European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

SÚDNA RADA SLOVENSKEJ REPUBLIKY

General Assembly meeting

Bratislava, 5 – 7 June 2019

Réunion de l'Assemblée Générale

Bratislava, les 5 -7 juin 2019

6 June

European Network of Councils for the Judiciary (ENCJ)

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"The Future of the Rule of Law and Justice in Europe"

6 June

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Opening of the General Assembly

Kees Sterk

President of the ENCJ

6 June

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Opening of the General Assembly

Lenka Praženková

President of the

Sudna Rada Slovakia

6 June

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Opening of the General Assembly

Gabor Gal

Minister of Justice,

Republic of Slovakia

6 June

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Réseau européen des Conseils de la Justice (RECJ)

Opening of the General Assembly

Laurent Pech

Professor

Head of Department Law

Middlesex University London

6 June

1. What is "rule of law backsliding"?

The **process** through which

(1) elected public authorities **deliberately** implement governmental blueprints which

(2) aim to **systematically** weaken, annihilate or capture internal checks on power with

(3) the view of dismantling the liberal democratic state and entrenching the long-term rule of the dominant party

Pech and Scheppele, 'Illiberalism Within: Rule of Law Backsliding in the EU' *Cambridge Yearbook of European Legal Studies* (2017)

2. How does one undermine the rule of law and get away with it

1/ Undermine checks and balances one small step at a time starting with the country's top courts and the media (see my "constitutional capture" recipe in 2017 CYELS article)

2/ Desensitise public/wear down citizens (national dimension)

3/ Play for time (EU dimension)

4/ Counter internal/external criticism by (i) denying the obvious; (ii) distracting the population and/or (iii) hide behind the "will of the people" and/or misleading use of foreign/EU law

5/ Change the facts on the ground before promising and/or adopting cosmetic concessions if/when under pressure and double down as soon as external attention has shifted elsewhere

6/ Force external monitoring bodies such as European Commission or Venice Commission into Sisyphus-type work by constantly changing the law

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Results Projects 2018-2019

Project 1: Independence, Accountability and Quality of the Judiciary

6 June

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INDEPENDENCE, ACCOUNTABILITY AND QUALITY

Project team 1

Agenda

1. Improvement cycle and improvement plans (Nerijus Meilutis)
2. Independence and Accountability: indicators and surveys (Frans van Dijk)
3. Quality of justice (Simon Picken)
4. Discussion (Pedro Alvarez de Benito)

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INDEPENDENCE, ACCOUNTABILITY AND QUALITY

Planning Cycle and Improvements Plans

MAIN TOPICS

1. Cyclical process of improvement. What is it?
2. Why do we need it when working on Independence, Accountability and Quality?
3. Improvement plan. What is its significance for Members and Observers?
4. Recommendations for the improvement plans.
5. Conclusions and proposals.
6. Improvement cycle for the next year and the future.

WHY DO WE NEED TO PLAN?

- Improvement is ongoing and must follow a consistent course.
- Members and Observers are able to clearly understand and plan their activities at national level.
- When new Members/Representatives join the project, it will be clear to them what is going on.
- It is a mechanism to ensure that the results of indicators and surveys are part of the development of National Improvement plans and that concerns about independence and accountability are addressed.

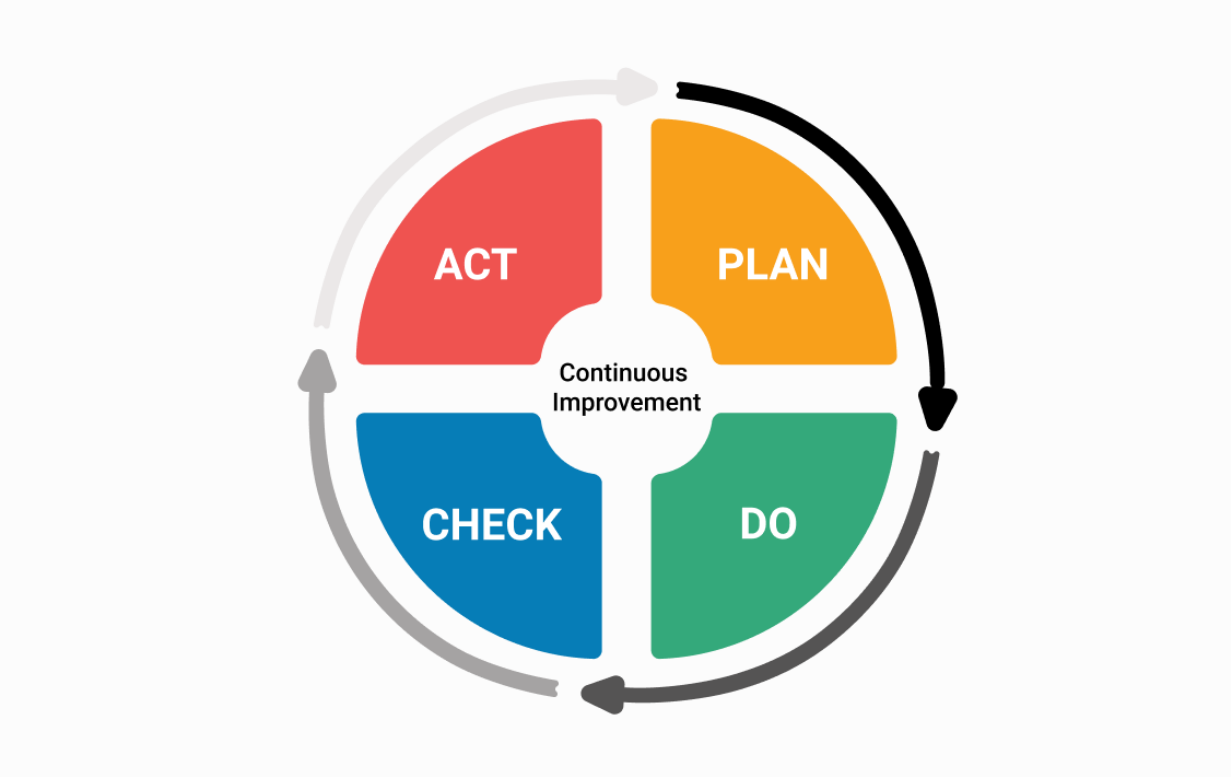
GENERAL PLANNING CYCLE

P (plan)

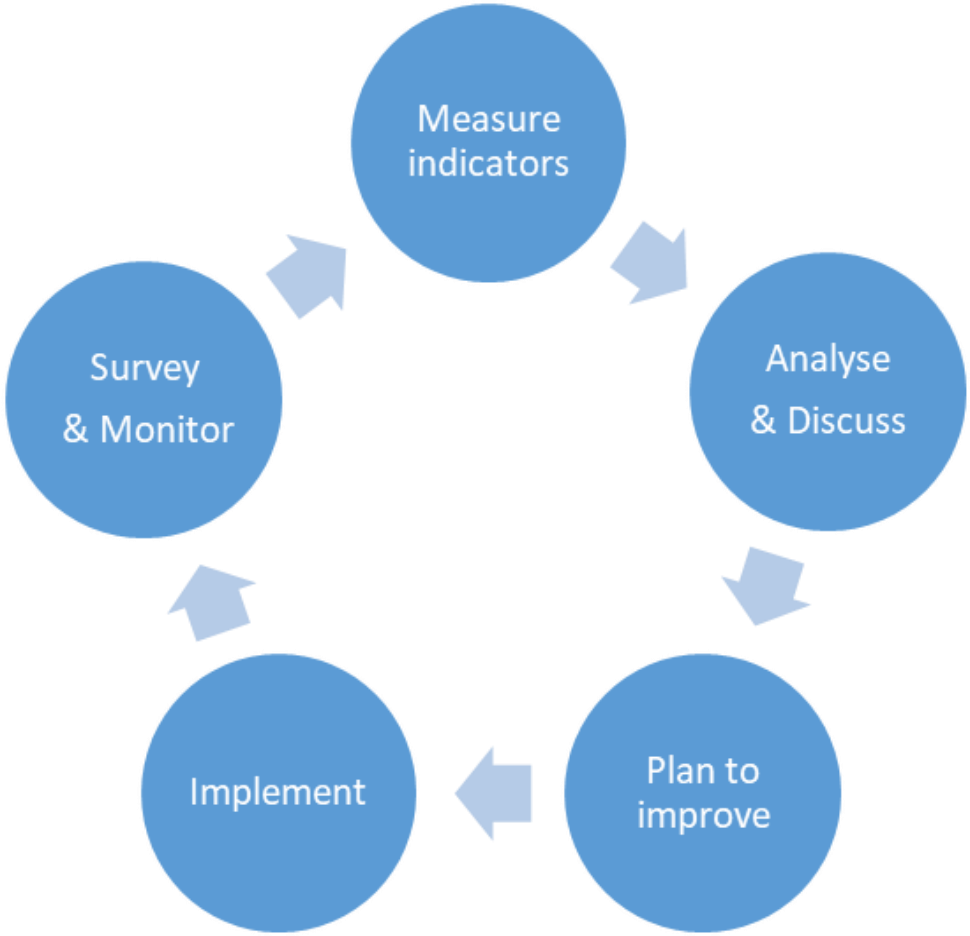
D (do)

C (check)

A (act)



ENCJ PLANNING CYCLE



IMPROVEMENT PLAN (1)

- Improvement plans are the most important part of the cycle.
- In the current cycle, the plans should have been submitted by June 2018.
- Not all Members have submitted plans.
- The reasons were identified and analyzed.
- Guidelines have been developed to make it easier to prepare Improvement Plans.
- Members need to present their next Improvement Plans in the new planning cycle (i.e. 2021 first half).

IMPROVEMENT PLAN (2)

- The plans are prepared after the meetings of the dialogue groups, taking into account the results of these meetings.
- The National Improvement Plans should take into account the results of the ENCJ indicators and surveys to improve the independence and accountability of judiciary.
- The Improvement plans could be a great tool for the Councils to prepare their National Strategic Plans

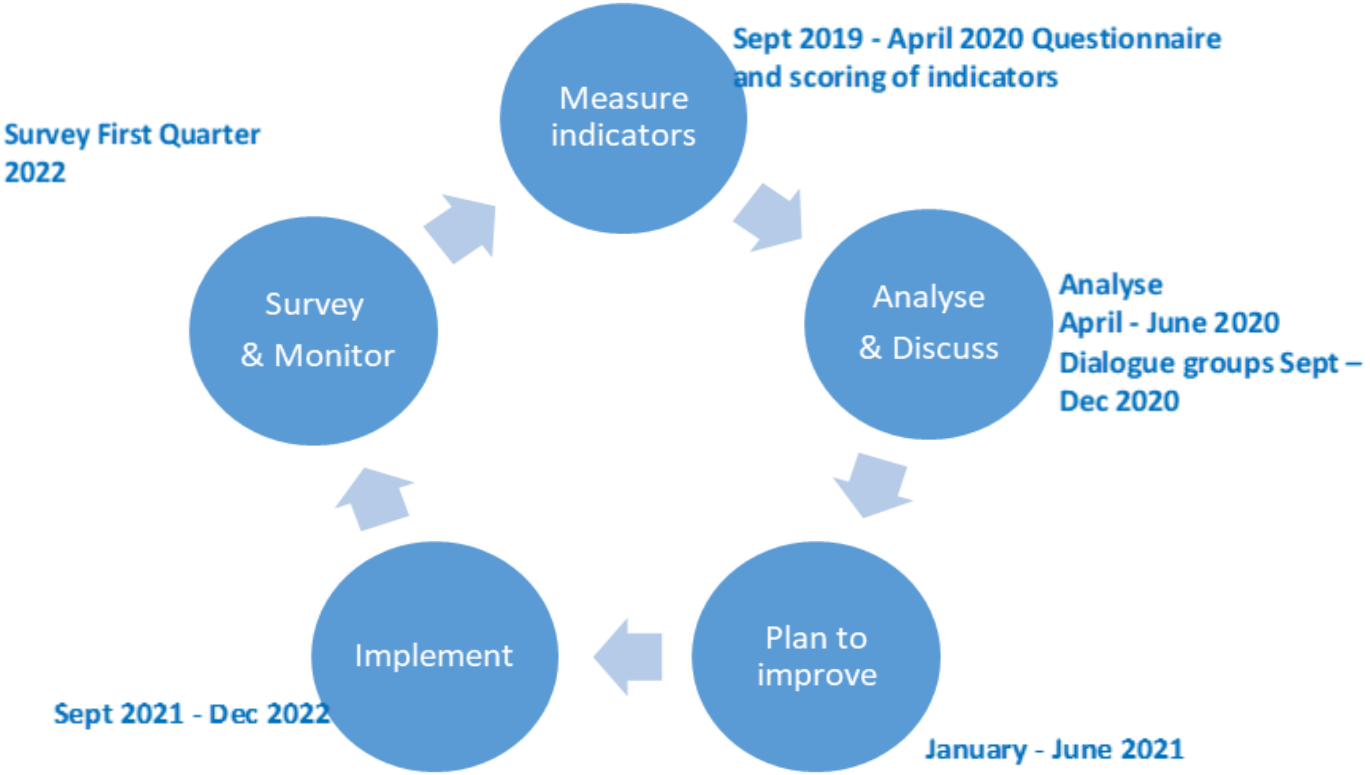
RECOMMENDATIONS ON IMPROVEMENT PLANS

- Focus on 2-3 topics
- Focus on the mandate of the Council
- Formulate strategic objectives
- Describe how the objectives will be realized
- Establish timelines
- Identify risks
- Name the stakeholders (but it is highly recommended to rely first of all on your Council)
- Determine monitoring mechanism

CONCLUSIONS & PROPOSALS

- Improvement of Independence and Accountability requires long term effort in a Plan-Do-Check-Act cycle
- Improvement plans should be linked to general strategic plans of Councils
- Improvement plans should focus on two-three topics, be aligned with the Council's own mandate and practical (with defined responsibilities, timelines, etc.)
- Improvement plans should also reflect the data and results we have obtained during our project.

The next cycle



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INDEPENDENCE and ACCOUNTABILITY

Indicators and surveys

What did we achieve?

1. Significant improvement I&A indicators
2. Design of a procedure to get reliable results
3. Survey among judges
4. Survey among lawyers with CCBE

Improvement of indicators: Independence

- Appointment for life added
- More precise reference to ENCJ guidelines on councils
- Inappropriate reasons for disciplinary measures added
- Perception of lawyers about judicial independence added as indicator

Improvement of indicators: accountability

- Better concept of accountability:
  - Transparancy
  - Involvement of civil society in governance
  - Mechanisms to promote and maintain ethical standards
- Understandable procedures from A to Q
- Perceived adherence to ethical standards
- Perceived adequacy of actions to address judicial misconduct and corruption

Procedure measuring I&A indicators

1. Questionnaire to Councils to measure indicators
2. National expert group to validate measurement by Council
3. At least two persons from Academia, but can be more
4. Retain international expert group to check consistency across countries

Participation judges survey

- 25 countries, 27 entities
- 11.335 judges responded

- Out: Albania, Estonia, France, **Poland**, Serbia,
- In: Bosnia, Greece, **Hungary**, Montenegro
- UK → Engeland and Wales, Scotland, Northern Ireland

Participation lawyers survey

- 26 countries, but 21 with sufficient observations
- 4,250 lawyers participated
- High response: Poland, Hungary, Norway, Sweden

Different composition:

- Extra: **France**, Cyprus, Luxembourg, **Poland**
- Less: Bosnia, Bulgaria, Croatia, Montenegro
- Not sufficient: Austria, Denmark, Estonia, Finland, Luxembourg
- England and Wales, Scotland, Northern Ireland → UK

Independence in general

According to judges	According to lawyers
Score: 6.5 – 9.8	5.2 - 9.0
Average: 8.3	6.7

