

INTERNAL MARKET SCOREBOARD

July 2019

No. 44

EEA EFTA STATES

44th 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 31 May 2019)*

- The average transposition deficit for directives for the EFTA States increased from 0.4% to 0.7% since the December 2018 Scoreboard.
- Iceland has increased its transposition deficit for directives from 0.5% to 0.7%, reflecting a total of six directives overdue, three of which have been outstanding for more than two years. The number of regulations which had not been fully transposed into national law on time also increased from 35 to 38, resulting in a transposition deficit for regulations of 1.2%. Nearly half of these outstanding regulations fall in the financial services and environment sectors.
- Norway now has three directives which have not been fully transposed on time, meaning an increase in its transposition deficit from 0.1% to 0.4%. One of these directives, in the social security sector, has been outstanding for just over a year. The number of regulations which had not been fully transposed into national law on time increased significantly from 3 to 17, resulting in a transposition deficit for regulations of 0.5%.
- Liechtenstein's deficit since the last Scoreboard has increased from 0.6% to 0.9%, with seven directives now outstanding. Five of these, all relating to driving licences, have been outstanding for more than two years.
- The Authority has seen a largely stable total number of infringement cases at 101 (up from 98). 50 of these cases concern the late transposition of directives or regulations, while 51 concern the incorrect implementation and application of EEA law.
- The EFTA States must increase their efforts to ensure timely compliance with EFTA Court judgments.
- 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 31 May 2019, the average time that had lapsed since the court judgment was 32.4 months. This is 5.8 months longer than the comparable figure (26.6 months) from the last scoreboard in December 2018.

The European Commission has taken the decision to publish only one annual Internal Market Scoreboard, taking stock of the situation as at the end of November each year. The EFTA Surveillance Authority will continue to publish two Internal Market Scoreboards per year. One will look at the situation in the EFTA Member States as at the end of November each year (December Scoreboard) and the other will look at the situation as at the end of May of each year (June Scoreboard). In future this June Scoreboard will also include figures for the EU Member States as at the end of December, as a comparison.

This Internal Market Scoreboard (No 44), reports on the status on 31 May 2019 and includes a comparison with the EU on the transposition of directives.

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, the Authority used the interim target of 1% set by the European Council in 2007 as a benchmark. Now, we are 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

The average transposition deficit for directives for the EFTA States increased from 0.4% to 0.7% since the December 2018 Scoreboard which matches the EU average at the time of the last Scoreboard. All 3 EFTA Member States, as at the end of May 2019, remain under the 1% target (**Figure 2**).

Iceland's transposition deficit for directives increased from 0.5% in December 2018 to 0.7% in this Scoreboard. This corresponds to six directives not having been fully transposed, two more than was observed in the December Scoreboard.

Norway also increased its transposition deficit to 0.4%, up from 0.1% at the time of the previous Scoreboard in December 2018, with three directives not having been fully transposed on time.

Liechtenstein saw an increase in its transposition deficit since the previous Scoreboard in December 2018, from 0.6% to 0.9%. This reflects the seven directives, two more than at the last Scoreboard, that had not been fully transposed on time.

¹ The findings regarding the transposition deficits of the EFTA States take into account the 810 directives that were incorporated into the EEA Agreement and were in force on 31 May 2019.

