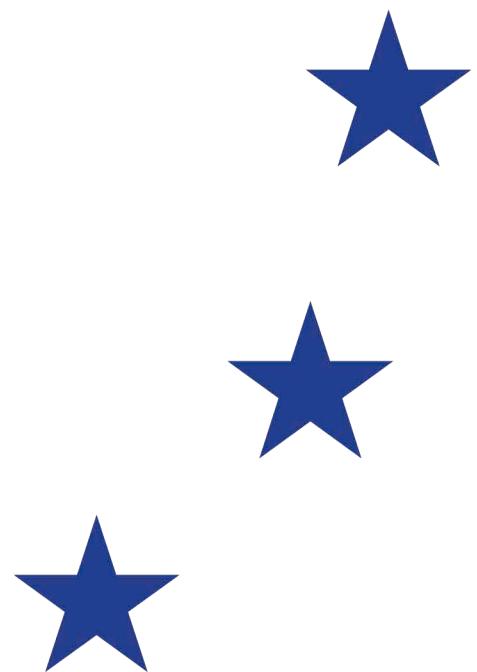




INTERNAL MARKET SCOREBOARD



No. 43
EEA EFTA STATES
of the EUROPEAN ECONOMIC AREA

March 2019

EFTA SURVEILLANCE
AUTHORITY

43rd 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 2018*)

- **Iceland** has improved upon its performance from the previous Scoreboard in May 2018. With four directives overdue, Iceland's transposition deficit has reduced to 0.5%, equaling its best ever rate. Iceland has two directives which have been outstanding for two years or more. However, there has been an increase in the number of overdue regulations, from 25 to 35 which translates into a transposition deficit of 1.1%. Furthermore, out of these 35, 28 are in the same field, Financial Services. Iceland needs to take the necessary action to reduce this deficit and in that regard take specific measures in the field of Financial Services. Whilst the number of open infringement cases for Iceland has reduced from 68 to 53, Iceland still has the highest number of open infringement cases of all the EFTA States.
- **Norway** continues to be a top-performer and has the same deficit as in the previous Scoreboard in May 2018 at 0.1%, reflecting one directive that has not been fully transposed into national law on time. There has also been a significant decrease in the number of overdue regulations, from 33 to three. This results in the transposition deficit for regulations decreasing from 1.1% to 0.1%. Concerning open infringement cases, for Norway this number has slightly increased from 34 to 35.
- **Liechtenstein's** deficit since the last Scoreboard in May 2018 decreased from 0.7% to 0.6%, with five directives that had not been fully transposed. All of these directives related to Driving Licenses. Four of these have been outstanding for two years or more. Liechtenstein has 10 open infringement cases.
- The Authority has seen a decrease in the total number of infringement cases from 113 to 98. 45 of these cases concern the late transposition of directives or regulations, while 53 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 decreased to its lowest ever rate of 0.4%.

Iceland's transposition deficit for directives decreased from 1% in May 2018 to 0.5%. This corresponds to four directives not having been fully transposed, four less than in the last Scoreboard. This deficit for Iceland equals the lowest percentage ever achieved by Iceland since the Scoreboards have been published, and Iceland is encouraged to maintain this trend further.

Norway continues its strong performance with an unchanged deficit since the previous Scoreboard in May 2018 of 0.1%. Only one directive had not been fully transposed on time.

Liechtenstein's transposition deficit slightly decreased since May 2018 from 0.7% to 0.6%, with five directives - one less 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 824 directives that were incorporated into the EEA Agreement and were in force on 30 November 2018.

