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**THE EU JUSTICE SCOREBOARD –
JUDICIAL EVALUATION AS A NEW GOVERNANCE TOOL**

ADRIANI DORI
Max Planck Institute Luxembourg

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ABSTRACT:

The EU Justice Scoreboard is the Commission's latest initiative to evaluate Member States' justice systems. The paper explores the features of the Justice Scoreboard, the reasoning behind its creation, as well as its methodology and data sources. Although the Scoreboard was initially conceived as a non-binding tool comparing data on national courts' performance in civil and commercial matters, a deeper analysis reveals that it goes beyond a simple monitoring and evaluating exercise. With its overemphasised economic focus and its strong policy dimension the Scoreboard is rather a governance mechanism that pushes for specific reforms in Member States. At the same time, the Scoreboard marks a transition from supranational harmonization to softer methods of policy coordination through monitoring and evaluation. Although it is still too early to evaluate whether this transition anticipates a paradigm shift in the Commission's policy towards EU Justice, the Scoreboard (after some commendable improvements in methodology and data presentation) holds a remarkable unexpressed potential for the future and could work as a basis for experimenting with new governance tools in the area of EU Justice.

KEYWORDS: EU Justice Scoreboard, judicial evaluation, judicial efficiency, CEPEJ Study, Justice for Growth Agenda, European Semester, Copenhagen dilemma.

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1. Introduction

Studies on judicial evaluation using statistical data and indicators are no longer *terra incognita* in Law. Nowadays, various policy actors (governments, international organisations etc.) are increasingly involved in drawing up documents that aim to assess and compare the performance of courts and legal rules.

These exercises differ significantly between the fields assessed, i.e. the performance of courts and other legal institutions or the value of particular legal rules, as regards their methodology (quantitative or qualitative, numerical or non-numerical data) or their focus area (statistical, social or economic),¹ and have received sometimes excessive criticism.² However, over the last few decades these exercises have established themselves and created a new field, often referred to as “*numerical comparative law*” in the relevant literature.³ Novel challenges are thus posed to academia, governments and the judiciary: While legal scholars try to acquaint themselves with new research methods, which have significantly expanded the traditional comparative law approach, policy makers have started using judicial evaluation comparisons to establish policy recommendations and judicial reforms.

At the European institutional level, the first national legal system evaluations were launched in the early 2000s. The Council of Europe established the European Commission for the Efficiency of Justice (CEPEJ), in acknowledgement of the key role that fair, efficient and accessible judicial systems perform in ensuring the rule of law on which European democracies rest.⁴ According to its Statute, the main aim of the CEPEJ was to analyse and to improve the efficiency and the functioning of Member States’ judicial systems.⁵ In fulfilling this task, the CEPEJ has launched a regular evaluation of national judicial systems through the identification and development of indicators, the collection and analysis of

¹ For a comprehensive analysis see Siems, *Comparative law* (CUP, 2014), pp. 168 et seqq.; Kern, *Justice Between Simplification and Formalism* (Mohr Siebeck, 2007).

² Kern, op. cit. *supra* note 1; id., “Die Doing-Business-Reports der Weltbank – fragwürdige Quantifizierung rechtlicher Qualität”, (2009) JZ, 498-504.

³ Siems, op. cit. *supra* note 1, pp. 146 et seqq.; id., “Statistische Rechtsvergleichung”, 72 *RabelsZ* (2008), 354-390; id., “Numerical comparative law: Do we need statistical evidence in law in order to reduce complexity?”, 13 *Cardozo J. Int’l & Comp. L.* (2005) 521-540; Kern, op. cit. *supra* note 1, at pp. 123 et seq.

⁴ See Council Of Europe Committee of Ministers, Resolution Res(2002)12 establishing the European Commission for the efficiency of justice (CEPEJ).

⁵ Art. 1 Resolution Res(2002)12.

quantitative and qualitative data and the establishment of measures and evaluation criteria. As an outcome, the CEPEJ releases reports, statistics, best practice surveys, guidelines, action plans, opinions and general comments.⁶ Launched in 2004 as a pilot project – the first of its kind in Europe –⁷ and followed by five more biannual editions,⁸ the CEPEJ Reports have for more than a decade provided important comparative information concerning the functioning of judicial systems.⁹ Broad media coverage ensures the CEPEJ Reports have a remarkable social and political impact,¹⁰ and the Reports are widely referenced in academic papers.¹¹

Following the successful example of the Council of Europe, the European Commission in 2013 launched its own annual instrument of judicial evaluation, the “EU Justice Scoreboard”, a statistical comparative tool on the efficiency of Member States’ judicial systems.

This initiative has received mixed responses depending on the stakeholders involved. Brief research online shows that the Scoreboard has drawn the attention of national policy makers. Every March, after the latest edition of the Scoreboard is released by the Commission, national media report on the Scoreboard findings which, depending on the ranking of each national judicial system, may be either embarrassing or something to boast about.

The relevance of the Scoreboard for investors is more difficult to assess. However, there is good evidence that unreliable judicial systems and poor performance by national courts, especially in judicial efficiency and

⁶ Art. 3 Resolution Res(2002)12.

⁷ See the interview of the first CEPEJ President Eberhard Desch available at <http://www.coe.int/t/e/com/files/interviews/20050429_interv_desch.asp> (last visited 14 Aug. 2015).

⁸ The Pilot Report as well as all later five editions of the CEPEJ Report (2006, 2008, 2010, 2012, and 2014) are available on the Internet page of the CEPEJ at <http://www.coe.int/t/dghl/cooperation/cepej/evaluation/archives_en.asp> (last visited 14 Aug. 2015).

⁹ See also Hess and Dimitropoulos, “Judicial Reforms in Luxembourg and Europe: International and Comparative Perspectives” in: Hess (Ed.), *Judicial Reforms in Luxembourg and Europe* (Nomos, 2014), 11-29, at p. 16.

¹⁰ See e.g. CEPEJ-GT-EVAL(2015)2 prepared by the Secretariat which summarizes the media coverage of the report “European judicial systems”, 2014 edition.

¹¹ Brief online research on “Google scholar” shows e.g. that the term CEPEJ appears either in the title or within the content of 1580 works.

perceived judicial independence, could influence investor behaviour when deciding their economic exposure in a country.¹²

This means that the Scoreboard cannot be neglected in the current debate on alternative venues of dispute settlement mechanisms, such as investment arbitration. In three recent studies by the European Parliament's Committee for International Trade (INTA) legal scholars have discussed the possibility of a European model of Investor-State Dispute Settlement (ISDS).¹³ In this context, the Scoreboard ranking would not only play a significant role in assessing the overall development of a domestic legal system in terms of rule of law, but might even become a procedural requirement for submitting a claim to investment arbitration.¹⁴ In particular, the studies have proposed an elastic rule that would allow local remedies to be assessed in light of the independence and competence of the relevant national legal system. The extent to which investors have a prior obligation to exhaust local remedies could be determined by the tribunal by using rule of law indexes, including the Scoreboard. This proposal assumes that a domestic legal system ensures effective domestic remedies, if it has reached a certain rate (yet to be

¹² See La Porta et al., "Law and Finance", 106 *J. Polit. Econ.* (1998), 1113-1155; Zambujal-Oliveira and Pinheiro-Alves, "The Ease of Doing Business Index as a tool for investment location decisions", 117 *Economics Letters* (2012), 66-70; Bellani, "Judicial efficiency and foreign direct investments: Evidence from OECD countries", available at <<http://www.uniba.it/ricerca/dipartimenti/dse/e.g.i/egi2014-papers/bellani>> (last visited 14 Aug. 2015); Lanau et al., *Judicial System Reform in Italy: A Key to Growth*, IMF Working Paper No. 14/32.

¹³ Kuijper, *Study on Investment Protection Agreements as Instruments of International Economic Law*, pp. 8-38; Hindelang, *Study on Investor-State Dispute Settlement ('ISDS') and Alternatives of Dispute Resolution in International Investment Law ('ISDS Study for the EP')*, pp. 39-131; Pernice, *Study on International Investment Protection Agreements and EU law*, pp. 132-169; all in European Parliament, *Investor-State Dispute Settlement (ISDS) Provisions in the EU's International Investment Agreements, Volume 2 - Studies* (Brussels, 2014), available at <http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534979/EXPO_STU%282014%29534979%28ANN01%29_EN.pdf> (last visited 14 Aug. 2015).

¹⁴ Hindelang, *Presentation of Studies on Investor-State Dispute Settlement Provisions in the EU's International Investment Agreements (ISDS)*, European Parliament JURI/INTA Joint Public Hearing on the Transatlantic Trade and Investment Partnership (TTIP): Regulatory Aspects and Investor-State Dispute Settlement/Arbitration on 27.01.2015, Annex, Art. X.21, para 1 lit. f(bis) and para 4 lit. a, available at <https://polcms.secure.europarl.europa.eu/cmsdata/upload/f54c6bac-1271-4585-99c6-565ef26c00a6/Steffen%20Hindelang_speaking%20notes_27-01-2015.pdf> (last visited 14 Aug. 2015); id., *Stellungnahme Öffentliche Anhörung des Ausschusses für Wirtschaft und Energie des Deutschen Bundestages am 15.12.2014 zum Comprehensive Economic and Trade Agreement („CETA“) zwischen der EU und Kanada; Themenblock „Investitionsschutzbestimmungen“*, Deutscher Bundestag Ausschussdrucksache18(9) 285.

determined) using an average rate that takes all indexes into account. Even though the above-mentioned rule is only a proposal, it illustrates a function the Scoreboard findings could perform in the future and shows that its role may even receive a formal inclusion in EU procedural law.

