

EU and the EFTA States parties to the Agreement (Iceland, Liechtenstein and Norway), based on common rules and equal conditions of competition

ess target EEA business rights



Internal Market Scoreboard

EEA EFTA States

February 2007

EFTA SURVEILLANCE
AUTHORITY

INTERNAL MARKET SCOREBOARD No. 19

EFTA STATES of the EUROPEAN ECONOMIC AREA

February 2007

EFTA SURVEILLANCE AUTHORITY

MAIN CONCLUSIONS FROM THE 19TH EFTA INTERNAL MARKET SCOREBOARD

- The Internal Market Scoreboard shows that the average transposition deficit of the EEA EFTA States has improved slightly, being now 1.4% instead of 1.5% six months ago. The average transposition deficit of the EU Member States is 1.2%.
- With a transposition deficit of 1.9%, Liechtenstein remains above the 1.5% interim target. Iceland's deficit decreased to 1.5%. Norway's transposition deficit has gone up to 0.7%.
- When comparing the 28 EEA States, Norway ranks 7th (down from 2nd), Iceland 21st (down from 17th) and Liechtenstein 24th (down from 22nd).
- Iceland and Liechtenstein each have two directives which are overdue by more than two years. The EEA EFTA States have no directives overdue by more than 2½ years.
- Liechtenstein has an average transposition delay of 10.5 months, Iceland of 9 months and Norway of 5 months.
- The number of infringement cases initiated by the Authority against the three EEA EFTA States has increased slightly. There are 43 infringement cases open against Norway, 40 against Iceland, and 34 against Liechtenstein.
- Infringement cases initiated due to non-conformity with or incorrect application of EEA rules account for 81% for Norway, 48% for Iceland and 29% for Liechtenstein. The rest of the infringement cases concern non-transposition of directives.
- More than half of all the EEA EFTA States' infringement cases relate to infringement by the EEA EFTA States of the rules on services, transport and public procurement.
- Norway resolves infringement cases, on average, in 25 months, Iceland in 13 months, and Liechtenstein in 12 months.

INTRODUCTION

The Internal Market of the European Union ensures the right for businesses and citizens of the European Union to trade their goods and services, to work, to invest and to establish wherever they want within the Union. The purpose of the EEA Agreement¹ is to extend the Internal Market to the three EEA EFTA States, namely Iceland, Liechtenstein and Norway,² thus ensuring, by and large, the same possibilities for businesses and individuals in those countries.

The benefits of the Internal Market include:

- free trade on equal terms within the EEA, which promotes innovation, competition and lower prices for consumers;
- the right to seek work and establish a business in 28 States across Europe;
- competition between service providers, which leads to more innovation and better services; and
- more cross-border investment within the EEA.

The Internal Market does not deliver its benefits automatically. A prerequisite for the functioning of the Internal Market is that equal conditions exist for competition, based on common, homogeneous rules across the 28 States that are parties to the EEA Agreement. These rules have to be adopted, transposed into national law and properly enforced.

The legal instruments used to create and regulate the Internal Market

The common body of law (“*acquis communautaire*”) that regulates the Internal Market consists first and foremost of directives and regulations adopted by the European Union.

Directives must be transposed into national legislation in the EEA States, but it is left to each EEA State to choose the form and the method of implementation. Each directive provides a time limit by which transposition has to be in place. Practically every month, directives adopted by the European Union are incorporated into the EEA Agreement through decisions made by the EEA Joint Committee. The obligation of the EEA EFTA States to transpose a directive into national law is triggered by these EEA Joint Committee decisions.

The EFTA Surveillance Authority is required to monitor that the transposition of the directives by the EEA EFTA States takes place in a timely manner, and that the transposition measures provide for full and correct implementation of the directive in question. The European Commission is entrusted with the parallel task towards the EU Member States. In carrying out its tasks, the Authority co-operates closely with the Commission. This co-operation ensures a uniform implementation and application of the Internal Market rules and principles throughout the whole EEA.

Regulations shall, according to the EEA Agreement, be made as such part of the internal legal order of the EEA EFTA States. According to the legal order of Liechtenstein, a regulation is directly applicable once the EEA Joint Committee decision incorporating it into the EEA Agreement enters into force. In Iceland and Norway, however, regulations are not directly applicable, which requires that these be made part of the internal legal order by way of a national implementing measure.

¹ Agreement on the European Economic Area.

² Switzerland is also a member of EFTA, but not party to the EEA Agreement. Hence, in this Scoreboard, the term “EEA EFTA States” refers to Iceland, Liechtenstein and Norway.

What is the purpose of the Internal Market Scoreboard?

Since 1997, the European Commission and the EFTA Surveillance Authority have issued the Internal Market Scoreboard to monitor how well the EU and EEA EFTA States comply with their obligations to ensure timely transposition of Internal Market directives.

The EFTA Internal Market Scoreboard monitors:

- to what extent the EEA EFTA States notify transposition of new EEA directives on time;
- the transposition backlog and average delays in transposition;
- in which sectors the EEA EFTA States face problems with transposition; and
- the number of infringement proceedings initiated against the EEA EFTA States for failure to transpose EEA legislation correctly and on time, and failure in applying these rules correctly.

The findings in this Scoreboard take into account the 1615 Internal Market directives that were incorporated into the EEA Agreement as per 31 October 2006.³ The Scoreboard records the transposition status for these directives on 11 November 2006.

