

INTERNAL MARKET SCOREBOARD

March 2020

No. 45

EEA EFTA STATES

45th 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 2019)*

- The average transposition deficit for directives for the EFTA States decreased from 0.7% to 0.6% since the June 2019 Scoreboard.
- **Iceland** has decreased its transposition deficit for directives since the previous Scoreboard in June 2019 from 0.7% to 0.6%, reflecting a total of five directives overdue, two 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 increased from 38 to 47, resulting in a transposition deficit for regulations of 1.5%. More than 75% of these outstanding regulations fall in the financial services and food & feed safety, animal health and welfare, sectors.
- **Norway** now has two directives which have not been fully transposed on time, meaning a decrease in its transposition deficit from 0.4% to 0.3%. One of these directives, in the social security sector, has been outstanding for now over 18 months. The number of regulations which had not been fully transposed into national law on time reduced from 17 to 15, resulting in a transposition deficit for regulations of 0.5%. Over half of these fall in the goods – TBT sector.
- **Liechtenstein's** deficit since the last Scoreboard has remained the same at 0.9%, with seven directives outstanding. Five of these, all relating to driving licences, have been outstanding for well over two years.
- The Authority has seen an increase in the total number of infringement cases at 121 (up from 98 since the December 2018 Scoreboard). 73 of these cases, an increase of 28, concern the late transposition of directives or regulations, while 48, a reduction from 53, 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, meaning the case remains unresolved at the cut-off date of the Scoreboard of 30 November 2019, the average time that had lapsed since the court judgment was 36.2 months.

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"). A second version of the June Scoreboard to include figures for the EU Member States as at the end of December, as a comparison, will also be published in parallel with the publication of the EU's Scoreboard.

This Internal Market Scoreboard (No 45), version 1, reports on the status of the EFTA Member States only as at 30 November 2019.

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 decreased from 0.7% to 0.6% since the June 2019 Scoreboard. All 3 EFTA Member States, as at the end of November 2019, remain under the interim target of 1% target set by the European Council in 2007, however only Norway remains lower than the 0.5% benchmark in line with the European Commission's Single Market Act proposed in April 2011. **(Figure 1).**

Iceland's transposition deficit for directives decreased from 0.7% in June 2019 to 0.6% in this Scoreboard. This corresponds to five directives not having been fully transposed, one less than was observed in the June Scoreboard.

Norway also decreased its transposition deficit to 0.3%, down from 0.4% at the time of the previous Scoreboard in June 2019, with two directives not having been fully transposed on time.

Liechtenstein's transposition deficit remained the same as the previous Scoreboard in June 2019, at 0.9%. This reflects the fact that seven directives still had not been fully transposed on time.

¹ The findings regarding the transposition deficits of the EFTA States take into account the 808 directives that were incorporated into the EEA Agreement and were in force on 30 November 2019.