However, despite the Scoreboard's significance and the efforts of the Commission to promote it, the Scoreboard, unlike the CEPEJ, has not yet reached a wide academic audience and has not been so far thoroughly debated among law scholars. References to the Scoreboard appear only sporadically and incidentally in academic papers dealing either with the new EU Commission's agenda or with the role of the rule of law in Europe.¹⁵

This paper aims to draw more attention to the EU Justice Scoreboard, bringing together hitherto fragmented analysis and thus filling a gap in the relevant literature. Rather than summarizing the results of this year's Scoreboard, the analysis will provide general information concerning this instrument by focusing on four main topics: a) the variables it assesses; b) its origin and legal basis; c) the reasoning behind its creation; d) its methodology and data sources.

The analysis will show how these four elements (broadly corresponding to the basic questions: what? who? why? and how?)¹⁶ delineate the function and the strong policy dimension of the Scoreboard. A top-down approach is adopted, with the aim of explaining the institutional framework in which decisions are made that have a great impact on rules which litigation experts and procedural law scholars usually discuss from a micro-perspective. Although originally conceived as a non-binding instrument, the Scoreboard indeed goes beyond a simple monitoring and evaluating exercise; rather, it is a governance mechanism that pushes for reforms in Member States. The way procedural reforms are conceived at EU level and are implemented at national level is indeed highly dependent on the economic analysis underpinning studies like the Scoreboard.

At the same time, the Scoreboard marks a significant transition in the Commission's policy towards EU justice from supranational harmonization to softer methods of policy coordination through

¹⁵ The same online research on "Google scholar" showed that the term "Justice Scoreboard" appeared only in 88 results, with none of them containing the term in its title.

¹⁶ This model of examination was inspired by the study conducted by Carrera et al., *The Triangular Relationship between Fundamental Rights, Democracy and the Rule of Law in the EU: Towards an EU Copenhagen Mechanism*, CEPS Paperbacks (20 Nov. 2013), pp. 4 et seqq.

monitoring and evaluating mechanisms.¹⁷ It remains to be seen if these new governance tools herald a paradigm shift for EU justice in the future.

2. The EU Justice Scoreboard: Its Features and the Variables It Measures

The Justice Scoreboard is the Commission's recent initiative to evaluate the functioning of national judicial systems. The Scoreboard was first published in 2013, followed by a second edition in March 2014 and a third in March 2015.¹⁸

The Scoreboard is a comparative tool that provides data concerning the judicial systems in all 28 Member States.¹⁹ It covers non-criminal litigious cases, i.e. civil, commercial and administrative disputes. The Scoreboard focuses on the efficiency, quality and independence of justice, and estimates the performance of national courts by means of indicators.²⁰ These indicators enable the Scoreboard to display its key findings through bar charts – the 2015 edition consists, for example, of 56 charts where Member States are ranked according to their performance in different fields.

Indicators for judicial efficiency include the length of proceedings (expressed in days needed for the court to reach a decision at first instance), the clearance rate of the court (the ratio of the number of resolved cases to the number of incoming cases, which shows whether a court is keeping up with the incoming caseload), and the number of pending cases (cases that still have to be decided at the beginning of a predefined period). The 2015 edition introduced fine-tuned data concerning the length of judicial proceedings in specific areas, such as EU competition law, consumer law, Community trademarks and public procurement.

¹⁷ See Carrera et al., op. cit. *supra* note 16, pp. 28-30; De la Porte, "Is the Open Method of Coordination Appropriate for Organising Activities at European Level in Sensitive Policy Areas?", 8 ELJ (2002), 38-58.

¹⁸ All three editions of the "EU Justice Scoreboard" (2013, 2014 and 2015) are available on the European Commission's webpage at <http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm> (last visited 14 Aug. 2015).

¹⁹ See COM(2015)116 final, "The 2015 EU Justice Scoreboard", p. 5.

²⁰ On the Scoreboard's indicators see Peršak, "Shared standards of justice, Towards normative indicators of judicial legitimacy at EU level" in Pauwels and Vermeulen (Eds.), *Actuele ontwikkelingen inzake EU-strafrecht, veiligheid, politie, strafprocedure, prostitutie en mensenhandel, drugsbeleid en penology* (Maklu, 2014), 44-61; see generally on indicators Davis et al., "Indicators as a Technology of Global Governance", 46 *Law & Society Review* (2012), 71-104.

The Scoreboard uses widely accepted parameters to measure the quality of justice,²¹ such as training and monitoring activities,²² the presence of national mechanisms for evaluating judicial performance as well as surveys conducted among court users or legal professionals; the availability of information and communication technology tools (ICT) in key areas (such as the registration and management of cases or cross-border online small claims procedures); the communication policies of courts, including online information about the judicial system for the general public, relations between courts and the media and online publication of judgements.

Another important indicator for the quality of justice relates to the use of Alternative Dispute Resolution (ADR) methods. In this area, assessment is based on evidence concerning, inter alia, the public sector activities promoting and incentivising the use of ADR or the number of consumer complaints received by companies.

Data on financial and human resources have been also presented, including national budgets of courts per inhabitant, annual public budgets allocated to legal aid, general government total expenditure on law courts (in EUR per inhabitant and as a percentage of the GDP) or the number of lawyers and judges. In addition, the 2015 Scoreboard provides, for the first time, data on gender balance in the judiciary.

The Scoreboard also measures perceived and structural judicial independence. Measurement of perceived judicial independence relies on data reported in the annual Global Competitiveness Report of the World Economic Forum (WEF).²³ Structural independence is measured on the basis of legal safeguards protecting adjudicators' independence, such as the existence of a national Council for the Judiciary (their composition and

²¹ See Opinion No 6 (2004) of the Consultative Council of European Judges (CCJE) on fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlement and Opinion No 11 (2008) on the quality of judicial decisions, both available at <http://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp> (last visited 14 Aug. 2015).

²² Regarding the importance of monitoring activities see Yein Ng et al., *Monitoring and Evaluation of Court System: A Comparative Study*, CEPEJ studies 2008, available at: <http://www.coe.int/t/dghl/cooperation/cepej/series/Etudes6Suivi_en.pdf> (last visited 14 Aug. 2015) and id., "Monitoring and Evaluation of Courts Activities and Performance", 1 IJCA (2008), 59-64, at 59.

²³ Available at <<http://www.weforum.org/reports/global-competitiveness-report-2013-2014>> (last visited 14 Aug. 2015); see COM(2015)116 final, "The 2015 EU Justice Scoreboard", Fig. 47 and footnote 54.

main powers) or of information concerning the government branch entrusted with the definition of the criteria for allocating financial resources to the judiciary. Data on the transfer and dismissal of judges, the allocation of incoming cases within a court, numbers on cases of withdrawal and refusal of judges, as well as on the procedures provided for in case of a threat against the independence of a judge are also included.

According to the Commission, the Scoreboard is aimed neither at providing a single overall ranking of the Member States, nor at promoting one particular national system over another.²⁴ It is a neutral instrument which focuses on parameters essential for the effectiveness of every judicial system and therefore is able to be applied regardless of adjudication models and legal traditions. Timeliness, independence, affordability and user-friendly access to justice are indeed parameters that each adjudication system should meet. With its comparative figures the Scoreboard aims to give an overview of the functioning of all judicial systems, and contributes to identifying trends, possible shortcomings, improvements and good practices over time.

To sum up, the Scoreboard has the following main characteristics: a) it is designed as an information tool with no binding character; b) it provides comparative data on the performance of Member States' courts concerning efficiency, quality and independence of justice; c) it covers civil, commercial and administrative cases; d) its findings use commonly accepted indicators and are presented as bar charts; e) it helps identify trends in the function or dysfunction of national justice systems over time.

3. Origins and Legal Basis

The Scoreboard is prepared under the auspices of the European Commission's Directorate-General for Justice (DG Justice). Its newly established "General Justice Policies and Judicial Systems" unit is responsible for development and management of the monitoring exercise.²⁵

However, the legal framework of the Scoreboard is uncertain, as the Treaty on the Functioning of the European Union (TFEU) contains no provisions that are directly applicable to the Scoreboard. The Scoreboard

²⁴ COM(2015)116 final, "The 2015 EU Justice Scoreboard", p. 5.

²⁵ See also Hess and Dimitropoulos, *op. cit. supra* note 9, p. 18; Peršak and Štrus, "Legitimacy and trust-related issues of judiciary: new challenges for Europe", in Peršak (Ed.), *Legitimacy and Trust in Criminal Law, Policy and Justice* (Ashgate, 2014), 89-111, at p. 103.

is not a Treaty-based instrument. Its indirect legal basis can be found in the provisions concerning justice cooperation in civil matters (Articles 67 and 81 TFEU) and in Article 121 (1) TFEU, according to which Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council.

