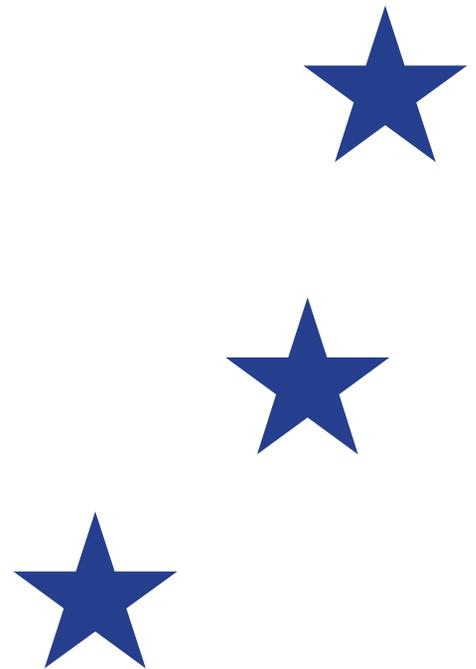




INTERNAL MARKET SCOREBOARD



No. 32

EEA EFTA STATES

of the EUROPEAN ECONOMIC AREA

July 2013

EFTA SURVEILLANCE
AUTHORITY

INTERNAL MARKET SCOREBOARD

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of the
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EFTA SURVEILLANCE AUTHORITY

MAIN FINDINGS –

**32nd INTERNAL MARKET SCOREBOARD of the
EEA EFTA STATES**

- **The average transposition deficit of the EEA EFTA States increased to 1.2%. Both Liechtenstein and Norway were below the deficit target of 1%. Iceland remained above.**
- **The EU Member States' average transposition deficit remained at 0.6%.**
- **Norway's deficit increased from 0.7% to 0.9%. However, the transposition delay in Norway decreased by 1.6 months, from 7.5 to 5.9 months.**
- **The transposition deficit for Liechtenstein decreased from 0.4% to 0.3%. However, Liechtenstein increased its transposition delay by 5.8 months, from 7.6 to 13.4 months.**
- **Iceland's deficit increased by 0.5%, from 1.8% to a disappointing 2.3%. Iceland managed to reduce its transposition delay by 1.2 months, from 13 to 11.8 months.**
- **Iceland had two directives overdue by more than two years. Liechtenstein had one and Norway none.**
- **The *total* number of infringement cases pursued by the Authority decreased by 17 cases (from 198 to 181) since the previous Scoreboard.**
- **The overall number of infringement cases due to *incorrect transposition or incorrect application* of Internal Market rules increased to 61, which is 7 cases more than in the previous Scoreboard.**
- **The number of infringement cases concerning the *late transposition of directives* by the EEA EFTA States decreased from 49 to 38 since the previous Scoreboard.**
- **Iceland's number of overdue *regulations* decreased, from the time of the previous Scoreboard, from 40 to 35. For Norway, the number increased by 19 regulations, to a total of 30.**
- **45% of the pending infringement cases concerned *late transposition of regulations*, 63 cases against Iceland and 19 against Norway.**

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 themselves wherever they want within the Union. The purpose of the EEA Agreement¹ is to extend the Internal Market to the three EEA EFTA States, namely Iceland, Liechtenstein and Norway.² This is to ensure, by and large, that the businesses and individuals in the EEA EFTA States have the same rights as those in the EU Member States.

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 the three EEA EFTA States;
- competition, e.g. between service providers, which leads to more innovation, better services and lower prices for consumers; 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 EEA States that are parties to the EEA Agreement. These rules have to be adopted, transposed into national law and properly enforced.

The legal instruments regulating 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. Each directive provides a time limit by which transposition has to take place. EU directives are incorporated into the EEA Agreement through decisions taken by the EEA Joint Committee. The obligation to transpose a directive into the national law of the EEA EFTA States is triggered by the EEA Joint Committee decisions, but it is left to each State to choose the form and the method of implementation.

The EFTA Surveillance Authority is required to ensure the fulfilment by the EEA EFTA States of their obligations under the EEA Agreement, including the transposition of the directives in a timely and correct manner. The European Commission is entrusted with the parallel task in relation to 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.

Regulations shall, according to the EEA Agreement, “as such” be made part of the internal legal orders of the EEA EFTA States. According to the legal order of

¹ Agreement on the European Economic Area.

² Switzerland is also a member of EFTA, but not a party to the EEA Agreement. Hence, in this Scoreboard, the term “EEA EFTA States” refers to Iceland, Liechtenstein and Norway.

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, the Icelandic and Norwegian constitutions require that regulations be made part of their 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 published 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 purpose of the EEA EFTA Internal Market Scoreboard is to monitor:

- to what extent the EEA EFTA States notify the transposition of new EEA directives on time;
- the number of directives still to be transposed; and
- the average time it takes for the EEA EFTA States to transpose directives.

This Scoreboard records the transposition status for these directives on *10 May 2013*. In addition to the information concerning the transposition of Internal Market directives into national law (chapter 2), the Scoreboard provides information on the number of infringement proceedings initiated against the EEA EFTA States for lack of conformity with or failure to apply EEA legislation correctly (chapter 3).

Finally, chapter 5 of the Scoreboard provides information on the number of infringement proceedings concerning failure to transpose Internal Market directives and regulations on time.

2. TRANSPOSITION OF INTERNAL MARKET DIRECTIVES INTO NATIONAL LAW

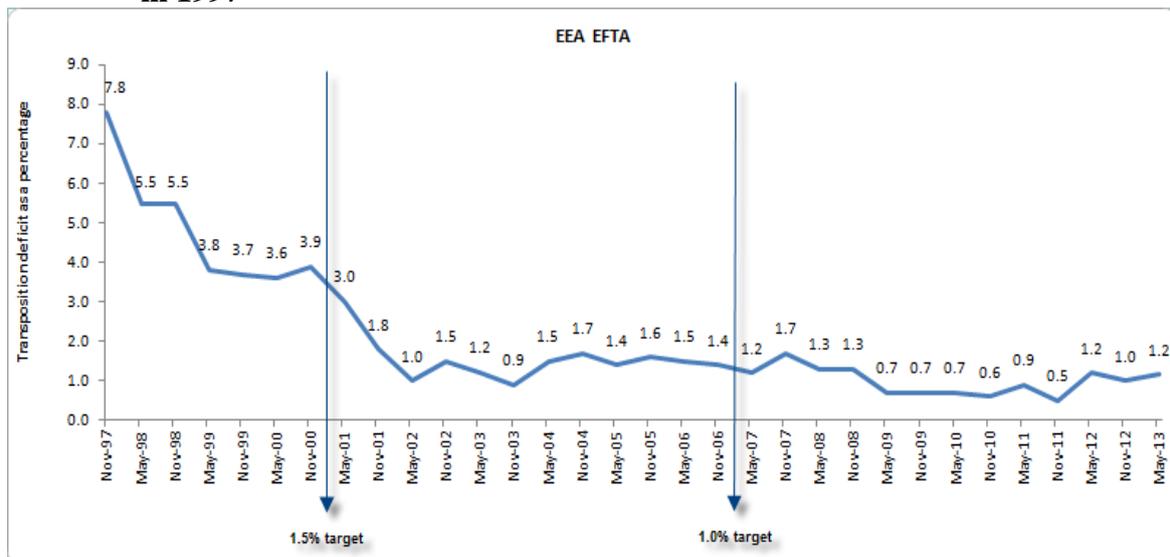
The Internal Market is a key driver of growth and jobs and one of the main engines for economic recovery. In these challenging times, a well-functioning Internal Market is more important than ever as it provides opportunities for businesses and citizens. Yet the Internal Market does not deliver benefits automatically. The EEA States need to transpose Internal Market legislation into their national law within the agreed deadlines. Timely transposition is a necessary condition for achieving the policy objectives set out in the relevant legislation. Moreover, it is important for the credibility of the Internal Market in the eyes of the public. This is why the EEA States are repeatedly called upon to improve their transposition records.

The transposition deficit indicates how many directives containing Internal Market rules and principles the EEA States have failed to communicate as having been transposed on time.³ As from January 2009, the relevant deficit target to measure transposition performance has been 1%, according to the European Council conclusions of March 2007.⁴ This interim target, set by the European Council, is used also as a benchmark by the Authority.