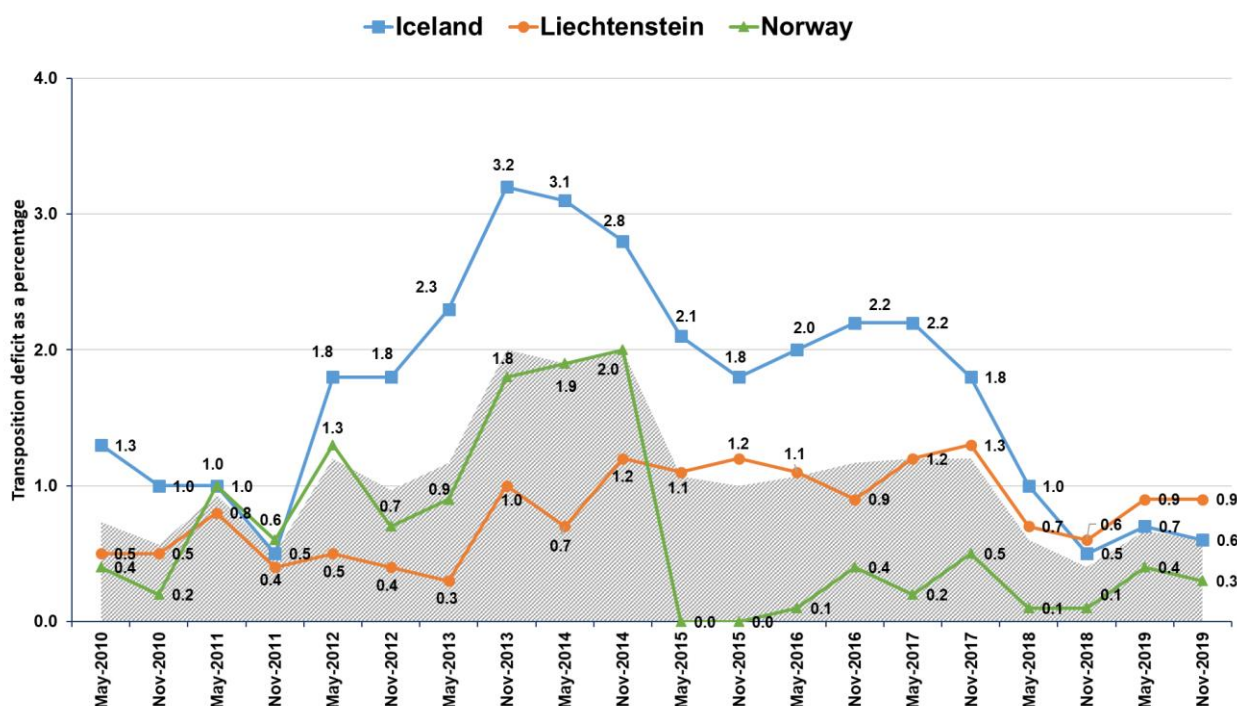


Figure 1: EFTA States' transposition deficit over the past 10 years

Transposition deficit for directives that should have been transposed on or before 30 November 2019

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 applicable in the EFTA States on 30 November 2019 had not been transposed by at least one of the three EFTA States (**Figure 2**). The incompleteness rate of 1% translates into 12 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 a decrease from 14 directives at the time of the last Scoreboard in June 2019.

² Formerly referred to as "fragmentation factor".

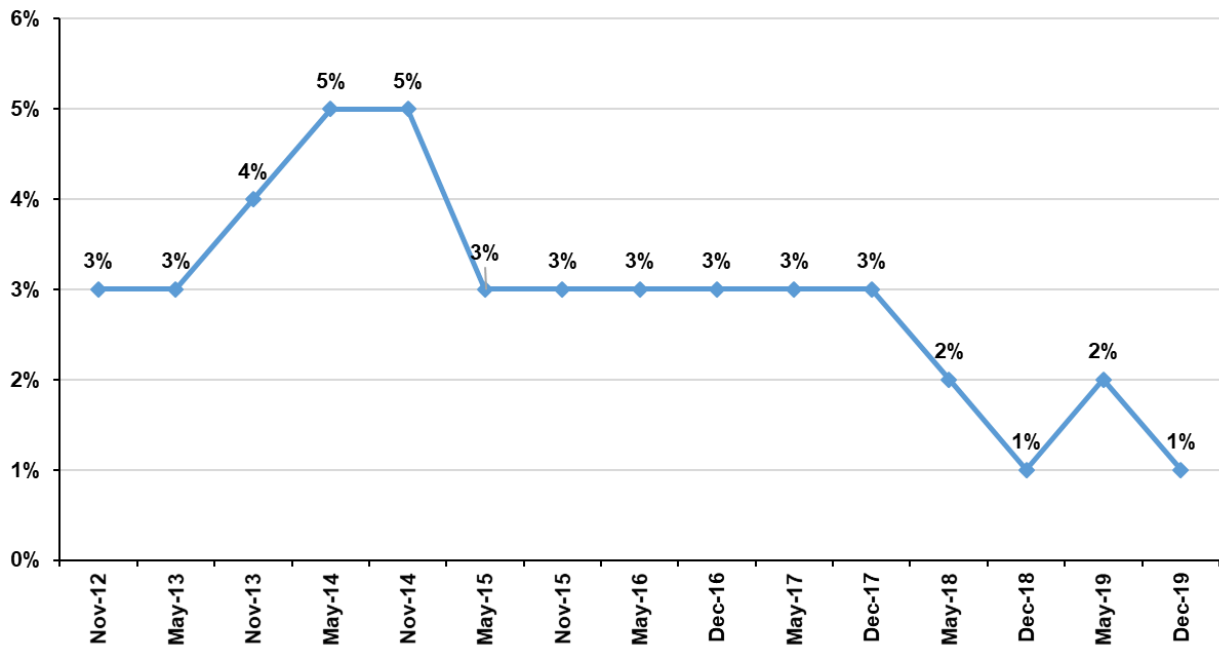
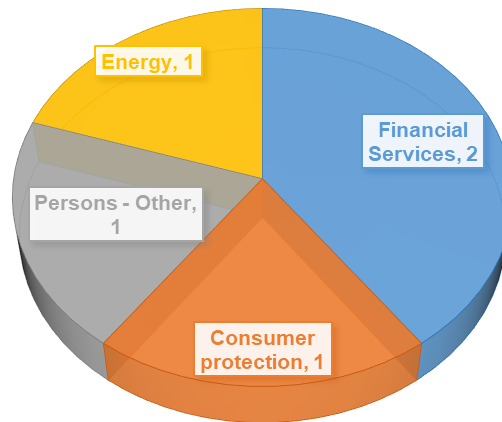