4. The Reasoning Behind the Creation of the Scoreboard

The question why the Commission decided to create this regular monitoring exercise is more complex than it first appears. Research for the Justice Scoreboard means dealing with European economic policy matters and questions on the capacity of the EU to handle rule of law crises. As the analysis will show, the Justice Scoreboard is part of a wider multi-level and multi-actor effort to create various mechanisms for monitoring, evaluating and correcting Member States' economic performance, on one hand, and to protect fundamental rights in the EU justice area, on the other. The Scoreboard is, thus, only a small *tessera* of a larger new EU economic governance framework and of the new EU strategic framework for strengthening the rule of law in Member States.²⁶

4.1 Recalling history

The history of the Scoreboard's creation casts some light on the reasons for its adoption. In September 2012, Ms. *Viviane Reding* – at that time Vice-President of the European Commission and EU Justice Commissioner – stressed before the European Parliament the need to create a new mechanism for measuring, comparing and benchmarking the strength, efficiency and reliability of the judicial systems in all Member States:

*“We as a European Union need to stand firm on our values and on the rule of law, and that is why I think that we need to put in place an objective mechanism to assess the judicial systems in all of our [...] Member States [...]”*²⁷

In March 2013, the Scoreboard was created. In the press conference introducing the new instrument to the public, the Commissioner presented briefly the reasons for this initiative:

²⁶ See COM(2014)158 final, “A new EU Framework to strengthen the Rule of Law”.

²⁷ Viviane Reding, speech to the European Parliament (Strasbourg, 12 Sept. 2012, Doc. 13780/12, PE 413, Annex III), available at: <http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%2013780%202012%20INIT> (last visited 14 Aug. 2015).

*“Our reasoning is simple: an efficient and trustworthy justice system will bring an economic benefit. Trusting that the rule of law is fully upheld directly translates into the confidence to invest in the economy. [...] shortcomings in a national justice system are not only a problem for a particular Member State, but can affect the functioning of the Single Market and, more generally, the whole EU legal system, which is based on mutual trust.”*²⁸

However, she concluded: *“This is not a beauty contest. It's not about ranking national justice systems.”*²⁹

As the Stockholm program – which presented the European Union’s priorities for the area of justice, freedom and security for the period 2010-2014 –³⁰ was entering its last phase, a lively debate started at European level on how to promote the effectiveness of national judicial systems, with special focus on the Scoreboard. In November 2013, the Commission organised a European forum in Brussels on the Future of EU Justice Policy, where a thorough discussion on the Scoreboard took place.³¹ High-level representatives of the judiciary and practitioners covering different fields of law emphasized the need for independent³² and efficient³³ judicial systems as a key element for economic growth³⁴ and pointed out the character of the Justice Scoreboard as an additional instrument in the Commission’s toolbox to identify and address concerns about the rule of law in the Member States.³⁵ Awaiting the second edition of the Scoreboard, which was about to come out a few weeks later, the European

²⁸ Viviane Reding, “The 2013 EU Justice Scoreboard” (Press Conference/Brussels, 27 Mar. 2013, Speech/13/271).

²⁹ Similar statements have been repeated in the later 2nd and 3rd editions of the Scoreboard, see COM(2014)155 final, “The 2014 EU Justice Scoreboard” and COM(2015)116 final, “The 2015 EU Justice Scoreboard”.

³⁰ European Council, “The Stockholm Programme – An open and secure Europe serving and protecting citizens, O.J. 2010, C 115/01 and the related Commission Action Plan COM(2010)171 final, “Action plan on the Stockholm Programme”.

³¹ Forum “Assises de las Justice”, information available at <http://ec.europa.eu/justice/events/assises-justice-2013/index_en.htm> (last visited 14 Aug. 2015); see also Hess and Dimitropoulos, op. cit. *supra* note 9, pp. 18 et seq.

³² See the intervention of Vassileios Skouris, “Independence of justice and the EU Justice Scoreboard”, available at: <http://ec.europa.eu/justice/events/assises-justice-2013/files/interventions/skouris_en.pdf> (last visited 14 Aug. 2015).

³³ See the intervention of Koen Lenaerts, “Effective judicial protection in the EU”, available at: <<http://ec.europa.eu/justice/events/assises-justice-2013/files/interventions/koenlenarts.pdf>> (last visited 14 Aug. 2015).

³⁴ See Viviane Reding, “From Maastricht to Lisbon: building a European area of Justice in small steps and great bounds” (Brussels, 21 Nov. 2013, Speech /13/960, p. 4).

³⁵ See the Conference’s Discussion Paper 4: Rule of law, available at <http://ec.europa.eu/justice/events/assises-justice-2013/files/rule_of_law_en.pdf> (last visited 14 Aug. 2015).

Parliament, in its resolution of 4 February 2014, underlined the importance of this instrument for economic growth and the rule of law and called on the Commission to advance the exercise.³⁶ A similar approach has also been adopted by the Council of the European Union.³⁷

The above references reveal that the Scoreboard has a double purpose: It is aimed at contributing to growth as well as at monitoring the rule of law in the Member States.³⁸ How exactly does it fulfil these aims, though?

4.2 *The role of the Scoreboard within the new EU's economic governance framework*

4.2.1 **The Justice for Growth Agenda**

The global economic, financial and sovereign debt crisis has massively affected the European Economic Area. Structural reforms have been pushed forward in the public administration and economic sectors of Member States in order to recover growth and competitiveness.³⁹ In line with the Europe 2020 strategy,⁴⁰ justice policy at European level has been mobilised to support companies, growth and economic stability. This economic focus has become part of the European Commission's broader "Justice for Growth" agenda.⁴¹

The judicial system lies at the heart of a healthy market.⁴² The key role of effective national judicial systems within this context has been repeatedly

³⁶ European Parliament Resolution of 4 February 2014 on the EU Justice Scoreboard – Civil and Administrative Justice in the Member States, paras.1, 2, and 12.

³⁷ Conclusions on the civil and commercial justice systems of the Member States of 4 March 2014, available at: <<http://data.consilium.europa.eu/doc/document/ST-6771-2014-INIT/en/pdf>> (last visited 14 Aug. 2015).

³⁸ The latter bears, of course, a hint of irony as it is an instrument which the Commission created for monitoring the rule of law but which is not directly based on the TFEU.

³⁹ COM(2010)2020 final, "Europe 2020, A strategy for smart, sustainable and inclusive growth"; Canton et al., *The Role of Structural Reform for Adjustment and Growth*, 34 ECFIN Economic Briefs (2014). The impact of structural reforms on economic growth has been assessed in a recent study by the Commission, see Varga and in 't Veld, "The growth impact of structural reforms", 12 (IV) QREA (2013) pp. 17-27.

⁴⁰ COM(2014)144 final, "The EU Justice Agenda for 2020 – Strengthening Trust, Mobility and Growth within the Union".

⁴¹ The "Justice for Growth" agenda was pushed forward by the Spanish Presidency of the Council in 2010 as well as by the Irish Presidency in 2013; see Council Conclusions on Judicial Cooperation for the Support of Economic Activity (23 Apr. 2010) and the Programme of the Irish Presidency of the Council of the European Union, p. 21, available at <http://eu2013.ie/media/eupresidency/content/documents/EU-Pres_Prog_A4.pdf> (last visited 14 Aug. 2015).

⁴² Viviane Reding, "Weathering the Storm Together: Justice for Growth, Justice for Citizens" (Institute for International and European Affairs (IIEA)/Dublin, 25 Sept. 2012, SPEECH/12/XXX), available at

highlighted by scholars. In recent years, several studies have explored the key role of effective and efficient national judicial systems and their connections with economic results.⁴³ All the studies highlight that trust in judicial systems and improvements in judicial efficiency indicators have a positive economic impact on business dynamics and foreign direct investments inflows.⁴⁴ Efficiency, quality and independence of justice, manifested in timely, predictable and enforceable justice decisions, are all essential conditions for the proper functioning of the market. Similar experiences in Member States undergoing Economic Adjustment Programmes (i.e. Greece, Ireland, Latvia and Portugal) have shown that justice system deficiencies have a negative impact on both economic growth and confidence in the institutions of justice.⁴⁵ For all these reasons, reforming justice has become central to EU justice policy.⁴⁶ Improving access to justice and facilitating the resolution of disputes is not only an integral part of the structural components of the Economic Adjustment Programmes,⁴⁷ but also a priority for all Member States. According to the latest edition of the Scoreboard, in 2014 all Member States were engaged in judicial reforms.⁴⁸

4.2.2 The European Semester

Considering the relationship between effective justice and the economy, it is not surprising that an EU instrument such as the Justice Scoreboard,

<http://www.iiea.com/event/download_transcript?urlKey=viviane-reding-keynote-address> (last visited 14 Aug. 2015).

⁴³ Lorenzani and Lucidi, *The Economic Impact of Civil Justice Reforms*, 530 Economic Papers (2014); Barkbu et al., *Fostering Growth in Europe Now*, IMF Staff Discussion Note No. 12/07 (June 2012); Palumbo et al., *The Economies of Civil Justice: New Cross-country Data and Empirics*, OECD Economics Department Working Paper. No 1060; Bellani, op. cit. *supra* note 12; OECD (2013), *What makes civil justice effective?*, OECD Economics Department Policy Notes, No.18 (June 2013); WEF, *The Global Competitiveness Report 2014-2015*, available at <http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf> (last visited 14 Aug. 2015).

⁴⁴ Examples of this positive correlation between efficiency of justice and economic performances can be found in COM(2014)155 final, “The 2014 EU Justice Scoreboard”, pp. 3-4 and in Lorenzani and Lucidi, op. cit. *supra* note 43, at pp. 9 et seq.

⁴⁵ See COM(2013)160 final, “The EU Justice Scoreboard – A tool to promote effective justice and growth”, p. 1.