What the Internal Market Scoreboard does not tell us

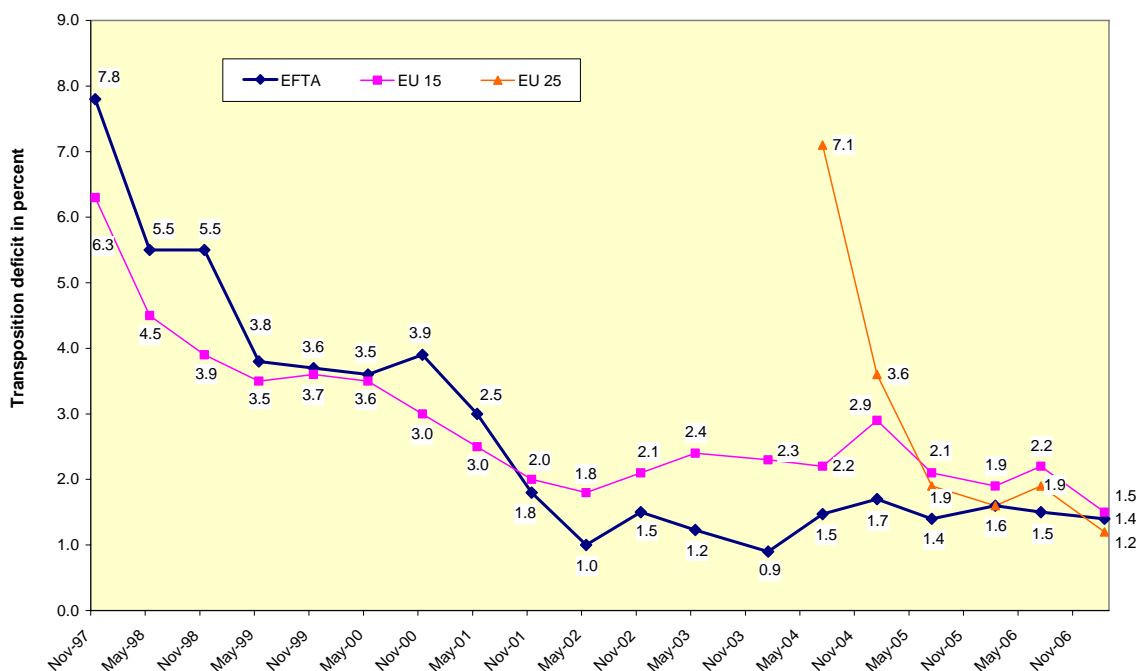
The Scoreboard concentrates on directives, and does not monitor whether Iceland and Norway have made regulations part of their internal legal orders. Furthermore, the transposition chapter of the Scoreboard does not report on the quality of the implementing measures notified by the EEA EFTA States, nor does it report on problems with the application of the EEA Agreement itself or the *acquis communautaire*. The Scoreboard does not, therefore, provide the complete picture on how the EEA EFTA States adhere to their obligations under the EEA Agreement.

³ The corresponding figure for the EU is 1634 Internal Market directives. The difference is caused by the fact that some directives become applicable in the EU before they are incorporated into the EEA Agreement, and some directives are repealed in the EU before they are repealed in the EEA EFTA States.

TRANSPOSITION OF INTERNAL MARKET DIRECTIVES

The transposition deficit indicates how many directives containing Internal Market rules and principles the EU and EEA EFTA States have failed to transpose on time.⁴ While the ideal transposition target is a 0% deficit, the European Council has set an interim target of 1.5% as the highest acceptable transposition deficit. This interim target has been endorsed by the EFTA Surveillance Authority.

Figure 1:
The EEA EFTA States’ average transposition deficit has decreased to 1.4%



Note: Transposition deficit for the EEA EFTA States, the EU 15 and the EU 25, situation as per 11 November 2006 for directives which should have been transposed on or before 31 October 2006. **Source for EU figures:** Internal Market Scoreboard N° 15bis - February 2007.

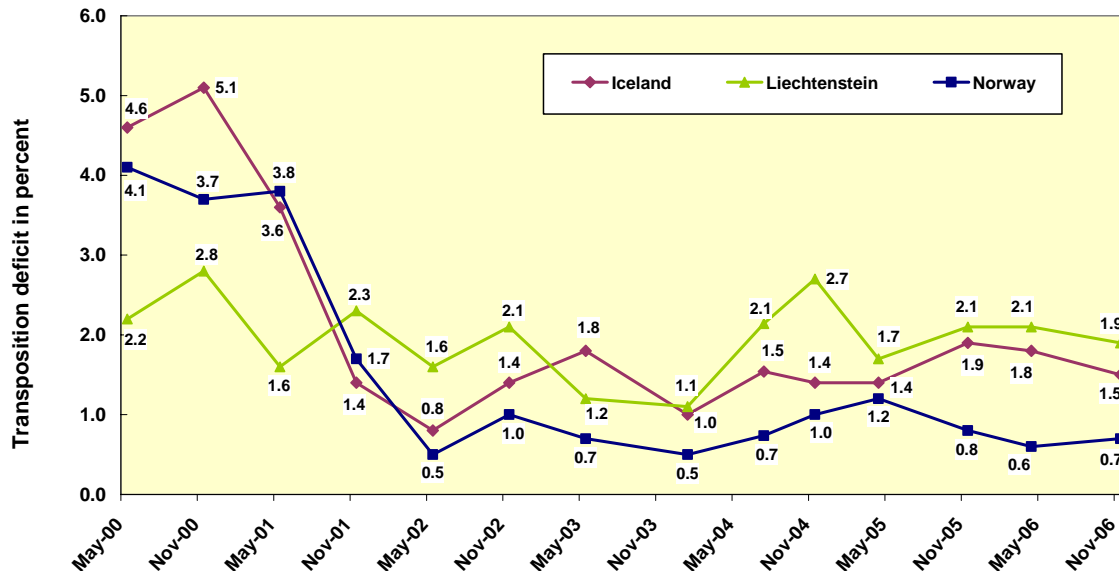
The average transposition deficit for the EEA EFTA States continued to decrease slightly from 1.5% to 1.4% (**figure 1**). This is a small improvement since July 2006 when the previous Scoreboard was published. In absolute terms, the 1.4% deficit implies that the EEA EFTA States are late with 67 notifications of national transposing measures, which is six less than half a year earlier.