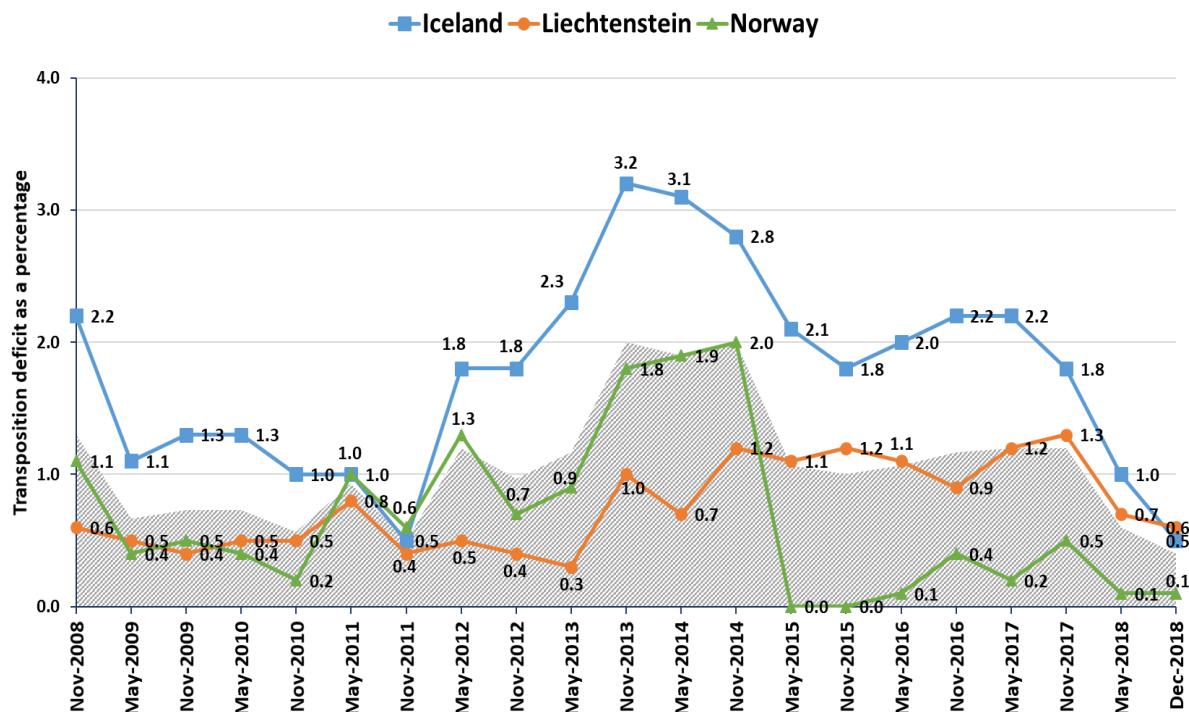


Figure 1: EFTA States' transposition deficit over the past 10 years

Transposition for directives that should have been transposed on or before 30 November 2018

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, 1% of the directives in force in the EFTA States on 30 November 2018 had not been transposed by at least one of the three EFTA States (**Figure 2**). The incompleteness rate of 1% translates into 10 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 the “fragmentation factor”.

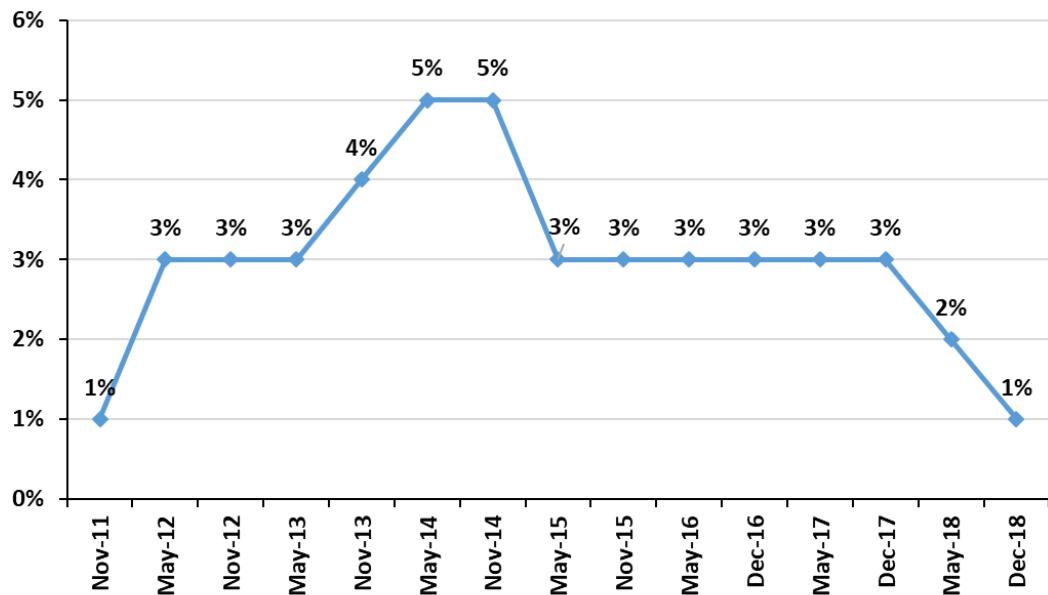


Figure 2: Incompleteness rate in the EFTA States (Directives)

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 sector in the EFTA States is in the area of transport. More efforts are needed to reduce the fragmentation in this sector (**Figure 3**).

