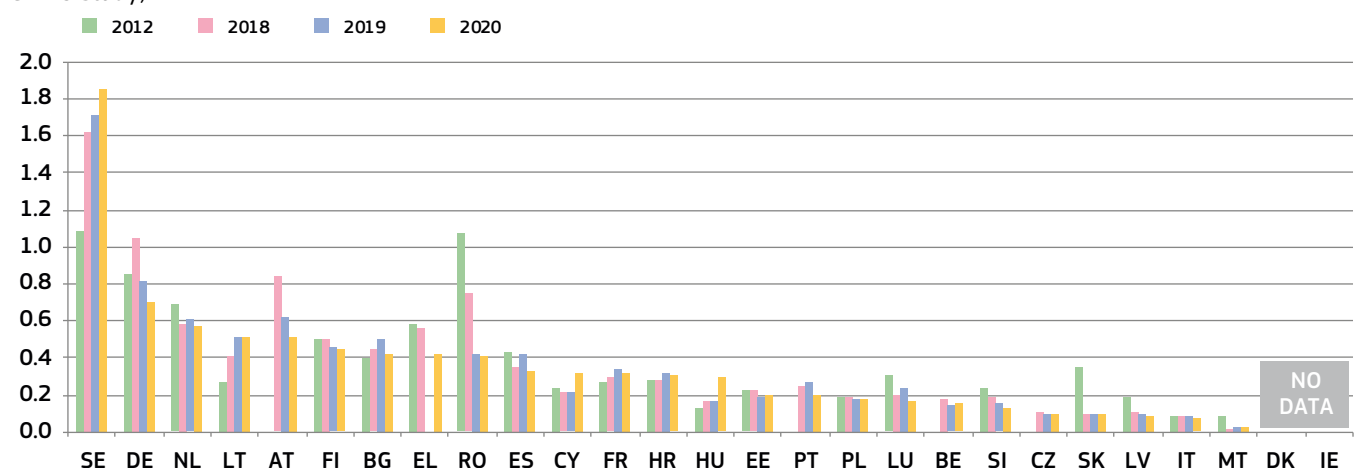
39 The enforcement of court decisions is also important for the efficiency of a justice system. However, comparable data are not available in most Member States.  
 40 In IT, the temporary slowdown of judicial activity due to strict restrictive measures to address the COVID-19 pandemic affected the disposition time. More details on the individual Member States' situation are presented in 2020 study on the functioning of judicial systems in the EU Member States – country profiles, 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).  
 41 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, 2018 – 2020 (\*) (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, 2018 – 2020 (\*) (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. Removal from judicial procedure of some administrative procedures 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 -

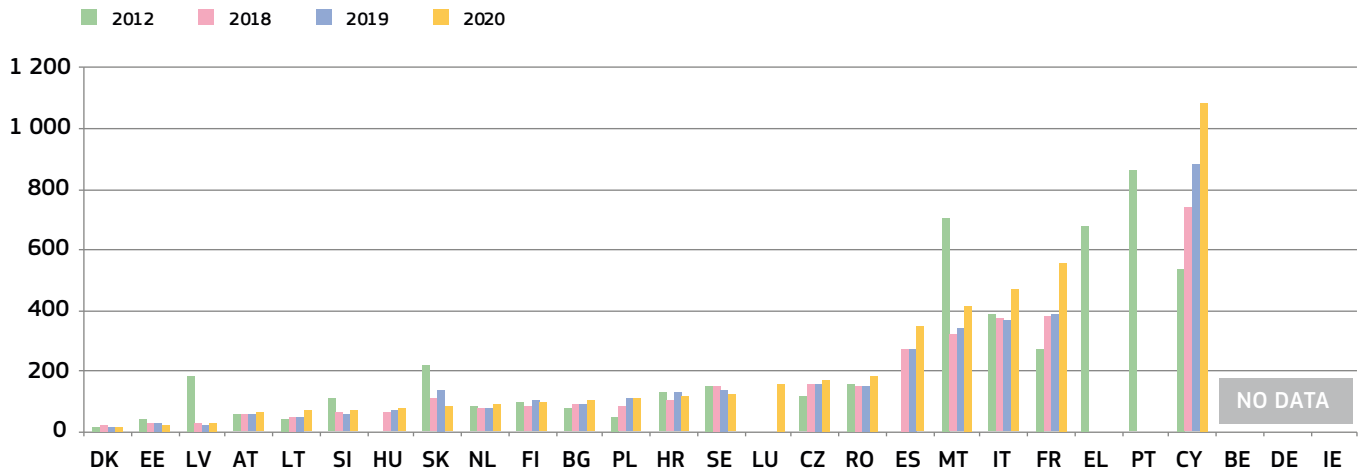
The length of proceedings indicates the estimated time (in days) needed to resolve a case in court, meaning the time taken by the court to reach a decision at first instance. The 'disposition time' indicator is the number of unresolved cases divided by the number of resolved cases at the end of a year multiplied by 365 (days) <sup>(42)</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, 2018, 2019 and 2020 <sup>(43)</sup>. Figures 8 and 10 show the disposition time in

42 Length of proceedings, clearance rate and number of pending cases are standard indicators defined by 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)

43 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, 2016 and 2017 are available in the CEPEJ report.

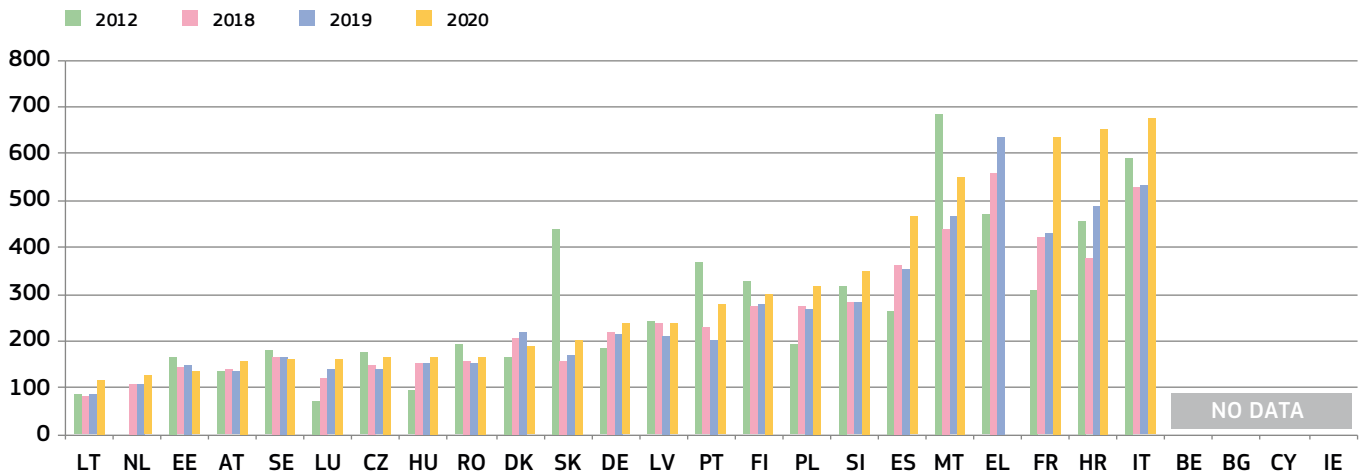
2020 in civil and commercial litigious cases, and administrative cases at all court instances, while Figure 24 shows the average length of proceedings in money laundering cases at first instance courts.

**Figure 6 Estimated time needed to resolve civil, commercial, administrative and other cases in 2012, 2018 – 2020 (\*) (1<sup>st</sup> instance/in days) (source: CEPEJ study)**



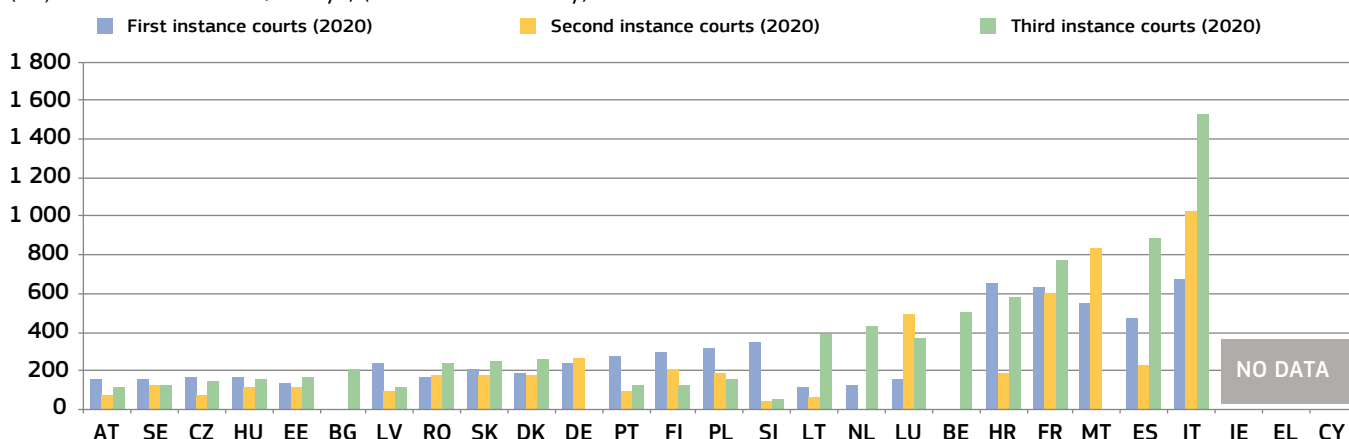
(\*) Under the CEPEJ methodology, this category includes all civil and commercial litigious and non-litigious cases, non-litigious land and business registry cases, other registry cases, other non-litigious cases, administrative law cases and other non-criminal cases. Methodology changes in **SK**. Pending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

**Figure 7 Estimated time needed to resolve litigious civil and commercial cases at first instance in 2012, 2018 – 2020 (\*) (1<sup>st</sup> instance/in days) (source: CEPEJ study)**



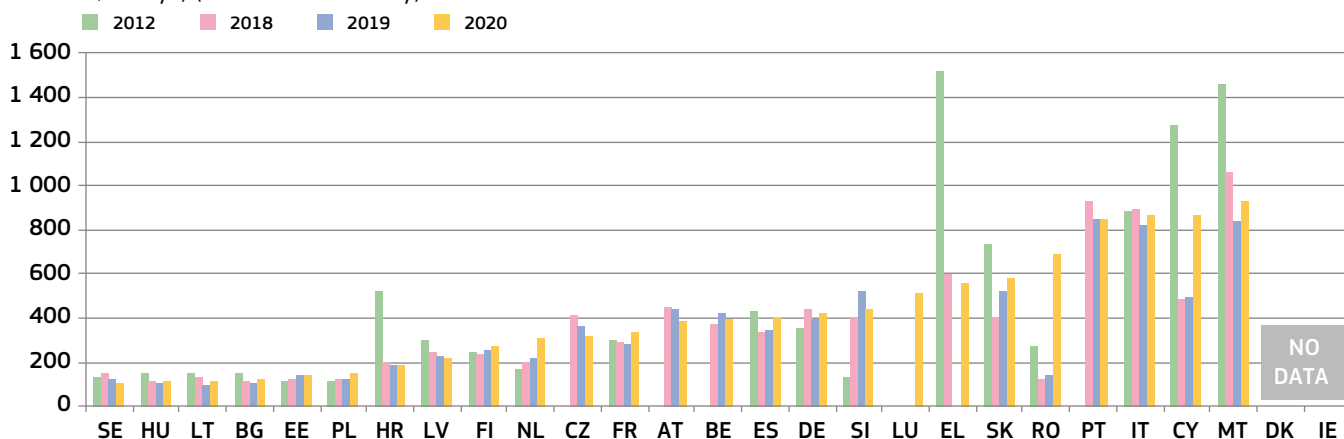
(\*) Under the CEPEJ methodology, litigious civil/commercial cases concern disputes between parties, e.g. disputes about contracts. Non-litigious civil/commercial cases concern uncontested proceedings, e.g. uncontested payment orders. Methodology changes in **EL** and **SK**. Pending cases include all instances in **CZ** and, up to 2016, in **SK**. **IT**: the temporary slowdown of judicial activity due to strict restrictive measures to address the COVID-19 pandemic affected the disposition time. Data for **NL** include non-litigious cases.

**Figure 8** Estimated time needed to resolve litigious civil and commercial cases at all court instances in 2020 (\*) (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> instance/in days) (source: CEPEJ study)



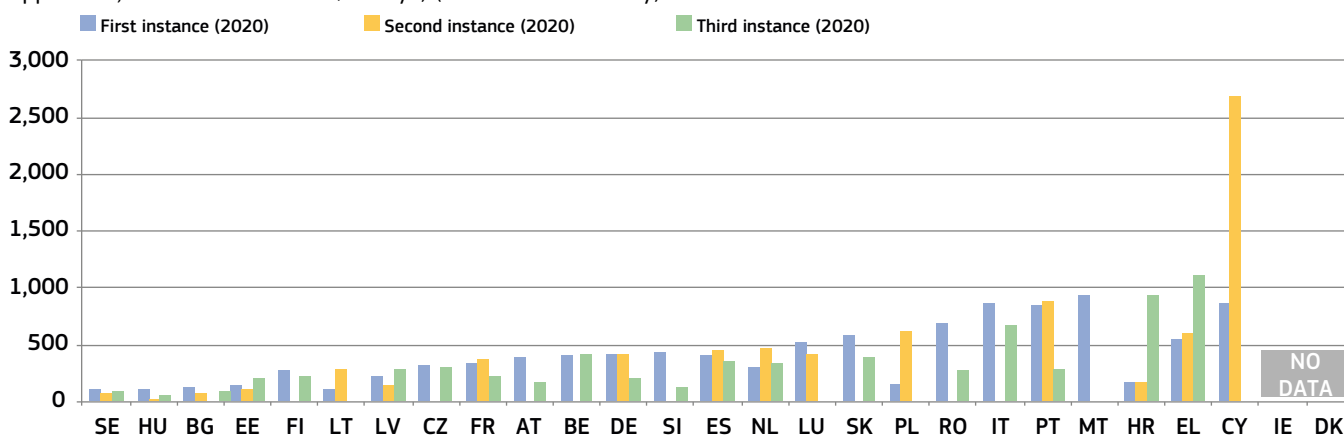
(\*) The order is determined by the court instance with the longest proceedings in each Member State. No data are available for first and second instance courts in **BE** and **BG**, for second instance courts in **NL**, for second and third instance courts in **AT** or for third instance courts in **DE** and **HR**. There is no third instance court in **DE** and **MT**. **IT**: The temporary slowdown of judicial activity due to strict restrictive measures to address the COVID-19 pandemic affected the disposition time. 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, 2018 – 2020 (\*) (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 courts of all 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 increased because cases were tried together, 2 724 consolidated cases were withdrawn and an administrative court was set up in 2015.

**Figure 10** Estimated time needed to resolve administrative cases at all court instances in 2020 (\*) (1<sup>st</sup> and, where applicable, 2<sup>nd</sup> and 3<sup>rd</sup> instance/in days) (source: CEPEJ study)

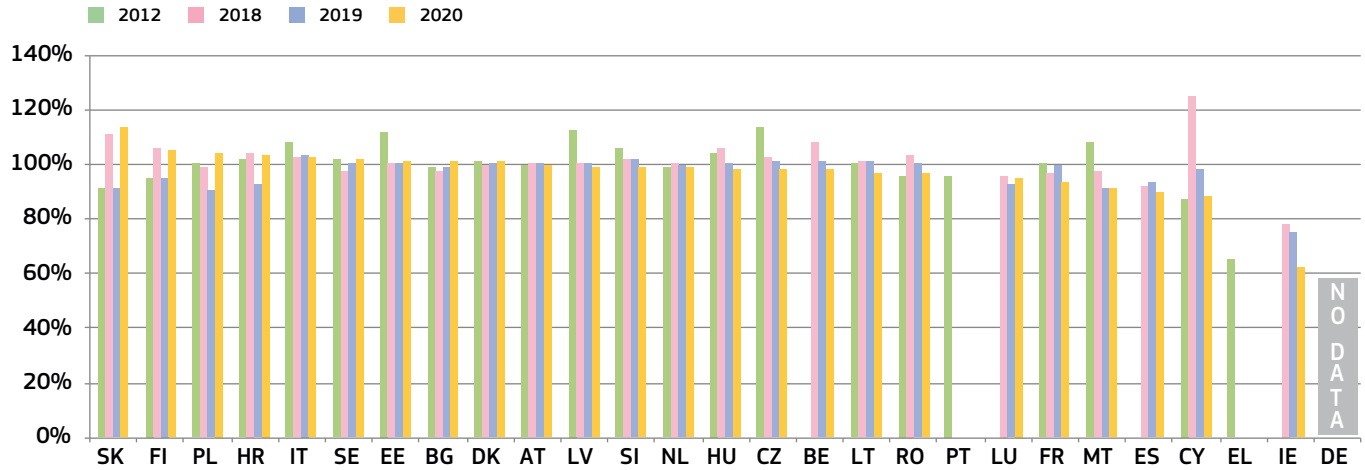


(\*) The order is determined by the court instance with the longest proceedings in each Member State. No data available for second instance courts in **BE**, **CZ**, **HU**, **MT**, **AT**, **RO**, **SI**, **SK** and **FI**, for third instance courts in **CY**, **LT**, **LU**, **MT** and **PL**. The supreme, or other 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 courts may be limited in some Member States. **DK** and **IE** do not record administrative cases separately.

- Clearance rate -

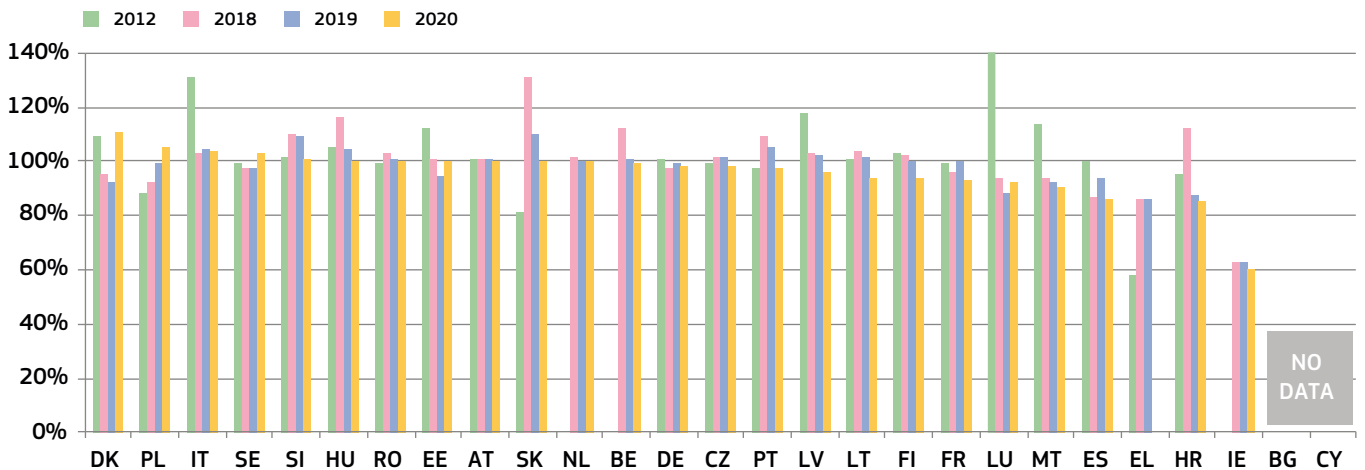
The clearance rate is the ratio of the number of resolved cases over the number of incoming cases. It measures whether a court is keeping up with its incoming caseload. When the clearance rate is around 100% or higher, it means the judicial system is able to resolve at least as many cases as come in. 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, 2018 – 2020 (\*)** (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)



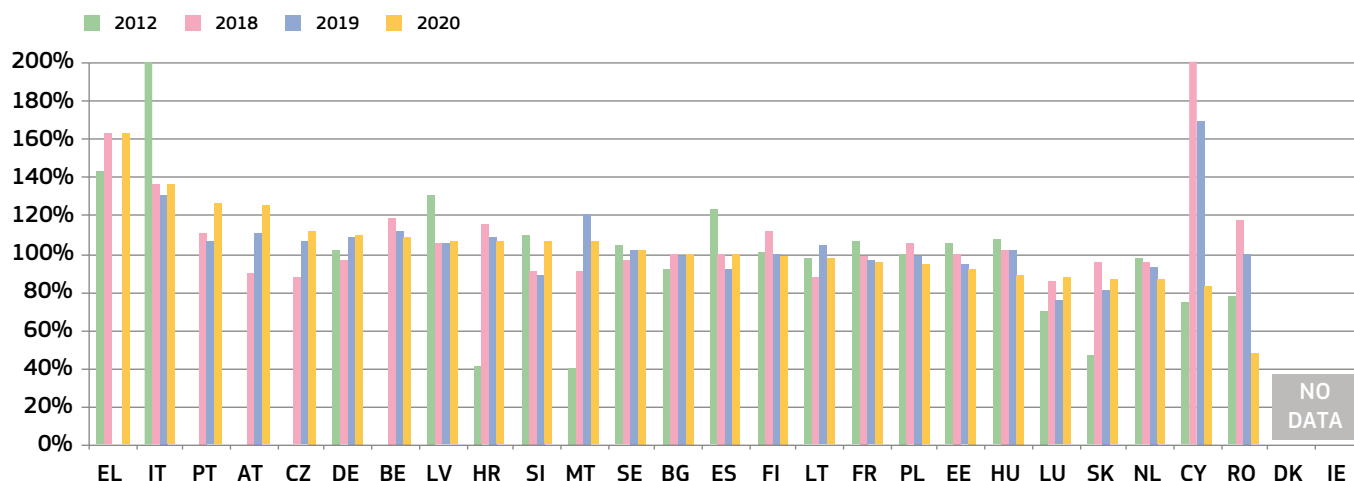
(\*) Under the CEPEJ methodology, this category includes all civil and commercial litigious and non-litigious cases, non-litigious land and business registry cases, other registry cases, other non-litigious cases, administrative law cases and other non-criminal cases. Methodology changes in **SK, IE**: 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, 2018 – 2020 (\*)** (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, 2018 – 2020 (\*) (1<sup>st</sup> instance/in %) (source: CEPEJ study)

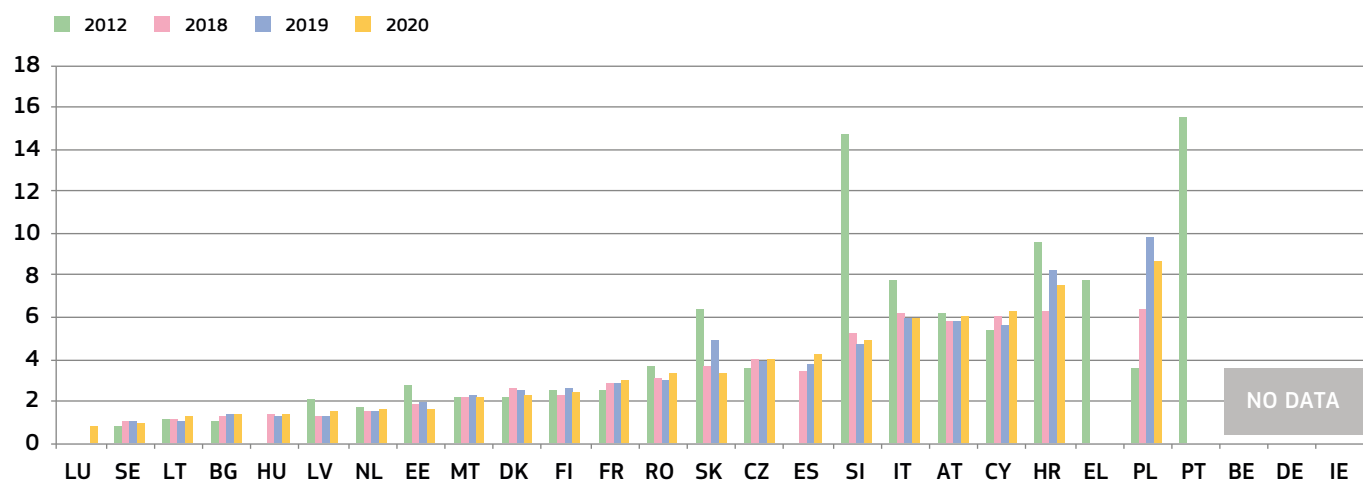


(\*) Past values for some Member States have been reduced for presentation purposes (CY in 2018 = 219%; IT in 2012=279.8%); Methodology changes in EL and SK. DK and IE do not record administrative cases separately. In CY the number of resolved cases has increased because cases were tried together, 2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

**- Pending cases -**

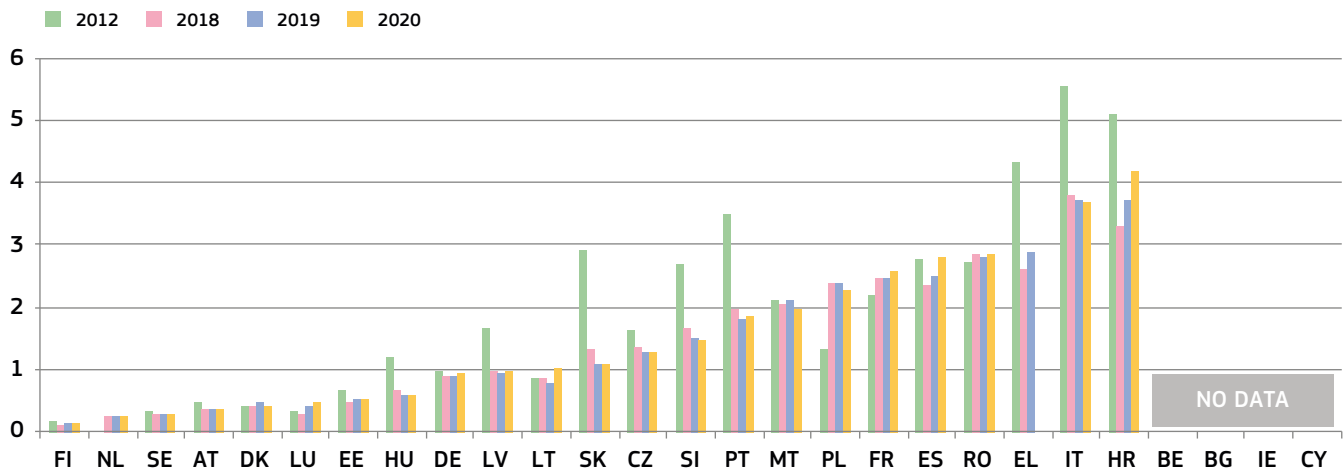
The number of pending cases expresses the number of cases that remains to be dealt with at the end of the year in question. It also affects disposition time.