2.1 Average transposition deficit in May 2013

In May 2013, the average transposition deficit for the EEA EFTA States was at 1.2%, thus above the 1% transposition deficit target (**Figure 1**). In absolute terms, the 1.2% deficit indicates that the EEA EFTA States were late with notifications of national transposing measures of 44 directives, which is an increase of 3 since the last Scoreboard.

Figure 1: Overview of transposition deficits since the first edition of the Scoreboard in 1997



Transposition deficit on 10 May 2013 for the EEA EFTA States for directives which should have been transposed on or before 30 April 2013.

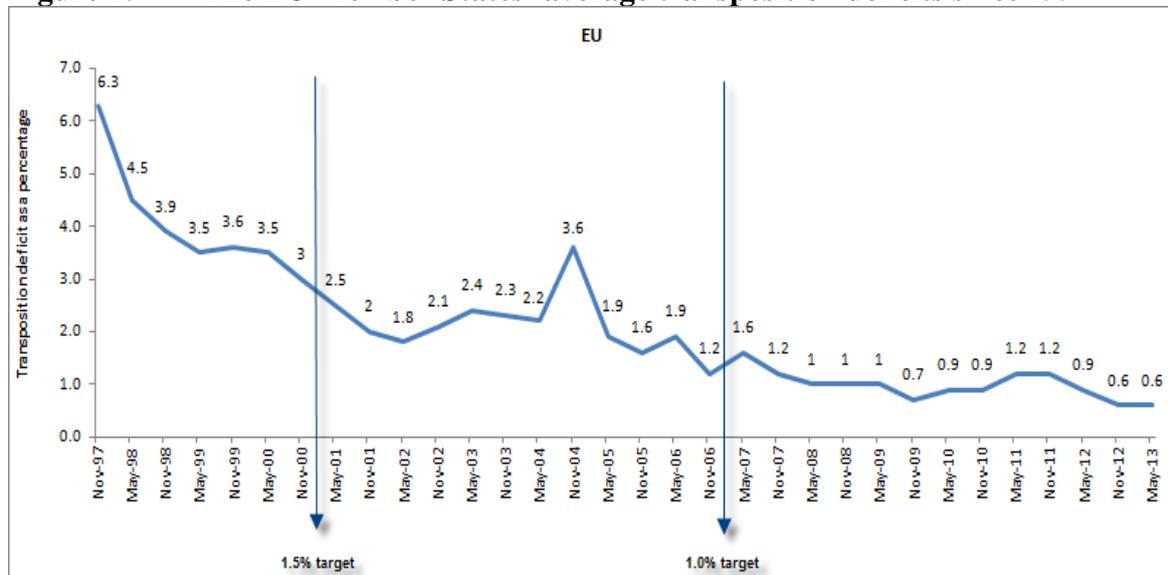
³ The EEA EFTA States' transposition deficit shows the proportion of Internal Market directives not notified to the EFTA Surveillance Authority as fully transposed by the deadline, in relation to the total number of Internal Market directives.

⁴ Conclusion of the European Council summit in Brussels (8-9 March 2007).

The above findings take into account the 1247 directives that were incorporated into the EEA Agreement by 30 April 2013. The corresponding figure for the EU is 1367 Internal Market directives. The difference is caused by the fact that directives mostly enter into force in the EU before they are incorporated into the EEA Agreement, and consequently they are also repealed in the EU before they are repealed under the EEA Agreement.

At the cut off date, the common *acquis* between EU and EEA EFTA States was 1096 directives, which corresponds to 80% of the EU *acquis*. This difference arose from two factors. On the one hand, 151 directives were still in force in the EEA, but had already been repealed in the EU. On the other hand, 271 directives have entered already into force in the EU, but have not yet been incorporated into the EEA Agreement. A difference in the *acquis* is an inherent consequence of the decision-making process to incorporate new legislation into the EEA Agreement. Any comparison between the EEA EFTA States and the EU Member States in this document has therefore to be made with this reservation.

Figure 2: The EU Member States’ average transposition deficits since 1997



Transposition deficit on 10 May 2013 for the EU 27 for directives which should have been transposed on or before 30 April 2013. Source for EU figures: The European Commission’s Internal Market Scoreboard N° 27.

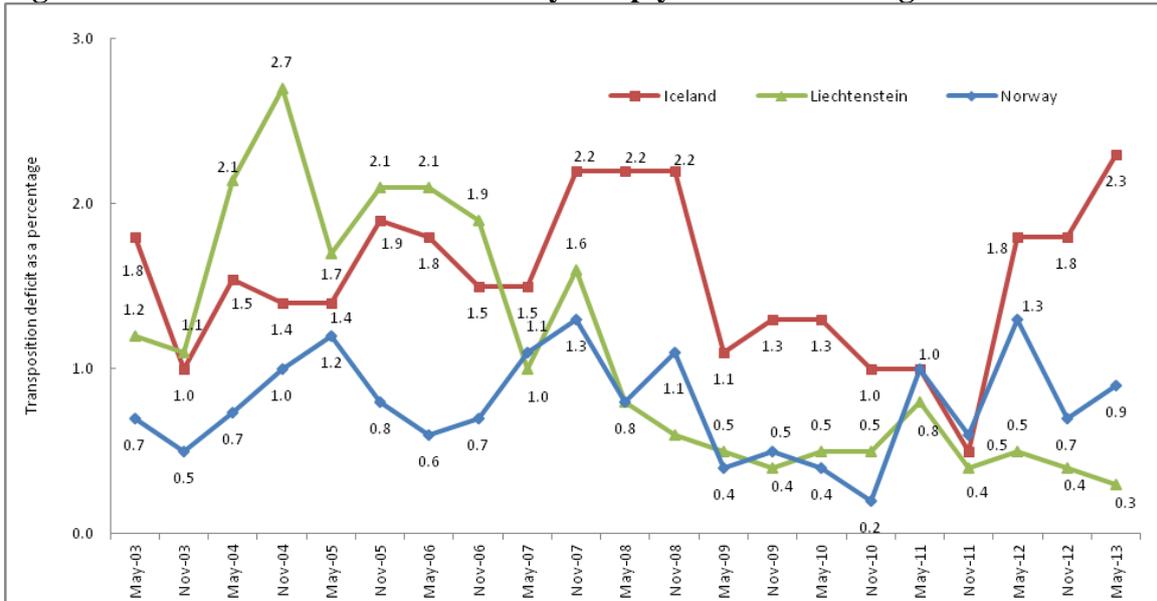
The EU average transposition deficit is well below the interim target of 1% at 0.6%, which represents again its best result since the introduction of the Scoreboard in 1997.

2.2 Performance measured against the 1% interim target

Iceland’s transposition deficit increased to a disappointing 2.3%. The deficit corresponds to 29 directives not fully transposed on time, which is four more directives than at the time of the last Scoreboard. It is essential that Iceland substantially improves its performance before the next Scoreboard.

Norway’s transposition deficit increased by 0.2% from 0.7% to 0.9%. This deficit corresponds to 11 directives not having been fully transposed, which is one more than at the time of the last Scoreboard.