The EU average transposition deficit, at 1.2%, down from 1.9% in July 2006, is well below the 1.5% interim target for the first time ever. Once again, the “new” EU Member States, with an average deficit of 0.9%, are performing better than the “old” Member

⁴ The EEA EFTA States’ transposition deficit shows the proportion of applicable Internal Market directives not yet notified to the EFTA Surveillance Authority as fully transposed.

States (EU 15), whose average deficit is 1.5%. It is also the first time in the last five years that the EU average transposition deficit is lower than the average EEA EFTA deficit.

Figure 2:
Liechtenstein still above the 1.5% interim target



Note: Development of rates of failure to implement EEA Internal Market directives (transposition deficit) between May 2000 and November 2006.

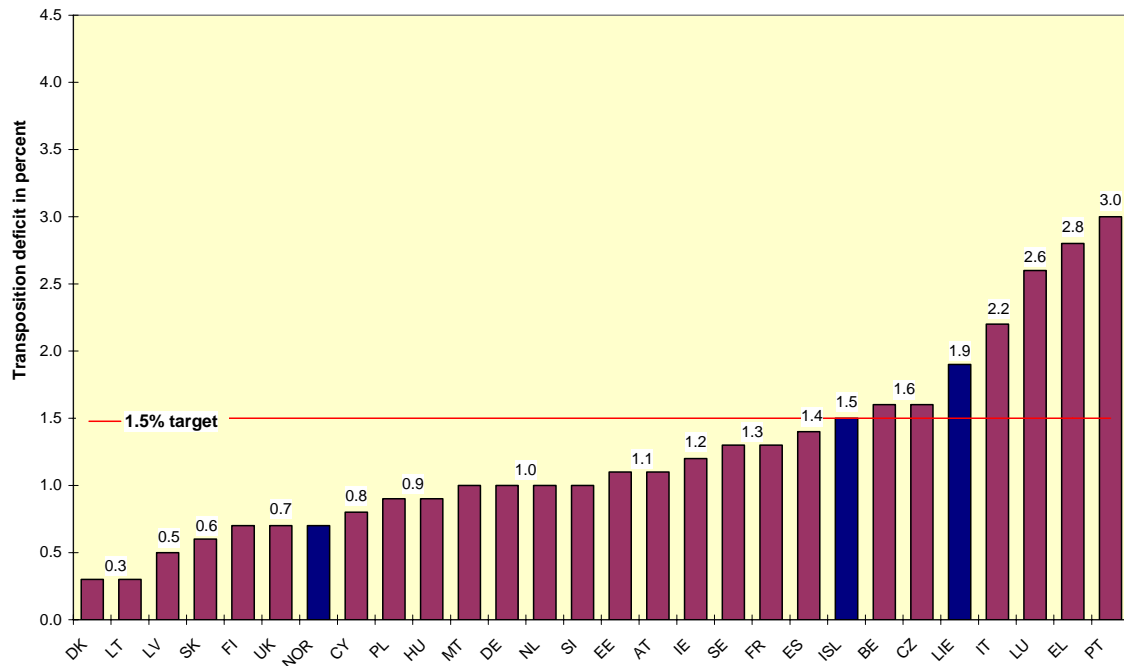
Liechtenstein’s transposition deficit has fallen from 2.1% in July 2006 to 1.9% in November 2006 (**figure 2**). This corresponds to four less outstanding directives but is still well above the interim target.

In the same period, Iceland has reduced its number of outstanding directives by 5, resulting in a decreased transposition deficit which corresponds to the interim target of 1.5% (down from 1.8%).

While Norway’s transposition deficit remains relatively low, it has risen to 0.7% from 0.6% due to three more overdue directives compared to last Scoreboard.

Apart from Norway, all the 28 EEA States have reduced their backlog since the previous Scoreboard.

Figure 3:
Norway 7th in the EEA class of 28, Iceland 21st and Liechtenstein 24th



Note: EEA comparison of transposition deficits

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 15bis - February 2007.

Among the 28 EEA States, Norway now ranks number seven (down from number two) (figure 3). Despite Iceland’s and Liechtenstein’s decreased transposition deficits, the countries have moved down to 21st (from 17th) and 24th (from 22nd) places, respectively.

Denmark and Lithuania are top of the class with deficits of 0.3%, followed by Latvia and Slovakia.

How late are the EEA EFTA States in transposing directives?