**Figure 14** Number of pending civil, commercial and administrative and other cases in 2012, 2018 – 2020 (\*) (1<sup>st</sup> instance/per 100 inhabitants) (source: CEPEJ study)



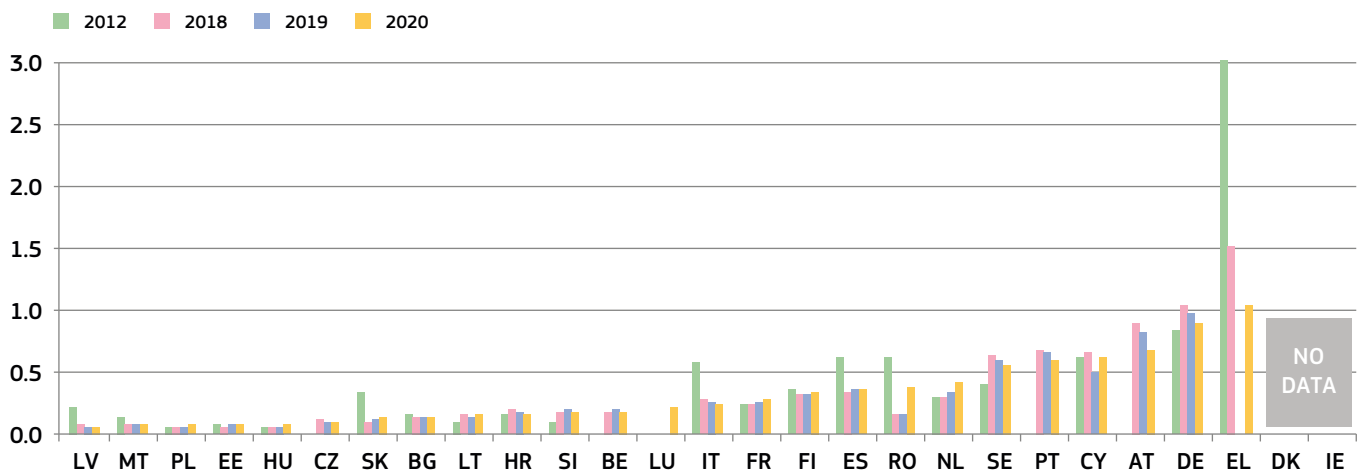
(\*) Under the CEPEJ methodology, this category includes all civil and commercial litigious and non-litigious cases, non-litigious land and business registry cases, other registry cases, other non-litigious cases, administrative law cases and other non-criminal cases. Methodology changes in SK. Pending cases include cases before courts of 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, 2018 – 2020 (\*) (1st instance/per 100 inhabitants) (source: CEPEJ study)



(\*) Methodology changes in **EL** and **SK**. Pending cases include cases before courts of 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, 2018 – 2020 (\*) (1st 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 cases before courts of 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>(44)</sup> in specific areas of EU law. The 2022 Scoreboard builds on previous data for competition, electronic communications, the EU trademark, consumer law and anti-money laundering. The four areas have been selected because of their relevance for the single market and the business environment. Moreover, this edition provides a broader overview of efficiency of administrative authorities: two new figures on the areas of competition and electronic communications complement such data on consumer protection. In general, long delays in judicial and administrative proceedings may have negative impacts on rights stemming from EU law e.g. when appropriate remedies are no longer available or serious financial damages become irrecoverable. For business in particular, administrative delays and uncertainty in some cases can lead to significant costs and undermine planned or existing investments<sup>(45)</sup>.

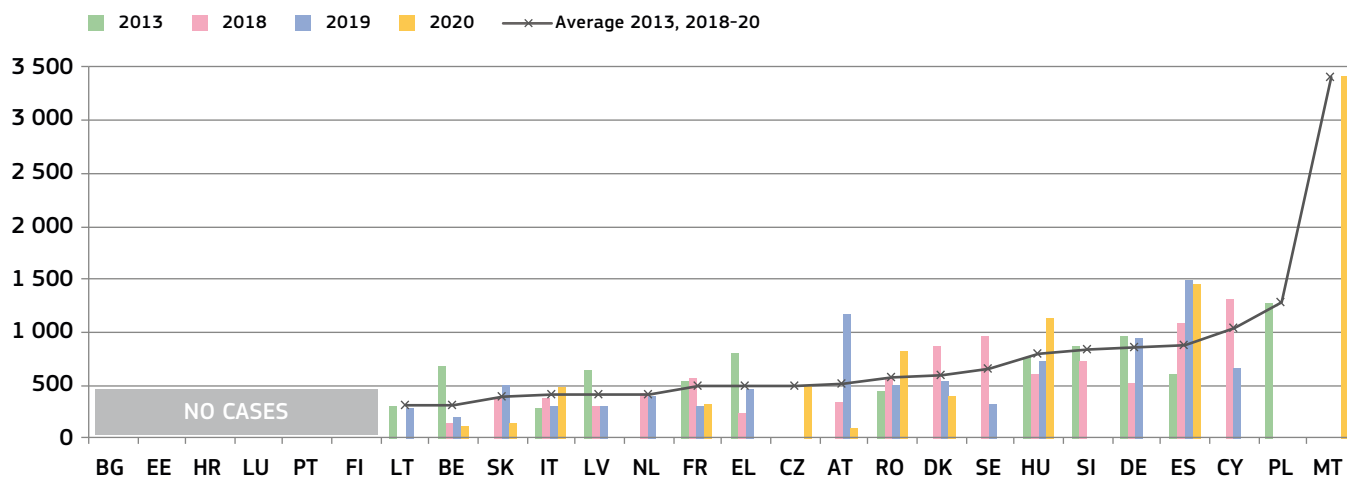
<sup>44</sup> The length of proceedings in specific areas is calculated in calendar days, counting from the day on which an action or appeal was lodged before the court (or the indictment became final) until the day on which the court adopted its decision (Figures 16-21). Values are ranked based on a weighted average of data for 2013 and 2018-2020 for Figures 16-18, data for 2013, 2018, 2019 and 2020 for Figure 19, and data for 2014 and 2018-2020 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.

<sup>45</sup> Figure 18 of the Retention and Expansion of Foreign Direct Investment, Political Risk and Policy Responses, 2019 the World Bank Group.

## – Competition –

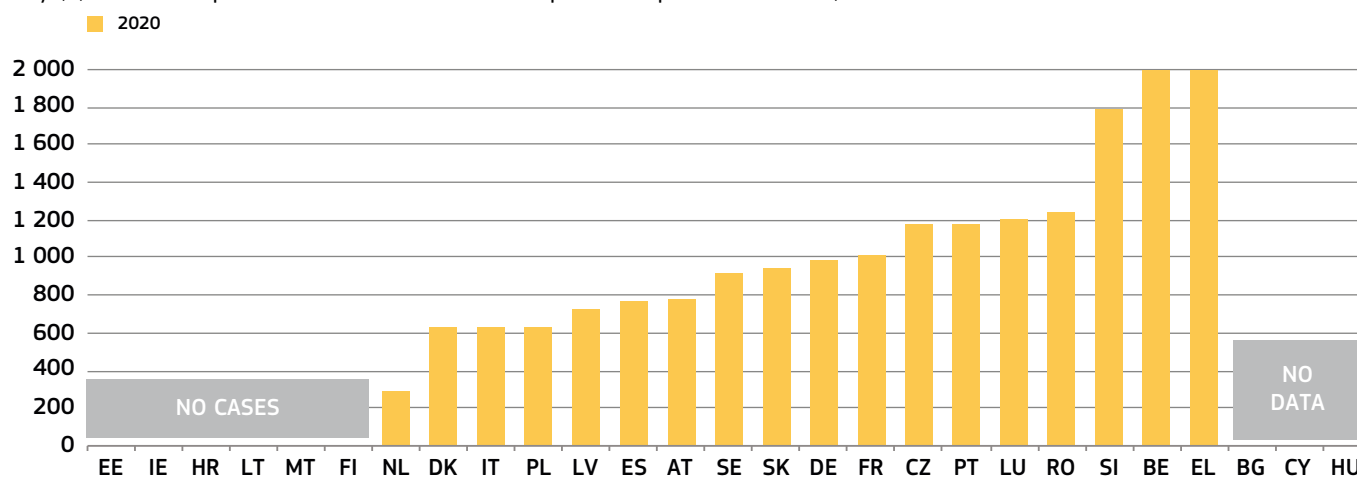
The effective enforcement of competition law is essential for an attractive business environment as it ensures a level playing field for businesses. It encourages enterprise and efficiency, creates a wider choice for consumers and helps reduce prices and improve quality. Figure 17 presents the average length of cases against the decisions of national competition authorities applying Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) <sup>(46)</sup>. Figure 18 presents the average length of proceedings before the national competition authorities when applying Articles 101 and 102 of the TFEU.

**Figure 17 Competition: average length of judicial review in 2013, 2018 – 2020 (\*) (1<sup>st</sup> instance/in days)** (source: European Commission with the European Competition Network)



(\*) **IE** and **AT**: the scenario is not applicable as the authorities do not have powers to take respective decisions. **AT**: data include 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 for **IT**. An empty column can indicate that the Member State reported no cases for the year in question. The number of cases is low (below five a year) in many Member States. This can make the annual data dependent on one exceptionally long or short case (e.g. This is the case with **MT** were there was only one case).

**Figure 18 Competition: average length of proceedings before the national competition authorities in 2020 (\*) (in days)** (source: European Commission with the European Competition Network)



(\*) In some Member States the number of cases is limited. **BE**: Data includes one cartel decision – 1 045 days and five interim measures. Total average length of all six proceedings – 2 015 days. **IT**: Proceedings 1833 – *Gare Consip per acquisizione beni e servizi per informatica e telecomunicazioni* – launched by the Italian Competition Authority under Article 101 TFEU, are not taken into account, because at the end of the proceedings it did not find any breaches of Article 101 TFEU. It must be taken into account that some Member States count the days for the length of proceedings from different starting points. Most Member States consider a case open when the investigation is open. In the **NL**, the case is considered open when the Statement of Objection is sent, while in **CZ** and **SK** a case is considered open when the administrative proceedings open. In the latter case, this is an intermediate phase between the opening of the investigation and the sending of the Statement of Objection. There are also a number of factors to take into account when it comes to the length of proceedings before the national competition authorities. These include the nature and complexity of the case, the time it takes to collect the economic data and the conclusion of the economic analysis, the deadline extensions at the requests of the parties, and the repetition of hearings.

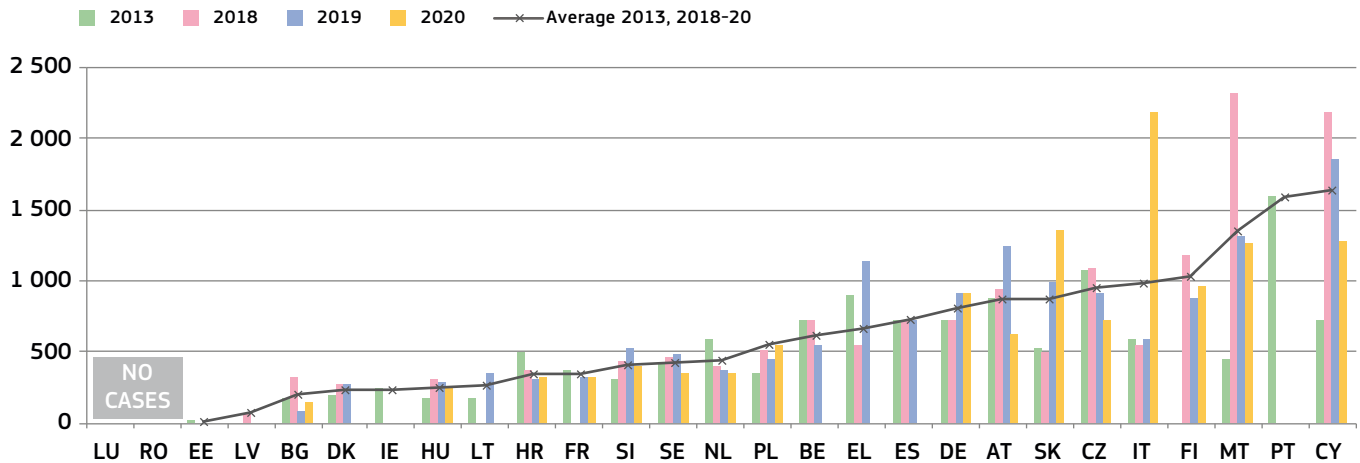
46 See <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN> and Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance), OJ L 1, 4.1.2003, p. 1–25, in particular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



## – Electronic communications –

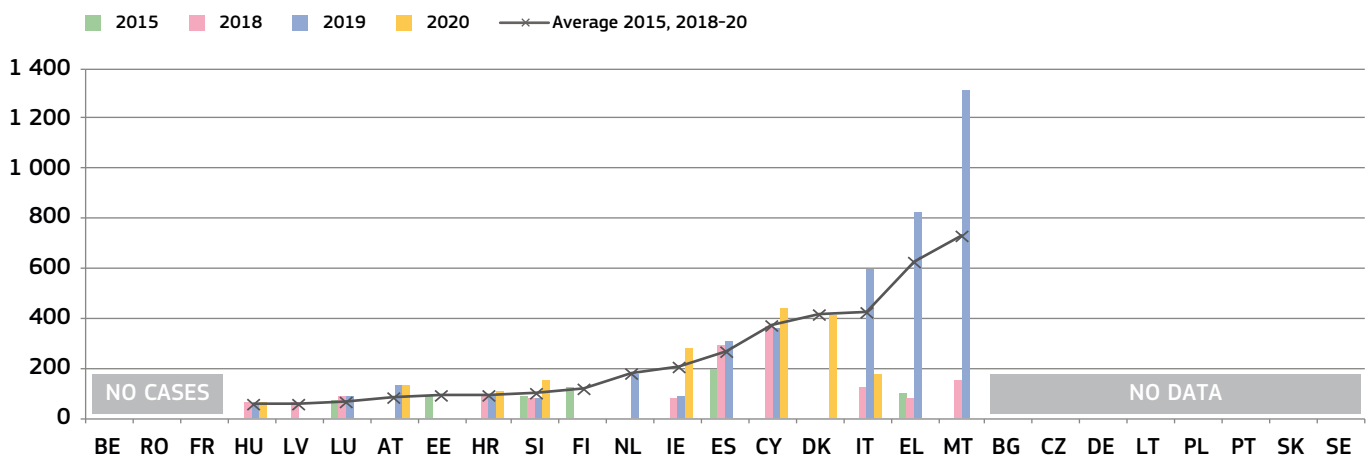
The objective of EU electronic communications legislation is to raise competition, to contribute to the development of the single market and to generate investment, innovation and growth. The positive effects for consumers can be achieved through effective enforcement of this legislation which can lead to lower prices for end users and better quality services. Figure 19 presents the average length of judicial review cases against the decisions of national regulatory authorities applying EU law on electronic communications<sup>(47)</sup>. It covers a broad range of cases, ranging from more complex ‘market analysis’ reviews to more straightforward consumer-focused issues. Figure 20 presents the average length of proceedings before the national regulatory authorities when applying EU law.

**Figure 19 Electronic communications: average length of judicial review in 2013, 2018 – 2020 (\*)** (1<sup>st</sup> instance/in days) (source: European Commission with the Communications Committee)



(\*) The number of cases varies from one Member State to another. An empty column indicates that the Member State reported no cases for the year (except **PT** for 2019-20, and **RO** no data). In some instances, the limited number of relevant cases (**BG**, **CY**, **MT**, **NL**, **SK**, **FI**, **SE**) can make the annual data dependent on one exceptionally long or short case and result in wide variations from one year to the next. **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.

**Figure 20 Electronic communications: average length of proceedings before the National Regulatory Authority in 2015, 2018 – 2020** (in days) (source: European Commission with the Communications Committee)



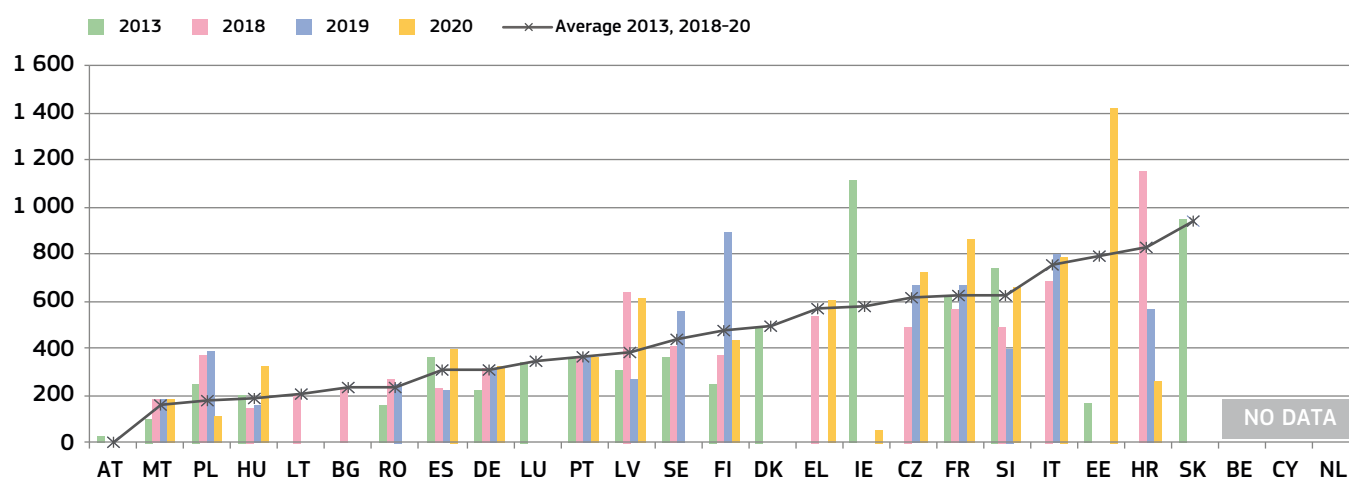
## – EU trademark –

Effective enforcement of intellectual property rights is essential to stimulate investment in innovation. EU legislation on EU trademarks<sup>(48)</sup> gives the national courts a significant role to play, in acting as EU courts and taking decisions that affect the single market. Figure 21 shows the average length of EU trademark infringement cases in litigation between private parties.

47 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), as well as other relevant EU law such as the radio spectrum policy programme and Commission spectrum decisions, excluding Directive 2002/58/EC on privacy and electronic communications.

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

**Figure 21 EU trademark: average length of EU trademark infringement cases in 2013, 2018 – 2020 (\*) (1<sup>st</sup> instance/in days)** (source: European Commission with the European Observatory on infringements of intellectual property rights)



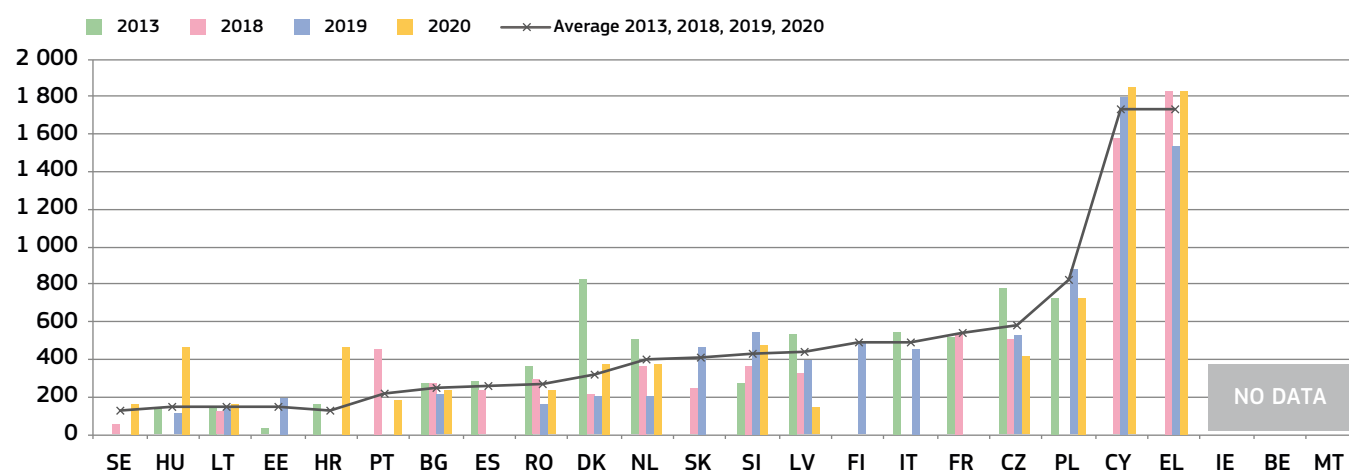
(\*) **FR, IT, LT, LU:** a sample of cases used for data for certain years. **DK:** data from all trademark cases (not only EU) in Commercial and Maritime High Courts; for 2018 and 2019, no data on average length due to changes in data collection system. **EL:** data based on weighted average length 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 an unfair advantage. Consumer protection authorities and courts play a key role in enforcing EU consumer law (49) within the various national enforcement systems. Figure 22 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 shed more light on this enforcement chain, the length of proceedings by consumer authorities is presented. Figure 23 shows the average length of time it took for administrative decisions by national consumer protection authorities in 2014, 2018-2020 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.

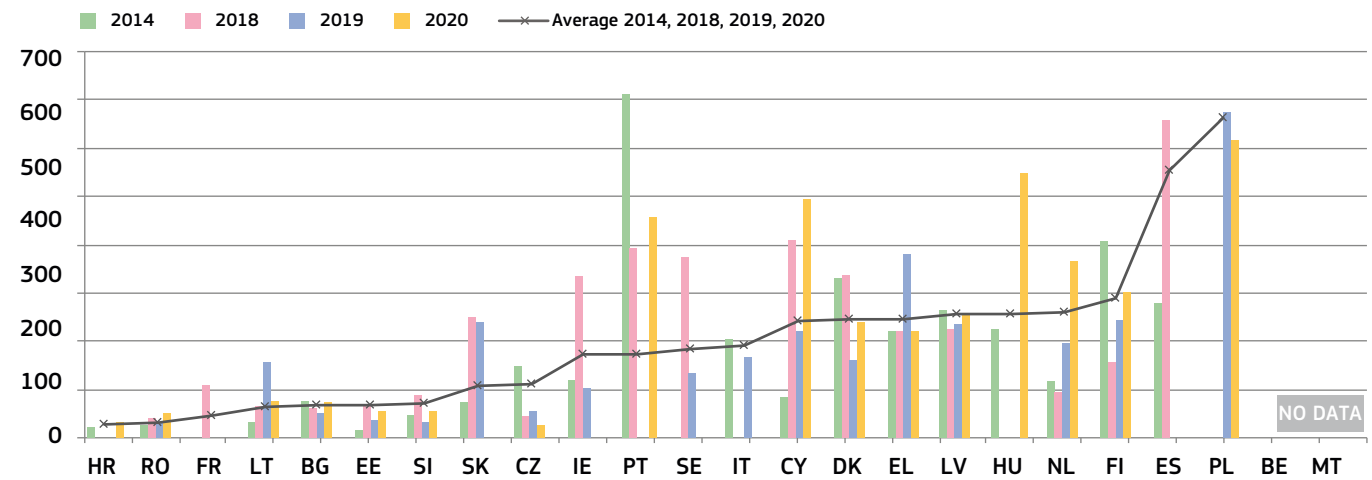
**Figure 22 Consumer protection: average length of judicial review in 2013, 2018 – 2020 (\*) (1<sup>st</sup> instance/in days)** (source: European Commission with the Consumer Protection Cooperation Network)



(\*) **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 2020 is low (fewer than five) in **IE** and **FI**. An estimate of average length was provided by **EL** and **RO** for certain years.

