



INTERNAL MARKET SCOREBOARD



No. 41
EEA EFTA STATES
of the EUROPEAN ECONOMIC AREA

April 2018

EFTA SURVEILLANCE
AUTHORITY

41st Internal Market Scoreboard of the EFTA States

The Internal Market aims at guaranteeing the free movement of goods, capital, services, and people across the EEA. A functioning internal market stimulates competition and trade for businesses, improves efficiency, raises quality and helps cut prices for consumers. It also improves living and working conditions for all citizens and strengthens environmental standards. The purpose of monitoring the Member States' timely compliance with EEA law is to ensure the full benefits of the EEA agreement for all stakeholders.

Main Findings (situation as at 30 November 2017)

- **Iceland** has improved upon its performance from the previous scoreboard in May 2017. With 15 directives overdue, Iceland's transposition deficit has reduced to 1.8%. Iceland has had three directives outstanding for two years or more. There has been a significant decrease in the number of overdue regulations, which has halved since the last scoreboard, and now stands at 35. This translates into a transposition deficit for regulations of 1.2%. Iceland needs to continue taking the necessary action to reduce these deficits.
- **Norway** has seen an increase in the overdue implementation of directives since the previous scoreboard in May 2017 with a deficit growing from 0.2% to 0.5%, reflecting four directives that have not been fully transposed into national law on time. There has also been a slight increase in the number of overdue regulations, which stands at four. However, this still results in the transposition deficit for regulations remaining at 0.1%.
- **Liechtenstein's** deficit since the last scoreboard in May 2017 increased, again, from 1.2% to 1.3%, with 11 directives that had not been fully transposed. Three of these have been outstanding for two years or more. Action is needed to reverse this downward trend.
- The Authority has seen a decrease in the total number of infringement cases from 172 to 127. Sixty six of these cases concern the late transposition of directives or regulations, while 61 concerned the incorrect implementation and application of EEA law.
- Each of the EFTA States must increase its efforts to ensure timely compliance with EFTA Court judgments.

1 Transposition of Internal Market directives into national law

The Internal Market is a key driver of growth and jobs. The EEA States need to transpose Internal Market legislation into their national law within the agreed deadlines. This is important, not only to achieve the policy objectives set out in the relevant legislation but also to protect the homogeneity of the Internal Market. This is why it is essential for all the EFTA States to display good transposition records¹.

The transposition deficit indicates how many directives and regulations the EEA States have failed to communicate as transposed on time. From 2009, ESA used the interim target of 1% set by the European Council in 2007 as a benchmark. Now, the Authority is looking towards a benchmark of 0.5% in line with the European Commission's Single Market Act proposed in April 2011.

1.1 The EFTA States' performance

Overall, the average transposition deficit for directives for the EFTA States stood at 1.2%. This, however, does not reflect the wide disparity in the performances of the EFTA States.

Iceland's transposition deficit for directives decreased from 2.2% in May 2017 to 1.8%. This corresponds to 15 directives not having been fully transposed, three less than was observed in the last Scoreboard. While this progress is to be welcomed, Iceland needs to continue improving its efforts to fully implement all applicable legislation in a timely manner in order that the full benefit of the single market can be enjoyed by Icelandic citizens and all citizens across the EEA.

Norway's transposition deficit has increased since May 2017 from 0.2% to 0.5%, as four directives had not been fully transposed on time.

Liechtenstein's transposition deficit increased since May 2017 from 1.2% to 1.3%, with 11 directives - one more than in the last scoreboard - not having been fully transposed on time.

¹ The findings regarding the transposition deficits of the EFTA States take into account the 840 directives that were incorporated into the EEA Agreement and were in force on 30 November 2017.