Correlation is high: 0.77

Conclusion: - generally positive scores
- consistent views about countries

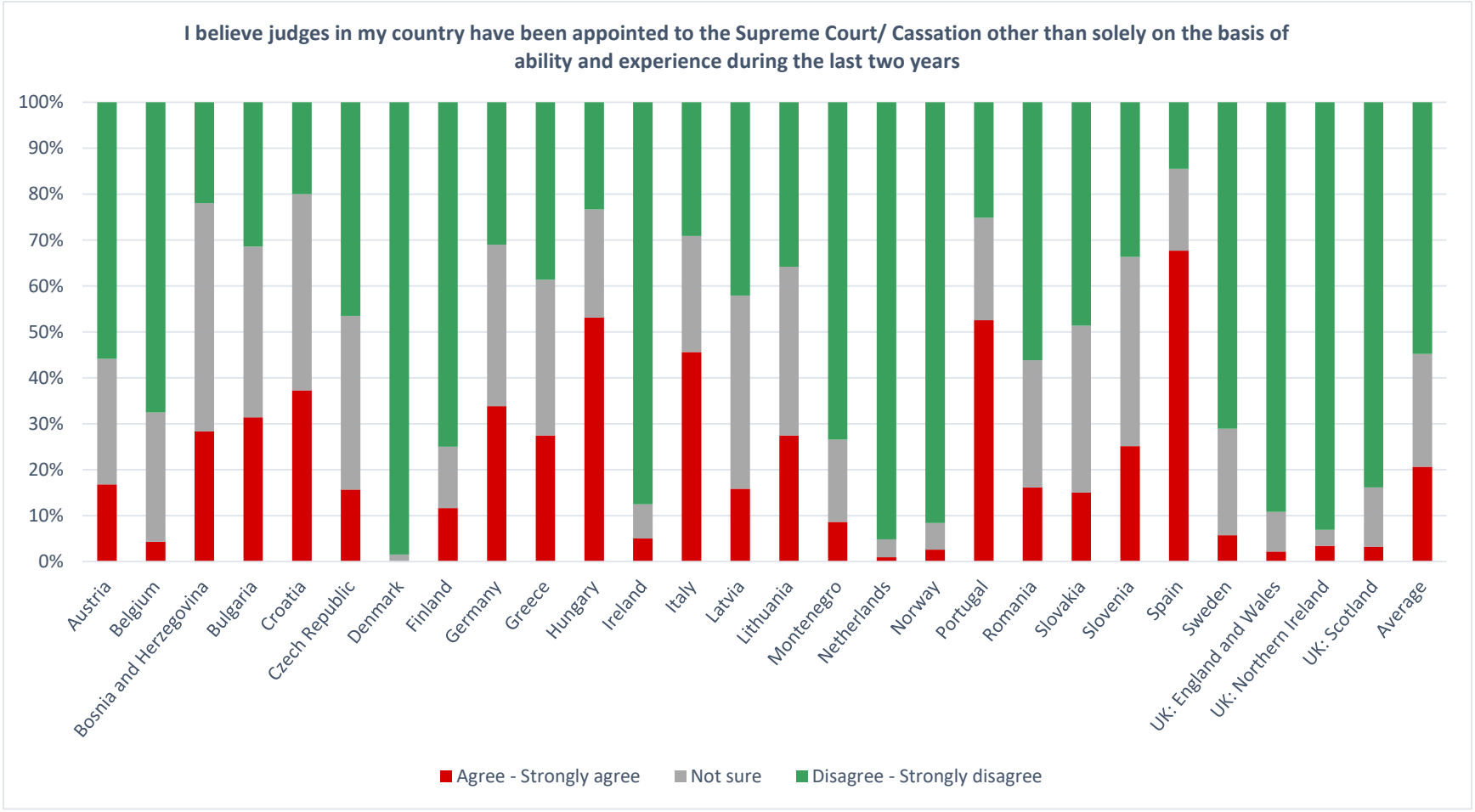
Main issues re independence

1. Appointment and promotion of judges

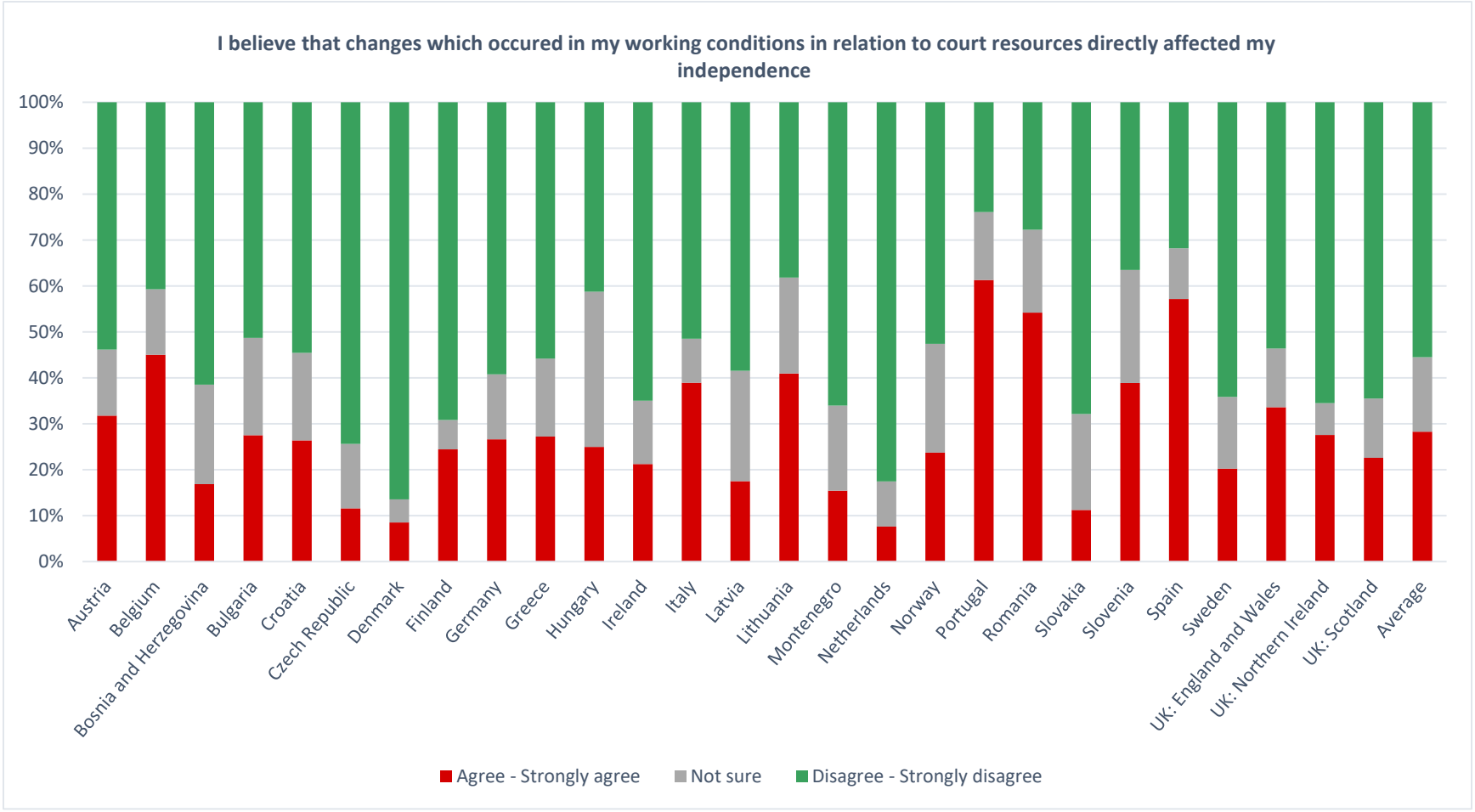
2. Court resources

3. Respect for independence by state powers and media

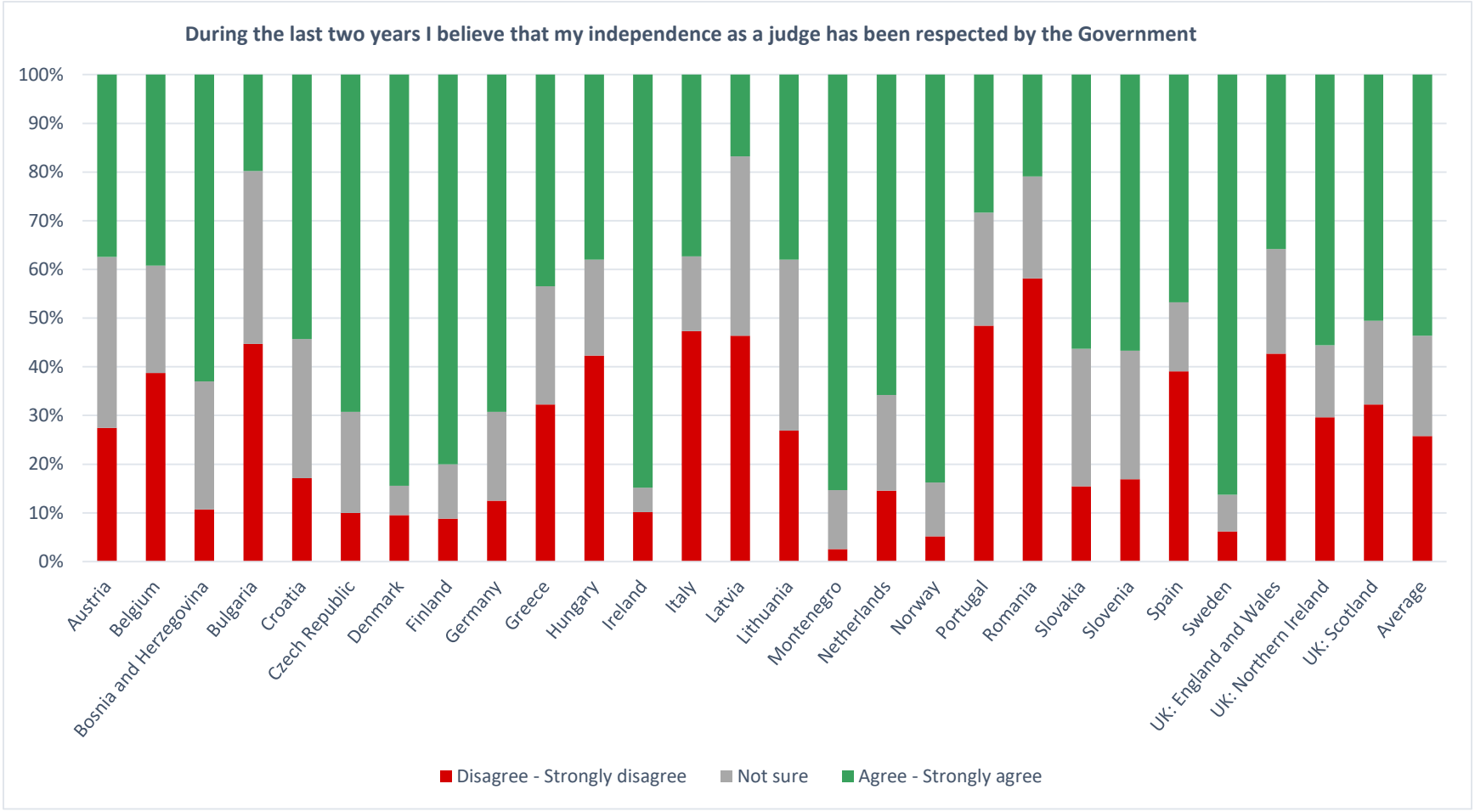
NEW: Appointment to Supreme Court



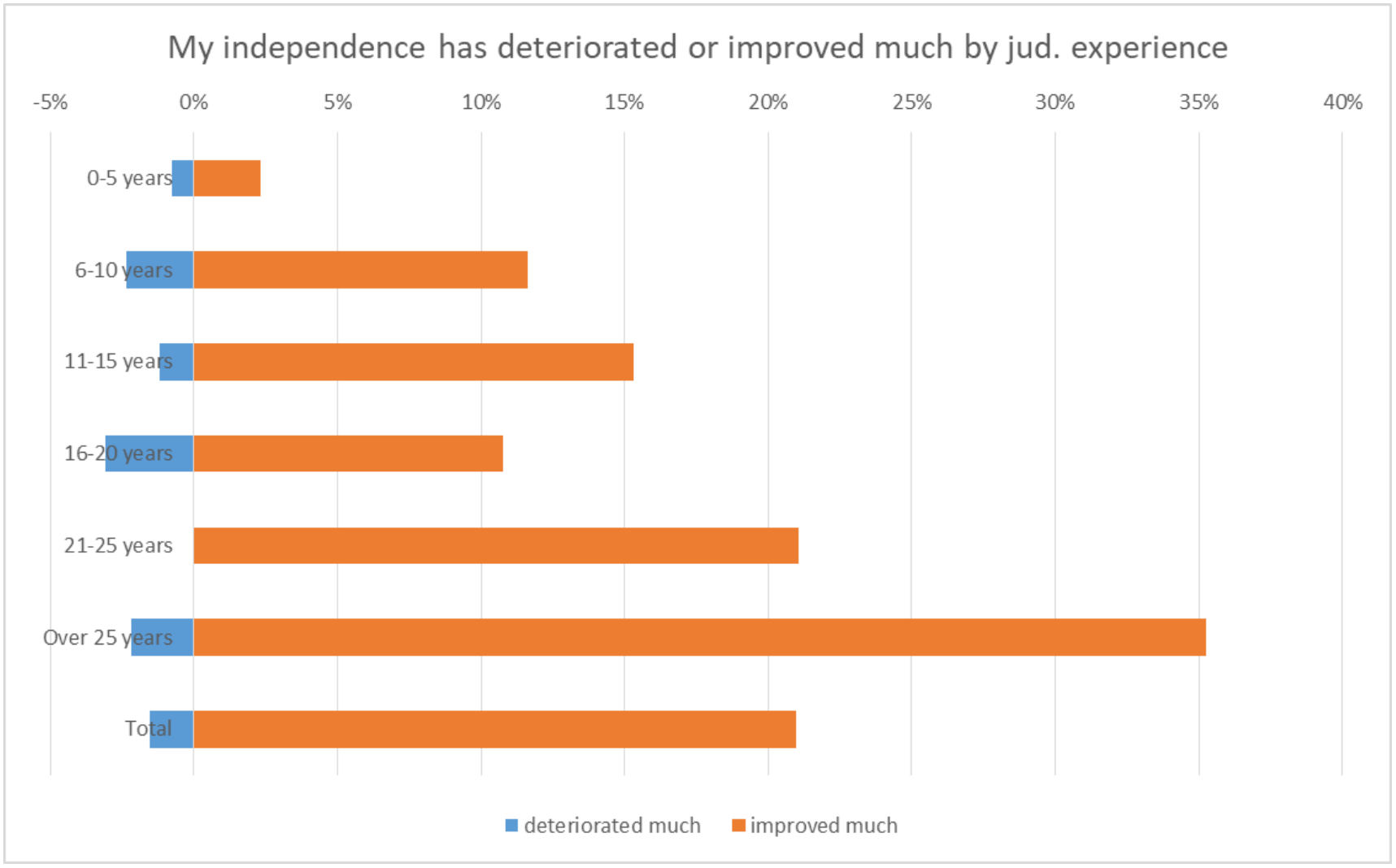
Court resources



Respect of judicial independence by government



NEW: Change of independence: Slovakia



Conclusions from surveys

1. Successful judges survey; improved lawyers survey
2. Judges are generally positive about their independence
3. Lawyers are more critical but generally positive
4. Many issues re human resource decisions
5. Resource constraints are a broad problem
6. Lack of respect for independence by other state powers and the media is a major issue
7. Mechanisms to combat corruption can be strengthened

Next steps I&A

1. Follow-up surveys: presenting and discussing results
2. Implementation of the I&A indicators:
   - Answering of questionnaire
   - Organizing national expert groups
3. Develop plan to address key issues raised by the surveys:
   - Respect for independence by state powers and media
   - Resources of Judiciary

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Quality of Justice
2018/2019

What did we achieve?

Production of a new and improved Quality Questionnaire

Previous work

- The extension of the Indicators to Quality of Justice started at the General Assembly in 2015.
- Why? Because the objective of an independent and accountable judiciary is to produce Quality of Justice for society.

2016/2017

- A set of Indicators was developed and applied in a pilot for three judiciaries.
- The pilot indicated that that a set of Indicators would provide a good basis for a system for all members and observers.
- It was, therefore, agreed at the General Assembly in 2017 that, after refinement of the Indicators, the Indicators would be applied by all members and, where possible, observers.

2017/2018

- It was intended that this would be done in 2017/2018.
- In total, 23 members and observers completed the 2017/2018 Questionnaire.
- However, some complications were encountered during the implementation of the indicator system.

Complications re questions

These included:

- inherent subjectivity of some questions; some questions allowed only binary answers;
- interpretation of questions in different legal/judicial systems: what is clear in one system, may be ambiguous in another;
- differences between courts and areas of law such as the distinction between first instance and appeal courts and between civil and criminal law.

… and scoring

Some ambiguities with regard to the scoring of answers were also highlighted.

2018/2019

- Hence, the work carried out by the sub-group this year (2018/2019) …

Tasks undertaken

At its meetings during 2018-2019, the following tasks were undertaken:

- reduction in questions which required subjective judgment;
- removal of ambiguities and uncertainties in some questions;
- simplification in the Questionnaire in order to make it more understandable and easier to complete.

After this work was done, scoring was considered.

Examples - 1

- In many questions, the number of options was reduced.
- For example the five options *“all types of cases, most types of cases, half of the types of cases, some types of cases and no”* were reduced to three options *“most types of cases, some types of cases and no”*.
- Also, the four options *“all courts, most courts, half of the courts and some courts”* were also reduced, in this case to two options *“all courts and some courts”*.
- These changes have resulted in a significant simplification of the Questionnaire.

Examples - 2

- Certain questions were removed either because it was not apparent that they identified a Quality issue or because the answer was controversial.
- For example, the question whether parties in civil or criminal cases are obliged to be represented by a lawyer: some national systems consider it important that unrepresented parties can obtain effective access to the courts, and it cannot therefore be regarded as a universal indicator of Quality that unrepresented parties are excluded.

Examples - 3

- The earlier version of the Questionnaire included the question *“Is there a requirement for permission to appeal?”*.
- There may, however, be scope for disagreement as to whether a system that imposes a requirement for permission is of greater or lesser Quality than a system that does not.
- The question was therefore both broadened and clarified, and now asks *“Is there a filtering system to prevent appeals which are without merit from proceeding to a full hearing?”*.

Examples - 4

- Scoring rules were revised to avoid double penalisation where a negative answer to a question resulted in the country concerned being unable to obtain any score for a supplementary question.

Revised Quality Indicators

- The sub-group did not make any substantive alteration to the Indicators themselves.
- Rather, the work carried out focused on the detail of the Questionnaire – with only modest refinement to the Indicators (see report at pp. 87-89).

Pilot

- The Questionnaire in its final revised form was piloted among a few members of the sub-group.
- At first sight and albeit only a very provisional basis, to be broadly realistic.
- As such, the methodology would appear to work.

Next steps - 1

- Next year (2019/2020) the revised Questionnaire should be completed by all members and observers with a view to the results being analysed and reported upon at the General Assembly which takes place in May/June 2020.

Next steps - 2

- The Indicators may be subjected to further review by the Project Group – as well as, perhaps, by external sources in, say, March 2020, as part of a validation process - in the light of the Questionnaire results and any further comments received from members and observers when submitting their completed Questionnaires.

Next steps - 3

- Although not necessarily work to be performed next year, consideration should also be given to the sub-group doing work on the Quality aspect of a court-user survey.

Next steps - 4

- Following analysis of the results of the revised Questionnaire, it will be up to individual Councils to identify the areas in which there is potential to improve Quality, and to take appropriate steps to achieve such improvement

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Results Projects 2018-2019

Project 2: Public Confidence and the Image of Justice

6 June

PUBLIC CONFIDENCE AND THE IMAGE OF JUSTICE

Institutional and Individual Use of Social Media within the Judiciary

ENCJ-REPORT 2018-2019

Communication *by* and *for* the judiciary

Active TRANSPARENCY

Judiciary = partner

ACCOUNTABILITY

TRANSPARENCY

INDEPENDENCE

TRUST

LEGITIMACY

Social media

Individually

Institutionally

Objectives and outcomes

Improve communication

Sharing regular and consistent information

Developing organisational culture

Understanding roles and responsibilities

Enhance productivity and effectiveness

Feeling important and valuable

Defend the system

Developing productive relationships

Regular institutional contact

Public awareness

Education and responsibilities

Guidance and consistency in delivering information

How to draft a communication strategy?
The establishment of a spokesperson
Report 2017-2018
Training in communication skills
constant contact with the general public

Projects for 2018-2019

The corporate use of social media

Guidelines for using social media by individual judges/prosecutors

Communication instruments with other branches of state power

Projects for 2019-2020

Protocols with influential actors

Best practices with other legal professionals

Conference with representatives of other state powers

Current Objectives

- Identify gaps of communication and improve relationships with other branches of power
- Improve the use of social media by individual judges/prosecutors
- Improve the use of social media by judicial councils

Future Objectives

- Identify best practices and promote strategies of communication with influencers
- Fair communication among legal professionals
- Use brand equity and designe to improve the image of justice

BOUNDARIES- no evaluation of compliance with national systems

RISKS : substantial differences between the judicial systems; reluctance of councils for the judiciary; the complexity of the topics

RESULTS: increase confidence; improve image; trust in institutions

OUTPUTS- Analysis & overwiev of communication recommendations; best practices

COHERENCE WITH OTHER PROJECTS:

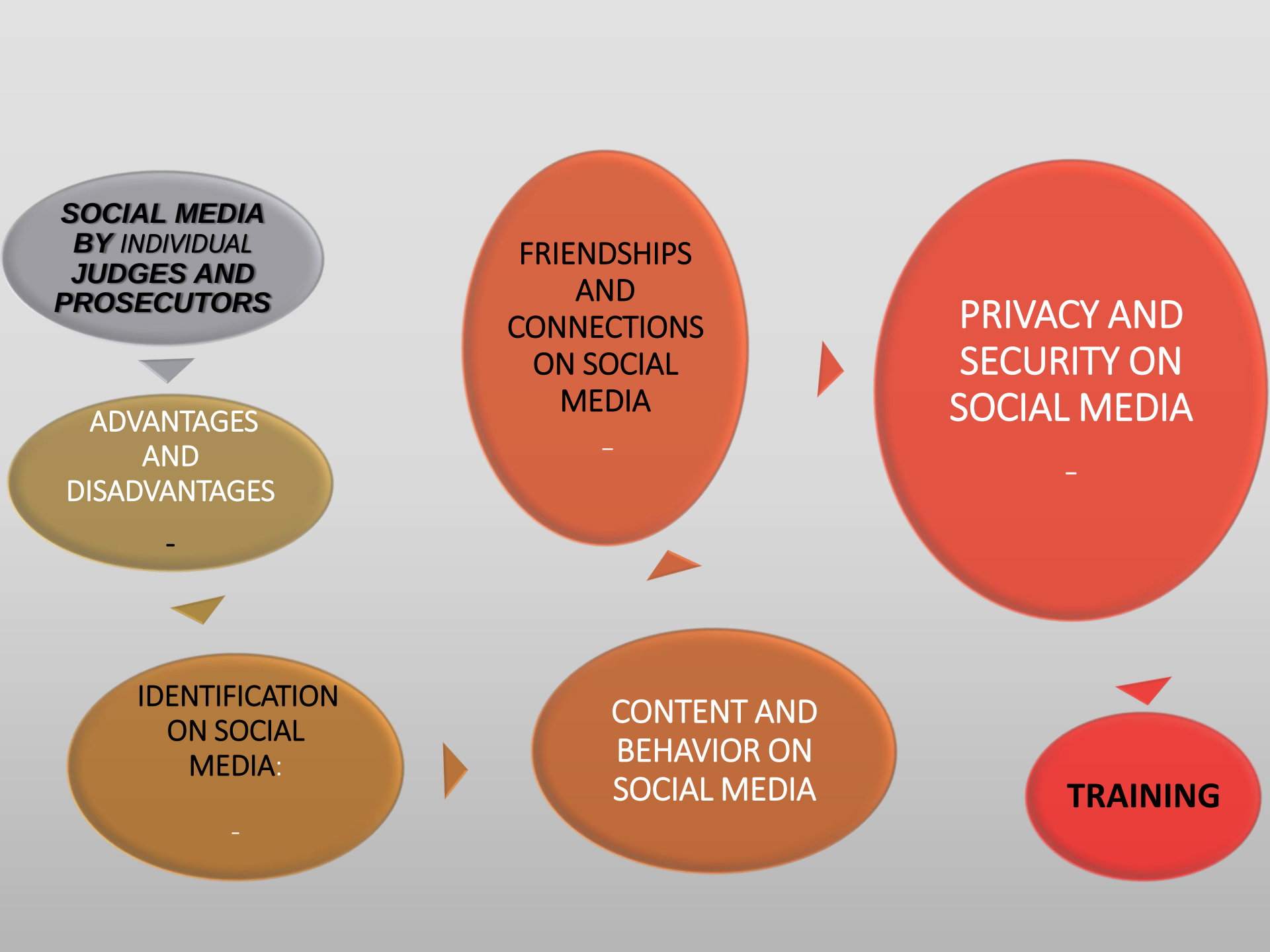
UNODC,

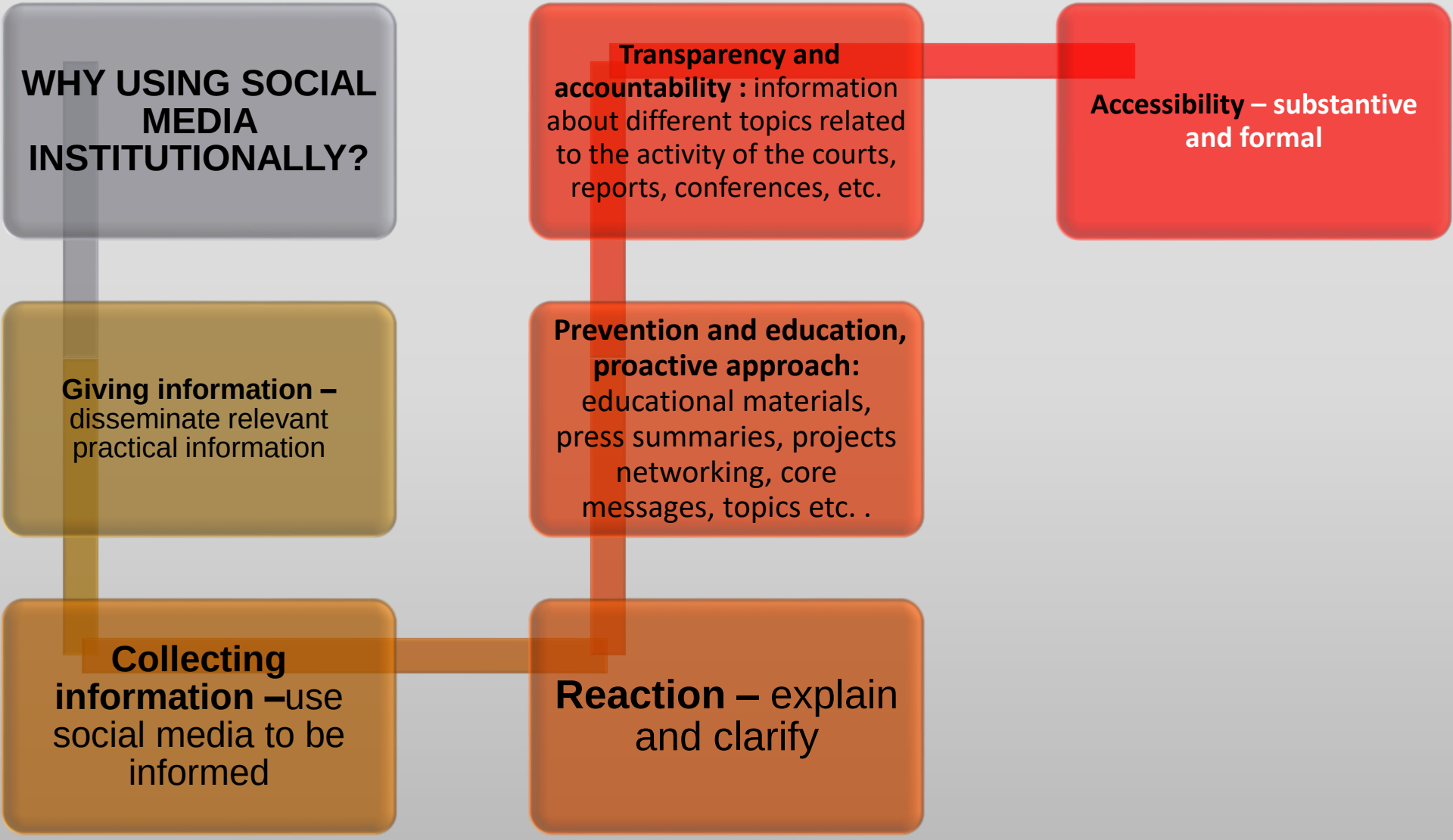
FRA,

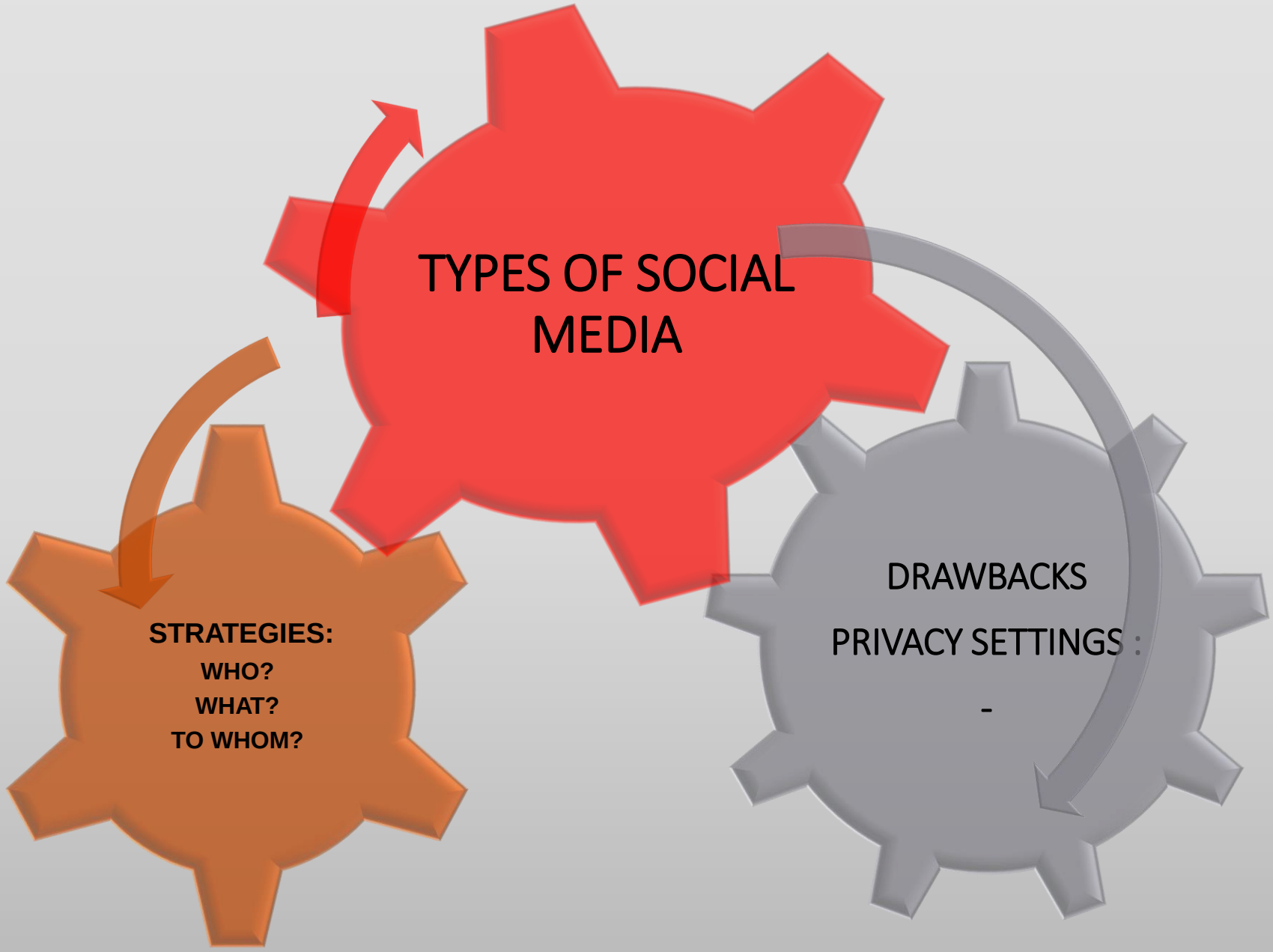
RFCMJ

EJTN

METHODOLOGY: collection of info; preparation of the meetings; collection of best practices


