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Delegations will find attached document COM(2022) 234 final.

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PART 2/2

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

2022 EU Justice Scoreboard

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 ([1]). 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 ([2]).

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 ([3]). 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 ([4]). 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.

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

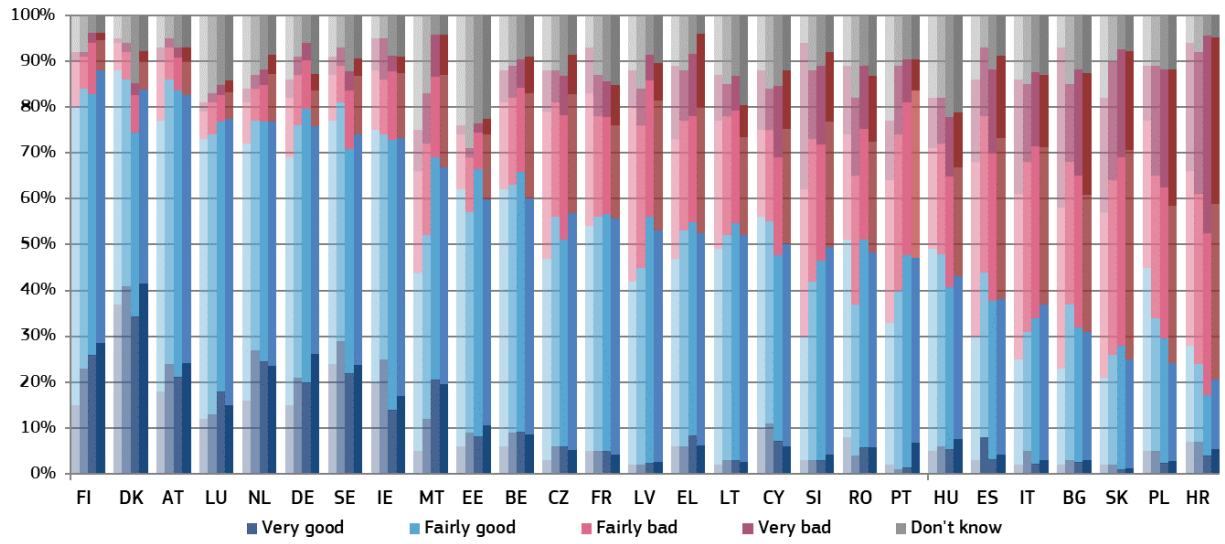
2 Court of Justice, judgment of 16 November 2021, *Criminal proceedings against WB and Others*, Joined Cases C-748/19 to C-754/19, judgment of 6 October 2021, *W. Ż.*, C-487/19, judgment of 15 July 2021, , *Commission v. Poland*, C-791/13, judgment of 2 March 2021, *AB*, C-824/18, judgment of 19 November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

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

4 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 ([5]) - 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.