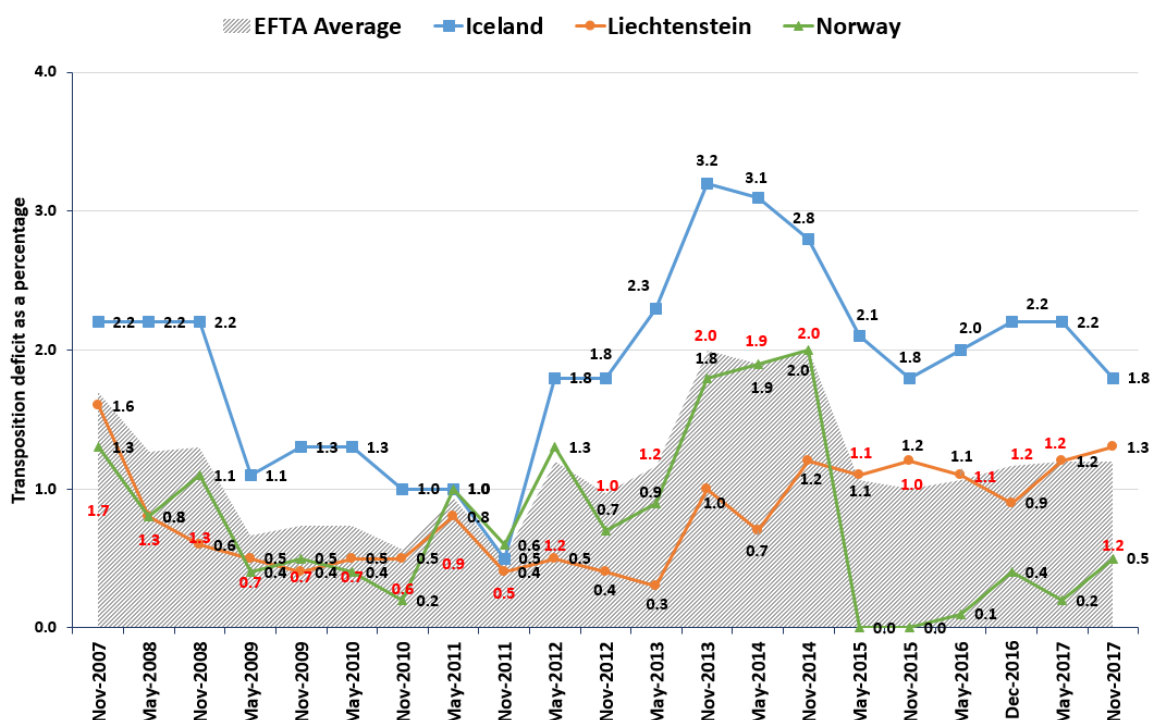


Figure 1: EFTA States' transposition deficit over the past 10 years

Transposition deficit as at 30 November 2017 for directives that should have been transposed on or before 30 November 2017

1.2 Incompleteness rate of the Internal Market in the EFTA States with regard to directives²

The incompleteness rate is an overall indicator of gaps in the EEA framework. Whenever one or more EEA States fail to transpose a directive on time, this leaves a gap meaning that instead of covering all EEA States, the internal market remains fragmented. Consequently, the economic interests of all EEA States are affected even if only one EEA State does not deliver on time.

The incompleteness rate records the percentage of directives which one or more of the three EFTA States have failed to transpose. In total, 3% of the directives in force in the EFTA States on 30 November 2017 had not been transposed by at least one of the three EFTA States (**Figure 2**). The incompleteness rate of 3% translates into 24 directives that had not been transposed by one or more of the EFTA States and which had, therefore, not achieved their full effect in the EFTA States.

² Formerly referred to as “fragmentation factor”.

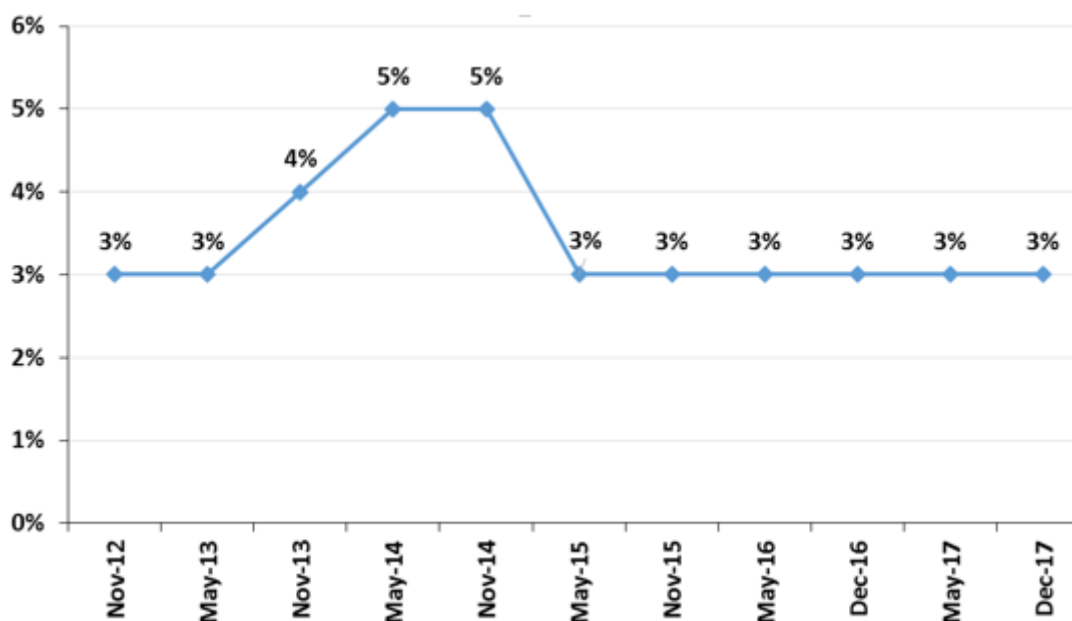


Figure 2: Incompleteness rate in the EFTA States (Directives)

The incompleteness rate records the percentage of the outstanding directives which one or more of the three EFTA States have failed to transpose with the consequence that the Internal Market is not complete in the EFTA States in the areas covered by those directives

When the transposition delays are broken down by sector, the pattern of implementation varies between the EFTA States. With regard to directives, the most incomplete sectors in the EFTA States are in the areas of goods (technical barriers), transport and environment. More efforts are needed to reduce the fragmentation in this sector (**Figure 3**).