Figure 2: Incompleteness rate in the EFTA States (Directives)

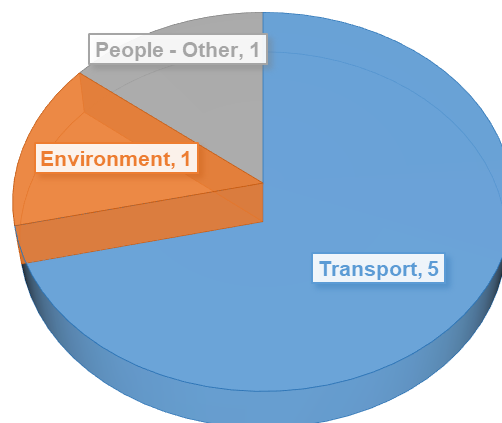
The incompleteness rate records the percentage of the outstanding directives which one or more of the three EFTA States have failed to transpose with the consequence that the Internal Market is not complete in the EFTA States in the areas covered by those directives.

When the transposition delays are broken down by sector, the pattern of implementation varies between the EFTA States. **(Figure 3)**

ICELAND 5 OUTSTANDING DIRECTIVES



LIECHTENSTEIN 7 OUTSTANDING DIRECTIVES



NORWAY 2 OUTSTANDING DIRECTIVES

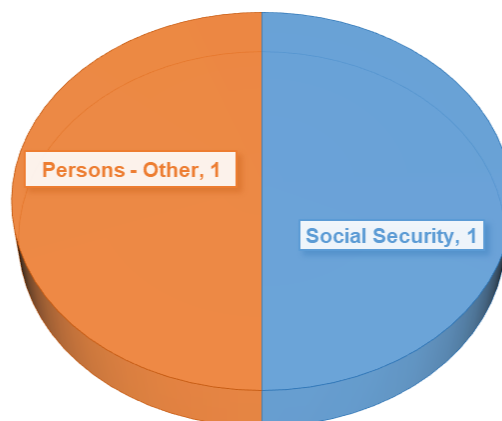


Figure 3: Outstanding directives broken down by sector in each EFTA State

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 30 November 2019, 3068 regulations incorporated into the EEA Agreement were in force. Of these, there were 47 regulations that Iceland had not notified as having been incorporated into its national law. This is yet another increase in outstanding regulations, up from 38 at the time of the last Scoreboard in June 2019, representing a transposition deficit of 1.5%.