Ensuring timely and correct transposition of directives is a continuous challenge. It requires a constant effort by the EEA EFTA States’ national administrations in order to keep pace with the incorporation of new acts into the EEA Agreement. Failure to do so may undermine the functioning of the Internal Market.

Delays in transposition are at times due to time-consuming legislative processes in the EEA EFTA States. However, the directives are usually transposed relatively fast after the expiry of the time limits. Directives that have been overdue for a long period of time are of particular concern to the Authority. Long delays may indicate unwillingness on the part of the State concerned to take the measures necessary to ensure smooth functioning of the Internal Market.

In March 2002, the European Council set a “zero tolerance” target for directives for which the transposition is two or more years overdue.

Figure 4: The EEA EFTA States' average transposition delay has increased

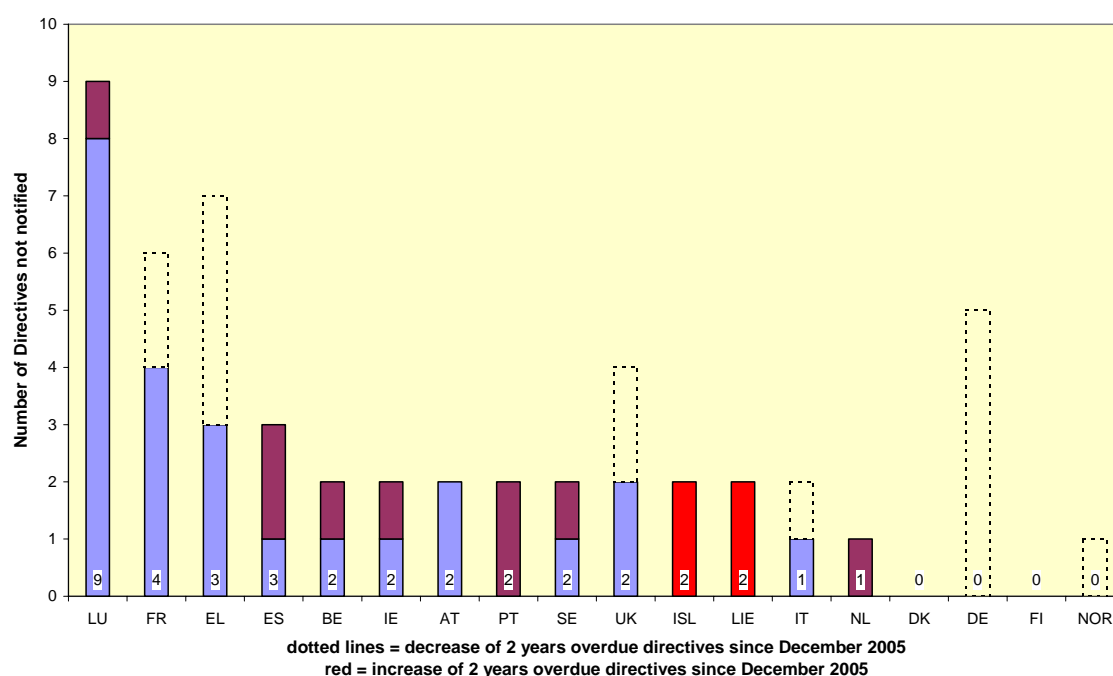
Length of delay	Number of directives delayed					
	ISL		LIE		NOR	
	11/06	05/06	11/06	05/06	11/06	05/06
Less than 6 months	8	13	9	13	6	3
6 to 12 months	6	5	3	12	2	2
12 to 24 months	2	4	10	10	1	0
24 to 36 months	2	1	2	0	0	0
Average delay (in months) by 11 November 2006	8.97	7.20	10.49	9.1	5.33	6.43

Note: Number of overdue Internal Market directives with transposition deadline on 31 October 2006 for which no notification had been received by 11 November 2006, broken down by the length of delay.

The average delay for the three EEA EFTA States has gone up from 7.6 to 8.3 months.

Of Norway's non-transposed directives, all but one have a delay of less than a year (figure 4). This would seem to indicate that the delay is caused by slow legislative process rather than political unwillingness to transpose directives into national law. Likewise, Iceland is late by less than a year with the majority of its directives. By contrast, half of Liechtenstein's overdue directives are delayed more than a year.

Figure 5: Iceland and Liechtenstein each have two directives overdue by more than two years



Note: Number of directives with a deadline for transposition into national law on or before 31 October 2004, which were not transposed by 11 November 2006.

One year ago, the EEA EFTA States had no directives which had been outstanding for more than two years. Now Iceland has two such “zero tolerance” directives, namely the Directive Adapting the “Dangerous Substances Directive” to Technical Progress⁵ (2½ years overdue) and the Directive on Emission of Pollutants from Machinery Engines⁶ (2 years and 2½ months overdue) (**figure 5**).

Also Liechtenstein has two “zero tolerance” directives, both in the field of environment: the Directive on Environmental Noise⁷ and the Strategic Environmental Assessment Directive⁸ (both 2 years and 3 ½ months overdue).

The Scoreboard does not report on the quality of the national legislation

It is important to bear in mind that the transposition deficit figures report the failure by the EEA EFTA States to notify implementation of directives at a given point in time. The quality of the national implementing legislation is only assessed at a later stage. Such conformity assessments may prompt the EFTA Surveillance Authority to take further action if it finds that the notified measures do not ensure full and correct implementation.