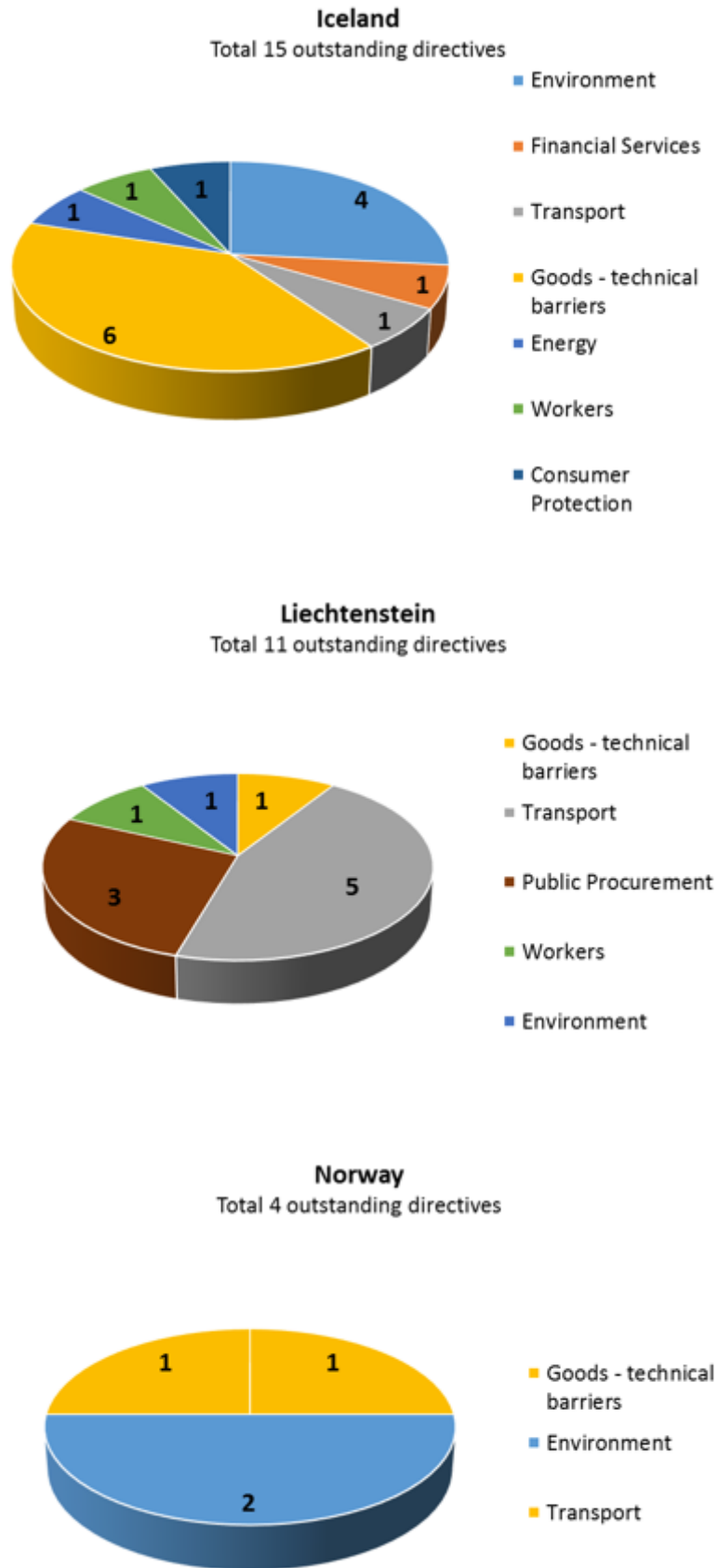


Figure 3: Most outstanding directives were in the areas of goods – technical barriers, transport and environment, which were also the most incomplete sectors

2 Transposition of regulations by the EFTA States

It follows from Article 7 of the EEA Agreement that regulations incorporated into the Agreement shall “as such” be made part of the internal legal order of the EFTA States.

Pursuant to its monistic legal tradition, regulations become part of Liechtenstein’s internal legal order once they have been incorporated into the EEA Agreement through an EEA Joint Committee decision and are published. Iceland and Norway are, on the other hand, obliged to adopt legal measures in order to make regulations “as such” part of their internal legal orders.

2.1 Delays in the transposition of regulations

Regulations are binding legal acts and, as such, the timely incorporation of regulations is as important as that of directives in ensuring the completeness of the internal market.

On 30 November 2017, 2859 regulations incorporated into the EEA Agreement were in force. Of these, there were 35 regulations that Iceland had not notified as incorporated into its national law. This is a significant decrease of 50% of the number of the non-incorporated regulations that were outstanding at the time of the last Scoreboard in May 2017 and represents a transposition deficit of 1.2%.

For Norway, the number of regulations not notified as incorporated into national law increased by one, meaning that there were four outstanding regulations. This represents a transposition deficit of 0.1%, which is the same as at the previous Scoreboard (May 2017).