SOCIAL MEDIA BY INDIVIDUAL JUDGES AND PROSECUTORS
ADVANTAGES AND DISADVANTAGES
-
IDENTIFICATION ON SOCIAL MEDIA:
-
CONTENT AND BEHAVIOR ON SOCIAL MEDIA
FRIENDSHIPS AND CONNECTIONS ON SOCIAL MEDIA
-
PRIVACY AND SECURITY ON SOCIAL MEDIA
-
TRAINING


WHY USING SOCIAL MEDIA INSTITUTIONALLY?
Transparency and accountability : information about different topics related to the activity of the courts, reports, conferences, etc.
Accessibility – substantive and formal
Giving information – disseminate relevant practical information
Prevention and education, proactive approach: educational materials, press summaries, projects networking, core messages, topics etc. .
Collecting information –use social media to be informed
Reaction – explain and clarify


TYPES OF SOCIAL MEDIA
STRATEGIES:
WHO?
WHAT?
TO WHOM?
DRAWBACKS
PRIVACY SETTINGS :
-

MALICIOUS COMMENTS:

avoid;

no anger;

see if needs reply;

create a FAQ section;

respond calm/neutral;

not for pending case;

establish rules.

MONITORING SOCIAL MEDIA

recommended on a daily basis with immediate response

LANGUAGE

clear and plain;

accurate and precise;

accessible for a broad audience, but satisfy the informed reader as well

Staff and budget (criteria)

communication staff(*monitoring information, proactive, anticipating needs*);

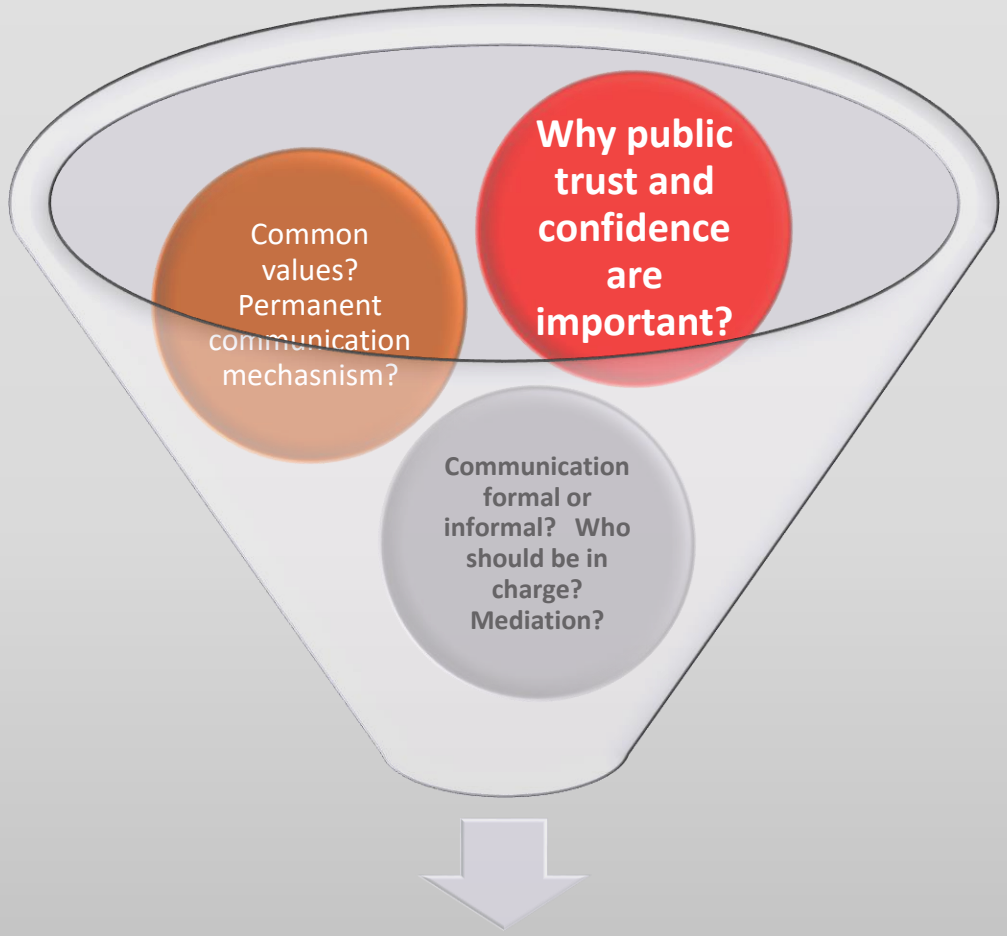
close cooperation between the spokespersons;

a dedicated budget

USE OF SOCIAL MEDIA IN COURT ROOMS

equally to social media and other media;

informing vs broadcasting



GUIDES WITH OTHER BRANCHES OF POWER!

RECCOMENDATIONS

INSTITUTIONAL COMMUNICATION

COMMUNICATION BY JUDGES AND PROSECUTORS

FUTURE PLANS

CONCLUSIONS

- *ANDREA, CHRISTIAN, DAMIR & THE PROJECT TEAM*

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Results Projects 2018-2019

Project 3: Digital Justice

6 June

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Results Projects 2018-2019

Project 4: Workshop Selection and Appointment of Judges

6 June

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Recommendations and conclusions

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As regards the ENCJ Standards for the Selection and Appointment of Judges and its impact

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Réseau européen des Conseils de la Justice (RECJ)

1. The ENCJ Standards on the Selection and Appointment of Judges as laid down in the report of 2012 are still a good reflection of the current systems in place in Europe and are a helpful instrument for self-assessment.

2. An objective and transparent appointment process is an important element to keeping and gaining public trust in the judiciary.

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3. The public perception is influenced by the way the members of the judicial appointment body or Council are appointed and the procedure should therefore guarantee the independence of all members (judicial and non-judicial members).
4. Written and reasoned decisions in all stages of the process for appointment and non-appointment are fundamental and contribute to the trust in and transparency of the judiciary.

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5. It was reaffirmed that the competencies for candidate-judges should include certain soft skills, such as communication skills sensibility, sociability, integrity, unflappability and the ability to co-operate.

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In relation to the perception of and trust in the impartiality of the selection and appointment procedures especially among judges

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6. To ensure that the selection and appointment procedures are merit based, rules and criteria should be law based, public and transparent. Written, reasoned decisions on appointment and promotion need to be made available to each candidate.

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7. Councils should adopt an active approach, and reach out to bar associations and universities to explain how judges are appointed. More generally, the judiciary could organise outreach activities by organising internships for students and sending judges to lecture in schools and universities. Judges have a responsibility to reach out and explain the importance of the Rule of Law and an independent judiciary.

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8. Training of new Council members on interviewing technique is in place in some countries and is recommended for all Councils and appointment bodies. Improved interview techniques could strengthen the perception that the procedure is merit based.
9. In most countries first appointment into the judiciary is, and is perceived to be, merit based. The further appointments or promotions cause more debate and the perception of it being merit based is lower.

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Looking at the future, and the question if the right people are selected to ensure the best justice for future generations

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10. Long term strategies for the judiciary are in place in only a few countries. It is not clear who should be in charge of these strategies. It could be argued, that it is not the sole responsibility of the Judiciary, but a shared responsibility with the other State Powers. Issues to be addressed in the long-term strategies would be the need for specialisation of judges and the need for diversity within the judiciary to reflect society.

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11. The judiciary must be, and must be seen to be more connected with society. This connection needs to be balanced with the need to maintain its authority and independence.

12. The authority of the judges used to be source based and automatic, nowadays it needs to be earned and maintained throughout the career.

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13. A way of strengthening the links with society and avoiding the perception of the judiciary being a closed shop, would be to get legal professionals to enter the judiciary later in their career.
14. More efforts must be put in providing continuous training for judges to make them more effective and efficient. Their social position and renumeration must be in line with the position they assume in society.

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Results Projects 2018-2019

Intermediate report pilot project with University of Utrecht

6 June

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Plenary session on the ENCJ manifesto for the new European Institutions

6 June

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Réseau européen des Conseils de la Justice (RECJ)

Plenary session

Introduction to the objectives of CCBE manifesto

José de Freitas

President of the CCBE

6 June

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Working group session:

Drafting the ENCJ Manifesto

6 June

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Réseau européen des Conseils de la Justice (RECJ)

(PLEASE CHECK THE DIVISION IN SUBGROUPS IN YOUR DOCUMENTS):

Group 1: end of the corridor

Group 2: end of the corridor

Group 3: big room (here)

Group 4: behind stage

Group 5: big room (here)

Group 6: next to the foyer

6 June

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Reporting back in plenary :

Preparation of final draft

6 June

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End of proceedings

6 June

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SÚDNA RADA SLOVENSKEJ REPUBLIKY

General Assembly meeting

Bratislava, 5 – 7 June 2019

Réunion de l'Assemblée Générale

Bratislava, les 5 -7 juin 2019

7 June

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Réseau européen des Conseils de la Justice (RECJ)

THE ENCJ Market

7 June

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

Plenary session

An external perspective on the results of the survey among judges and lawyers

7 June

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

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ENCJ General Assembly
"The Future of the Rule of Law and Justice in Europe"

Bratislava 7 June 2019

An external perspective on the results of the survey among judges and lawyers 2019

Marco Fabri – National Research Council of Italy
Kamil Jonski – University of Lodz, Poland

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Agenda

Two external, but coordinated, perspectives on the results of the survey among judges and lawyers

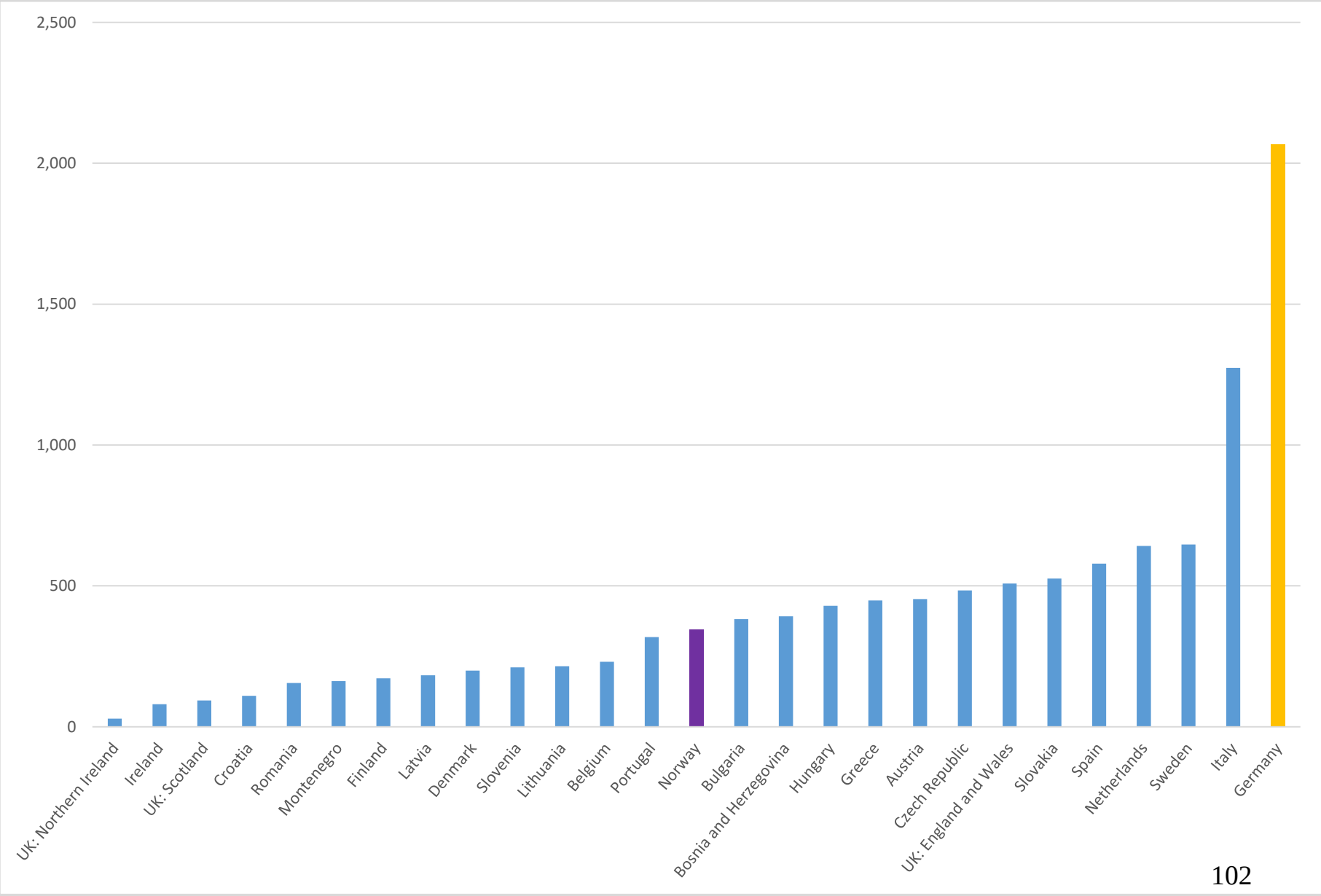
Some hints for debate and further thoughts

Your Survey … some warnings

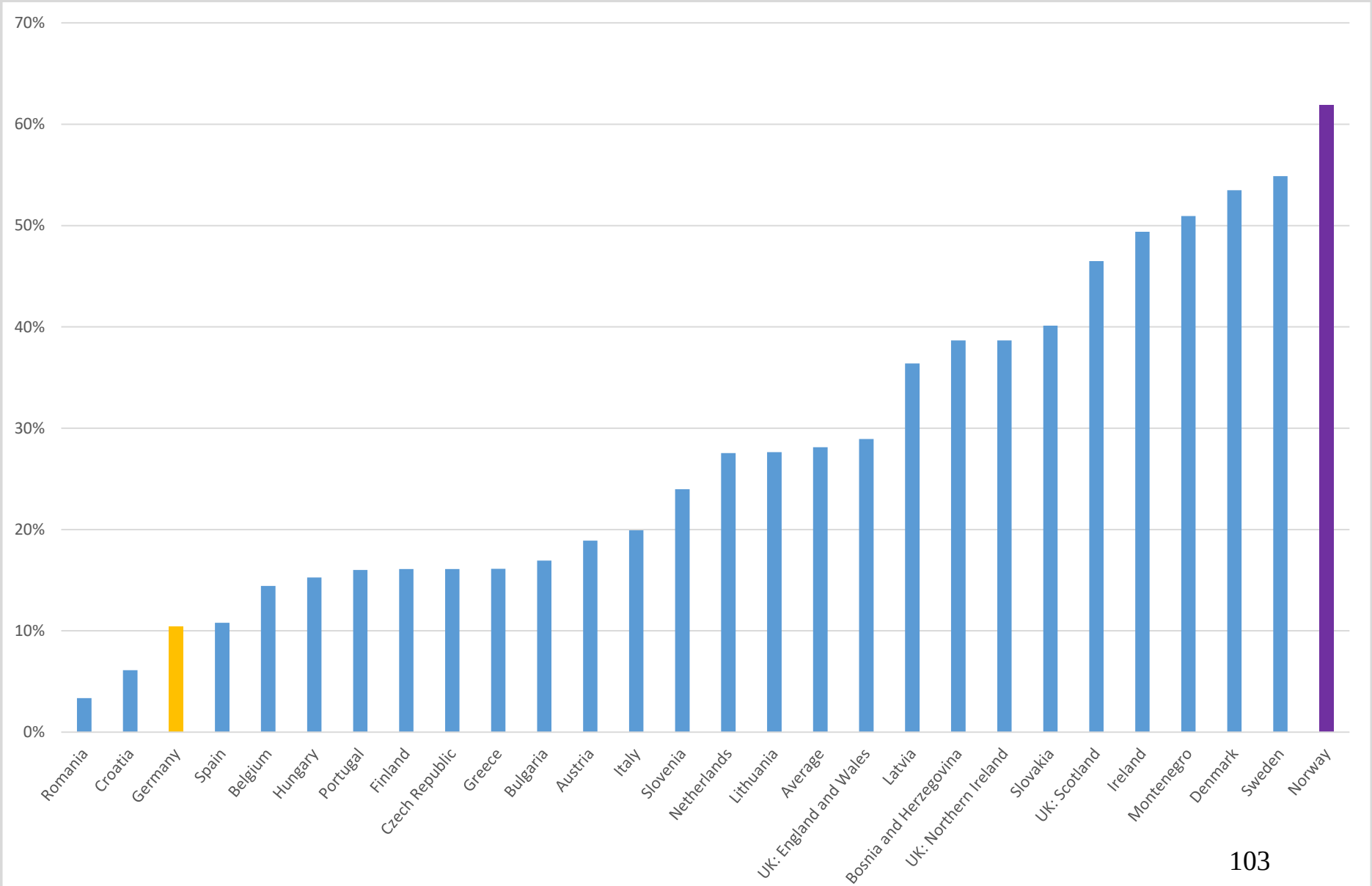
- 11.335 answers from 25 countries.
- Small sub-samples for civil, criminal, admin. judges
- No answers analyzed for prosecutors.
- Lawyers' replies.
- Quality control on (some) "answers".
- Surveys deal with perceptions.
- Data highlight a phenomenon but they do not explain it.
- Qualitative analysis is needed.

Not everything that counts can be counted. Some matter can only be judged, that is to say that can only be assessed in a qualitative way