⁴⁶ For an overview of the EU initiatives to promote judicial reforms see Hess and Dimitropoulos, op. cit. *supra* note 9, pp. 18 et seqq.

⁴⁷ E.g. for Greece and Portugal see European Commission Report, *Market Reforms at Work in Italy, Spain, Portugal and Greece*, European Economy 5, 2014.

⁴⁸ See Fig. 1 of the 2015 Justice Scoreboard. For an overview of the past years’ judicial reforms in Europe see the Report of the European Networks of Councils for the Judiciary (ENCJ), available at <http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_judicial_reform_def.pdf> (last visited 14 Aug. 2015).

which measures the functioning of justice systems and assesses judicial reforms in Member States, falls within the sphere of a broader new economic governance of the EU, the so-called European Semester.

The crisis has revealed links and spill-overs between all 28 Member States' national economies. At the same time, the lack of coordination between Member States' budgetary and economic policies emerged as a structural weakness of the European economy.⁴⁹ For these reasons and within a broader effort to reform EU economic governance, the European Council decided in 2010 to establish the so-called European Semester, a yearly cycle of economic policy coordination among Member States.

The European Semester can be seen as a policy-making calendar of the EU, which functions as an umbrella mechanism and synchronizes the timetables of Member States' economic and fiscal policies. Its ultimate goal is to mitigate inconsistencies and discrepancies and prohibit, through preventive surveillance, macroeconomic and fiscal imbalances from occurring and evolving. The European Semester covers three blocks: fiscal policies, avoidance of macroeconomic imbalances, and structural reforms. Its legal basis lies in the Stability and Growth Pact of 1997 (SGP)⁵⁰ as it has been reinforced by the so-called "Six-Pack"⁵¹ and "Two-Pack"⁵² agreements and by the intergovernmental Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG).

The European Semester is a complex mechanism with three institutional actors: the Commission, the European Council and the Council of the European Union, each playing a different role. A detailed description of

⁴⁹ See COM(2010)2020 final, "Europe 2020, A strategy for smart, sustainable and inclusive growth", pp. 7 et seqq.

⁵⁰ See Resolution of the European Council on the Stability and Growth Pact Amsterdam of 17 June 1997, O.J. 1997, C 236/01.

⁵¹ A package of six legislative acts which entered into force on 13 December 2011: Regulation (EU) No. 1173/2011 on the implementation of efficient budgetary surveillance in the euro area; Regulation (EU) No. 1174/2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area; Regulation (EU) No. 1175/2011 amending the surveillance procedures of budgetary positions; Regulation (EU) No. 1176/2011 on the prevention and correction of macroeconomic imbalances; Regulation (EU) No. 1177/2011 amending the procedure concerning excessive deficits; Directive 2011/85/EU of the Council of 8 November 2011 on the requirements for budgetary frameworks of the Member States.

⁵² Two Regulations entered into force on 13 May 2013: Regulation (EU) No. 473/2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area and Regulation (EU) No. 472/2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability.

the steps taken in every stage of the Semester by those actors goes beyond the scope of this paper,⁵³ but it is worth noting that, during the first half of each year, Member States have the chance to review each other's economic and fiscal policies before their implementation at national level. In addition, Euro-area countries have to present their draft budgets and reform plans for the following year to the Commission, which then assesses whether they are in line with the requirements of the Stability and Growth Pact (SGP) and the European Semester. The Commission, based on the "Annual Growth Survey"⁵⁴ and the "Alert Mechanism Report"⁵⁵, analyses in detail each Member State's economic and structural reforms programme and then formulates country-specific recommendations for the next 12 - 18 months.⁵⁶ Member States should then consider these recommendations when drafting their budget and reforms of the next year. Member States that do not adopt these recommendations within the given period must expect policy warnings or even sanctions, if greater macroeconomic and budgetary imbalances occur.

The effectiveness of these recommendations correlates strongly with their implementation by Member States. However, it is very difficult to assess the EU-wide implementation record. Reports of the European Parliament concerning the progress of the European Semester for 2013 and 2014 provide rather disappointing results. They point out that only 15% of the around 400 country-specific recommendations show a significant degree of progress in comparison with previous years,⁵⁷ and that only 10% of the

⁵³ For an overview, see Zeitlin and Vanhercke, *Socializing the European Semester? Economic Governance and Social Policy Coordination in Europe 2020*, Watson Institute for International Studies Research Paper No. 2014-17; Borrás and Radaelli, "The transformation of EU governance, the open method of coordination and the economic crisis" in: Rodrigues and Xiarchogiannopoulou (Eds.), *Eurozone crisis and the transformation of EU governance: internal and external implications* (Ashgate, 2014), pp. 41 et seqq.

⁵⁴ The "Annual Growth Survey" (AGS) is the Commission's yearly analysis of the progress towards Europe 2020 targets.

⁵⁵ The "Alert Mechanism Report" is the analysis starting each yearly round of Macroeconomic Imbalance Procedure in accordance with Arts. 3 and 4 of the Regulation (EU) No 1176/2011 on the prevention and correction of macroeconomic imbalances.

⁵⁶ The country-specific recommendations and accompanying Commission staff working documents are available at <http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm> (last visited 14 Aug. 2015).

⁵⁷ See Report on the European Semester for economic policy coordination: implementation of 2013 priorities, 8 Oct. 2013, para. 6, available at <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0322+0+DOC+XML+V0//EN>> (last visited 14 Aug. 2015).

recommendations for 2013 were fully implemented, whereas 45% have seen limited or no progress at all.⁵⁸

4.2.3 Country-specific Recommendations in the Policy Area of Justice

Key elements within the third block related to structural reforms policy coordination during the European Semester, in particular while assessing the quality of Member States' public administration, are quality, independence and efficiency of justice. The information compiled for the Scoreboard along with the specific assessment of the situation in Member States defines the country-specific recommendations in the area of justice and the defined targets for national judicial systems for the next year.

The nature and range of these justice-related recommendations and the measures taken by the Member States vary depending on the findings of each year's Scoreboard for each country: from operational measures (such as the improvement and modernisation of case management, the use of Communication and Information Technologies and the promotion of ADR), to the more structural (e.g. reorganisation of courts, reform of judicial and legal professions, improvement of legal aid or redesign of judicial processes based on simplified procedural rules).

In 2012, six Member States received recommendations in the field of justice.⁵⁹ During the 2013 European Semester, the number increased to 10,⁶⁰ with four countries having been asked to increase their clearance rate by promoting ADR mechanisms.⁶¹ The Scoreboard's findings resulted in recommendations being addressed to twelve Member States in 2014,⁶² and to four Member States in 2015,⁶³ while the Commission is monitoring efforts to improve the effectiveness of the justice systems in 10 other Member States.⁶⁴ To avoid an overlap between measures set out in the ongoing Economic Adjustment Programmes, no additional recommendations have been addressed to Cyprus and Greece, while the

⁵⁸ Report on the European Semester for economic policy coordination: implementation of 2014 priorities, 15 Oct. 2014, para 28, available at <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2014-0019+0+DOC+XML+V0//EN>> (last visited 14 Aug. 2015).

⁵⁹ Bulgaria, Italy, Latvia, Poland, Slovenia, Slovakia.

⁶⁰ Bulgaria, Spain, Hungary, Italy, Latvia, Malta, Poland, Romania, Slovenia and Slovakia.

⁶¹ Italy, Latvia, Slovenia, Slovakia.

⁶² Bulgaria, Croatia, Ireland, Italy, Latvia, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain.

⁶³ Croatia, Italy, Latvia and Slovenia.

⁶⁴ Belgium, Bulgaria, Cyprus, Spain, Ireland, Malta, Poland, Portugal, Romania and Slovakia.

recommendations for Bulgaria and Romania should always be seen in relation to the progress reports under the Cooperation and Verification Mechanism applicable to those two countries.⁶⁵

It has already been mentioned that the effectiveness of the recommendations correlates strongly with implementation by Member States and that the data of the implementation record are rather disappointing. However, a recent study based on a more complex indicator of EU-wide implementation shows an average score of over 40%, with the rate for the policy area of justice reaching up to 45%.⁶⁶

4.2.4 The Allocation of ESI Funds

The Justice Scoreboard data not only contribute to the European Semester process by identifying issues that deserve particular attention to ensure implementation in the area of justice, but also assist the Commission in establishing priorities regarding the distribution of EU funding among the Member States.

To achieve the Europe 2020 strategy objectives for smart, sustainable and inclusive growth,⁶⁷ the EU has made available to Member States five different funding sources (European Structural and Investment Funds - ESI funds).⁶⁸ Building institutional capacity in the public administration and the judiciary are embraced by two of them.⁶⁹ According to the new rules,⁷⁰ Member States with identified judicial shortcomings when setting out their plans along with the Commission on how to use ESI funds (“Partnership Agreements” between Member States and the Commission) could set the improvement of their judicial systems as strategic goals and investment priorities for the absorption of EU funds. Not only does the European Commission negotiate the content of the “Partnership Agreements” with

⁶⁵ See for Bulgaria Decision of 13/12/2006, C(2006) 6570 final and COM(2015) 36 final; For Romania see Decision of 13/12/2006 C(2006)6569 final and COM(2015) 35 final.

⁶⁶ See Deroose and Griesse, *Implementing economic reforms – are EU Member States responding to European Semester recommendations?*, 37 ECFIN Economic Briefs (2014), at p. 2 and p. 7.