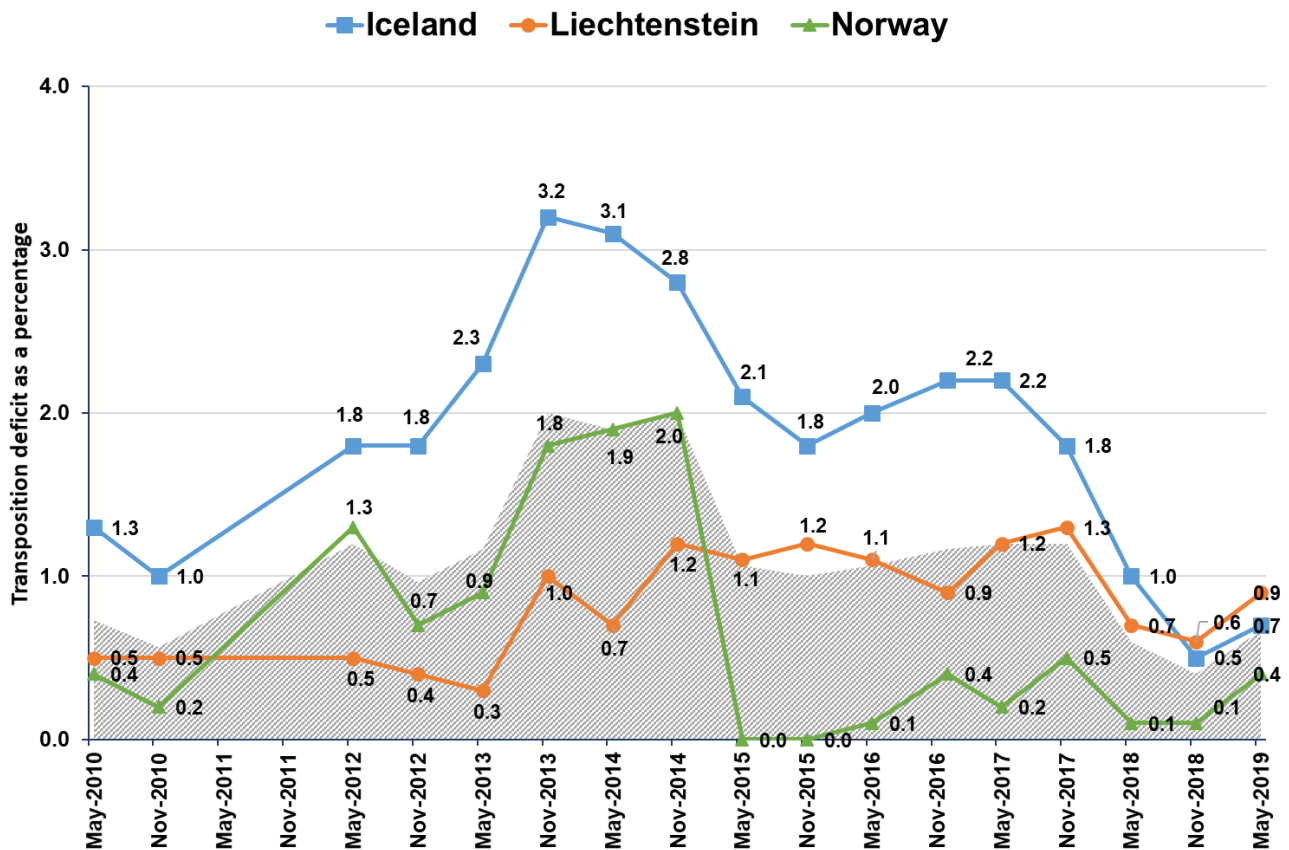
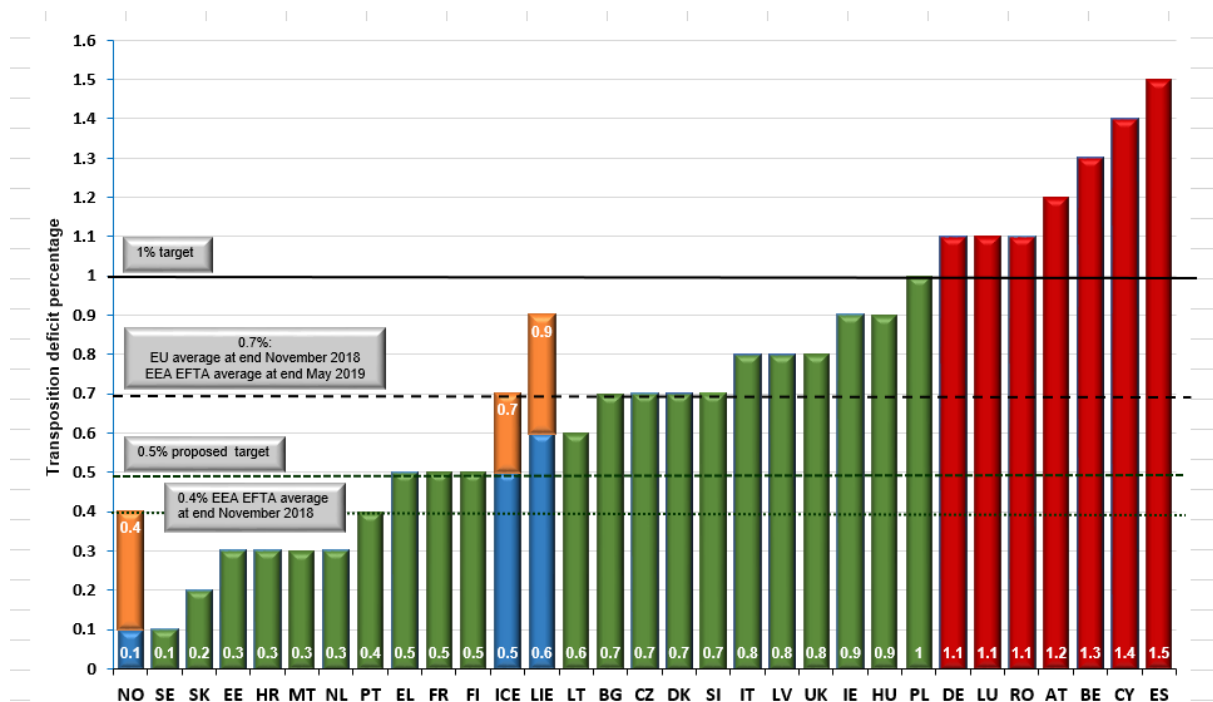


Figure 1: EFTA States' transposition deficit over the past 10 years

Transposition deficit for directives that should have been transposed on or before 31 May 2019



- EU MS Deficit as at end November 2018 (< 1% target)
- EU MS deficit as at end November 2018 (> 1% target)
- EFTA MS deficit as at end November 2018
- EFTA MS deficit as at end May 2019

Figure 2: Comparison of transposition deficits between the 31 EEA Member States

Seven EEA States did not meet the 1% target at the end of November 2018 / All EFTA States still remain under the 1% target

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, 2% of the directives applicable in the EFTA States on 31 May 2019 had not been transposed by at least one of the three EFTA States (**Figure 3**). The incompleteness rate of 2% translates into 14 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. This is an increase from 10 directives at the time of the last Scoreboard in December 2018.