49 Figures 22 and 23 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 23 Consumer protection: average length of administrative decisions by consumer protection authorities in 2014, 2018 – 2020 (\*)** (1<sup>st</sup> instance/in days) (source: European Commission with the Consumer Protection Cooperation Network)

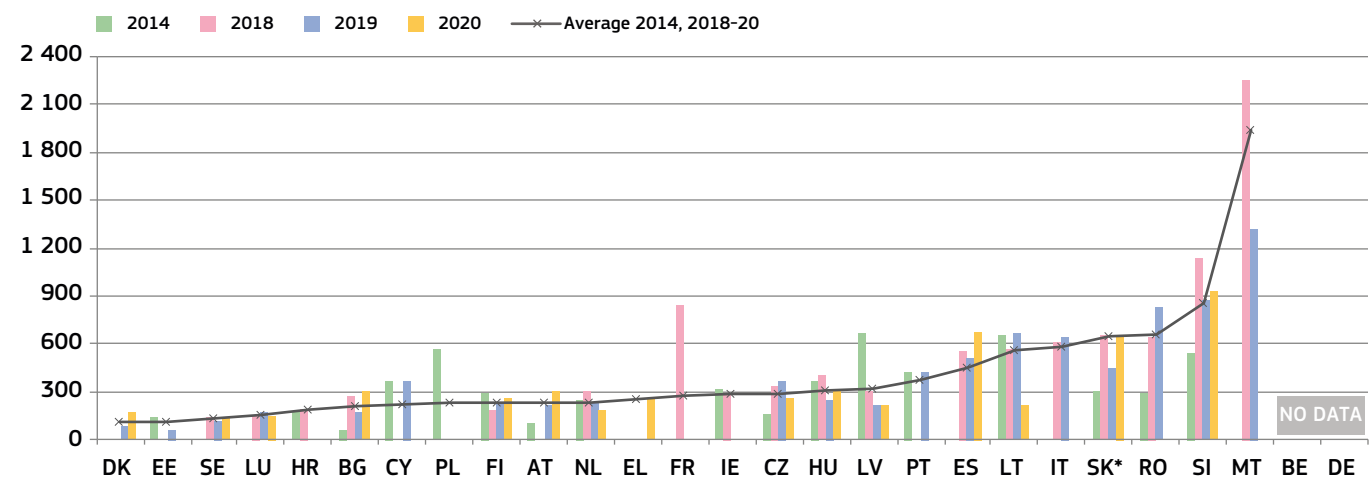


(\*) DE, LU, AT: scenario is not applicable as consumer authorities are not empowered to decide on infringements of relevant consumer rules. An estimate of average length was provided by DK, EL, FR, RO and FI for certain years.

## – 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>(50)</sup>. Money laundering can discourage foreign investment, distort international capital flows and negatively affect a country's macroeconomic performance, resulting in welfare losses, thereby draining resources from more productive economic activities<sup>(51)</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>(52)</sup>. In cooperation with Member States, an updated questionnaire was used to collect data on the judicial stages in national anti-money laundering regimes. Figure 24 shows the average length of first instance court cases dealing with money laundering criminal offences.

**Figure 24 Money laundering: average length of court cases in 2014, 2018 – 2020(\*)** (1<sup>st</sup> instance/in days) (source: European Commission with the Expert Group on Money Laundering and Financing of Terrorism)



(\*) No data for 2020: BE, DE, EE, IE, HR, PL and PT. 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. 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 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.

50 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.

51 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>

52 Article 44(1) of Directive (EU) 2015/849. See also revised Article 44 of 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 to 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 2022 EU Justice Scoreboard contains data on efficiency spanning eight years (2012-2020). This time-span allows to identify certain trends and to take into account that it often takes time for the effect of justice reforms to be felt.

Looking at the available data since 2012 and until 2020, in civil, commercial and administrative cases, the trends were in most cases positive. However, in 2020, for some Member States the general data on efficiency show a negative impact on efficiency. It is possible that it was caused by the COVID-19 pandemic and therefore is of temporary nature.

Some positive developments can be observed in the Member States that have been considered, in the context of the European Semester, to be facing specific challenges <sup>(53)</sup>:

- Since 2012, and based on the existing data for these Member States, and despite the COVID-19 pandemic, in some Member States, the **length of first instance court proceedings** in the broad ‘all cases’ category (Figure 6) and the ‘litigious civil and commercial cases’ category (Figure 7) continued to decrease or remained stable. In about half of the Member States concerned, the same two Figures 6 and 7 show an increase in the length of proceedings, sometimes above 2012 levels. In administrative cases (Figure 9), the length of proceedings since 2012 has decreased or remained stable in about half of these Member States. Overall, about half of the Member States saw an increase in the length of proceedings in administrative cases in 2020.
- 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 whose **clearance rate** is more than 100% has decreased since last year, going back closer to 2012 levels. In 2020, despite the decrease, the most Member States, including most of those facing challenges, reported a high clearance rate (more than 97%). This means that courts are generally able to deal with the incoming cases in these categories. In administrative cases (Figure 13), a bigger difference in the clearance rate can be observed from one year to the next. 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, the situation remains stable or continues to improve in almost all Member States facing the most substantial challenges with their **backlogs**, regardless of the category of cases. In 2020, despite the increase in the number of pending cases in some Member States, in others substantial progress in reducing the number of pending cases has been made in both litigious civil and commercial cases (Figure 15) and administrative cases (Figure 16). However, significant differences remain between Member States with comparatively few pending cases and those with a high number of pending cases.

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

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

## Efficiency in specific areas of EU law

Data on the average length of proceedings in specific areas of EU law (Figures 17-24) provide an insight into the functioning of justice systems in concrete types of business-related disputes.

Data on efficiency in specific areas of EU law are collected based on narrowly defined scenarios, so the number of relevant cases may appear low. However, 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.

Finally, the new figures that focus on the length of administrative proceedings before the national competition authorities and national regulatory authorities dealing with electronic communications provide insights into administrative efficiency in more areas of EU law. Efficiency of the overall enforcement chain, including administrative and judicial proceedings, contributes to a positive business and investment environment, by ensuring timely resolution of cases and enforcement of rights.

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

- For **judicial review of competition cases** (Figure 17), as the overall caseload faced by courts across Member States increased, the length of judicial review decreased or remained stable in six Member States, while it increased in five other Member States. Despite the slightly positive trend, three Member States reported an average length exceeding 1 000 days in 2020. For **proceedings before the national competition authorities**, 10 Member States reported that proceedings took less than 1 000 days. Some Member States, who experience issues with efficiency in the judicial review of competition cases, are among the more efficient when it comes to proceedings before the national competition authorities.
- For **electronic communications** (Figure 19), the case-loads faced by courts decreased compared to previous years, continuing the positive trend regarding increased length of proceedings observed in 2019. In 2020, most Member States registered a decrease in the average lengths of proceedings or figures remained stable, compared to 2019, with only few showing an increase. The new figure on the **efficiency of national regulatory authorities dealing with electronic communications** (Figure 20) shows that in some Member States, the average length of proceedings is fairly stable but overall there is no clear trend over the years for which data are available.
- For **EU trademark infringement cases** (Figure 21), in 2020 the overall caseload decreased. However, while some Member States managed to cope better with their caseload, registering decreased or stable lengths of proceedings, six others saw a clear increase in the average length of proceedings.
- 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 22 and 23). In 2020, six Member States reported that their consumer protection authorities took on average less than 3 months to issue a decision in a case covered by EU consumer law, while in six other Member States they took more than 6 months. Where the decisions of the consumer protection authorities were challenged in court, in 2020 the trends in the length of the judicial review of an administrative decision diverged, with increases in eight, and decreases in four other, Member States compared to 2019. In two Member States the average length of a judicial review remains at over 1 000 days.
- The effective fight against **money laundering** is crucial for protecting the financial system, ensuring fair competition and preventing negative economic consequences. Challenges in the length of court proceedings when dealing with money laundering offences may influence the effective fight against money laundering. Figure 24 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 first instance court proceedings take up to a year on average, they take around 2 years on average in several Member States <sup>(54)</sup>.

54 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 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 2022 EU Justice Scoreboard continues to examine factors that are generally accepted as relevant for improving the quality of justice. They fall into four categories:

- 1) accessibility of justice for citizens and businesses;
- 2) adequate financial and human resources;
- 3) putting in place of assessment tools;
- 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, about how to initiate a claim and the related financial aspects, about 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 that determines access to justice. High litigation costs, including court fees<sup>(55)</sup> and legal fees<sup>(56)</sup>, may hinder access to justice. Litigation costs in civil and commercial matters are not harmonised at EU level. Governed by national legislation, they 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>(57)</sup>. It allows access to justice to people who would not otherwise be able to bear or advance the costs of litigation. Most Member States grant legal aid based on the applicant's income<sup>(58)</sup>.

Figure 25 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 a percentage of the Eurostat poverty threshold for each Member State<sup>(59)</sup>. For example, if the threshold for legal aid appears to be at 20%, it means that an applicant with an income 20% higher than the Eurostat poverty threshold for their Member State will still be eligible for legal aid. However, if the threshold for legal aid appears to be below 0, this 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 only a full or partial legal aid system.

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

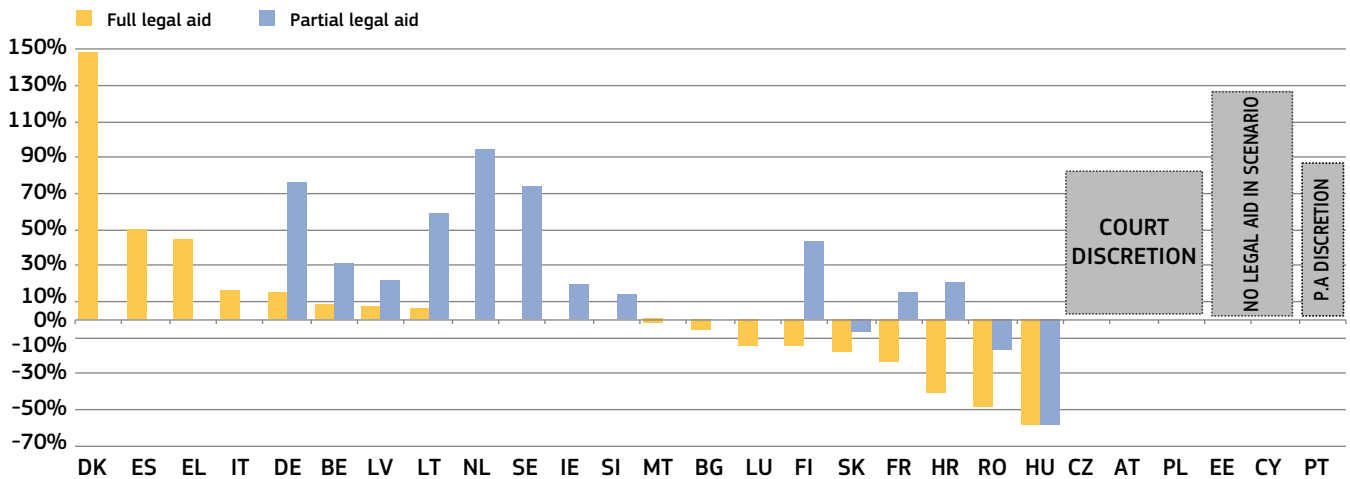
56 Legal fees are the bill for services provided by lawyers to their clients.

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

58 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 tied to the applicant's personal capital. 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.

59 To collect comparable data, each Member State's 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)

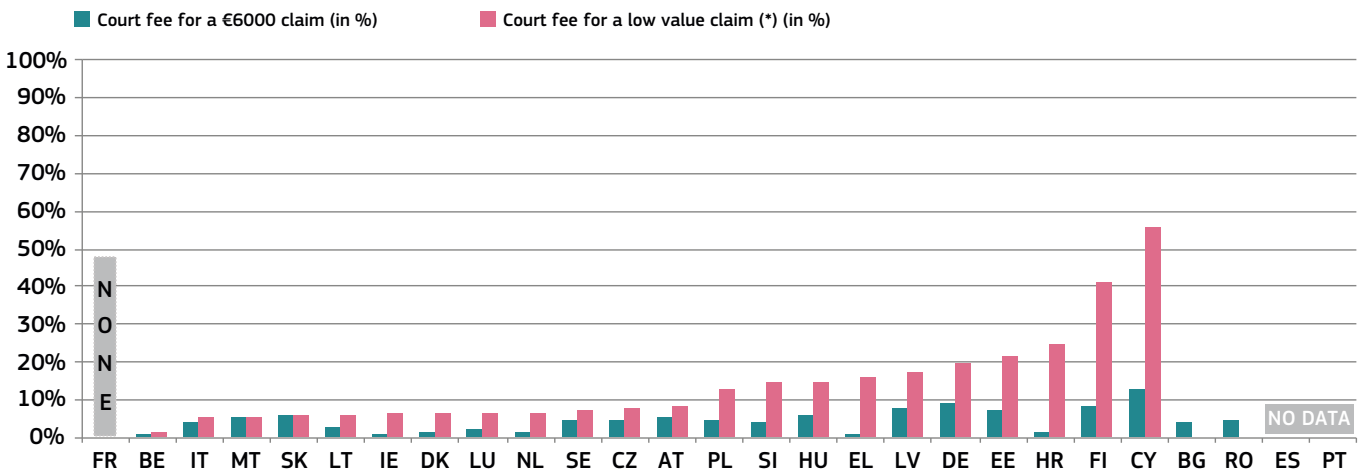
**Figure 25 Income threshold for legal aid in a specific consumer case, 2021 (\*)** (differences in % from Eurostat poverty threshold) (source: European Commission with the Council of Bar and Law Societies in Europe (CCBE) <sup>(60)</sup>)



(\*) **EE:** decision to grant legal aid is not based on the level of the applicant's financial resources. **IE:** legal aid has to also take into account the applicant's disposable assets. **CY:** 2020 data. **MT:** 2020 data. **LV:** thresholds vary by municipality; the chart shows the upper limit. **PT:** the granting of legal aid is a decision taken by the public administration (P.A. in the figure), with the Social Security Ministry assessing the applicant's financial conditions under the law. **RO:** 2020 data.

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, the Netherlands, Poland and Slovenia are recipients of legal aid not automatically exempt from paying court fees. In Czechia, the court decides on a case-by-case basis whether or not 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 26 compares, for two scenarios, the amount of the court fee presented as a proportion of the value of the claim. If, for example, in the figure below the court fee appears to be 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 (AROP) threshold for each Member State.

**Figure 26 Court fee to start judicial proceedings in a specific consumer case, 2021 (\*)** (amount of court fee as a proportion of the value of the claim) (source: European Commission with the Council of Bar and Law Societies in Europe (CCBE) <sup>(61)</sup>)



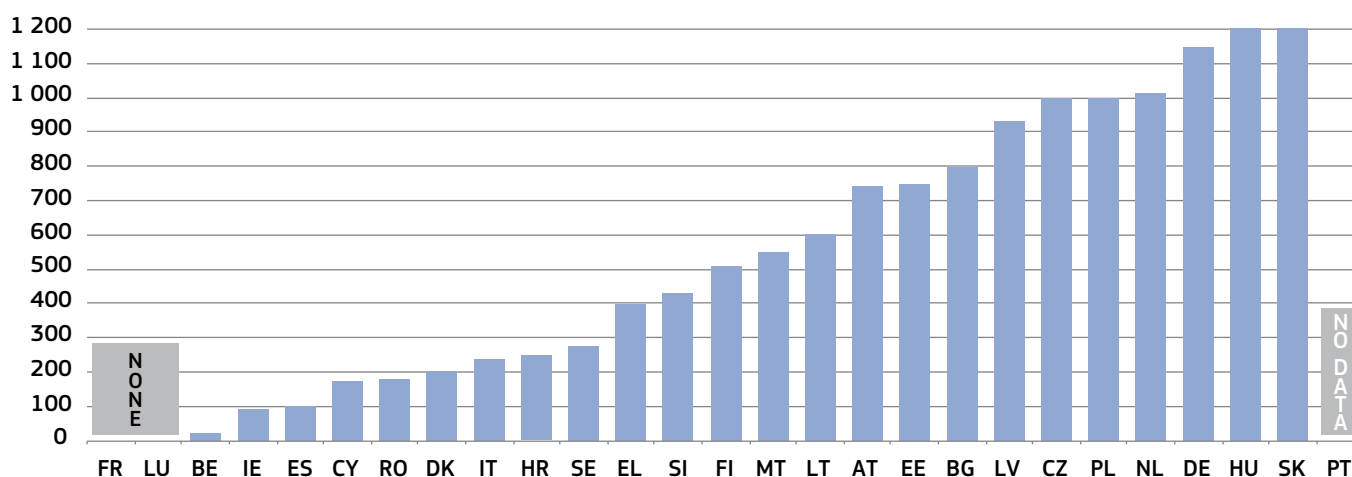
(\*) 'Low value claim' is a claim corresponding to the Eurostat poverty threshold for a single person in each Member State, converted to monthly income (e.g. in 2019, this value ranged from EUR 193 in **RO** to EUR 1 824 in **LU**). **ES, PT:** no data provided. **BG, RO:** 2020 data for court fee for a EUR 6 000 claim. No information on court fees for a low value claim was provided. **CY:** 2020 data. **LU:** Litigants have to pay bailiff fees to start proceedings as a plaintiff unless they benefit from legal aid. **MT:** 2020 data. **NL:** Court fees for income < EUR 2 383/month. **AT:** The maximum amount of the 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 < EUR 2 339, the court fee is EUR 88. In cases where the value of the claim is > EUR 2 339, the court fee is EUR 275. For other types of claims there are other court fees.

60 2021 data collected using replies from Council of Bar and Law Societies in Europe (CCBE) members to a questionnaire based on the following specific scenario: a dispute of a consumer with a company (two different claim values indicated: EUR 6 000 and the Eurostat AROP threshold for 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 or legal expenses insurance, with a regular income and a rented apartment.

61 The data, referring to income thresholds valid in 2020, have been collected using replies from Council of Bar and Law Societies in Europe (CCBE) members to a questionnaire based on the following scenario: a consumer dispute between an individual and a company (two different claim values indicated: EUR 6 000 and the Eurostat AROP threshold for each Member State).

Efficient contract enforcement is essential for the economy. The likelihood of recovering the actual costs of litigation strengthens the position of a 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 27 shows the amount of the 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 claim value of EUR 20 000.

**Figure 27** Court fee to start judicial proceedings in a specific commercial case, 2021 (\*) (in EUR) (source: European Commission with the CCBE <sup>(62)</sup>)



(\*) **CY, LU, MT, PL, RO:** 2020 data. **EL, ES:** Recovery of court fees is decided on a case-by-case basis. **HU:** There is no full recovery of court fees by the winning party.

It is common for the creditor to advance their own lawyer's fees 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. This rule deters the filing of cases where there is a low probability of winning, but encourages the filing of cases where there is a high probability of winning. Figure 28 shows the amount the court would award to the successful plaintiff in a specific commercial case scenario (footnote 62).

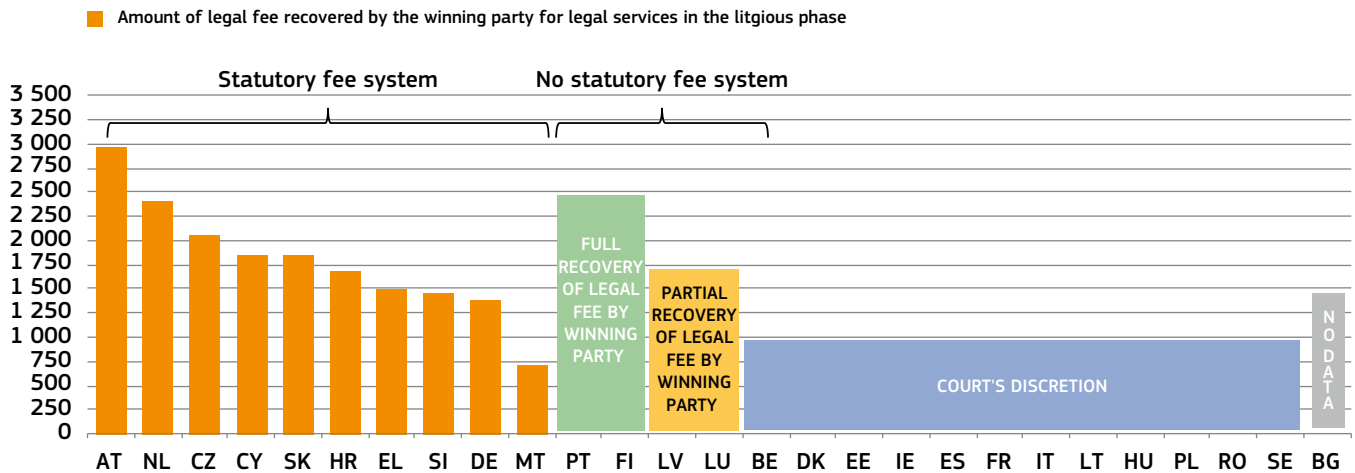
Three main fee systems can be distinguished:

- (1) in Member States with a statutory fee system, the reimbursement of legal fees depends on the level of the statutory fee for the work carried out by the lawyer, which varies significantly from one Member State to another;
- (2) in Member States without a statutory fee system, there is either full (Portugal, Finland) or partial (Latvia, Luxembourg) reimbursement of legal fees;
- (3) in a number of Member States the issue of reimbursement is decided by the court on a case-by-case basis.

62 The data have been collected using replies from Council of Bar and Law Societies in Europe (CCBE) members to a questionnaire based 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.



**Figure 28 Recoverability of legal fees in a commercial trial, 2021 (\*) (in EUR)** (source: European Commission with the Council of Bar and Law Societies in Europe (CCBE) <sup>(63)</sup>)

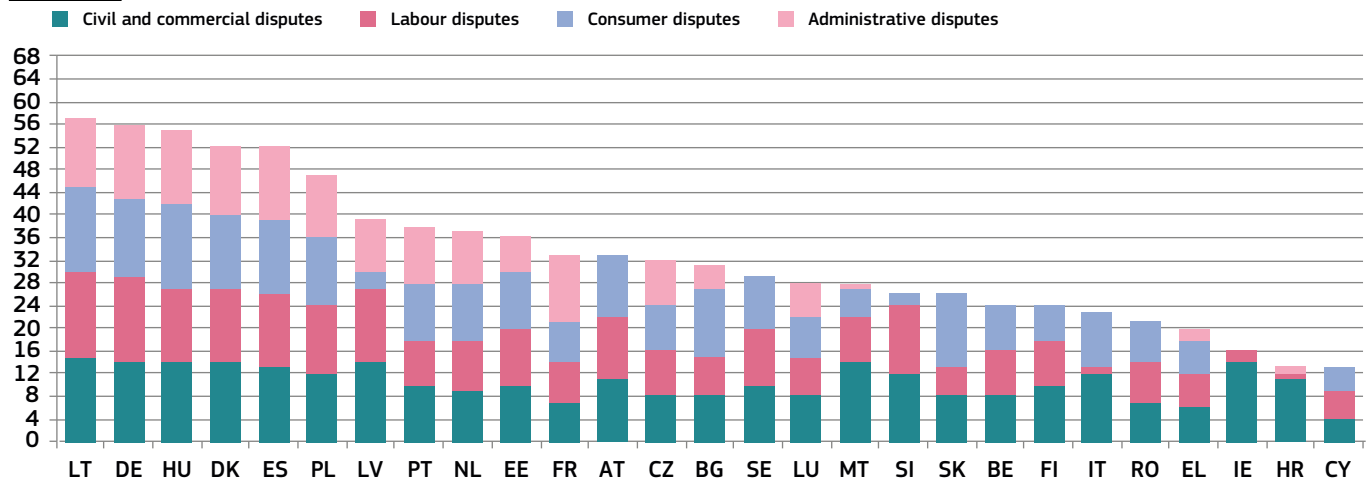


(\*) For this figure, legal fees do not include clerical costs and VAT, if payable. The hypothetical legal fee for the litigious phase provided for in the scenario is EUR 1 650. Full recovery in systems without a statutory fee means that this amount (EUR 1 650) can be recovered. Member States with partial recovery (LV, LU) are sorted by order of the recoverable legal fee (highest to lowest, with amounts ranging from EUR 2 200 to EUR 660). The figure does not include information on the recoverability of legal fees for the pre-litigious phase, because this is not envisaged in all Member States. **IT**: there is a statutory fee in IT (EUR 3 235 in the scenario), but the court can decide on reimbursement within a set range. **LT**: the court decides, taking into account guidance from the Ministry of Justice. The maximum amount in the scenario would be EUR 3 350. **HU**: There are two scenarios: the court could order a full recovery of legal fees by the winning party, based on the legal fee arrangement between the lawyer and the client; the court could take into account the statutory legal fee system and order only a partial recovery of legal fees by the winning party, despite the arrangement between the lawyer and the client. **MT**: there is no concept of an hourly legal fee in MT, reimbursement is determined based on the value of the claim. **AT**: scenario not fully applicable to AT's system of reimbursement. **PL**: The minimum amount of fees is determined by law and they are dependent on the value of the subject matter of the dispute. The court could decide to waive the fee or to order payment of the minimum fee (in case the fee is increased due to specific circumstances as set out in the relevant legislation).