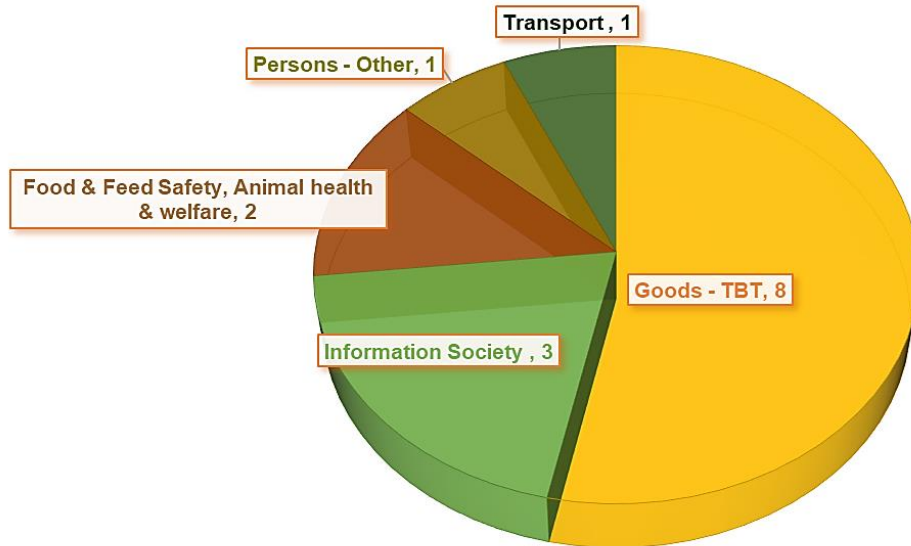
For Norway, the number of regulations not notified as incorporated into national law decreased from 17 to 15 outstanding regulations. This represents a transposition deficit of 0.5%, which remains the same, since the previous Scoreboard in June 2019.

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, 2% of the 3068 regulations incorporated into the EEA Agreement on 30 November 2019 had not been transposed by both Iceland and Norway. The figure translates into 57 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 47 regulations and 15 have not been transposed by Norway.

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

NORWAY 15 OUTSTANDING REGULATIONS



ICELAND 47 OUTSTANDING REGULATIONS

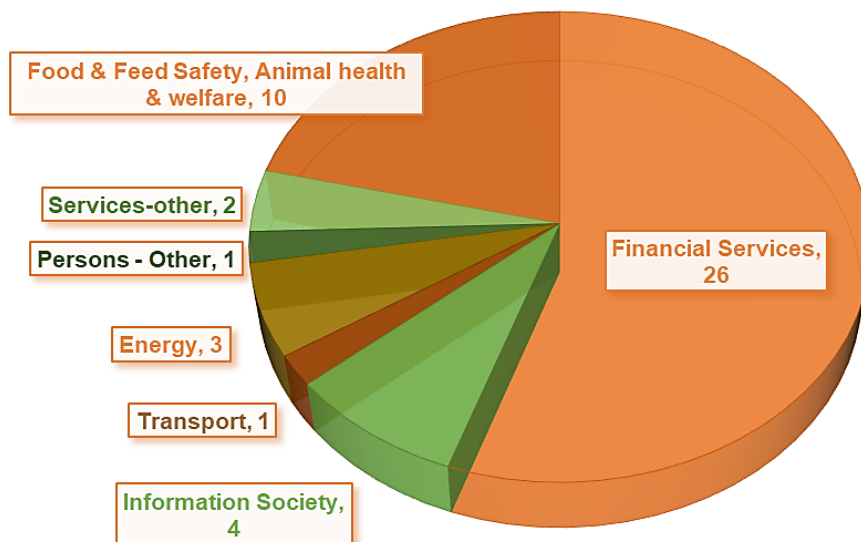


Figure 4: Outstanding regulations as at 30 November 2019

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 December 2019, the Authority was pursuing a total of 121 infringement cases against the EFTA States in the internal market field (**Figure 5**)⁴. This is 23 cases more than at the time of the last Scoreboard in December 2018.

Of the 121 pending infringement cases, 48 concerned the incorrect implementation or application of Internal Market rules - see chapter 3.2 (a decrease of 5), whereas 20 cases concerned the late transposition of directives - see chapter 3.3 (an increase of 8), and the remaining 53 cases concerned the late transposition of regulations - see chapter 3.4 (an increase of 20), since the December 2018 Scoreboard.

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.

