INTERNAL MARKET SCOREBOARD

No. 36

EFTA STATES of the EUROPEAN ECONOMIC AREA

October 2015

EFTA SURVEILLANCE AUTHORITY
### MAIN FINDINGS

**36th INTERNAL MARKET SCOREBOARD of the EFTA STATES**

- The average transposition deficit of the three EEA EFTA States is 1.1%, a decrease from 2.0% in the previous scoreboard.

- Of all the 28 EU Member States and the three EEA EFTA States, Iceland had by far the highest transposition deficit at 2.1%, down from 2.8% in the last Scoreboard. This corresponds to 21 directives not being fully transposed into national law within the foreseen deadlines.

- Norway achieved a perfect score, bringing its transposition deficit down to 0%, with all directives having been implemented on time. With regard to the transposition deficit, this was Norway’s best performance ever and the best performance of all the EEA States.

- Liechtenstein’s deficit decreased from 1.2% to 1.1%. Liechtenstein had 11 directives where implementation was overdue.

- In comparison, the average deficit among the EU Member States was 0.7%. Five EU Member States showed a deficit above the 1% target.

- While the EFTA Surveillance Authority notes a decrease in its deficit, Iceland’s performance remains disappointing and Iceland is urged to take steps to improve.

- Iceland had 6 directives outstanding for two years or more and Liechtenstein had 3.

- In May 2015, Iceland had 22 overdue regulations, 12 less than at the time of the previous scoreboard. For Norway, the number decreased by 11, to 9 outstanding regulations.

- The total number of infringement cases pursued by the Authority decreased from 244 to 127 since the previous scoreboard. Of these, 71 concerned the late transposition of directives or regulations, while 56 concerned the incorrect implementation and application of EEA provisions. This significant decrease reflects the improved performance of the States in the timely implementation of both directives and regulations.
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 three EFTA States, namely Iceland, Liechtenstein and Norway. Switzerland is also a member of EFTA, but not a party to the EEA Agreement. Hence, in this Scoreboard and in accordance with the terminology of the Agreement, the term “EFTA States” refers only to Iceland, Liechtenstein and Norway. This is to ensure, by and large, that the businesses and individuals in the EFTA States have the same rights as those in the EU Member States.

The Internal Market promotes innovation, competition, better services and lower prices for consumers. Its benefits include:

- free trade on equal terms within the EEA;
- the right to seek work and establish a business in the 28 EU Member States and the three EFTA States;
- competition, e.g. between service providers; and
- more cross-border investment within the EEA.

A prerequisite for the functioning of the Internal Market is that equal conditions exist for competition, based on common, homogeneous rules, across 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 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 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 aims at 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 EFTA States. According to the legal order of Liechtenstein, a regulation

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1 Agreement on the European Economic Area, OJ L 1994/1, 3.
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 EFTA States comply with their obligations to ensure timely transposition of Internal Market directives.

The purpose of the EFTA Internal Market Scoreboard is to monitor:

- to what extent the 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 EFTA States to transpose directives.

This Scoreboard records the transposition status as at 30 April 2015 for directives which should have been transposed on or before 30 April 2015. In addition to the information concerning the transposition of Internal Market directives into national law (Section 2), the Scoreboard provides information on the number of infringement proceedings initiated against the EFTA States for lack of conformity with or failure to apply EEA legislation correctly (Section 3). Section 4 illustrates the performance of the EFTA States on the basis of various indicators related to the functioning of the internal market.

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

2.1 Average transposition deficit in May 2015

In May 2015, the average transposition deficit for the EFTA States stood at 1.1%, slightly higher than the 1% transposition deficit target (Figure 1).

Figure 1: The EFTA States’ average deficits since the first edition of the Scoreboard in 1997

Transposition deficit as at 30 April 2015 for the EFTA States for directives which should have been transposed on or before 30 April 2015.

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2 Conclusion of the European Council summit in Brussels (8-9 March 2007).
In absolute terms, the 1.1% deficit indicates that the EFTA States were late with notifications of national transposing measures for 32 directives, down from 67 since the last Scoreboard.