## – Accessing alternative dispute resolution methods –

Figure 29 shows Member States' efforts to promote the voluntary use of alternative dispute resolution (ADR) methods with specific incentives. These may vary depending on the area of law <sup>(64)</sup>.

**Figure 29 Promotion of and incentives for using ADR methods, 2021 (\*)** (source: European Commission <sup>(65)</sup>)



(\*) Maximum possible: 68 points. Aggregated indicators based on the following indicators: 1) website providing information on ADR; 2) media publicity campaigns; 3) brochures for the general public; 4) provision by the court of specific information sessions on ADR upon request; 5) court ADR/mediation coordinator; 6) publication of evaluations on the use of ADR; 7) publication of statistics on the use of ADR; 8) partial or full coverage by legal aid of costs ADR incurred; 9) full or partial refund of court fees, including stamp duties, if ADR is successful; 10) no requirement for a lawyer for ADR procedures; 11) judge can act as a 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 procedures electronically; 15) possibility of online payment of applicable fees; 16) use of technology (artificial intelligence applications, chat bots) to facilitate the submission and resolution of disputes; and 17) other means. For each of these 17 indicators, one point was awarded for each area of law. **IE**: administrative cases fall into the category of civil and commercial cases. **EL**: ADR exists in public procurement procedures before administrative courts of appeal. **ES**: ADR is mandatory in labour law cases. **PT**: for civil/commercial disputes, court fees are refunded only in the 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.

63 The data have been collected using replies from CCBE members to a questionnaire based on the same scenario as for Figure 27 (footnote 62). The following scenario was used as a basis for calculating the legal fees: the company seeking to enforce the contract contracted a specialised and experienced lawyer. The lawyer did the following work: in the pre-litigious phase: 3 hours of work, with one document produced for an hourly legal fee of EUR 200 (overall EUR 600); phase: 11 hours of work, with 3 documents produced and 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 for the work in the (pre-)litigious phase, if existing and b) the amount of the legal fee that the court would reasonably order the losing party to reimburse. (The hypothetical hourly legal fee has been changed compared to the 2020 EU Justice Scoreboard, with the result that the answers are not comparable).

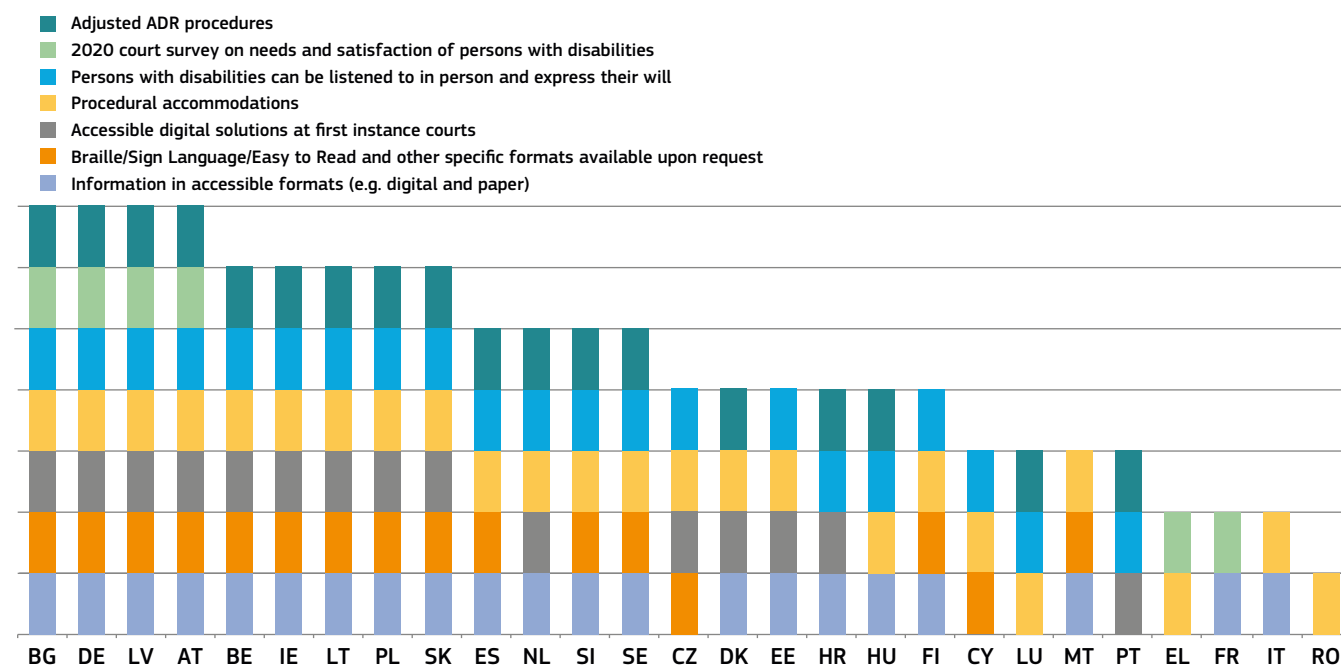
64 The methods for promoting and incentivising the use of ADR do not cover compulsory requirements to use ADR before going to court, as such requirements raise concerns about their compatibility with the right to an effective remedy before a tribunal enshrined in the Charter of Fundamental Rights of the EU.

65 2021 data collected in cooperation with the group of contact persons on national justice systems.

## – Specific arrangements for access to justice of persons with disabilities –

As Parties to the UN Convention on the Rights of Persons with Disabilities<sup>(66)</sup>, the EU and all its Member States are obliged to ensure persons with disabilities have effective equal access to justice by ensuring appropriate accommodation with the aim to equality and non-discrimination. State parties should also provide accessibility, including communication and information as well as reaffirm their right to equal recognition before the law. Figure 30 shows selected specific arrangements in this regard, such as the availability of information in accessible formats, the availability upon request of specific formats, or the accessibility for people with disabilities of digital solutions for civil and commercial cases, administrative cases and criminal cases before first instance courts.

**Figure 30** Specific arrangements for access to justice of persons with disabilities, 2021 (source: European Commission<sup>(67)</sup>)



## – Judicial control over public administration in business-related scenarios –

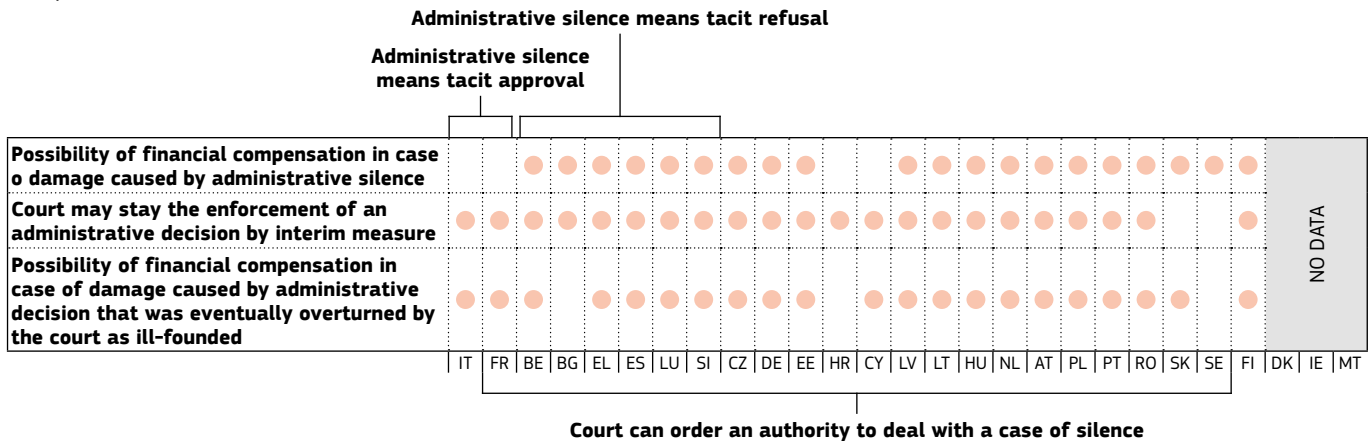
For the first time, the 2022 EU Justice Scoreboard provides an overview of selected legal safeguards regarding acts or omissions of administrative authorities in business-related scenarios<sup>68</sup>. Relevant safeguards include the court review of administrative decisions and interim measures, or possibility for financial compensation in the case of administrative silence or an ill-founded decision. All of these contribute to the quality of the justice system, of particular relevance for the business and investment environment and the functioning of the single market.

66 <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

67 2021 data collected in cooperation with the group of contact persons on national justice systems.

68 In the first scenario, during the court proceedings related to the expropriation, the authorities order a mining company to cease mining with immediate effect; they rely on earlier complaints made by house owners in the neighbouring village, already settled by the mining company. The company would incur a daily profit loss of EUR 8 000 if it complied with the administrative decision. The company challenges the administrative decision in court, which eventually overturns the decision as ill-founded. In the second scenario, a company established in Member State 'B' files with the competent authority in Member State 'A' a request for permission to build an 800 square meters retail store in the capital city of Member State 'A'. The company does not receive any reply from the authority in question within the statutory time limit/within what seems a reasonable time to reply (period of administrative silence). Finally, the figure examines whether the company can seek financial compensation for the losses it incurred because of the delay (the period of administrative silence) in granting the building permit (assuming that the building permit is finally granted) from the competent authority.

**Figure 31** Legal safeguards regarding decisions or inaction of administrative authorities, 2021 (\*) (source: European Commission (69))

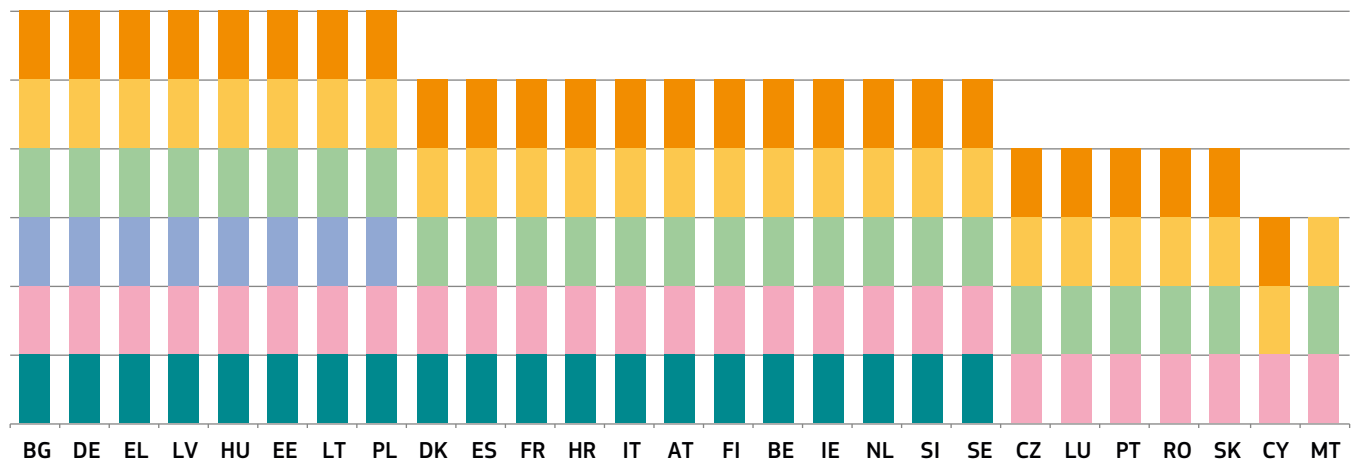


– Child-friendly justice –

The 2022 EU Justice Scoreboard deepens the analysis of child friendly-justice compared to previous editions. Figure 32 shows the various arrangements in Member States that make a justice system more suited to the needs of children. Figure 33 looks at specific arrangements available when a child is involved as a victim or as a suspect/accused person.

**Figure 32** Specific arrangements for child-friendly proceedings, 2021 (\*) (Civil and criminal/juvenile justice and administrative proceedings), (source: European Commission (70))

- Measures are in place to provide for a specific treatment of children who are deprived of liberty
- Children who are suspects or accused persons in criminal proceedings have the right to legal aid
- Training for judges on child-friendly and child-rights based communication with children
- Evaluation of such treatment is covered by court surveys addressed to court users
- Children are treated in an appropriate manner which takes into account their specific needs and rights
- Specifically child-friendly designed website to provide online information about the justice system



(\*) Children: persons under 18 years of age. Data for MT on training for judges are for 2020.

69 2021 data collected in cooperation with the group of contact persons on national justice systems.

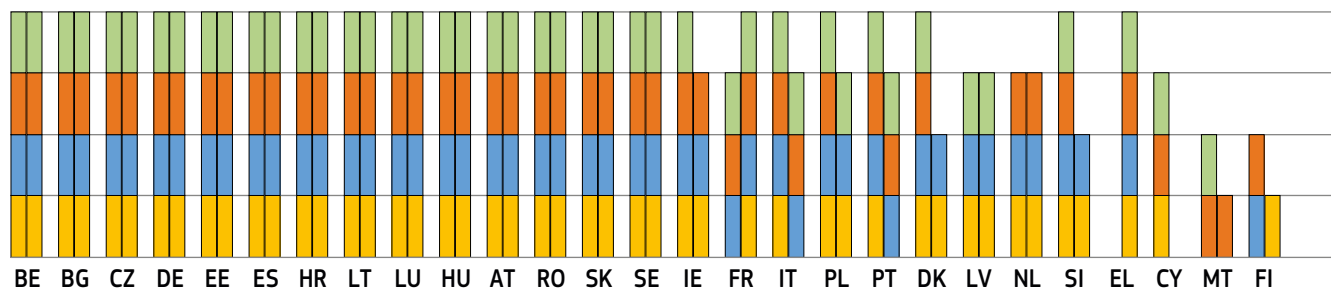
70 2021 data collected in cooperation with the group of contact persons on national justice systems and the European Judicial Training Network.

**Figure 33** Specific arrangements for child-friendly proceedings with children involved as victims or suspects or as accused persons, 2021 (\*) (source: European Commission (71))

For each Member State, the two columns represent the involvement of children as (from left to right):

1. victims
2. suspects or accused persons

- Audio-visual recording of questioning of children
- Children are heard in child-friendly specialised settings and may effectively participate in the hearing
- Children are provided with child-friendly information about their rights and the proceedings
- Children are assisted by a lawyer (always or where necessary)



(\*) Children: persons under 18 years of age.

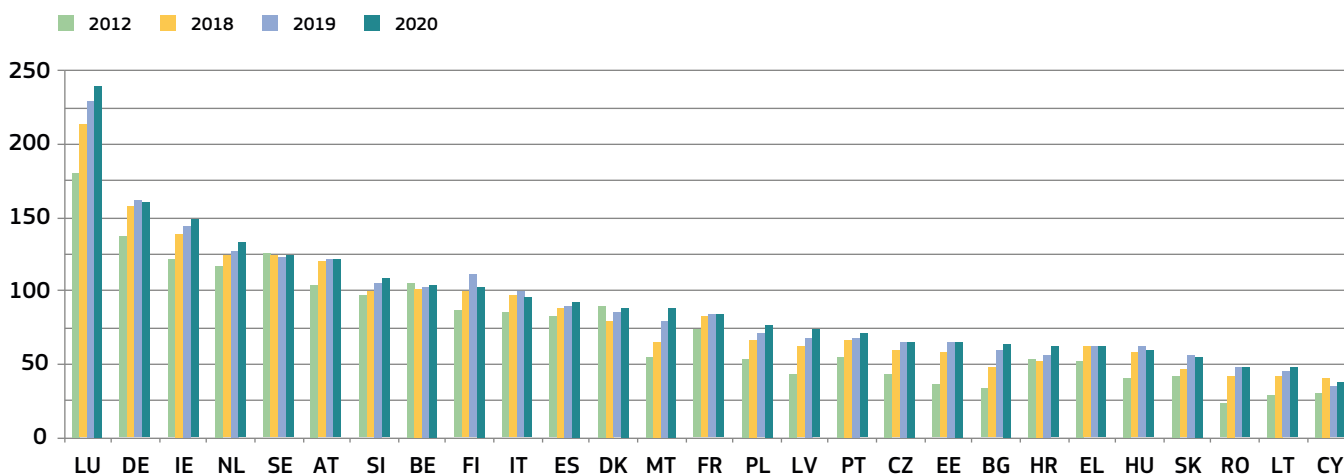
### 3.2.2. Resources

Sufficient resources, including the necessary investments in physical and technical infrastructure, and well qualified, trained and adequately paid staff of all kinds, are necessary for the justice system to work properly. Without adequate facilities, tools or staff with the required qualifications, skills and access to continuous training, the quality of proceedings and decisions is undermined.

#### – Financial resources –

The figures below show the actual government expenditure on the operation of the justice system (excluding prisons), both per inhabitant (Figure 34) and as a proportion of gross domestic product (GDP) (Figure 35).

**Figure 34** General government total expenditure on law courts in EUR per inhabitant, 2012, 2018 – 2020 (\*) (source: Eurostat)

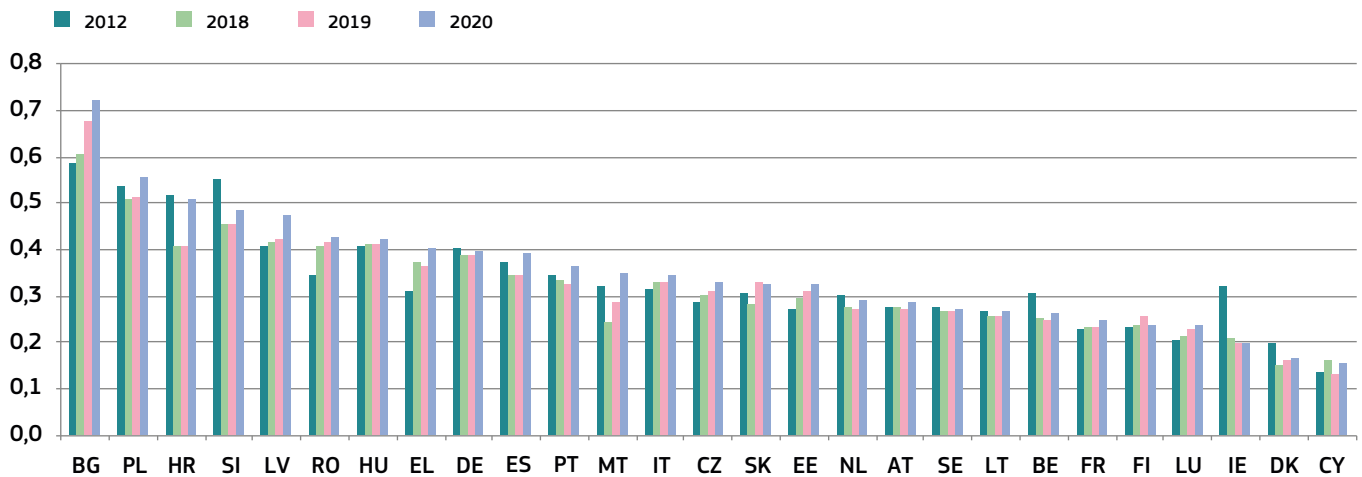


(\*) Member States are ordered according to their expenditure in 2020 (from highest to lowest). The following data are provisional: DE (2018-2020), ES (2020), FR (2019-2020), IT (2020) and PT (2020).

71 2021 data collected in cooperation with the group of contact persons on national justice systems.

**Figure 35** General government total expenditure on law courts as a percentage of GDP, 2012, 2018 – 2020 (\*)

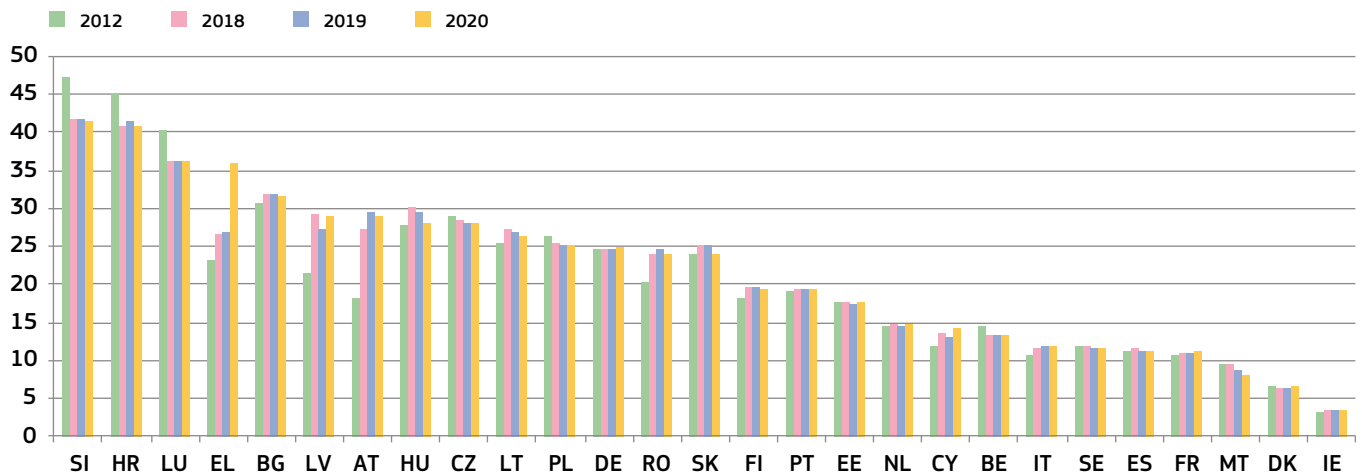
(source: Eurostat)



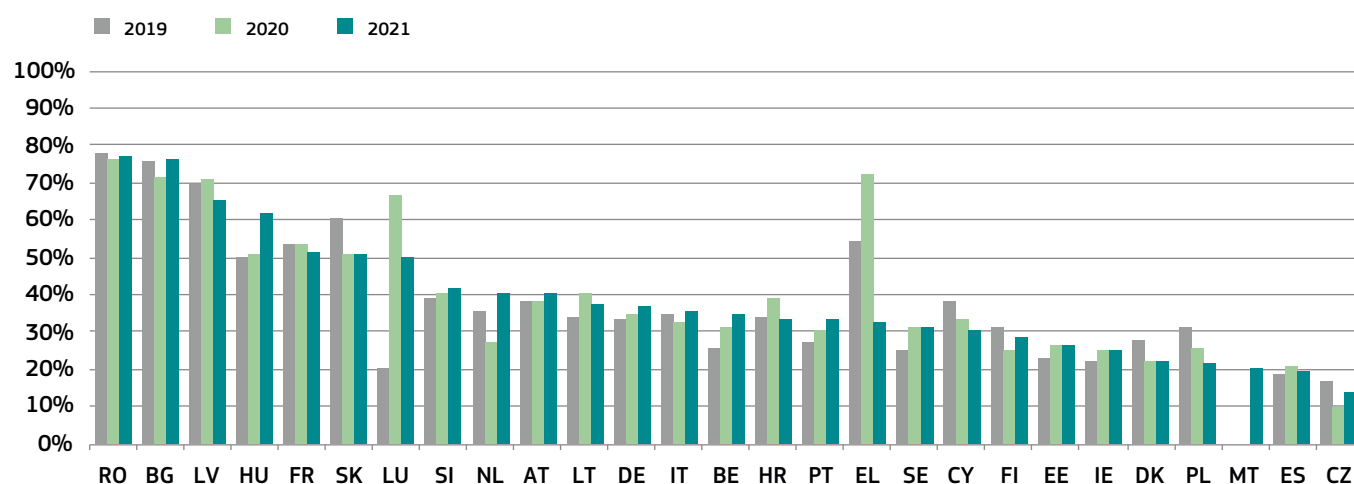
(\*) Member States are ordered according to their expenditure in 2020 (from highest to lowest). The following data are provisional: DE (2018-2020), ES (2020), FR (2019-2020), IT (2020) and PT (2020).