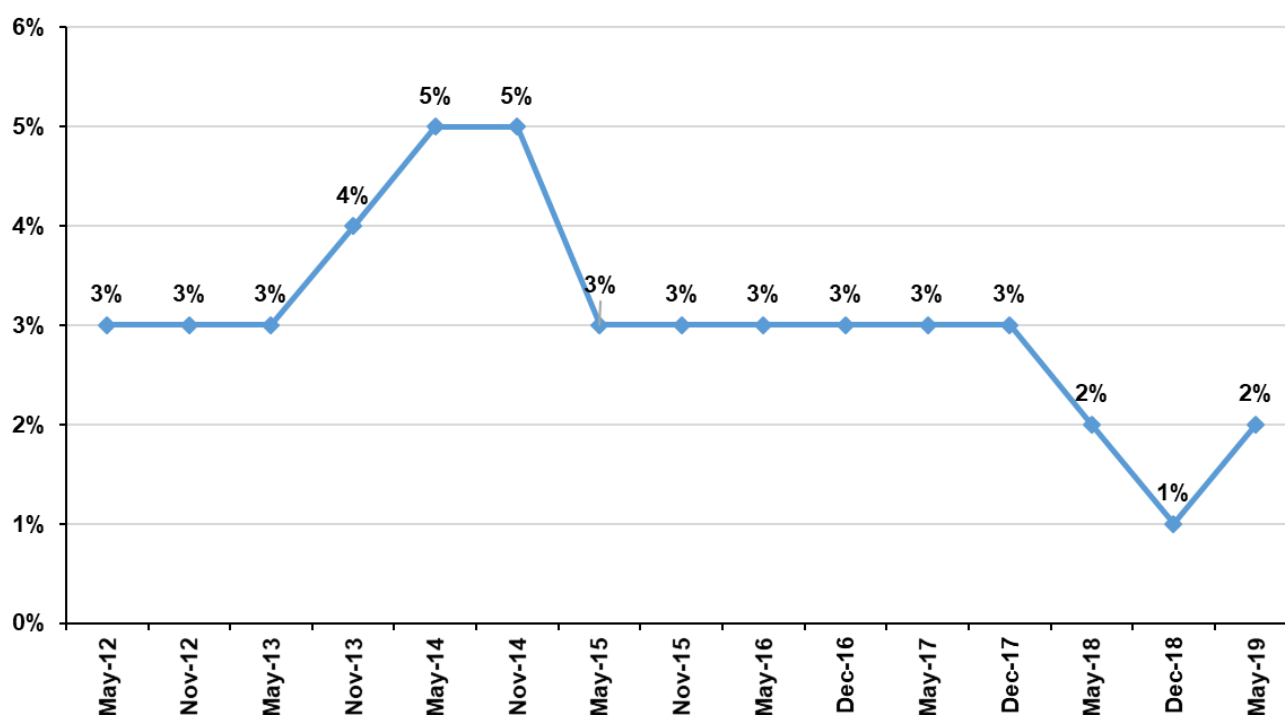


Figure 3: Incompleteness rate in the EFTA States (Directives)

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.

² Formerly referred to as “fragmentation factor”.

When the transposition delays are broken down by sector, the pattern of implementation varies between the EFTA States. (**Figure 4**).