[5] 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

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 ([6]))*

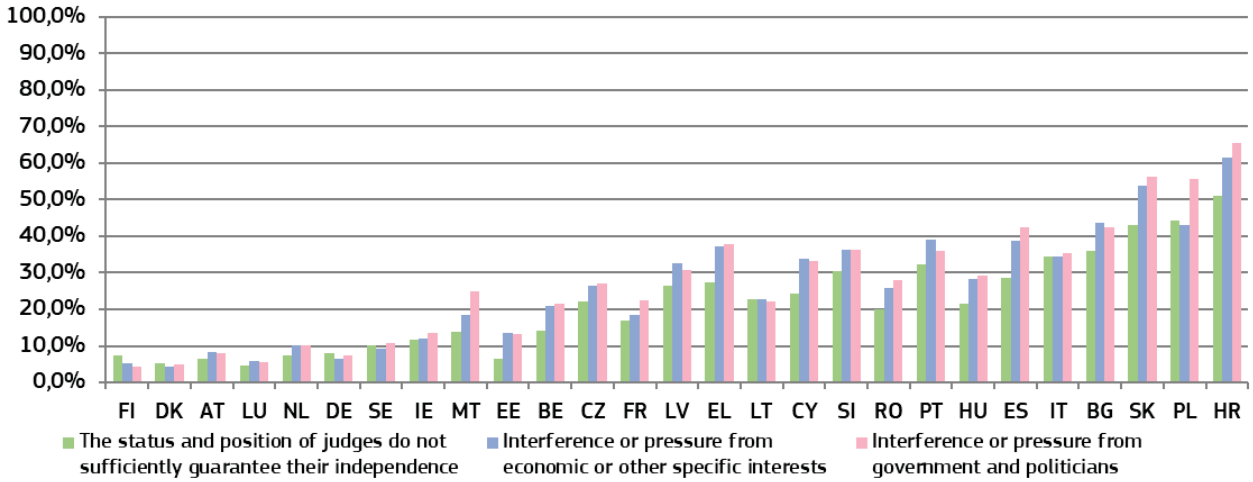
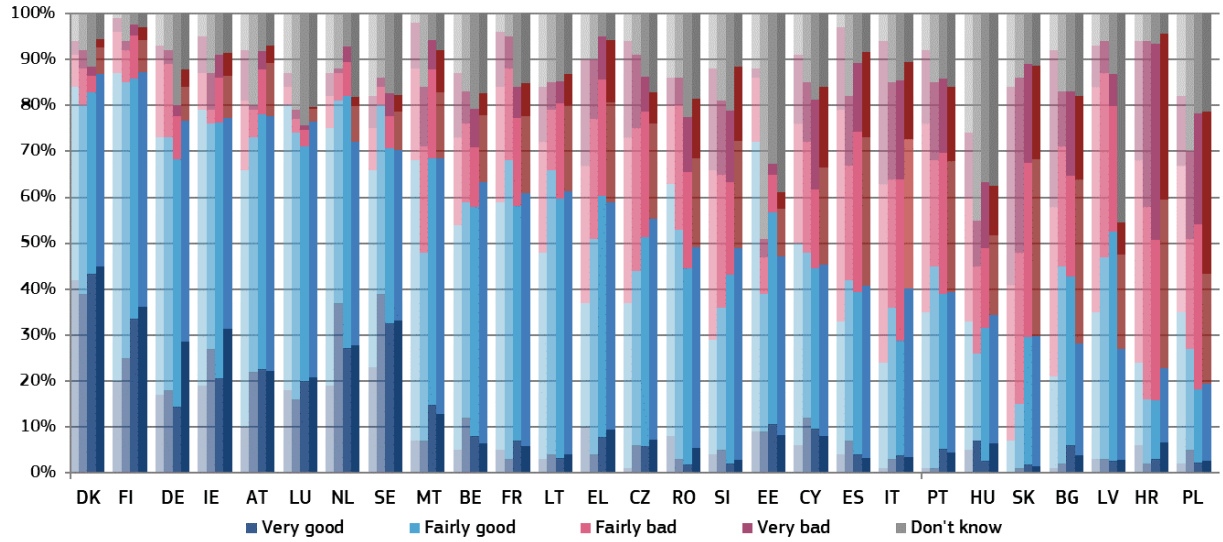


Figure 52: How companies perceive the independence of courts and judges (*) *(source: Eurobarometer ([7]) - light colours: 2016, 2020 and 2021, dark colours: 2022)*