2.2 Incompleteness rate of the Internal Market in the EFTA States with regard to regulations

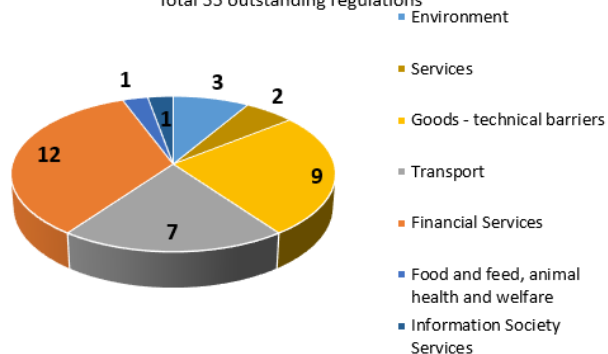
The implementation of regulations in a timely manner is crucial in order to deliver the benefits of the internal market to businesses and consumers across the EEA. In total, 1% of the 2859 regulations in force in the EFTA States on 30 November 2017 had not been transposed by both Iceland and Norway. The figure translates into 39 regulations which had not been transposed by both States and which had, therefore, not achieved their full effect in the EFTA States. Iceland has not transposed 35 regulations and four have not been transposed by Norway.

With regard to regulations, the most incomplete sectors in Iceland are in the areas of financial services, goods - technical barriers, and transport. In Norway, the most incomplete sector is food and feed, animal health and welfare. (**Figure 4**).

Scoreboard 41 - November 2017

Iceland

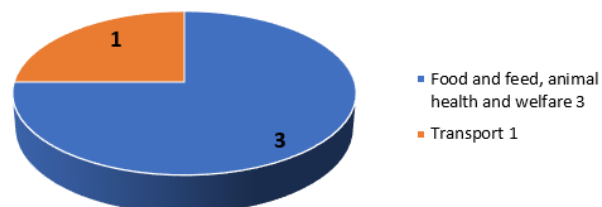
Total 35 outstanding regulations



Scoreboard 41 - November 2017

Norway

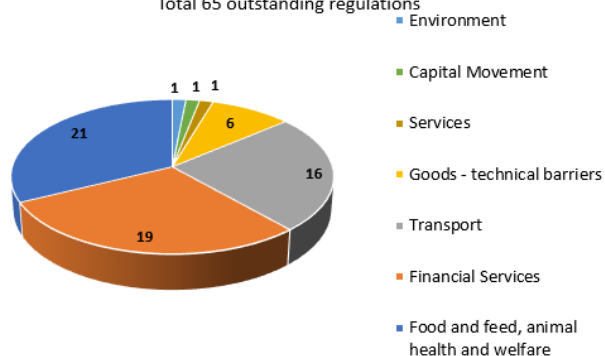
Total 4 outstanding regulations



Scoreboard 39 - November 2016

Iceland

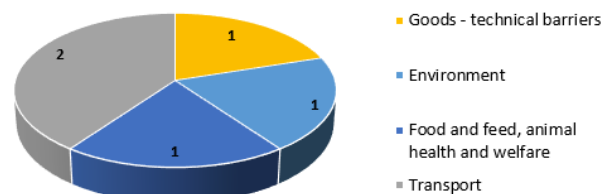
Total 65 outstanding regulations



Scoreboard 39 - November 2016

Norway

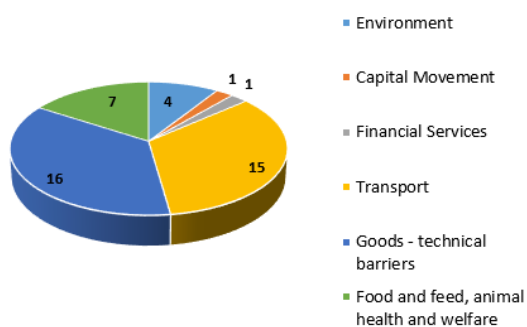
Total 5 outstanding regulations



Scoreboard 38 - June 2016

Iceland

Total 44 outstanding regulations



Scoreboard 38 - June 2016

Norway

Total 13 outstanding regulations

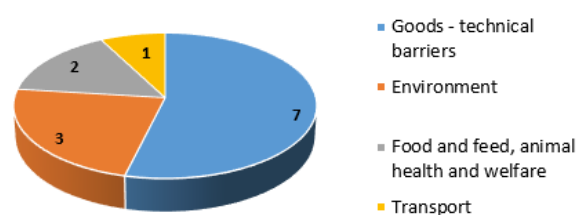


Figure 4: Most outstanding regulations in 2017 were in the areas of financial services, goods – technical barriers and transport

The next chapter of the Scoreboard highlights the infringement proceedings initiated by the Authority which relate to lack of conformity with or incorrect application of Internal Market rules.

3 Infringement Proceedings³

The Authority opens infringement proceedings when it is of the view that an EFTA State has failed to fulfil its obligations under the EEA Agreement. When interpreting the statistics on infringement procedures below it should be noted that only the EFTA Court can declare that a breach of EEA law has occurred.