Figure 3: Liechtenstein and Norway comply with the 1% target

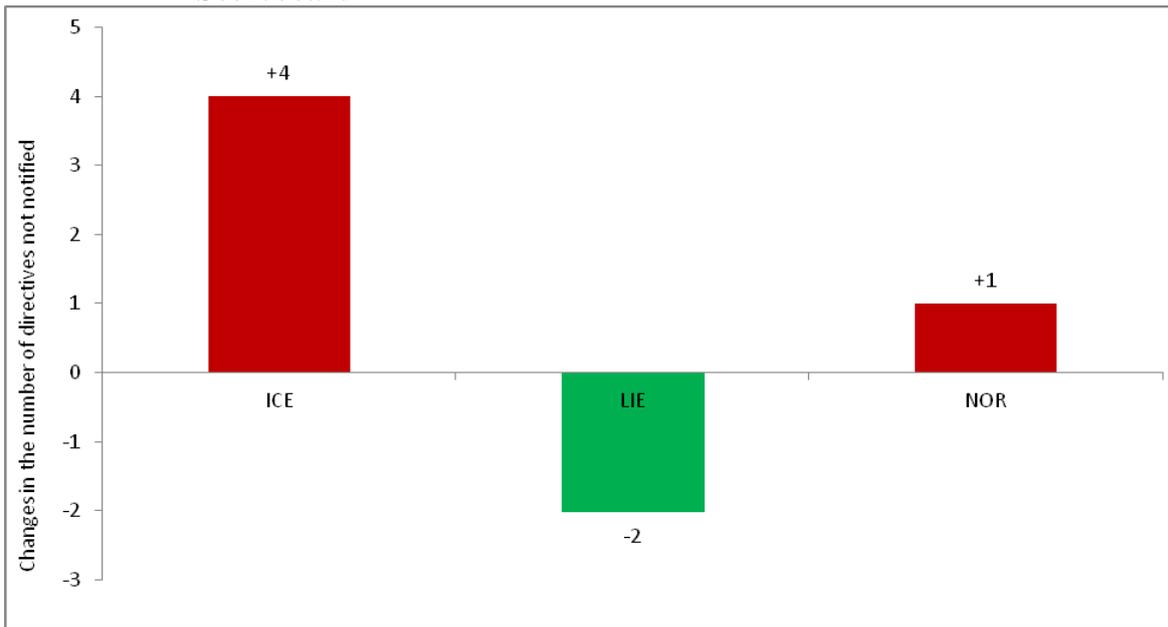


Transposition deficit on 10 May 2013 for directives which should have been transposed on or before 30 April 2013.

Liechtenstein remained well below the interim target of 1% and decreased its deficit again by 0.1%, from 0.4% to 0.3%. This corresponds to only four directives not having been fully transposed, which is two less than at the time of the last Scoreboard.

Figure 3 illustrates the trend of the past 10 years. It shows that Norway mostly met the set targets with only few exceptions. Liechtenstein had problems in the first half of the 10-year period, but has managed to reduce the deficit and consistently meet the 1% target since 2008. Iceland has traditionally had problems in meeting the target, and after having done rather well between 2009 and 2011, it is now once again well above the 1% deficit.

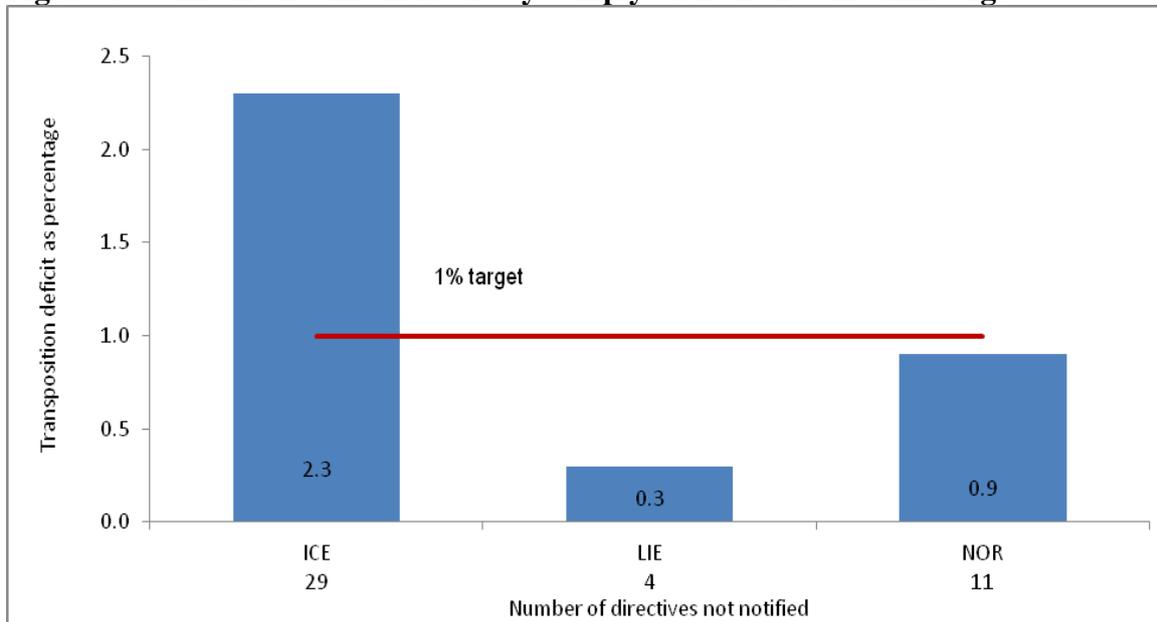
Figure 4: Change in the number of outstanding directives since the previous Scoreboard



The change in the number of outstanding directives by each EEA EFTA State since the previous Scoreboard.

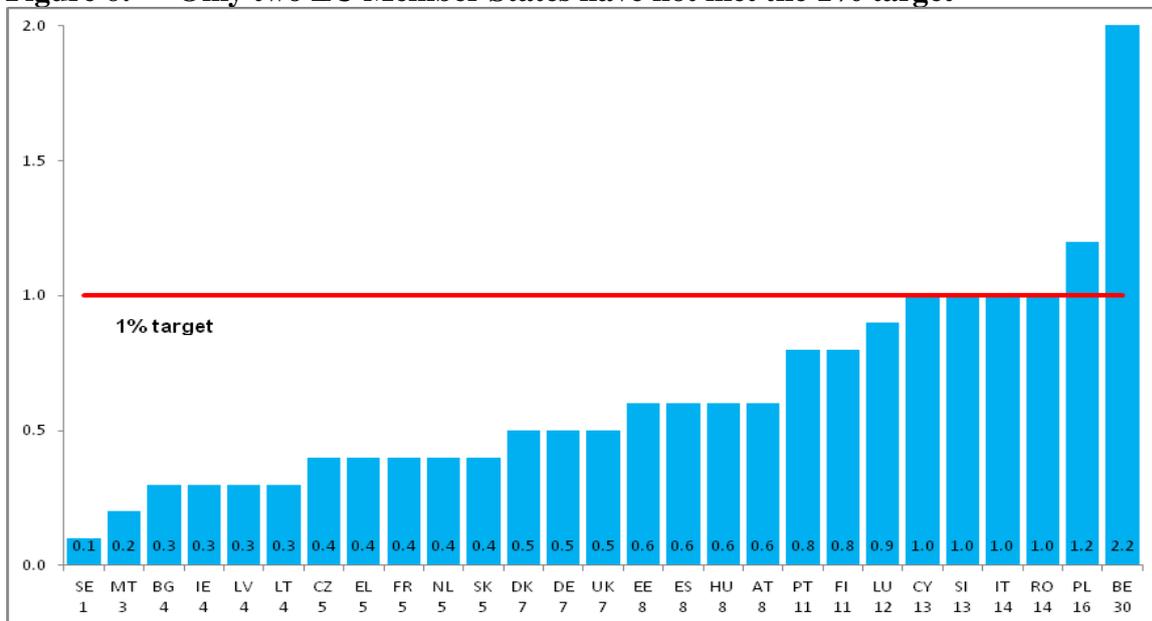
Out of the 30 EEA States, 27 succeeded in bringing their transposition deficits into line with the 1% interim target, whereas only 3 EEA States were above the target (**Figures 5 and 6**). This means that within the past 6 months, the number of EU Member States in line with the 1% transposition deficit target increased, from 23 to 25.

Figure 5: Liechtenstein and Norway comply with the 1% interim target



Comparison of transposition deficits of the EEA EFTA States.

Figure 6: Only two EU Member States have not met the 1% target



Comparison of transposition deficits within the EU Member States.

Source for EU figures: The European Commission's Internal Market Scoreboard N° 27.

2.3 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.