### – Human resources –

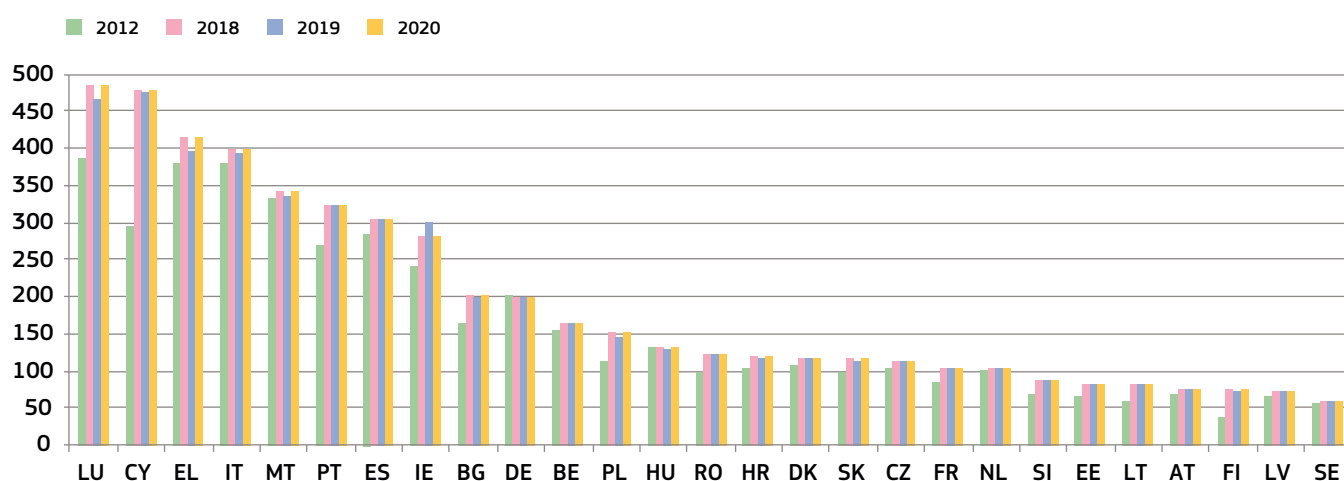
Adequate human resources are essential for the quality of a justice system. Diversity among judges, including gender balance, adds complementary knowledge, skills and experience and reflects the reality of society.

**Figure 36** Number of judges, 2012, 2018 – 2020 (\*) (per 100 000 inhabitants) (source: Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) study)

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

**Figure 37** Proportion of female professional Supreme Court judges 2019 – 2021 (\*) (source: European Commission (72))

(\*) The data are sorted by 2020 values, from the highest to the lowest. **MT**: No women on the highest court in 2019 and 2020.

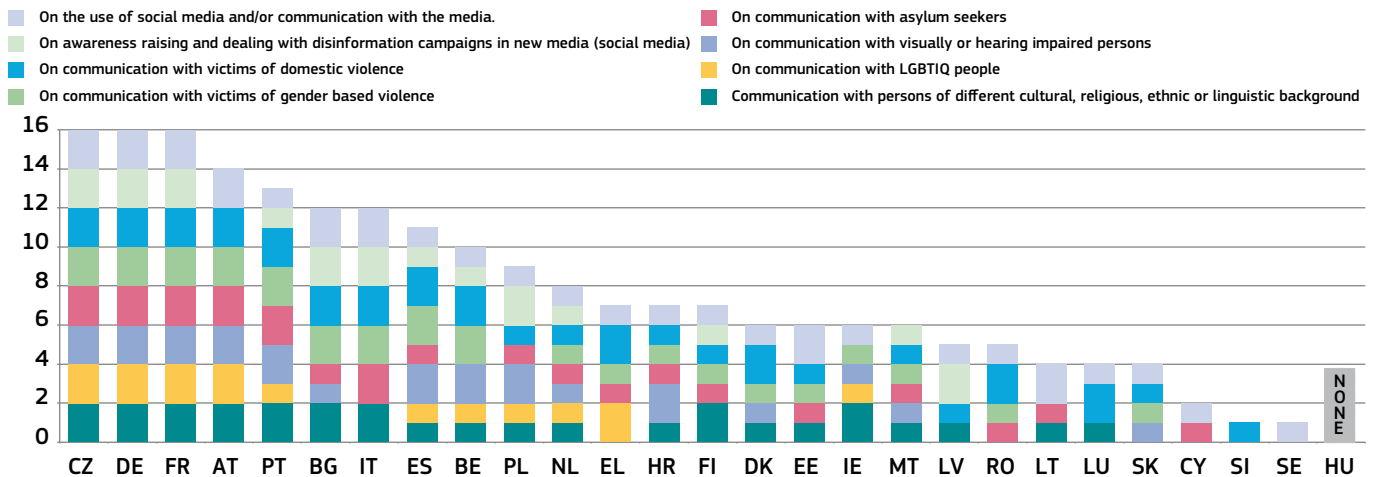
**Figure 38** Number of lawyers, 2012, 2018 – 2020 (\*) (per 100 000 inhabitants) (source: Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) study)

(\*) In accordance with the CEPEJ methodology, a lawyer is a person qualified and authorised by national law to plead and act on behalf of their clients; to engage in the practice of law; to appear before the courts or advise and represent their 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 or 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 makes an important contribution 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.

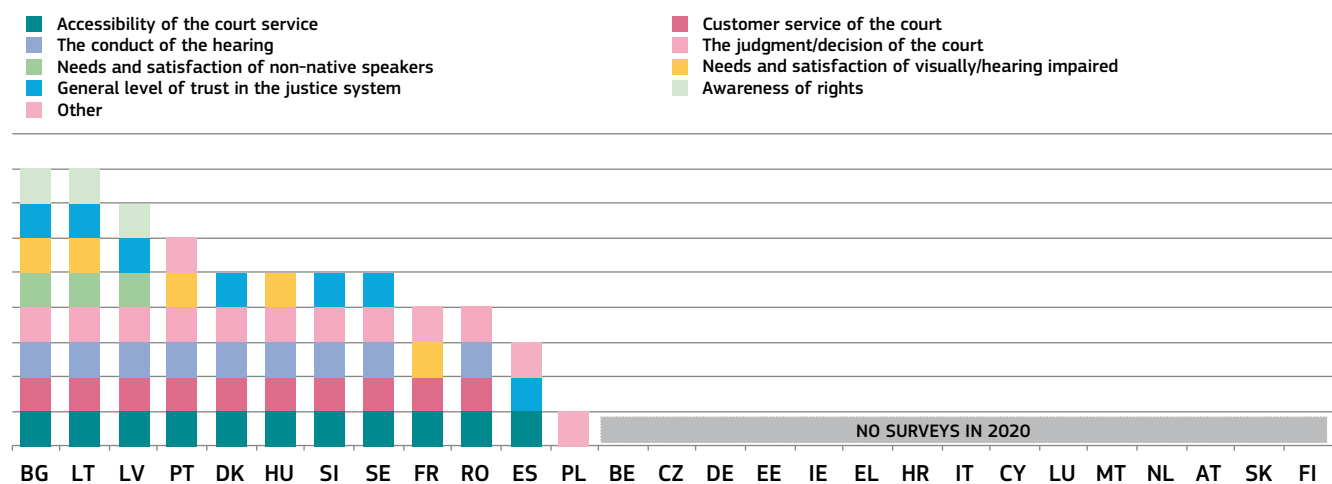
72 European Institute for Gender Equality, Gender Statistics Database: [https://eige.europa.eu/gender-statistics/dgs/indicator/wmidm\\_jud\\_natcrt\\_wmid\\_natcrt\\_supcrt/datatable](https://eige.europa.eu/gender-statistics/dgs/indicator/wmidm_jud_natcrt_wmid_natcrt_supcrt/datatable)

**Figure 39 Availability of training in communication for judges, 2021 (\*)** (source: European Commission (73))

(\*) Maximum possible: 16 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). **MT**: 2020 data.

### 3.2.3. Assessment tools

Regular evaluation could make the justice system more responsive to current and future challenges, thereby improving its quality. Surveys (Figure 40) are essential for assessing how justice systems operate from the perspective of legal professionals and court users.

**Figure 40 Topics of surveys conducted among court users or legal professionals, 2019 (\*)** (source: European Commission (74))

(\*) 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 a survey among litigants about their opinion on the new ways of improving the quality of customer service in the courts and the accessibility of the courts service (**FR**), a survey among judges on topics such as the general situation of the justice system, their function and judicial independence (**ES**), assistance provided to crime victims (**PL**), general aspects of courts and their functioning, access to information about courts, court facilities, judge responsible for the process, resources, loyalty (**PT**).

### 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. At the same time, it showed the need for the national justice systems to further improve their digitalisation.

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 (75), the Scoreboard

73 2021 data collected in cooperation with the European Judicial Training Network.

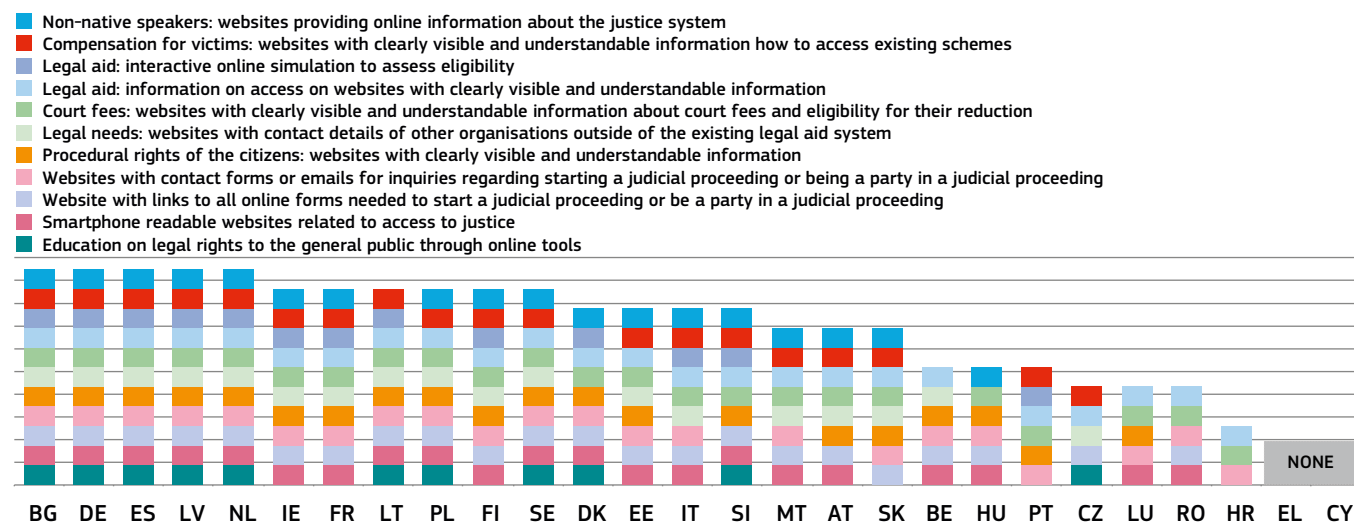
74 2019 data collected in cooperation with the group of contact persons on national justice systems.

75 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.

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 41 shows the availability of online information and specific public services that can help people access justice.

**Figure 41** Availability of online information about the judicial system for the general public, 2021 (\*) (source: European Commission (76))



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

## – Digital-ready rules –

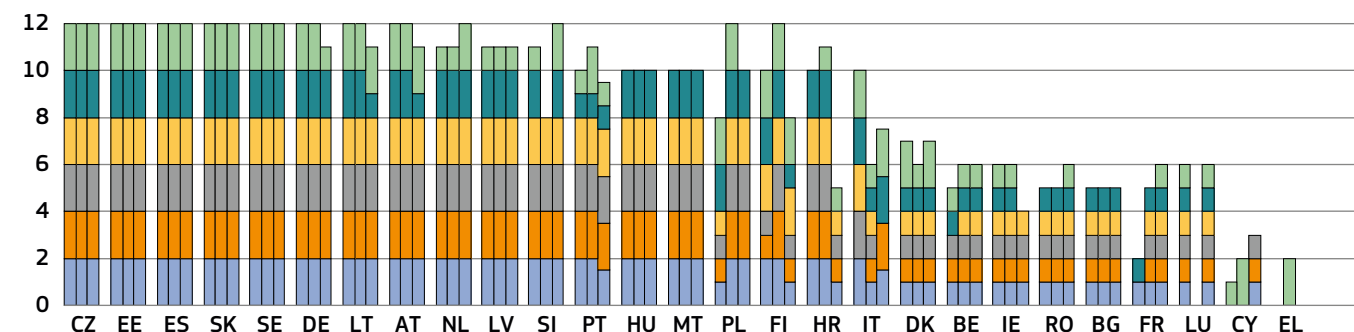
The use of digital solutions in civil/commercial, administrative and criminal cases often requires appropriate regulation in national procedural rules. Figure 42 illustrates the possibility for various actors to use distance communication technology (such as videoconferencing) for procedures related to court cases, and reflects the current situation on the admissibility of digital evidence.

**Figure 42** Procedural rules allowing digital technology in courts in civil/commercial, administrative and criminal cases, 2021 (\*) (source: European Commission (77))

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.

- Parties/defendants/victims can be heard by distance communication technology
- Experts can be heard by distance communication technology
- Oral part of the procedure can be conducted entirely via distance communication technology
- Witnesses can be heard by distance communication technology
- Language interpretation possible while using distance communication technology
- Admissibility of evidence filed in a digital format only



(\*) For each Member State, the first column presents procedural rules for civil/commercial cases, the second column for administrative cases and the third column for 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 between civil/commercial and administrative cases, the same number of points has been given for both areas. **EL:** none for administrative and criminal cases. **LU:** none for administrative cases.

76 2021 data collected in cooperation with the group of contact persons on national justice systems.

77 2021 data collected in cooperation with the group of contact persons on national justice systems.

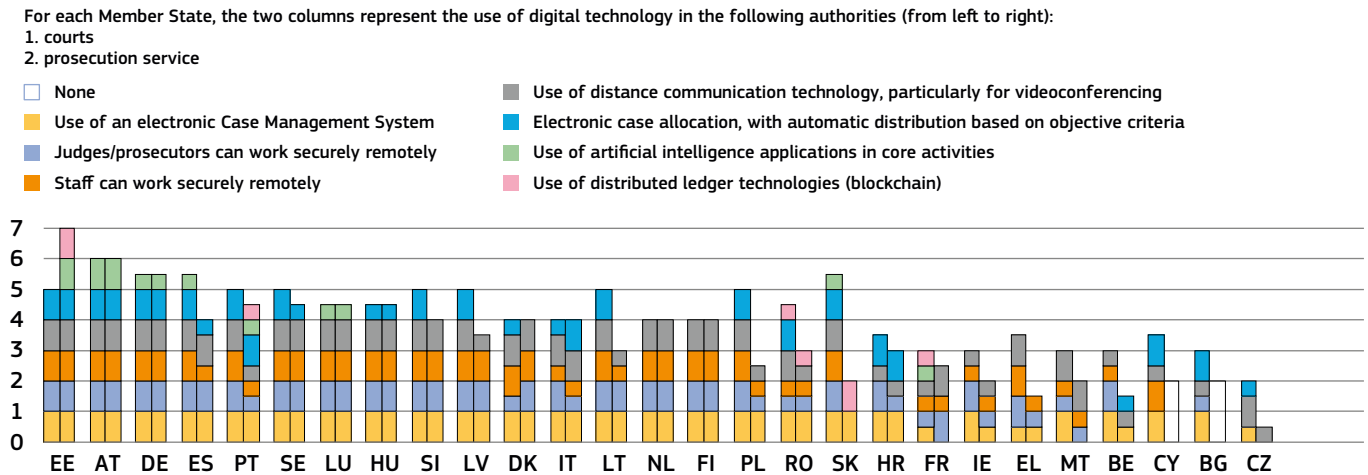


## – Use of digital tools –

Beyond digital-ready procedural rules, courts and prosecution services need to have appropriate tools and infrastructure in place for distance communication and secure remote access to the workplace (Figure 43). Adequate infrastructure and equipment is also needed for secure electronic communication between courts/prosecution services and legal professionals and institutions (Figures 44 and 45).

ICT, including innovative technology, plays an important role in supporting the work of judicial authorities. It therefore contributes significantly 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.

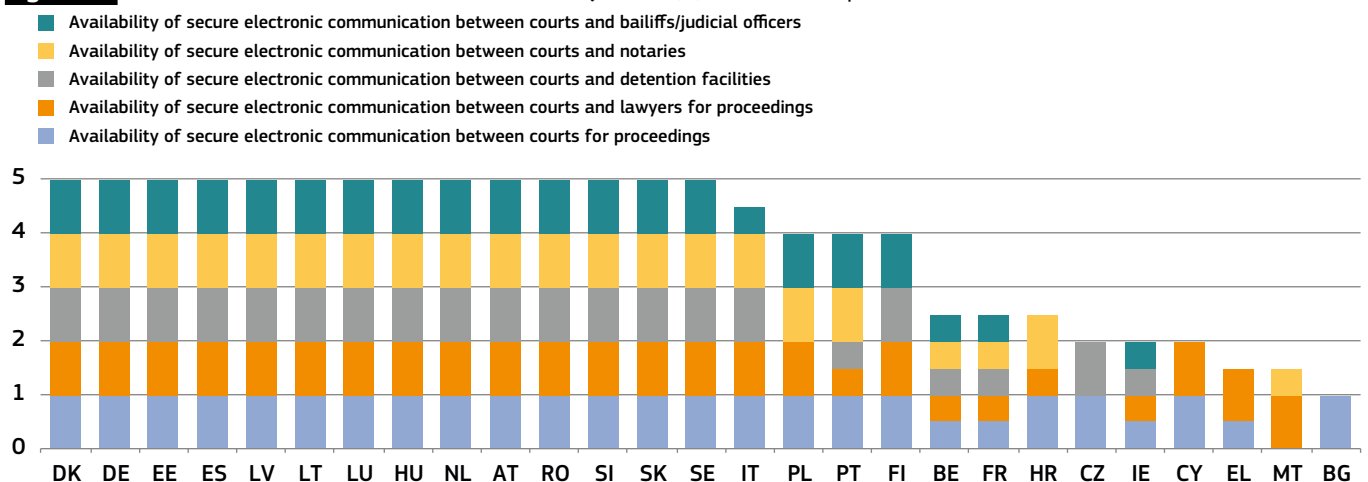
**Figure 43 Use of digital technology by courts and prosecution services, 2021 (\*)** (source: European Commission (78))



(\*) 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 44 Courts: electronic communication tools, 2021 (\*)** (source: European Commission (79))

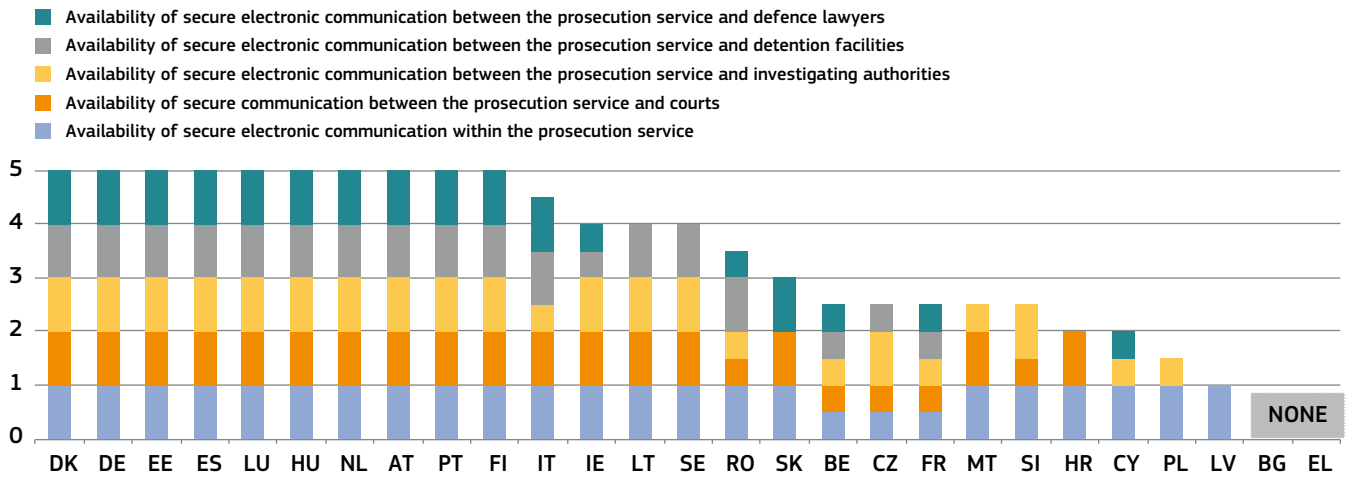


(\*) Maximum possible: 5 points. For each criterion, one point was given if secure electronic communication is available for courts. 0.5 was awarded when the possibility does not exist in all cases. **FI**: the tasks of notaries do not relate to courts. Therefore, there is no reason to provide them with secure connection.

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

78 2021 data collected in cooperation with the group of contact persons on national justice systems.

79 2021 data collected in cooperation with the group of contact persons on national justice systems.

**Figure 45 Prosecution service: electronic communication tools, 2021(\*)** (source: European Commission <sup>(80)</sup>)

(\*) 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 carry out specific steps in a judicial procedure electronically is an important aspect of the quality of justice systems. The electronic submission of claims, the possibility to monitor and advance a proceeding online or serve documents electronically can tangibly facilitate access to justice for citizens and businesses (or their legal representatives) and reduce delays and costs. The availability of such digital public services would help bring courts one step closer to citizens and businesses, and by extension increase public trust in the justice system.

**Figure 46 Digital solutions to initiate and follow proceedings in civil/commercial and administrative cases, 2021(\*)** (source: European Commission <sup>(81)</sup>)

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



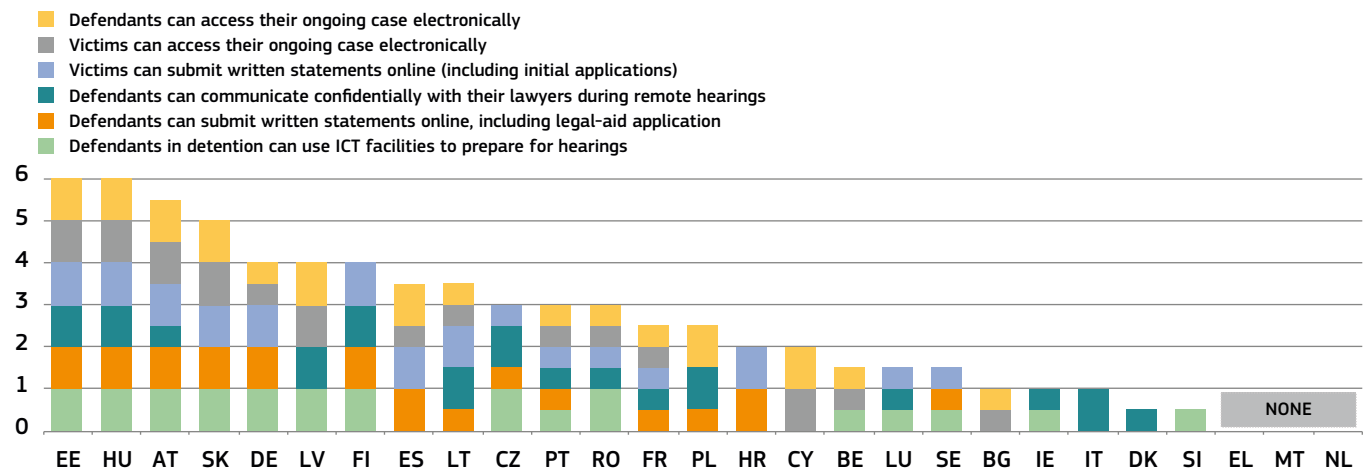
(\*) Maximum possible: 9 points. For each criterion, one point was given if the possibility exists in all civil/commercial and administrative cases, respectively. 0.5 point was awarded when the possibility does not exist in all cases. For those Member States that do not distinguish civil/commercial and administrative cases, the same number of points has been given for both areas.

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 enable confidential remote communication between defendants and their lawyers, allow defendants in detention to prepare for their hearing and help victims of crime avoid secondary victimisation.

80 2021 data collected in cooperation with the group of contact persons on national justice systems.

81 2021 data collected in cooperation with the group of contact persons on national justice systems.

**Figure 47 Digital solutions to conduct and follow court proceedings in criminal cases, 2021(\*)** (source: European Commission <sup>(82)</sup>)



(\*) 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 publishing judicial decisions online are essential for creating user-friendly search facilities <sup>(83)</sup> that make case-law more accessible to legal professionals and the general public. Seamless access to and easy reuse of case-law makes the justice system algorithm-friendly, enabling innovative ‘legal tech’ applications that support 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 <sup>(84)</sup> fully applies to the processing of personal data by courts. When assessing what data to make public, a fair balance has to be struck between the right to data protection and the right to publicise court decisions to ensure the transparency of the justice system. This is particularly true when there is a prevailing public interest that justifies the disclosure of those data. In many countries, the law or practice requires the anonymisation or pseudonymisation <sup>(85)</sup> of judicial decisions before publication, either systematically or upon request. Data produced by the judiciary are also governed by EU legislation on open data and the reuse of public sector information <sup>(86)</sup>.