(*) 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

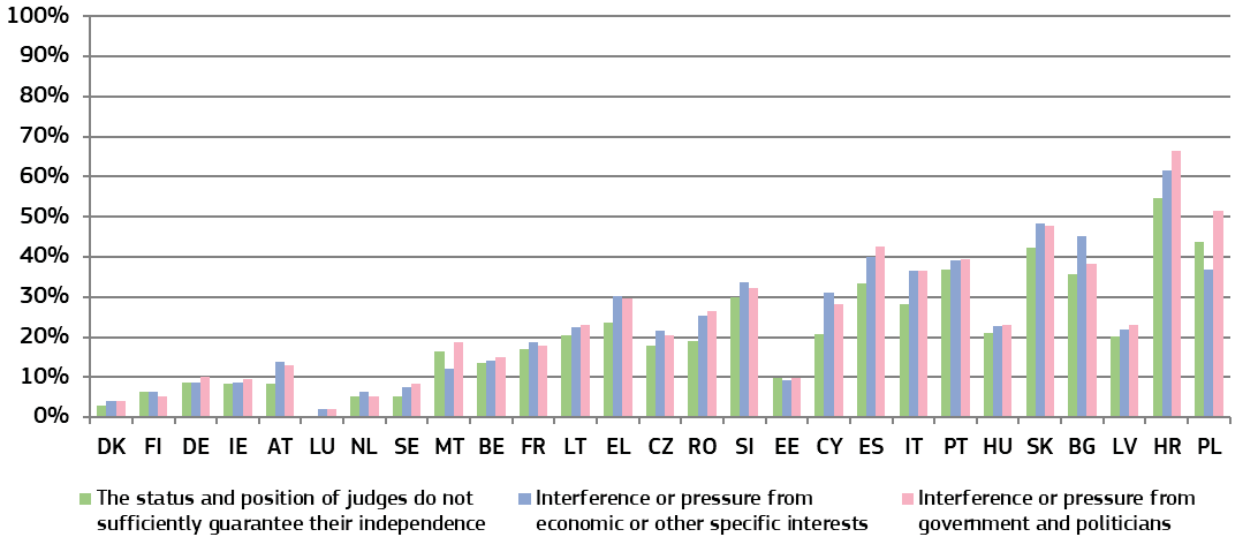
6 Eurobarometer survey FL503, replies to the question: 'Could you tell me to what extent each of the following reasons explains your rating of the independence of the justice system in (our country): very much, somewhat, not really, not at all?' if reply to Q1 is 'fairly bad' or 'very bad'.

7 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; 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.

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.

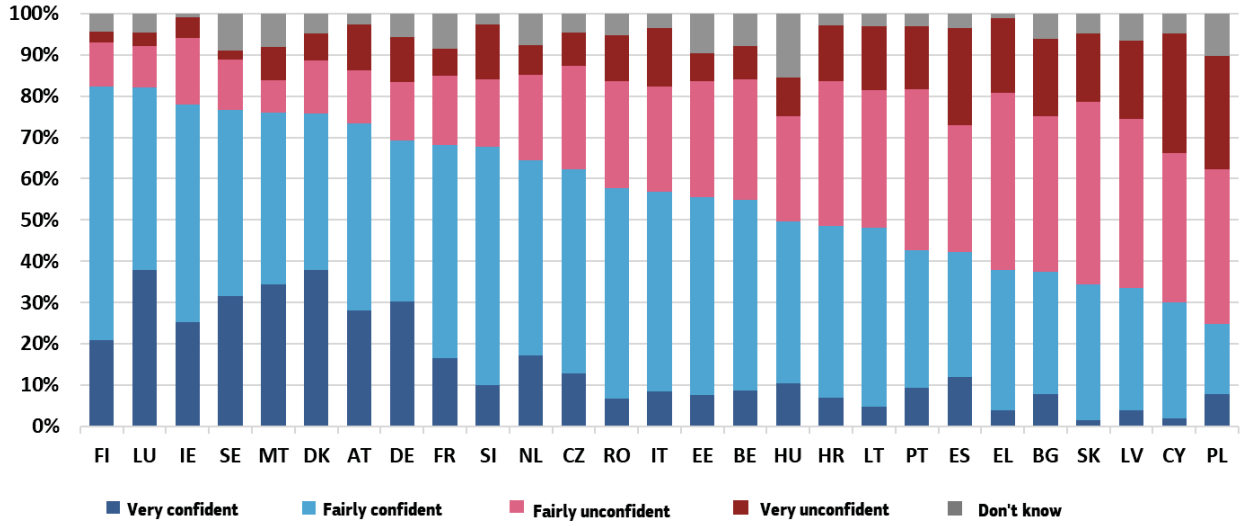
Figure 53: Main reasons among companies for the perceived lack of independence *(rate of all respondents - higher value means more influence) (source: Eurobarometer ([8]))*



