

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

July 2007

EFTA SURVEILLANCE  
**AUTHORITY**

# **INTERNAL MARKET SCOREBOARD**

**No. 20**

**EEA EFTA STATES  
of the  
EUROPEAN ECONOMIC AREA**

**July 2007**

**EFTA SURVEILLANCE AUTHORITY**

## **MAIN CONCLUSIONS FROM THE 20<sup>TH</sup> EEA EFTA INTERNAL MARKET SCOREBOARD**

- The Internal Market Scoreboard shows that the average transposition deficit of the EEA EFTA States has improved slightly, being now 1.2% instead of 1.4% six months ago. The average transposition deficit of the EU Member States is 1.6%.
- With a transposition deficit of 1.0%, Liechtenstein is well below the 1.5% interim target. Iceland's deficit remained at 1.5%. Norway's transposition deficit increased from 0.7% to 1.1%.
- When comparing the 28 EEA States Liechtenstein ranks 6<sup>th</sup> (up from 24<sup>th</sup>), Norway 11<sup>th</sup> (down from 7<sup>th</sup>) and Iceland 18<sup>th</sup> (up from 21<sup>st</sup>).
- Liechtenstein has one directive overdue by more than two years, Iceland and Norway have none.
- Norway has an average transposition delay of 3 months, Iceland of 4 months and Liechtenstein of 9 months.
- The number of infringement cases initiated by the Authority against the three EEA EFTA States decreased slightly since the previous Scoreboard. There are 18 infringement cases open against Norway, 25 against Liechtenstein and 51 against Iceland.
- Infringement cases initiated due to non-conformity with or incorrect application of EEA rules account for 77% for Iceland, 72% for Norway and 32% 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 infringements by the EEA EFTA States of the rules on technical barriers to trade, company law and food and feed safety, animal health and welfare.
- On average, both Iceland and Norway resolved infringement cases within 12 months, while the corresponding figure for Liechtenstein is 21 months.

## 1. INTRODUCTION

The Internal Market of the European Union ensures that businesses and citizens of the European Union have the right to trade their goods and services, to work, to invest and to establish wherever they want within the Union. The purpose of the EEA Agreement<sup>1</sup> is to extend the Internal Market to the three EEA EFTA States, namely Iceland, Liechtenstein and Norway,<sup>2</sup> 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 the 27 EU Member States and 3 EEA EFTA States;<sup>3</sup>
- 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 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 aforementioned 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 take place. EU directives are incorporated into the EEA Agreement through decisions made by the EEA Joint Committee. The obligation to transpose a directive into national law of the EEA EFTA States is triggered by these EEA Joint Committee decisions.

The EFTA Surveillance Authority is required to ensure the fulfillment by the EEA EFTA States of their obligations under the EEA Agreement including the transposition of the directives 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.

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<sup>1</sup> Agreement on the European Economic Area.

<sup>2</sup> 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.

<sup>3</sup> Romania and Bulgaria, which have been members of the EU since 1 January 2007, will become members of the EEA upon signing and ratification of the Agreement on the EEA Enlargement in the near future, thus bringing the number of the EEA States to 30.

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. Rather, their constitutional orders require that regulations be made part of the internal legal orders by way of national implementing measures.

*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 States and the EEA EFTA States comply with their obligations to ensure timely transposition of Internal Market directives.

The EEA 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 1637 Internal Market directives that were incorporated into the EEA Agreement as per 30 April 2007.<sup>4</sup> The Scoreboard records the transposition status for these directives on 10 May 2007.

*What the EEA EFTA Internal Market Scoreboard does not tell us?*

The transposition chapter of 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*.

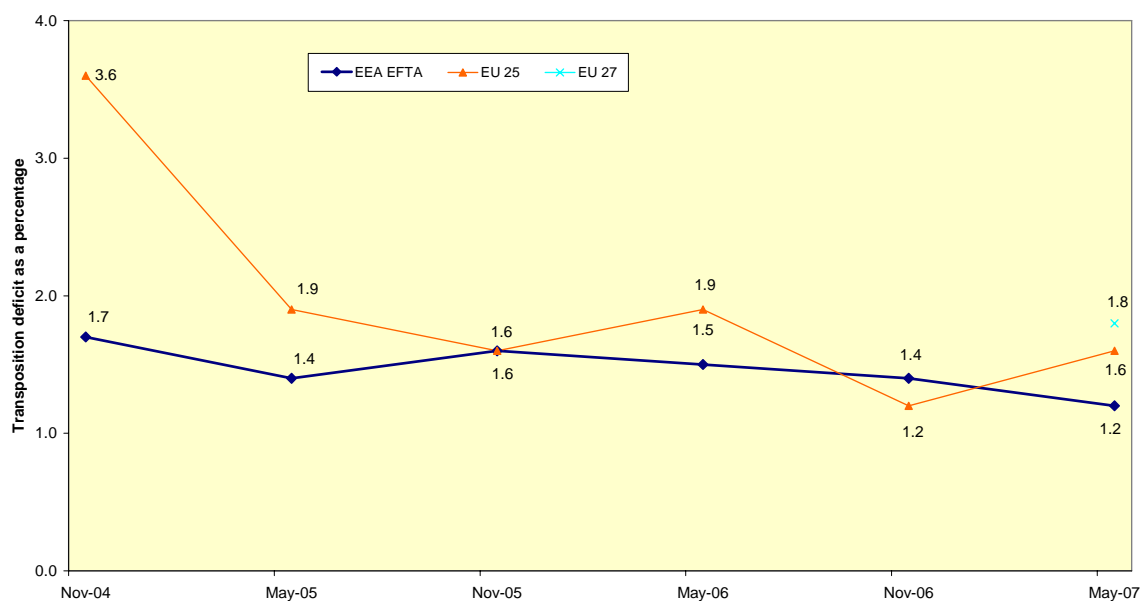
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<sup>4</sup> The corresponding figure for the EU is 1628 Internal Market directives. The difference is caused by the fact that some directives become applicable in the EU before they are incorporated into the EEA Agreement, and some directives are repealed in the EU before they are repealed in the EEA EFTA States.