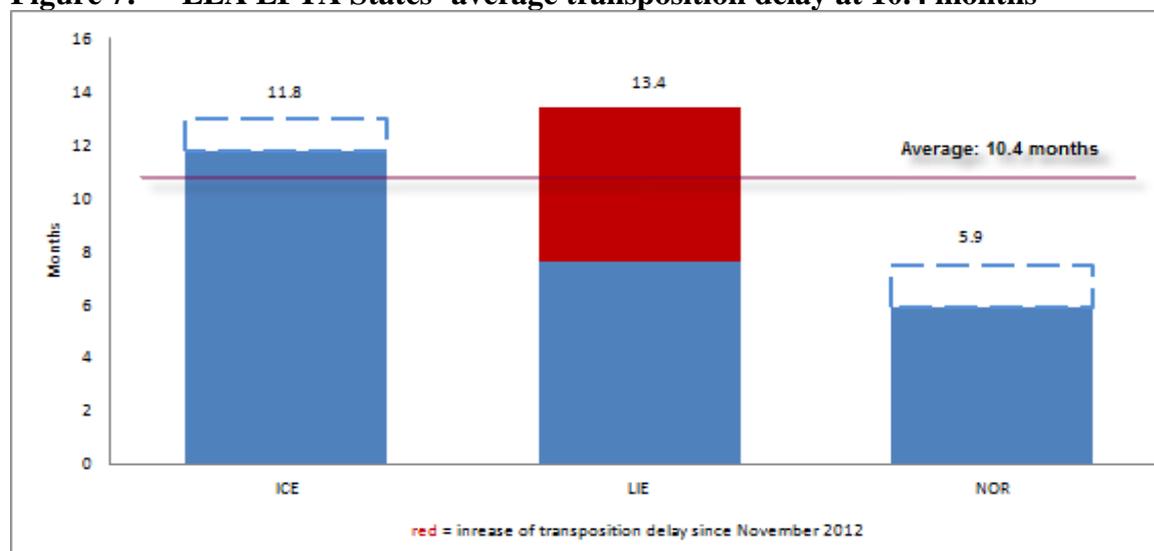
Delays in transposition may occur due to time-consuming legislative processes in the EEA EFTA States. However, directives are usually transposed relatively soon after the expiry of the time limits.

In March 2002, the European Council announced a “zero tolerance” for directives for which transposition is overdue by two years or more.⁵ Similarly, such delays in the transposition of directives are of particular concern to the Authority.

2.3.1 Length of transposition delays

It is important that the EEA States ensure that implementation takes place in a timely manner. The EEA EFTA States did not manage to reduce their average time taken to transpose directives: it increased by 1 month since the previous Scoreboard, from 9.4 to 10.4 months (Figure 7). This increase is particularly disappointing, as the last Scoreboard demonstrated the need for further improvement in this respect.

Figure 7: EEA EFTA States' average transposition delay at 10.4 months



Average transposition delay of overdue Internal Market directives with a transposition deadline of 30 April 2013 for which no notification was received by 10 May 2013, broken down by the length of delay.

Liechtenstein's transposition delay increased by 5.8 months, bringing the delay to 13.4 months. In the case of Iceland, whose transposition deficit increased considerably, the transposition delay decreased by 1.2 months – falling to 11.8 months. This means that, on average, Liechtenstein and Iceland take an extra year to transpose directives after the transposition deadlines have expired. Norway's transposition delay decreased from 7.5 to 5.9 months (Figure 8).

⁵ Conclusion of the European Council summit in Barcelona (15-16 March 2002).

In the light of the above, substantive improvement in the reduction of transposition delay is required by all three EEA EFTA States.

Figure 8: Liechtenstein has the highest transposition delay among the three EEA EFTA States

Length of delay	Number of directives delayed					
	ICE		LIE		NOR	
	May 13	Nov 12	May 13	Nov 12	May 13	Nov 12
Less than 6 months	16	4	1	3	6	3
6 to 12 months	2	16	1	1	2	6
12 to 24 months	5	0	0	1	1	0
Over 24 months	2	3	1	0	0	0
Average delay (in months) by 30 April 2013	11.8	13.0	13.4	7.6	5.9	7.5

Number of overdue Internal Market directives with a transposition deadline of 30 April 2013 for which no notification was received by 10 May 2013, broken down by the length of delay.

The EU States’ average transposition delay, at 8 months, is now less than the average delay of the EEA EFTA States.

2.3.2 “Zero tolerance” for delays in the transposition of directives of more than two years

If EEA States do not transpose Internal Market directives on time, they deprive citizens and businesses of their rights and of the full benefits of a properly functioning Internal Market. The longer the delay, the more serious the consequences. Therefore, a “zero tolerance” target has been set for directives whose transposition is two years or more overdue.⁶

23 of the directives which have not yet been transposed by the EEA EFTA States are overdue by less than 6 months, and five directives are overdue by 6 to 12 months. Six directives are overdue between 12 and 24 months. Iceland has reduced the number of overdue directives by more than 2 years by one, from three to two. Liechtenstein has one overdue directive (**Figure 9**).

Figure 9: Iceland has two directives overdue by more than two years, Liechtenstein has one

Number	Title	Not transposed by	Transposition deadline
2003/55/EC	Common rules for the internal market in natural gas (Second Directive)	ICE	01/06/2007
2007/16/EC	Undertakings for collective investment in transferable securities (UCITS)	ICE	01/08/2009
2006/126/EC	3rd Driving Licence Directive	LIE	19/01/2011

Number of directives with a deadline for transposition into national law on or before 30 April 2011, which were not transposed by one Member State – Situation as at 10 May 2013.

⁶ Conclusions of the European Council summit in Barcelona (15-16 March 2002).

2.4 Conformity of legislation: Directives not correctly transposed

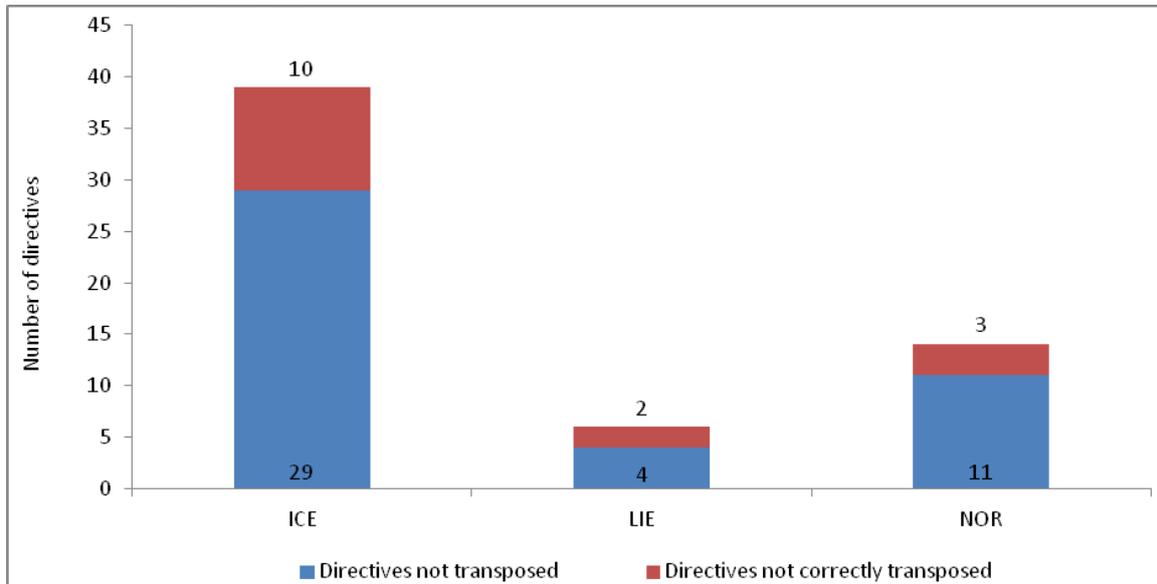
For the well functioning of the Internal Market, timely transposition of EEA legislation represents only a first step. It is also important that the legislation is transposed correctly.

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 presented above only 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 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 Authority.

The overall number of directives that were *not communicated* to the Authority as having been fully transposed by 10 May 2013 was 44. This number had increased by 3 since the time of the previous Scoreboard. The number of infringement proceedings against the EEA EFTA States concerning *incorrect transposition* of directives, at 15, was significantly lower than the number of outstanding directives.⁷ The majority of such conformity assessments are, however, concluded without the need to resort to formal infringement proceedings.

Figure 10: Number of infringement cases concerning incorrectly transposed directives



The number of Internal Market directives not yet communicated as having been fully transposed (transposition deficit) added by the number of directives transposed but for which an infringement proceeding for non-conformity has been initiated by the Authority (May 2013).

⁷ This figure only includes problems with the correct transposition of directives as established on the basis of systematic *conformity assessments*.