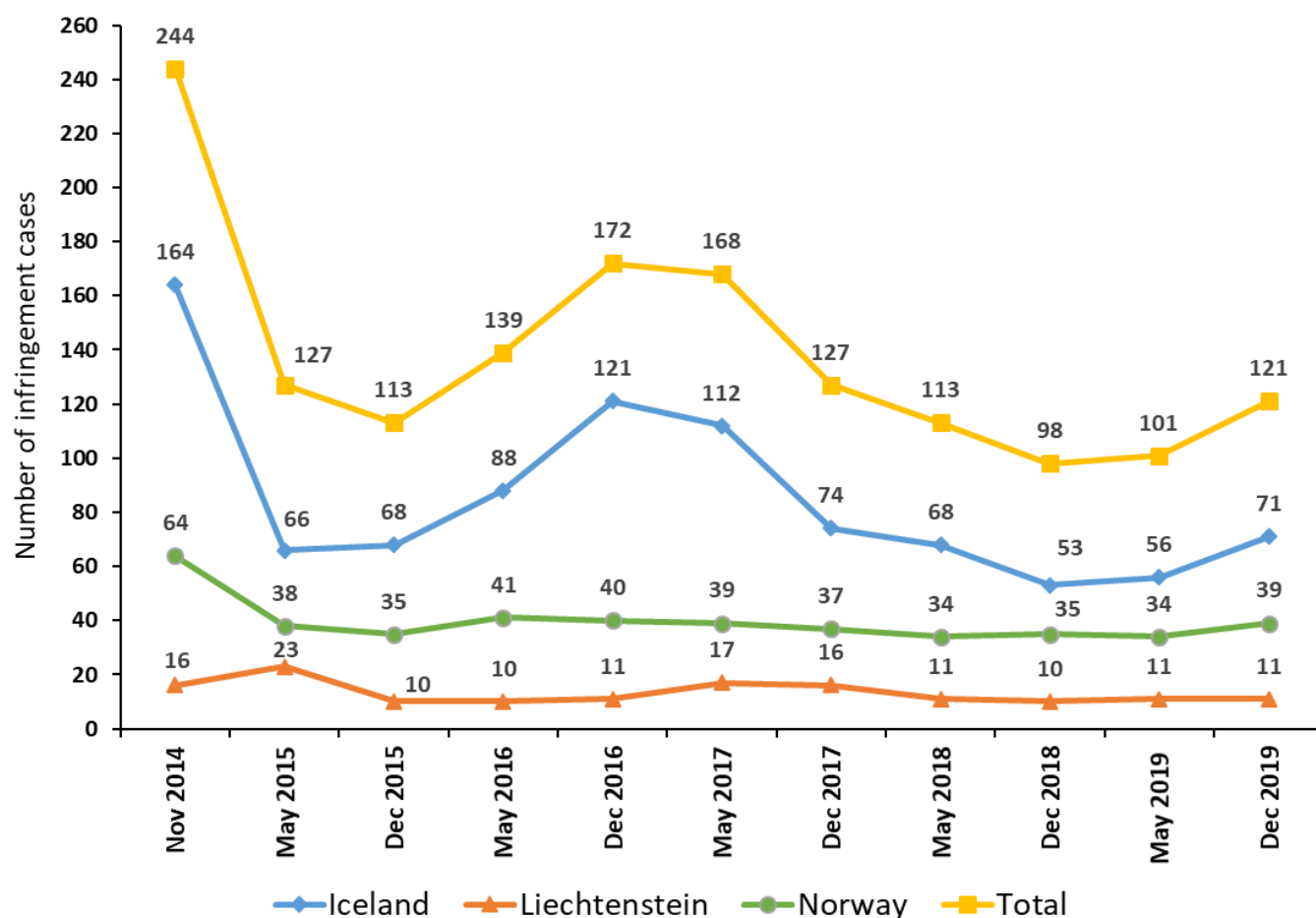


Figure 5: Total number of infringement cases

Total number of all open infringement proceedings against the three EFTA States on 1 December 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 48. This reflects a decrease of five since the previous Scoreboard in December 2018.

There has been a slight reduction overall since this last Scoreboard in December 2018; with the number of infringement cases against Iceland and Liechtenstein having reduced by one each to 16 and seven respectively, and in Norway, the figure decreased from 28 to 25.