## 2. TRANSPOSITION OF INTERNAL MARKET DIRECTIVES

The transposition deficit indicates how many directives, containing Internal Market rules and principles, the EU States and the EEA EFTA States have failed to notify as transposed on time.<sup>5</sup> While the ideal transposition target is a 0% deficit, the European Council has set an interim target of 1.5% as the maximum transposition deficit. This interim target is used as a benchmark by the Authority as well.

**Figure 1:**  
**The EEA EFTA States' average transposition deficit has decreased to 1.2%**



**Note:** Transposition deficit for the EEA EFTA States and the EU 25, for directives which should have been transposed on or before 30 April 2007, as per 10 May 2007.

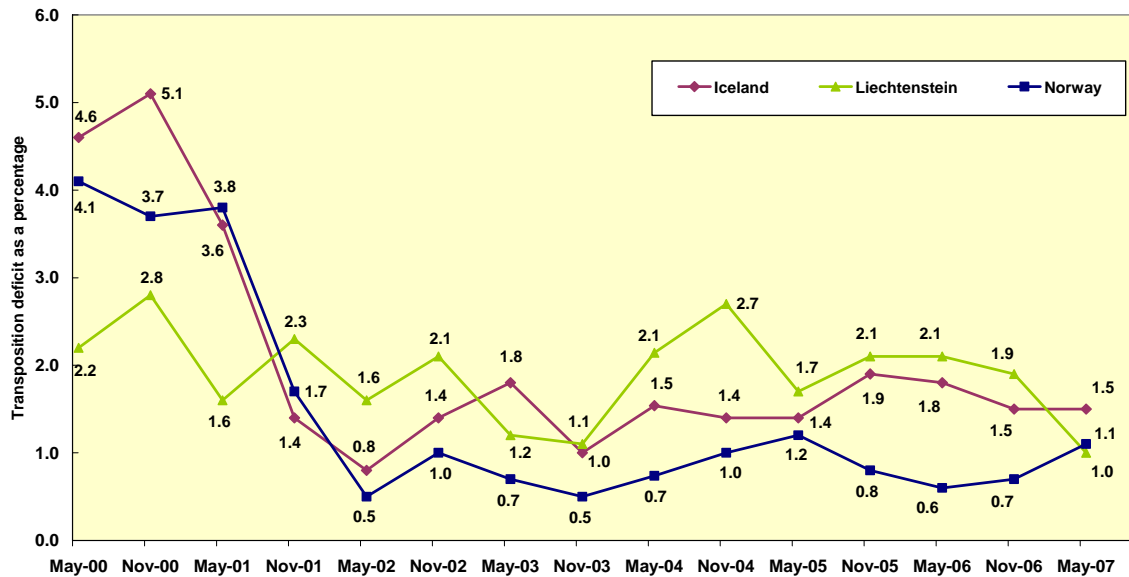
**Source for EU figures:** The European Commission's Internal Market Scoreboard N° 16 published in July 2007.

The average transposition deficit for the EEA EFTA States continued to decrease from 1.4% to 1.2% (**figure 1**). In absolute terms, the 1.2% deficit indicates that the EEA EFTA States are late with 60 notifications of national transposing measures, which is seven directives less than in February 2007 when the previous Scoreboard was published.

The EU average transposition deficit, at 1.6%, up from 1.2% in February 2007, is slightly above the 1.5% interim target.

<sup>5</sup> The EEA EFTA States' transposition deficit shows the proportion of Internal Market directives not notified to the EFTA Surveillance Authority as fully transposed.