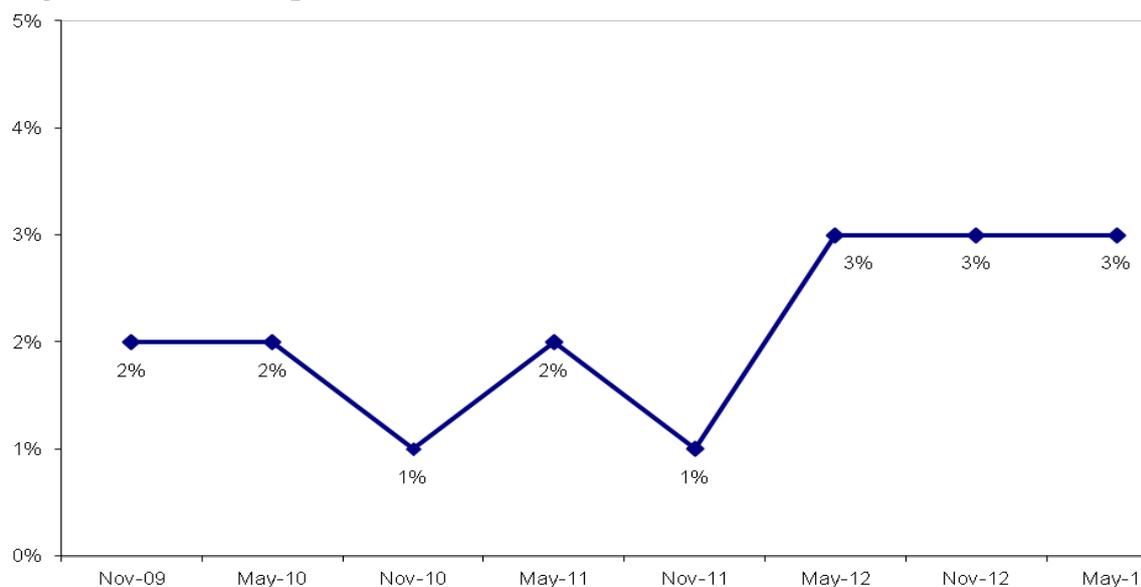
Adding the number of incorrectly transposed directives to the number of directives that are not yet transposed, the EEA EFTA States' ranking was as follows: Liechtenstein has the lowest number of cases (6), followed by Norway (14) and Iceland (39) (**Figure 10**).

2.5 Incompleteness rate of the Internal Market in the EEA EFTA States⁸

The incompleteness rate is an overall indicator of legal gaps. Whenever one or more EEA States fail to transpose directives on time, they leave a gap in the legal framework of the EEA. Hence, instead of the Internal Market covering all EEA States, it remains smaller and fragmented. Consequently, the economic interests of all EEA States are hampered even if only one EEA State does not deliver on time.

In total, 3% of the directives in force in the EEA EFTA States on 30 April 2013 had not been transposed by at least one of the three EEA EFTA States (**Figure 11**). The incompleteness rate of 3% translates into 37 directives which have not been transposed by all three EEA EFTA States and which have, therefore, not achieved their full effect in the EEA EFTA States. The incompleteness rate in the 27 EU Member States was 4%.

Figure 11: Incompleteness rate in the EEA EFTA States remained at 3%



The so-called incompleteness rate records the percentage of the outstanding directives which one or more of the three EEA EFTA States have failed to transpose with the consequence that the Internal Market is not a reality in the EEA 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 EEA EFTA States. The most incomplete sector in the EEA EFTA States is in the area of goods-technical barriers. More efforts are needed to reduce the fragmentation in this sector (**Figure 12**).

⁸ Formerly referred to as “fragmentation factor”.

Figure 12: Most outstanding directives were in the area of transport and goods – whereas the most incomplete sector is in the area of goods

	Company law (2)	Public procurement (1)	Persons-other (3)	Services - general (3)	Financial services (5)	Food Safety (2)	Transport (9)	Environment (6)	Goods - technical barriers (9)	Workers (1)	Energy (3)	Total for all EEA EFTA States (44)
ICE	2012/6	2007/66	2004/113 2010/41	2008/122 2008/48 2009/22	2007/16 2009/110 2009/111 2009/44 2010/76	90/167	2005/35 2006/38 2009/118	2001/81 2008/50 2008/98 2011/97	2007/23 2008/43 2009/125 2009/48 2012/2 2012/3	2009/38	2003/55 2009/28	29
LIE							2006/126 2011/94	2003/35	2009/19			4
NOR	2012/6		2004/113			2012/31	2010/48 2009/12 2006/38 2005/35	2011/97	2008/112 2009/48		2009/28	11
Frag-mentation factor	1	1	2	3	5	2	7	5	8	1	2	37

Breakdown by EEA EFTA State of the backlog of non-transposed directives and sector concerned – situation as at 10 May 2013.

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 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.⁹ Such infringement proceedings correspond to those initiated by the European Commission under Article 258 of the Treaty on the Functioning of the EU (TFEU).

The opening of infringement proceedings provides an opportunity for a more formal dialogue between the Authority and the EEA EFTA State concerned. The Authority opens infringement proceedings when it is of the view that an EEA EFTA State is failing to fulfil its obligations under the EEA Agreement. It should be noted that only the EFTA Court can declare that a breach of EEA law has occurred. Until the Court renders such a judgment, the fact that infringement proceedings have been opened shows only that it is the Authority's view that the State concerned has failed to fulfil its obligations under the EEA Agreement. This should be kept in mind when interpreting the statistics on infringement procedures below.

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 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 EEA 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 are often 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 EEA 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 EEA EFTA State concerned. Information on the infringement cases concerning late transposition of directives and regulations is included in chapter five.

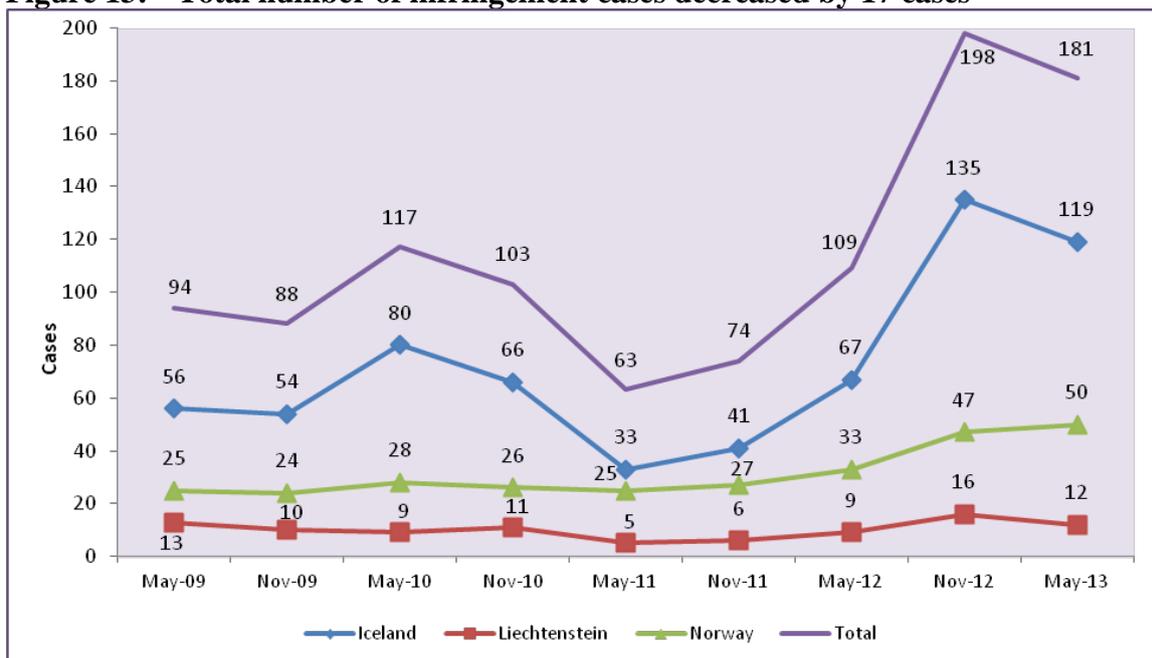
3.1. Decrease in the *total* number of infringement proceedings

On 1 May 2013, a total of 181 infringement cases were being pursued by the Authority (**Figure 13**).¹⁰ This represents 17 cases less than at the time of the last Scoreboard. The decrease in the number of infringement cases is mainly due to the decrease in the infringement cases concerning timely incorporation of regulations (down to 82 from 95) .