⁶⁷ See COM(2010)2020 final, “Europe 2020, A strategy for smart, sustainable and inclusive growth”.

⁶⁸ European Regional Development Fund (ERDF), European Social Fund (ESF), Cohesion Fund (CF), European Agricultural Fund for Rural Development (EAFRD), European Maritime & Fisheries Fund (EMFF). The rules covering all five EU structural and investment funds are set out in the Common Provisions Regulation, Regulation (EU) No 1303/2013.

⁶⁹ Namely, the European Regional Development Fund (ERDF) and European Social Fund (ESF) under the thematic objective TO11-better public administration.

⁷⁰ See Regulation (EU) No 1303/2013 (Common Provisions Regulation) with rules covering all five EU structural and investment funds.

national authorities, but it also monitors Member States closely as they draw up their “Operational Programmes” and break down the investment priorities and objectives of the “Partnership Agreements” into concrete actions. According to the Commission, eleven Member States out of twelve that received country-specific recommendations in the area of justice in 2014 identified justice as a priority area of support for the ESI funds.⁷¹

Within this systemic dialogue between the Commission and the Member States, the findings of the Scoreboard along with the country-specific recommendations and the country-specific assessments are crucial for the approval of funds. Additionally, the indicators used in the Scoreboard enable the Commission to coherently monitor the effectiveness of the support provided and regularly report on the results achieved.

Previous experience has shown that EU funds can be used to improve the efficiency of judicial systems. An inspiring example is Estonia, where, as a result of the successful investment of EU funds in E-justice tools, the country ranked very quickly among the leading users of information and communication technology for the management of courts and communication between courts and parties in the EU.⁷² A similar situation has also occurred in Slovenia, with EU funds having been allocated to the development of a project for monitoring the efficiency of court operations, improving the planning of decision-making and managing human resources. Not only has this system helped Slovenia to enhance productivity and to reduce the number of pending cases and disposition times, but it has also increased transparency and placed the project as a finalist in the CEPEJ and European Commission “Crystal Scales of Justice Competition”.⁷³

To summarize, the Scoreboard is a non-binding tool in that no sanctions are imposed for poor performance. However, data from the Justice Scoreboard feed the European Semester process and help identify issues that deserve particular attention and ensure that the implementation of recommended reforms is monitored. In particular, these data are taken into account when the country-specific assessments are prepared, and they

⁷¹ See COM(2015)116 final, “The 2015 EU Justice Scoreboard”, p. 4.

⁷² See European Commission, *Quality of Public Administration - A Toolbox for Practitioners* (Luxembourg, 2015), pp. 379 et seqq. See also Fig. 18 and 21-26 of the 2015 EU Justice Scoreboard.

⁷³ For more information on the Slovenian “Judicial Data Warehouse and Performance Dashboard project” see European Commission, op. cit. *supra* note 72, at pp. 346 et seqq.

define the content of the country-specific recommendations in the area of justice. Furthermore, the results of the Scoreboard have considerable influence on the allocation of regional development and social EU funds.

4.3 The Copenhagen Dilemma – The Justice Scoreboard as an Additional Policy Instrument of the EU to Protect the Rule of Law

Independent and effective judicial review, including respect for fundamental rights, is one of the core principles of the rule of law.⁷⁴ Not only does the rule of law describe a legal system that delivers independent and efficient justice, but it also implies that this independence and efficiency is so obvious that all citizens would willingly put trust in the system.⁷⁵

The rule of law, along with respect for human dignity, freedom, democracy, equality and respect for human rights, shapes the values on which the EU is founded. This set of common principles, as defined in Articles 2 and 49 TEU, forms part of the accession criteria for new Member States, the so-called “*Copenhagen criteria*” (established in 1993 in Copenhagen by the European Council).⁷⁶ Candidate countries must ensure that they comply with the EU principles, respect the rule of law and protect human rights.

However, after the accession of a new Member State, the Commission faces the “*Copenhagen dilemma*”:

“We are very strict on the Copenhagen criteria, notably on the rule of law in the accession process of a new member state but, once this member state has joined the European Union, we appear not to have any instrument to see whether the rule of law and the independence of the judiciary still command respect.”⁷⁷

The only Treaty-based instrument for monitoring Member States’ compliance with the rule of law is Article 7 TEU, according to which, in the event of a serious and persistent breach by a Member State, such Member State may be sanctioned and suspended from voting at Council

⁷⁴ See COM(2014)158 final, “A new EU Framework to strengthen the rule of law” and Annexes.

⁷⁵ See Viviane Reding, “The EU and the Rule of Law – What next?”(CEPS/Brussels, 4 Sept. 2013, Speech/13/677).

⁷⁶ European Council in Copenhagen, Conclusions of the Presidency, 21-22.6.1993, DOC 93/3.

⁷⁷ Viviane Reding, op. cit. *supra* note 27.

level.⁷⁸ However, the “nuclear option” of Article 7 has never been applied, primarily due to the high majority needed to adopt a decision in the Council and Member States’ political unwillingness. Another option from the EU’s toolbox can be found in Articles 258 - 260 TFEU, according to which the Commission may open infringement proceedings and eventually refer a Member State to the European Court of Justice if that Member State has failed to implement EU law – a condition not easily fulfilled by non-binding recommendations.⁷⁹ The same applies to Article 47 of the EU Charter of Fundamental Rights ensuring the right to an effective remedy, since according to Article 51, the Charter is applicable only when Member States are implementing Union law. Of little help, lastly, is the Cooperation and Verification Mechanism (CVM), due to its country-specific nature. Under the CVM, the EU reserves the right to require that applying countries fulfil certain criteria, such as a more transparent and efficient judicial process.⁸⁰ However, the CVM inevitably has a limited scope: currently, it only applies to Romania and Bulgaria in their accession process.

The recent rule of law crises in France in 2010 (the “Roma crisis”), in Hungary in 2011 (independence of the judiciary and constitutional reform) and in Romania in 2012 (infringement of the constitutional court’s decisions) revealed the inadequacies of the existing EU safeguards for protecting fundamental principles at EU-level and demonstrated the need to take action. In his State of the Union Address 2012, the former President of the European Commission called for a better developed set of instruments between the “soft power” of political persuasion and the “nuclear option” of Article 7 of the Treaty”.⁸¹

The Scoreboard is only one of a series of legal and policy instruments that were created in response to this call for more effective tools to safeguard the rule of law.⁸² And although the Scoreboard may not have been

⁷⁸ For a detailed analysis of Art. 7 see COM(2003)606 final, “Article 7 of the Treaty on European Union - Respect for and promotion of the values on which the Union is based”.

⁷⁹ See Kochenov and Pech, *Upholding the Rule of Law in the EU: On the Commission's 'Pre-Article 7 Procedure' as a Timid Step in the Right Direction*, EUI-RSCAS Research Paper No. 2015/24 (EUI, 2015), pp. 3 et seqq.

⁸⁰ See Decisions C(2006)6569 final (O.J. 2006, L 354/56) and C(2006)6570 final (O.J. 2006, L 354/58) establishing the CVM to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime.

⁸¹ José Manuel Barroso, “State of the Union 2012 Address” (EPPS/Strasbourg, 11 Sept. 2012, Speech/12/596).

⁸² See Viviane Reding, “Safeguarding the rule of law and solving the ‘Copenhagen dilemma’: Towards a new EU-mechanism” (GAC/Luxembourg, 22 Apr. 2013, Speech/13/348).

designed to restore compliance with EU values, with some improvements in its structure and the procedure for its preparation it could contribute to the future development of a broader mechanism, as described by former President Barroso.⁸³ For the moment, though, it maintains its monitoring and evaluating character by helping the Commission identify improvements and address targeted recommendations to Member States for their national justice systems.

Additionally, in accordance with the priority of objective and impartial judicial assessment in the Stockholm program,⁸⁴ the EU has consolidated its surveillance system with the development of a multi-level and multi-actor framework of legal and policy monitoring instruments dealing (directly or indirectly) with Article 2-related principles at Member State level: The European Commission's Annual Report on the Application of the Charter of Fundamental Rights, the European Parliament Annual Report on Fundamental Rights, the Annual Report of the Agency for Fundamental Rights, the Annual Report of the European Ombudsman, the Annual Report of the European Anti-Fraud Office, the EU Anti-Corruption Report.⁸⁵

Interestingly enough, the Justice Scoreboard, along with the EU Anti-Corruption Report, are both experimental governance techniques. Since the Commission is dealing with policy areas closely linked to Member States' sovereignty instead of advancing a supranational harmonisation, it is using alternative and soft methods, such as the soft coordination of domestic policies, evaluation and benchmarking, exchange of good practices, mutual learning processes, peer pressure etc.⁸⁶

It is, of course, too early to predict how effective the follow-up of the Scoreboard will be. However, it has already come in for criticism among scholars who point out that, despite its ambitious aims, the Scoreboard is not designed to address issues related to a wider range of fundamental

⁸³ See European Commission, "Questions & Answers: EU Justice Scoreboard" (Brussels, 27 Mar. 2013, Memo/13/288).

⁸⁴ European Council, The Stockholm Programme – An open and secure Europe serving and protecting citizens, O.J. 2010, C 115/01, point 1.2.5.