The availability of judicial decisions in a machine-readable format <sup>(87)</sup> facilitates an algorithm-friendly justice system <sup>(88)</sup>.

82 2021 data collected in cooperation with the group of contact persons on national justice systems.

83 See *Best practice guide for managing Supreme Courts*, under the project Supreme Courts as guarantee for effectiveness of judicial systems, p. 29.

84 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).

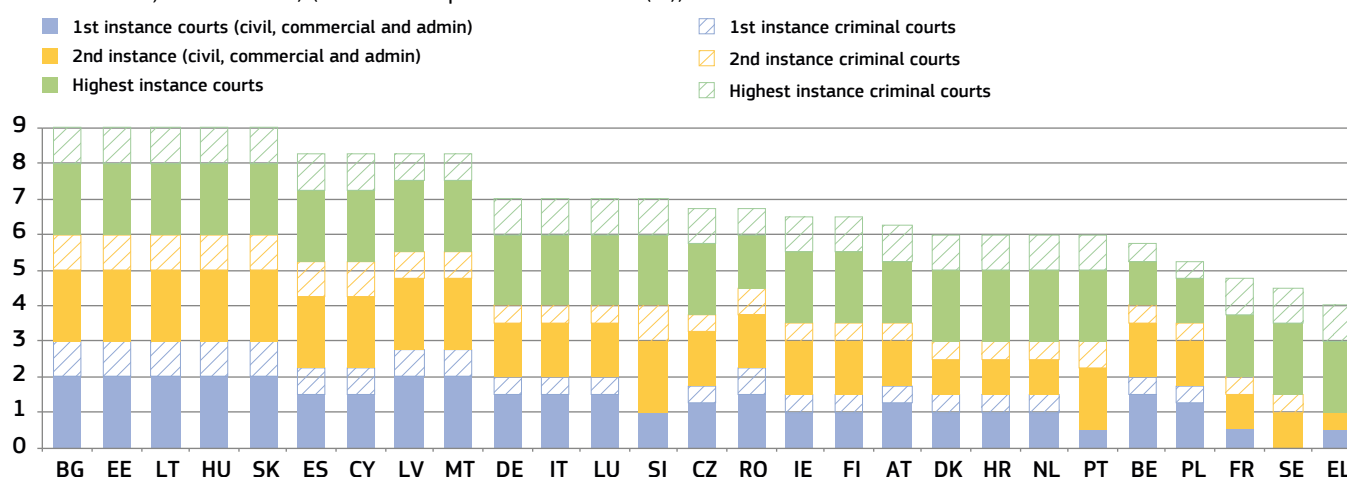
85 Anonymisation/pseudonymisation is more efficient if assisted by an algorithm. However, human supervision is needed, since the algorithms do not understand context.

86 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).

87 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).

88 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 48 Online access to published judgments by the general public, 2021 (\*)** (civil/commercial, administrative and criminal cases, all instances) (source: European Commission <sup>(89)</sup>)



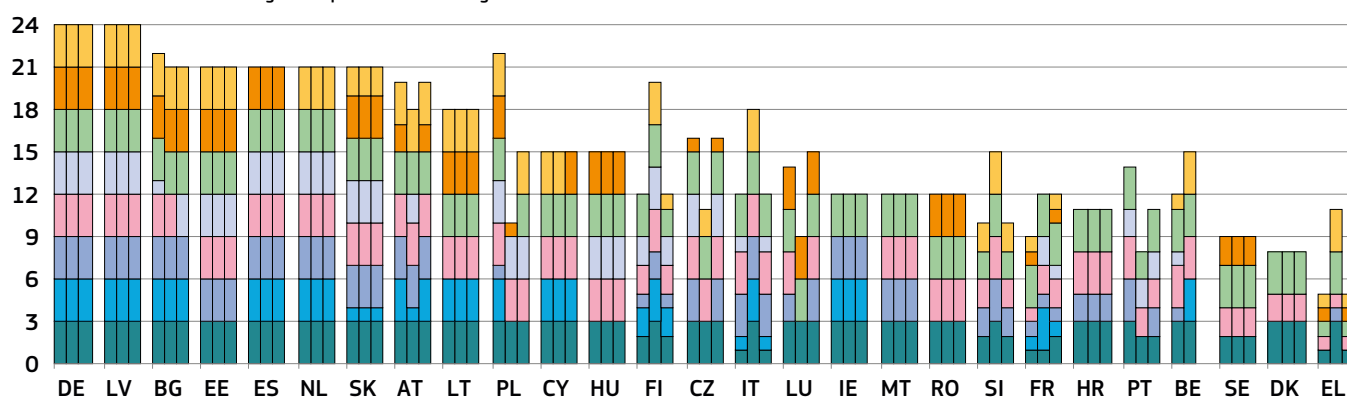
(\*) Maximum possible: 9 points. For each court instance, one point was given if all judgments are available for civil/commercial and administrative and criminal cases respectively, 0.75 points when most judgments (more than 50% are available) and 0.5 points when some judgments (less than 50%) are available. 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. **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. Decisions of the Supreme Administrative Court taken by a single judge are published if the judge concerned decides to publish them. Furthermore, decisions only containing legal issues where there already is continuous jurisprudence of the Supreme Administrative Court and non-complicated decisions concerning discontinuance of proceedings are not published. **NL**: courts decide on publication according to published criteria. **PT**: a commission within the court decides on the publication. **SI**: procedural decisions with little or no significance for the case-law are not published; from decisions in cases, which are identical in substance (e.g. bulk cases), only the leading decision is published (together with the list of case files with the same content). Individual higher courts decide which judgments can be published. **SK**: decisions on several types of civil cases, such as in inheritance matters or determining of paternity are not published. **FI**: courts decide which judgments are published.

**Figure 49 Arrangements for producing machine-readable judicial decisions, 2021 (\*)** (civil/commercial, administrative and criminal cases, all instances) (source: European Commission <sup>(90)</sup>)

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.

- Judgments and their associated metadata are downloadable free of charge in the form of a database or by other automated means
- Anonymisation/pseudonymisation is assisted by an algorithm
- Rules are in place to determine whether or not personal data are revealed in online published judgments
- Judgments have associated information ("metadata") on citations and references to national and/or EU law or case law
- Judgments have associated information ("metadata") on keywords, date of the decision, etc.
- Judgments are assigned a European Case Law Identifier (ECLI)
- Judgments are modelled according to a standard which would enable their machine readability
- Website is accessible to the general public free of charge



(\*) Maximum possible: 24 points per type of case. 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 a 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 developing databases or for commercial purposes must follow the procedure and conditions established by the CGPJ through its Judicial Documentation Centre. **IE**: anonymisation of judgments is done in family law, child care and other areas where statute requires or a judge directs the identities of parties or persons not to be disclosed.

89 2021 data collected in cooperation with the group of contact persons on national justice systems.

90 2021 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 all contribute to a high quality justice system. Citizens and business expect high quality decisions from an effective justice system. The 2022 EU Justice Scoreboard makes a comparative analysis of these factors.

#### Accessibility

The 2022 edition looks again at a number of elements that contribute 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 living in poverty. Figure 25 shows that in some Member States, consumers whose income is below the Eurostat poverty threshold would not receive legal aid. Compared to 2020, legal aid has become more accessible in around a third of Member States – especially partial legal aid – and more restricted in two Member States. This contrasts with the previous trend of legal aid becoming less accessible in some Member States. The level of court fees (Figure 26) 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. Difficulties in benefiting from legal aid combined with high levels of court fees in some Member States could dissuade people living in poverty from attempting to access justice.
- The level of **court fees for commercial litigation** (Figure 27) varies greatly between 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. Compared to 2020, the level of court fees has remained largely stable, with only two Member States lowering and one Member State increasing the fee. Figure 28 shows to what extent legal costs can be recovered by the winning party in a commercial case. There are large differences in the recoverability of legal fees for the litigious phase 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 the recoverability of legal costs is at the discretion of the courts. A system's level of generosity for recovering legal fees can either incentivise or deter someone from filing a case, affecting overall access to justice.
- The 2022 EU Justice Scoreboard continues to analyse the ways in which Member States promote voluntary use of **alternative dispute resolution methods** (ADR) (Figure 29), including the possibility of using digital technologies. Compared to 2020, a third of Member States increased their promotion efforts while around the same number decreased their efforts. In general, the number of ways to promote ADR methods tends to be lower for administrative disputes than for civil and commercial, labour or commercial disputes, but a slightly increased effort can be observed in this area compared to 2020.
- For the first time, the 2022 EU Justice Scoreboard takes stock of the **specific arrangements in place to support persons with disabilities** in accessing justice on equal basis with others. Figure 30 shows that all Member States have at least some arrangements in place – mostly procedural accommodations or information available in accessible formats. Specific formats, such as in Braille, sign language or easy-to-read, are available upon request in more than half of Member States. Digital solutions for civil and commercial cases, administrative cases as well as criminal cases at first instance court are also accessible for persons with disabilities in just over half of Member States.
- Also for the first time, the 2022 EU Justice Scoreboard maps **certain aspects of judicial control over acts and omissions of public administration** based on specific business scenarios. Figure 31 shows that in almost all Member States companies may receive financial compensation for damage caused by administrative decisions or by administrative silence and that courts may stay the enforcement of administrative decisions. These elements may have an impact on the investor confidence, the business environment and the functioning of the single market, which warrants closer monitoring and analysis.
- The 2022 EU Justice Scoreboard provides a deeper analysis of the measures Member States have in place to ensure a **child-friendly justice system**. In particular, it refines the selection of arrangements in different types of proceedings presented in Figure 32 and distinguishes (in Figure 33) between a child involved in the proceedings as a victim and a child that is a suspect or accused person. Figure 32 shows that all Member States make at least some accommodations for children, most frequently ensuring that they are treated appropriately according to their specific needs and rights. Almost all Member States also provide training courses for judges on child-friendly justice. Figure 33 illustrates the variation between Member States in this area, showing comparatively fewer specific arrangements available for children involved in proceedings as suspects or accused persons in about a third of Member States.

## Resources

High quality justice systems in Member States depend on sufficient financial and human resources. This requires appropriate investment in physical and technical infrastructure, initial and continuous training, and diversity among judges, including gender balance. The 2022 EU Justice Scoreboard shows:

- In terms of **financial resources**, the data show that, overall, in 2020, 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 34 and 35). Almost all Member States increased their expenditure as a percentage of GDP in 2020 (an increase compared to 2019) and a majority also increased their expenditure per capita.
- **Women** still account for fewer than 50% of judges at Supreme Court level in most Member States (Figure 37). Figures for the three-year period 2019-2021 show diverging levels and trends between Member States, but since 2010, the proportion of female judges at Supreme Court level has risen in most Member States.
- To **improve communication with vulnerable groups** (Figure 39), most Member States provide training on how to best communicate with victims of gender-based and/or domestic violence, and more than two thirds provide training on communicating with asylum seekers and with people from different cultural, religious, ethnic or linguistic backgrounds. Around half of Member States provide training on how to communicate with visually or hearing impaired persons. Furthermore, more than two thirds of Member States provide training on the use of social media and/or communication with the media, and around half raise awareness and provide training on dealing with disinformation.

## Assessment tools

- The **use of surveys** among court users and legal professionals (Figure 40) was lower in 2020 than in the preceding years, with a stable number of Member States opting not to conduct any surveys. However, the Member States that did not conduct surveys are not always the same as last year, indicating that some of them conduct surveys 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.

## Digitalisation

Since its 2021 edition, the EU Justice Scoreboard includes a large section 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 have some **online information about their judicial system**, including websites with visible and understandable information on how to access legal aid, and on court fees and eligibility criteria for their reduction (Figure 41). But differences exist between Member States on the level of information and the degree to which it responds to people's needs. For example, not many Member States (only 13) provide an interactive online simulation where people can find out whether they are eligible for legal aid. On the other hand, most Member States provide a website with online forms for companies and individuals, and information for non-native speakers.
- Fewer than half of Member States have **digital-ready procedural rules** (Figure 42), which allow fully 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 number of situations. Nonetheless, since 2020 there has been progress in almost half of Member States.
- On the **use of digital technology by courts and prosecution services** (Figure 43), most Member States already have various digital tools at the disposal of courts, prosecutors and staff members. Although most Member States have case-management systems, videoconferencing systems and teleworking arrangements in place, further progress is needed in automating case allocation systems and in making artificial intelligence and block chain based tools more widely available.
- Courts in most Member States have **secure electronic tools for communication** at their disposal. In a number of Member States, however, courts can only communicate via secure electronic means with certain legal professionals and/or national authorities (Figure 44). In the case of prosecution services (Figure 45), more than a third of Member States comprehensively provide for secure electronic communication with legal professionals and national institutions, which represents progress compared to 2020.

- In civil/commercial and administrative cases, most Member States provide individuals and businesses (or their legal representatives) with **online access to their ongoing or closed cases** (Figure 46), albeit to various degrees. In more than a third of Member States, individuals and businesses benefited from an improved online access compared to 2020. Nevertheless, in criminal cases (Figure 47) in most Member States defendants and victims have very limited possibilities to follow or carry out part of their case electronically despite improvements in about a half of the Member States.
- The 2022 Scoreboard assesses the data on **online access to court judgments** (Figure 48) in more detail in order to provide a more accurate picture of the situation in the Member States. The results therefore differ from last year. In particular, on the publication of judgments at the highest instance: 22 Member States publish all civil/commercial and administrative judgments and 22 Member States also publish criminal judgments. Nevertheless, online publication of judgments at second instance is more rare, with only ten Member States publishing all second instance court judgments.
- The 2022 EU Justice Scoreboard continues to analyse **arrangements in the Member States to help produce machine-readable judicial decisions** (Figure 49). All Member States have at least some arrangements in place for civil/commercial, administrative and criminal cases although there is considerable variation between Member States. It appears that administrative courts are relatively more advanced in granting seamless access to and facilitating easy reuse of case-law by 'legal tech' companies. In general, there is a tendency to introduce more arrangements, particularly for the availability of metadata in judgments on key words, dates of decisions and the regulation of personal data in the published judgments. Ten Member States reported an improvement in 2021 compared with the previous year. 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>(91)</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>(92)</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>(93)</sup>. Preserving the EU legal order is fundamental for all citizens and business whose rights and freedoms are protected under EU law.

A high perceived independence of the judiciary is paramount for the trust which justice in a society governed by the rule of law must inspire in individuals, and is contributing to a growth-friendly business environment, as a perceived lack of independence can deter investments<sup>(94)</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 (EGMLTF), the Scoreboard presents indicators related to security checks on judges, possibility of higher/Supreme Courts to take decisions on the consistency of case-law of lower courts on their own initiative, safeguards in revolving doors situations regarding judges and prosecutors, as well as a more in-depth view on the possibility to have a review of a decision of a prosecutor not to prosecute a case.

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

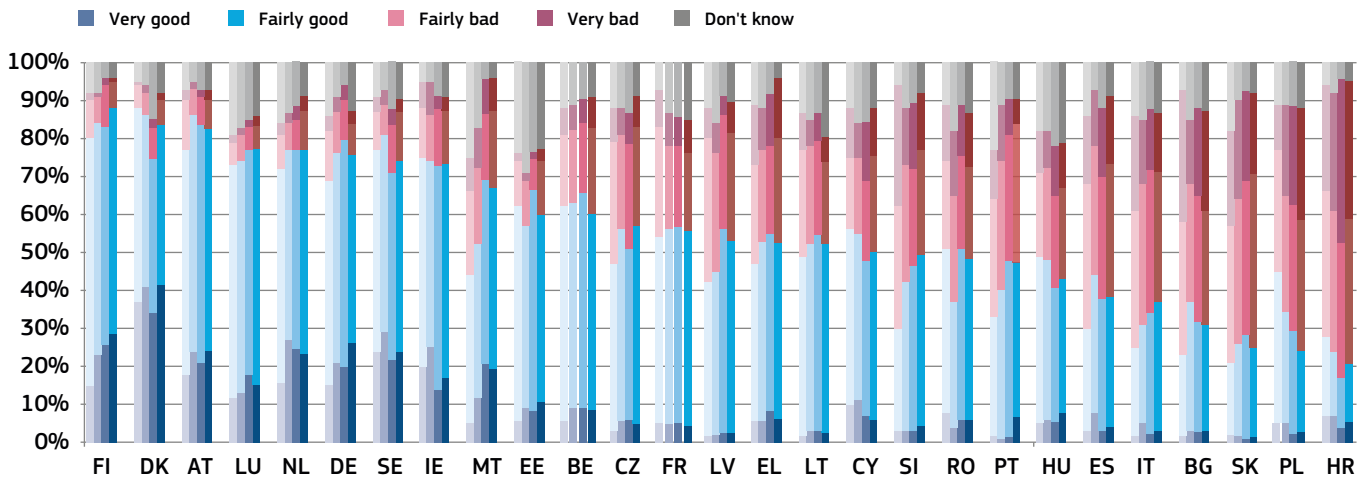
92 Court of Justice, judgment of 16 November 2021, *Criminal proceedings against WB and Others*, Joined Cases C-748/19 to C-754/19, judgment of 6 October 2021, *W. Ż.*, C-487/19, judgment of 15 July 2021, *Commission v. Poland*, C-791/13, judgment of 2 March 2021, *AB*, C-824/18, judgment of 19 November 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 5 November 2019, *Commission v. Poland*, C-192/18, 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.

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

94 In 2020 and 2021, the World Economic Forum has not published the Global Competitiveness Index (GCI) rankings.

### 3.3.1. Perceived judicial independence and effectiveness of investment protection

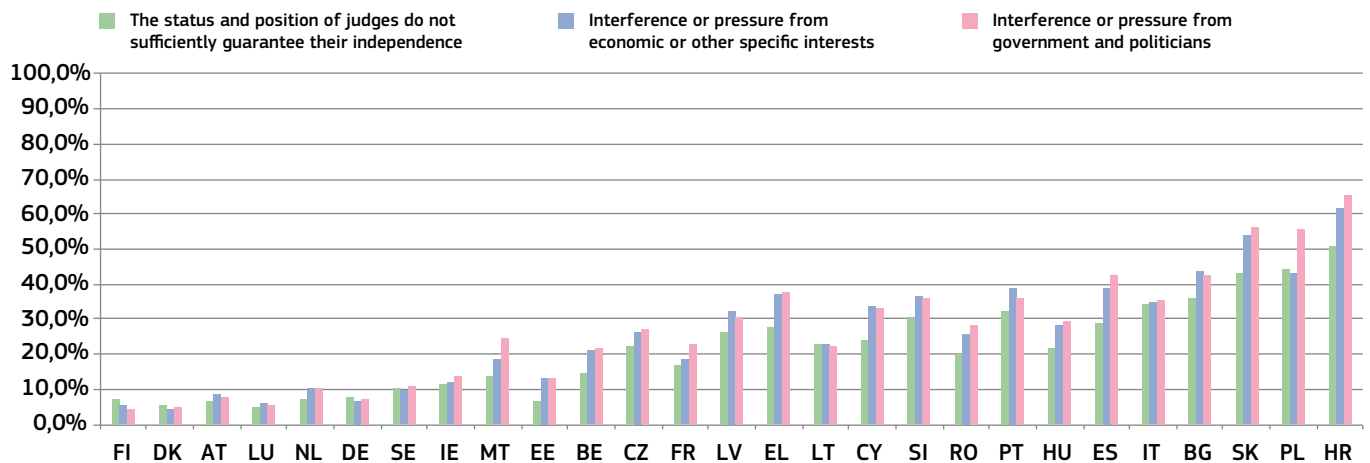
**Figure 50** How the general public perceives the independence of courts and judges (\*) (source: Eurobarometer <sup>(95)</sup> - light colours: 2016, 2020 and 2021, dark colours: 2022)



(\*) 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 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 50.

**Figure 51** Main reasons among the general public for the perceived lack of independence (share of all respondents - higher value means more influence) (source: Eurobarometer <sup>(96)</sup>)

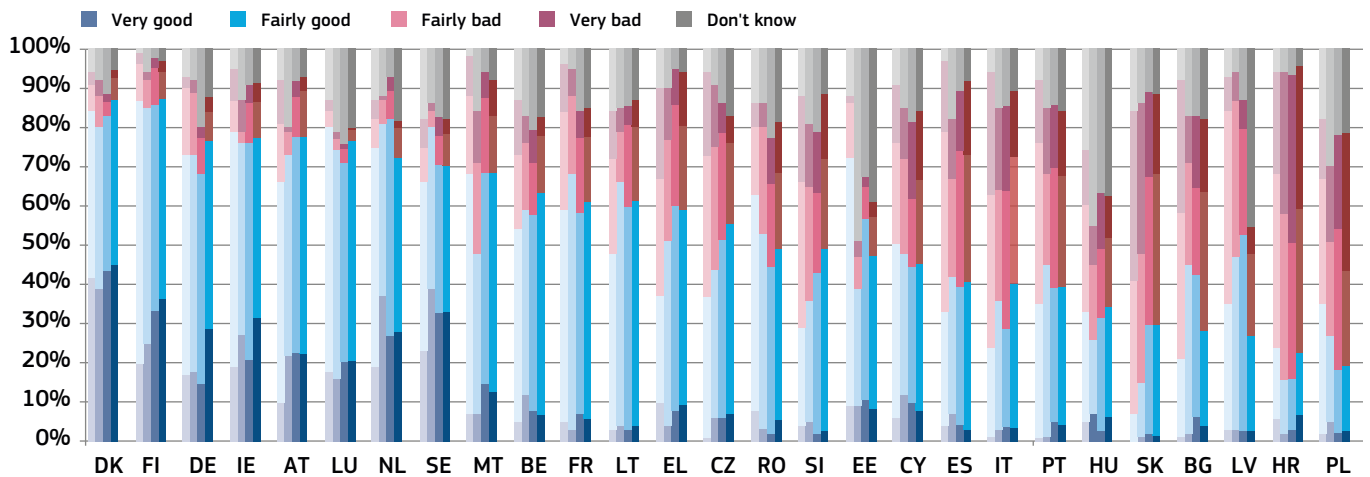


95 Eurobarometer survey FL503, conducted between 17 and 24 January 2022. Replies to the question: 'From what you know, how would you rate the justice system in (your country) in terms of the independence of courts and judges? Would you say it is very good, fairly good, fairly bad or very bad?', see: [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)

96 Eurobarometer survey FL503, 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?' if reply to Q1 is 'fairly bad' or 'very bad'.



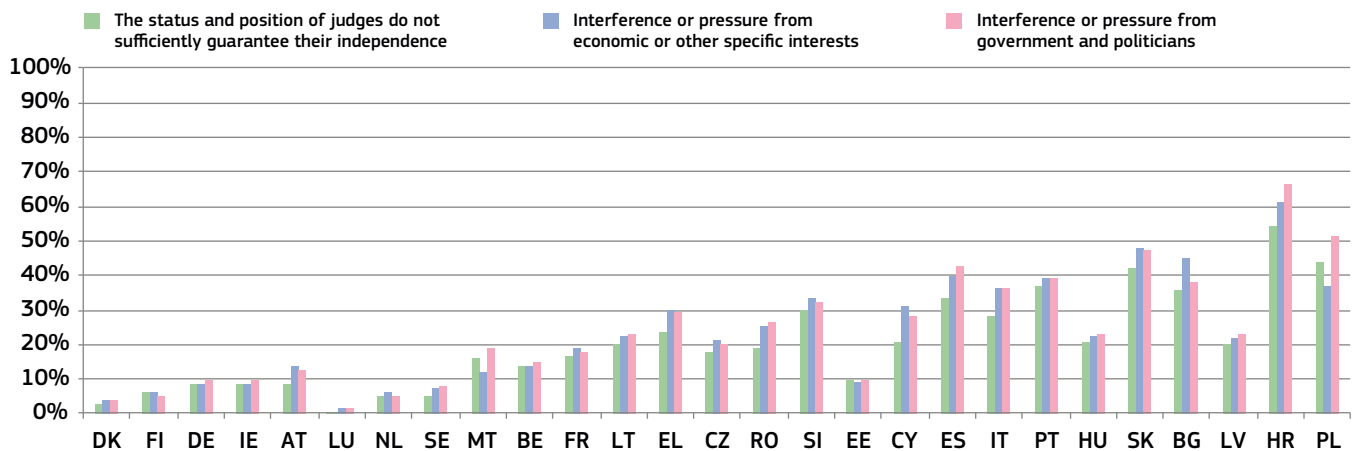
**Figure 52** How companies perceive the independence of courts and judges (\*) (source: Eurobarometer <sup>(97)</sup>) - light colours: 2016, 2020 and 2021, dark colours: 2022



(\*) 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 53 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 52.