⁹ Agreement on the Establishment of a Surveillance Authority and a Court of Justice.

¹⁰ A pending infringement case is defined as a case where at least a letter of formal notice has been sent to the State, but the case has not yet been referred to the EFTA Court.

Figure 13: Total number of infringement cases decreased by 17 cases



Total number of all open infringement proceedings against the three EEA EFTA States on 1 May 2013.

Of the 181 infringement cases pending on 1 May 2013, 61 cases concerned incorrect implementation or application of Internal Market rules (see chapter 3.2), whereas 38 cases concerned the late transposition of directives (see chapter 5.1). The remaining 82 cases concerned the late transposition of regulations (see chapter 5.2).

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

3.2.1. The number of infringement proceedings concerning the lack of conformity with or incorrect application of rules

The overall number of infringement cases due to lack of conformity with, or incorrect application of, Internal Market rules (61 cases) increased by seven since the previous Scoreboard (Figure 14).

Figure 14: The number of infringement cases increased by seven since the previous Scoreboard

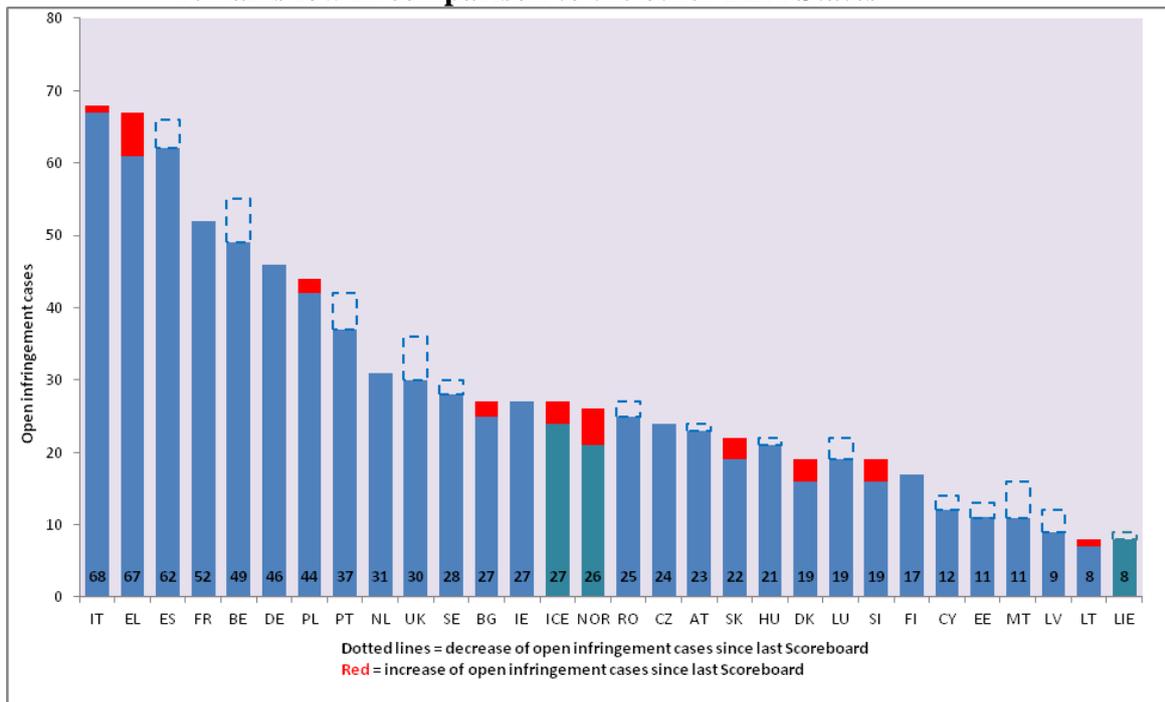
	ICE		LIE		NOR		EEA EFTA	
	May 13	Nov 12	May 13	Nov 12	May 13	Nov 12	May 13	Nov 12
Letter of formal notice	17	18	5	5	14	13	37	36
Reasoned opinion	10	4	2	4	11	7	22	15
Referral to EFTA Court	0	2	1	0	1	1	2	3
Total	27	24	8	9	26	21	61	54

Pending infringement cases against the EEA EFTA States due to lack of conformity with or incorrect application, broken down according to the stage reached in the infringement proceedings as at 1 May 2013.

Both Iceland and Norway saw an increase in the number of infringement cases brought against them since the previous Scoreboard: Iceland by three cases and Norway by five cases. Liechtenstein saw a decrease in the number of cases brought against it by one.

In comparison to the EU27, the number of infringement proceedings against the EEA EFTA States remained low (**Figure 15**).

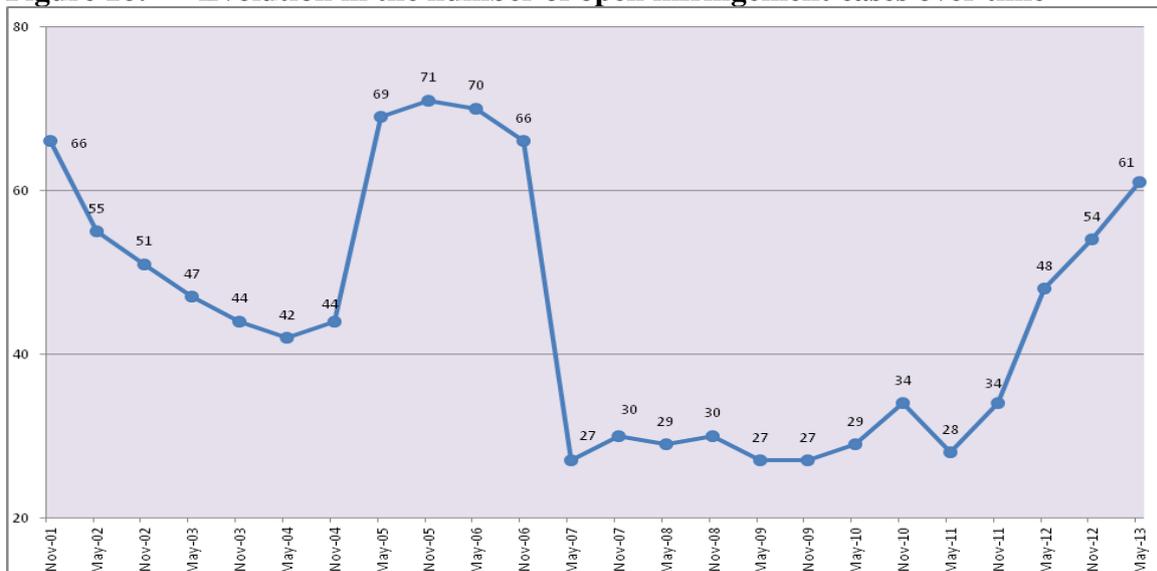
Figure 15: The number of EEA EFTA States' infringement cases concerning lack of conformity with or incorrect application of Internal Market rules remains low in comparison to the other EEA States



Pending infringement cases due to lack of conformity with or incorrect application of Internal Market rules on 1 May 2013 compared to the situation in November 2012.

Source for EU figures: The European Commission's Internal Market Scoreboard N° 27.

Figure 16: Evolution in the number of open infringement cases over time



Open infringement cases concerning lack of conformity with or incorrect application of Internal Market rules as at 1 May 2013 compared to previous years

The number of open infringement cases for the EEA EFTA States seems to be rising again, after a peak was reached due to a growing number of complaint cases lodged against Norway in spring 2005.