[8] 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 ([9]))*

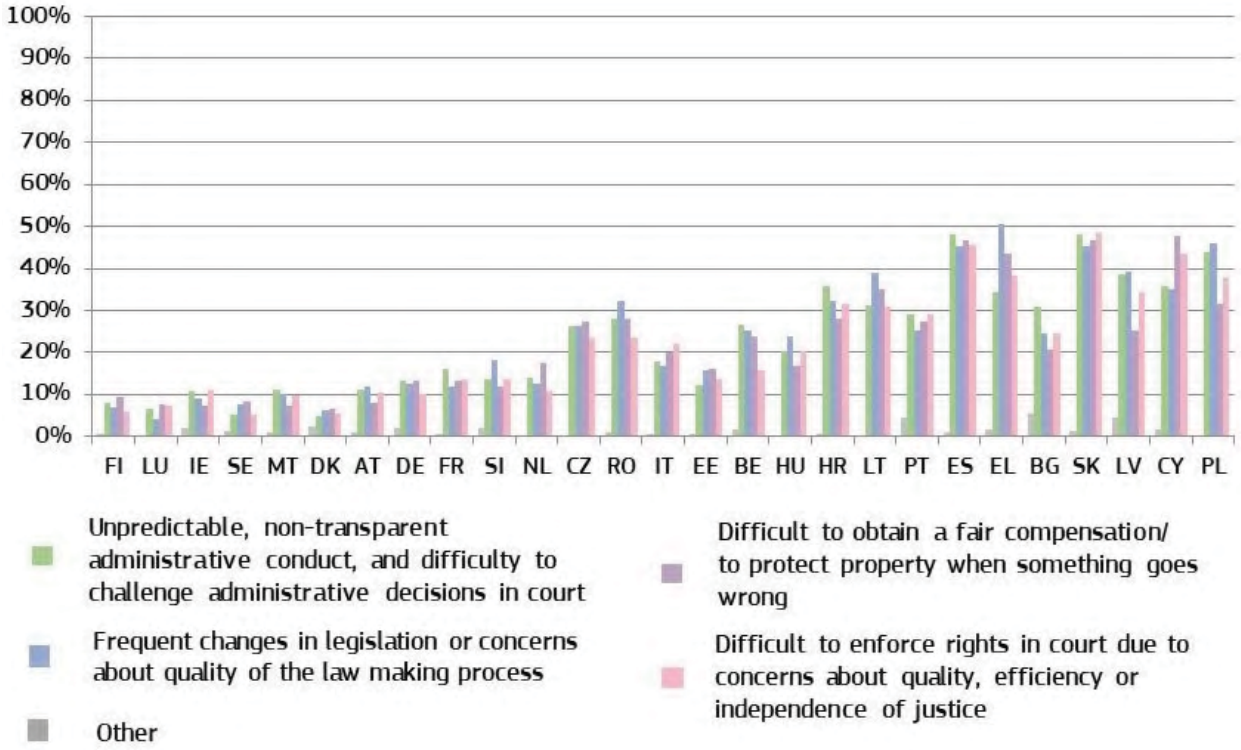


(*) Member States are ordered first by the combined percentage of respondents who stated that they are very or fairly confident in investment protection by the law and courts (total confident).

[9] 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.

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 ([10]))*



[10] 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 ([11]). 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 ([12]).

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* ([13]). 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) ([14]). It also presents a more detailed overview of

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[11] 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 Juízes 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.

[12] 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.

[13] 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').

[14] 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

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) ([15]). 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 ([16]).

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 ([17]), 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" ([18]). Security checks on judges, especially when carried out by an executive body, may constitute such an 'external pressure' ([19]). When security/integrity checks are not carried out by

questionnaire drawn up by the Commission in close cooperation with the Expert Group on Money Laundering and Financing of Terrorism.

15 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.

16 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.

17 "[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.

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

19 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.

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 ([20]).

Figure 56: National security checks on judges: authorities involved and timing (*) ([21])

*(*) **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*

[20] 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.

[21] Data collected through 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 whose ENCJ membership has been suspended, were obtained through cooperation with the NPSC.

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.*

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 oblige 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 ([22]). 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 ([23]). 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 ([24]). Any procedure for the

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

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

[24] 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.

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.