The number of infringement proceedings stemming from complaint cases also reduced slightly from 19 to 17 since the Scoreboard in December 2018.⁵ This figure represents 35% of all pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Broken down by State, 11 of these cases related to Norway, five to Iceland and one 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

Pending infringement proceedings due to lack of conformity with or incorrect application of Internal Market rules on 1 December 2019 divided by sector

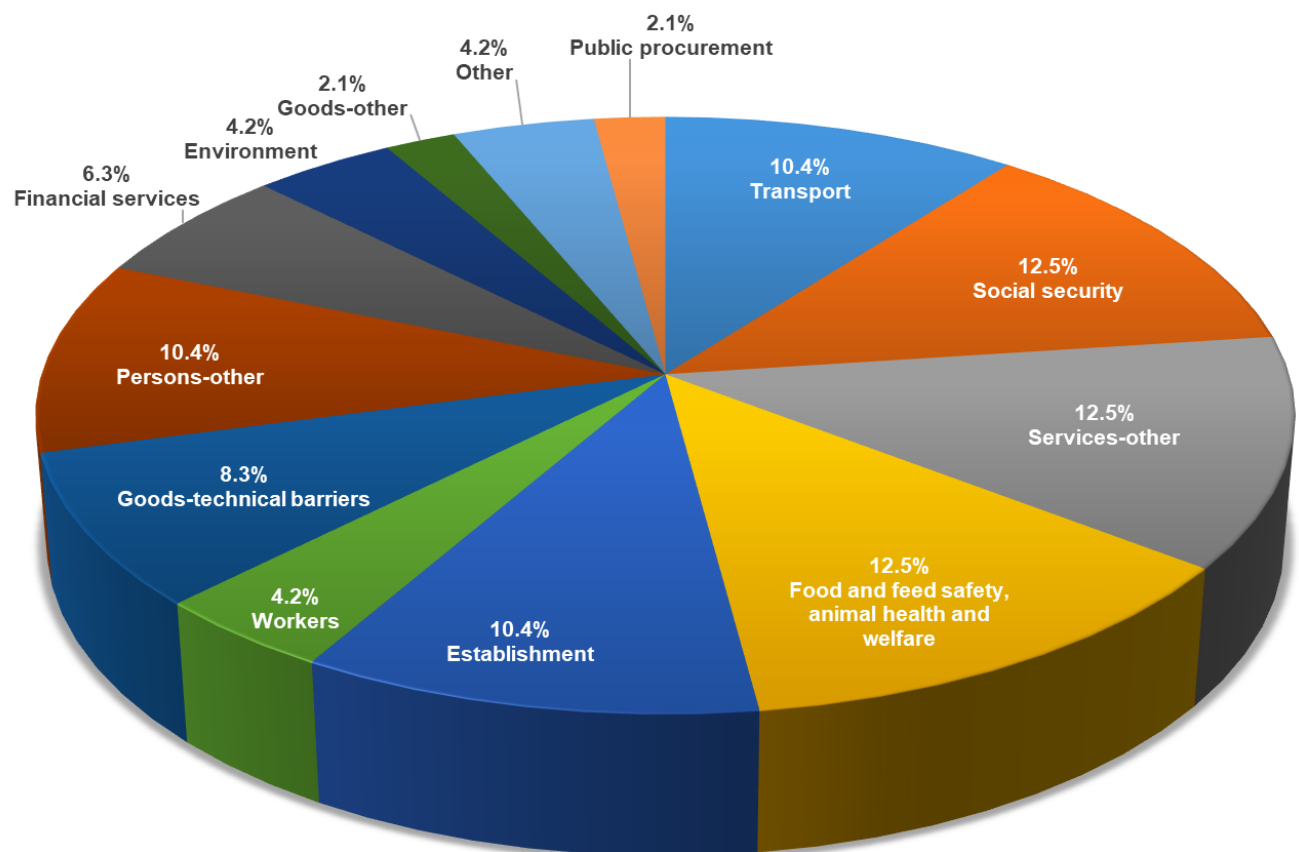


Figure 6: Pending infringement proceedings as at 1 December 2019

The fields of food and feed, animal health and welfare, services and social security accounted for the highest number of infringement proceedings concerning the lack of

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

conformity with or incorrect application of Internal Market rules. Together these sectors accounted for 37.5% of the 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 19 months. This is 1.7 months longer than the comparable figure (17.3 months) from the previous Scoreboard in December 2018⁶.