Infringement cases can be divided into two categories. The first category relates to cases concerning ***lack of conformity with, or incorrect application of*** EEA provisions, opened either on the basis of ***complaints*** or on the Authority's ***own initiative***. These cases concern, for example, situations in which the Authority, after having acknowledged transposition of a directive by an EFTA State, concludes at a later stage that the national legislation is not in full conformity with the requirements of the relevant directive or that the EFTA State is not complying with the Internal Market rules, i.e. the free movement principles, in some other way. When EEA rules are not correctly implemented or applied in practice, citizens and businesses can be deprived of their rights.

The second category of cases relates to ***late transposition***, in other words directives and regulations only partially transposed or not transposed at all into the national legislation of the EFTA States within the 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 EFTA State concerned. Information on the infringement cases concerning late transposition of directives and regulations is included in chapter five.

3.1 Decrease in the total number of infringement proceedings

As at 1 December 2017, the Authority was pursuing a total of 127 infringement cases against the EFTA States in the internal market field (**Figure 5**)⁴. This is 45 cases less than at the time of the last Scoreboard in December 2016.

³ If the Authority considers that an EFTA State has failed to correctly implement and apply legislation under the EEA Agreement, it may initiate formal infringement proceedings pursuant to Article 31 of the Agreement on the Establishment of a Surveillance Authority and a Court of Justice. Such infringement proceedings correspond to those initiated by the European Commission under Article 258 of the Treaty on the Functioning of the EU (TFEU).

⁴ A pending infringement case is defined as a case where at least a letter of formal notice has been sent to the State concerned.

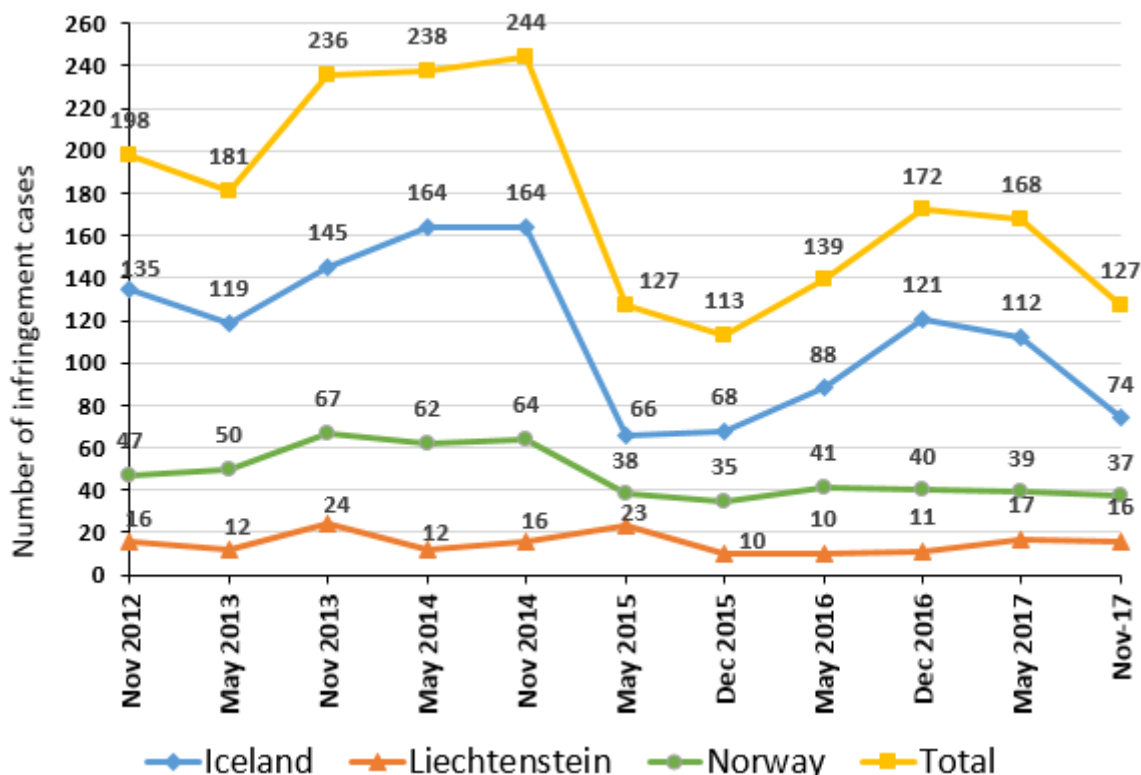


Figure 5: Total number of infringement cases

Total number of all open infringement proceedings against the three EFTA States on 1 December 2017

Of the 127 pending infringement cases, 61 concerned the incorrect implementation or application of Internal Market rules (see chapter 3.2), whereas 26 cases concerned the late transposition of directives (see chapter 3.3) and the remaining 40 cases concerned the late transposition of regulations (see chapter 3.4).

3.2 Infringement proceedings due to lack of conformity with or incorrect application of Internal Market rules

3.2.1 Number of cases

The overall number of infringement cases of 61, which were being pursued on the grounds of lack of conformity with or incorrect application of Internal Market rules decreased by one since the previous Scoreboard in December 2016.

Since this last Scoreboard in December 2016, there has been a decrease in the number of infringement cases against Iceland and Norway. In Iceland the figure dropped by two from 21 to 19, and in Norway from 34 to 33. In Liechtenstein, the figure rose from seven to nine.