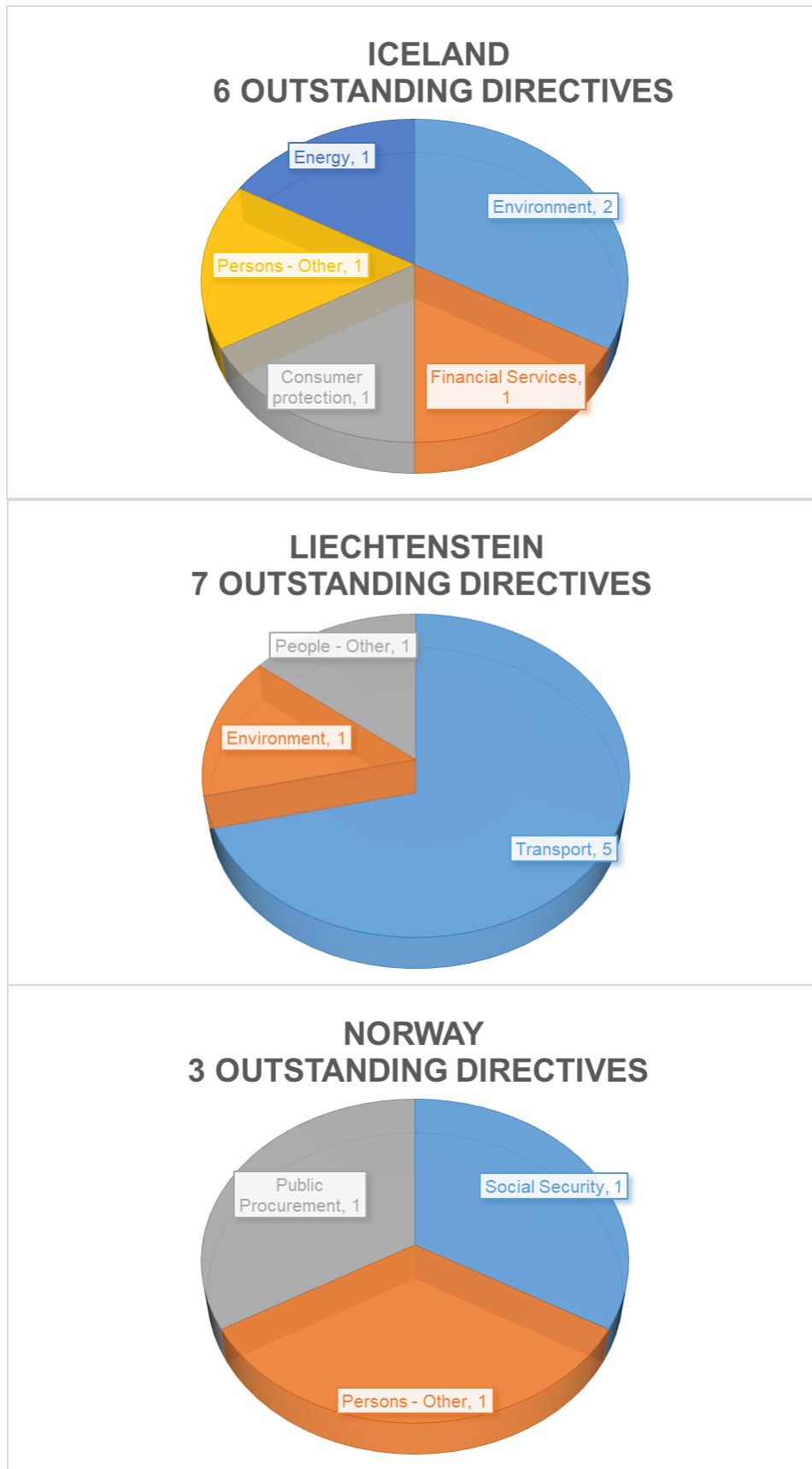


Figure 4: Outstanding directives broken down by sector in each EFTA State

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

The timely incorporation of regulations is as important as that of directives in ensuring the completeness of the internal market.

On 31 May 2019, 3300 regulations incorporated into the EEA Agreement were in force. Of these, there were 38 regulations that Iceland had not notified as having been incorporated into its national law. This is a further increase in outstanding regulations since the last Scoreboard in December 2018, representing a transposition deficit of 1.2%.

For Norway, the number of regulations not notified as incorporated into national law increased by 14, meaning that there were 17 outstanding regulations. This represents a transposition deficit of 0.5%, an increase from 0.1% since the previous Scoreboard in December 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 3330 regulations incorporated into the EEA Agreement on 31 May 2019 had not been transposed by both Iceland and Norway. The figure translates into 41 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 38 regulations and 17 have not been transposed by Norway.

With regard to regulations, the most incomplete sectors in Iceland are in the areas of financial services and environment. In Norway, the most incomplete sectors are food and feed, animal health and welfare, and financial services. **(Figure 5).**