The above findings take into account the 978 directives that were incorporated into the EEA Agreement and were in force on 30 April 2015. The corresponding figure for the EU is 1115 Internal Market directives. This difference is due to 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 of 30 April 2015, the common acquis between the EU and the EFTA States was 867 directives, which corresponds to 78% of the EU acquis. This difference arose from two factors. On the one hand, 111 directives that were still in force in the EEA, had already been repealed in the EU. On the other hand, 248 directives had already entered into force in the EU, but had 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 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**

The EU average transposition deficit at 0.7% was well below the interim target of 1%.

### 2.2 Performance measured against the 1% interim target

Although an improvement since the previous scoreboard, Iceland’s transposition deficit remained disappointingly high at 2.1%. The deficit corresponds to 21 directives not having been fully transposed on time, which is 10 directives less than at the time of the last Scoreboard. Iceland is encouraged to continue its efforts in order to demonstrate commitment to the EEA Agreement.
With no directives outstanding, Norway cut its transposition deficit to 0%. This figure means that all directives had been fully transposed.

Liechtenstein’s transposition deficit decreased by 0.1%, down to 1.1%. This corresponds to 11 directives not having been fully transposed, which is two less than at the time of the last Scoreboard.

**Figure 3: EFTA transposition deficit over the past 10 years**

![Transposition deficit as at 30 April 2015 for directives which should have been transposed on or before 30 April 2015.](image)

**Figure 3** illustrates the trend of the past ten years. Norway managed to reverse the trend of the previous three scoreboards, by ensuring that all directives had been implemented and thereby achieving the lowest transposition deficit in the whole EEA.

Liechtenstein had problems in the first half of the 10-year period, but managed to reduce the deficit and had, from 2008 up until the previous scoreboard, consistently remained within the 1% target. A slight improvement can be observed in Liechtenstein’s deficit level since the last scoreboard but Liechtenstein however remained just above the target deficit.

Iceland has traditionally had problems reaching the 1% target. After doing rather well between 2009 and 2011, it is now well beyond the target. In the last four Scoreboards, Iceland has continued to reduce its deficit but, with a transposition deficit of 2.1% in May 2015, Iceland had a significantly higher deficit than any other EEA State. In recent times, Iceland has repeatedly been the worst performing EEA State. Iceland is strongly urged to do its utmost to substantially reduce its deficit.
Figure 4: Change in the number of outstanding directives since the previous Scoreboard

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

Out of the 31 EEA States, 24 succeeded in bringing their transposition deficits into line with the 1% interim target, whereas only 7 EEA States (5 EU Member States and Iceland and Liechtenstein) exceeded the 1% target (Figures 5 and 6). Iceland was by far the worst performer.

Figure 5: Only Norway complied with the 1% interim target

Comparison of transposition deficits of the EFTA States.
2.3 How late are the EFTA States in transposing directives?

Ensuring timely and correct transposition of directives is a continuous challenge. It requires a constant effort by the 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 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. 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. Since the previous Scoreboard, the EFTA States increased the average time taken to transpose directives by 4.6 months, from 10.8 to 15.4 months. This was mainly due to the fact that Iceland failed to transpose six directives that had been outstanding for over two years; one of which, as at 30 April 2015, was outstanding for 95 months. Liechtenstein had three directives outstanding for more than two years, one of which was outstanding for 51 months. These factors led to an increase in the average time taken to transpose directives.

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3 Conclusion of the European Council summit in Barcelona (15-16 March 2002).
Figure 7: EFTA States’ average transposition delay

Average transposition delay of overdue Internal Market directives with a transposition deadline of 30 April 2015 for which no notification had been received as at 30 April 2015, broken down by the length of delay.

Norway’s transposition delay went from 6.1 months to none. Liechtenstein’s transposition delay increased by 11.4 months, from 11.3 to 22.7 months. In the case of Iceland, the transposition delay increased by 8.3 months from 15.1 to 23.4 months.

Substantive improvement in the reduction of transposition delay is still required by Iceland and Liechtenstein.

Figure 8: Norway had the lowest transposition delay among the three EFTA States

<table>
<thead>
<tr>
<th>Length of delay</th>
<th>ISL May 15</th>
<th>ISL Nov 14</th>
<th>Lie May 15</th>
<th>Lie Nov 14</th>
<th>Nor May 15</th>
<th>Nor Nov 14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 6 months</td>
<td>1</td>
<td>11</td>
<td>1</td>
<td>6</td>
<td>0</td>
<td>20</td>
</tr>
<tr>
<td>6 to 12 months</td>
<td>10</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>12 to 24 months</td>
<td>4</td>
<td>11</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Over 24 months</td>
<td>6</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
</tbody>
</table>

Number of overdue Internal Market directives with a transposition deadline of 30 April 2015 for which no notification had been received by 10 May 2015, broken down by the length of delay.