Furthermore, failure to comply with the basic principles of the EEA Agreement itself, such as the free movement of goods, persons, services and capital, impairs the functioning of the Internal Market as well and might therefore also prompt action by the EFTA Surveillance Authority.

The next chapter of the Scoreboard highlights the infringement proceedings initiated by the Authority, many of which relate to the incorrect transposition of directives or incorrect application of the EEA Agreement itself.

⁵ Commission Directive 2000/33/EC of 25 April 2000 adapting to technical progress for the 27th time Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances.

⁶ Directive 2002/88/EC of the European Parliament and of the Council of 9 December 2002 amending Directive 97/68/EC on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery.

⁷ Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise - Declaration by the Commission in the Conciliation Committee on the Directive relating to the assessment and management of environmental noise.

⁸ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

INFRINGEMENT PROCEEDINGS

If the EFTA Surveillance Authority considers that an EEA EFTA State has failed to fulfil an obligation under the EEA Agreement, it may initiate formal infringement proceedings pursuant to Article 31 of the Surveillance and Court Agreement. Such infringement proceedings correspond to those initiated by the European Commission under Article 226 of the EC Treaty.

To the extent possible, the Authority endeavours to solve all matters by informal means, through contact with the national administrations concerned. Formal infringement proceedings are opened only where an informal exchange of views fails to solve the problem at hand.

The Authority initiates formal infringement proceedings by sending a letter of formal notice, inviting the EFTA Government in question to submit its observations on the matter within a specified time limit. If the matter is not resolved during the given time limit, the Authority may take the second step in the proceedings by delivering a reasoned opinion. A reasoned opinion defines the final position of the Authority, states the grounds for the opinion and requests the Government to take the measures necessary to end the infringement. If a matter is not resolved following a reasoned opinion, the Authority may bring it before the EFTA Court, whose judgment is binding on the State concerned.

Infringement cases can be divided into two categories. The **first category** relates to late implementation, meaning that directives are not transposed into the national legislation of the EEA EFTA States within the set time limits. Infringement cases in this category (non-transposition cases) are generally clear-cut and, therefore, seldom the subject of legally complicated disputes between the Authority and the EEA EFTA State concerned.

The same is not always true when it comes to the **second category** of cases, which relate to non-conformity or incorrect application of EEA provisions. This concerns, for example, situations in which the Authority, after having acknowledged transposition of a directive by an EEA EFTA State, concludes at a later stage that the national legislation does not fully conform to the requirements of the relevant directive or that the EFTA State otherwise does not comply with EEA Internal Market rules and principles. When EEA Acts are not applied correctly in practice, citizens and businesses are often deprived of their rights.

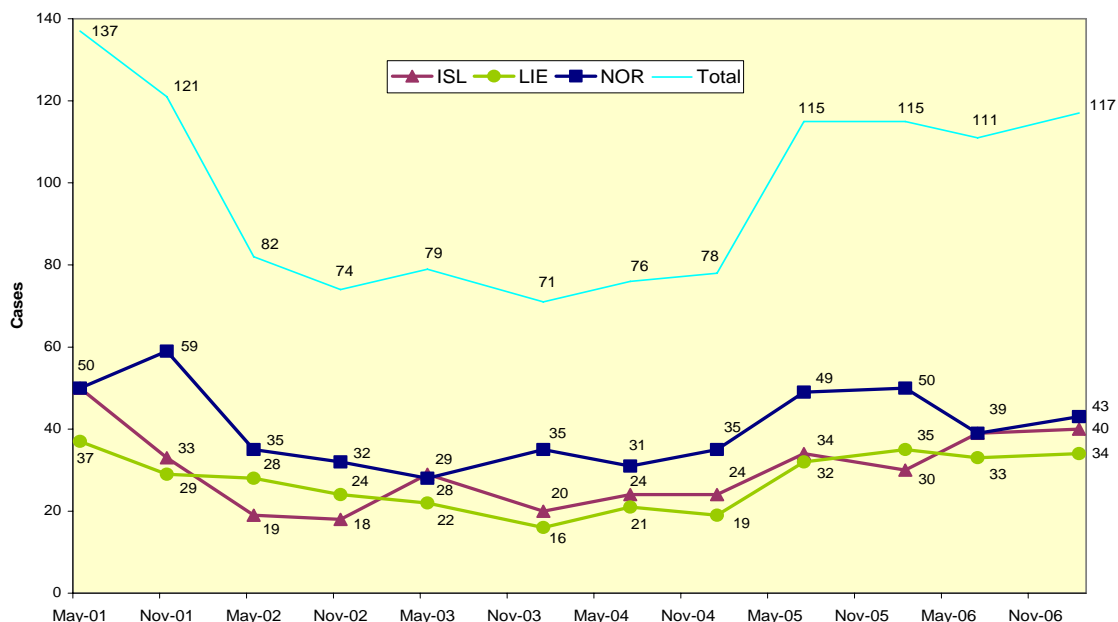
A particular situation arises with regard to the application of EC regulations in the EEA Agreement. For the EU Member States, adopted regulations automatically become part of the internal legal order. The same is the case for Liechtenstein, due to its monistic legal tradition. For Iceland and Norway, on the other hand, regulations only become part of the internal legal order following an act of incorporation by the appropriate national legislative body. The Authority initiates an infringement action if an inquiry reveals that such incorporation has not taken place on time. Cases concerning regulations, due to their particular EEA-specific nature, are however counted within the second group of cases, *i.e.* non-conformity with or incorrect application of EEA provisions.