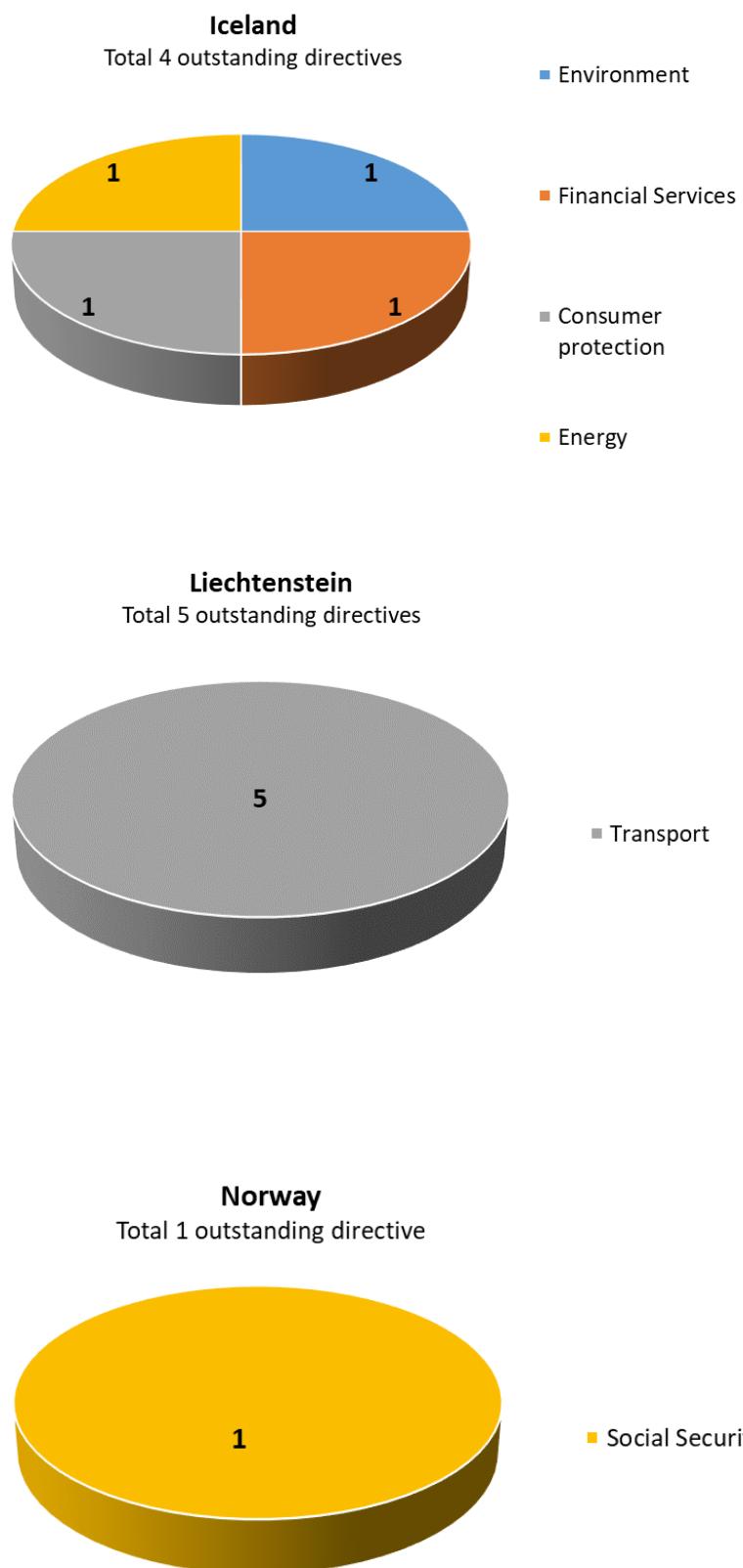


Figure 3: Most outstanding directives were in the area of transport, which was also the most incomplete sector

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 2018, 3122 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 an increase of 10 regulations since the time of the previous Scoreboard in May 2018 and represents a transposition deficit of 1.1%.