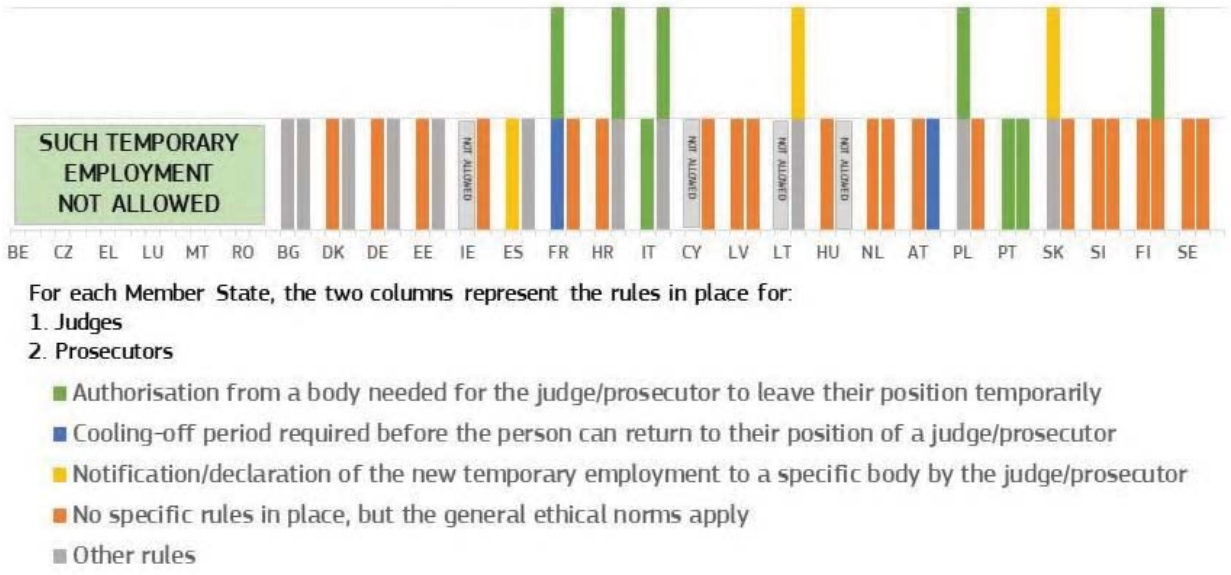
Figure 57: Possibility of higher/Supreme Courts to take decisions on the consistency of case-law of lower courts on their own initiative (*)

*(*) **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.*

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 (*)



(*) ***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 month after the end of the mandate) their reinsertion into their former service, which has to be realised within 3 month 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 ([25]), 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

[25] 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).

being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice ([26]).

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 ([27]). 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 ([28]). 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 ([29]). Independence applies not only to the prosecution service as a whole, but also to its particular bodies and to individual prosecutors ([30]). 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 ([31]) and without unjustified interference ([32]). In particular, where the government gives instructions of a general nature, for example on crime policy, such

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[26] 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.

[27] 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.

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

[29] 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.

[30] 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.

[31] 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.

[32] 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.

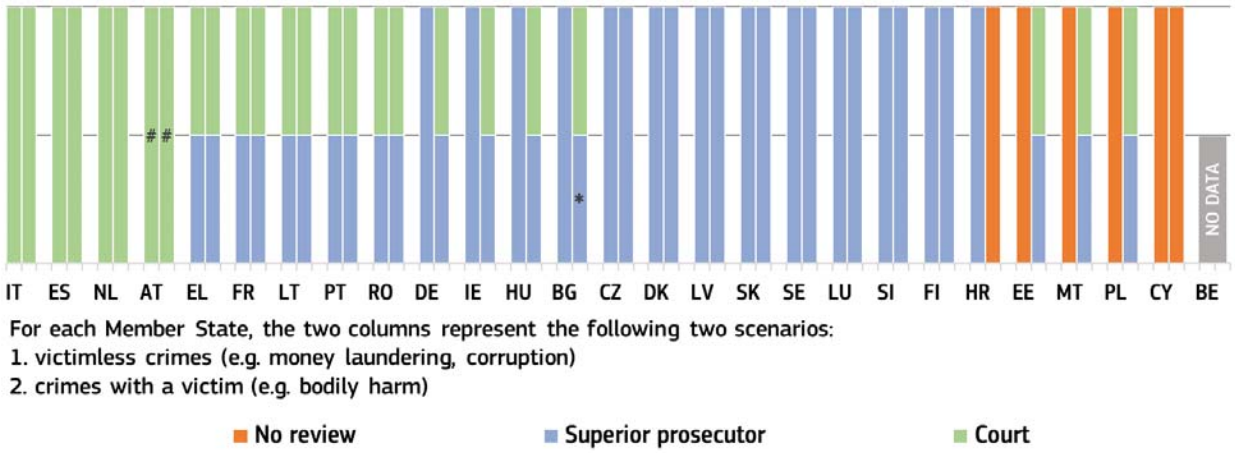
instructions must be in writing and published in an adequate way ([33]). Where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees ([34]). According to the 2000 Recommendation of the Committee of Ministers of the Council of Europe, instructions not to prosecute should in principle be prohibited or be exceptional and subject to specific safeguards ([35]). Interested parties (including victims) should be able to challenge a decision of a public prosecutor not to prosecute a case ([36]), which also provides a form of accountability of prosecutors ([37]).

