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# DRAFT REPORT

on the 2017 EU Justice Scoreboard  
(2018/2009(INI))

Committee on Legal Affairs

Rapporteur: Jytte Guteland

Rapporteur for the opinion (\*): Sylvie Guillaume

(\*) Associated committees – Rule 54 of the Rules of Procedure

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the 2017 EU Justice Scoreboard (2018/2009(INI))

*The European Parliament,*

- having regard to the communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions of 10 April 2017 entitled ‘The 2017 EU Justice Scoreboard’ (COM(2017)0167),
- having regard to the 2017 European Commission Joint Research Centre study entitled ‘The judicial system and economic development across EU Member States’<sup>1</sup>,
- having regard to the 2017 Institute for Legal Reform Survey entitled ‘The Growth of Collective Redress in the EU’<sup>2</sup>,
- having regard to the Gender Statistics Database of the European Institute for Gender Equality (EIGE)<sup>3</sup>,
- having regard to the 2011 ‘Joint Contribution by ILGA-Europe and Transgender Europe towards the European Commission’s monitoring of the implementation of the Gender Goods and Services Directive and the Gender ‘Recast’ Directive in the EU Member States’<sup>4</sup>,
- having regard to Milieu’s 2011 ‘Comparative study on access to justice in gender equality and anti-discrimination law’<sup>5</sup>,
- having regard to the Council of Europe’s Recommendation on judges: independence, efficiency and responsibilities (CM/Rec(2010)12)<sup>6</sup>,
- having regard to the 2017 European Parliament Policy Department for Citizens’ Rights and Constitutional Affairs study entitled ‘Mapping the Representation of Women and Men in Legal Professions Across the EU’<sup>7</sup>,
- having regard to the annual evaluation reports on European judicial systems drawn up by the Council of Europe’s European Commission for the Efficiency of Justice

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<sup>1</sup>[http://publications.jrc.ec.europa.eu/repository/bitstream/JRC104594/jrc104594\\_2017\\_the\\_judicial\\_system\\_and\\_economic\\_development\\_across\\_eu\\_member\\_states.pdf](http://publications.jrc.ec.europa.eu/repository/bitstream/JRC104594/jrc104594_2017_the_judicial_system_and_economic_development_across_eu_member_states.pdf) (accessed 14 December 2017).

<sup>2</sup>[http://www.instituteforlegalreform.com/uploads/sites/1/The\\_Growth\\_of\\_Collective\\_Redress\\_in\\_the\\_EU\\_A\\_Survey\\_of\\_Developments\\_in\\_10\\_Member\\_States\\_April\\_2017.pdf](http://www.instituteforlegalreform.com/uploads/sites/1/The_Growth_of_Collective_Redress_in_the_EU_A_Survey_of_Developments_in_10_Member_States_April_2017.pdf) (accessed 14 December 2017).

<sup>3</sup> <http://eige.europa.eu/gender-statistics/dgs>

<sup>4</sup>[https://www.ilgaeurope.org/sites/default/files/Attachments/report\\_on\\_gender\\_discrimination\\_in\\_employment\\_and\\_access\\_to\\_goods\\_and\\_services\\_1.pdf](https://www.ilgaeurope.org/sites/default/files/Attachments/report_on_gender_discrimination_in_employment_and_access_to_goods_and_services_1.pdf) (accessed 4 January 2018).

<sup>5</sup> Milieu Ltd (2011), ‘Comparative study on access to justice in gender equality and anti-discrimination law’, Synthesis report, DG Justice of the European Commission, Brussels.

<sup>6</sup>[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec\(2010\)12&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec(2010)12&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true)

<sup>7</sup> [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596804/IPOL\\_STU\(2017\)596804\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596804/IPOL_STU(2017)596804_EN.pdf) (accessed 14 December 2017).

(CEPEJ)<sup>1</sup>,

- having regard to Rule 52 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A8-0000/2018),
- A. whereas the Commission has published the 2017 EU Justice Scoreboard, a comparative, non-binding tool assessing the effectiveness of national justice systems, in order to better define Member States' justice policies, focusing for that purpose on the parameters of justice systems that contribute to an improved business, investment and consumer climate in the Union;
- B. whereas the 2017 EU Justice Scoreboard does not present an overall ranking of national justice systems;
- C. whereas the 2017 EU Justice Scoreboard focuses mainly on civil, commercial and administrative justice;
- D. whereas this non-binding exercise has the merits of identifying both positive and negative trends and of offering a forum for exchange of best practices across the Union;