For Norway, the number of regulations not notified as incorporated into national law decreased by 30, meaning that there were just three outstanding regulations. This represents a transposition deficit of 0.1%, which is a decrease of 1% since the previous Scoreboard (May 2018).

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 3122 regulations in force in the EFTA States on 30 November 2018 had not been transposed by both Iceland and Norway. The figure translates into 38 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 three have not been transposed by Norway.

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

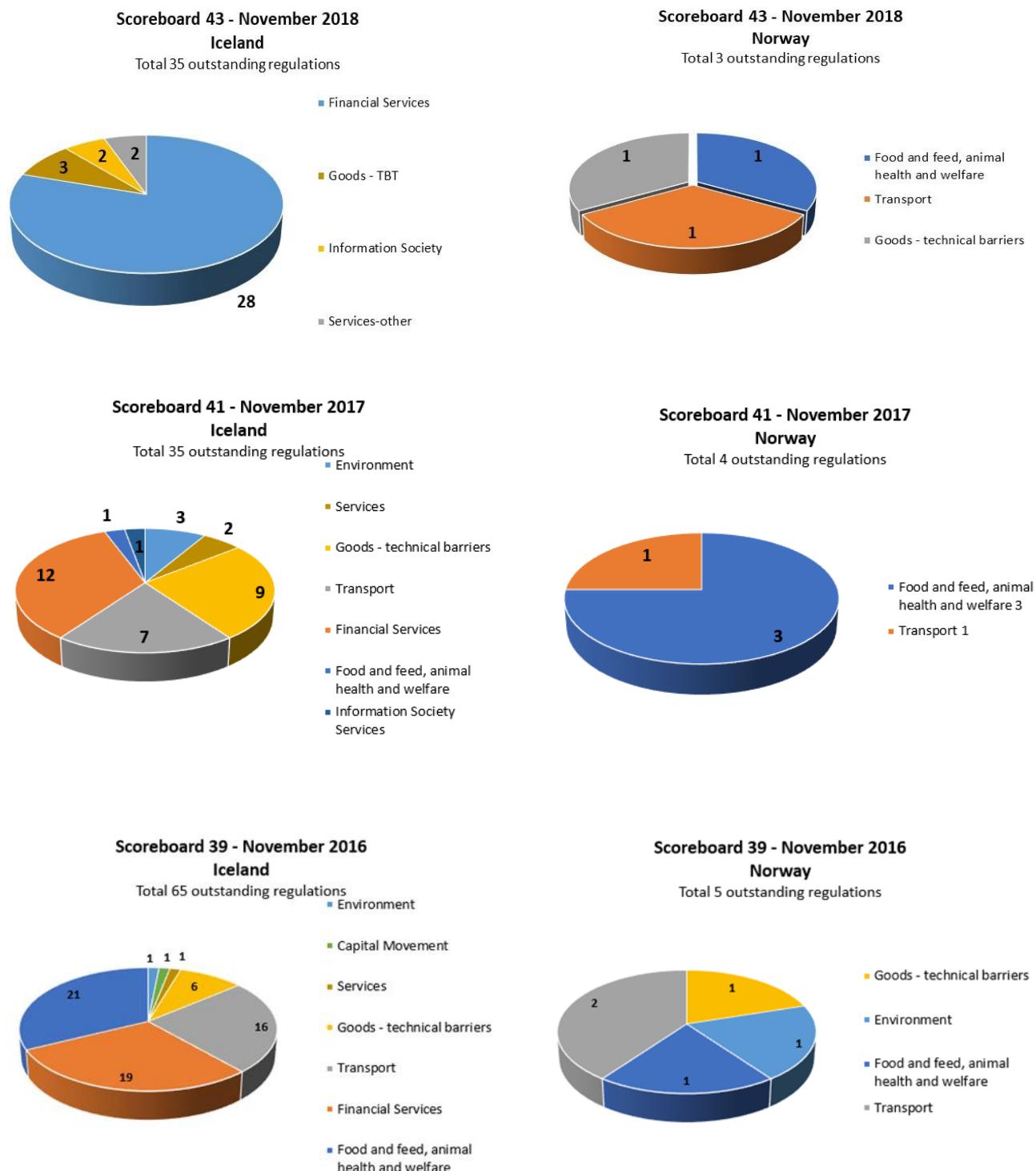


Figure 4: Most outstanding regulations in 2018 were in the areas of financial services, goods – technical barriers, Information Society and Services-other

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 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 2018, the Authority was pursuing a total of 98 infringement cases against the EFTA States in the internal market field (**Figure 5**)⁴. This is 29 cases less than at the time of the last Scoreboard in December 2017.