**Figure 2:**  
All EEA EFTA States now complying with the interim target of 1.5%



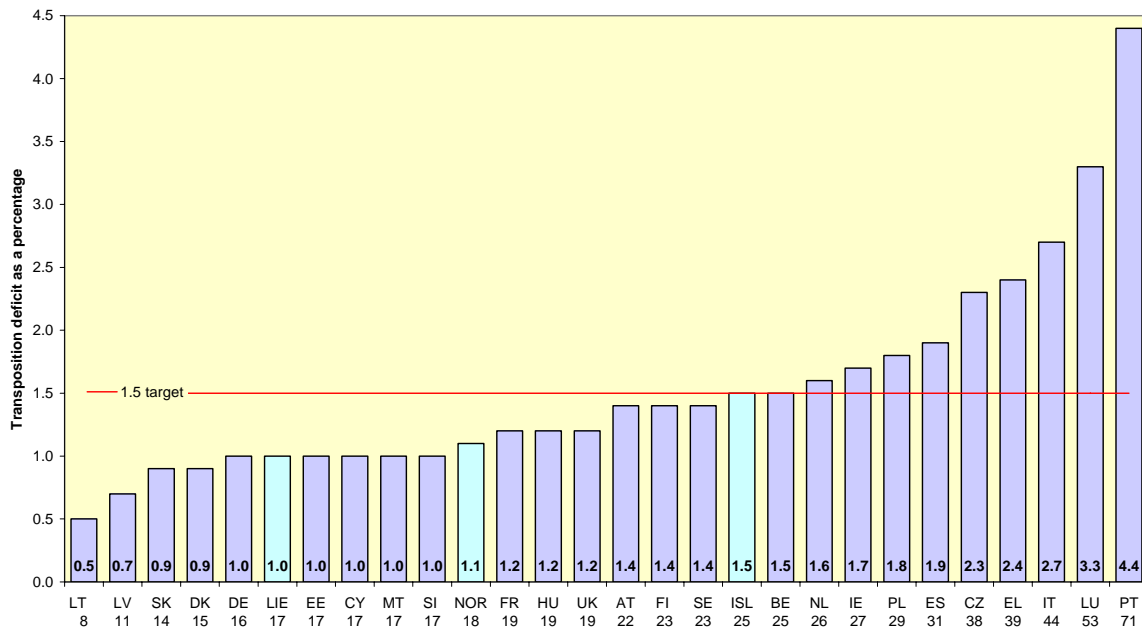
**Note:** Development of rates of failure to implement EEA Internal Market directives (transposition deficit) between May 2000 and May 2007.

Liechtenstein's transposition deficit decreased significantly from 1.9% at the time of the previous Scoreboard to 1.0% (**figure 2**).

In the same period, Iceland's transposition deficit remained unchanged corresponding to the interim target of 1.5%.

Norway's transposition deficit rose to 1.1% from 0.7%, due to six more overdue directives compared to the previous Scoreboard.

**Figure 3:**  
**Liechtenstein 6<sup>th</sup> , Norway 11<sup>th</sup> and Iceland 18<sup>th</sup> in the EEA**



**Note: EEA comparison of transposition deficits.**

**Source for EU figures: The European Commission’s Internal Market Scoreboard N° 16 published in July 2007.**

Among the 28 EEA States, Liechtenstein, having been able to reduce its transposition deficit significantly, ranks now in 6<sup>th</sup> place, together with Estonia, Cyprus, Malta and Slovenia, compared to 24<sup>th</sup> in the previous Scoreboard. Norway now ranks number eleven (down from number seven) (**figure 3**). Despite Iceland’s transposition deficit remaining the same as in the previous Scoreboard, the country has improved its position to place 18 (up from 21).

Lithuania and Latvia are top of the class with transposition deficits of 0.5% and 0.7% respectively, followed by Slovakia and Denmark who also have a transposition deficit below 1.0%.

### **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 directives 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 an unwillingness on the part of the State concerned to take the measures necessary to ensure the smooth functioning of the Internal Market.

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

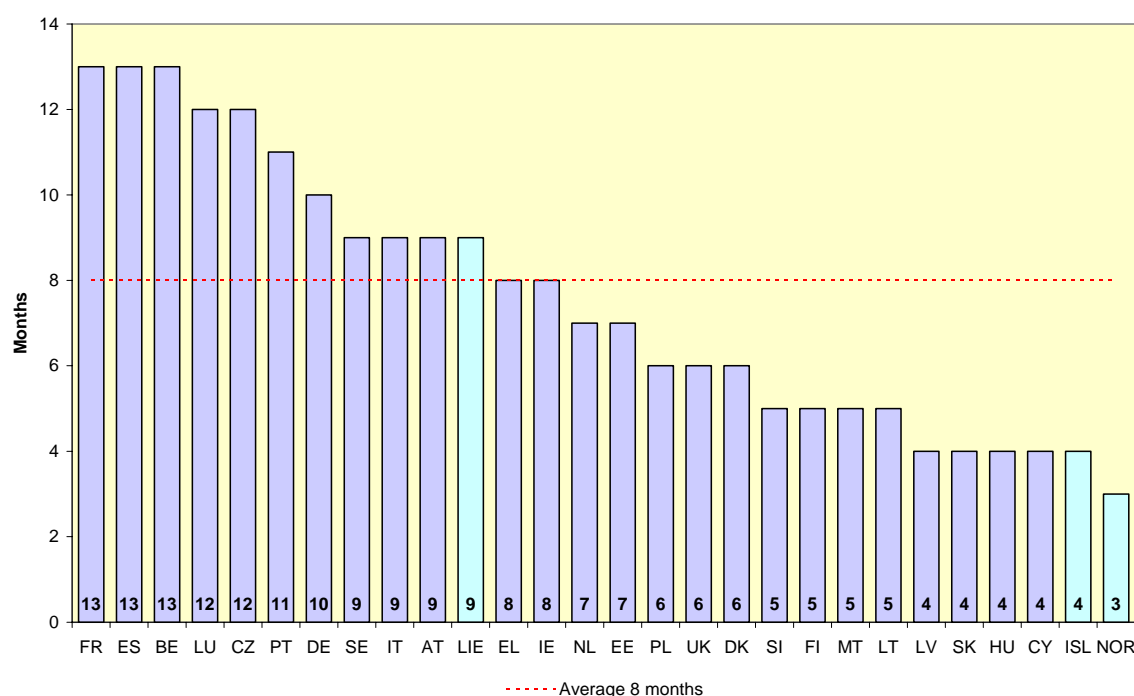
**Figure 4:**  
The EEA EFTA States’ average transposition delay has decreased