Figure 6 below shows all open infringement cases. Figure 7 shows infringement cases due to non-transposition, whereas the remaining figures focus on the second category, *i.e.* infringements by the EEA EFTA States in addition to mere non-transposition.⁹

⁹ Figures in the EFTA Scoreboards prior to No. 9 do not show this distinction and are, therefore, not fully comparable.

All infringement cases

Figure 6: More infringement cases against the EEA EFTA States than six months ago



Note: Total number of open infringement proceedings against the three EEA EFTA States on 31 October 2006.

On 31 October 2006, 117 infringement cases were being pursued by the Authority (**figure 6**) which was six cases more than at the time of the previous Scoreboard. The increase comprises additional 10 cases concerning non-transposition of directives, whereas the number of cases concerning non-conformity or incorrect application of Internal Market rules and principles decreased by four.

Infringement cases due to non-transposition

Figure 7: More infringement cases against the EEA EFTA States due to non-transposition

	ISL		LIE		NOR		EFTA	
	10/06	04/06	10/06	04/06	10/06	04/06	10/06	04/06
Letter of formal notice	11	7	8	10	8	0	27	17
Reasoned opinion	8	11	11	8	0	0	19	19
Referral to EFTA Court	0	0	5 ¹⁰	5	0	0	5	5
Total	19	18	24	23	8	0	51	41

Note: EEA EFTA States infringement cases due to non-transposition, according to stage of infringement proceedings on 31 October 2006.

¹⁰ These five cases, which concerned the implementation by Liechtenstein of the Electronic Communication Regulatory Package, were ruled upon by the EFTA Court on 29 June 2006, Joined cases [E-5/6/7/8/9/05](#).

The EEA EFTA States have 24% more infringement cases pursued against them for non-transposition of directives than six months ago (figure 7). This increase is mainly due to eight new infringement proceedings having been opened against Norway. Iceland and Liechtenstein both have one additional case against them in this category.

Similarly to the Commission, the EFTA Surveillance Authority is looking more critically at non-timely transposition and is starting procedures on non-transposition more quickly than in the past. Naturally, a relatively high transposition deficit translates into relatively high infringement figures of non-transposition.

Infringement cases due to non-conformity or incorrect application

Figure 8: Fewer infringement cases against the EEA EFTA States due to non-conformity or incorrect application

	ISL		LIE		NOR		EFTA	
	10/06	04/06	10/06	04/06	10/06	04/06	10/06	04/06
Letter of formal notice	18	14	4	3	23	25	45	46
Reasoned opinion	3	7	6	7	6	8	15	22
Referral to EFTA Court	0	0	0	0	6	6 ¹¹	6	2
Total	21	21	10	10	35	39	66	70

Note: Open infringement cases due to non-conformity or incorrect application on 31 October 2006.

The previous Scoreboard reported that the number of cases due to non-conformity or incorrect application of Internal Market rules and principles against Iceland had doubled. This negative trend has come to a halt as the Authority has exactly as many open cases against Iceland in this category as at the time of the previous Scoreboard (**figure 8**). Some cases were resolved after a reasoned opinion, while some new cases have been opened.

Liechtenstein also has exactly as many infringement cases due to non-conformity or incorrect application as six months ago.

There are fewer infringement cases open against Norway for non-conformity or incorrect application than six months ago. Six cases against Norway have prompted infringement actions before the EFTA Court. These cases are covered by two Court referrals concerning:

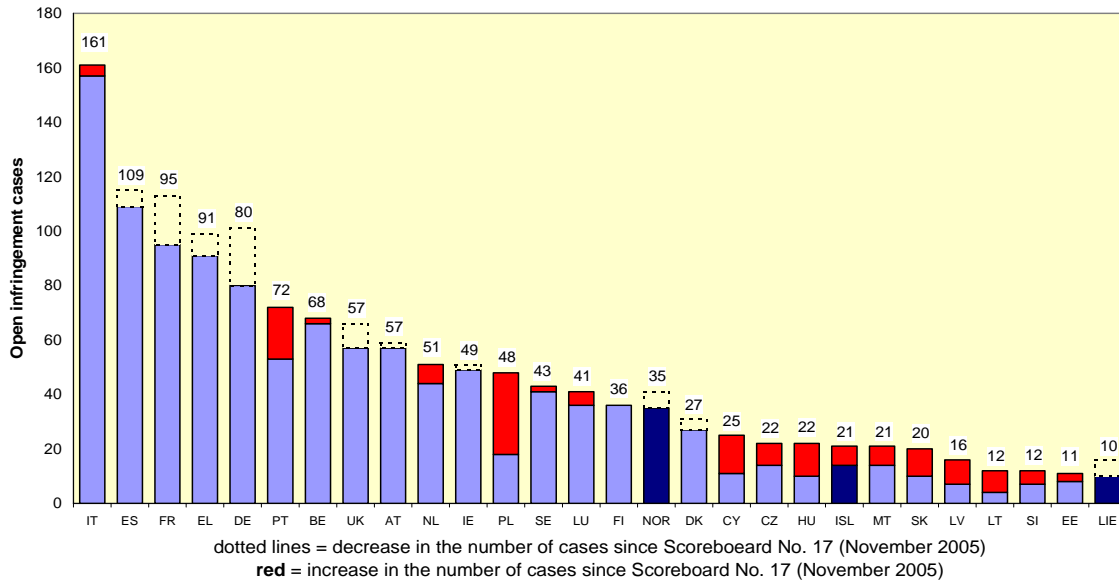
- The introduction by Norway of a monopoly on the operation of gaming machines;¹² and
- The Norwegian law on acquisition of waterfalls.