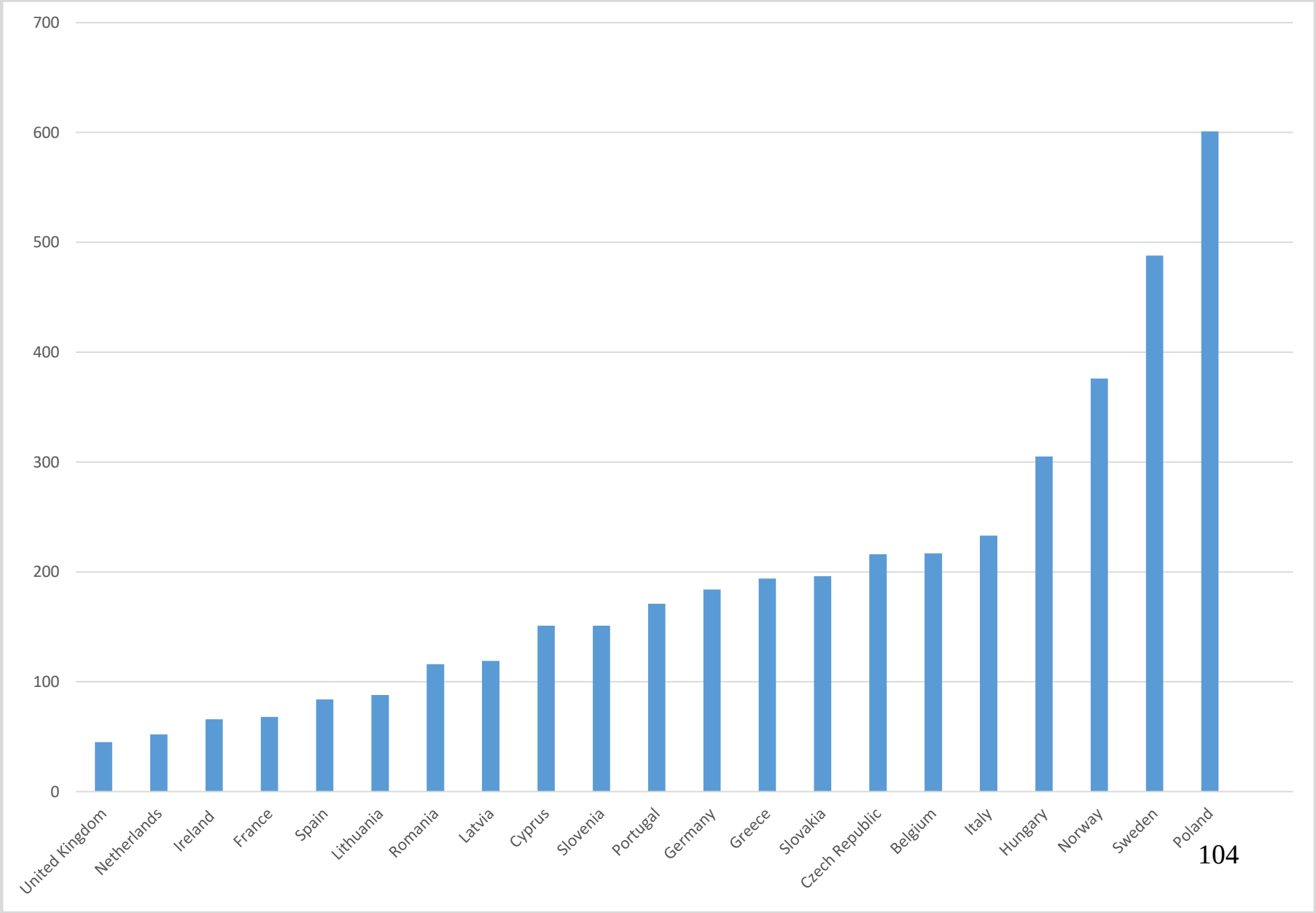
Respondents

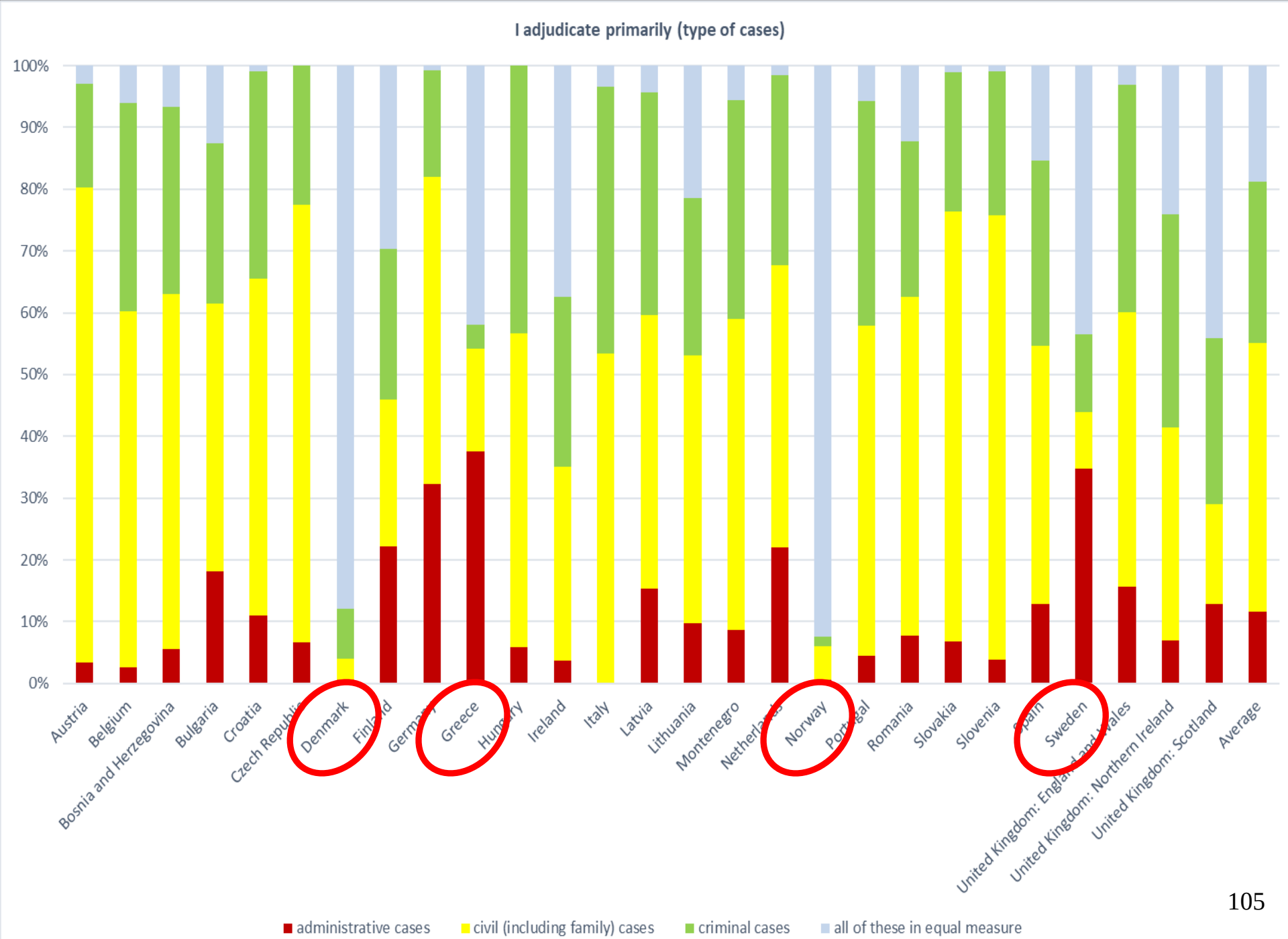


Response Rate



Lawyers


700
600
500
400
300
200
100
0
United Kingdom
Netherlands
Ireland
France
Spain
Lithuania
Romania
Latvia
Cyprus
Slovenia
Portugal
Germany
Greece
Slovakia
Czech Republic
Belgium
Italy
Hungary
Norway
Sweden
Poland


I adjudicate primarily (type of cases)
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Austria
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Czech Republic
Denmark
Finland
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Montenegro
Netherlands
Norway
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
United Kingdom: England and Wales
United Kingdom: Northern Ireland
United Kingdom: Scotland
Average
administrative cases
civil (including family) cases
criminal cases
all of these in equal measure

ENCJ General Assembly, Bratislava JUN 7th 2019
‚The Future of the Rule of Law and Justice in Europe'

WYDZIAŁ PRAWA i ADMINISTRACJI
Uniwersytet Łódzki

An external perspective on the results of the survey of judges and lawyers

Kamil Jonski
University of Lodz

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ENCJ effort to quantitatively monitor developments in the area of judicial independence

- *„You can't manage what you can't measure”*
  P. Drucker

- *„If you can’t measure a thing, go ahead and measure it anyway”*
  F. Knight

- *“And even when we can measure a thing, our knowledge will be meager and unsatisfactory”*
  J. Viener

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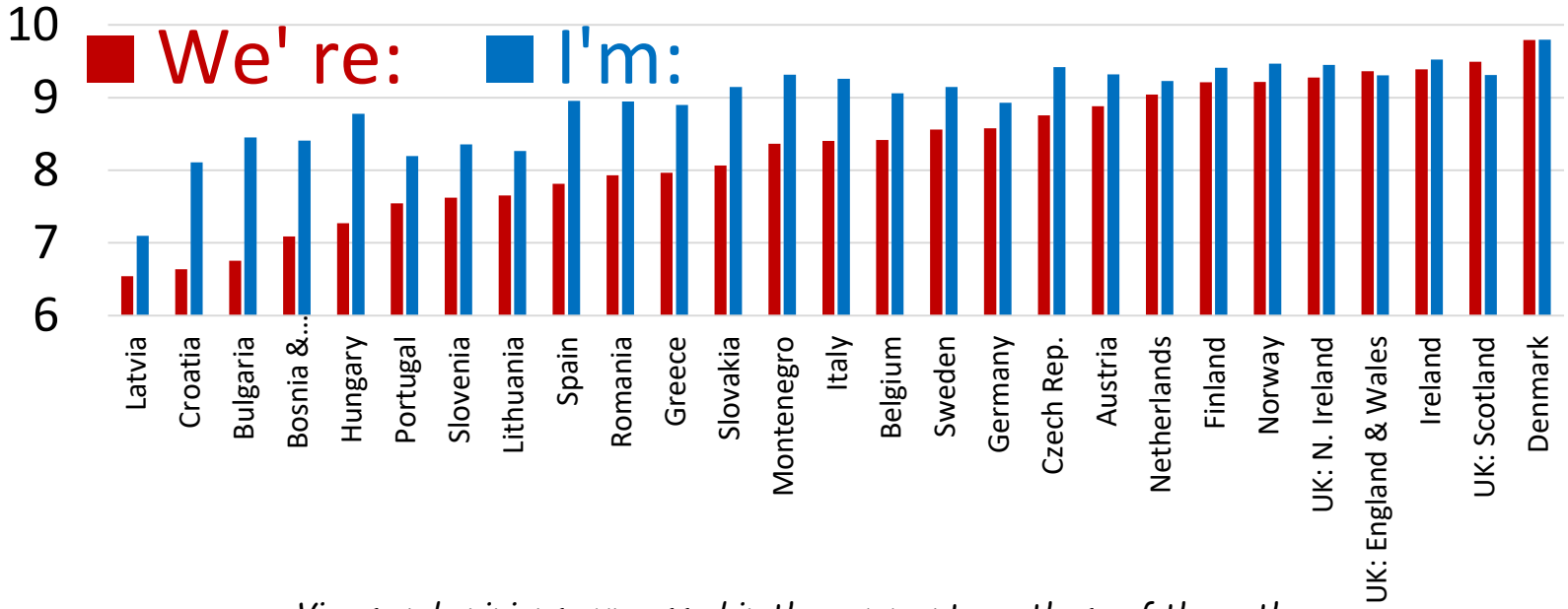
ENCJ effort to quantitatively monitor developments in the area of judicial independence

- Q:16 On a scale of 0 - 10 The professional judges in my country are…
- Q:17 On a scale of 0 - 10 As a judge I…



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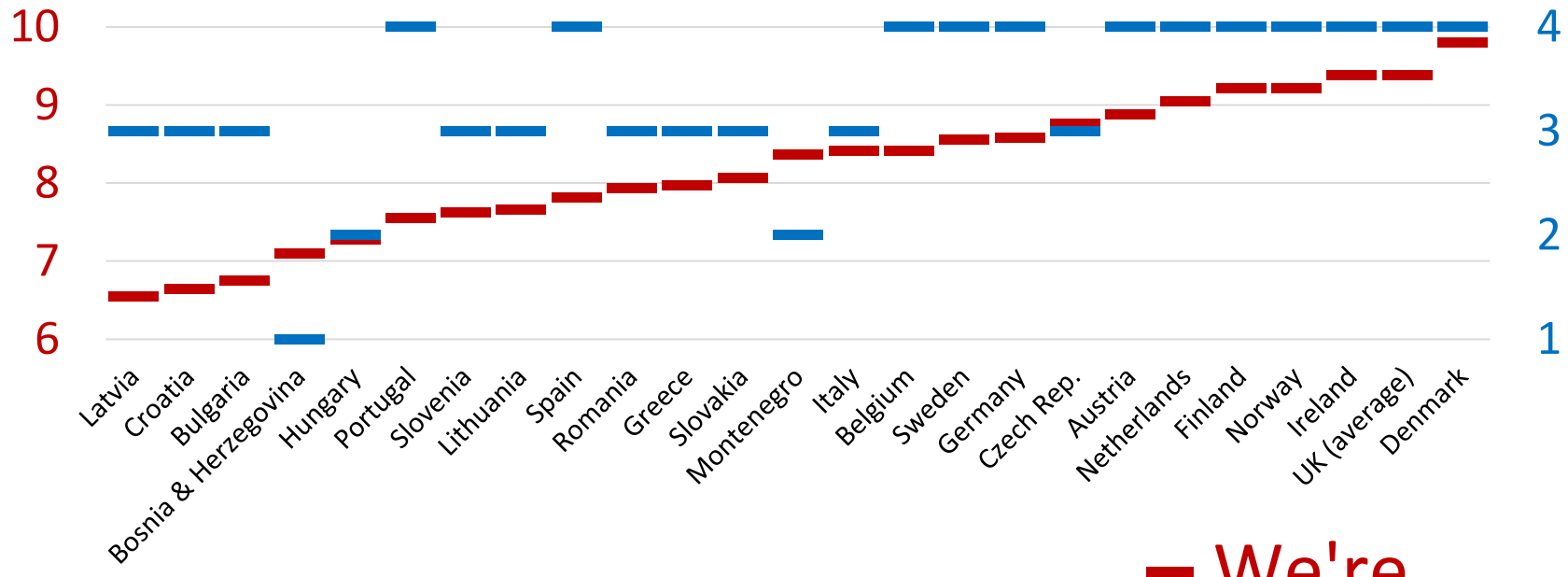
ENCJ survey results vs. alternative attempts to quantify judicial independence

- *Freedom House's Freedom in the World reports* ->

  Is there an independent judiciary?, as of 2018



We're

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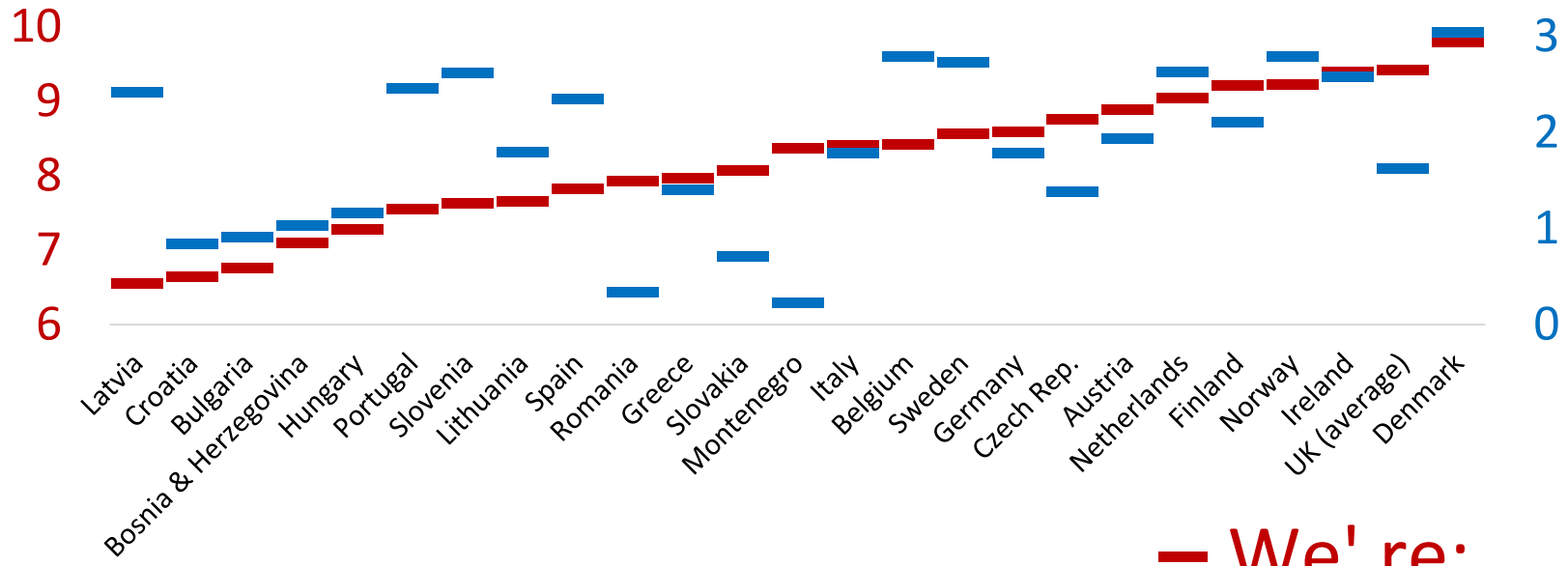
ENCJ survey results vs. alternative attempts to quantify judicial independence

- The Varieties of Democracy *Project* (V-Dem) ->

  Lower court independence, as of 2018



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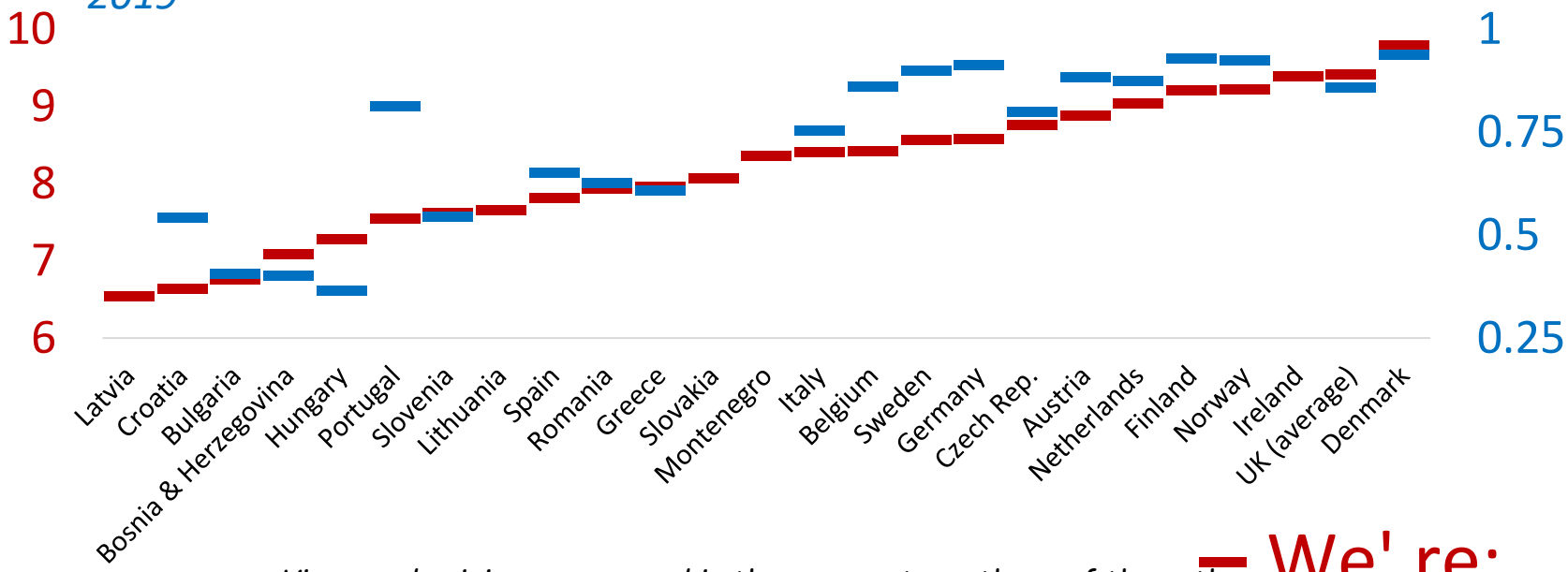
ENCJ survey results vs. alternative attempts to quantify judicial independence

- The World Justice Project (WJP) ->

1. Civil justice-, 2. Criminal system- is free of improper government influence as of 2019



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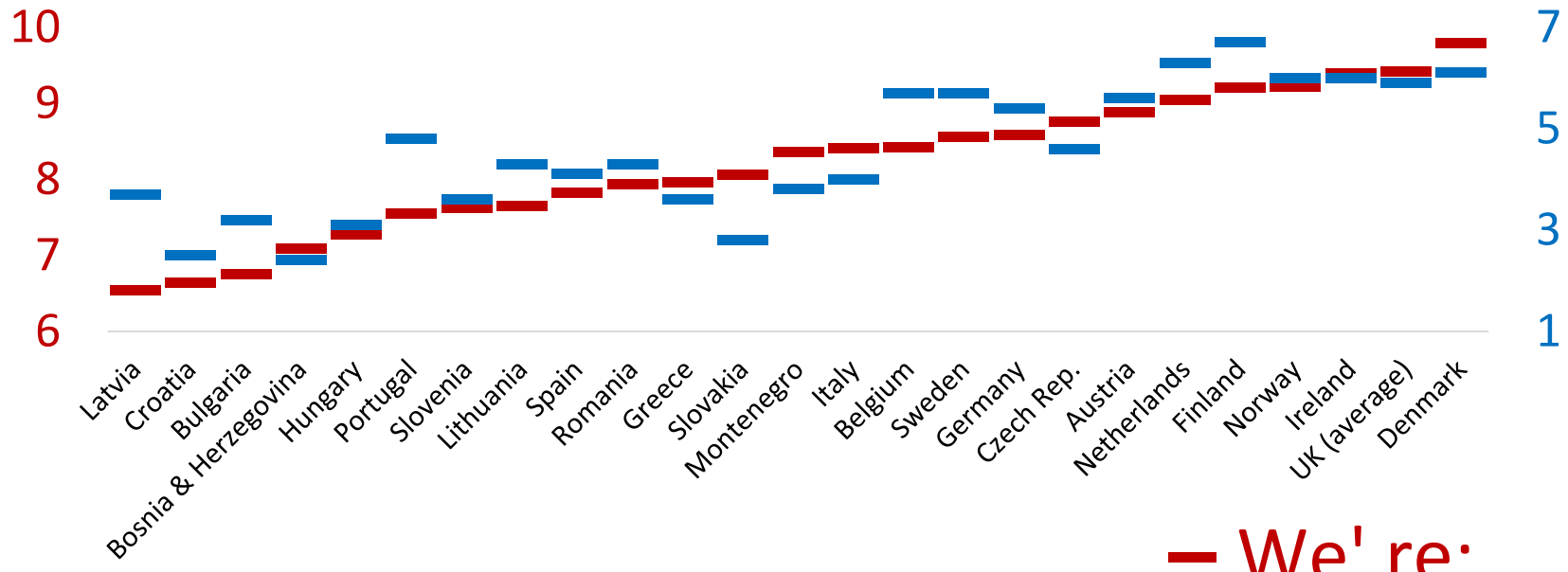
ENCJ survey results vs. alternative attempts to quantify judicial independence

❑ The World Economic Forum (WEF) ->

Judicial independence (Executive Opinion Survey) as of 2019



– We' re:

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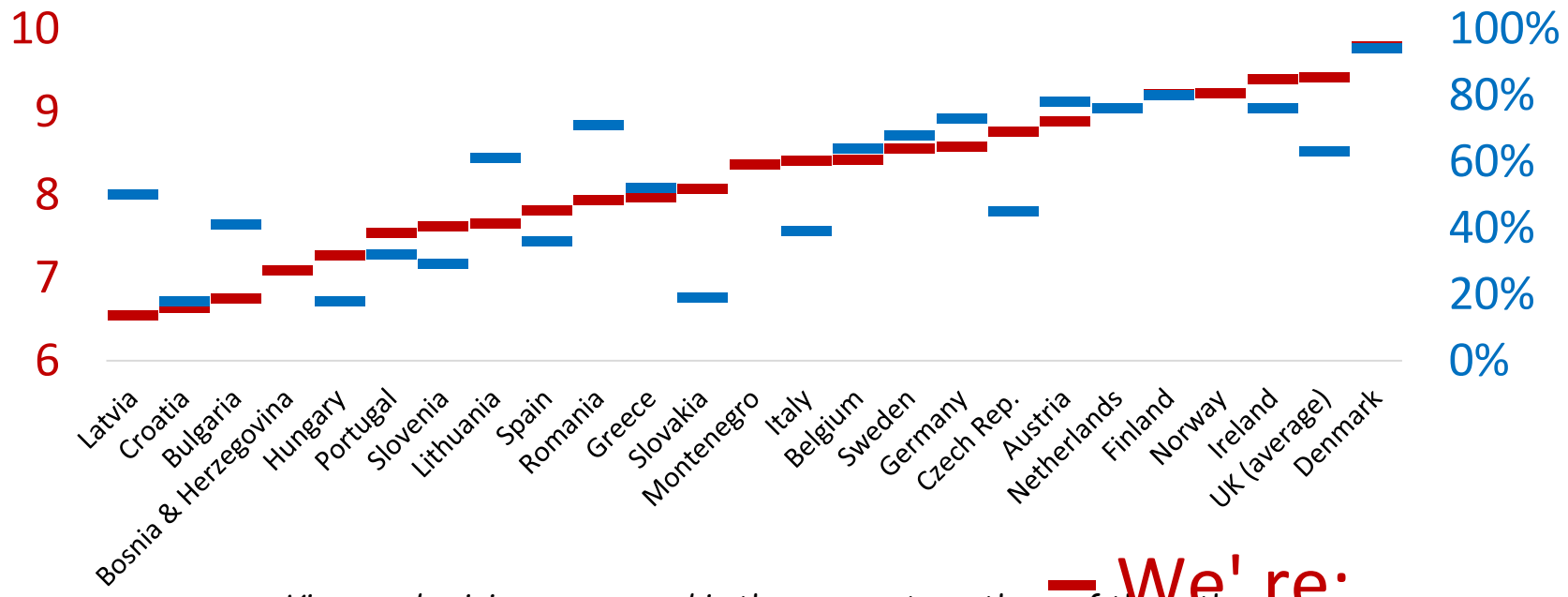
ENCJ survey results vs. alternative attempts to quantify judicial independence