The decision not to prosecute can create an issue in terms of accountability of prosecutors, which is why a legal remedy is important ([38]). 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.

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) ([39]). 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.

[33] The 2000 Recommendation, para. 13, point c).
[34] The 2000 Recommendation, para. 13, point d).
[35] 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.
[36] The 2000 Recommendation, para. 34.
[37] 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.
[38] 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.
[39] 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 59: Authority reviewing a prosecutor's decision not to prosecute (*) *(Source: European Commission with the Expert Group on Money Laundering and Financing of Terrorism)*



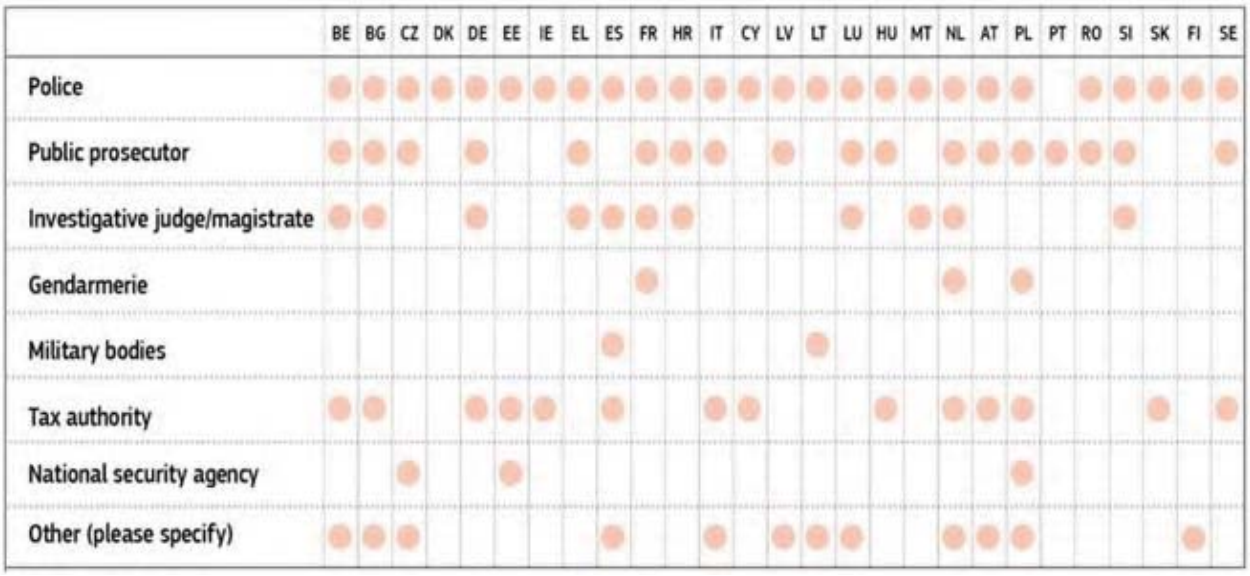
(*) For all Member States: Where such review exists, in the case of victimless crimes, the decision not to prosecute could be challenged/overruled by the superior prosecutor (in BG, CZ, DE, ES, FR, LV, LU, PL, PT and RO), challenged by the complainant who notified about the alleged criminal offense (in 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.*

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 ([40]), as well as against other financial and economic crime.