The number of infringement proceedings stemming from complaint cases remained at 25 since the previous Scoreboard in December 2016.⁵ This figure represents 41% of all pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Broken down by State, 17 of these cases related to Norway, six to Iceland and two to Liechtenstein.

Undertakings and citizens may lodge a complaint with the Authority if they believe that they have not been able to exercise their rights under the EEA Agreement.

3.2.2 Breakdown per sector

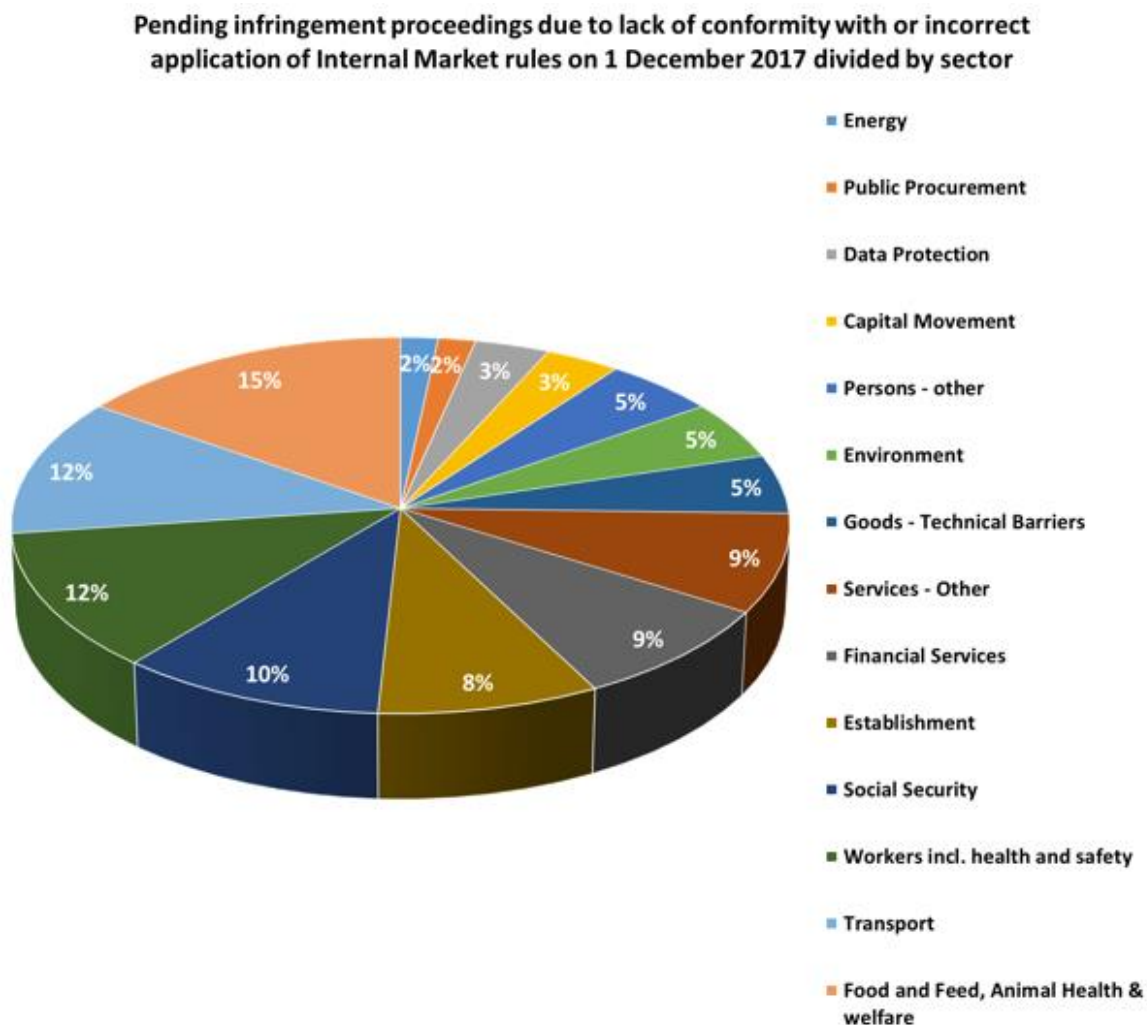


Figure 6: The sector food and feed, animal health and welfare accounted for most of the infringement proceedings in the EFTA States

The field of food and feed, animal health and welfare accounted for the highest number of infringement proceedings concerning the lack of conformity with or incorrect application of Internal Market rules. This sector accounted for 15% of these infringement proceedings (**Figure 6**).

⁵ The comparison here is made with the situation on 1 December 2016 (Scoreboard 39) since these are the figures last officially reported by the European Commission.

3.2.3 Compliance with Court judgments

Court rulings establishing a breach of EEA law require that the State concerned takes immediate action to ensure compliance as soon as possible. Internal circumstances or practical difficulties cannot justify non-compliance with obligations and time-limits arising from EEA law.

Looking back over the cases that have been closed in the last five years (**Figure 7**), the average time taken by the EFTA States to comply with an EFTA Court ruling in cases concerning lack of conformity with or incorrect application of Internal Market rules was 12.7 months. This is 3.4 months shorter than the comparable figure (16.1) from the previous Scoreboard in December 2016.