❑ Eurobarometer – companies

Q:1 rate a justice system in terms of independence – v. good&good:



– We' re:

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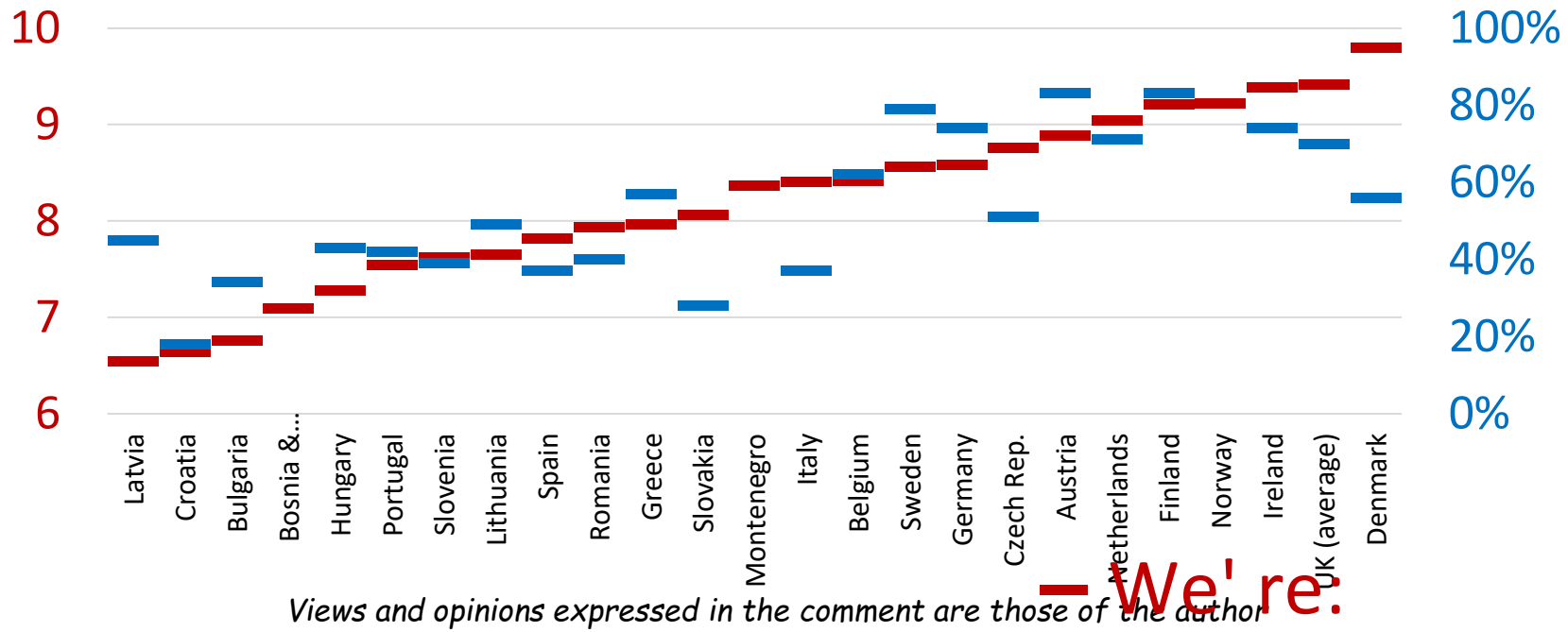
ENCJ survey results vs. alternative attempts to quantify judicial independence

❑ Eurobarometer – general public

Q:1 rate a justice system in terms of independence – v. good&good:



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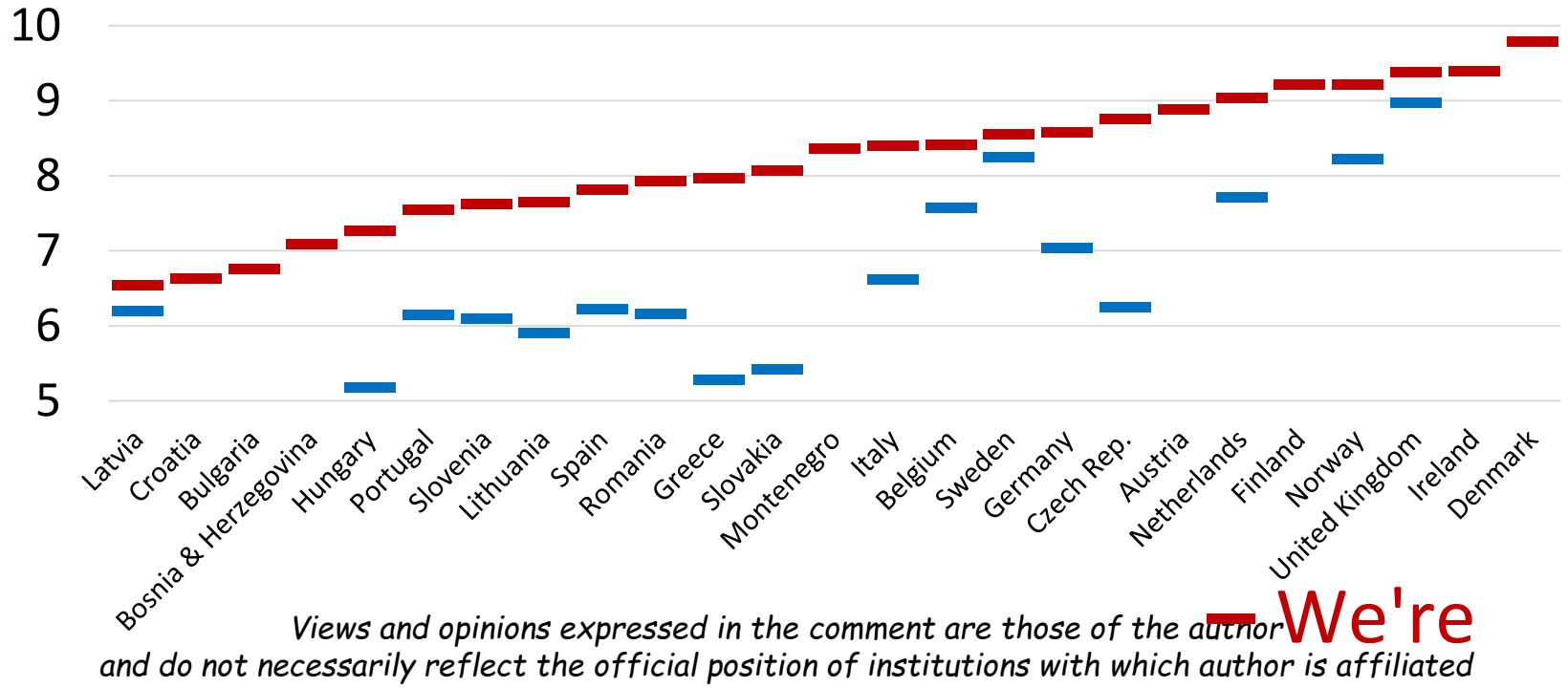
ENCJ survey results vs. alternative attempts to quantify judicial independence

❑ ENCJ Survey of Lawyers

Q:10 On a scale of 0 - 10 professional judges in my country are:



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ENCJ survey results vs. alternative attempts to quantify judicial independence

- Generally, various metrics seem to provide broadly consistent assessments of the „*judicial independence*" level across Europe
- Or at least perceptions of various stakeholders are generally in line…
- Nevertheless, systematic documentation of the views of the judicial community (system insiders) is novel and important contribution
- But it could be beneficial to:
  - centralize the data collection process,
  - monitor countries, where risks seems to be the highest…

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To what extent obtained results reflect the views of judicial community?

- *„You can't manage what you can't measure”*
  P. Drucker

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  F. Knight

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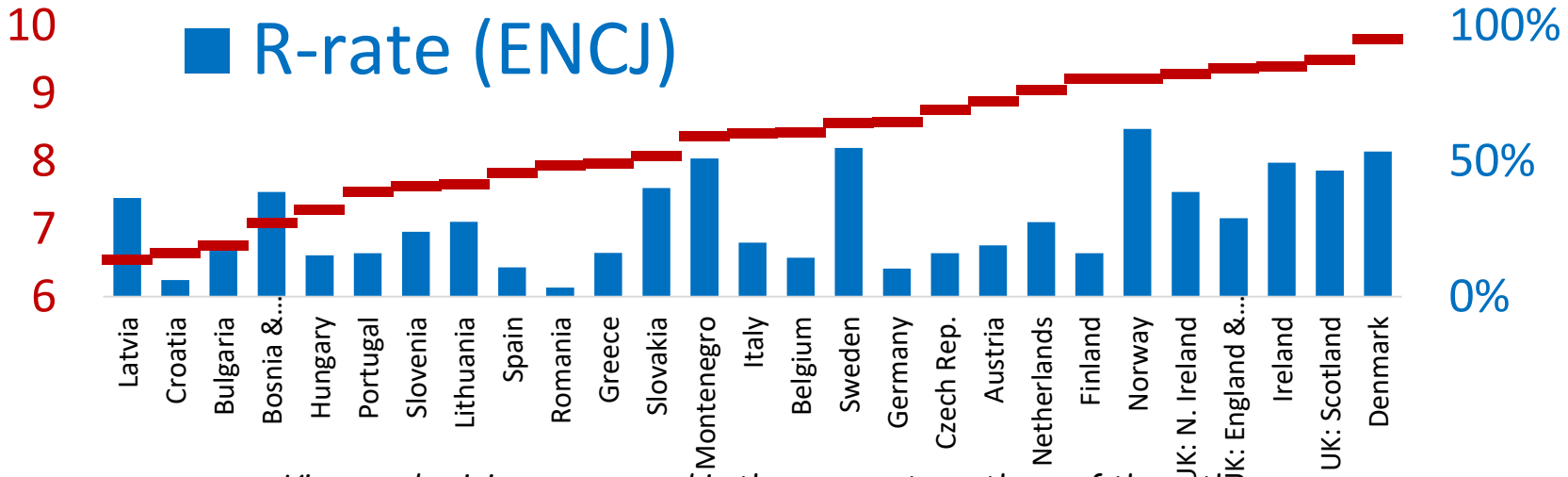
To what extent obtained results reflect the views of judicial community?

- Sample seection: the letter of introduction to all judges within each jurisdiction, link to the internet survey.
- Response rates caluclated using CEPEJ data on the numer of professional judges, as of 2016 ->



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To what extent obtained results reflect the views of judicial community?

- Response Rate higher with countries scored higher on independence…
- As judges choose to participate, how representative (i.e. similar to the whole judicial community) the sample actually is?
- CEPEJ data on the numer of professional judges include distinction between the court level (1st instance, 2nd instance, Supreme Court) and gender
- Using these groups (strata) we could gauge how representative the sample was (but only in that dimension, and problems with CEPEJ data remain)

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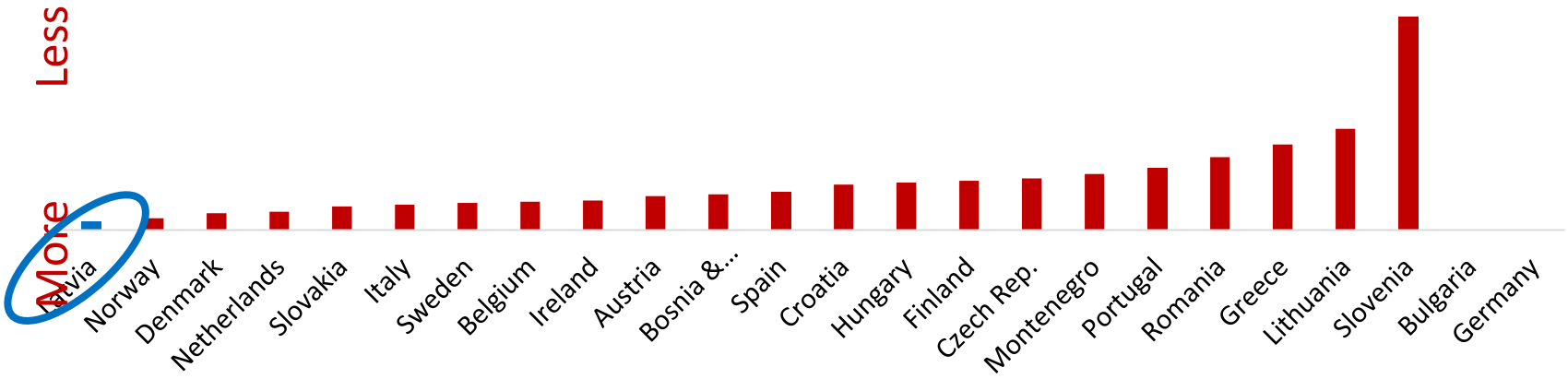
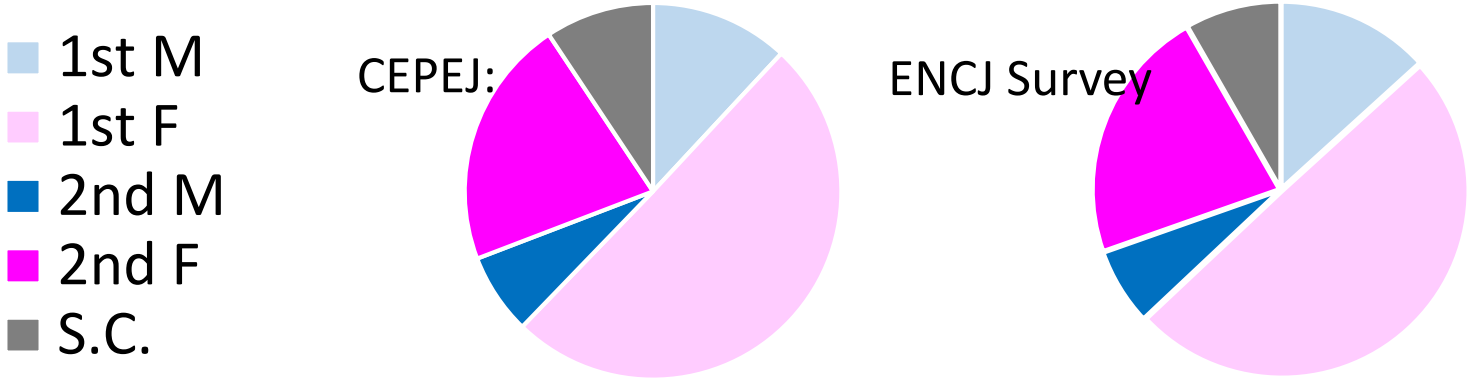
To what extent obtained results reflect the views of judicial community?





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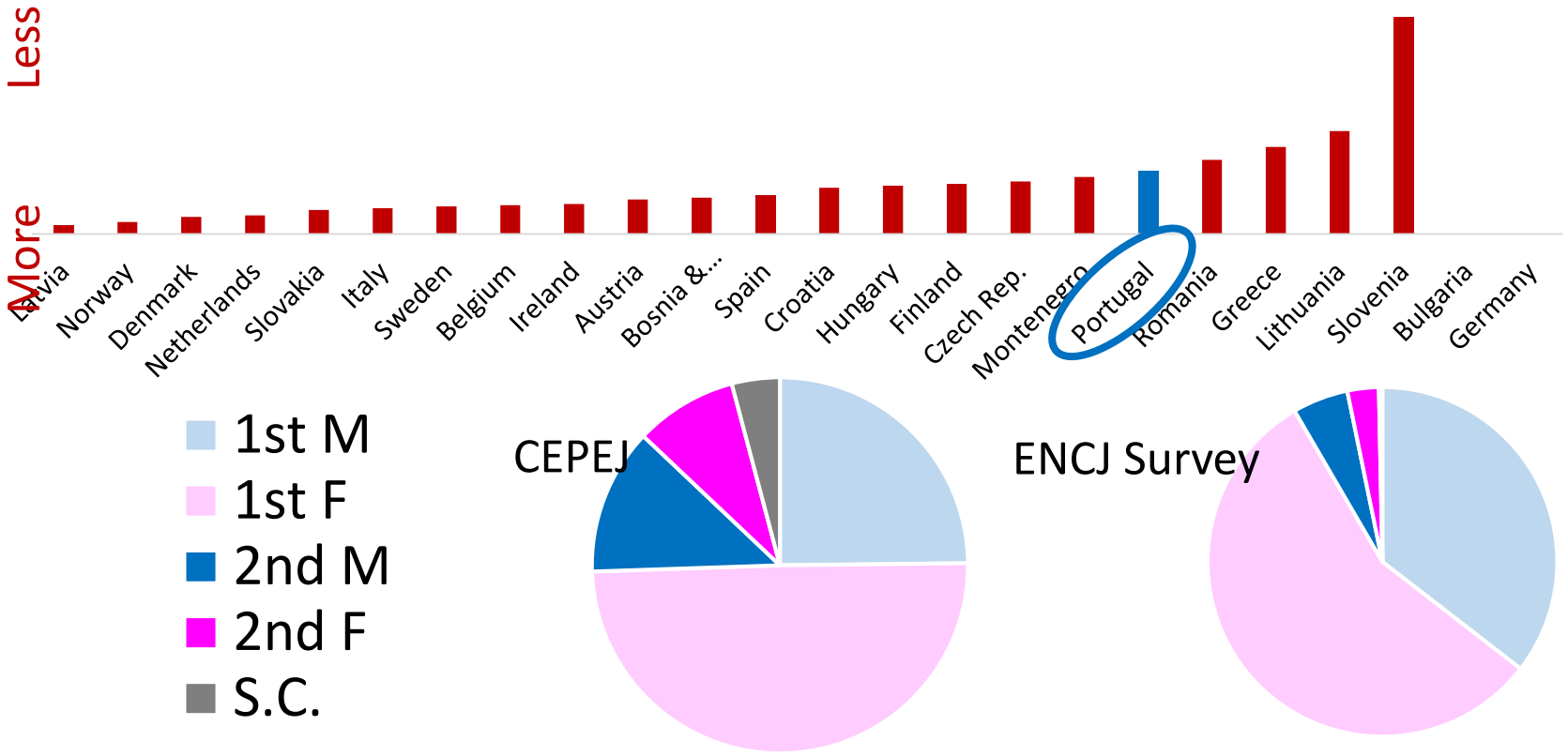
To what extent obtained results reflect the views of judicial community?



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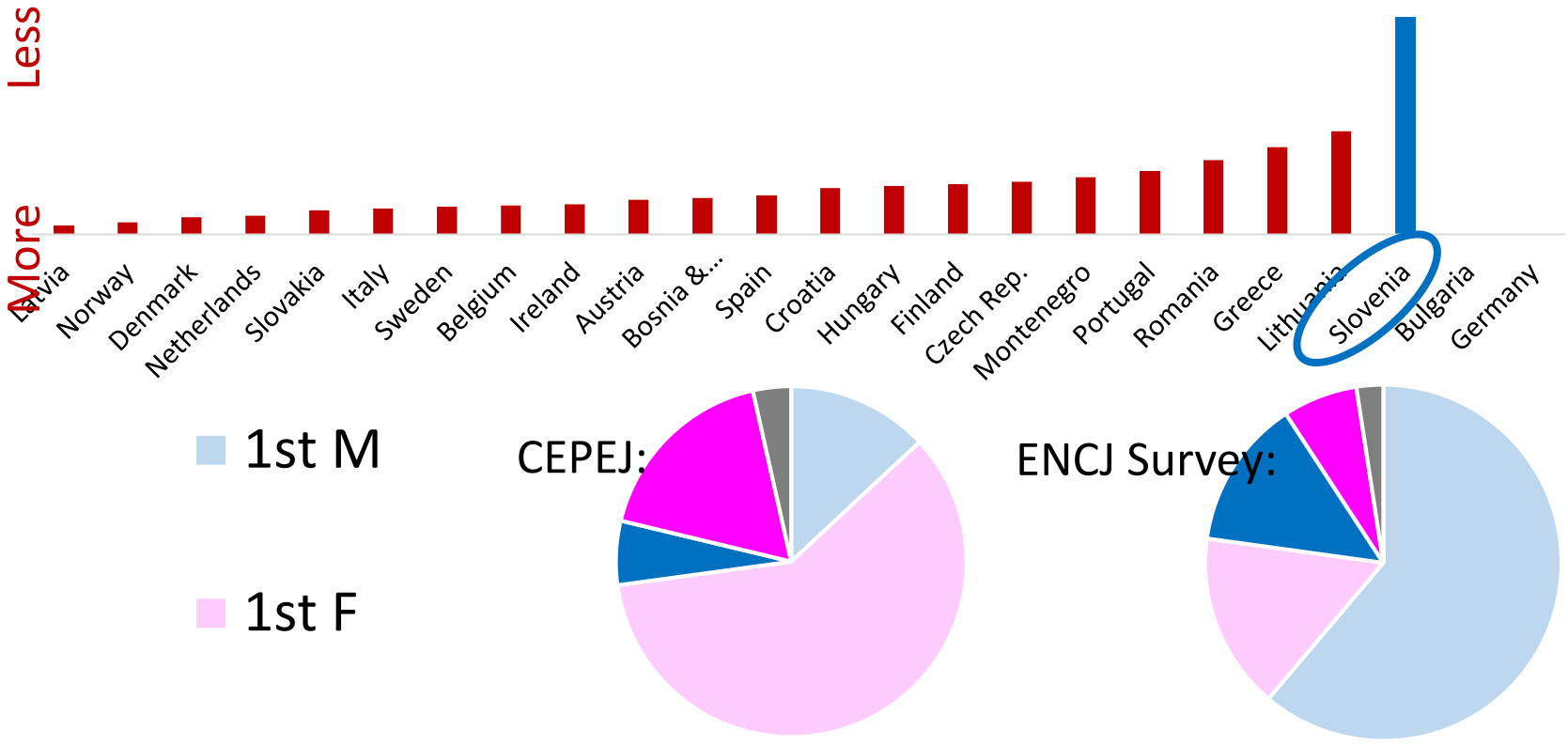
To what extent obtained results reflect the views of judicial community?