**Figure 53** Main reasons among companies for the perceived lack of independence (rate of all respondents - higher value means more influence) (source: Eurobarometer <sup>(98)</sup>)

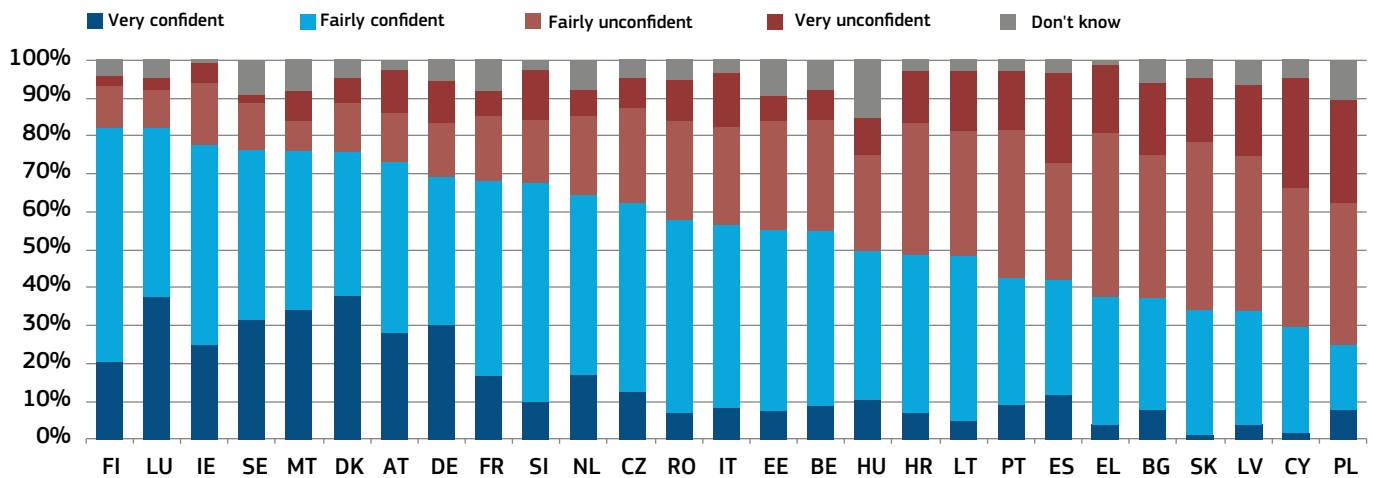


97 Eurobarometer survey FL504, conducted between 17 and 24 January 2022. Replies to the question: 'From what you know, how would you rate the justice system in (our country) in terms of the independence of courts and judges? Would you say it is very good, fairly good, fairly bad or very bad?', see: [https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard\\_en](https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard_en); from 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.

98 Eurobarometer survey FL504; 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 (your country): very much, somewhat, not really, not at all?' if the response to Q1 was 'fairly bad' or 'very bad'.

Figure 54 shows a new indicator on how companies perceive the effectiveness of investment protection by the law and courts as regards, in their view, unjustified decisions or inaction by the State.

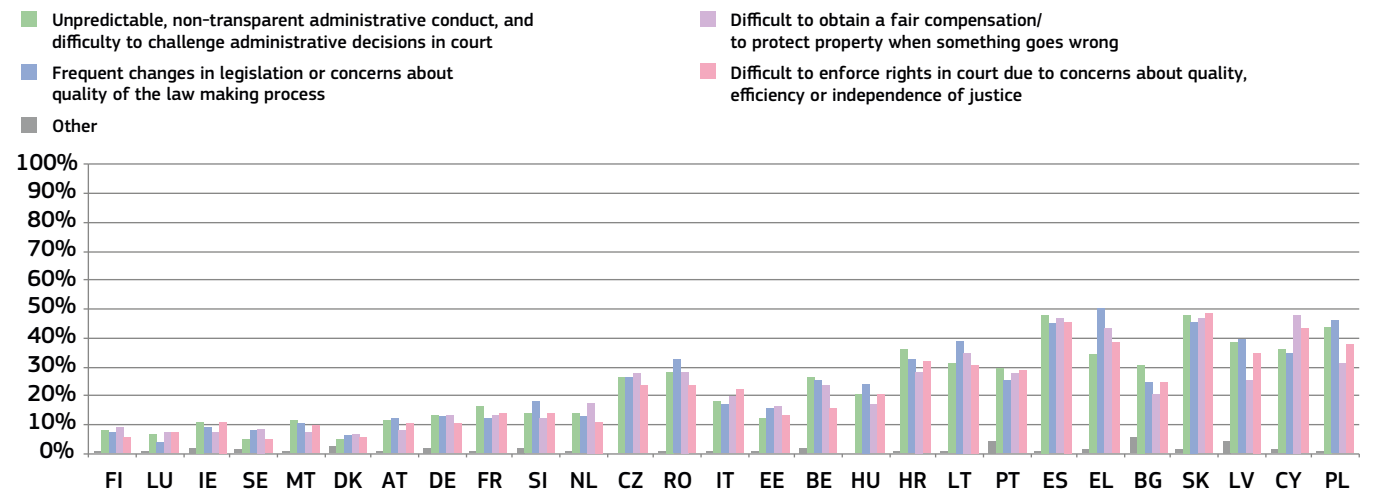
**Figure 54** How companies perceive the effectiveness of investment protection by the law and courts (source: Eurobarometer <sup>(99)</sup>)



(\*) Member States are ordered first by the combined percentage of respondents who stated that they are very or fairly confident in investment protection by the law and courts (total confident).

Figure 55 shows the main reasons given by respondents for the perceived lack of effectiveness of investment protection. Respondents among companies, who rated their level of confidence as 'fairly unconfident' or 'very unconfident', could choose four reasons to explain their rating (and some indicated "other"). The Member States are listed in the same order as in Figure 54.

**Figure 55** Main reasons among companies for their perceived lack of effectiveness of investment protection (source: Eurobarometer <sup>(100)</sup>)



99 Eurobarometer survey FL504; replies to the question: 'To what extent are you confident that your investments are protected by the law and courts in (your country) if something goes wrong?' For the purpose of the survey, investment was defined as including any kind of asset that a company owns or controls and that is characterised by the commitment of capital or other resources, the expectation of gain or profit or the assumption of risk.

100 Eurobarometer survey FL504; replies to the question: 'What are your main reasons for concern about the effectiveness of investment protection?' if the response to Q3 was 'fairly unconfident' or 'very unconfident'.

### 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 the court to external factors and its neutrality with respect to the interests before it <sup>(101)</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 that are more indirect and that are liable to have an effect on the decisions of the judges concerned <sup>(102)</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>(103)</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 Scoreboard contains new indicators on: (i) authorities involved and the frequency of potential security checks on judges (Figure 56); (ii) the possibility of higher/Supreme Courts to take decisions on the consistency of case-law on their own initiative (Figure 57); and (iii) the safeguards in place relating to the temporary employment of judges/prosecutors on political posts (Figure 58) <sup>(104)</sup>. It also presents a more detailed overview of the possibility to have a review of a decision of a prosecutor not to prosecute a case involving crimes with a victim or a case involving ‘victimless crimes’ (e.g. corruption or money laundering) (Figure 59), and shows the bodies with power to conduct criminal investigations (Figure 60) <sup>(105)</sup>. The figures present the national frameworks as they were in place in December 2021.

The figures presented in the Scoreboard do not provide an assessment nor present quantitative data on the effectiveness of the safeguards. They are not intended to reflect the complexity and details of the procedures and accompanying safeguards. 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.

The special place of the judiciary within the system of the separation of powers and the emphasis placed upon judicial independence and impartiality require that laws regulating the assessment or evaluation of the professional duties of judges must be worded and applied with great care and the role of the executive or legislative branches in this process should be limited to the extent absolutely necessary <sup>(106)</sup>.

101 See Court of Justice, judgment of 16 November 2021, *Criminal proceedings against WB and Others*, Joined Cases C-748/19 to C-754/19, para. 67, judgment of 6 October 2021, *W.Ż.*, C-487/19, para. 109, judgment of 15 July 2021, *Commission v. Poland*, C-791/19, para. 59, judgment of 2 March 2021, *A.B.*, C-824/18, para.117, 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, judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117, para. 44. 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.

102 See Court of Justice, judgment of 2 March 2021, *A.B.*, C-824/18, para. 119, 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.

103 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’).

104 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. Safeguards regarding prosecutors in Figure 57 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.

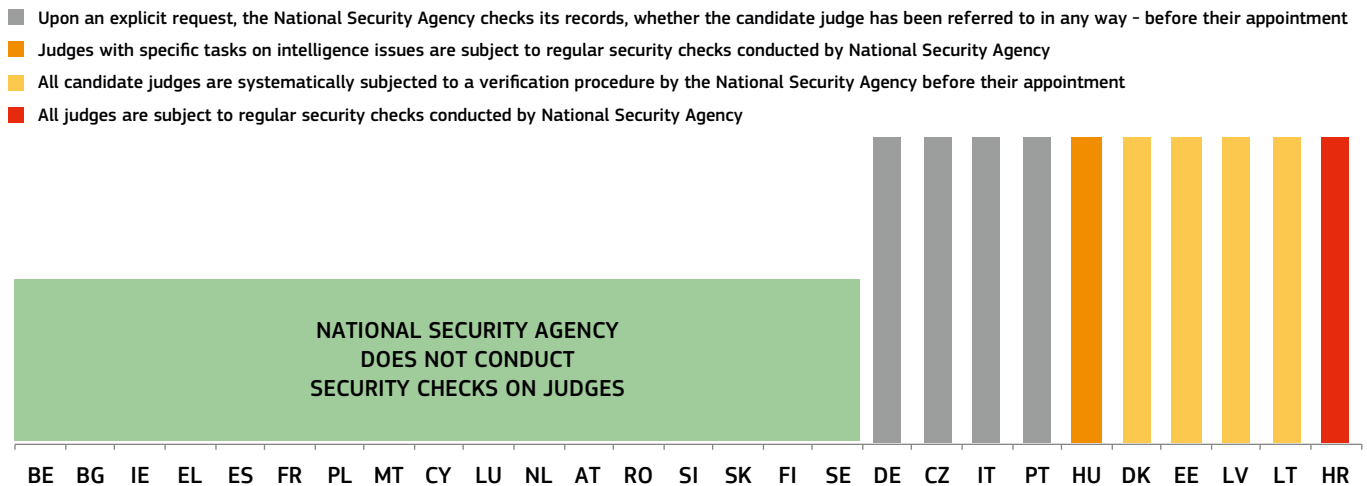
105 The figures are based on responses to an updated questionnaire drawn up by the Commission in close cooperation with the Expert Group on Money Laundering and Financing of Terrorism.

106 Venice Commission, Opinion no. 819/2015 on the Draft law on integrity checking in Ukraine, CDL-AD(2015)031, 25 October 2015, para. 40, and Venice Commission, Opinion No. 789/2014, Amicus Curiae Brief for the Constitutional Court of Moldova on certain provisions of the law on professional integrity testing, CDL-AD(2014)039-e, 15 December 2014, para. 14.

Figure 56 shows whether in Member States the National Security Agency is involved in conducting security checks on judges – either candidate judges or existing judges, and how often they are made.

The involvement of National Security Agencies belonging to the executive in the appointment and status of judges is particularly sensitive from the perspective of judicial independence. While there may be a legitimate interest, especially for certain specific judicial posts, to conduct a verification of security<sup>(107)</sup>, this should be done in full respect for judicial independence. According to European standards, “independence means that the judiciary is free from external pressure, and is not subject to political influence or manipulation, in particular by the executive branch”<sup>(108)</sup>. Security checks on judges, especially when carried out by an executive body, may constitute such an ‘external pressure’<sup>(109)</sup>. When security/integrity checks are not carried out by self-governing bodies of the judiciary themselves but by an external body, utmost consideration must be given to respecting the principles of separation of powers and checks and balances<sup>(110)</sup>.

**Figure 56 National security checks on judges: authorities involved and timing (\*)<sup>(111)</sup>**



(\*) **DE:** In all federal states, the National Security Agency can check its records about a candidate judge before appointment upon an explicit request. In two federal states, the National Security Agency conducts a check of its records on all candidate judges before appointment: in Bavaria (if a candidate judge does not give consent for the check of records, they cannot be appointed); since 2021, in Mecklenburg-Western Pomerania (not requiring their consent). By law, the National Security Agency or the agencies of the federal states only perform verification processes if judges are to be concerned with tasks within the court administration and need to get access to classified information for that purpose. Apart from that, judges are legally exempt from security checks when granted access to classified information, as such procedures could influence judicial independence. **EE:** The Internal Security Service performs the security check of a candidate for judicial office, except if the candidate holds a valid access permit to access state secrets classified as top secret or if the candidate occupies a position that provides the right by virtue of office to access all levels of state secrets. The Internal Security Service presents the information gathered as a result of the security check to the judge's examination committee and provides an opinion on whether a person who submitted the application meets the conditions for being issued a permit for access to state secrets. **HR:** The Security and Intelligence Agency conducts security checks on all candidates for judges and on all existing judges every 5 years (as well as state attorneys). According to the law, for existing judges, the Security and Intelligence Agency, after conducting a check including an interview, will send its report to the Supreme Court President who will then assign it to a panel of five Supreme Court judges to decide if there is a security issue. If the panel finds a security issue, this will be notified to the Minister of Justice, the Court President and Judges' Council and the President of Higher Court where the judge in question sits. The Minister of Justice will prescribe the by-laws regulating the procedure for conducting security checks. **FR:** As all state officials, all candidate judges are subjected to a police records check/an administrative investigation led by the national police under the authority of the general prosecutor (checking its records, classified information, morality behaviour...). **IT:** The chart reflects the situation for judges in civil and criminal courts. National security agencies are not involved in the procedure for appointing administrative judges. **HU:** All regional court presidents, vice presidents and judges who permit intelligence data gathering or deal with cases related to classified information need to undergo a security check by the National Security Agency. The security check is conducted before assuming their responsibilities and then every five years (Section 71/C, paragraph (7), of Act CXXV of 1995 on National Security and Sections 42/A to 42/C of Act CLXII of 2011 on the Status and Remuneration of Judges). **NL:** A certificate of good conduct (VOG) needs to be handed over before a candidate judge can be appointed. This is only done at first appointments or when a judge becomes president of a court. The organisation providing VOGs is called Justis - the screening authority that is a benefit-expense agency with independent management, which is formally under the Ministry of Justice & Security. The authority checks whether a candidate's (judicial) history is an objection to carrying out the duties of the new office. Justis is not the National Security Agency (AIVD). It is the decision of Justis, whether or not to hand out a certificate of good conduct. If someone wishes to appeal this decision, they can take the case to an administrative judge. **PL:** When a person first applies to a judicial post, the president of the competent court (where the vacant post exists) requests information on the candidate from the Regional Head of Police. **RO:** Judges give a formal statement, on a yearly basis, that they are not operatives, including undercover agents, informers or collaborators of the intelligence services. **SE\*:** The Judicial Appointments Board, an independent judicial body, conducts the verification procedure for all security levels for court presidents, based on a questionnaire. Each court performs the verification procedure for all security levels for first or second instance judges. The Swedish Security Service conducts a records check (whether the candidate has been referred to in its records in any way), which is carried out before a person can take part in security sensitive activities (the Service does not collect information through a questionnaire, which is the task of the Judicial Appointments Board). For court presidents, the government decides which positions are to be classified for security on the highest security level and the Government Office decides which positions are to be classified for security on the lower security levels. For first or second instance judges, the government decides which positions are to be classified for security on the highest security level and the court decides which positions are to be classified for security on the lower security level.

107 “[T]he authority of a judiciary can only be maintained if (a) the legal system puts in place adequate mechanisms to ensure that candidates are not appointed as a judge if they do not have the required competences or do not meet the highest standards of integrity; and (b) the judiciary is cleansed of those who are found to be incompetent, corrupt or linked to organised crime.”, Venice Commission, Opinion no. 1073/2021 on the Introduction of the procedure of renewal of security vetting through amendments to the Courts Act, CDL(2022)002, 18 March 2022, para. 14.

108 Venice Commission, CDL-AD(2016)007, Rule of Law Checklist, para. 74.

109 Venice Commission, Opinion no. 1073/2021 on the Introduction of the procedure of renewal of security vetting through amendments to the Courts Act, CDL(2022)002, 18 March 2022, para. 13.

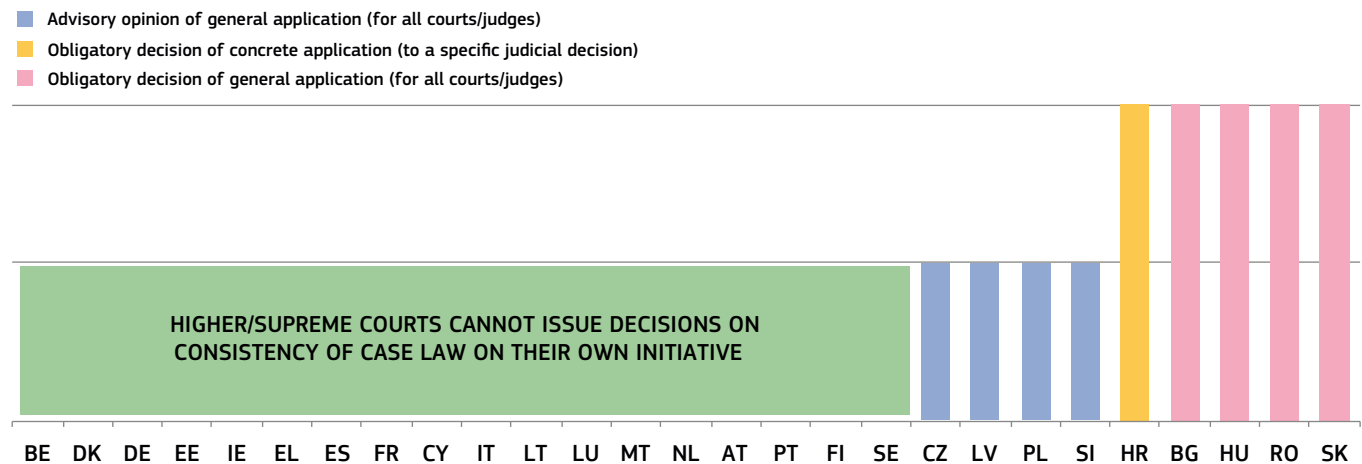
110 Venice Commission, CDL-AD(2021)046, Republic of Moldova - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts, para. 16

111 Data collected through an updated questionnaire drawn up by the Commission in close association with the ENCI. Responses to the updated questionnaire from Member States that have no Councils for the Judiciary, are not ENCI members, or whose ENCI membership has been suspended, were obtained through cooperation with the NPSC.

Figure 57 shows whether courts or judges have the possibility to take decisions on the consistency of case-law of lower courts on their own initiative. Such decisions could either be advisory or obligatory, and could apply only to a particular case, or to all cases of a similar type. The figure below shows four different situations in Member States: higher courts/judges i) cannot issue such decision on their own initiative, ii) they can issue advisory (non-binding) decisions of general application that apply to all courts/judges in particular types of cases (e.g. practice statements), iii) they can issue obligatory decisions of concrete application that apply only to a specific judicial decision (e.g. decision which obliges a judge/panel to adapt the draft judgment), or iv) they can issue obligatory decisions of general application that apply to all courts/judges in particular types of cases.

Supreme Courts, as final instance courts, and higher/appeal courts in general, are essential to secure the uniform application of the law in Member States. Nevertheless, hierarchical judicial organisation should not undermine individual independence<sup>(112)</sup>. Superior courts should not address instructions to judges about the way they should decide individual cases, except in national preliminary rulings or when deciding on legal remedies according to the law<sup>(113)</sup>. A hierarchical organisation of the judiciary in the sense of a subordination of judges to higher instances in their judicial decision-making activity would be a clear violation of the principle of internal independence, according to the Venice Commission<sup>(114)</sup>. Any procedure for the unification of case-law must comply with fundamental principles of separation of powers, and even after such a decision of a higher/Supreme Court, all courts and judges must remain competent to assess their cases independently and impartially, and to distinguish new cases from the interpretation previously unified by a higher/Supreme Court.

**Figure 57** Possibility of higher/Supreme Courts to take decisions on the consistency of case-law of lower courts on their own initiative (\*)



(\*) **BG**: Not following the obligatory decision or a general direction for particular kinds of cases is taken into account during the evaluation of the magistrates, which is an objective assessment of their professional, business and moral qualities, demonstrated in the performance of their position. **CZ**: The Supreme Court and Supreme Administrative Court can issue unifying opinions which are not formally binding for the courts of lower level. The binding nature of the unifying opinions is based not on their formal status but on the authority of the Supreme Courts and the persuasiveness of their reasoning. The Supreme Court uses unifying opinions for legal questions they consider to be of special importance. Regarding the possibility to diverge, a judge is bound only by the law in their decision-making. A diversion is thus possible but such a decision should be properly justified. **HR**: There are registration judges on each county court and on High Commercial Court, High Misdemeanour Court, High Administrative, High Criminal Court and Supreme Court, which register the judgments so that they can be notified to the parties, and can alert a judge/chamber when a draft judgment diverges from previously delivered case law and can propose to discuss the divergence at a section meeting pursuant to Article 40 of the Law on Courts, in order to issue a decision of the section which is binding on all judges in the court. **LV**: The Plenary Session (the assembly of all judges of the Supreme Court) and the general meeting of judges of the Departments of the Supreme Court can adopt opinions regarding the issues of interpretation and application of law standards in the form of a decision, which is published on the web site. **HU**: a judge can diverge from the obligatory decision 'only if the facts of the case differ from the facts of the obligatory decision or with reasoning of diverging in points of law.' **PL**: Among others, the First President of the Supreme Court or Presidents of the Supreme Court's chambers, or the President of the Supreme Administrative Court may propose on their own initiative that an 'abstract legal issue' is clarified by a panel of seven judges of the Supreme Court/Supreme Administrative Court in case of non-uniformity of judicial decisions/judgments delivered by the courts. The abstract resolution adopted by seven judges, presenting interpretation of the law, is not binding for the lower courts and has an influence on lower court only based on the authority of the Supreme Court/Supreme Administrative Court and on the persuasiveness of their reasoning. Such abstract resolutions may be binding on the Supreme Court only if the seven-judge panel decides so, unless overruled by a larger bench (e.g. a resolution of a whole Chamber of the Supreme Court or by the whole Supreme Court; Art. 88 of the Law on the Supreme Court). **RO**: To ensure a consistent interpretation and implementation of the law by all courts, the High Court of Justice and Cassation in the procedure 'appeals in the interest of the law', ex officio or upon request by parties, rules on legal issues that have been settled differently by courts of law. Such decisions have no effects on the court judgments being examined or on the status of parties in those cases. According to Article 99 of Law no. 303/2004 on the statute of judges and prosecutors, not complying with the appeals in the interest of law of the High Court of Cassation and Justice constitutes a disciplinary misconduct. This means that a disciplinary procedure against the judge concerned can be initiated. **SI**: Principled legal opinions on issues important for the uniform application of laws have a nature of a normative individual legal act whose scope goes beyond a specific case. It is binding on all panels of the Supreme Court and, only by force of reasoning, on lower courts, for which it is constitutionally acceptable to deviate from the adopted principled legal opinion, as in the case of deviating from the established case-law, if such deviation is supported by reasoning. **SK**: A court/judge is bound by the obligatory decision of the hierarchically superior court. In certain cases the inferior court is entitled to diverge from the obligatory decision of hierarchically superior courts/judges. There are three main reasons for doing so: (i) change of facts; (ii) different legal opinion expressed in the judgment of the Court of Justice of the EU; and (iii) an amendment of the laws. For specific proceedings, a judge can be subject to disciplinary proceedings at the Supreme Court.

112 Recommendation CM/Rec(2010)12, para. 22.

113 Recommendation CM/Rec(2010)12, para. 23.

114 Venice Commission, Report on the independence of the judicial system, Part I: the independence of courts, Study No. 494/2008, 16 March 2010, CDL-AD(2010)004, paras. 68 - 72.

Figure 58 shows the safeguards in place in situations where judges or prosecutors decide to temporarily become employed in politically-exposed positions, notably positions as politicians, ministers, government officials, cabinet members or positions in other political offices. The figure shows whether or not judges or prosecutors can take up such employment and afterwards return to the position of a judge or a prosecutor, or whether specific rules are in place to safeguard their impartiality.