⁸⁵ For a thorough examination of the EU level mechanisms assessing respect for rule of law, democracy and fundamental rights by EU Member States see Carrera et al., *op. cit. supra* note 16, pp. 4 et seqq.; Moxham and Stefanelli, *Safeguarding the Rule of Law, Democracy and Fundamental rights: A Monitoring Model for the European Union*, Bingham Centre for the Rule of Law (15 Nov. 2013).

⁸⁶ See Carrera et al., *op. cit. supra* note 16, pp. 28 et seqq.

rights and rule of law values;⁸⁷ Furthermore, the fact that it is not a binding instrument reduces its impact, whereas its indirect follow-up options within the European Semester show that this instrument is linked to economic and structural reforms rather than to the protection of the rule of law. Finally, the Scoreboard itself overemphasizes the economic value of justice and focuses only on parameters that are considered to be decisive for the improvement of business and investment environments, as evidenced by the fact that criminal cases are not included.⁸⁸

5. Methodology and Data Sources

A more serious criticism concerns the methodology of the Scoreboard and, in particular, problems that occur during the collection, evaluation and presentation of the data. The Commission already admitted at an early stage of this initiative that it has faced difficulties in gathering reliable and comparable figures.⁸⁹ The Scoreboard data are obtained from three main categories of sources: a) data collected at EU inter-institutional level b) pilot exercises or field studies and c) EU-external sources.

A closer look at the 2015 edition, the latest available, shows that the vast majority of the data (87%) was obtained from EU inter-Institutional sources, 9% from field studies, whereas only 4% of the data originated from EU-external sources. In the next paragraphs, each of these categories will be examined. The analysis will critically assess the data collection and presentation methods and will suggest some improvements.

5.1 EU Inter-institutional Sources

The vast majority (87%) of the data have been obtained at EU inter-institutional level from sources such as: a) CEPEJ (46%),⁹⁰ b) the Commission itself in cooperation with the “*group of contact persons on*

⁸⁷ Moxham and Stefanelli, op. cit. *supra* note 85, p. 18; Carrera et al., *Rule of law or rule of thumb? A new Copenhagen mechanism for the EU*, CEPS Policy Brief No. 303 (20 Nov. 2013), p. 3.

⁸⁸ Nevertheless, it should be noted that a debate between the Parliament, the Council and the Commission is underway on the establishment of a Justice Scoreboard in criminal matters; see European Parliament resolution of 12 March 2014 on evaluation of justice in relation to criminal justice and the rule of law.

⁸⁹ See European Commission, op. cit. *supra* note 83.

⁹⁰ See 2015 Justice Scoreboard, Fig. 2-12, 18-24, 36, 38-39, 42-46.

national justice systems” (18%),⁹¹ and c) judicial networks (16%).⁹² 7% of the data come from other sources.⁹³

5.1.1 CEPEJ Study

The Scoreboard makes massive use of data provided by CEPEJ. In particular, in 2011 the Commission requested CEPEJ to conduct a specific annual survey aimed at analysing judicial systems in EU Member States. After a two-year preparation,⁹⁴ CEPEJ started in 2013 with the publication of its annual Studies,⁹⁵ which have fed the Scoreboard’s editions with figures and findings. The CEPEJ Studies build upon the processing of data and comments provided by Member States through two previous CEPEJ evaluation cycles (2010 and 2012 CEPEJ Reports). These findings are integrated by a specific questionnaire (2013).⁹⁶

Data used in the Scoreboard are collected in accordance with CEPEJ methodology. A specific evaluation scheme drawn from a selection of questions from the CEPEJ “*Scheme for Evaluating Judicial Systems 2012-2014*” is used,⁹⁷ and the common definitions provided in the CEPEJ reports are relied upon.⁹⁸ Following the standard working methods of CEPEJ, the collection of data has been assigned once again to the Member States and their national correspondents (often established within the ministries of justice), who are entrusted with the coordination of the replies to the Scheme for their respective States. The responses of the national

⁹¹ See 2015 Justice Scoreboard, Fig. 1, 26-34.

⁹² See 2015 Justice Scoreboard, Fig. 37, 48-55.

⁹³ Eurobarometer (Fig. 35), Eurostat (Fig. 40-41), or combined data (Fig. 56).

⁹⁴ For more information on the steps taken, the technical research, the cooperation with the Commission and the challenges CEPEJ faced during the first survey see Velicogna, *The EU Justice Scoreboard and the challenge of investigating the functioning of EU justice systems and their impact on the economy of the Member States*, Paper prepared for the “Società Italiana di Scienza Politica” (SISP) Conference - September 2013, available at

<https://www.academia.edu/9860876/The_EU_Justice_Scoreboard_and_the_challenge_of_investigating_the_functioning_of_EU_justice_systems_and_their_impact_on_the_economy_of_the_Member_States> (last visited 14 Aug. 2015).

⁹⁵ See 2013, 2014, 2015 Study from the European Commission for the Efficiency of Justice of the Council of Europe (CEPEJ) prepared for the European Commission: The functioning of judicial systems and the situation of the economy in the European Union Member States, all available at the Commission’s internet page <http://ec.europa.eu/justice/effective-justice/document/index_en.htm> (last visited 14 Aug. 2015).

⁹⁶ See 2015 CEPEJ Study, CEPEJ(2014)17 final (v2.0 - 16 feb.2015), p. 6.

⁹⁷ Scheme for evaluating judicial systems, CEPEJ(2012)12Rev2.

⁹⁸ For more information on the questionnaire see 2015 CEPEJ Study, CEPEJ(2014)17 final (v2.0 - 16 feb.2015), p. 16 and in Annex the explanatory note of the Scheme and a figure concerning the definitions of the “Disposition Time” and the “Clearance Rate”.

correspondents are subsequently analysed and evaluated according to statistical methodologies by the CEPEJ Secretariat.

The collection of data through national official channels raises concerns. First, the Scoreboard's figures come from only one source per country, and solely from the "supply side" (i.e. governmental agencies in the justice sector). The "demand side" (i.e. users of courts) has been ignored.⁹⁹ It is precisely due to users not being included in the surveys that the CEPEJ questionnaire has been criticised as not being sufficient to measure all aspects of the rule of law.¹⁰⁰

Another criticism concerns the reliability of data. CEPEJ has limited power to ensure the quality of data which are collected exclusively at national level. Despite CEPEJ efforts to verify the numbers through an open dialogue and exchange of best practices with the correspondents,¹⁰¹ States have exclusive responsibility for the quality of figures used in the survey.¹⁰² No other source can be taken into account and information received from the Member States cannot be substituted from other studies.¹⁰³ Figures that do not appear sufficiently accurate to merit publishing have been disregarded and cases have been reported where large data discrepancies at national level are not accompanied by any explanations from Member States.¹⁰⁴

The heterogeneity of national statistics represents another significant problem for the accuracy and completeness of the data. Some Member States do not collect figures in a way which allows for an objective evaluation and comparison with other Member States. Others quite often report changes in their collecting methodology and in the categorization of

⁹⁹ See Uzelack, "Efficiency of European Justice Systems - The strength and weaknesses of the CEPEJ evaluations", 1 *International Journal of Procedural Law*, (2011), 106-147, at p. 140; Albers, "How to measure the rule of law: a comparison of three studies", Conference paper Rule of law conference (Hague Institute for Internationalisation and Law (Nov. 2007), available at <http://www.coe.int/t/dghl/cooperation/cepej/events/OnEnParle/Albers251007.pdf>) (last visited 14 Aug. 2015).

¹⁰⁰ See Albers, op. cit. *supra* note 99, pp. 9 et seq.

¹⁰¹ See CEPEJ, Report on "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice", p. 7.

¹⁰² 2015 CEPEJ Study, CEPEJ(2014)17 final (v2.0 - 16 feb.2015), p. 17.

¹⁰³ See also Johnsen, "The European Commission for the Efficiency of Justice (CEPEJ) - Reforming European Justice Systems – 'Mission Impossible?'" , 9 *IJCA* (2012), 1-19, at p. 4.

¹⁰⁴ See CEPEJ, Report on "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice", p. 6.

data.¹⁰⁵ Even structural reforms such as the re-organization of court systems reduce the consistency of data over time.¹⁰⁶ Federal States or States with a decentralised system of judicial administration issue caveats as to the completeness of data. For instance, answers provided by Germany have to be interpreted and compared extremely carefully as, for some questions, only certain federal entities were able to reply.¹⁰⁷ Last but not least, there are also cases where the diagram of the Scoreboard ranks Member States on the basis of data from different years.¹⁰⁸

On top of the difficulty in obtaining comparable data, the response rate of Member States varies significantly. For some questions, no data have been provided, either because they were unavailable at national level, or because data meeting specific quality requirements have not been provided on time. Furthermore, while some countries are more willing to provide information, others have refused to cooperate. This contrast can be illustrated by the following examples: Croatia, as the youngest EU Member State, participated for the first time in the second edition of the Scoreboard and it shared a complete set of data with figures and indicators not available for many other Member States. In an attempt to avoid complications similar to those faced by Bulgaria and Romania – which are monitored under the Cooperation and Verification Mechanism because they failed to implement commitments during the accession negotiations – the accession process for Croatia was more focused on the judiciary. Indeed, reports based on performance of the judiciary and rule of law indicators were required even before actual membership, during the ratification period of the accession treaty.¹⁰⁹ To the contrary, the United Kingdom has repeatedly refused to provide any data for the CEPEJ study. Such refusal has been justified using various arguments, from questioning the legal framework and the Commission's competence to produce the Scoreboard (especially because the instrument is not limited to data on the implementation of EU law or on cross border cases, but encroaches on national statistics), to more practical reasons such as the allocation of

¹⁰⁵ See e.g. Fig. 4-12 of the 2015 Justice Scoreboard.