| Length of delay                                   | Number of directives delayed |       |             |       |             |       |
|---|------------------------------|-------|-------------|-------|-------------|-------|
|   | ISL                          |       | LIE         |       | NOR         |       |
|   | 04/07                        | 10/06 | 04/07       | 10/06 | 04/07       | 10/06 |
| Less than 6 months                                | 15                           | 8     | 9           | 9     | 12          | 6     |
| 6 to 12 months                                    | 2                            | 6     | 2           | 3     | 2           | 2     |
| 12 to 24 months                                   | 4                            | 2     | 4           | 10    | 1           | 1     |
| 24 to 36 months                                   | 0                            | 2     | 1           | 2     | 0           | 0     |
| <b>Average delay</b> (in months) by 30 April 2007 | <b>4.1</b>                   | 8.97  | <b>8.53</b> | 10.49 | <b>2.54</b> | 5.33  |

Note: Number of overdue Internal Market directives with a transposition deadline of 30 April 2007 for which no notification was received by 10 May 2007, broken down by the length of delay.

The average delay for the three EEA EFTA States reduced from eight to five months.

**Figure 5:**  
Average transposition delay at 8 months

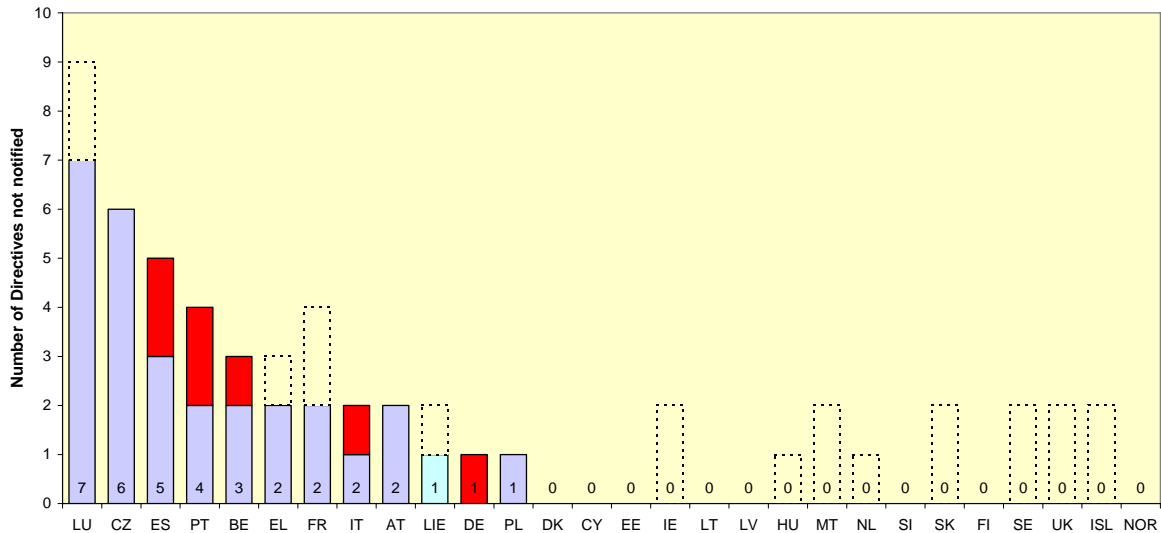


Note: EEA comparison of average transposition delay.

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 16 published in July 2007.

Of Norway’s non-transposed directives all but one have a delay of less than a year (**figure 4**). Likewise, both Iceland and Liechtenstein were late by less than a year with the majority of their directives.

**Figure 6:**  
**Liechtenstein has one directive overdue by more than two years**



dotted lines = decrease since December 2006 of directives overdue by two or more years  
 red = increase since December 2006 of directives overdue by two or more years

**Note:** Number of directives with a deadline for transposition into national law on or before 30 April 2005, which were not transposed by 10 May 2007.

**Source for EU figures:** The European Commission’s Internal Market Scoreboard N° 16 published in July 2007.

At the time of the previous Scoreboard Iceland and Liechtenstein had two directives each which had been outstanding for more than two years. Now only Liechtenstein has one such “zero tolerance” directive, namely the Directive relating to the assessment and management of environmental noise (**figure 6**).