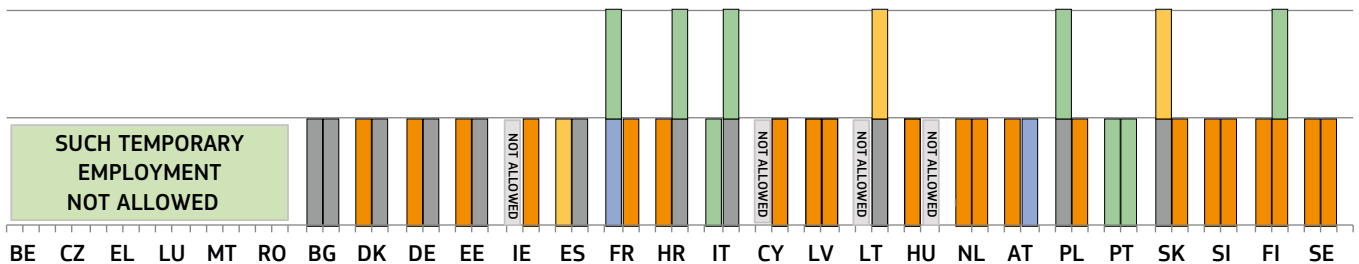
**Figure 58 Safeguards relating to temporary employment of judges/prosecutors as politicians/ministers/government officials/cabinet members/in other political offices (\*)**

For each Member State, the two columns represent the rules in place for:

1. Judges

2. Prosecutors

- Authorisation from a body needed for the judge/prosecutor to leave their position temporarily
- Cooling-off period required before the person can return to their position of a judge/prosecutor
- Notification/declaration of the new temporary employment to a specific body by the judge/prosecutor
- No specific rules in place, but the general ethical norms apply
- Other rules



(\*) **BG:** Magistrates can temporarily be appointed in these positions. For their re-appointment as judges/prosecutors/investigative magistrates, special procedural rules are in place requiring an application to be submitted to the relevant panel of the Supreme Judicial Council within 14 days from the date of their dismissal from the other (temporary) position with a view to their reinstatement. **DE:** If a prosecutor is elected to the Federal Parliament/appointed as a member of the Federal Government, the rights and duties deriving from the public employment are suspended for the period of the mandate (with the exception of duties relating to official secrecy and the prohibition to accept rewards or gratifications); when the mandate at the Bundestag has come to an end, the respective public servant may request (within a period of 3 months after the end of the mandate) their reinsertion into their former service, which has to be realised within 3 months after the request and at the same or an equivalent level as the former position (if reinsertion is not requested, the rights and duties deriving from the public employment continue to be suspended). In case of a return of a public official after a period of activity as a government member, which, in principle, is possible with consent of both sides (otherwise a status of retirement applies), the specific rules (statutory disclosure requirements or related possibilities for a temporary prohibition to take up certain activities) do not apply - such requirements only apply, where subsequent activities in the private sector are intended by a former government member. **DK:** It is a prerequisite that upon returning to the prosecution service, the prosecutor can be approved and sustain the security approval provided. **EE:** Judges: Although there is no specific regulation, which would limit the areas in which the judge could work, upon returning to judgeship, there is one important condition upon the return: a judge may return to a vacant position of judge in the same court by giving at least one month's advance notice thereof to the chairman of the corresponding court. If after leaving the state service, a judge does not have the opportunity to return to a vacant position of judge in the same court and they do not desire to be transferred to another court, the judge is released from office and receives compensation in an amount equal to their six months' salary. Prosecutors: a prosecutor cannot be a member of a political party. **ES:** Judges: Judges who become members of Parliament or Government can return to the same court or judicial position after their political mandate. The only exception to these rules applies to judges of the Supreme Court, who lose their judicial position at the Supreme Court upon returning to judgeship and must sit at a lower court. Furthermore, the general rules of withdrawal and recusal apply if the judge has to decide a case which involves politicians or political interests upon returning to judgeship. Prosecutors: Those who are returned to the prosecution service must refrain, and where appropriate may be challenged, from intervening in any matters in which political parties or groups are involved, or those of their members who hold or have held public office. **FR:** To return to the judgeship, a judge who has been previously politician/minister/government official/cabinet member is required to apply to a new position and the Council must formally approve their appointment. Before returning to a position of a judge, the person must wait during a "cooling-off" period of five years in the area it exercised a public mandate, or three years in the case of a European Parliament mandate. **HR:** There are specific rules regarding the positions to which prosecutors can temporarily be seconded as well as procedure that must be followed. **IT:** The chart reflects the situation in the civil and criminal courts. The High Council for the Judiciary must give authorisation for judges in civil and criminal courts. Administrative judges can work in consultative sections of Council of State or in jurisdictional sections which have no competence on matters related to the previous activity of the judge. Prosecutors who run for Parliamentary elections may return to the prosecution service only to work in a district other than the one where they run for election (irrespective of whether they were elected or not). Prosecutors may not run for Parliamentary elections in the district where they performed their functions in the last six months prior to their candidacy. For regional and municipal elections, prosecutors may not run for election in the Region where they exercise their functions. **LV:** Judges cannot be involved in any capacity in political life (even not members of a political party). **AT:** regarding prosecutors, before returning to a position of a prosecutor in a management position (i.e. head of a public prosecutor's office, of a senior public prosecutor's office, of the General procurator's office), the person must wait during a "cooling-off" period of five years. **PL:** As regards appointment to political positions, the elected judge must renounce his judicial mandate but retains the right to return to judicial office (to the post held prior to the appointment) if the period in which the political function was exercised does not exceed 9 years. Authorisation is required by the National Council for Judiciary. **PT:** Judges and prosecutors need a previous authorisation of the Judicial High Council or Superior Council of Public Prosecution (CSMP), respectively. **SK:** After returning to judgeship, judge must not apply for a position of President or Vice-President of court. Notification is done to Ministry of Justice 60 days before returning to the judgeship.

## – 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 case-law of the Court of Justice relating to the European Arrest Warrant Framework Decision<sup>(115)</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, 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>(116)</sup>.

The organisation of national prosecution services varies across the EU and there is no uniform model for all Member States. However, the Council of Europe has noted a widespread tendency to have a more independent prosecutor's office, rather than one subordinated or linked to the executive<sup>(117)</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>(118)</sup>. Moreover, in a democratic society, both courts and the investigative authorities must remain free from political pressure. The concept of independence means that prosecutors are free from unlawful interference in the exercise of their duties so as to ensure full respect for and application of the law and the principle of the rule of law and that they are not subjected to any political pressure or unlawful influence of any kind<sup>(119)</sup>. Independence applies not only to the prosecution service as a whole, but also to its particular bodies and to individual prosecutors<sup>(120)</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>(121)</sup> and without unjustified interference<sup>(122)</sup>. In particular, where the government gives instructions of a general nature, for example on crime policy, such instructions must be in writing and published in an adequate way<sup>(123)</sup>. Where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees<sup>(124)</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>(125)</sup>. Interested parties (including victims) should be able to challenge a decision of a public prosecutor not to prosecute a case<sup>(126)</sup>, which also provides a form of accountability of prosecutors<sup>(127)</sup>.

The decision not to prosecute can create an issue in terms of accountability of prosecutors, which is why a legal remedy is important<sup>(128)</sup>. The figure below provides a more detailed overview 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 that takes account of the specific circumstances of each Member State.

115 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).

116 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, *Poltorak*, 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.

117 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.

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

119 Consultative Council of European Prosecutors (CCPE) Opinion No. 16 (2021) on the Implications of the decisions of international courts and treaty bodies as regards the practical independence of prosecutors, para. 13.

120 Consultative Council of European Prosecutors (CCPE) Opinion No. 16 (2021) on the Implications of the decisions of international courts and treaty bodies as regards the practical independence of prosecutors, para. 13.

121 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.

122 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.

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

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

125 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.

126 The 2000 Recommendation, para. 34.

127 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.

128 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.

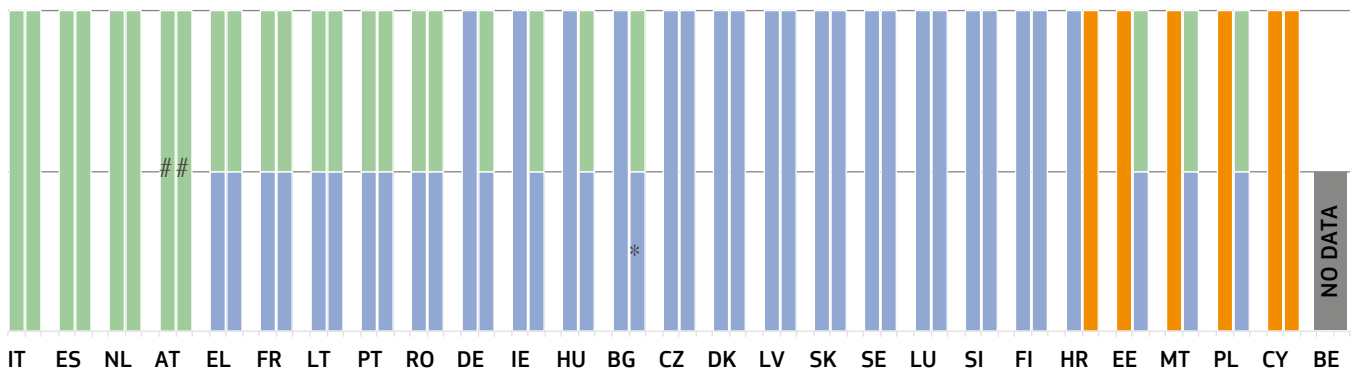
Figure 59 presents the authorities that decide on a request to review a decision of a prosecutor not to prosecute in an individual case for victimless crimes (e.g. money laundering, corruption) and for crimes with a victim (e.g. bodily harm)<sup>(129)</sup>. It shows who conducts a check on the work of individual prosecutors, which has an impact on the functioning of the prosecution service. In some Member States, the decision not to prosecute is reviewed by different authorities: either superior prosecutors (including where relevant the Prosecutor General) or a court. In some Member States, the decision is first reviewed before the superior prosecutors, and then this decision can be challenged before a court (countries where column is in two colours). Where the column is in one colour, either only the superior prosecutor, or only the court review the decision not to prosecute. In some of Member States, the decision cannot be reviewed.

**Figure 59 Authority reviewing a prosecutor's decision not to prosecute (\*)** (Source: European Commission with the Expert Group on Money Laundering and Financing of Terrorism)

For each Member State, the two columns represent the following two scenarios:

1. victimless crimes (e.g. money laundering, corruption)
2. crimes with a victim (e.g. bodily harm)

■ No review ■ Superior prosecutor ■ Court



(\*) For all Member States: Where such review exists, in the case of victimless crimes, the decision not to prosecute could be challenged/overruled by the superior prosecutor (in BG, CZ, DE, ES, FR, LV, LU, PL, PT and RO), challenged by the complainant who notified about the alleged criminal offense (in DE (via disciplinary complaint), IE (National Police Service), FR (including administrative bodies), PL (as regards state and local-government institutions, and private parties in specific cases, HR, IT, LV, HU, NL, SI and SK) or could be challenged by others, such as persons who have presumed/legitimate interest (DK, DE, RO), the Commissioner for Legal Protection (AT), anyone (PT: for certain victimless crimes) and anyone (FI). In the case of crimes with a victim, the decision not to prosecute can be challenged by the superior prosecutor (in BG, CZ, DE, FR, LV, LU, PT and RO), by the victim (in BG, CZ, DE, EE, IE, ES, FR, IT, LV, HU, MT, NL, AT, PT, PL, SI and SK) or by others, such as persons who have presumed/legitimate interest (DK, RO, PL), an administration that its entitled to act (FR), and anyone (FI). Private prosecution is possible in BG, IE, HR, HU, MT, PL, PT, SI and SE.

The symbols '##' for **AT**: Austrian law knows different types of decisions not to prosecute. If the prosecution refrains from starting investigations because of the lack of an initial suspicion, then the decision cannot be challenged (The decision is however not binding). If the prosecution decides not to prosecute after an investigation (both in certain victimless crimes and crimes with a victim), the decision can be challenged before the court. The symbol '\*' for **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. 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 deadline 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. **EE**: 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**: The judge investigator is the authority vested with the power to decide whether to prosecute or not. Following a decision not to prosecute, the judge investigator should inform the other parties to the process (i.e. the public prosecutor and the victim/complainant), who are able to challenge the decision before the court. **IT**: In any criminal proceedings, if the public prosecutor deems that the conditions for prosecution are not met (e.g. due to insufficient evidence), he/she shall file a request for dismissal with the judge for preliminary investigations who shall decide whether to accept or not the prosecutor's request. **CY**: If the Attorney General decides 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. **LT**: The 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 must be sent to the prosecutor within 24 hours, 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. **HU**: Judicial review for crimes with a victim is possible only in the framework of private prosecution (e.g. in cases of defamation and libel) or substitute private prosecution (following a prosecutorial decision not to prosecute). **MT**: Prosecution of criminal offences is being transferred from the police to the Office of the Attorney General. The transition is planned to be completed by the end of 2025. 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. 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. **PL**: The framework differentiates between a decision to refuse the initiation of prosecution and a decision to discontinue the prosecution. The initiation of prosecution can be challenged in front of the superior prosecutor and before court, by the victim, State, local-government or community institution which notified the alleged offence. The discontinuation of prosecution can be challenged by the parties to proceedings, State or local-government institution that notified the alleged offence, and, only if the alleged offence led to breach of that person's rights, a person notifying an offence concerning solely specific types of criminal acts listed in the law. **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. 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. **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 must inform certain categories of people and state authorities 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 action. If no new information, the Development Centre decides on revision.

129 Victim, as defined by Article 2 of the Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, means a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence, or family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.



Figure 60 presents a first overview of bodies and authorities with power to conduct criminal investigations with regard to financial and economic crime, and all other offences. Independent and impartial justice systems that effectively enforce anti-corruption legislation by conducting impartial investigations and prosecutions are important for an effective fight against corruption<sup>(130)</sup>, as well as against other financial and economic crime.

**Figure 60 Bodies with power to conduct criminal investigation (\*)** (Source: European Commission with the Expert Group on Money Laundering and Financing of Terrorism)

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE
<b>Police</b>	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
<b>Public prosecutor</b>	●	●	●		●					●	●	●		●		●	●	●	●	●	●	●	●	●	●	●	●
<b>Investigative judge/magistrat</b>	●	●			●			●	●	●	●					●		●	●					●			
<b>Gendarmerie</b>										●									●	●							
<b>Military bodies</b>									●						●												
<b>Tax authority</b>	●	●			●	●	●		●			●	●				●		●	●	●				●		●
<b>National security agency</b>			●			●														●	●						
<b>Other (please specify)</b>	●	●	●						●			●		●	●	●			●	●	●						●

(\*) **CZ**: Police authorities include also the General Inspection of Security Forces, the Prison Service, customs officers, military police, and also organs of the Security Information Service and organs of the Foreign Intelligence Service, who investigate crimes committed by members of the Security Information Service and the Foreign Intelligence Service respectively. **EE**: Secret Service is set up for the maintenance of national security through collection of information and implementation of preventive measures as well as investigation of offences. In addition to being a security institution it is also a police-type authority conducting criminal investigations mainly regarding terrorism and grand corruption. **PL**: Agency of Internal Security, Foreign Intelligence Agency and Service of Military Counter-Intelligence/Intelligence should transmit to public prosecutor any evidence of alleged criminal offences. Under the category 'other', Member States noted: **BE**: Several public service agencies at federal level. **BG**: Investigating customs inspector. **ES**: Customs authorities. **IT**: Police includes the following law enforcement agencies: Polizia di Stato, Guardia di Finanza and Carabinieri. According to Articles 55 and 57 of the Code of Criminal Procedure other bodies and agencies may perform functions of judicial police (criminal investigations) within the limits provided for by the law (e.g. customs officials). **LV**: the State Security Service, Internal Security Department of the State Revenue Service, the Military Police, the Latvian Prison Administration, the Corruption Prevention and Combating Bureau, the Tax and Customs Police of the State Revenue Service, the State Border Guard, the captains of seagoing vessels at sea, the commander of a unit of the Latvian National Armed Forces located in the territory of a foreign country, the Internal Security Bureau. **LT**: The State Border Guard Service, the Special Investigation Service, the Financial Crime Investigation Service, the Customs of the Republic of Lithuania and the Fire and Rescue Department, the Department of Prisons. **LU**: some sworn public servants (judicial police officers) of different administrations, such as Customs administrations. **NL**: special investigative bodies, being FIOD (financial-economic inspection), the inspection for social welfare, inspection for the environment and the inspection for agriculture. **PL**: Border Guard, the Central Anti-corruption Bureau. **SK**: The Criminal Office of the Financial Administration (FACO) is a special unit within the Financial Directorate of Slovakia entitled to detect and investigate criminal offences in the area of customs and tax regulations. **FI**: Customs, Border Guard and Defense Forces can also investigate crimes. The Customs has powers to investigate money laundering cases.

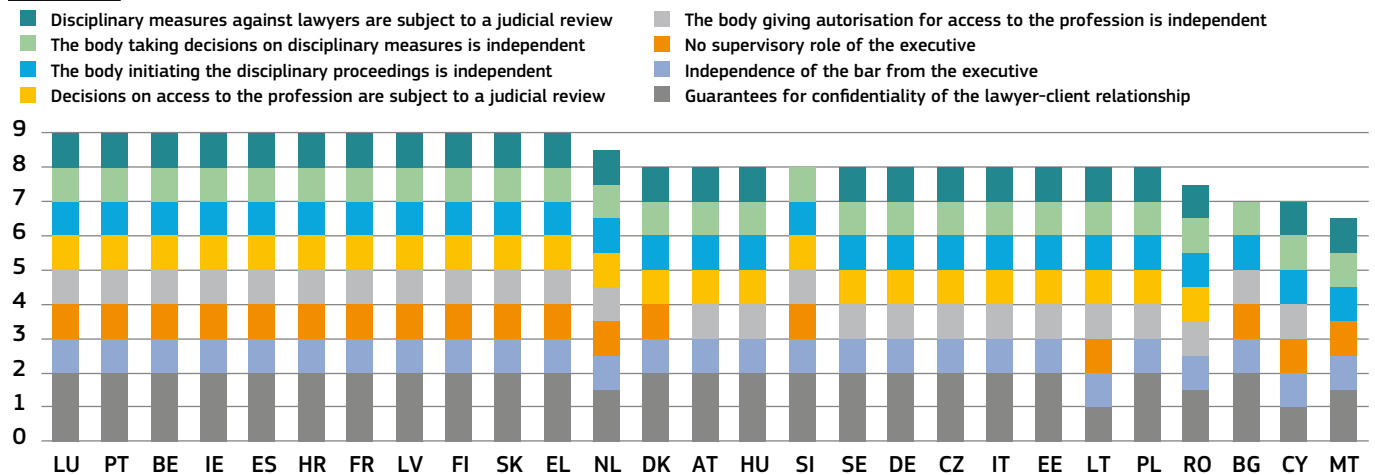
### –Independence of Bars and lawyers in the EU –

Lawyers and their professional associations play a fundamental role in ensuring the protection of fundamental rights and the strengthening of the rule of law<sup>(131)</sup>. A fair system of administering 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>(132)</sup>.

130 2020 Rule of Law Report - Communication from the Commission on the rule of law situation in the European Union, p. 13, and Council non-paper 8478/21 of 12 May 2021, available at <https://data.consilium.europa.eu/doc/document/ST-8478-2021-IN/IT/en/pdf>

131 "Lawyers play an important role in protecting the rule of law and judicial independence, while respecting the separation of powers and fundamental rights.", 'Access to a lawyer and rule of law', Presidency discussion paper for the meeting of the Justice and Home Affairs Council on 3 and 4 March 2022: <https://data.consilium.europa.eu/doc/document/ST-6319-2022-IN/IT/en/pdf>

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

**Figure 61 Independence of Bars and lawyers, 2021 (\*)** (source: European Commission with the CCBE<sup>(133)</sup>)

(\*) Maximum possible: 9 points. Survey conducted end-2021. For the question related to guarantees for confidentiality of the lawyer/client relationship 0.5 points were awarded for each of the 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 their premises, tax audit of the law firm and other administrative checks) fully covered. For all other criteria fully met, 1 point was awarded, while no point was awarded where the criterion was not met. Due to a change in the methodology the results are not comparable with those presented in Figure 58 of the 2021 Justice Scoreboard. **RO, CY, MT:** 2020 replies, adapted to the new methodology. **FR:** A legislative change in 2021 established the possibility of judicial review of disciplinary measures taken against lawyers. **DK:** The decisions concerning the authorisation to practice as a lawyer or to accede to the profession are approved by the Ministry of Justice upon recommendation and consultation with the Danish Bar and Law Society. **AT:** The Ministry of Justice has some structural supervisory powers (related to oversight over the legality of the administrative management of the Bar), however none regarding the day-to-day business of the bars. **SE:** The Chancellor of Justice has supervisory powers with regard to advocates and may request that disciplinary measures are implemented by the Disciplinary Committee against a negligent member, or by the Board in respect of members who no longer fulfils the formal requirements for membership. **CZ:** The Ministry of Justice retains a supervisory role in defined matters. **EE:** The Ministry of Justice has broad supervisory powers over the organisation of the legal aid system. **LT:** The activities of the Lithuanian Bar Association are based on the principle of independent self-governance of advocates (lawyers), however, following the Law on the Bar regulating the activities of the Lithuanian Bar Association, the Lithuanian Bar Association is obligated by law to coordinate the procedures, related exclusively with activities of advocates with the Ministry of Justice. **PL:** The Ministry of Justice has a supervisory role over the Bar, organising the bar examinations and controlling the scheme on minimal legal fees.

### 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 2022 Scoreboard shows trends in the general public's and companies' perceptions of judicial independence. This edition also presents some indicators on the national security checks on judges, on possibility of higher/Supreme Courts to take decisions on the consistency of case-law of lower courts on their own initiative, on rules regulating 'revolving doors', as well as a more detailed insight into 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 2022 Scoreboard presents the developments in **perceived independence** from surveys of the general public (Eurobarometer) and companies (Eurobarometer):
  - The seventh Eurobarometer survey among the general public (Figure 50) shows that the perception of independence has *improved* in over three fifths of Member States when compared to 2016. The general public's perception of independence has *improved* in half of the Members States facing specific challenges when compared to 2016. However, compared to last year, the general public's perception of independence *decreased* in more than half of all Member States and in more than half of the Members States facing specific challenges, and in a few Member States, the level of perceived independence remains particularly low.
  - The seventh Eurobarometer survey among the companies (Figure 52) shows that the perception of independence has *improved* in over half of the Member States compared to 2016. Compared to last year, the companies' perception of independence *decreased* in less than one third of all Member States (whereas last year this was the case in over half of Member States) and in about one fifth of Members States facing specific challenges. In a few Member States, the level of perceived independence remains particularly low.

133 2021 data collected through replies by CCBE members to a questionnaire.

- 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 51 and 53).
- Among the reasons for good perception of independence of courts and judges, nearly four fifths of companies and of the general public (equivalent to 41% and 42% of all respondents, respectively) named the *guarantees provided by the status and position of judges*.
- For the first time, the EU Justice Scoreboard presents the results of a Eurobarometer survey on how companies perceive the effectiveness of investment protection by the law and courts as regards, in their view, unjustified decisions or inaction by the State (Figure 54). The results suggest that administrative conduct, stability and quality of the law-making process, as well as effectiveness of courts and property protection are key factors of comparable significance for confidence in investment protection. Among the reasons for companies' concerns about the effectiveness of investment protection (Figure 55), the *unpredictable, non-transparent administrative conduct, and difficulty to challenge administrative decisions in court* was the most stated reason, closely followed by *frequent changes in legislation or concerns about quality of the law making process*.
- Figure 56 shows whether in Member States, the National Security Agency is involved in conducting security checks on judges, either on candidate judges or on existing judges, and what is the frequency of such checks.
- Figure 57 shows whether higher courts or Supreme Courts can take a decision on their own initiative on the consistency of case-law of lower courts. Such decisions could either be advisory or obligatory in nature, and could apply only to a particular case before the lower court or to all cases of a similar type in all courts.
- Figure 58 presents safeguards in place in situations where judges or prosecutors decide to temporarily become employed in politically-exposed positions, notably positions as politicians, ministers, government officials, cabinet members or positions in other political offices.
- Figure 59 shows the safeguards in place regarding the decision of a prosecutor not to prosecute a case. The updated figure gives a more detailed overview of the safeguards available in the case of victimless crimes (e.g. money laundering) and in the case of crimes with a victim. While in some Member States there is, in both cases, the possibility to challenge the decision not to prosecute before a court, in the majority of Member States there is either a review by a superior prosecutor, by a court or by both. In a few Member States there is no possibility to review a decision not to prosecute.
- Figure 60 gives a first overview of bodies and authorities with the power to conduct criminal investigations. The figure shows that in the majority of Member States criminal investigation can be conducted not only by the police and prosecutors, but also by various other state authorities.
- Figure 61 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 lawyers to be free in pursuing their activities of advising and representing their clients.

## 4. CONCLUSIONS

The 2022 EU Justice Scoreboard presents a diverse picture of the effectiveness of justice systems in the Member States. While in some Member States, the high level of digitalisation of the justice system allowed for an almost unobstructed functioning of the courts and prosecution services during the COVID-19 pandemic, in others the temporary closures of courts led to a decrease in efficiency, particularly at first instance courts.

The updated section dedicated to the digitalisation of justice systems shows the trends on the further uptake of digital tools at the disposal of courts, prosecutors and staff members. Challenges remain to ensure full trust of citizens in the legal systems of all Member States. The information 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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