Disparities in European Law

Frank ter Borg | EFILA | London, 23 January 2015
Outline

- Maxims European Commission
- Independent ‘rating agencies’
- Relevant benchmarks
- Benchmark results
- Position of European Commission
- Conclusions
Two maxims European Commission

- In the EU European law shall apply

- Courts in the EU practice European law
Two ‘rating agencies’

- World Economic Forum
  - *Global Competitiveness Report 2014*
    - 144 countries

- World Bank - IBRD
  - *Doing Business Report 2014*
    - 189 countries
What are relevant benchmarks?

Relevant is what is relevant for business operators - investors

- Judicial independence (GCR)
- Enforcing contracts through the courts (DB)
- Registering property (DB)
- Transparency of government policy making (GCR)
- Favouritism in decisions of government officials (GCR)
- Ease of doing business (DB)
## Benchmarks for EU - I

<table>
<thead>
<tr>
<th>Category</th>
<th>Best score</th>
<th>Worst score</th>
<th>Country range</th>
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<tbody>
<tr>
<td>Judicial independence</td>
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<td>2 – 130 / 144</td>
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<td>Enforcing contracts</td>
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<td>122</td>
<td>1 – 122 / 189</td>
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<tr>
<td>Registering property</td>
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<td>180</td>
<td>6 – 180 / 189</td>
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## Benchmarks for EU - II

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<td>Favouritism in decisions of government officials</td>
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<td>4 – 141 / 144</td>
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<td>Transparency in government policy making</td>
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<td>Ease of doing business</td>
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<td>5 – 103 / 189</td>
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</table>
Position European Commission (EC)

- In the internal market: prosecutor and judge of first instance

- Political considerations play an important and recognized role in infringement procedures
  - and what about the rule of law?

- EC allows all sorts of arbitration mechanisms (incl. Solvit – explicitly set up to avoid lengthy legal procedures)

- Yet investor-state dispute settlement moot point
Conclusions

- Wide disparities in European law!
- No common European legal area
- European Union = legal patchwork Europe
- Should every investor – state dispute be brought forward to Luxembourg?
- No way! Hence the need for effective investor – state dispute settlement