**The transposition deficit figures do not indicate the quality of the national legislation**

It is important to bear in mind that the transposition deficit figures indicate the failure by the EEA EFTA States to notify the 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 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.

### 3. INFRINGEMENT PROCEEDINGS

If the 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 contacts 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 is not in full conformity with the requirements of the relevant directive or that the EFTA State otherwise does not comply with the EEA Internal Market rules and principles. When EEA legislation/rules 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 EU regulations in the EEA Agreement. For the EU Member States adopted regulations automatically become part of the internal national 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 infringement proceedings if an inquiry reveals that such incorporation has not taken place on time. Cases concerning regulations, due to their particular EEA-specific nature, are counted within

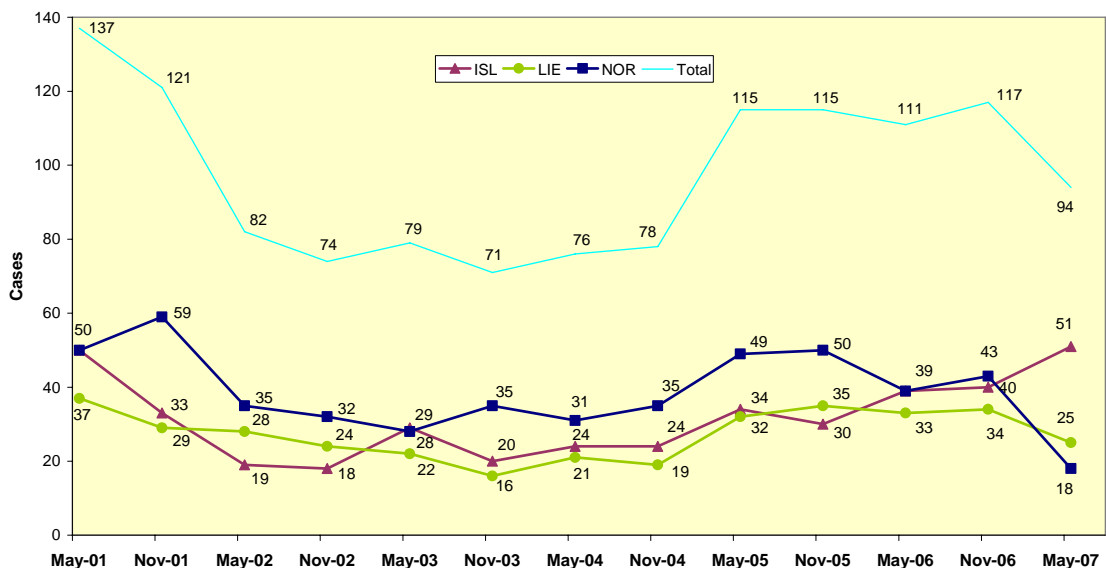
the second category of cases.

Figure 7 shows all open infringement cases. Figure 8 shows infringement cases due to non-transposition, whereas figures 9 to 12 focus on the second category, i.e. infringements due to non-conformity or incorrect application.

### 3.1. All infringement cases

On 30 April 2007, 94 infringement cases were being pursued by the Authority (**figure 7**) which was 23 cases less than at the time of the previous Scoreboard. The decrease comprises 17 cases concerning non-transposition of directives and six cases concerning non-conformity or incorrect application of Internal Market rules and principles.

**Figure 7:**  
Less 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 30 April 2007.

### 3.2. Infringement cases due to non-transposition

**Figure 8:**

**Far less pending infringement cases against the EEA EFTA States due to non-transposition**

|                         | ISL       |       | LIE                  |       | NOR      |       | EEA EFTA  |       |
|-------------------------|-----------|-------|----------------------|-------|----------|-------|-----------|-------|
|                         | 04/07     | 10/06 | 04/07                | 10/06 | 04/07    | 10/06 | 04/07     | 10/06 |
| Letter of formal notice | <b>8</b>  | 11    | <b>5</b>             | 8     | <b>3</b> | 8     | <b>16</b> | 27    |
| Reasoned opinion        | <b>3</b>  | 8     | <b>6</b>             | 11    | <b>2</b> | 0     | <b>11</b> | 19    |
| Referral to EFTA Court  | <b>1</b>  | 0     | <b>6<sup>6</sup></b> | 5     | <b>0</b> | 0     | <b>7</b>  | 5     |
| <b>Total</b>            | <b>12</b> | 19    | <b>17</b>            | 24    | <b>5</b> | 8     | <b>34</b> | 51    |

**Note: Pending EEA EFTA States infringement cases due to non-transposition, according to stage of infringement proceedings, on 30 April 2007.**

The amount of infringement cases for non-transposition of directives pursued against the EEA EFTA States decreased by 33% in the last six months (**figure 8**).