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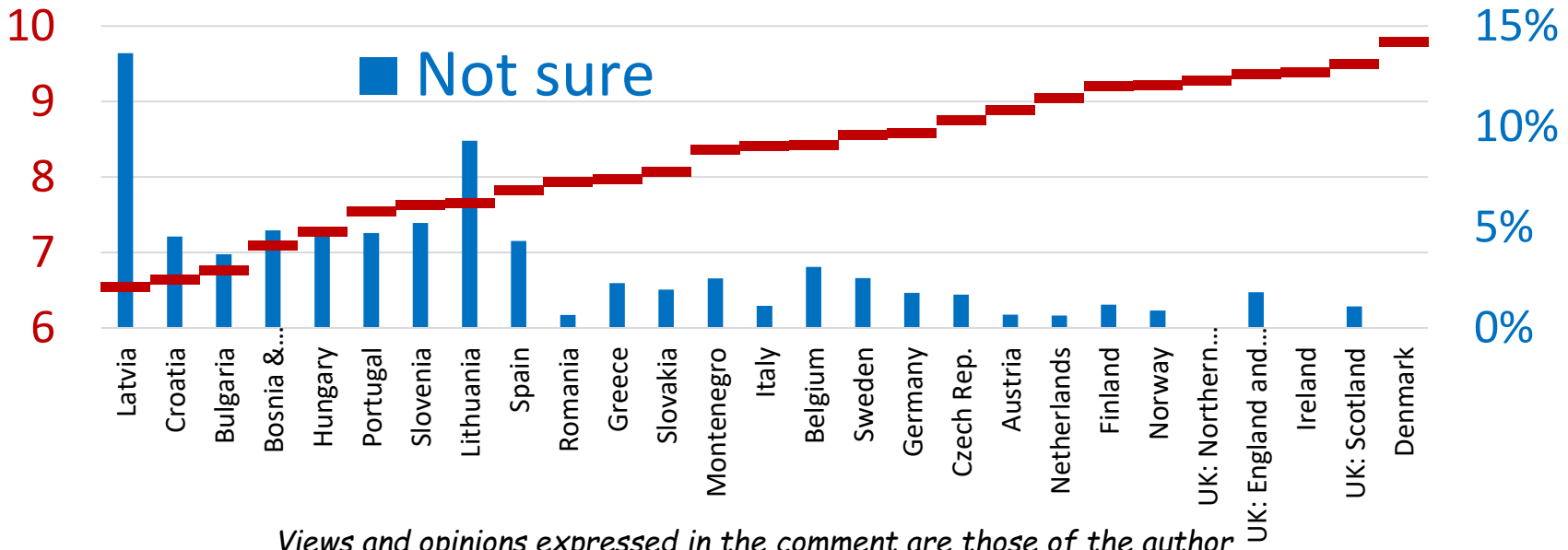
Not categorical answers…

- To what extent answers like „Not sure - Not applicable" blur the picture?
- Q1a *During the last two years I have been under inappropriate pressure to take a decision in a case or part of a case in a specific way*



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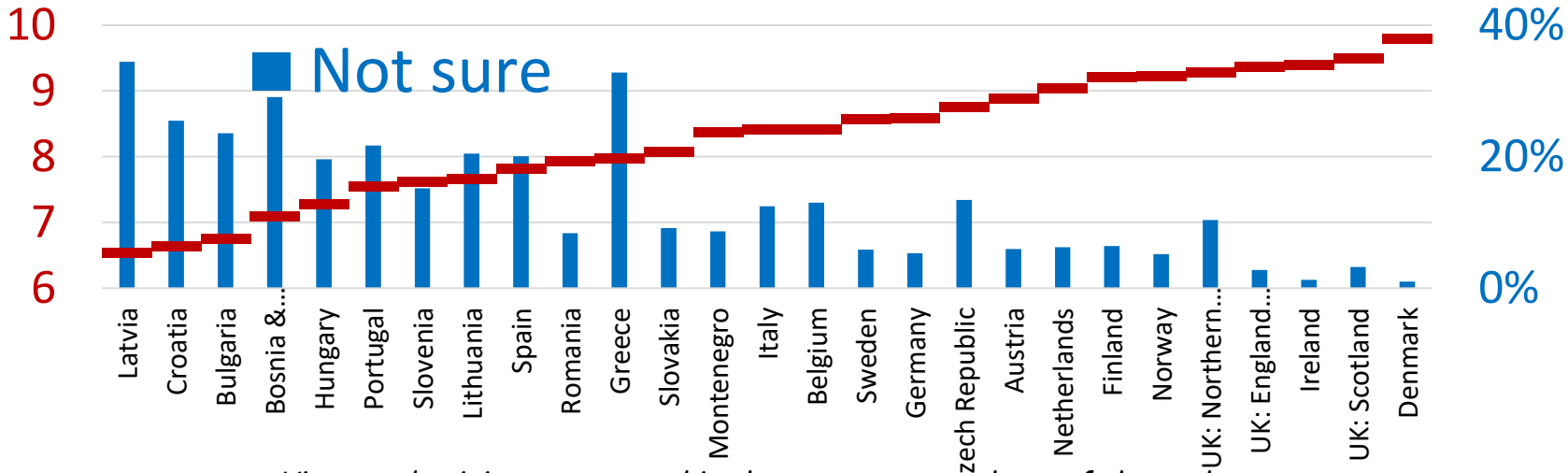
Not categorical answers…

- To what extent answers like „Not sure - Not applicable” blur the picture?
- Q4 I believe during the last two years cases have been allocated to judges other than in accordance with established rules or procedures in order to influence the outcome of the particular case.



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To what extent obtained results reflect the views of judicial community?

- What is the best method to:
  - assess the Response Rate and representativeness (CEPEJ data shortcomings, appropriate stratas – as level and gender seems not the most important grouping factors)
  - Improve tchem (centralize the data collection process?)
- *„Not sure”* and *meaningfull „Not sure”*…

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Towards a conceptual framework of judicial independence measurement

- *„You can't manage what you can't measure”*
  P. Drucker

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Towards a conceptual framework of judicial independence measurement

- Experiences
  - Q1a *I have been under inappropriate pressure,*
  - *Q10 During the last two years changes occurred in my working conditions that negatively influenced my independence*
  - *Q17 As a judge, I:*
- Perceptions
  - Q2a *individual judges have accepted bribes*
  - Q16 *The professional judges in my country are*

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Towards a conceptual framework of judicial independence measurement

- Respect - cultural factor, not obviously defined (lack of inappropriate actions? General climate of interaction?)
- *(inappropriate) pressure – concrete actions aimed at influencing judicial decisions*
- *Independence – Freedom from being governed or ruled by others; The ability to live your life without being helped or influenced by other people.– the ability to resist the pressure*
- *Formal safeguards of judicial independence expected to increase the probability of resisting the inappropriate pressure*

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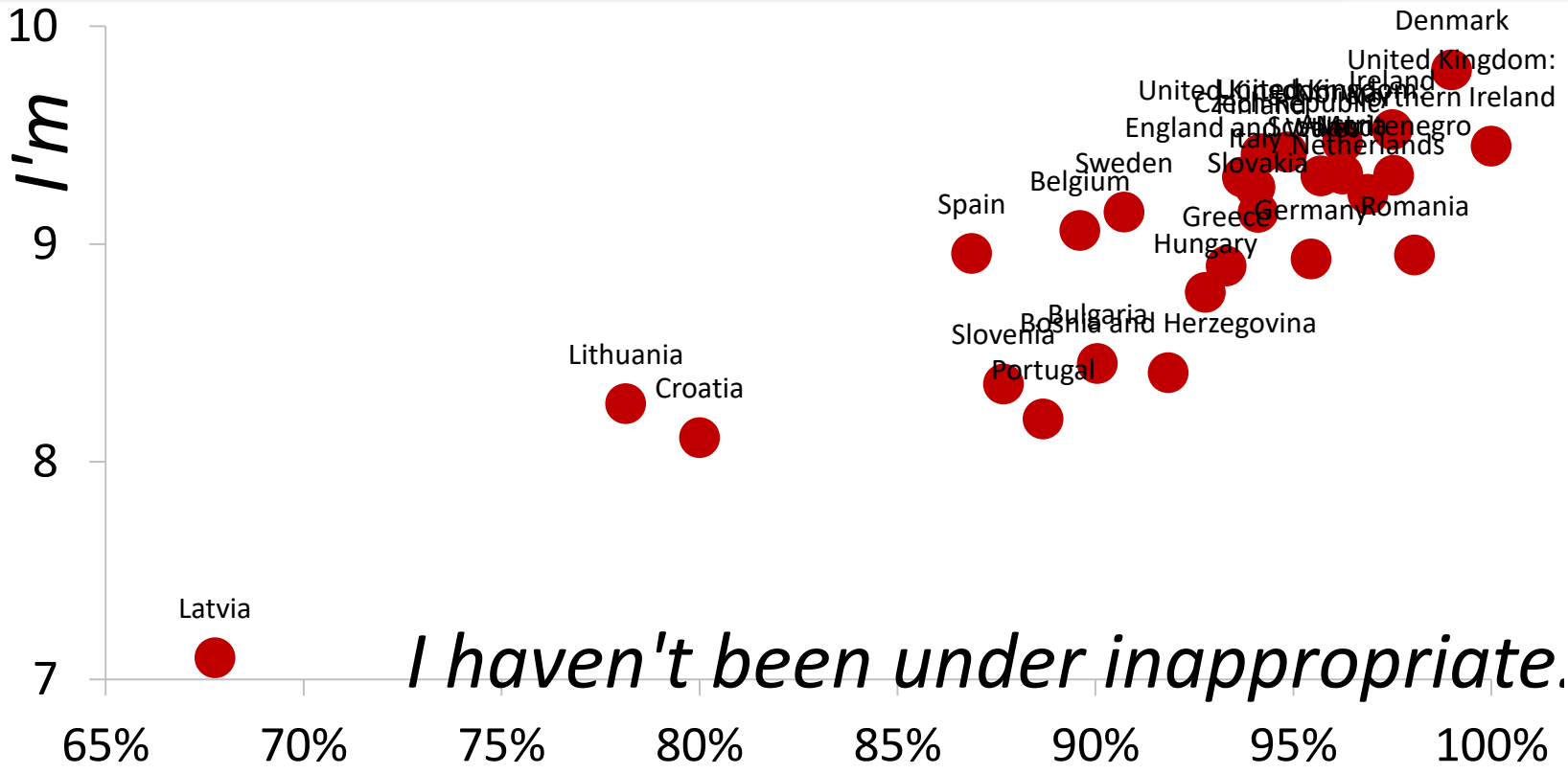
Towards a conceptual framework of judicial independence measurement



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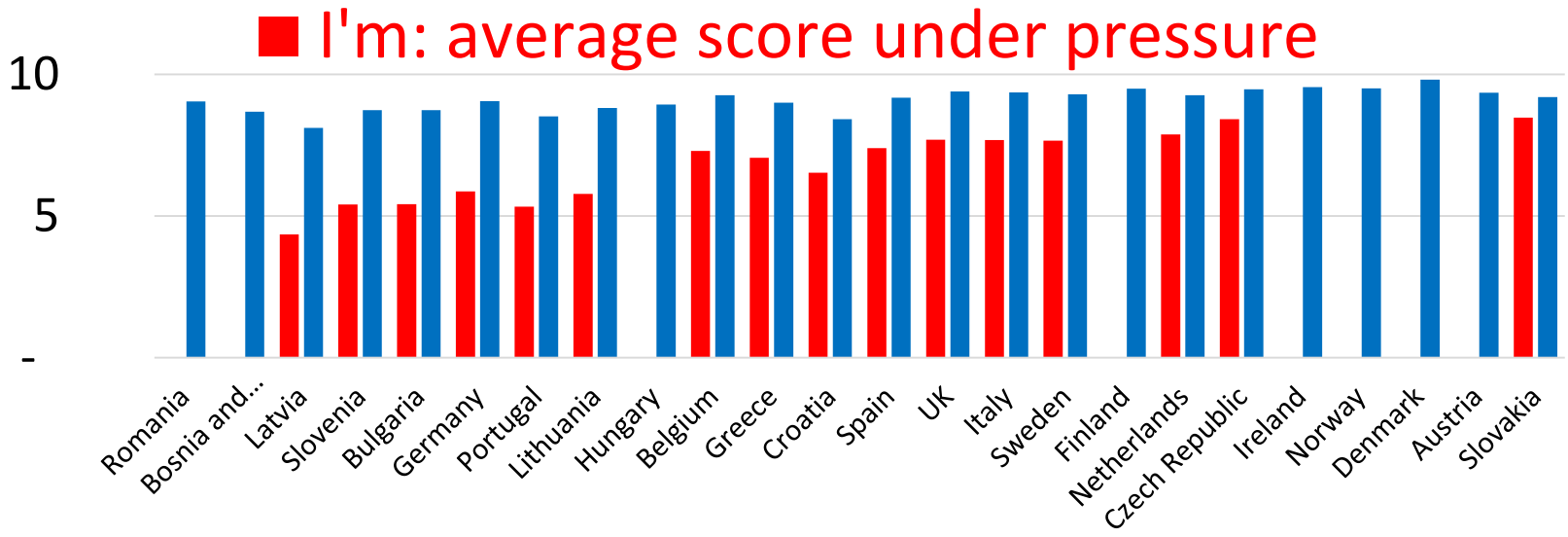
Towards a conceptual framework of judicial independence measurement

- Among judges that experienced inappropriate pressure (Q 1a), 16 % rated themselves 10 on the independence scale (Q. 17)
  Among judges that have not experienced pressure – 52 %



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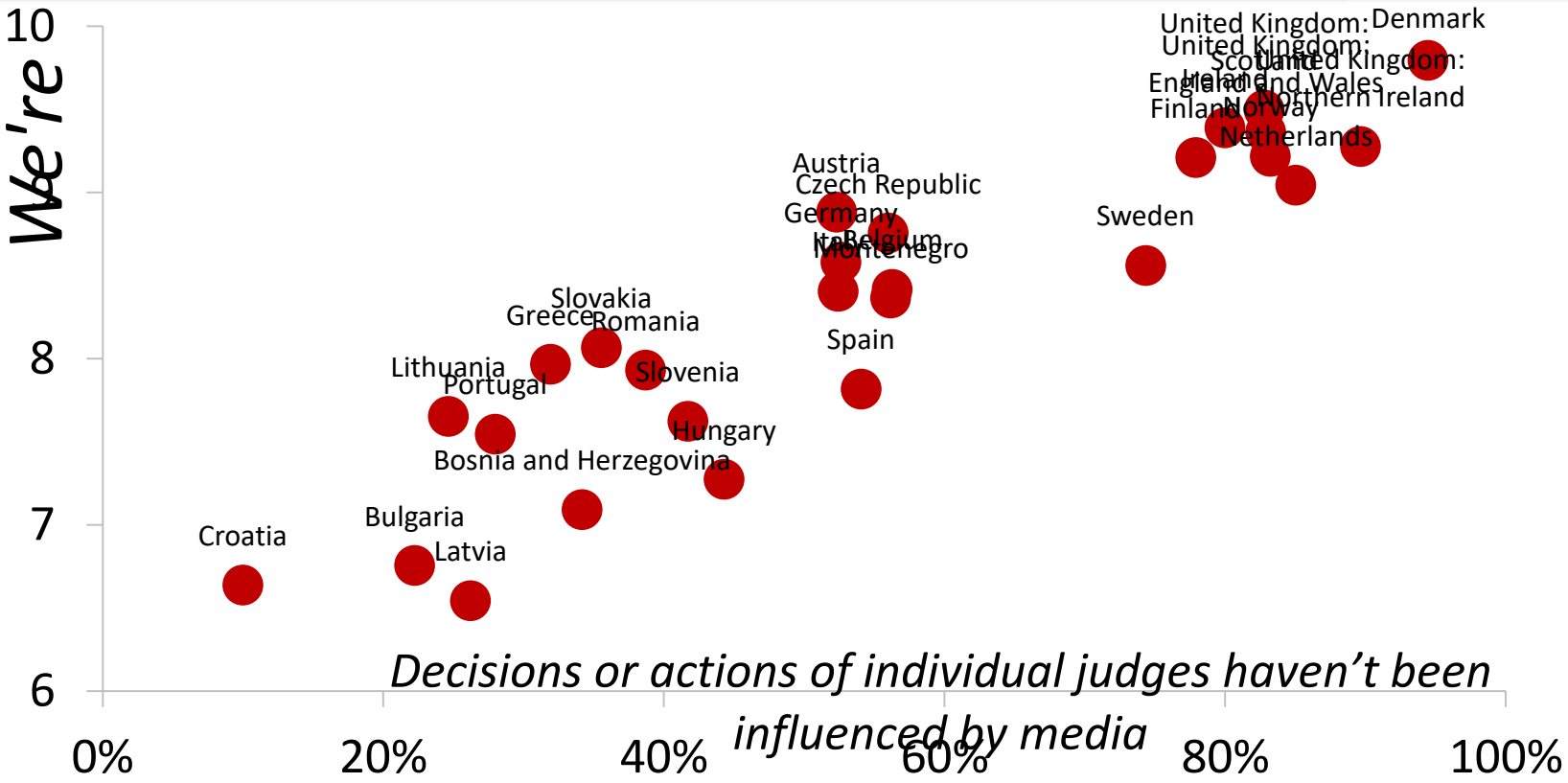
Sources of pressure:
- outside of the system



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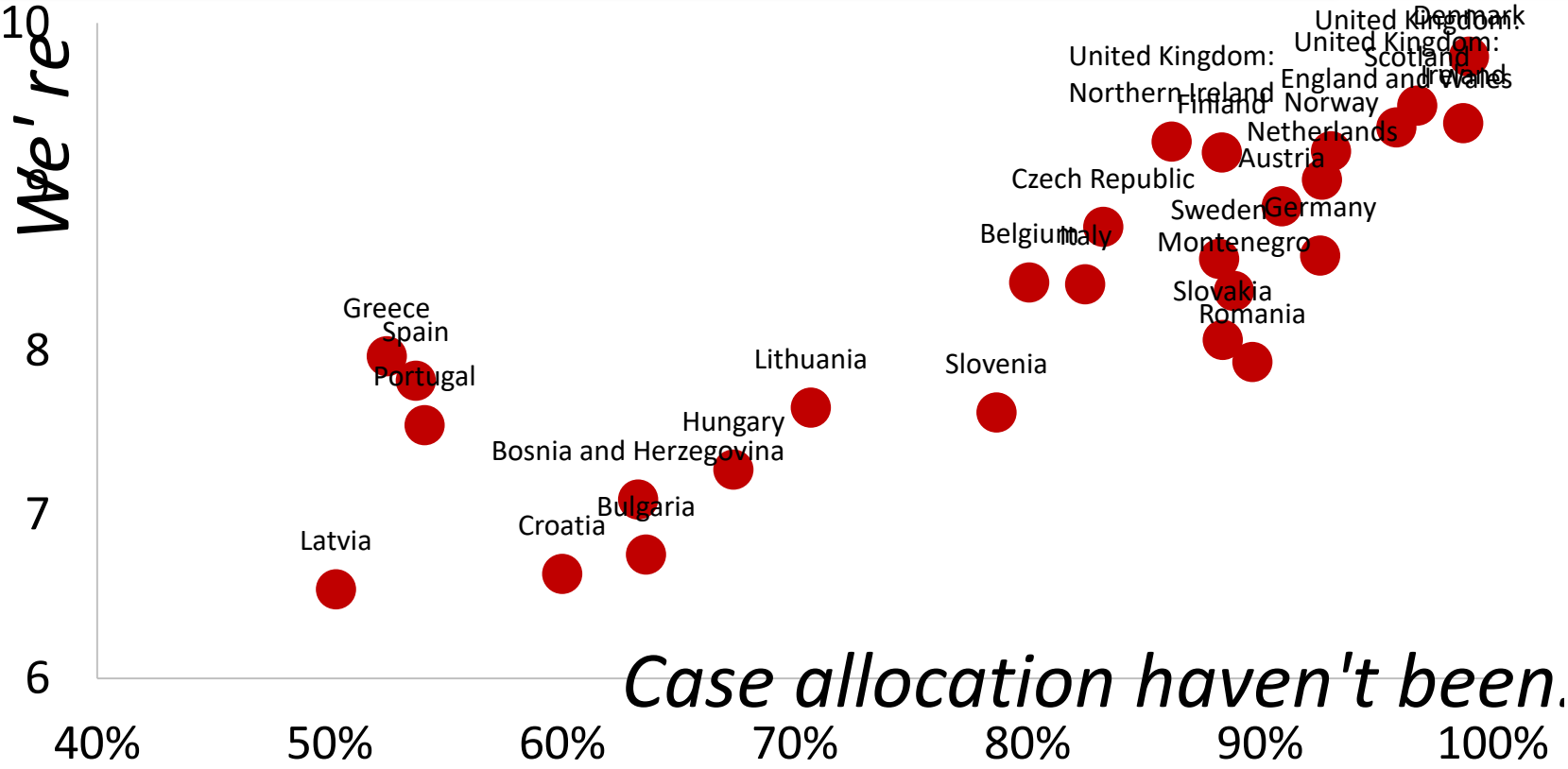
Sources of pressure:
- *within the system*



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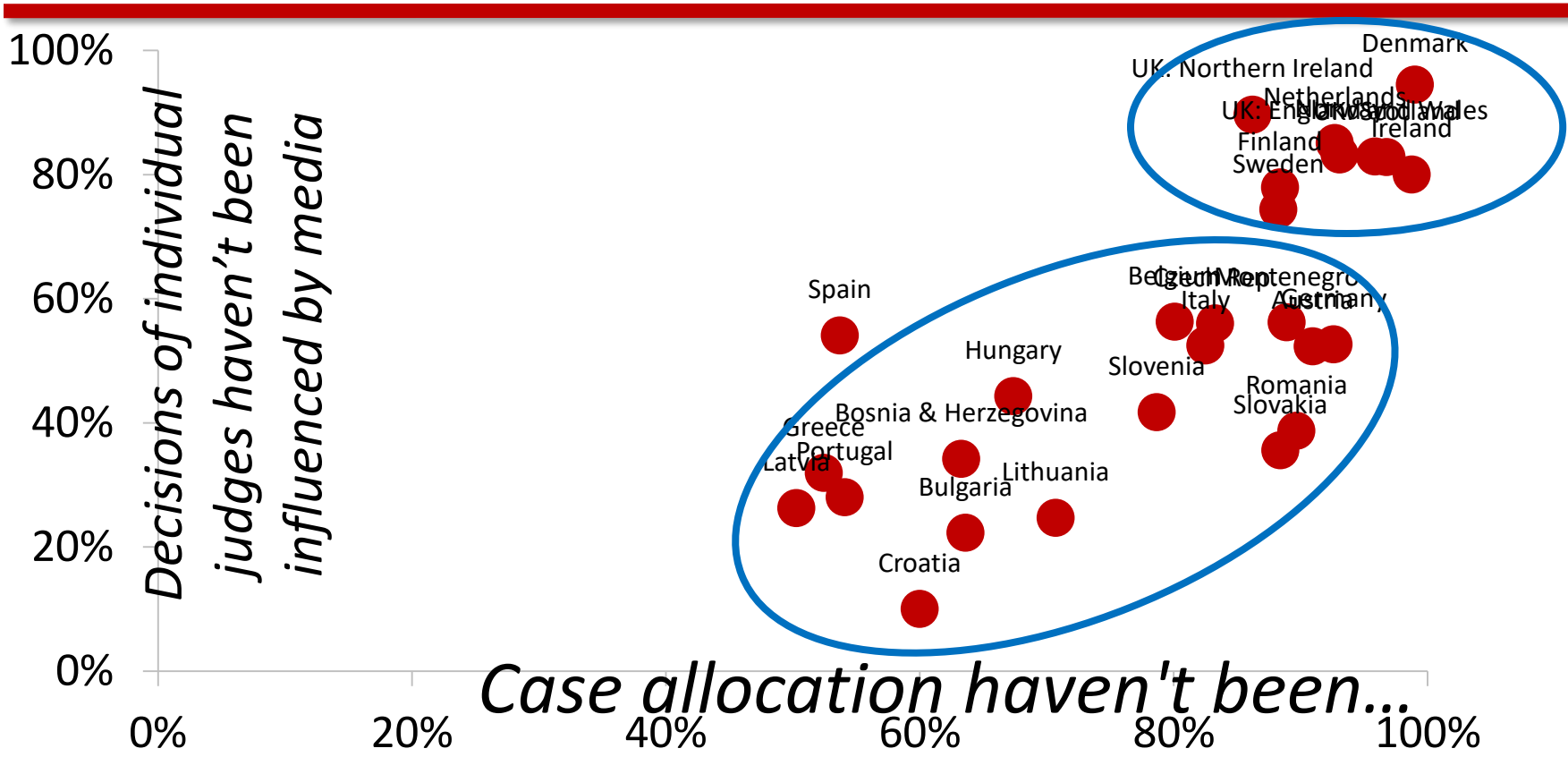
Weak system is threaten from both – outside and within



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An external perspective on the results of the survey among judges and lawyers 2019

Marco Fabri – National Research Council of Italy

marco.fabri@irsig.cnr.it

The Essentials

Impartial

Not supporting any of the sides involved in an argument.

