

FB – Index 2012

Index for the comparison of the efficiency of 42 European judicial systems, with data taken from the World Bank and Cepej reports.

Introduction

The points of reference internationally recognized for evaluating the quality and efficiency of the judicial systems are two reports: the World Bank's *Doing Business* - in particular, its section "Enforcing Contracts" - and the report *European judicial systems*, published by the CEPEJ, the specialized committee in evaluating judicial systems at the Council of Europe.

While the World Bank with the *Doing Business* report makes a real ranking among the judicial systems examined, the Cepej report draws up an overview of several indicators, highlighting for each of them various graphs and tables of assessment, but in essence, without making a real comparison of the systems examined.

The *Doing Business* report has several strengths. First of all, by comparing 183 judicial systems it achieves a world-wide benchmark. In addition, the indicators considered (for Enforcing Contracts they are three: the duration of a trade dispute, the number of activated procedures for the resolution of the dispute and the cost thereof) are measured through the observations of a large number of protagonists of the judiciary in each country. This methodology minimizes the risk of measurement error. For example, if you look at the duration of the civil case study in Italy (equal to 1,266 days in 2012) obtained through the evaluation of the average durations reported by observers interviewed, you can see that the published data is very close to the official one measured by the Italian Ministry of Justice. However, the only limit of the *Doing Business* report can be detected in the small number of indicators, only three as mentioned, though referred to a case study that is very specific. The dispute concerns a lawful transaction between two businesses, the seller sells and deliver certain goods to the buyer who refuses to pay on the grounds that the delivered goods were not of adequate quality. The seller sues the buyer and the judgment is 100% in favor of seller although it obtains the money only through an enforcing action.

This point of (relative) weakness of the *Doing Business* is indeed the strength of the work done by the Cepej because the commission looks at a very large number of indicators: budget to courts, legal aid, access to justice, number of courts, flows of proceedings, litigious ratios, ADR methods, lawyers, notaries, and many others.

Objective of the study presented in this paper is to build an index, called FB-Index, that evaluates, in addition to the indicators of the *Doing Business* report also a selected number of indicators of the Cepej report, thereby achieving a rating representative of a larger number of elements upon which the judicial systems are funded.

The study is experimental and open to all sorts of comments and contributions that could definitely improve its accuracy and value.

FB-Index 2012

(data from Cepej, *European judicial systems - Edition 2012* – and from *Doing Business 2012*)

The table below shows the ranking obtained by the FB-Index applied to 42 European countries for which it has been possible to obtain the indicators in the two above referenced reports.

FB Index 2012

rnk	Country	Indx	rnk	Country	Indx
1	Denmark	110,5	22	Slovenia	59,6
2	Portugal	105,3	23	Austria	59,0
3	Finland	94,9	24	Slovakia	58,3
4	Norway	94,7	25	The FYRO Macedonia	57,5
5	Czech Republic	92,9	26	Montenegro	56,4
6	Luxembourg	91,7	27	Albania	54,9
7	Sweden	83,8	28	Netherlands	54,5
8	France	83,3	28	Romania	54,5
9	Lithuania	82,2	30	Serbia	51,3
10	Croatia	79,9	31	Greece	49,0
11	Azerbaijan	78,5	32	Bosnia Herzegovina	48,2
12	Switzerland	78,3	33	Malta	46,5
13	Germany	75,3	34	Ireland	45,4
14	Cyprus	75,3	35	Italy	45,1
15	Russian Federation	75,0	36	Armenia	44,3
16	Estonia	74,3	37	Georgia	40,9
17	Latvia	72,9	38	Bulgaria	40,8
18	Hungary	68,5	38	Turkey	40,8
19	Iceland	66,7	40	Moldova	39,7
19	Ukraine	66,7	41	Poland	37,4
21	Belgium	65,2	42	Spain	27,1

Construction of the FB-Index

The FB-Index is the arithmetic mean of the scores obtained by each judicial system in the 14 indicators selected from those utilized by the World Bank and by the CEPEJ. The 14 indicators were divided into two groups according to what was deemed to be the relevance: the group of basic indicators (weight 2) assigns scores from 0 to 180, the other group, with those that were considered more important indicators (weight 1) assigns double scores for each placement, and so from 0 to 360. In both groups, for each indicator, a positive score is assigned to judicial systems that rank among the first 30 positions. To those ranked from 31st to the 42nd position is assigned a score of zero.

The countries that have contributed to the CEPEJ report did not send the data for all the relevant indicators, therefore, also in the construction of the FB-Index, for certain indicators, some countries have not been classified. As a result, it was decided not to use the summation of all the scores obtained, because this method would reward systems with the highest number of measurements, but it was used the arithmetic mean of all the scores achieved.

Of the 48 judicial systems included in CEPEJ evaluation, six have been excluded from the Fb-Index: three - Andorra, San Marino and Monaco - because having a population of less than one million people they were considered too small for a comparison with other nations; the other three, which are those of the United Kingdom - England-Wales, Scotland and Northern Ireland - have been excluded because of the impossibility to put together the data of CEPEJ, in fact divided in three sub-regions, with those of the *Doing Business* that simply reports the performance of the United Kingdom.