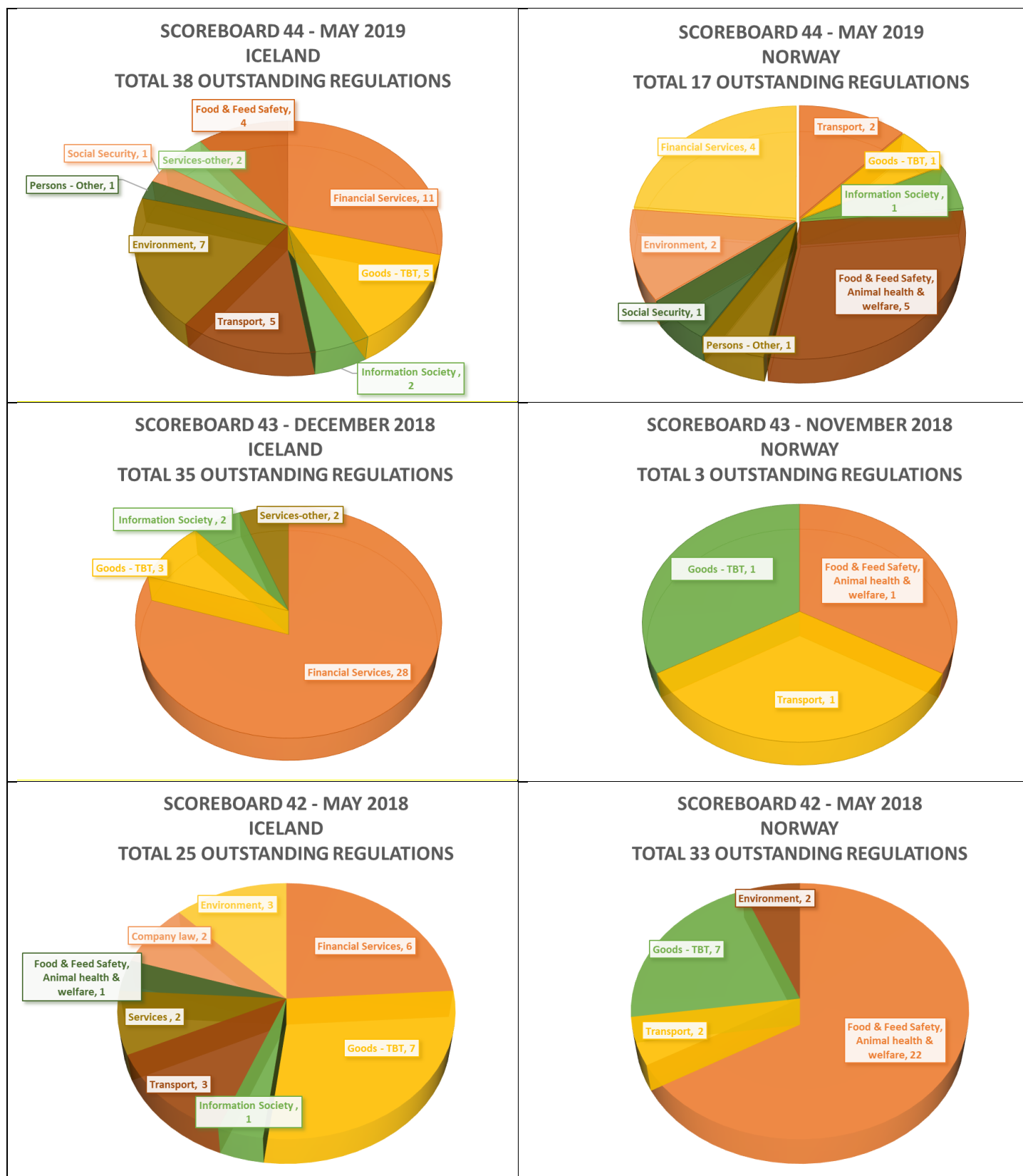


Figure 5: Outstanding regulations as at 31 May 2019

The next chapter of the Scoreboard highlights the infringement proceedings initiated by the Authority, many of 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 sections 3.3 and 3.4.

3.1 Increase in the total number of infringement proceedings

As at 1 June 2019, the Authority was pursuing a total of 101 infringement cases against the EFTA States in the internal market field (**Figure 6**)⁴. This is 3 cases more than at the time of the last Scoreboard in December 2018.

Of the 101 pending infringement cases, 51 concerned the incorrect implementation or application of Internal Market rules (see chapter 3.2), whereas 15 cases concerned

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.

the late transposition of directives (see chapter 3.3) and the remaining 35 cases concerned the late transposition of regulations (see chapter 3.4).