Independent

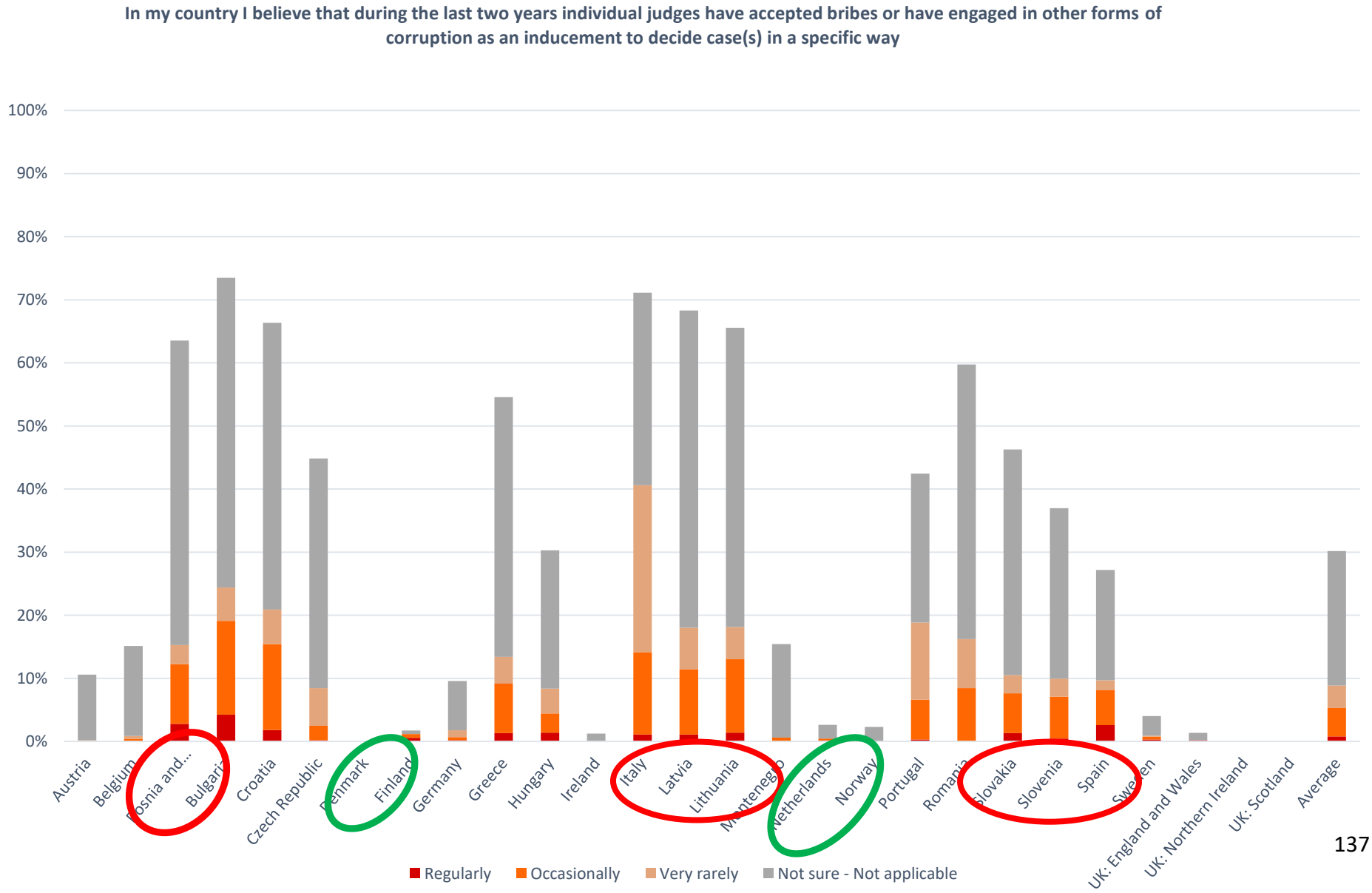
- **Freedom from being governed or ruled by others. [institutional indep.]**

- **The ability to live your [professional] life without being helped or influenced by other people. [individual indep.]**

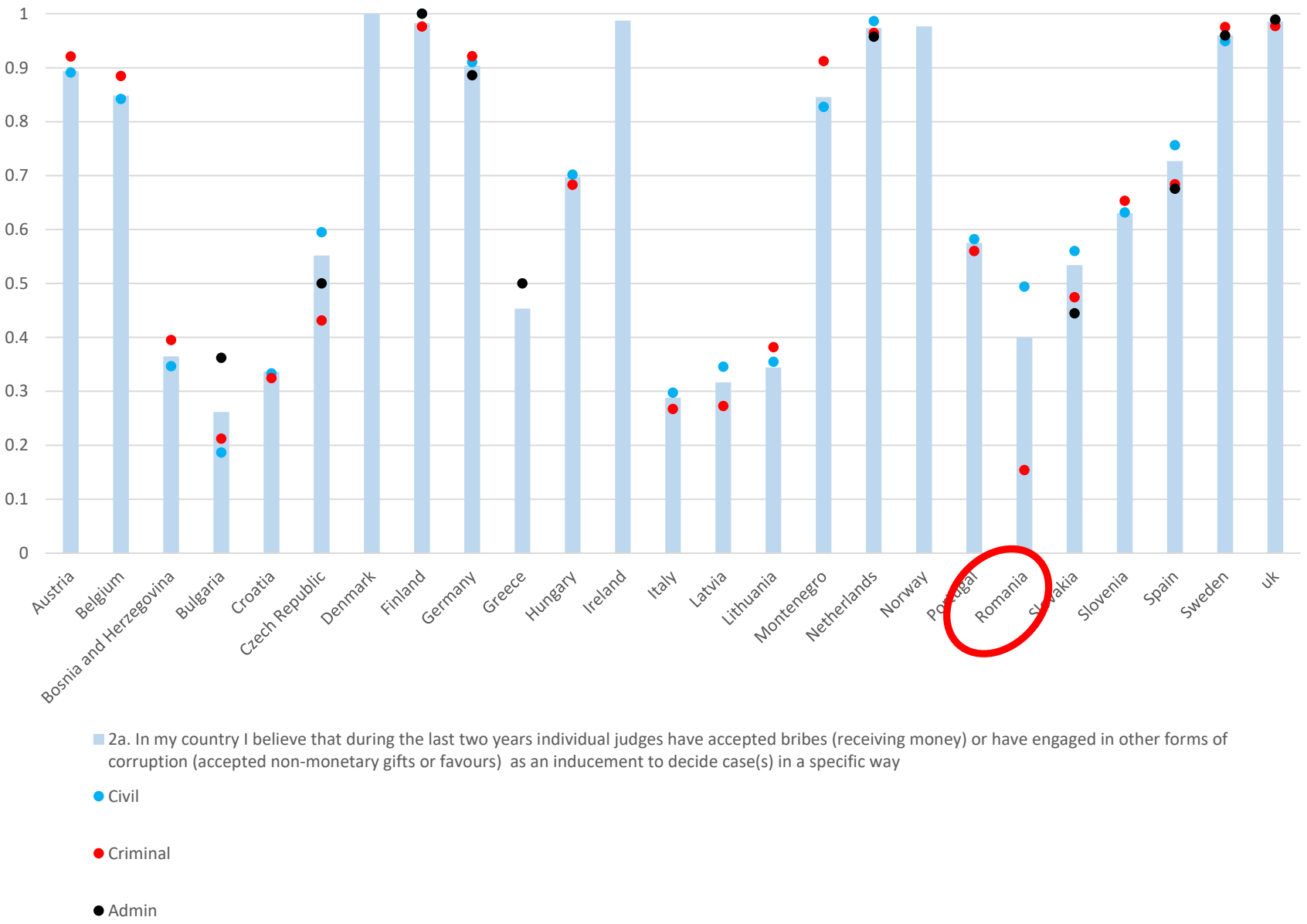
Your Survey Areas

- Inappropriate pressures
- Corruption
- Threats
- Case assignment
- Selection and career
- Media pressure
- Independence respected
- Irremovability
- Enforcement of decision against government
- “Feeling” about independence
- Ethical stds
- Role of judicial council

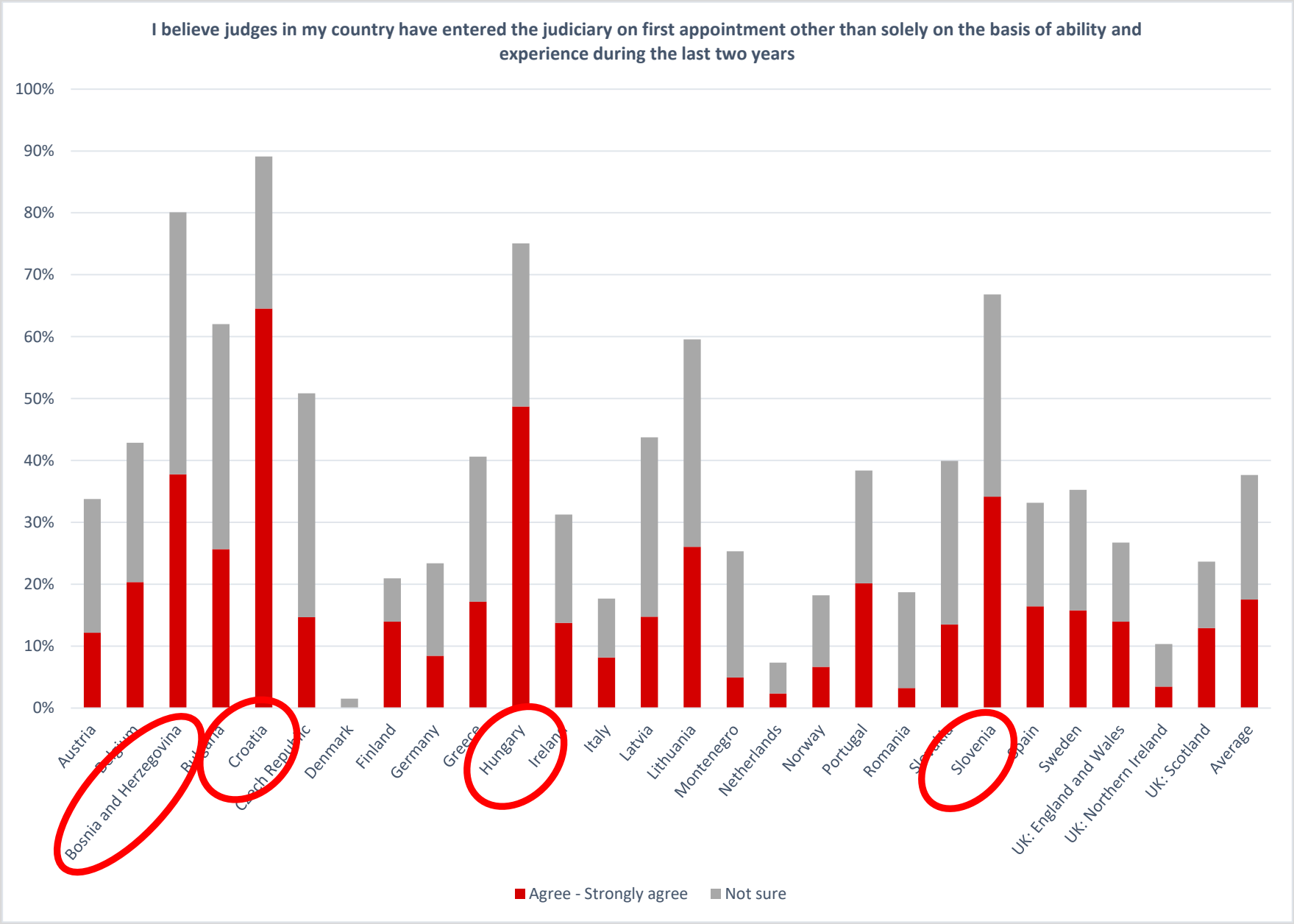
Corruption (12)



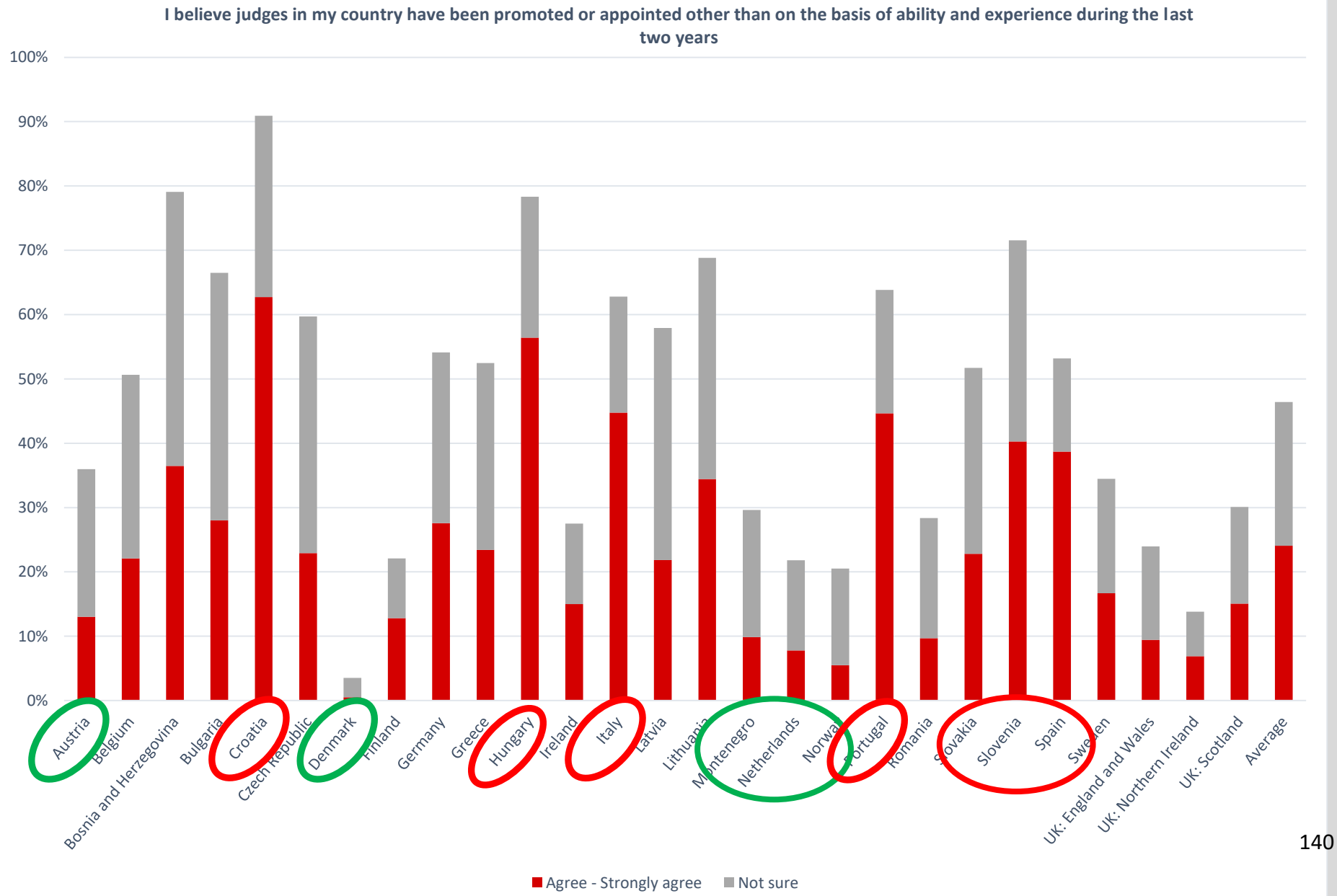
Corruption


1
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0
Austria
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Czech Republic
Denmark
Finland
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Montenegro
Netherlands
Norway
Romania
Slovenia
Spain
Sweden
uk
2a. In my country I believe that during the last two years individual judges have accepted bribes (receiving money) or have engaged in other forms of corruption (accepted non-monetary gifts or favours) as an inducement to decide case(s) in a specific way
Civil
Criminal
Admin

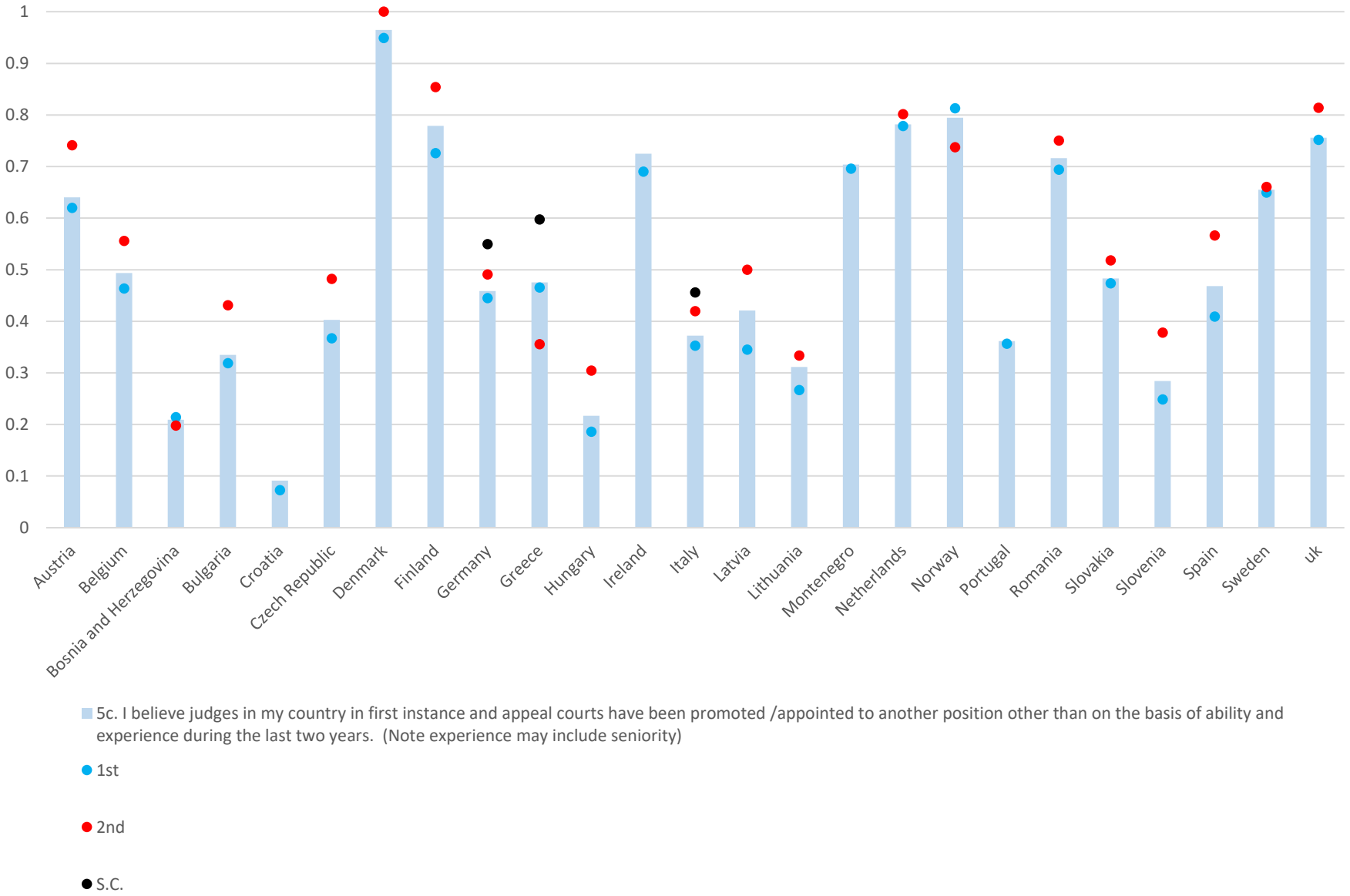
First Appointment (21)



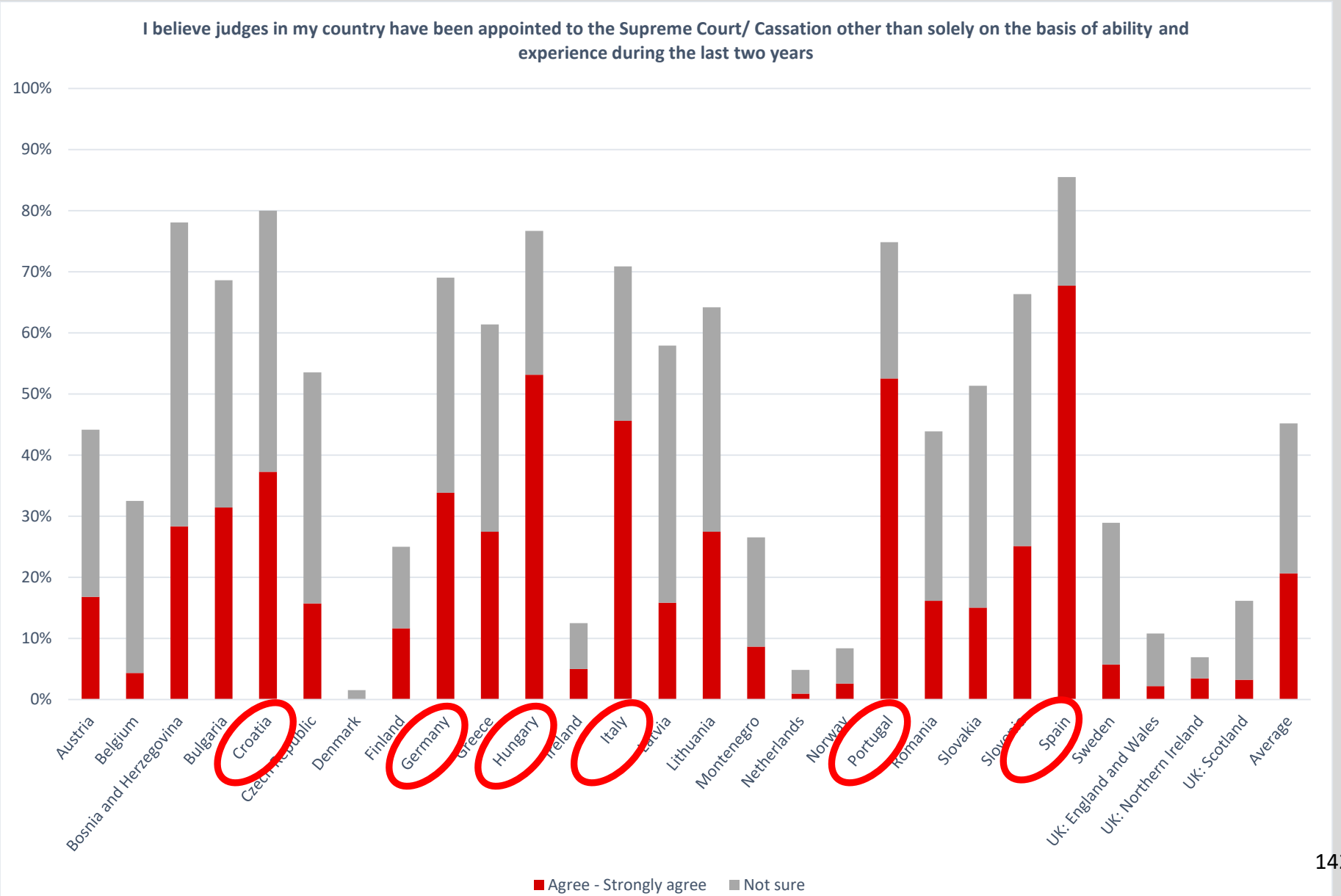
Promotions (23)