EFTA State	Case	Duration in months
Norway	Ownership restrictions in Financial Services Infrastructure Institutions	35
Iceland	Compliance of the Posting Act with Article 36 EEA and the Posting of Workers Directive 96/71	26
Iceland	Failure to comply with the requirements of the Environmental Noise Directive 2002/49	13
Norway	Access to family benefits in Norway for unmarried/divorced parents where one partner is living outside of Norway	12
Liechtenstein	Complaint concerning deposits for staffing agencies	12
Iceland	Conformity assessment of the national measures implementing the Equal Treatment Directive 2006/54/EC	9
Iceland	Complaint and incorrect implementation/application case concerning exit taxation of cross-border mergers	4
Iceland	Conformity assessment of Directive 2000/30/EC on the technical roadside inspection of the roadworthiness of commercial vehicles	3
Iceland	Incorrect Implementation of Directive 95/50/EC on checks on transport of dangerous goods by road	3
Norway	Complaint concerning licensing under the Building and Planning Act - provision of services and recognition of qualifications	2

Figure 7: Cases concerning lack of conformity with or incorrect application of Internal Market rules referred to the EFTA Court and subsequently closed in the last five years

Duration in months between the judgment of the EFTA Court and the resolution of the case

For those cases where the EFTA States still have to comply with an EFTA Court judgment at the cut-off date of the scoreboard of 30 November 2017, the average time that had lapsed since the court judgment was 24.5 months (see **Figure 8** for the details of these cases). This is 1.4 months longer than the comparable figure (23.1 months) from the last Scoreboard in December 2016.

EFTA State	Case	Duration in months
Iceland	Conformity assessment of the national measures implementing Directive 2002/92/EC (insurance mediation) in Iceland	48
Norway	Conformity assessment of national measures implementing Directive 2005/60/EC (Third Anti-Money Laundering Directive)	47
Norway	Complaint concerning the temporary import of foreign-registered rental cars	38
Liechtenstein	Establishment of Austrian trained 'Dentist'	32
Norway	Implementation of the Directive on ambient air quality	26
Liechtenstein	Liechtenstein Trade Act and the Services Directive	18
Norway	Incorrect implementation of Directive 2000/59 on port reception facilities	16
Iceland	Complaint against Iceland concerning imports of raw meat	1
Iceland	Own initiative case concerning requirements imposed by Iceland on imports of egg and dairy products	1

Figure 8: Ongoing cases concerning lack of conformity with or incorrect application of Internal Market rules referred to the EFTA Court which on 1 December 2017 remained unresolved

Duration in months since the judgment of the EFTA Court

3.3 Infringement proceedings concerning failure to transpose directives into national law

The number of infringement cases initiated against the EFTA States for non-transposition of directives decreased by two cases from 28 to 26 from the time of the previous Scoreboard in May 2017. (Figure 9).