### *General observations*

1. Takes note of the 2017 EU Justice Scoreboard with great interest and calls on the Commission to further promote this exercise in accordance with the Treaties and in consultation with the Member States;
2. Supports the aim of this exchange and stresses that an effective and independent justice system could give businesses incentives to develop and invest at national and cross-border level, while at the same time protecting consumers and workers, thus boosting their economic contribution;
3. Notes the importance of judicial benchmarking for cross-border mutual trust, for effective cooperation between justice institutions and for the creation of a common judicial area and a European judicial culture; encourages the Commission, therefore, to continue developing concrete indicators to assess, in practice, the upholding of EU values such as the rule of law or respect for fundamental rights;
4. Believes that such a comparison must be based on objective criteria and evidence that is accurately compiled, compared and analysed while taking individual constitutional and legal frameworks into account; stresses the importance of ensuring equality of treatment between all Member States when impartially assessing their justice systems;
5. Welcomes the efforts of the Commission to provide measurable data and draw concrete conclusions on how Member States have improved or may yet improve the quality and efficiency of their justice systems; regrets that there are still instances where, though applicable or available, no data have been provided by some Member States for certain categories; calls on Member States, therefore, to fully collaborate with the Commission

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<sup>1</sup> [https://www.coe.int/t/dghl/cooperation/cepej/evaluation/default\\_en.asp](https://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp)

by sharing relevant, up-to-date data;

6. Calls on the Member States to examine the results of the 2017 Justice Scoreboard closely and to determine what lessons need to be drawn therefrom;

### *Efficiency*

7. Underlines the importance of efficient and timely proceedings in strengthening consumer protection and safeguarding intellectual property and data privacy rights; notes with concern that such proceedings are still too lengthy in some Member States;
8. Encourages Member States to invest in the continued development and use of ICT tools in their judicial systems, in an effort to make them more accessible and comprehensible to all EU citizens, including those with any form of disability; emphasises the benefit of ICT systems in reducing costs for all stakeholders involved and in improving the overall efficiency and quality of justice systems, and regrets that their full potential has not yet been reached in all Member States;
9. Highlights the need to intensify and diversify the scope of training offered to judges, namely in the fields of gender structures, judicial ethics, IT skills, court management and communication with parties and the press; underlines furthermore the importance of adequate training in EU law and different EU cooperation structures, such as Eurojust;

### *Quality*

10. Asks the Commission to consider collective redress procedures in next year's comparative exercise on accessibility factors of justice systems, as it is increasingly significant for facilitating access to justice and efficient dispute resolution;
11. Highlights that legal aid for consumers below the poverty threshold remains an essential balancing factor; underlines the role of legal aid in guaranteeing that weaker parties may also have access to justice, a fundamental right under EU law;
12. Calls on the Commission to introduce, during next year's exercise, a new indicator on access to justice for the LGBTI community, for example concerning access to legal aid, the length of proceedings in LGBTI discrimination cases or, where applicable, the impact of measures such as the reversed burden of proof;
13. Stresses the need to address the still existing gender balance disparities and considerable ratio gaps among judges, namely in higher instance courts/supreme courts, at both national and European level; takes note with regret of the recent negative development in the proportion of female professional judges in some Member States;
14. Highlights that there is still much to do in terms of gender equality in the judicial professions across Europe, for example in terms of gender stereotypes, transparency in appointments, reconciliation between work and non-work responsibilities or the existence of mentoring practices; emphasises the clear discrepancy between the proportion of female professionals at lower levels of the judiciary (including non-judge staff) and that at the higher court and prosecution levels;

15. Recalls the 2015 Joint Statement by the European Parliament and the Council stating that Member States should, to the greatest possible extent and in view of the objective of achieving equality between men and women laid down in Article 3 of the Treaty on European Union, ensure an equal presence of women and men when appointing candidates as judges at the General Court of the Court of Justice of the European Union;
16. Underlines that, while over half of the Member States increased expenditure on the judicial system per inhabitant in 2015, the determination of financial resources is still mostly based on historical or actual costs instead of actual workload or number of court requests;
17. Welcomes the increased use of alternative dispute resolution systems in most Member States, in particular that of the European online dispute resolution (ODR) platform for consumers and traders;

### *Independence*

18. Calls on Member States to give great consideration to the fact that a strong, independent judicial system relies, on the one hand, on the lack of interference or pressure from government and politics and, on the other hand, on effective guarantees provided by the status and position of judges;
19. Points out the importance of impartial, i.e. free from arbitrary executive discretion, and comprehensive mechanisms for the appointment, evaluation, transfer or dismissal of judges;
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  - ◦
20. Instructs its President to forward this resolution to the Council and the Commission.

## EXPLANATORY STATEMENT

This own initiative report is a response to the Commission's 2017 EU Justice Scoreboard. In the Union, enforcement of law before courts remains largely the matter of national procedural rules and practice. National courts are also Union courts. It is therefore for the proceedings before them to ensure fairness, justice and efficiency as well as effective application of Union law.

The right to an effective remedy and to a fair trial, as enshrined in Article 47 of the Charter and in Article 6 ECHR, constitutes one of the fundamental guarantees for the respect of the rule of law and democracy.

Although the Member States are party to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), experience has shown that that alone does not always provide a sufficient degree of trust in justice systems of other Member States. The extent of mutual trust is very much dependent on a number of parameters, which include, inter alia, mechanisms for safeguarding the rights of the claimant or the defendant while guaranteeing access to courts and justice.