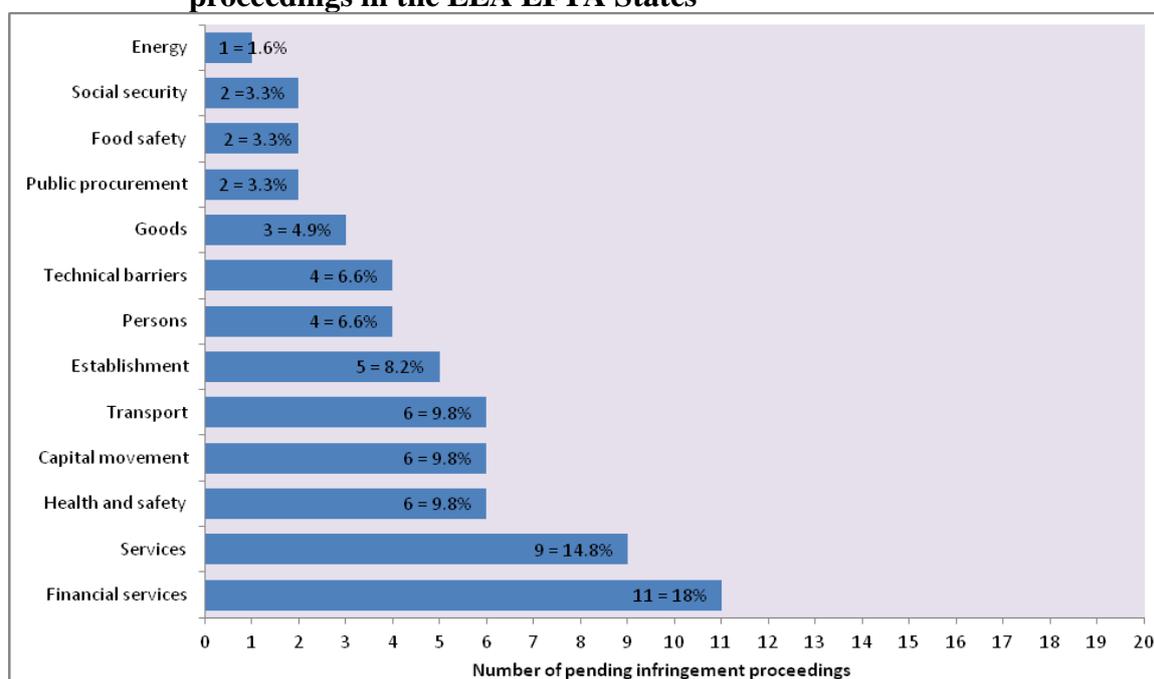
Undertakings and citizens may lodge a complaint with the Authority if they believe that they have not been able to exercise their rights under the EEA Agreement due to the failure of an EEA EFTA State to apply the EEA Agreement correctly.

The number of pending infringement proceedings initiated as a result of complaints increased by two since the time of the previous Scoreboard (from 20 to 22). The 22 pending infringement proceedings initiated on the basis of complaints represent 36% of the 61 pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. 11 of these complaint cases related to Norway, six to Liechtenstein and five to Iceland.

3.2.2. Breakdown of infringement proceedings per sector

The biggest number of infringement proceedings concerning the lack of conformity with, or incorrect application of, Internal Market rules relate to the field of financial services. This sector accounted for 18% of all infringement proceedings (**Figure 17**).

Figure 17: Financial services sector accounts for most of the infringement proceedings in the EEA EFTA States



Pending infringement proceedings due to lack of conformity with or incorrect application of Internal Market rules on 1 May 2013 divided by sector.

3.2.3. Duration of infringement proceedings

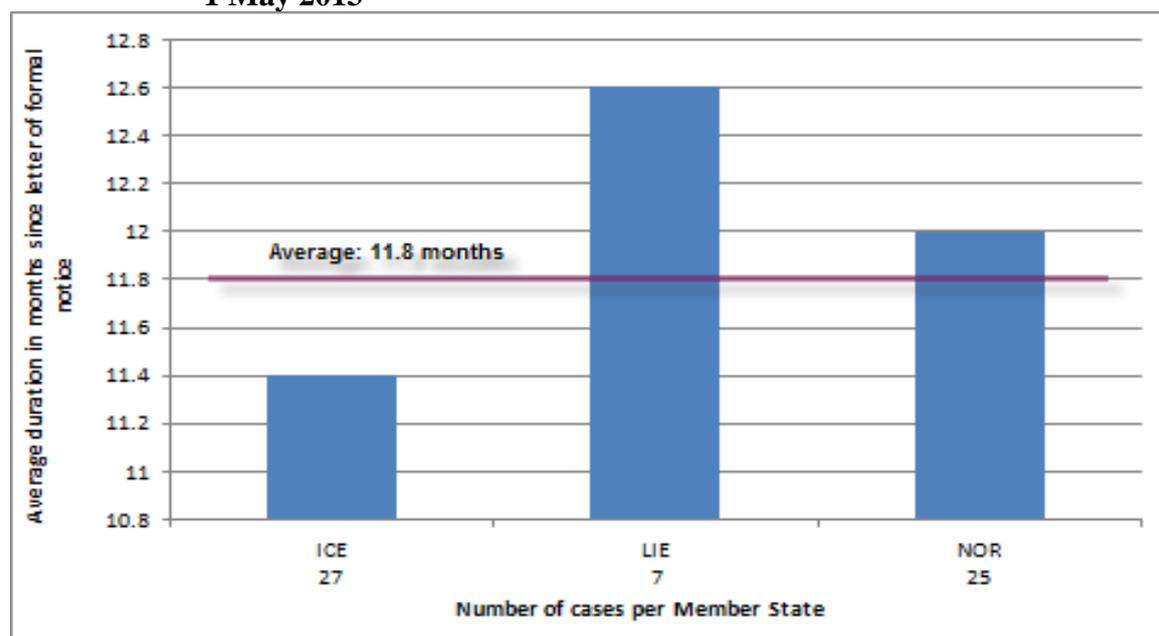
When problems with the application of Internal Market rules do arise, they need to be solved quickly to ensure that citizens and businesses are able to exercise their rights. Therefore, special focus should be placed on the time required to solve infringement

proceedings and/or the time taken by the EEA EFTA States to comply with Court judgments.

3.2.3.1. Time required for infringement proceedings

The average time of pending infringement cases not yet sent to the Court for the EEA EFTA States is 11.8 months at the cut-off date of 1 May 2013 (**Figure 18**). This is a decrease of 0.4 months compared to the last Scoreboard. The average duration of the EU Member States' infringement proceedings still exceeds the two-year mark (26.7 months).

Figure 18: Pending infringement cases not yet sent to the EFTA Court as of 1 May 2013



Pending infringement cases not yet sent to the EFTA Court as at 1 May 2013 (59 such cases): average time in months from the moment the letter of formal notice was issued.

3.2.3.2. Compliance with Court judgements

Court rulings establishing a breach of EEA legislation require that the State concerned takes immediate action to ensure EEA law compliance as soon as possible¹¹. Internal circumstances or practical difficulties cannot justify non-compliance with obligations and time-limits arising from EEA law.¹²

The average time taken by the EEA EFTA States to comply with an EFTA Court ruling is 18 months (**Figure 21**). This is a decrease since the assessment 6 months ago, when the

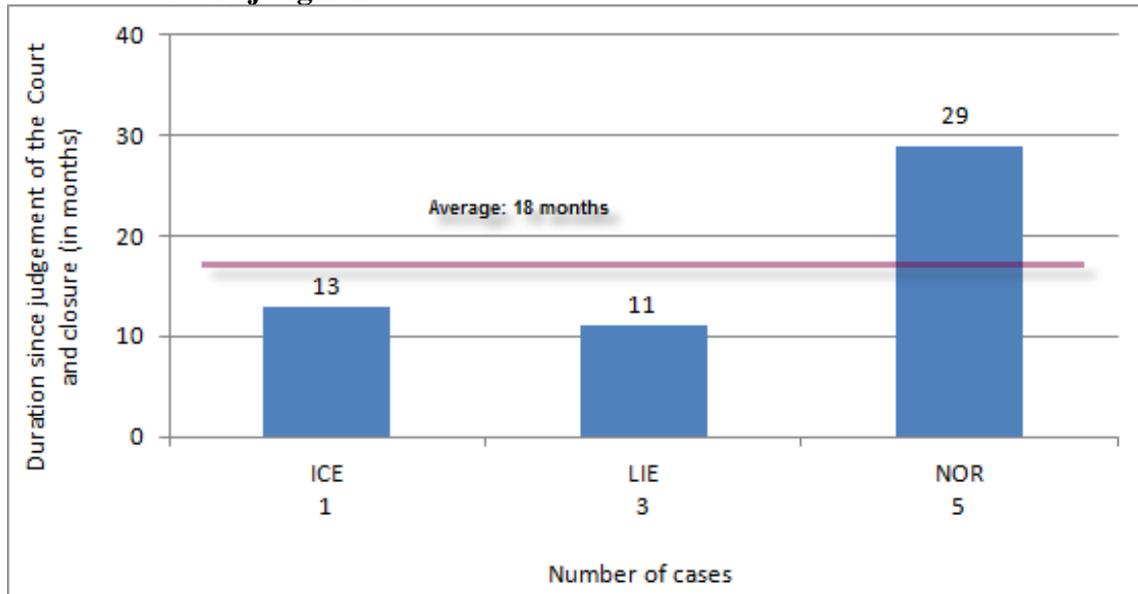
¹¹ See, in particular, Case E-18/10 *EFTA Surveillance Authority v Norway*, 2011 EFTA Court Report, 204, paragraph 29; Case C-291/93 *Commission v Italian Republic* [1994] ECR I-859, paragraph 6; Case C-101/91 *Commission v Italian Republic* [1993] ECR I-191, paragraph 20; and Case C-328/90 *Commission v Hellenic Republic* [1992] ECR I-425, paragraph 6.