¹⁰⁶ See e.g. Fig. 6 of the 2015 Justice Scoreboard.

¹⁰⁷ See 2015 CEPEJ Study, CEPEJ(2014)17 final (v2.0 - 16 feb.2015), p. 17 and Fig. 4-12, 38-39 of the 2015 Justice Scoreboard.

¹⁰⁸ See e.g. Fig. 18 of the 2015 Justice Scoreboard.

¹⁰⁹ See Kos et al., *Increasing the Efficiency of Macedonia's and Montenegro's Justice System - Introducing an Innovative EU Monitoring and Evaluation Mechanism in the Sphere of Administrative Law* (Association for Development Initiatives – Zenith, 2014), p. 22.

national resources for collecting and preparing the data on annual basis or even doubts as to the usefulness of the initiative, since the Scoreboard largely duplicates work already undertaken by CEPEJ.¹¹⁰

Another difficulty is related to the heterogeneity of national judicial systems, which negatively affects comparability of the data.¹¹¹ To begin with, national systems and proceedings are not based on common operational definitions. Even the most basic terms used in comparative surveys, such as “civil or administrative case”, “judge”, “case filing” or “pending case”, can have different meanings in different jurisdictions,¹¹² meaning that the figures of CEPEJ studies are always supported by lengthy narrative comments for each country, which the reader should bear in mind when interpreting the findings.¹¹³ Although the Scoreboard substantially duplicates the CEPEJ data, it does not contain any such explanations. Being more communication-oriented, the only important information in the Scoreboard appears to be a visualized rank among Member States as well as an identification of increases or decreases in their judicial performance. Even though such data are good for shaming or self-congratulation, they give very little insight into why some courts perform better or worse than others, or how some Member States managed to improve their performance more than others.¹¹⁴ Hence, this exercise is of little help when it comes to providing guidance to policy makers. The Scoreboard can raise politicians’ – and with good press coverage, the public’s – awareness about serious inefficiencies affecting national courts, but it cannot assist the preparation of reform agendas aimed at solving such drawbacks.

¹¹⁰ For more information see Parliament of the United Kingdom, House of Commons European Scrutiny Committee, 47th Report of Session 2013-2014, 15 May 2014, 25 MOJ (35888) (34822) 2014 EU Justice Scoreboard, available at <<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/83-xlii/8328.htm>> (last visited 14 Aug. 2015).

¹¹¹ See Uzelack, *op. cit. supra* note 99, pp. 137 et seq.

¹¹² See Albers, “Improvements of Judicial Systems: European Experiences”, 1 IJCA (2008), 45-57, at 46; Johnsen, *op. cit. supra* note 103, pp. 4 et seq.; Mohr and Contini, “Conflict and Commonalities in Judicial Evaluation”, 4 *Oñati Socio-Legal Series* (2014), 843-862, at pp. 846 et seq.

¹¹³ See 2015 CEPEJ Study, CEPEJ(2014)17 final (v2.0 - 16 feb.2015), p. 16.

¹¹⁴ See Mohr and Contini, *op. cit. supra* note 112, at pp. 846 et seqq.

5.1.2 “Group of Contact Persons on National Justice Systems”

The “*group of contact persons on national justice systems*” is an expert group of the Commission.¹¹⁵ It was established in 2013 by DG Justice as an “*informal*”¹¹⁶ permanent body to assist the development of the EU Justice Scoreboard and to promote the exchange of best practices concerning the effectiveness of judicial systems as well as the collection of data.¹¹⁷ The group is comprised of two contact persons from each Member State, one coming from the judiciary and one from the ministry of justice.¹¹⁸ So far, there have been two group meetings held in 2014 and 2015 respectively, where the group members presented certain aspects of their justice systems. Additionally, the group has provided the 2015 Scoreboard with a significant amount of data on practices and policies on courts’ communication at national level (e.g. online publication of judgements, relations between courts and press/media, etc.).

By not having any internal rules of procedure,¹¹⁹ the group operates with a certain flexibility that enables experts to participate in a direct dialogue when developing the EU Justice Scoreboard. The Commission has not published the names of the experts participating in the group, nor the specific national administrations these experts belong to. The choice is apparently due to the informal character of this interaction with national authorities.¹²⁰ However, transparency is lacking regarding the functioning of the group and its cooperation with the Commission. Apart from some standard material published in the Register of Commission’s Expert Groups and Other Entities¹²¹ – such as the Commission’s department running the group, the group’s mission, its task and the number of

¹¹⁵ The legal framework for the establishment and the functioning of the Commission’s expert groups is described in C(2010),7649 final, “Framework for Commission expert groups: horizontal rules and public register”.

¹¹⁶ As opposed to *formal* expert groups set up by a Commission decision, *informal* are set by an individual Commission department, see Rule 2 (3) C(2010), 7649 final.

¹¹⁷ See COM(2015),116 final, “The 2015 EU Justice Scoreboard”, p. 4

¹¹⁸ DG Justice requested Member States, through their Permanent Representations, to appoint contact persons that have expertise in monitoring the functioning of the justice system, in judicial reforms and in the collection of data; see C(2010),7649 final, Rules 8 (4) and 10. According to the 2015 Justice Scoreboard, there is one Member State which has not yet nominated contact persons, while four Member States have only nominated one contact person from their ministry of justice and none from the judiciary, see COM(2015),116 final, p. 4.

¹¹⁹ See C(2010),7649 final, Rule 15.

¹²⁰ See C(2010),7649 final, Rule 18.

¹²¹ The Register is available at <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3022> (last visited 14 Aug. 2015).

representatives from each Member State – no further information on the meetings of the group, on the specific context of this dialogue, on data-collection methods, on questionnaires or answers has been made available to the public. In our view, a more transparent procedure should be implemented, especially if the Commission is aiming at expanding cooperation with the group to areas that go beyond the practices and policies on courts' communication (e.g., efficiency or independence of justices).

5.1.3 Judicial Networks under the Aegis of or Within the EU

For the development of the Scoreboard the Commission has enhanced cooperation with judicial networks such as the European Network of Councils for the Judiciary (ENCJ), the Network of Presidents of the Supreme Courts of the European Union and the European Judicial Training Network.

In particular, the Commission asked the ENCJ to develop indicators for independence and accountability of judicial systems, judiciaries and councils for the judiciary within the EU, as these factors were missing in the first edition of the Scoreboard.¹²² Following this request and starting from 2014, the ECNJ has provided its assistance in the collection of data on legal protection of judicial independence at national level (structural independence). Such figures are based on a questionnaire prepared by the Commission and the ENCJ.¹²³ The cooperation between DG Justice and the ENCJ has proved to be extremely fruitful, as it has provided data that had not been previously available at European level, thus widening significantly the scope of the Scoreboard.¹²⁴ In this framework, both sides have agreed to strengthen the cooperation and explore the possibility of collecting data on the functioning of the justice systems in other focused areas.¹²⁵

¹²² See ENCJ Report 2013-2014, *Independence and Accountability of the Judiciary*, pp. 4 et seq.

¹²³ For Member States, in which councils for the judiciary do not exist, the answers to the questionnaire have been obtained in cooperation with the “Network of the Presidents of the Supreme Courts of the European Union”.

¹²⁴ See also the recent speech of the EU-Justice Commissioner Věra Jourová, “Promoting Effective Justice Systems” (Meeting with ENCJ Assembly/The Hague, 4 June 2015), available at https://ec.europa.eu/commission/2014-2019/jourova/announcements/promoting-effective-justice-systems-meeting-european-network-councils-judiciary-assembly-2015-hague_en (last visited 14 Aug. 2015).

¹²⁵ See COM(2014)155 final, “The 2014 EU Justice Scoreboard”, p. 27 and ENCJ Rome Declaration (11-13 June 2014); see also Velicogna, op. cit. *supra* note 94, at p. 3.

The contribution of judicial networks to further develop the Scoreboard and the successful collection of data for the Commission is just one aspect of the growing role of associations of judicial professions and judicial institutions that have been established under the aegis of the EU. With a broader range of activities such as the exchange of ideas and practices, production of recommendations in the field of judicial organisation, opinions and best practices, they are becoming important actors in EU justice policy-making.¹²⁶

5.2 *Field studies*

The Scoreboard's findings on the time needed by national courts to resolve cases when they apply EU law (competition, consumer protection, Community trademarks) are based on data collected through pilot exercises carried out by the Commission in cooperation with European networks of national authorities (such as the European Competition Network and the Consumer Protection Cooperation Network)¹²⁷ or the European Observatory on Infringements of Intellectual Property Rights.¹²⁸ Data are also collected through field studies conducted by third parties for the Commission (i.e. in public procurement and small claims).¹²⁹

The Commission has claimed that the availability of the “*more fine-tuned data*” gathered since 2015 is a major improvement in the statistical assessments underpinning the Scoreboard.¹³⁰ A closer look reveals a series of problems though: 1) lack of transparency, since no information has been provided on the data collection methods at national level and on the pilot exercises; 2) lack of data, since not all Member States are able to provide statistics of that sort;¹³¹ 3) the fact that, in case of data unavailability, calculations are based on an undefined sample (or even on rough estimates

¹²⁶ For more information on the increasing role of judicial networks see: Benvenuti, “National Supreme Courts and the EU Legal Order: Building a European Judicial Community through Networking”, 6 (I) *Perspectives on Federalism* (2014), 1-28; Claes and Visser, “Are you Networked Yet? On Dialogues in European Judicial Networks”, 8 (II) ULR (2012), 100-114; Dallara, “The Definition of ‘Best Judicial Practices’ by Judicial and Legal Expert Networks and Commissions” in Vauchez (Ed.), *The Fabric of International Jurisprudence. An Interdisciplinary Encounter*, EUI-RSCAS Working Papers 2012/51 (EUI, 2012), pp. 21-31; Magrassi, “Reconsidering the principle of separation of powers: judicial networking and institutional balance in the process of European integration”, 3 (II) *Contemp. Readings L. & Soc. Just.* (2011), 159-180.