An important and current example of the relevance of the latter parameters is LGBTI discrimination cases. Not unlike what is often still the case with other kinds of discrimination (based on gender, religion, etc.), the effectiveness of the European legal framework - including Article 21 of the EU Charter of Fundamental Rights on non-discrimination - depends on victims' capacity to access justice. That capacity entails, among other factors, efficient and timely proceedings, reasonable costs of legal representation and judges' awareness on how to deal with such cases (e.g. dealing with the practical implementation of measures like a reversed burden of proof). As relevant literature indicates, these factors are not yet a full reality. From this perspective, it would therefore be useful to have Member States providing concrete data about measures or policies - either being designed or already in place - aimed at better addressing the aforementioned obstacles. For instance, they could provide information on whether their national laws provide time limits (and which) for the issuing of a judicial decision and, if so, whether those limits vary according to the cases in question and whether they are respected or not due to excessive workload, scarce resources, etc.<sup>1</sup>

Your rapporteur thus welcomes the objective of efficient, independent and of high quality judicial systems in the Member States. This would furthermore contribute to economic growth and increased consumer protection. . In order to make a more comprehensive assessment, your Rapporteur has however also chosen to make use of other information sources than the scoreboard itself, such as information from the Institute for Legal Reform, the European Institute for Gender Equality (EIGE), Council of Europe, one of the Parliament's own Policy Departments etc.

Indeed, an improvement of court efficiency can lead to a greater growth rate for the economy, whereas businesses' perception of judicial independence can lead to increased growth in

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<sup>1</sup> Please see "Joint Contribution on the Commission's Monitoring of the implementation of the Gender Goods and Services Directive and the Gender 'Recast' Directive in EU Member States" (ILGA, 2011) and "Comparative Study on access to justice in gender equality and anti-discrimination law" (2011, Milieu).

productivity. Where judicial systems guarantee the enforcement of rights, creditors are more likely to lend, firms are dissuaded from opportunistic behaviour, transaction costs are reduced and innovative businesses are more likely to invest.<sup>1</sup>

That being as it may, it should be underlined that further improvement is needed with regard to the online provision of information about national justice systems, namely through web pages which are accessible to the visually impaired or which provide interactive tools enabling citizens to find out whether they are eligible for legal aid. Online availability of court judgments for civil/commercial and administrative cases could also be improved across all instances.

What is more, it is to be noted that the negative trend, seen currently in some Member States, regarding the level of gender balance among judges in higher instances/Supreme Courts is not only an issue at national level. The most recent data collected by the European Institute for Gender Equality shows that the ratio of female presidents and members of European Courts, namely the European Court of Justice of the European Union, is 19.2% in comparison with that of men at 80.8%. Nevertheless, the lack of gender balance may also be observed in judicial professions other than that of judge. With effect, a decrease in the overall proportion of female professionals at the level of the courts can also be concluded. This fact, as well as the significant discrepancy between the proportion of female professionals in lower levels of the judiciary (including non-judge staff) and that in the higher court and prosecution levels, can be explained, *inter alia*, by the lack of mentoring practices, transparent appointment procedures, supportive networks or the visibility of female role models in the most senior positions in the judicial professions.<sup>2</sup>

As far as judicial independence is concerned, your rapporteur welcomes the fifth World Economic Forum survey, which shows that businesses' perception of independence has improved or remained stable in more than two-thirds of Member States with a low level of perceived independence. She considers however, that having more safeguards alone does not ensure the effectiveness of a justice system and that implementing policies and practices to promote integrity and prevent corruption within the judiciary is also an essential element to guarantee judicial independence. The need for such policies and practices is well illustrated by the worrisome and recent developments that have taken place in some Member States and remains, therefore, of the utmost urgency.

Accordingly, having in place a comprehensive and impartial recruitment process for judges, from examination to appointment, hence avoiding discretionary decision-making as much as possible, and founding the final decision on concrete and objective factors seems the right way forward. Additionally, the provision of strong safeguards in cases of non-appointment, such as the obligation to provide reasons and the possibility of a judicial review, is also necessary. To the same direction, a system for the assessment of judges based on objective criteria would be crucial as well as for the review by an independent panel of decisions for the transfer or dismissal of judges.<sup>3</sup>

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<sup>1</sup> Please see “The judicial system and economic development across EU Member States” (European Commission, 2017)

<sup>2</sup> Please see Gender Statistics Database of the European Institute for Gender Equality and “Mapping the Representation of Women and Men in Legal Professions Across the EU” (EP, 2017).

<sup>3</sup> Please see CM/Rec(2010)12.

As far as the training of judges is concerned, and despite considerable progress in this area, efforts are still needed to diversify the scope of the training offered. Continuous training on judicial skills, IT skills, court management and judicial ethics does not exist in all Member States. Moreover, certain Member States do not provide any training on communicating with parties and with the press. Further training should be offered in terms of gender balance in the professional environment and in handling gender violence cases.

Finally, and in order to ensure a comprehensive and accurate evaluation of the status quo, it would be of particular importance to address the data gap issue. Although due to good cooperation with Member States, the judiciary and other stakeholders, and due to the development of new indicators, such as the 'end-users' perspective', the data gap seems to be closing, there still appears to be a lot of unavailable data and discrepancy in the amount and specificity of data provided by the Members States.