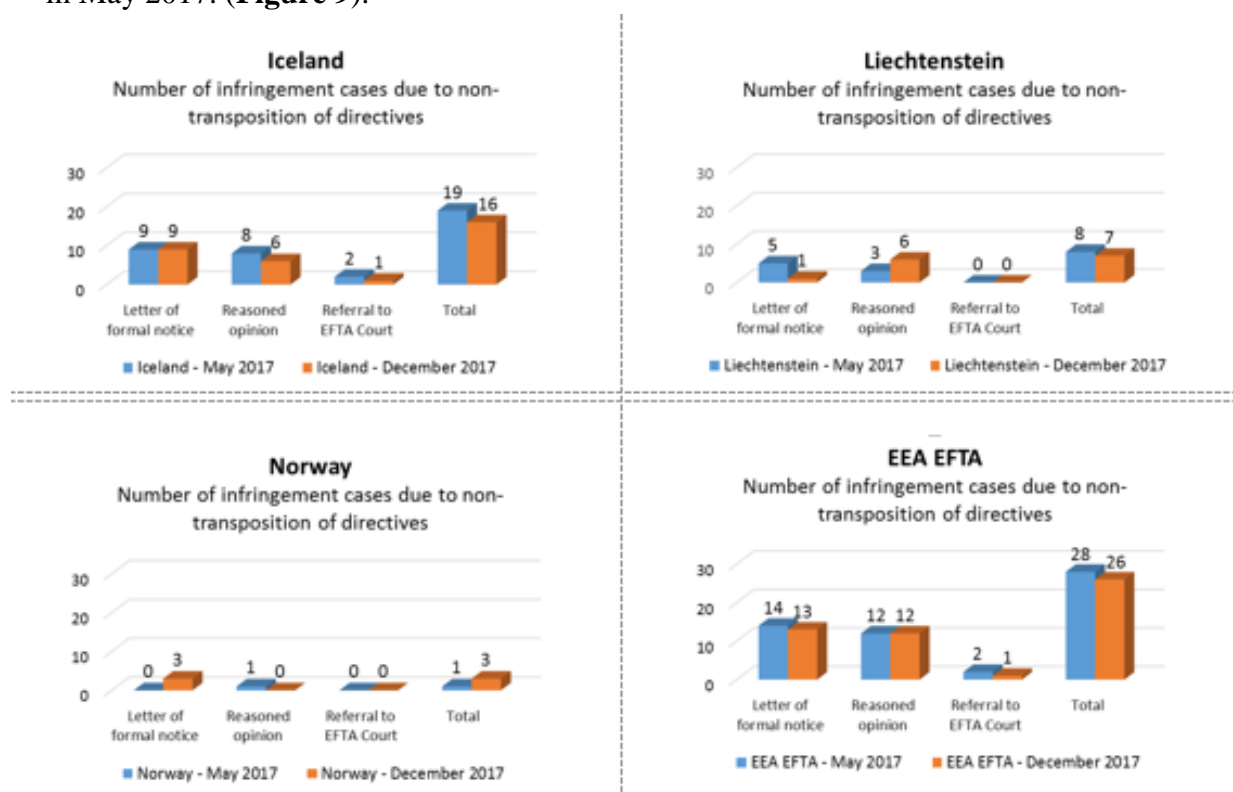


Figure 9: The number of infringement cases against the EFTA States due to non-transposition of directives.

3.4 Infringement proceedings concerning failure to transpose regulations into national law

Of the 127 infringement cases pending on 1 December 2017, 31% concerned the late transposition of regulations. For Iceland, this means 39 cases, and for Norway, one case. This represents a 45% decrease for Iceland, a significant improvement, with no change for Norway since the time of the Scoreboard in May 2017 (**Figure 10**).

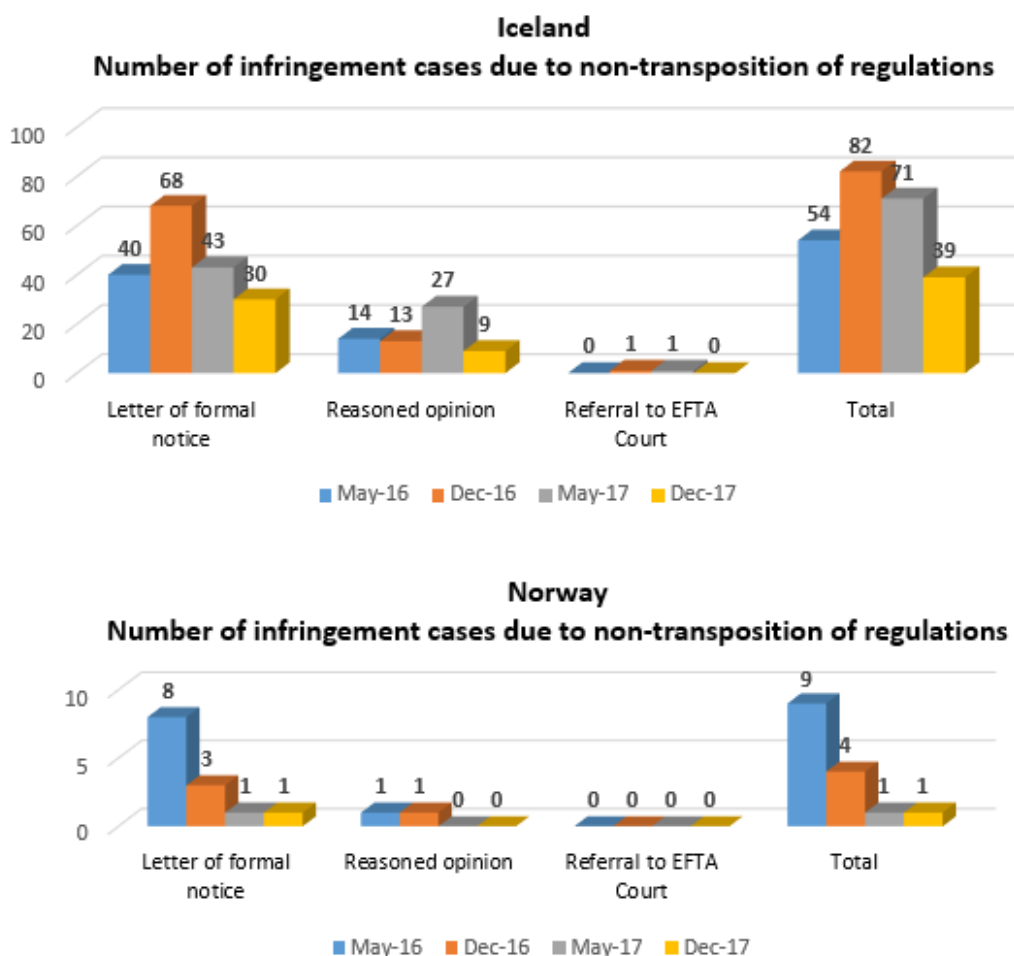


Figure 10: The number of infringement cases initiated against Iceland and Norway concerning failure to transpose regulations in 2017, decreased since the previous Scoreboard

The total number of infringement cases concerning the non-transposition of directives and regulations decreased by 34 cases from 100 to 66 since the Scoreboard in May 2017.