Of the 98 pending infringement cases, 53 concerned the incorrect implementation or application of Internal Market rules (see chapter 3.2), whereas 12 cases concerned the late transposition of directives (see chapter 3.3) and the remaining 33 cases concerned the late transposition of regulations (see chapter 3.4).

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 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.

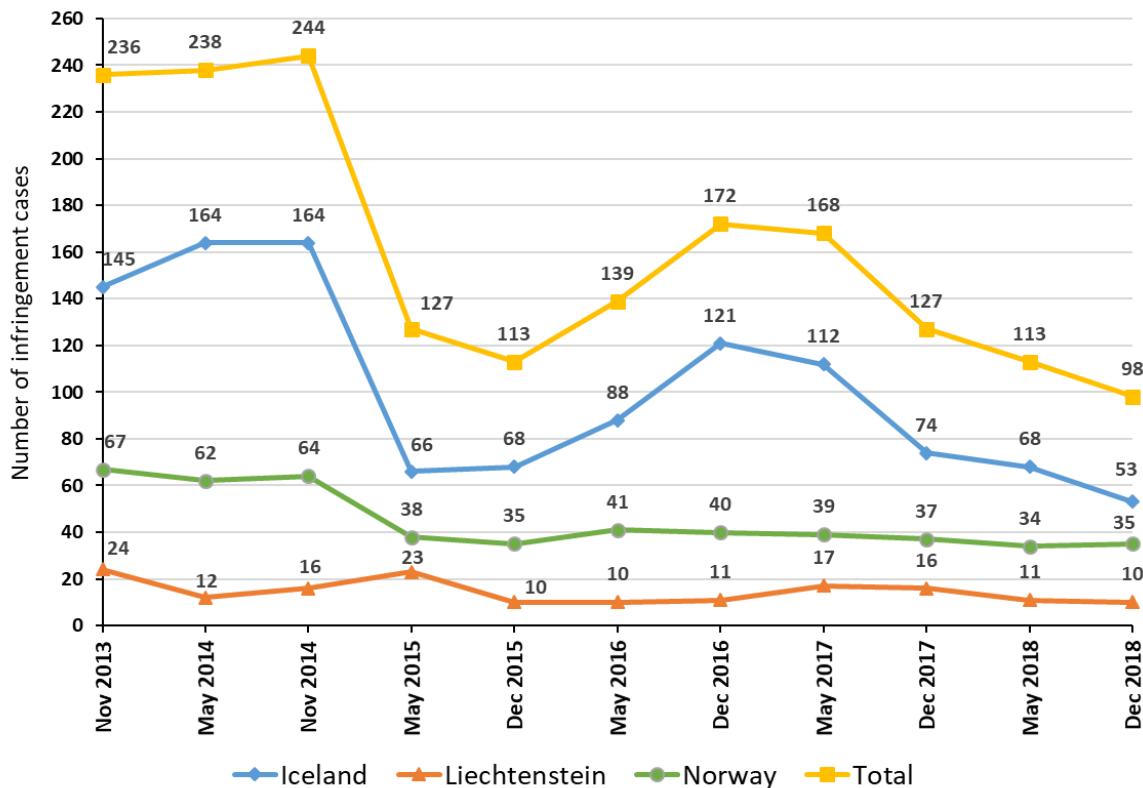


Figure 5: Total number of infringement cases

Total number of all open infringement proceedings against the three EFTA States on 1 December 2018

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 53, which were being pursued on the grounds of lack of conformity with or incorrect application of Internal Market rules decreased by eight since the previous Scoreboard in December 2017.

Since this last Scoreboard in December 2017, there has been a decrease in the number of infringement cases against all EEA EFTA States. In Iceland, the figure dropped by two from 19 to 17, and in Norway from 33 to 28. In Liechtenstein, the figure decreased from nine to eight.