Out of the total number of infringement cases, those initiated due to non-conformity or incorrect application account for 81% (down from 100%) for Norway, 48% (down from 54%) for Iceland and 29% (down from 30%) for Liechtenstein.

¹¹ In the previous Scoreboard, this figure was reported as two Court referrals. This time, instead, the number reported, i.e. 6 cases, is the number of infringement cases which the two Court referrals are based upon.

¹² The Court case ([Case E-1/06](#)) is based on five separate infringement cases pending before the Authority.

Figure 9: The number of EEA EFTA States infringement cases remains low in the EEA context



Note: Open infringement cases due to non-conformity or incorrect application on 31 October 2006, EEA comparison.

Source EU figures: The European Commission’s Internal Market Scoreboard N° 15bis - February 2007.

In comparison to the EU 15, the number of infringement proceedings against the EEA EFTA States remains low (figure 9). With 10 cases, Liechtenstein has the lowest number of infringement proceedings in this category out of all 28 EEA States.

Compared to one year ago, Liechtenstein and Norway, in line with eight “old” EU Member States, have managed to reduce the number of infringement proceedings against them. Iceland has five more cases in this category than a year ago.

Complaints to the EFTA Surveillance Authority

Undertakings and citizens may complain to the EFTA Surveillance Authority if they believe that their rights under the EEA Agreement are infringed upon by an EEA EFTA State. Compared to six months ago, the number of complaints that have reached the infringement stage has gone down from 33 to 29 (25% of all the 117 open infringement cases).

As for the number of complaint cases per EFTA State, 27 complaints (down from 30), or 93%, related to Norway; two complaints were lodged against Liechtenstein. No complaints were registered against Iceland.

Figure 10: Breakdown of infringement cases according to their nature per EEA State

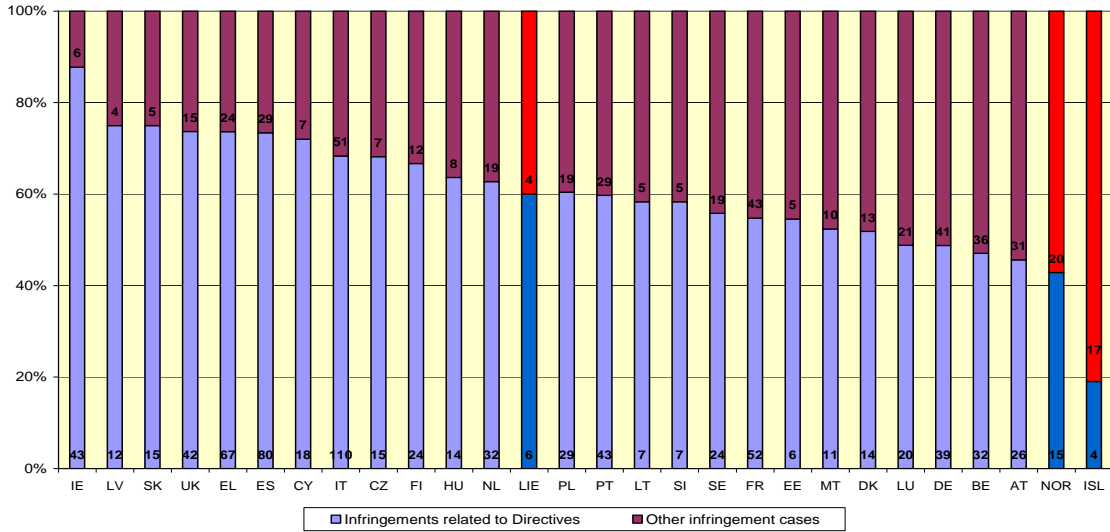
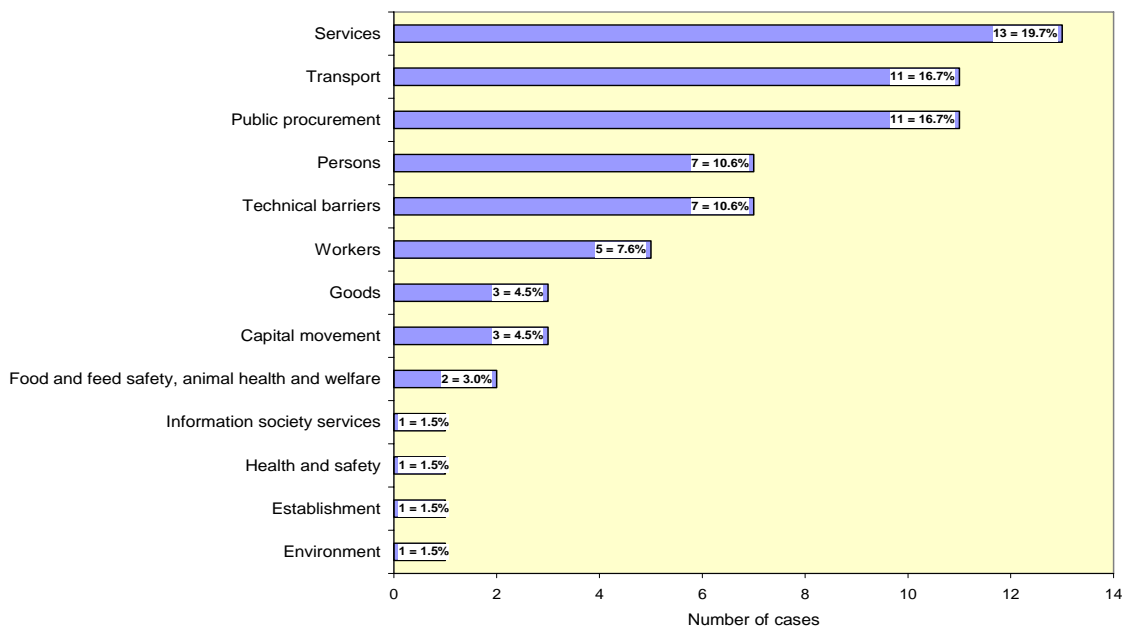