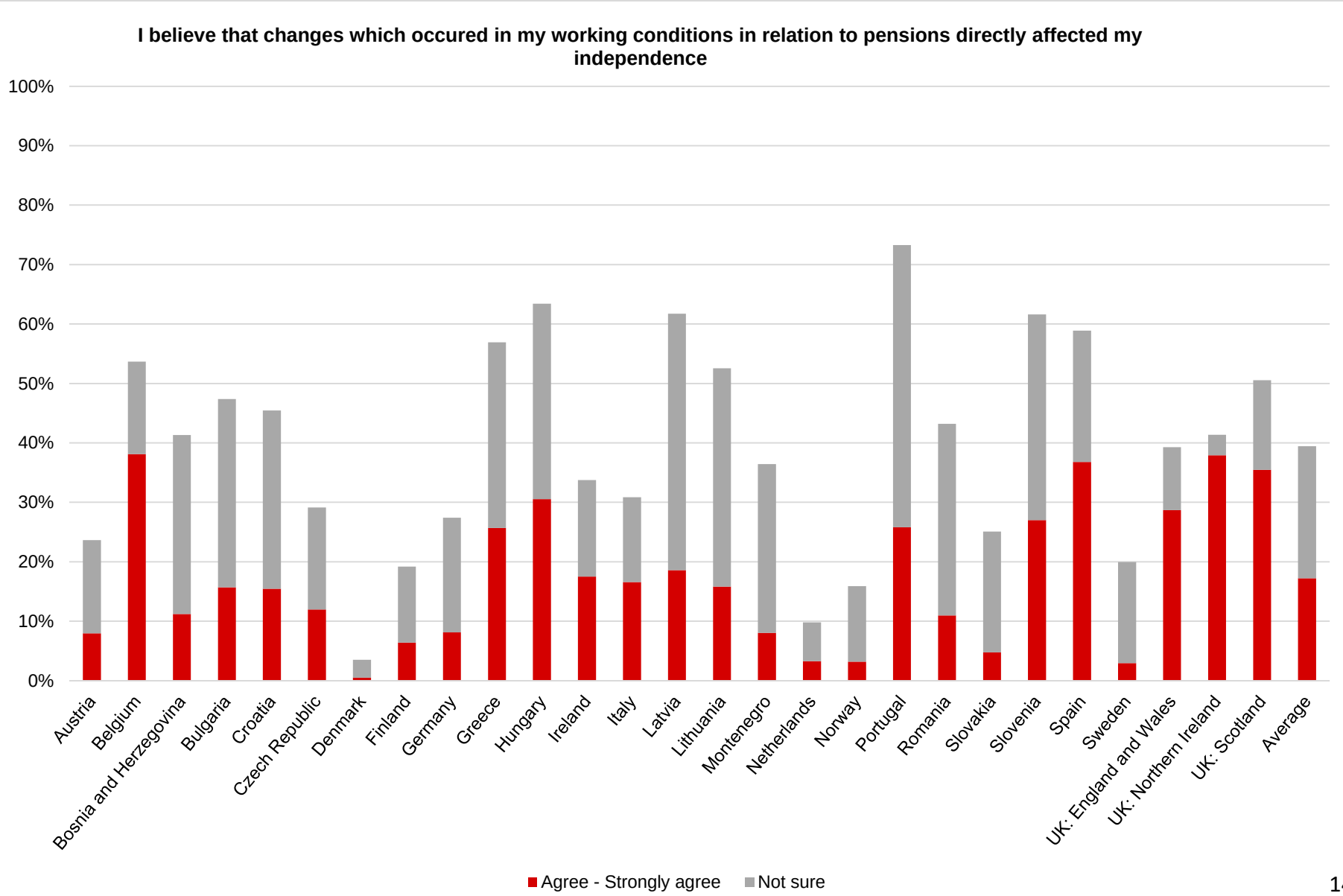
Promotions


1
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0
Austria
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Czech Republic
Denmark
Finland
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Montenegro
Netherlands
Norway
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
uk
5c. I believe judges in my country in first instance and appeal courts have been promoted /appointed to another position other than on the basis of ability and experience during the last two years. (Note experience may include seniority)
1st
2nd
S.C.

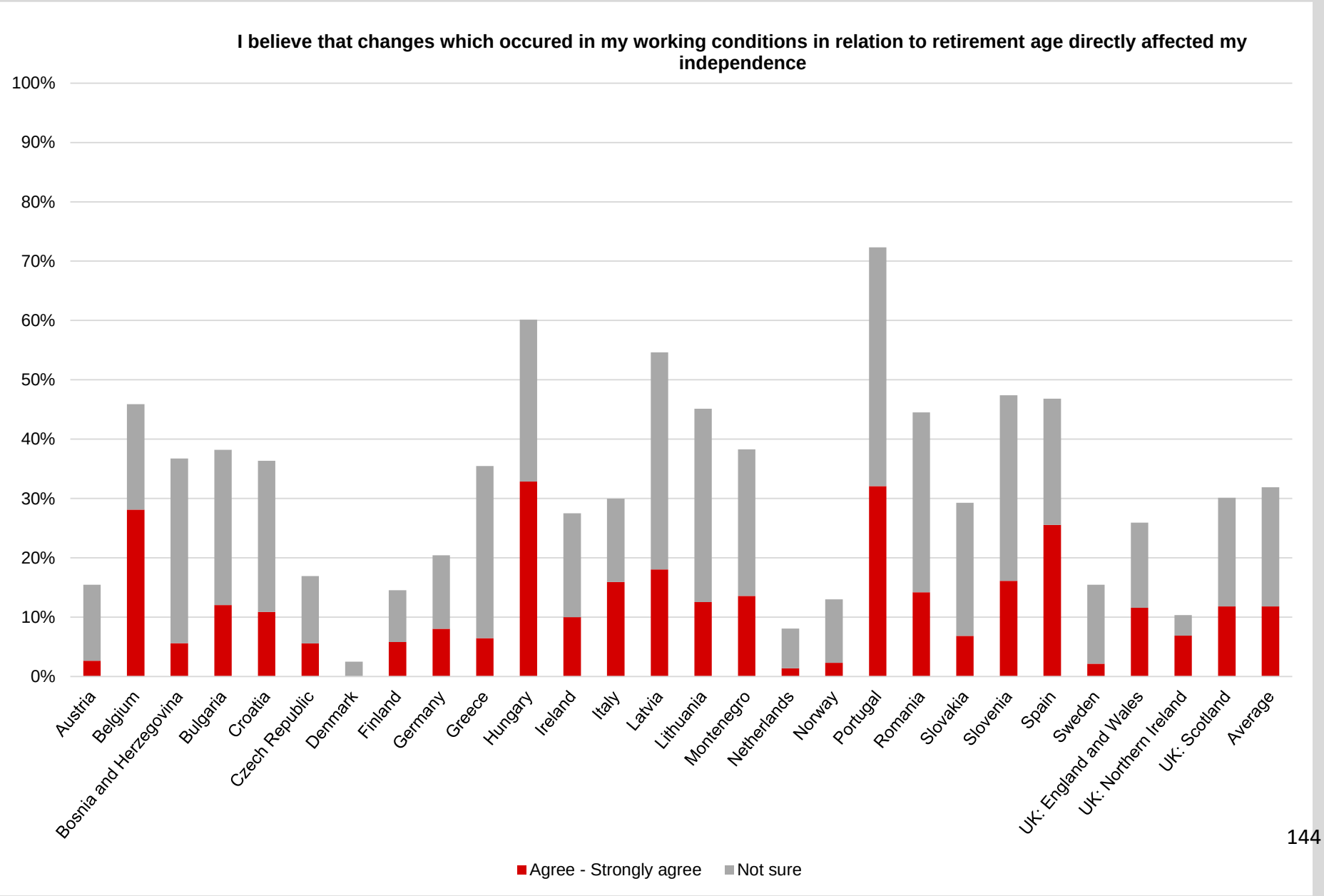
Supreme Court Appointment (22)



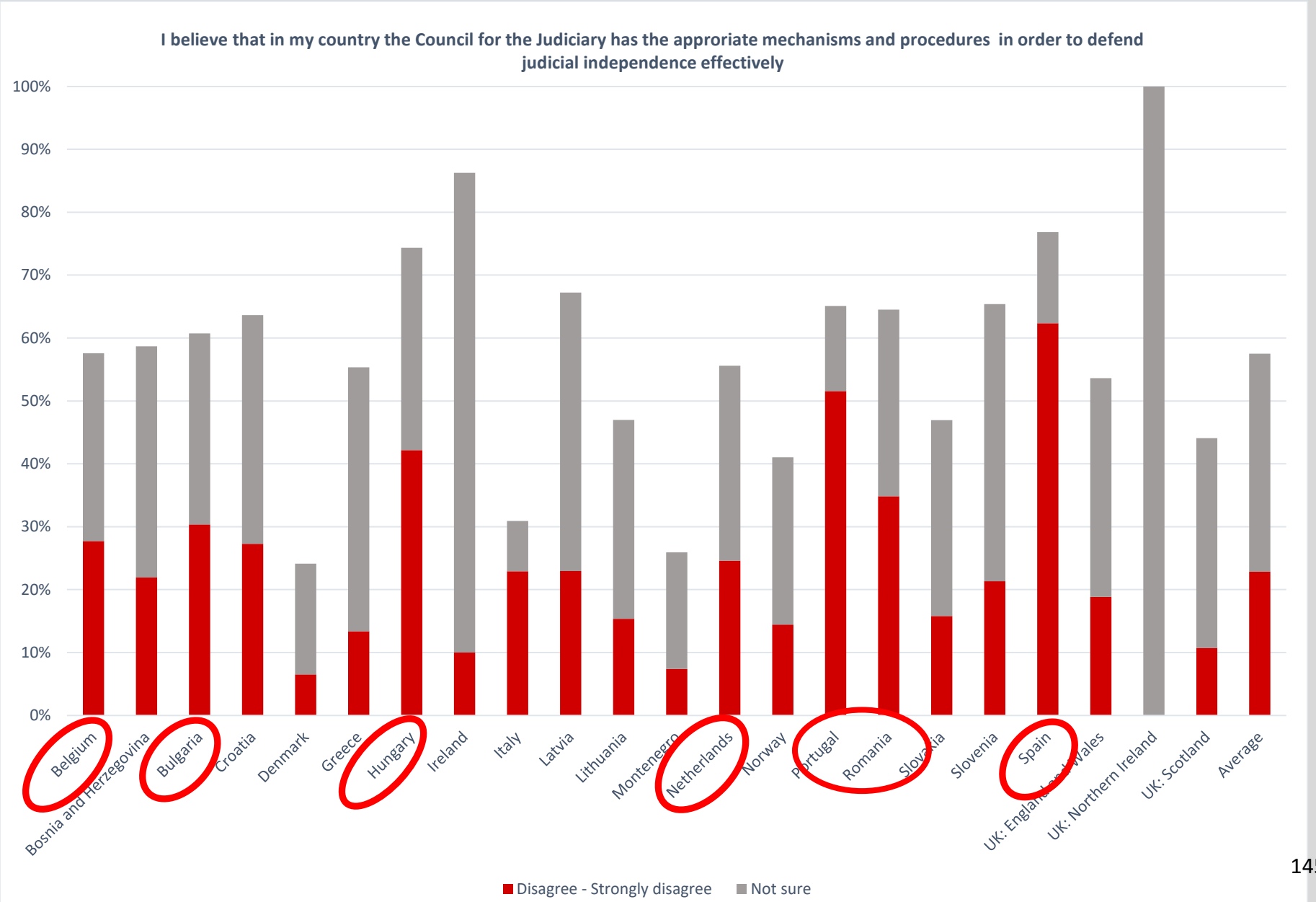
Pension directly affected (25) ...?



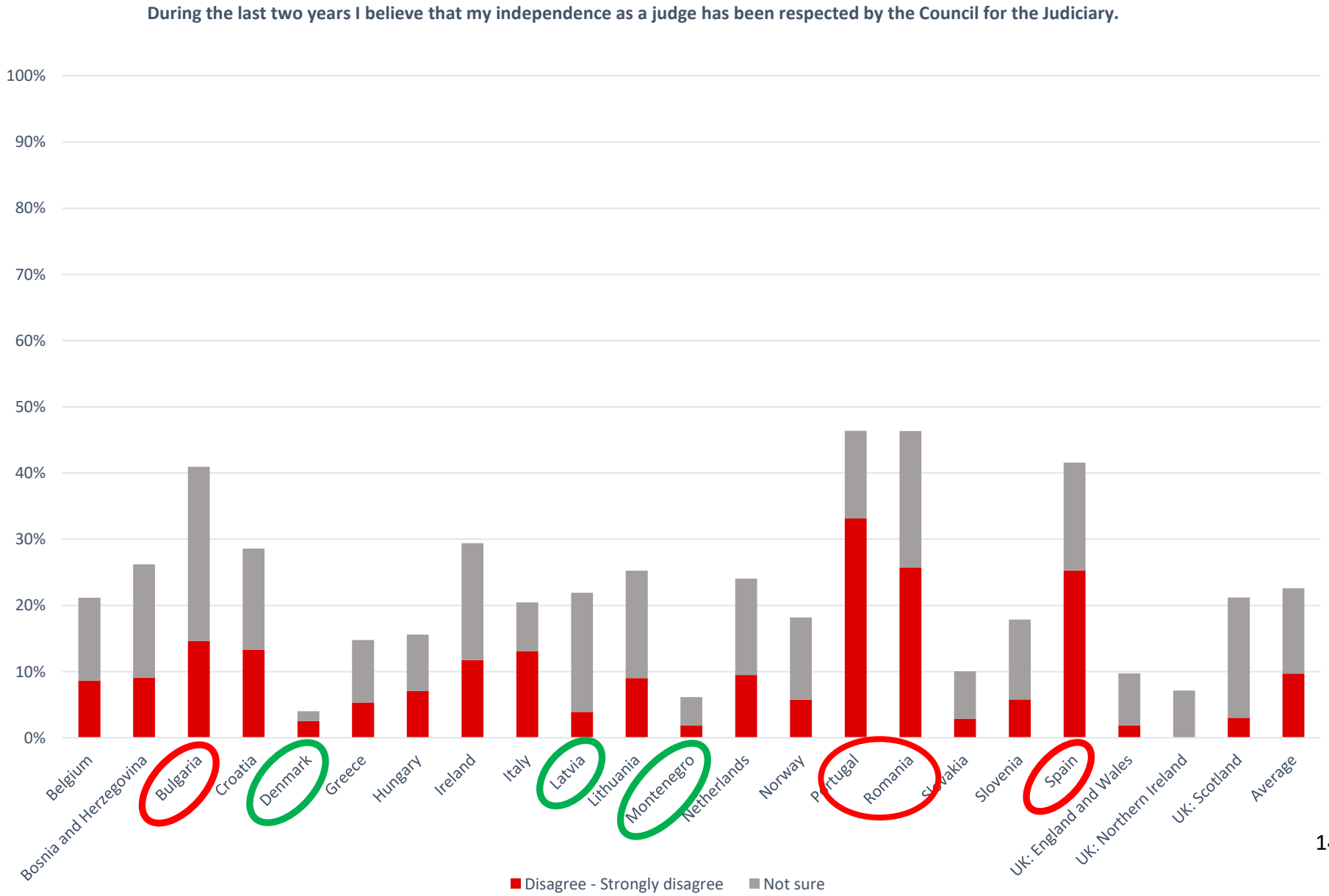
Retirement Age directly affected (26) … ?



Council 'tools' (46)



Judicial Council Respect (34)



Some Final Remarks

- There are **"packages"** of judicial independence, depend on historical, legal, economic, and social context in each country.

- Different packages of safeguards may lead to the same result … **or vice versa**.

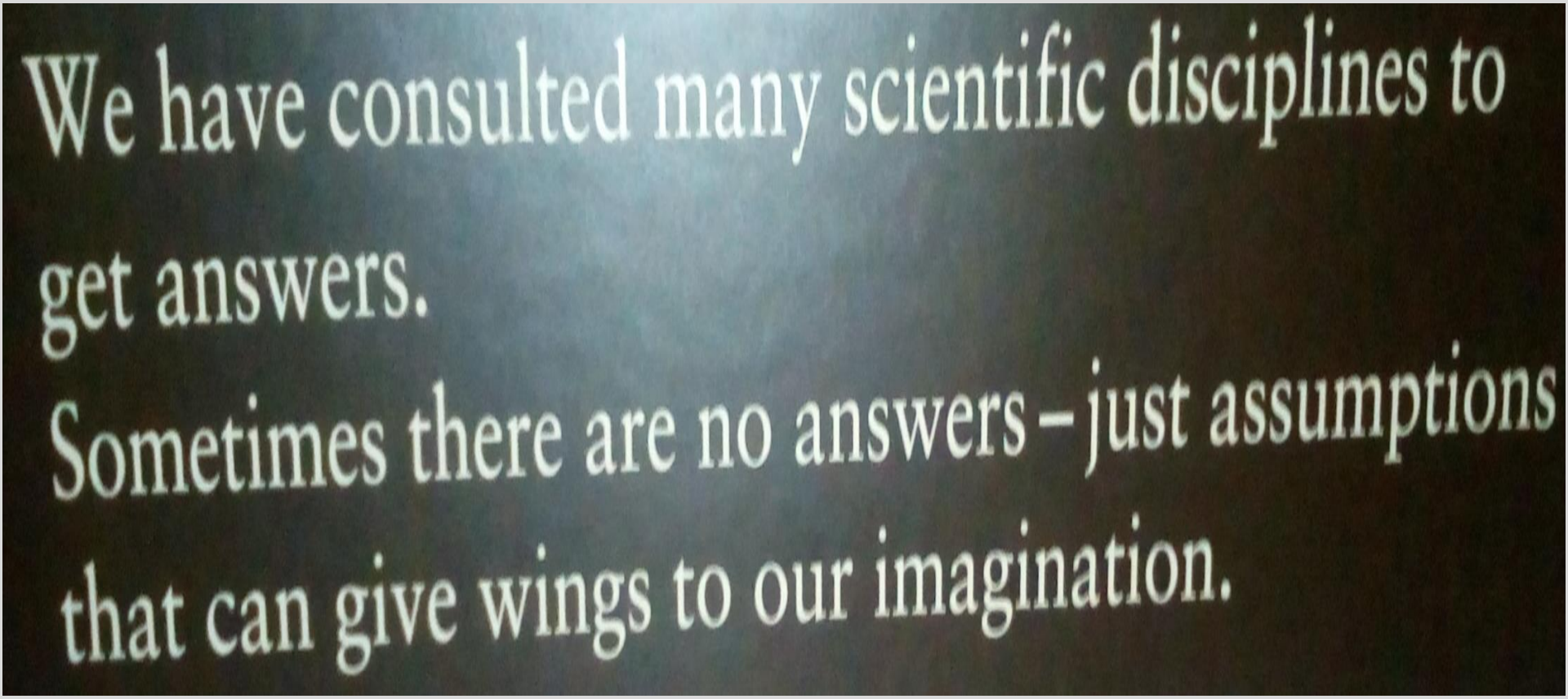
- "Much depends on how the formal structures work **in practice** and on their interaction»

- «It is not sufficient to set standards and guidelines, but also the extent to which these are realized **in practice** needs to be systematically assessed» (*ENCJ Independence, accountability and quality report, p.8)*.

- **Quality analysis is needed**

Some Final Remarks

- Inappropriate influence from the **Media**, or, in some countries **Corruption.**
- Initial recruitment is quite fine, but some problems arise in **career developments** managed by Judicial Councils.
- **Case assignment** still an issue.
- **How, and how much, can these issues affect Judges' impartiality ?**
- Countries with councils are not that much happy about their independence.
- **So … what Judicial Councils should do to really "improve" judicial independence and judges' impartiality (perceptions) ?**


We have consulted many scientific disciplines to get answers.
Sometimes there are no answers – just assumptions that can give wings to our imagination.

ENCJ General Assembly
"The Future of the Rule of Law and Justice in Europe"

Bratislava 7 June 2019

An external perspective on the results of the survey among judges and lawyers 2019

Marco Fabri – Kamil Jonski

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European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

Administration of the Association ENCJ

Adoption of recommendations of the 2018-2019 projects

7 June

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

Administration of the Association ENCJ

Adoption of ENCJ work plan 2019-2020

7 June

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

ENCJ work plan 2019-2010

Proposal Project 1:

Independence, Accountibility and Quality of the Judiciary - continuation

7 June

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

ENCJ work plan 2019-2020

Proposal Project 2:

Public confidence and the Image of Justice - continuation

7 June

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Réseau européen des Conseils de la Justice (RECJ)

ENCJ work plan 2019-2020

Proposal Project 3:
To promote Digital Justice

7 June

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

ENCJ work plan 2019-2020

Proposal Project 4:
Workshop evaluation of judges

7 June

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

1. Independence, Accountability & Quality of the Judiciary (1st meeting 19-20 Sofia)
2. Public confidence and the image of justice (1st meeting 19-20 Sofia)
3. Digital justice forum (Spring 2020)
4. Workshop evaluation of judges (October - November 2019)

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

Administration of the Association ENCJ

Adoption of the ENCJ Bratislava Manifesto

7 June

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

Administration of the Association ENCJ

ENCJ Award for Positive Change

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

Presentation of 2020 General Assembly venue

7 June

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

Date: 3-5 or 10-12 June 2020

BRUSSELS

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

Closing of the 2019 General Assembly

7 June

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

Closing of the General Assembly

Kees Sterk

President of the ENCJ

7 June

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

Tour of Judicial Council:

Meeting point at entrance of venue at 13h55

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

SÚDNA RADA SLOVENSKEJ REPUBLIKY

General Assembly meeting

Bratislava, 5 – 7 June 2019

Réunion de l'Assemblée Générale

Bratislava, les 5 -7 juin 2019

7 June