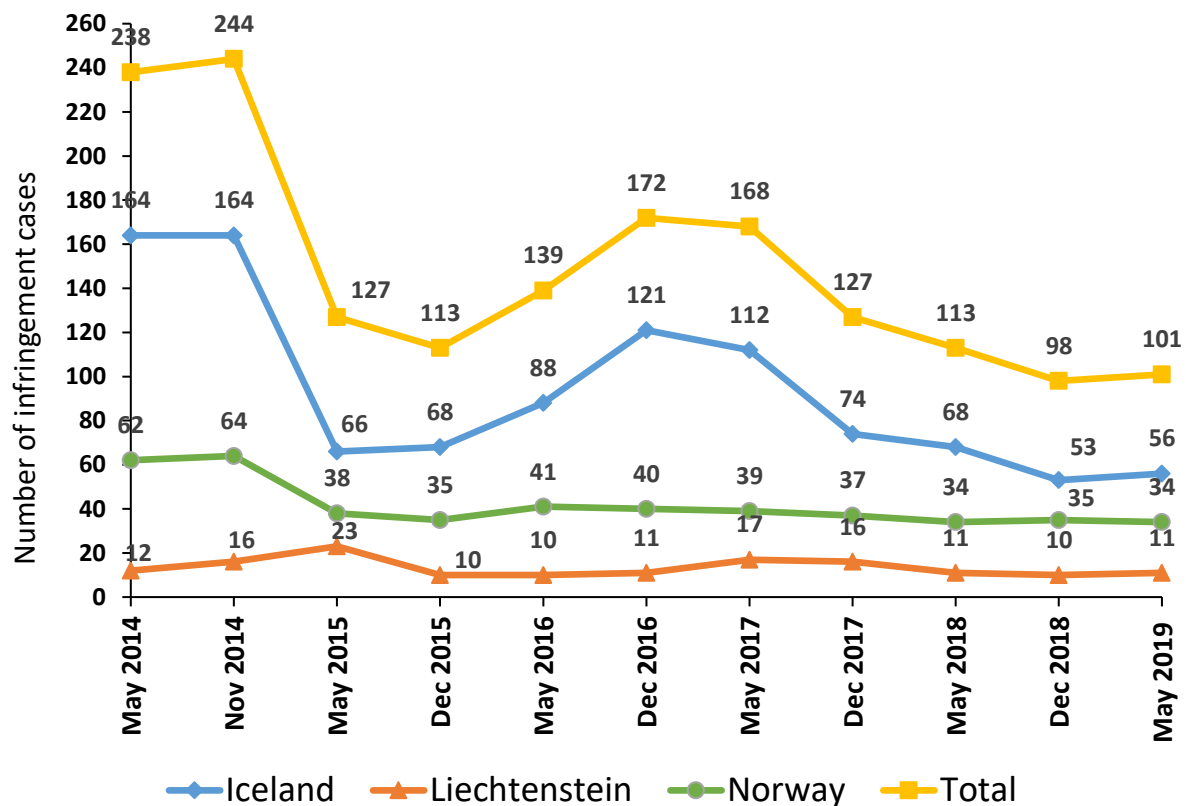


Figure 6: Total number of infringement cases

Total number of all open infringement proceedings against the three EFTA States on 1 June 2019.

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 which were being pursued on the grounds of lack of conformity with or incorrect application of Internal Market rules was 51. This reflects a decrease of two since the previous Scoreboard in December 2018.

There has been little change overall since this last Scoreboard in December 2018; the number of infringement cases against Iceland and Liechtenstein remains at 17 and eight respectively, and in Norway, the figure decreased only slightly from 28 to 26.

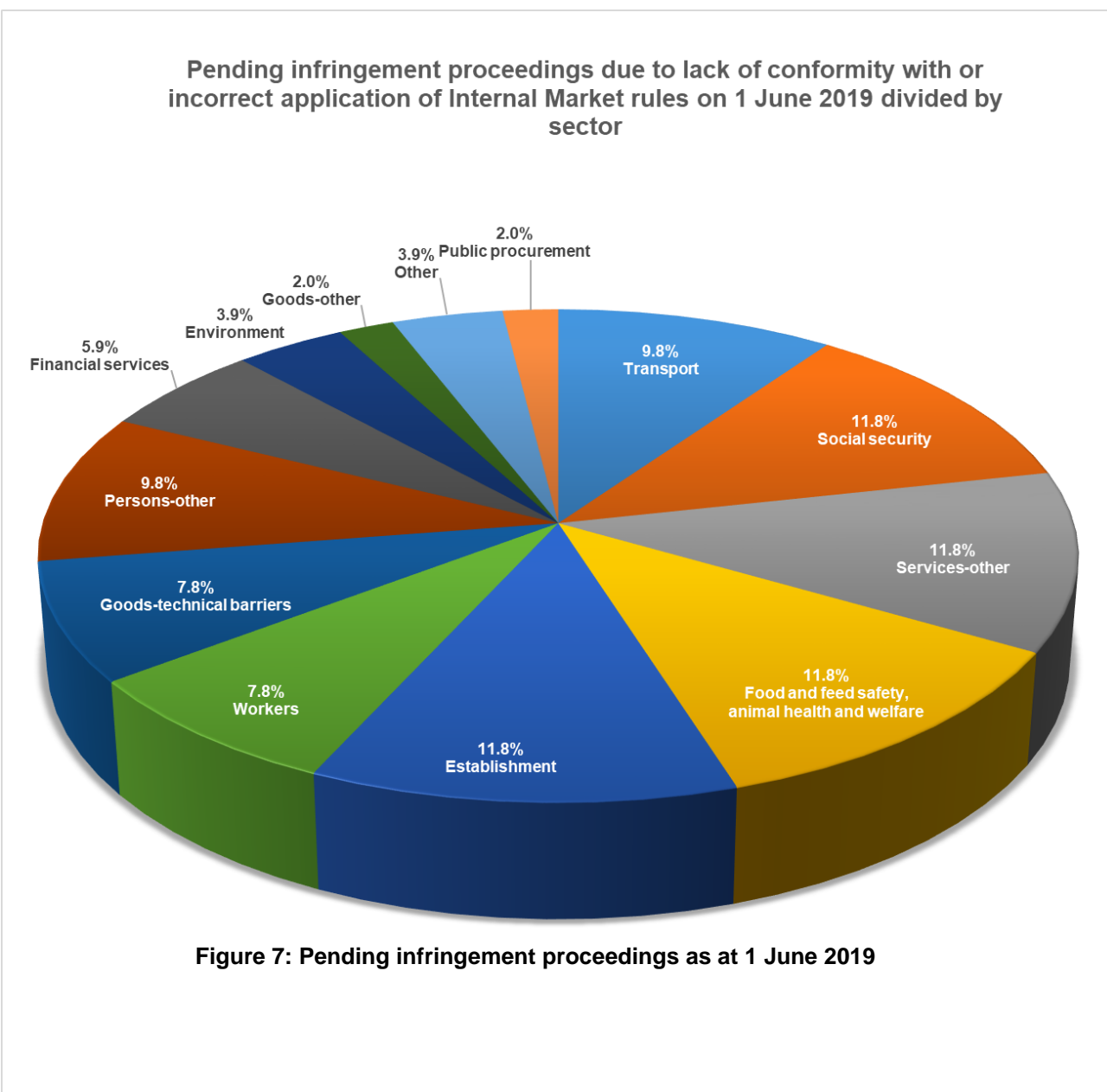
The number of infringement proceedings stemming from complaint cases also remained the same at 19 since the Scoreboard in December 2018.⁵ This figure represents 37% of