¹² Joined Cases E-5/05, E-6/05, E-7/05, E-8/05 and E-9/05 *EFTA Surveillance Authority v Liechtenstein*, 2006 EFTA Court Report, 142, paragraph 21 and see also e.g. Case C-316/06 *Commission v Ireland* [2008] ECR I-124, paragraph 31; Case C-89/03 *Commission v Luxembourg* [2003] ECR I-11659, paragraph 5; Case C-140/00 *Commission v United Kingdom* [2002] ECR I-10379, paragraph 60 and Case C-52/91 *Commission v Netherlands* [1993] ECR I-3069, paragraph 3.

average was 28 months. This long delay was primarily due to the Norway’s non-implementation of the judgment by the EFTA Court in Case E-2/07, which was delivered on 30 October 2007.¹³ This resulted in another judgment by the Court on 28 June 2011 (Case E-18/10), which declared that Norway has failed to take the measures necessary to comply with its previous judgment.¹⁴

In comparison, the EU average has increased by 0.2 months since the previous Scoreboard, with an average duration of 17.6 months.

Figure 21: EEA EFTA States take an average of 18 months to comply with EFTA Court judgments



Cases closed between 1 May 2008 and 30 April 2013 (9 such cases): Average duration between the judgment of the EFTA Court and the resolution of the case.

¹³ Case E-2/07 *EFTA Surveillance Authority v The Kingdom of Norway*, 2007 EFTA Court Report, 280.

¹⁴ Case E-18/10 *EFTA Surveillance Authority v The Kingdom of Norway*, 2011 EFTA Court Report, 204.

4. PERFORMANCE PER INDICATOR – EEA EFTA STATES

As illustrated on several occasions above, the proper functioning of the Internal Market does not only depend on timely implementation, but also on the proper application of Internal Market rules. This is the reason why the Internal Market Scoreboard uses a range of different indicators to measure the performance of the EEA States.

The table below links the relevant indicators together in order to provide a better overview of EEA EFTA States' compliance with the implementation and application of Internal Market rules.

	ICE	LIE	NOR	EEA EFTA average	EU average
Transposition deficit	2.3%	0.3%	0.9%	1.2%	0.6%
Progress over the last 6 months (change in the number of outstanding directives)	+4	-2	+1	+1	0
Number of directives two years or more overdue	2	1	0	1	0.7
Transposition delay on overdue directives (in months)	11.8	13.4	5.9	10.4	8
Compliance deficit	0.8%	0.2%	0.2%	0.4%	0.6%
Number of pending infringement proceedings	27	8	26	20	30
Duration of infringement proceedings (in months)	11.4	12.6	12.0	11.8	26.7
Duration since Court's judgments - closed cases (in months)	13	11	29	18	17.6

good performance	caution zone	under-performance
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The Index shows that, overall, Liechtenstein is the best-performing EEA EFTA State. All EEA EFTA States have areas where more attention is needed (orange and red fields). This time, Iceland did not perform well in respect to any of the indicators on the implementation and application of Internal Market rules.

5. INFRINGEMENT PROCEEDINGS CONCERNING FAILURE TO TRANSPOSE DIRECTIVES AND REGULATIONS INTO NATIONAL LAW

5.1 Infringement proceedings concerning non-transposition of directives

The number of infringement cases initiated against the EEA EFTA States for non-transposition of directives decreased by 22% (corresponding to 11 cases) from the time of the previous Scoreboard (**Figure 22**). Liechtenstein had a decrease of three cases in comparison with the last Scoreboard. Norway had a decrease of eight cases, and Iceland remained at the same amount of cases as at the time of the last Scoreboard.

Figure 22: The number of infringement cases against the EEA EFTA States due to non-transposition of directives decreased

	ICE		LIE		NOR		EEA EFTA	
	May 13	Nov 12	May 13	Nov 12	May 13	Nov 12	May 13	Nov 12
Letter of formal notice	16	11	4	7	2	8	22	26
Reasoned opinion	11	18	0	0	3	5	14	23
Referral to EFTA Court	2	0	0	0	0	0	2	0
Total	29	29	4	7	5	13	38	49

Pending EEA EFTA States infringement cases due to non-transposition of directives, broken down according to the stage of infringement proceedings reached, on 1 May 2013.

Since the last Scoreboard, two cases concerning non-transposition of directives by Iceland have been referred to the EFTA Court. The directives concerned are Directive 2008/48/EC (credit agreements for consumers) and Directive 90/167/EEC (medicated feedingstuffs).

5.2. Non-transposition of regulations

5.2.1 Transposition of regulations “as such” by the EEA 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 EEA EFTA States.

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

Due to the fact that regulations do not contain a provision setting out an obligation to notify implementing measures (as directives do), the Authority systematically requests that, pursuant to Article 6 of the Surveillance and Court Agreement, Iceland and Norway notify the national measures taken to transpose regulations.

5.2.2 Delays in the transposition of regulations

As explained above, regulations only become part of the internal legal order of Iceland and Norway following an act of incorporation by the national legislative body. This usually requires the prior translation of regulations into the national language, followed by the publication of the translated regulations in the EEA Supplement to the Official Journal. In recent years, the delays in the translation and publication of regulations in Icelandic have created a backlog of overdue regulations in Iceland.

On 10 May 2013, Iceland had 35 overdue regulations which had not been notified as fully incorporated into its national law. This is five less than at the time of the last Scoreboard. For Norway, the number of regulations not notified as fully incorporated into national law increased by 19 regulations, bringing the number of outstanding regulations to 30.

5.2.3 Infringement proceedings concerning failure to transpose regulations in a timely manner

The Authority considers the timely transposition of regulations in Iceland and Norway to be necessary for the smooth functioning of the Internal Market. Consequently, enforcement of the non-transposed regulations is handled swiftly and systematically by the Authority. Of the 181 infringement cases pending in May 2013, 45% concerned the late transposition of regulations by Iceland (63 cases) and Norway (19 cases). This is a decrease of 19 infringement proceedings against Iceland and an increase of six cases against Norway since the time of the last Scoreboard (**Figure 23**).

Figure 23: The number of infringement cases initiated against Iceland decreased and the number of infringement cases against Norway increased since the previous Scoreboard

	ICE		NOR		EEA EFTA	
	May 13	Nov 12	May 13	Nov 12	May 13	Nov 12
Letter of formal notice	33	72	14	7	47	79
Reasoned opinion	30	10	5	6	35	16
Referral to EFTA Court	0	0	0	0	0	0
Total	63	82	19	13	82	95

Pending infringement cases against Iceland and Norway due to non-transposition of regulations, according to stage of infringement proceedings, on 1 May 2013.

Although the total number of infringement cases decreased by 13, it is still at a very high level compared to the low number indicated on previous Scoreboards (between 15 and 20 cases). Further substantial improvement of performance is therefore expected from both countries, and in particular from Iceland.



INTERNAL MARKET SCOREBOARD



No. 32

EEA EFTA STATES

of the EUROPEAN ECONOMIC AREA

July 2013

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