For each selected indicator it has been established an evaluation criteria to rank the judicial systems. The criteria are the following ones: 1) ranking from the highest value to the lowest (highest); 2) ranking from the lowest value to the highest (lowest); and 3) ranking from the closest value to the arithmetic mean to the most distant (distance from mean). For example, the proportion of court fees to the budget of courts (in Italy it is the Contributo Unificato) is an indicator whose rating should reward more those countries with the highest coverage (highest). Moreover, the disposal time of proceedings in civil and commercial justice is an indicator whose ranking should reward more those judicial systems that were recorded for the least duration (lowest). Finally, there are indicators for which it seems more appropriate to establish a ranking on the basis of how close they are to the European average. For example, the indicator that measures the number of courts per 100,000 inhabitants does not denote a system better than others in being lower (fewer courts) or higher (greater number of courts). Rather, it is more appropriate to consider more "virtuous" those judicial systems that are closest to the European average.

In the FB-Index half of the indicators are measured by the method of the distance from the European average and the other half with the other two.

It is quite evident that, although the choice of criteria was based on reasonable considerations, it is anyway a subjective evaluation, in some cases, not necessarily accepted by all experts of this field. On the other hand, it seems reasonable to think that many studies of this type are based on assumptions not universally agreed.

Below is the list of indicators with the weight, size and the source.

#	indicator	weight	measure	source
1	Whole cost of justice per inhabitant (excluding legal aid)	1	Distance from average	Cepej 2012
2	Budget allocated to legal aid per inhabitant	1	Highest	Cepej 2012
3	Proportion of court fees to the budget of courts	2	Highest	Cepej 2012
4	Number of inhabitants per first instance court	1	Distance from average	Cepej 2012
5	Level of computerization	2	Highest	Cepej 2012
6	Number of judges	1	Distance from average	Cepej 2012
7	Non judge staff	2	Distance from average	Cepej 2012
8	Number of prosecutors	1	Distance from average	Cepej 2012
9	Non prosecutor staff	2	Distance from average	Cepej 2012
10	Civil litigious cases - Disposition time	1	Lowest	Doing Business 2012
11	Clearance rate of civil litigious cases	1	Highest	Cepej 2012
12	Cost of justice as a % of claim's value	2	Lowest	Doing Business 2012
13	Clearance rate of severe criminal cases	1	Highest	Cepej 2012
14	Number of practicing lawyers per 100.000 inhabitants	2	Distance from average	Cepej 2012

Comment to results

A trend that seems to emerge looking at the ranking obtained with the FB-Index is that Europe, with regards to the level of efficiency and performance of judicial systems, can be divided into three main regions. The area that appear to be most virtuous is that of northern Europe with Denmark, Finland, Norway, Luxembourg and Sweden in the top ten.

The Western and Central Europe follows closely with the Czech Republic 5th, France 8th and Germany 13th.

Finally, Mediterranean Europe slides into the bottom of the ranking, with Malta 33rd, Italy 35th, Turkey 38th and Spain, unfortunately last one, out of the 42.

Denmark ranks at the top places in various indicators. It has one of the most conspicuous per capita budget for legal aid, shows an excellent balance between public prosecutors and population and shows excellent ratios in the clearance rate of civil and criminal affairs, both above 100% on an annual basis.

Very interesting appears the profile of Portugal which ranks second although not excelling in specific areas but recording a high score in at least 12 out of the 14 indicators. Also for Portugal are very good the ratios of the clearance of new civil and criminal proceedings.

It has to be noted that for Iceland and Ukraine, sharing the 19th position with the same score, it was possible to measure only 9 out of 14 indicators, while for all other countries it has been possible to measure a minimum of 11 out of 14.

Azerbaijan, which is 11th in the ranking, is the champion with regards to the average duration of cases in the civil sector (237 days to resolve a trade dispute). This is the key indicator of the *Doing Business* report, but also the factor most commonly used to measure the effectiveness of the "justice service".

Serbia has the highest rate on court's budget covered by fees (77% versus 10.7% in Italy).

Switzerland has a balanced ratio between lawyers and population (130 lawyers per 100,000 inhabitants). In the same category, Italy, with its 211,962 lawyers, has one of the highest per capita ratios and shares this low position in the ranking with Spain, Iceland, Poland, Greece and Luxembourg.

Italy in the FB-Index

According to the FB-Index, Italy ranks at the 35th position out of 42 systems evaluated, which is certainly not a placement to be proud of. However, if we look at the ranking of the same judicial systems in the *Doing Business*, we would notice that Italy is in the last position. In other words, if in addition to the resolution time of trade disputes and the cost incurred by the parties to conduct the case reported by the World Bank will also consider other indicators of the CEPEJ, Italy scale a few places.

The Italian judicial system in 2010 showed a remarkable performance only in one indicator, the clearance rate of civil disputes, mainly due to the sharp decline in new registrations of oppositions to administrative penalties. Another good placement is also obtained by the indicator on the per-capita budget for justice, not far from the European average. On all other indicators the performance is low, confirming, unfortunately, the common perception of the poor quality of the efficiency of the Italian judicial system.