Between 1 November 2006 and 30 April 2007, four cases prompted action before the EFTA Court. Two cases were lodged against Liechtenstein and one case against Iceland and Norway respectively. Two of the cases concerned non-transposition of directives, one concerning non-notification by Iceland of the directive on emission of pollutants from machinery engines and the other non-notification by Liechtenstein of the directive relating to the assessment and management of environmental noise.

### 3.3. Infringement cases due to non-conformity or incorrect application

**Figure 9:**

**Fewer pending infringement cases against the EEA EFTA States due to non-conformity or incorrect application**

|                         | ISL       |       | LIE      |       | NOR       |       | EEA EFTA  |       |
|-------------------------|-----------|-------|----------|-------|-----------|-------|-----------|-------|
|                         | 04/07     | 10/06 | 04/07    | 10/06 | 04/07     | 10/06 | 04/07     | 10/06 |
| Letter of formal notice | <b>36</b> | 18    | <b>5</b> | 4     | <b>7</b>  | 23    | <b>48</b> | 45    |
| Reasoned opinion        | <b>3</b>  | 3     | <b>2</b> | 6     | <b>4</b>  | 6     | <b>9</b>  | 15    |
| Referral to EFTA Court  | <b>0</b>  | 0     | <b>1</b> | 0     | <b>2</b>  | 6     | <b>3</b>  | 6     |
| <b>Total</b>            | <b>39</b> | 21    | <b>8</b> | 10    | <b>13</b> | 35    | <b>60</b> | 66    |

**Note: Pending infringement cases due to non-conformity or incorrect application, according to stage of infringement proceedings, on 30 April 2007.**

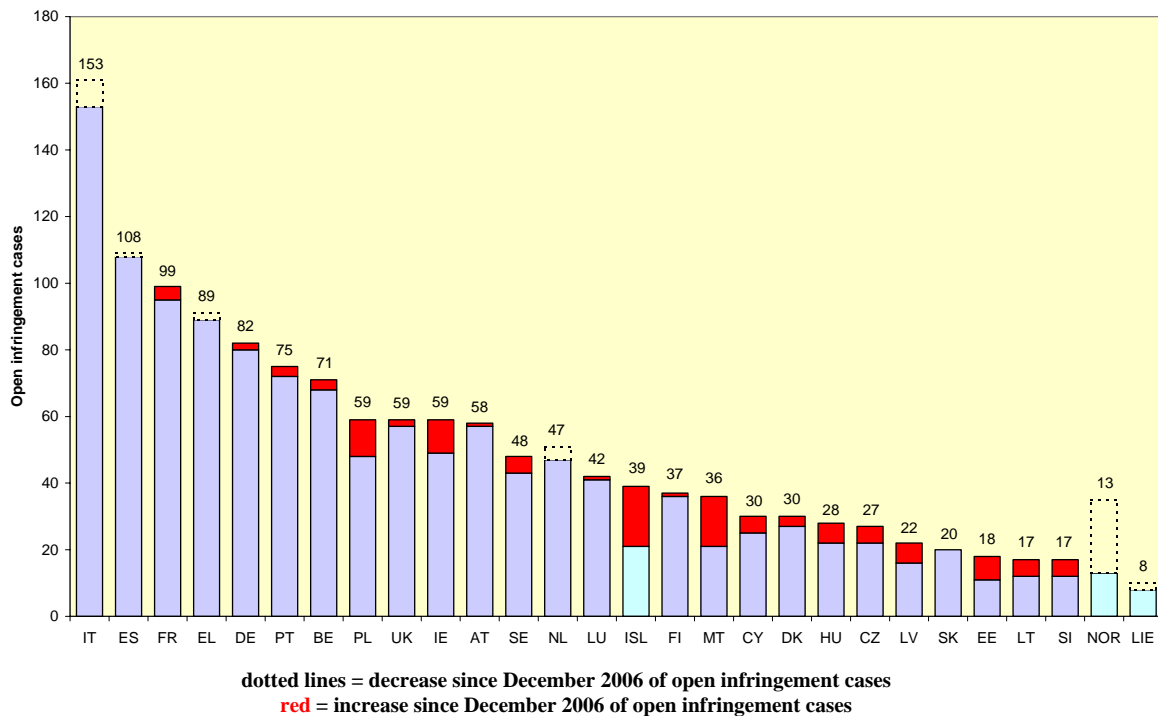
The overall number of infringement cases due to non-conformity or incorrect application has remained more or less at the same level as at the time of the previous Scoreboard. However, the number of cases against Iceland has almost doubled and, at the same time,

<sup>6</sup> This number includes the five infringement cases concerning the implementation by Liechtenstein of the Electronic Communication Regulatory Package which were ruled upon jointly by the EFTA Court on 29 June 2006, Joined cases E-5/6/7/8/9/05, but have not been closed by the Authority yet, as well as one other infringement case referred to EFTA Court in December 2006 concerning the implementation of the directive relating to the assessment and management of environmental noise.

the number of cases against Norway has more than halved (**figure 9**). The main reason for the increase of infringement cases against Iceland falling within this category is the late incorporation of regulations into the Icelandic legal order caused mainly by delays in translation and publication.