The number of infringement proceedings stemming from complaint cases decreased from 25 since the previous Scoreboard in December 2017 to 19 in this Scoreboard.⁵ This figure represents 36% of all pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Broken down by State, 13 of these cases related to Norway, four to Iceland and two to Liechtenstein.

⁵ The comparison here is made with the situation on 1 December 2017 (Scoreboard 41) as these are the figures last officially reported by the European Commission.

3.2.2 Breakdown per sector

Pending infringement proceedings due to lack of conformity with or incorrect application of Internal Market rules on 1 December 2018 divided by sector

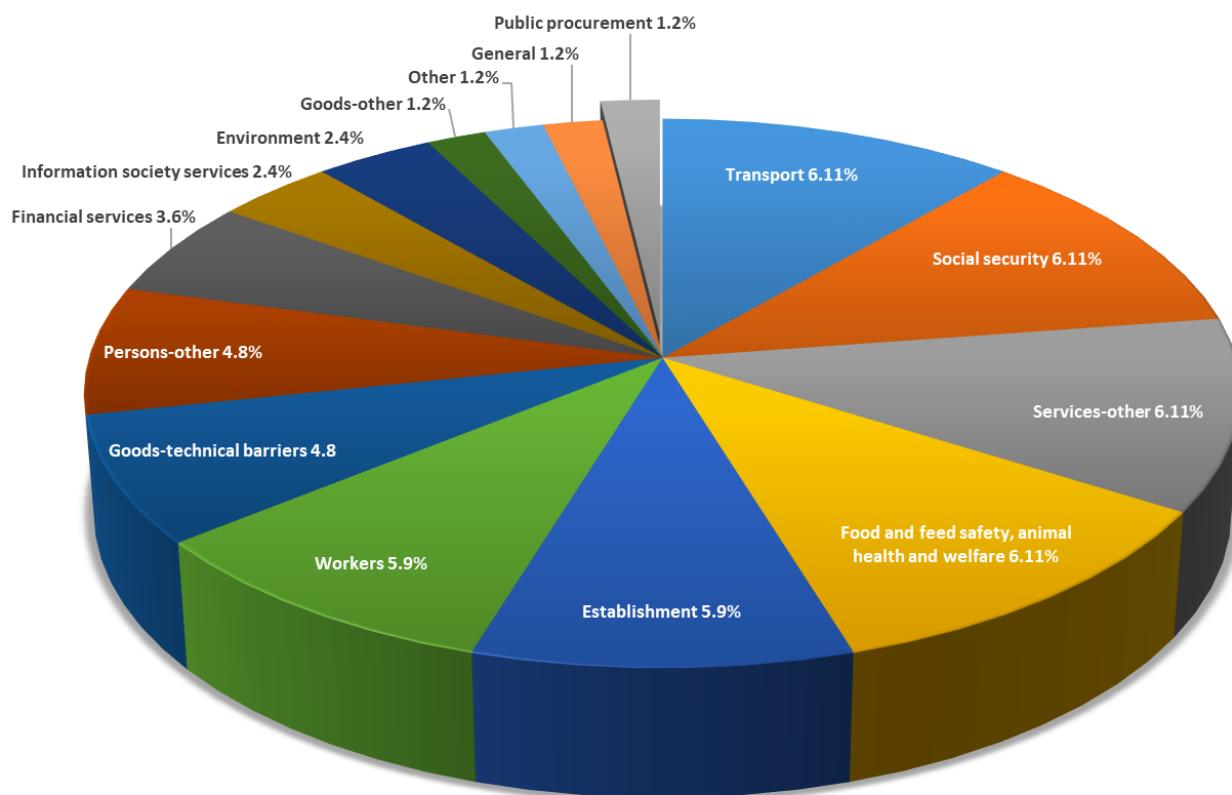


Figure 6: The sectors food and feed, animal health and welfare, services-other, social security and transport accounted for most of the infringement proceedings in the EFTA States

The fields of food and feed, animal health and welfare, services-other, social security and transport accounted for the highest number of infringement proceedings concerning the lack of conformity with or incorrect application of Internal Market rules. These four sectors each accounted for 11% of these infringement proceedings (Figure 6).

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

17.3 months. This is 4.6 months more than the comparable figure (12.7) from the previous Scoreboard in December 2017⁶.