EFTA State	Case	Duration in months
Norway	Complaint against Norway concerning the temporary import of foreign-registered rental cars	61
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
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 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, meaning the case remains unresolved at the cut-off date of the Scoreboard of 30 November 2019, the average time that had lapsed since the court judgment was 36.2 months (see **Figure 8** for details of these cases). This is 9.6 months longer than the comparable figure (26.6 months) from the last Scoreboard in December 2018⁶.

⁶ The comparison here is made with the situation on 1 December 2018 (Scoreboard 43) as these are the figures last officially reported by the European Commission.

EFTA State	Case	Duration in months
Liechtenstein	Establishment of an Austrian trained 'Dentist'	55
Norway	Implementation of the Directive on ambient air quality & Complaint regarding ambient air quality	49
Liechtenstein	Liechtenstein Trade Act and the Services Directive	42
Norway	Incorrect implementation of Directive 2000/59 on port reception facilities	39
Iceland	Complaint against Iceland concerning imports of raw meat & Own initiative case concerning requirements imposed by Iceland on imports of egg and dairy products	24
Norway	Complaint against Norway concerning the construction of an underground parking and the award of a concession for its operation	20

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 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 five cases from 15 to 20 from the time of the previous Scoreboard in June 2019. (**Figure 9**).

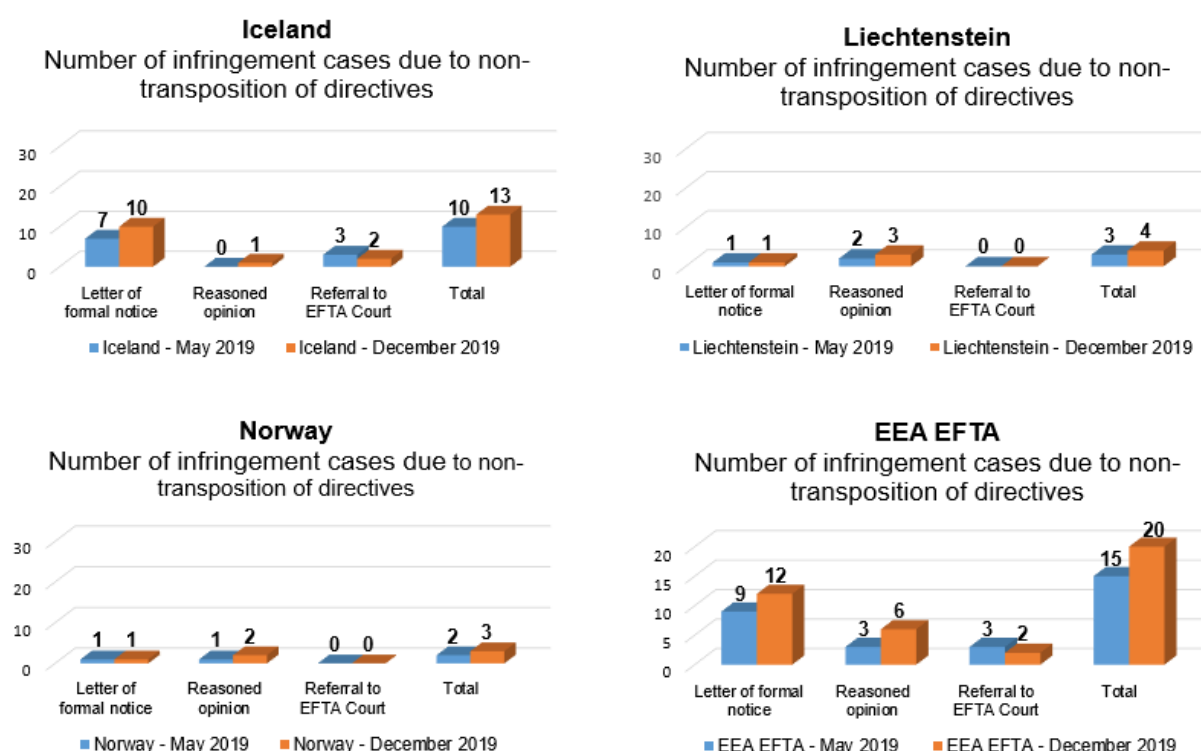


Figure 9: The number of infringement cases against the EFTA States due to non-transposition of directives.