¹²⁷ See Fig. 14 and Fig. 15 of the 2015 Justice Scoreboard, respectively.

¹²⁸ See Fig. 16 of the 2015 Justice Scoreboard.

¹²⁹ See Fig. 17 and 25 of the 2015 Justice Scoreboard, respectively.

¹³⁰ See COM(2015),116 final, “The 2015 EU Justice Scoreboard” p. 6.

¹³¹ See Fig. 14-16 of the 2015 Justice Scoreboard.

by courts or national authorities), with the size of the sample varying across Member States;¹³² 4) large disparities between data referring to decisions of the same instance (be it first or second) in two consecutive years (2012-2013) in the same Member State, as a result of the limited number of relevant or sample cases.¹³³ Furthermore, similar difficulties with the collection of reliable data have led the Commission, at least for the time being, to quit its ambitious plan of mapping available enforcement proceedings and providing comparable information on the time needed to satisfy claims at national level.¹³⁴

The Commission's idea to expand the scope of the Scoreboard with data on the efficiency of courts in more specific areas of EU law is a positive development and shows the dynamic character of the Scoreboard as an evolving instrument. However, since these data-collection exercises are still experimental, the reliability of the findings is highly questionable. The Commission should of course persist in its efforts. Nevertheless, a proper use of the study would require that results be published only after the methodology adopted for conducting the pilot exercises has been improved and after the procedure has been made transparent.

5.3 *EU-external sources*

The 2015 Scoreboard also uses data from external sources. The World Bank's Doing Business Report (DBR) has served as a source for the indicator on the time needed to resolve insolvencies, and the Global Competitiveness Report (GCR) of the World Economic Forum (WEF) as a basis for measuring perceived judicial independence.¹³⁵

The Doing Business Report and the Scoreboard show significant differences in the way they present data. Although subject to criticism addressing its methodology,¹³⁶ the DBR tackles questions on the efficiency of resolving insolvencies in a more complex and sophisticated way, in which 'time needed' is only one of three relevant components, along with cost and outcome. These indicators also address the calculation of the recovery rate, i.e. the percentage of the loan a secured creditor would be able to recover at the end of proceedings. From 2015, the DBR introduced

¹³² See Fig. 15 (Footnote 21) and Fig. 16 (Footnote 23) of the 2015 Justice Scoreboard.

¹³³ See Fig. 14 (Footnote 20) and Fig. 15 (Footnote 21) of the 2015 Justice Scoreboard.

¹³⁴ See 2015 Justice Scoreboard p. 18.

¹³⁵ See 2015 Justice Scoreboard, Fig. 13 and Fig. 47, respectively.

¹³⁶ See Kern, *op. cit. supra* note 1; *ib.*, *op. cit. supra* note 2.

an additional indicator, the strength of insolvency framework index (measuring the adoption of internationally recognised good practices in each country). Finally, in its explanatory notes, the DBR provides additional information on the reasons for the fluctuations national performances undergo over time (e.g. insolvency law reforms at national level, reorganisation of proceedings, etc.). The aim of the DBR's analysis is, thus, to capture multiple aspects of the insolvency framework of each economy.¹³⁷

The Scoreboard follows, instead, a different and less sophisticated approach: it only isolates data for the 'time needed' and it presents Member States' performance for 2014 in the form of a diagram. In addition, the Scoreboard is aimed at identifying trends by incorporating Member States' data from previous years. However, no explanation is provided for the fluctuations in Member States' performance over time.¹³⁸ The figures of the Scoreboard give grounds for being characterised as a solid ranking diagram of all Member States.

As far as perceived judicial independence is concerned, the Scoreboard duplicates data collected from the WEF.¹³⁹ The indicator used is based on an executive opinion survey conducted on a representative sample of firms that operate in the main economic sectors (agriculture, manufacturing industry, non-manufacturing industry and services).¹⁴⁰ The firms participating in this exercise were asked to rank their legal system from one to seven on the question "To what extent is the judiciary in your country independent from the influences of members of government,

¹³⁷ For more information see Doing Business Report 2015, pp. 96 et seqq., available at <<http://www.doingbusiness.org/~//media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB15-Full-Report.pdf>> (last visited 14 Aug. 2015).

¹³⁸ On data level, the Scoreboard provides some impressive performances, e.g. that of Czech Republic. Compared to 2010, the time to complete insolvency proceedings has fallen by more than a year (from 3.2 to 2.1 years). However, explanations for that can only be found in the DBR (e.g. reorganisation instead of liquidation as preferred method of insolvency in the new insolvency law, insolvency representatives were subject to educational and professional requirements as well as stricter government oversight etc.). For further information see Doing Business Report 2014, p. 117, available at <<http://www.doingbusiness.org/~//media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB14-Full-Report.pdf>> (last visited 14 Aug. 2015).

¹³⁹ See Fig. 47 and Footnote 5 of the 2015 Justice Scoreboard; WEF, *The Global Competitiveness Report 2013-2014*, p. 415, available at <http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf> (last visited 14 Aug. 2015).

¹⁴⁰ For all EU countries the average number of received responses was less than 100 in each country, whereas the number varies significantly across individual Member States.

citizens, or firms?”. The GCR’s business-oriented approach to perceived judicial independence is in line with its intention to capture the voice of the business sector concerning several matters. By reproducing the same data, the Scoreboard demonstrates once again its strong economic focus and its link to economic growth. Business surveys are often criticized for being biased in favour of an approach that sees law as a way to facilitate commerce, without taking into account other interests.¹⁴¹ In order to achieve a more representative analysis, these surveys might be enlarged so as to include the opinion of users of justice services that are not necessarily related to commerce, such as judges and lawyers, private parties, and consumers.

6. Conclusions

1. The EU Justice Scoreboard is the Commission’s instrument to evaluate Member States’ justice systems. It provides on a yearly basis comparative data on the performance of Member States’ courts from the point of view of efficiency, quality and independence of justice in civil and commercial matters. Although the Scoreboard was initially conceived as a non-binding tool, a deeper analysis of the reasoning of its creation and of its function shows that it goes beyond a simple monitoring and evaluating exercise. Its strong economic focus and its inherent policy dimension reveal that the Scoreboard is rather a governance mechanism that fosters an open dialogue on improving the efficiency of the judiciary and pushes for specific reforms in Member States.
2. The Justice Scoreboard is a very powerful information tool. Its effects stem from both the process of its preparation and the results it delivers. To better illustrate these multiple impacts, we can consider the Scoreboard along three time dimensions: past, present, and future.
3. The Scoreboard reflects the Commission’s past efforts to map the functioning of national judicial systems and to draw up an inventory of potential shortcomings (see part 2). The new tool makes use of innovative methods of comparative law that involve recourse to indicators and empirical evaluations. The Commission’s commitment to endeavour in a challenging data collection from all 28 Member States represents a remarkable

¹⁴¹ For further details see Siems, *op. cit. supra* note 1, pp. 176-179.

example of good cooperation with a number of European and national stakeholders.

4. As for the present, the analysis has shown that the Justice Scoreboard is a part of a wider multi-level and multi-actor effort to monitor, evaluate and improve Member States' economic performance, on one hand, and to protect fundamental rights in the EU justice area, on the other (see part 4). The Scoreboard is, thus, only a small tessera of the larger new EU economic governance and of the new EU strategic framework for strengthening the rule of law in Member States.
5. Furthermore, the analysis of the methodology (see part 5) has shown that the Scoreboard is the end-product of an intensified transnational dialogue – carried out under the auspices of the Commission among EU institutions, national courts and judicial networks – that focuses on the improvement of national justice systems.
6. This paper has highlighted some drawbacks in the current Scoreboard methodology. Far from implying that the results of the Commission's exercise should be discarded, such criticisms aim to suggest possible improvements that might make this exercise more accurate. Reliable data are indeed a prerequisite for both policy making and academic debate. Furthermore, communication should not prevail over substance. Narrative comments, explanations and data analysis should accompany the eye-catching bar charts that display the findings of the Scoreboard. Otherwise, despite the Commission's denial, the Scoreboard will continue to be perceived as a mere ranking of national legal systems.
7. As for the future, the Scoreboard marks a significant transition in the Commission's policy towards EU Justice from supranational harmonization to softer methods of policy coordination through monitoring and evaluation. Although it is still too early to assess whether this transition anticipates a paradigm shift in the Commission's policy towards EU Justice, the Scoreboard (after some commendable improvements in methodology and data presentation) holds a remarkable unexpressed potential for the future and could work as a basis for experimenting with new governance tools in the area of EU Justice.