EFTA State	Case	Duration in months
Norway	Conformity assessment of national measures implementing Directive 2005/60/EC (Third Anti-Money Laundering Directive) in Norway	55
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
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 2018, the average time that had lapsed since the court judgment was 26.6 months (see **Figure 8** for the details of these cases). This is 2.1 months longer than the comparable figure (24.5 months) from the last Scoreboard in December 2017.⁶ above

⁶ The comparison here is made with the situation on 1 December 2017 (Scoreboard 41) as these are the figures last officially reported by the European Commission.

EFTA State	Case	Duration in months
Norway	Complaint concerning the temporary import of foreign-registered rental cars	50
Liechtenstein	Establishment of Austrian trained 'Dentist'	43
Norway	Implementation of the Directive on ambient air quality	37
Liechtenstein	Liechtenstein Trade Act and the Services Directive	30
Norway	Incorrect implementation of Directive 2000/59 on port reception facilities	28
Iceland	Complaint against Iceland concerning imports of raw meat	12
Norway	Complaint against Norway concerning the construction of an underground parking and the award of a concession for its operation	8

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 2018 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 four cases from 16 to 12 from the time of the previous Scoreboard in May 2018. (Figure 9).

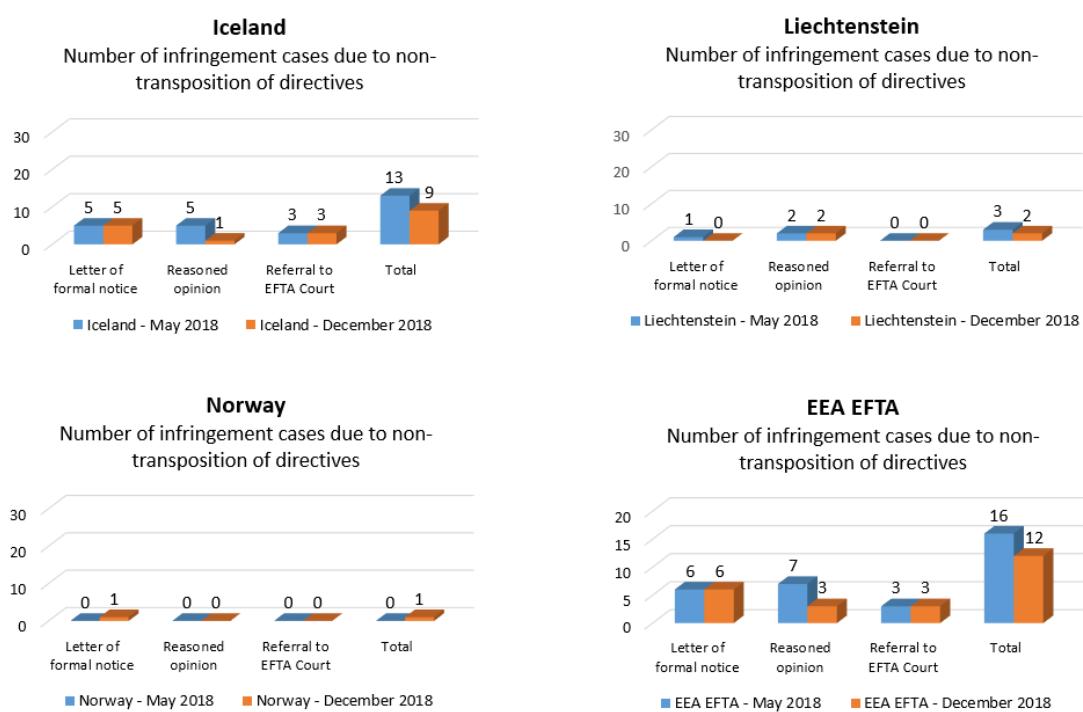


Figure 9: The number of infringement cases against the EFTA States due to non-transposition of directives.

3.4 Infringement proceedings concerning failure to transpose regulations into national law

Of the 98 infringement cases pending on 1 December 2018, 34% concerned the late transposition of regulations. For Iceland, this means 27 cases, and for Norway, six cases. This represents a 27% decrease for Iceland, a significant improvement, although there has been a steady rise in the number of cases referred to the EFTA Court. For Norway, there has been an increase of two cases since the time of the Scoreboard in May 2018 (**Figure 10**).