Out of the four applications lodged before the EFTA Court between 1 November 2006 and 30 April 2007 two concerned non-conformity or incorrect application of EEA rules. Both cases had been initiated on the basis of complaints, one concerning discriminatory Norwegian legislation regarding pension rights and the other the Liechtenstein helplessness allowance (Hilflosenentschädigung).

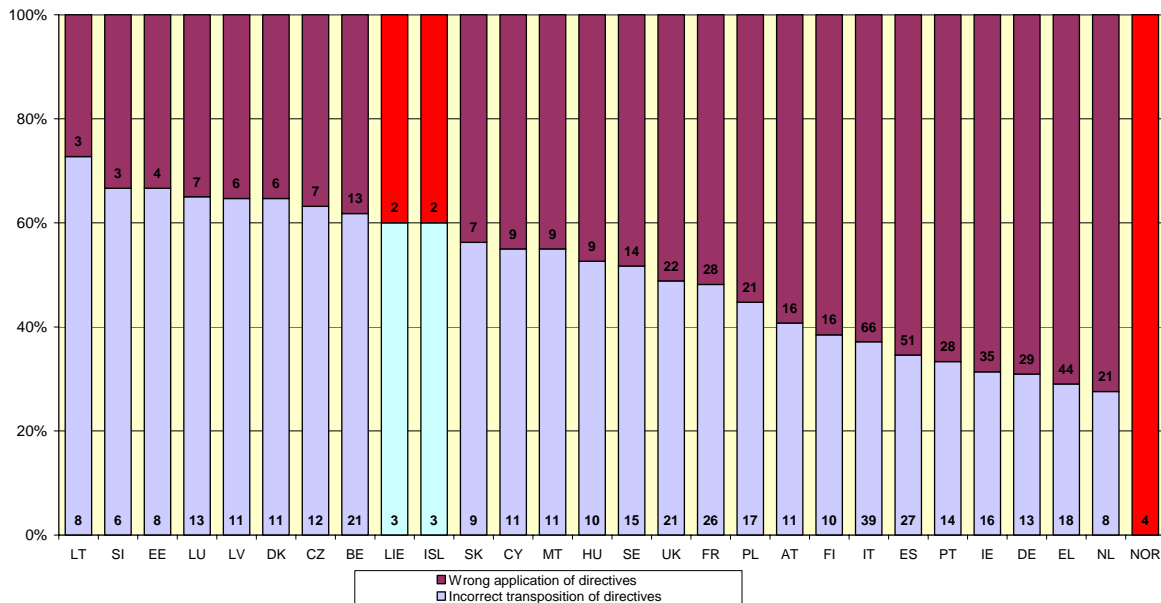
**Figure 10:**  
The number of EEA EFTA States infringement cases remains low



**Note:** Pending infringement cases due to non-conformity or incorrect application on 30 April 2007.  
**Source for EU figures:** The European Commission’s Internal Market Scoreboard N° 16 published in July 2007.

In comparison to the EU 25, the number of infringement proceedings against the EEA EFTA States remains low (**figure 10**). With eight cases, Liechtenstein has the lowest number of infringement proceedings in this category out of the 28 EEA States, followed by Norway with 13 cases.