[40] 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-INIT/en/pdf

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

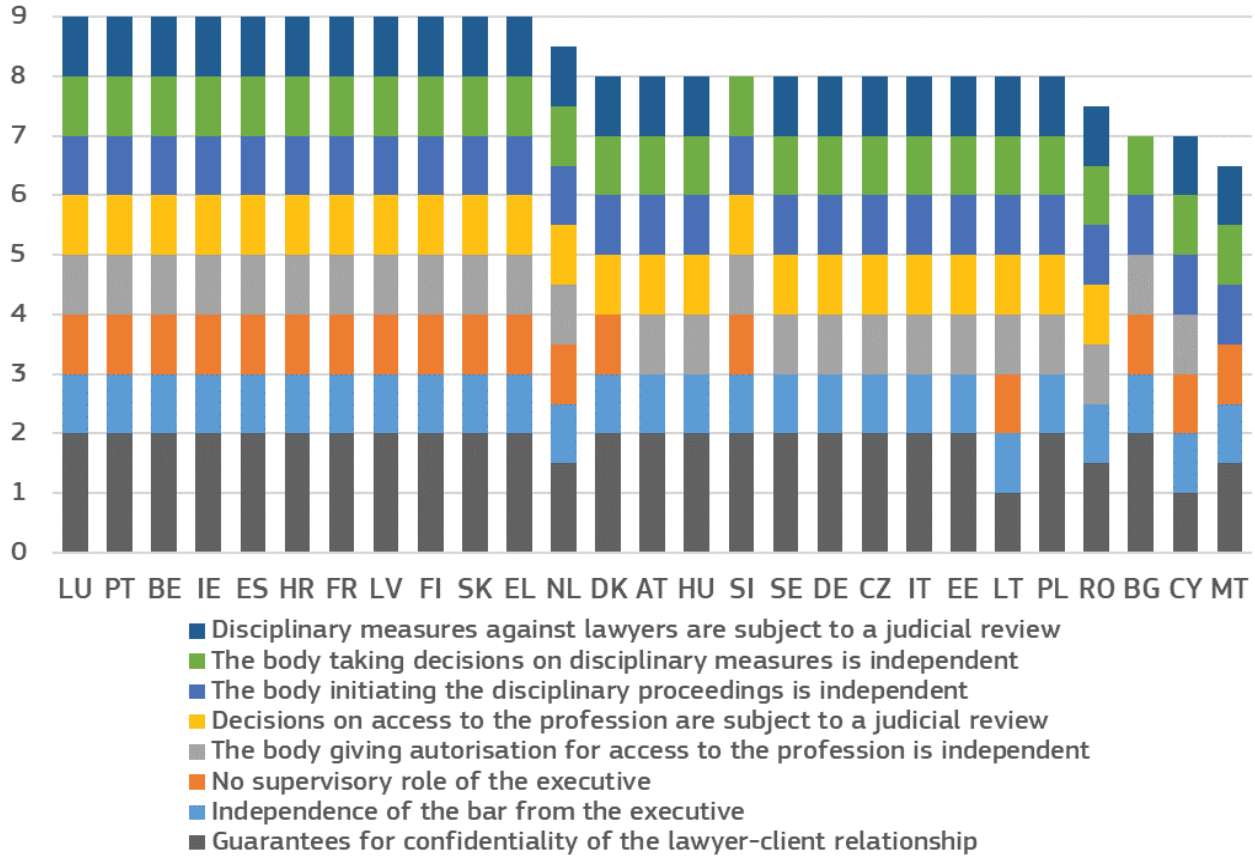


*(*) **CZ**: Police authorities include also the General Inspection of Security Forces, the Prison Service, customs officers, military police, and also organs of the Security Information Service and organs of the Foreign Intelligence Service, who investigate crimes committed by members of the Security 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 ([41]). 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 ([42]).

Figure 61: Independence of Bars and lawyers, 2021 (*) *(source: European Commission with the CCBE([43]))*



[41] "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-INIT/en/pdf

[42] Recommendation No. R(2000)21 of the Committee of Ministers of the Council of Europe.

[43] 2021 data collected through replies by CCBE members to a questionnaire.

(*) 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.

  - 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.