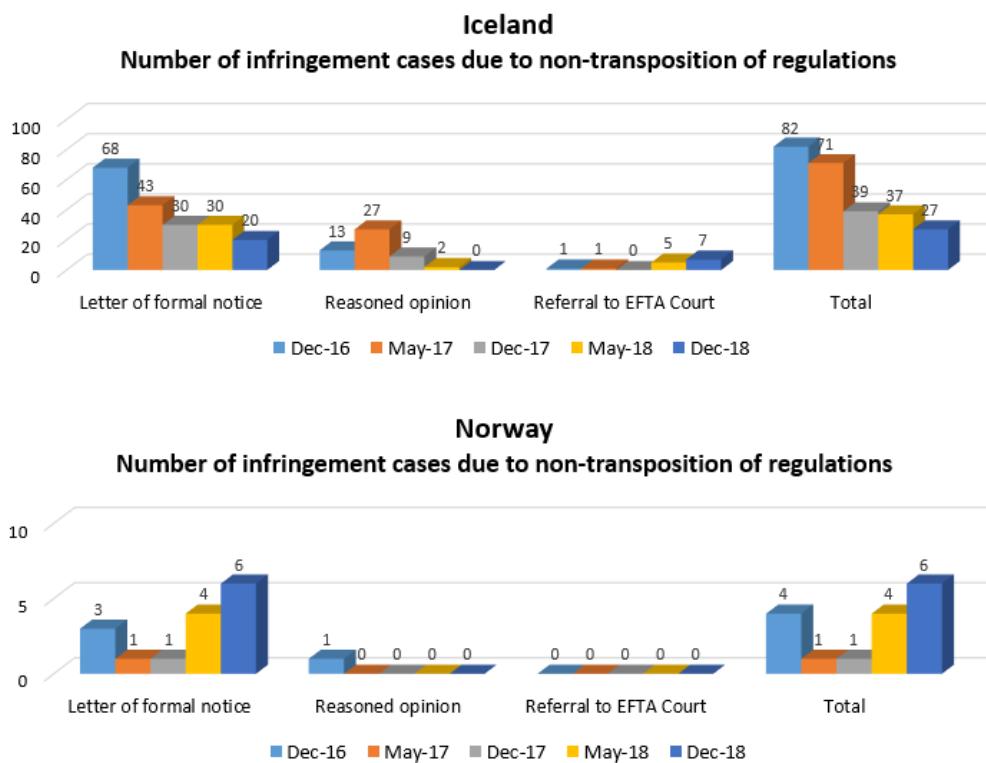
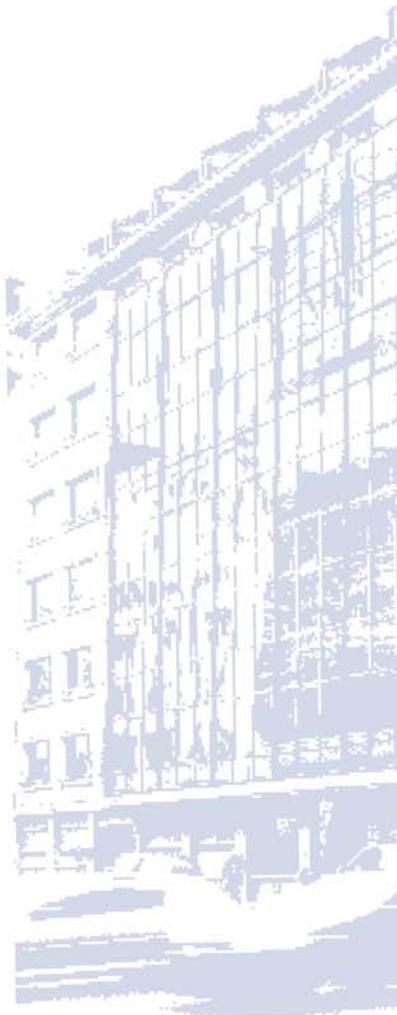


Figure 10: The number of infringement cases initiated against Iceland and Norway concerning failure to transpose regulations in 2018, decreased since the previous Scoreboard

The total number of infringement cases concerning the non-transposition of directives and regulations decreased by 12 cases from 57 to 45 since the Scoreboard in May 2018.



EFTA Surveillance Authority
Rue Belliard 35
B-1040 Brussels
Belgium

Tel. +32 2 286 18 11
Fax +32 2 286 18 00
E-mail: registry@eftasurv.int
Internet: <http://www.eftasurv.int>
Twitter: @eftasurv

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