Figure 10 shows, for each EEA State, the number and share of infringements related to incorrect transposition or wrong implementation of on the one hand a directive (blue) or on the other hand another source of EU law, such as the EEA Agreement, a regulation or a decision (red). Besides transposing directives on time, EEA States need to ensure that Internal Market directives are correctly transposed and applied.

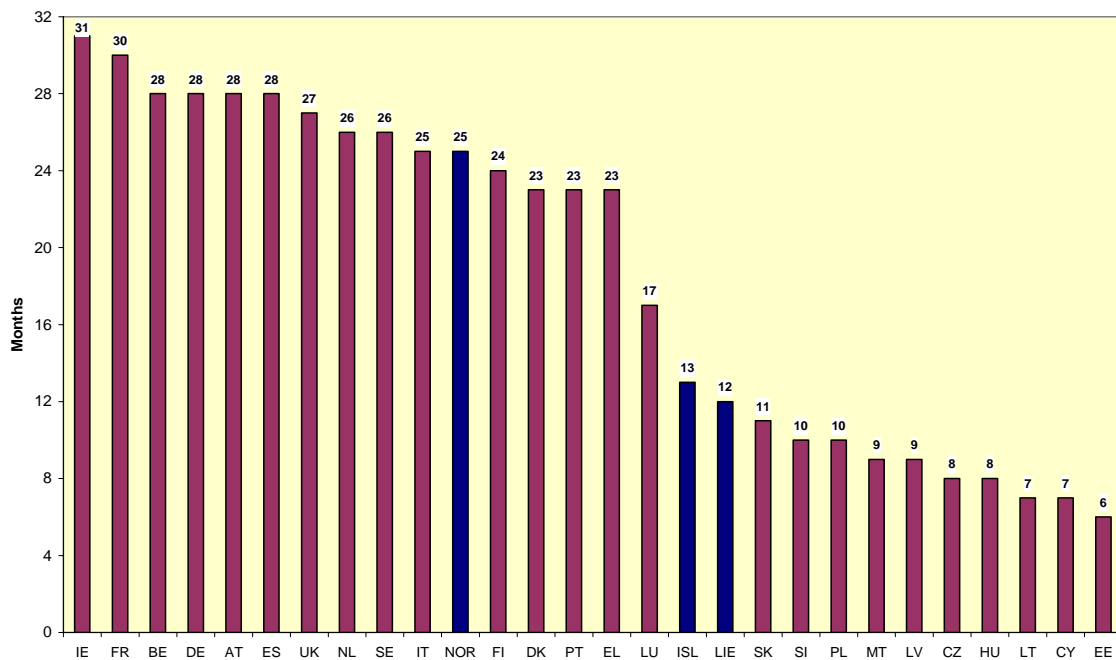
For Iceland, all 17 cases in the category “Other infringement cases” concern delays in incorporation of regulations into its internal legal order. On the opposite, none of the cases against Norway relate to incorporation of regulations into its internal legal order.

Figure 11: Breakdown of infringement cases per sector



A breakdown of the infringement proceedings into sectors indicates that the biggest number of cases (19.7%) relates to freedom to provide services (**figure 11**). Transport and public procurement both account for 16.7% of the cases. Together these three sectors account for more than half of all the infringement cases against the EEA EFTA States.

Figure 12: Infringement resolution speed per EEA State



Note: Infringement cases closed or brought before the ECJ/EFTA Court between 31/10/2004 and 31/10/2006: average time in months needed either to close an infringement case or to bring it before the ECJ/EFTA Court counted from the moment of the sending of the letter of formal notice; EEA comparison.

Source EU figures: The European Commission's Internal Market Scoreboard N° 15bis - February 2007.

Quick and out-of-court resolution of infringement proceedings is important for the good functioning of the Internal Market. Norway's average resolution speed of infringement cases is 25 months, which is a little shorter than the average among the "old" EU Member States (EU 15), whose average resolution speed is 26 months (**figure 12**). With an average of 13 and 12 months respectively, Iceland and Liechtenstein lie between the EU 15 and the "new" Member States.

The objective of the Agreement of the European Economic Area (EEA Agreement) is to establish a dynamic and homogeneous EEA between the

future statistics directive progr



EFTA Surveillance Authority
Rue Belliard 35, B-1040 Brussels, Belgium
Tel: (+32) (0)2 286 18 11, fax: (+32) (0)2 286 18 00
Website: www.eftasurv.int