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.

⁵ The comparison here is made with the situation on 1 December 2018 (Scoreboard 43) since these are the figures last officially reported by the European Commission.

all pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Broken down by State, 12 of these cases related to Norway, five to Iceland and two to Liechtenstein.

3.2.2 Breakdown per sector



The fields of food and feed, animal health and welfare, establishment, services and social security accounted for the highest number of infringement proceedings concerning the lack of conformity with or incorrect application of Internal Market rules. Together these sectors accounted for 47% of the infringement proceedings (**Figure 7**).

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 8**), 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 18.1 months. This is 0.8 months longer than the comparable figure (17.3 months) from the previous Scoreboard in December 2018.

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
Iceland	Conformity assessment of national measures implementing Directive 2002/92/EC (insurance mediation)	50
Norway	Ownership restrictions in Financial Services Infrastructure Institutions	35
Liechtenstein	Complaint concerning deposits for staffing agencies	12
Norway	Access to family benefits in Norway for unmarried/divorced parents where one partner is living outside of Norway	12
Iceland	Conformity assessment of the national measures implementing the Equal Treatment Directive 2006/54/EC	9
Iceland	CoA Directive 2000/30/EC on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community	3
Iceland	Checks on transport of dangerous goods by road under Directive 95/50/EC	3
Norway	Complaint concerning licensing under the Building and Planning Act - provision of services and recognition of qualifications	2

Figure 8: 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 31 May 2019, the average time that had lapsed since the court judgment was 32.4 months (see **Figure 9** for the details of these cases). This is 5.8 months longer than the comparable figure (26.6 months) from the last scoreboard in December 2018.

EFTA State	Case	Duration in months
Norway	Complaint concerning the temporary import of foreign-registered rental cars	55
Liechtenstein	Establishment of an Austrian trained 'Dentist'	49
Norway	Implementation of the Directive on ambient air quality & Complaint regarding ambient air quality	43
Liechtenstein	Liechtenstein Trade Act and the Services Directive	36
Norway	Incorrect implementation of Directive 2000/59 on port reception facilities	34
Iceland	Complaint against Iceland concerning imports of raw meat & Own initiative case concerning requirements imposed by Iceland on imports of egg and dairy products	18
Norway	Complaint against Norway concerning the construction of an underground parking and the award of a concession for its operation	14

Figure 9: Ongoing cases concerning lack of conformity with or incorrect application of Internal Market rules referred to the EFTA Court which on 1 June 2019 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 increased by three cases from 12 to 15 from the time of the previous Scoreboard in December 2018. (**Figure 10**).