**Figure 11:**  
**Breakdown of infringement cases concerning directives per EEA State**

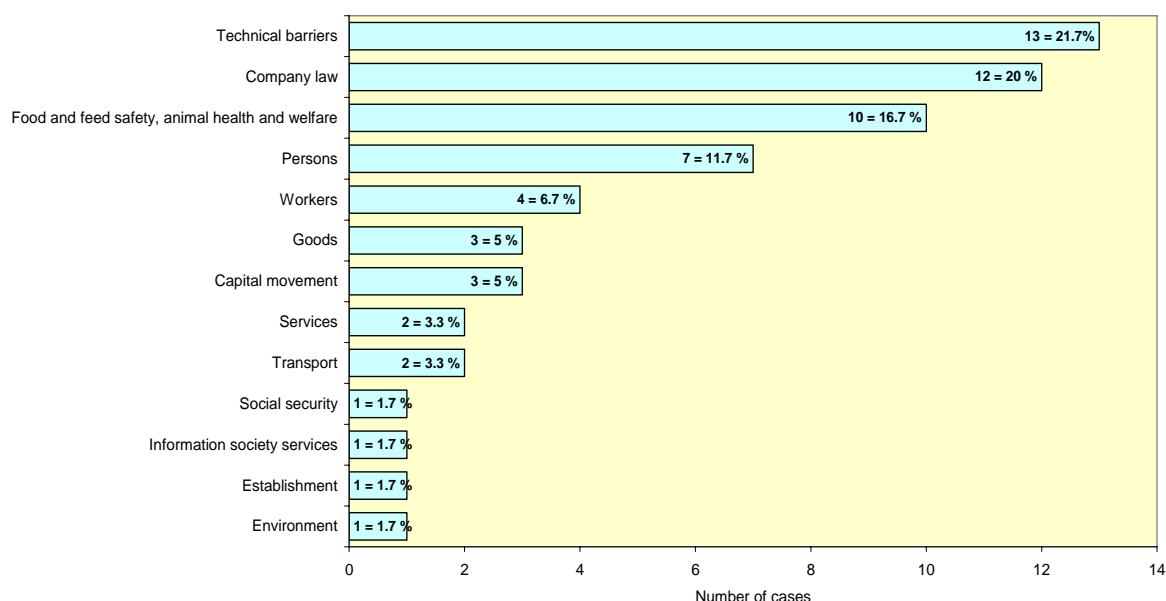


**Note: Breakdown of infringement cases concerning directives.**

**Source for EU figures: The European Commission’s Internal Market Scoreboard N° 16 published in July 2007.**

Besides correctly transposing directives, EEA States must ensure that the rules contained in the directives are correctly applied. Figure 11 illustrates, for each EEA State, the number and proportion of infringement proceedings related to the incorrect transposition of directives (blue) while figures in red refer to situations where the correctly transposed directives have been wrongly applied. All infringement cases relating to directives against Norway concern the wrong application of directives. With regard to Iceland and Liechtenstein, the majority of infringement cases concern the incorrect transposition of directives.

**Figure 12:**  
**Breakdown of infringement cases per sector**



**Note: Infringement cases per sector.**

A breakdown of infringement proceedings according to sectors indicates that the biggest number of cases (21.7%) relates to technical barriers to trade (**figure 12**). Company law has a 20% share of the cases. The third largest sector is food and feed safety, animal health and welfare with 16.7%. Together these three sectors account for more than half of all the infringement cases brought against the EEA EFTA States.

### 3.4. Infringement cases initiated through complaints to the Authority

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 because of the failure by an EEA EFTA State to apply the EEA Agreement correctly. Compared to six months ago, the number of pending infringement proceedings initiated as a result of a complaint went down from 29 to 8. This is mainly due to the high number of the complaint cases resolved and closed by the Authority.

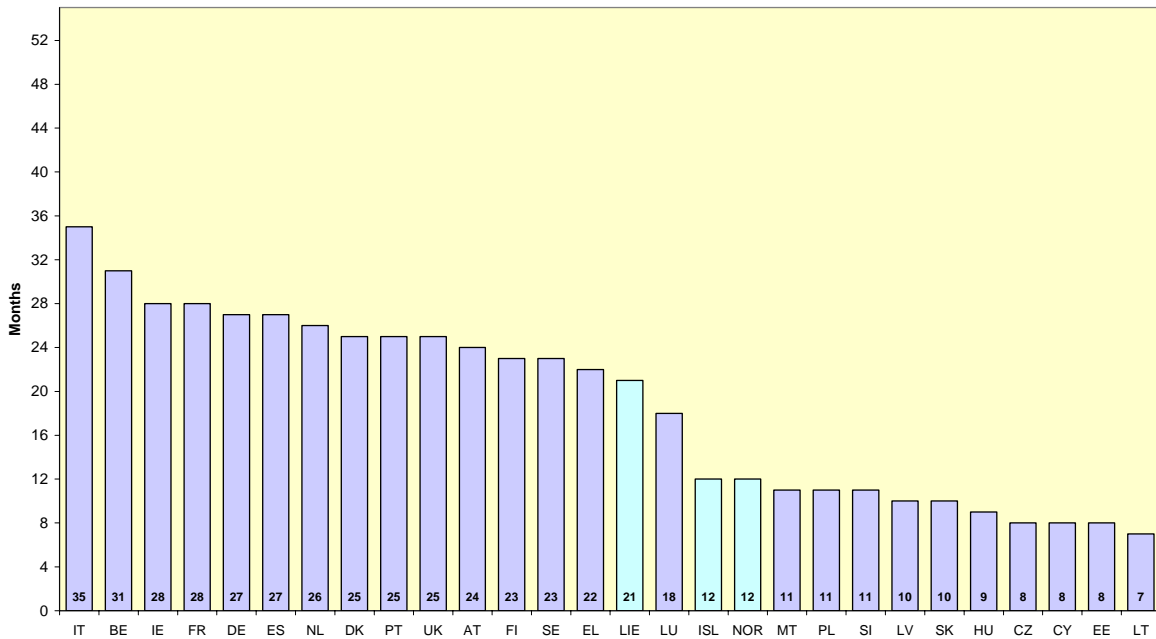
The eight infringement proceedings initiated as a result of a complaint represent 8.5% of the total 94 pending infringement proceedings. Five of these (62.5%) infringement proceedings relate to Norway, two to Liechtenstein and one to Iceland.

### 3.5. How fast are infringement cases solved?

Quick and out-of-court resolution of infringement proceedings is important for the good functioning of the Internal Market.

With an average of 12 months, Iceland and Norway lie well below the EEA average of 19 months (**figure 13**). For Liechtenstein the average time taken to solve infringement cases increased from 12 months to 21 months since the previous Scoreboard.

**Figure 13:**  
**Infringement resolution speed per EEA State**



**Note: Infringement cases closed or brought before the ECJ/EFTA Court between 30 April 2005 and 30 April 2007: 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.**  
**Source for EU figures: The European Commission's Internal Market Scoreboard N° 16 published in July 2007.**

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



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