3.4 Infringement proceedings concerning failure to transpose regulations into national law

Of the 121 infringement cases pending on 1 December 2019, 44% concerned the late transposition of regulations. For Iceland, this means 42 cases, a significant increase from 29 at the time of the June 2019 Scoreboard, and for Norway the figure nearly doubled from six to 11. (**Figure 10**).

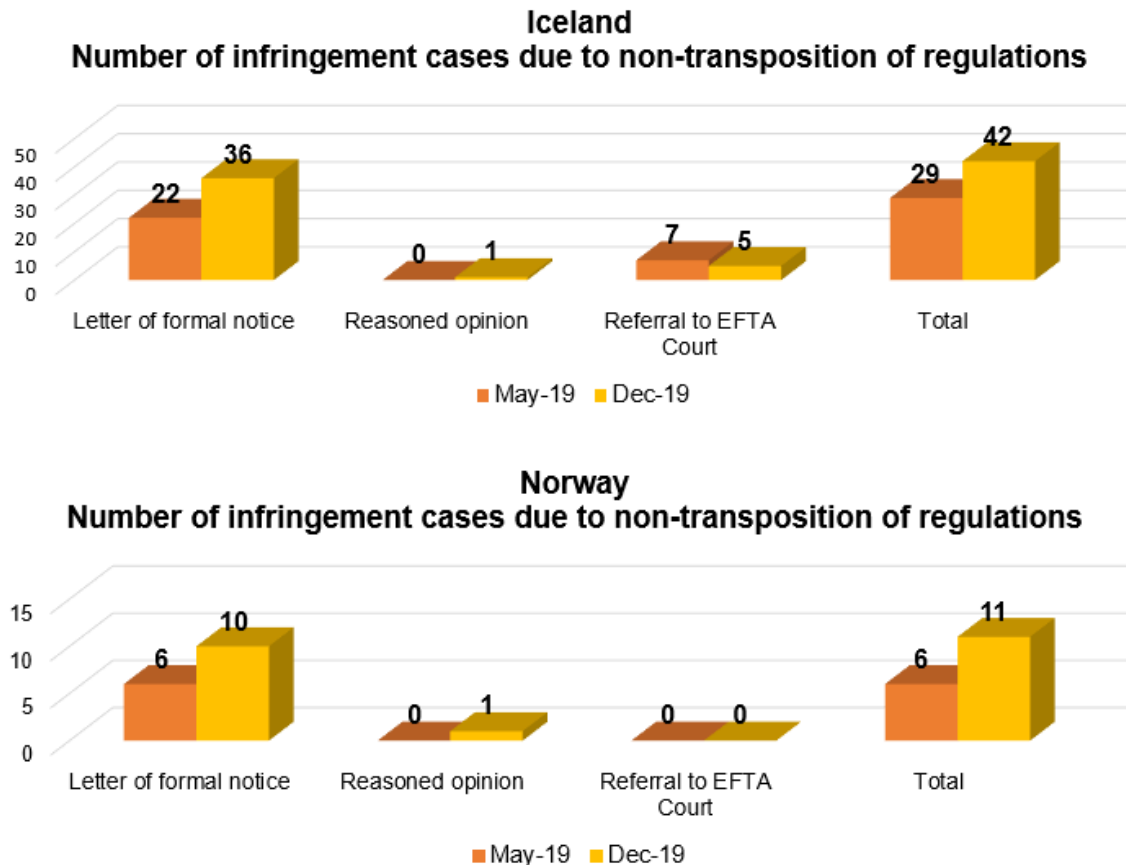


Figure 10: The number of infringement cases against the EFTA States due to non-transposition of regulations.

The total number of infringement cases concerning the non-transposition of directives and regulations increased by 23 cases from 50 to 73 since the Scoreboard in June 2019.



EFTA Surveillance Authority
Rue Belliard 35
B-1040 Brussels
Belgium

Tel. +32 2 286 18 11
www.eftasurv.int



@eftasurv



/eftasurv



/eftasurv