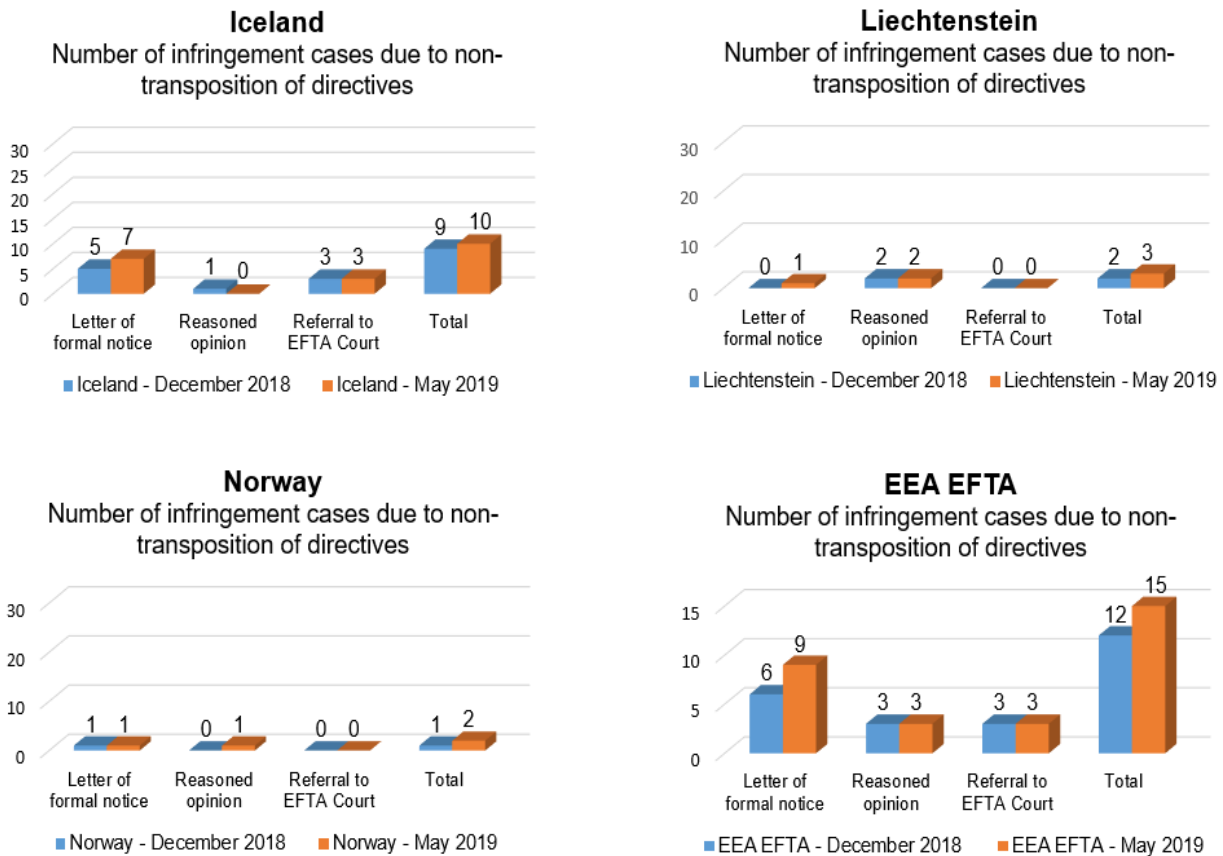


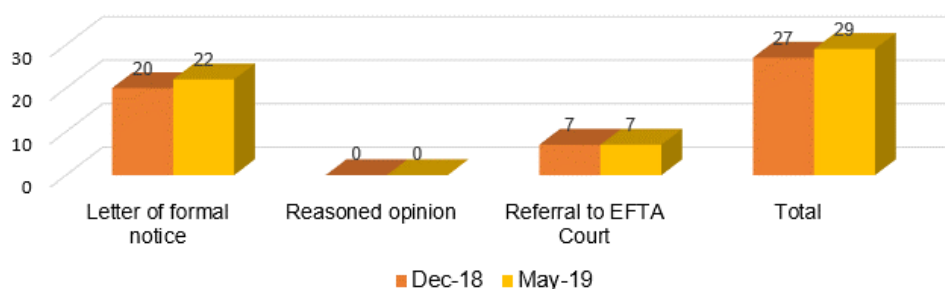
Figure 10: The number of infringement cases against the EFTA States due to non-transposition of directives.

3.4 Infringement proceedings concerning failure to transpose regulations into national law

Of the 101 infringement cases pending on 1 June 2019, 35% concerned the late transposition of regulations. For Iceland, this means 29 cases up from 27, and for Norway the figure stands the same at six cases. (**Figure 11**).

Iceland

Number of infringement cases due to non-transposition of regulations



Norway

Number of infringement cases due to non-transposition of regulations

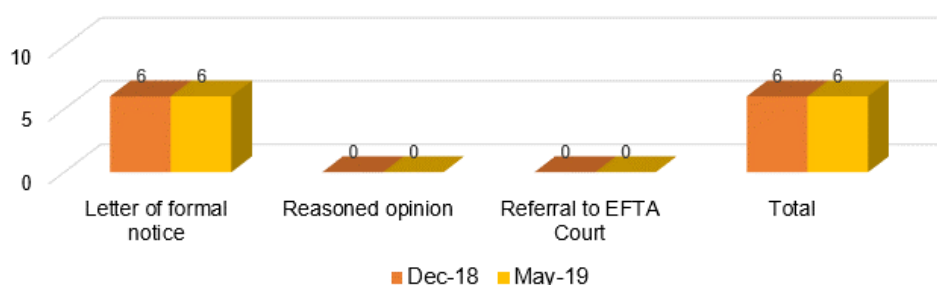


Figure 11: The number of infringement cases against the EFTA States due to non-transposition of regulations.

The total number of infringement cases concerning the non-transposition of directives and regulations increased by five cases from 45 to 50 since the Scoreboard in December 2018.



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