The 28 EU States’ average transposition delay, at 7.4 months, was considerably less than the average delay of the 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.4

Two of the directives which had not yet been transposed by the EFTA States were overdue by less than six months, 13 directives were overdue by between six and 12 months and eight directives were overdue by between 12 and 24 months. 9 directives were overdue by more than two years (Figure 9).

Figure 9: All three EFTA States had directives overdue by more than two years

<table>
<thead>
<tr>
<th>Number</th>
<th>Title</th>
<th>Not transposed by</th>
<th>Transposition deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003/55/EC</td>
<td>Common rules for the internal market in natural gas (Second Directive)</td>
<td>ICE</td>
<td>01/06/2007</td>
</tr>
<tr>
<td>2009/111*</td>
<td>Amending the Capital Requirements Directive and the Payment Services Directive</td>
<td>ICE</td>
<td>01/01/2012</td>
</tr>
<tr>
<td>2007/23/EC</td>
<td>Placing on the market of pyrotechnic articles</td>
<td>ICE</td>
<td>01/11/2012</td>
</tr>
<tr>
<td>2008/43/EC</td>
<td>Setting up a system for the identification and traceability of explosives for civil uses</td>
<td>ICE</td>
<td>01/11/2012</td>
</tr>
<tr>
<td>2004/113/EC</td>
<td>Implementing the principle of equal treatment between men and women in the access to and supply of goods and services</td>
<td>ICE</td>
<td>01/11/2012</td>
</tr>
<tr>
<td>2003/35*</td>
<td>Public participation regarding plans and programmes relating to the environment</td>
<td>LIE</td>
<td>01/05/2012</td>
</tr>
<tr>
<td>2011/94/EU</td>
<td>Driving licences</td>
<td>LIE</td>
<td>30/06/2012</td>
</tr>
</tbody>
</table>

Number of directives with a deadline for transposition into national law on or before 30 April 2015, which had not been transposed by one or more Member States.
* Directives which have only been partially implemented.

On the EU side, five directives were outstanding for more than two years by one or more Member States and seven Member States had directives overdue by more than two years.

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4 Conclusions of the European Council summit in Barcelona (15-16 March 2002).
2.4 Conformity of legislation: Directives not correctly transposed

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

The transposition deficit figures do not indicate whether EEA legislation has been correctly transposed into national law. It is important to bear in mind that the transposition deficit figures presented above only indicate the failure by the EFTA States to notify the implementation of directives at a given point in time. The correct implementation 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 application.

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 number of infringement proceedings against the EFTA States concerning incorrect transposition of directives on the basis of systematic conformity assessments, at four, was significantly lower than the number of conformity assessments actually initiated. This is due to the fact that the majority of such cases are concluded without the need to resort to formal infringement proceedings.

**Figure 10: Number of infringement cases concerning incorrectly transposed directives**

![Graph showing number of directives not transposed and not correctly transposed for ICE, LIE, and NOR.](image)

The number of Internal Market directives not yet communicated as fully transposed (transposition deficit) added to the number of directives transposed but for which infringement proceedings for non-conformity had been initiated (1 May 2015).
Adding the number of incorrectly transposed directives to the number of directives that had not yet been transposed, the EFTA States’ ranking was as follows: Norway with no cases, followed by Liechtenstein (12) and then Iceland (24) (Figure 10).

2.5 Incompleteness rate of the Internal Market in the EFTA States\(^5\)

The incompleteness rate is an overall indicator of gaps in the EEA framework. 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 affected even if only one EEA State does not deliver on time.

Hence, the incompleteness rate records the percentage of the outstanding directives which one or more of the three EFTA States have failed to transpose. In total, 3% of the directives in force in the EFTA States on 30 April 2015 had not been transposed by at least one of the three EFTA States (Figure 11). The incompleteness rate of 3% translates into 28 directives which had not been transposed by all three EFTA States and which had, therefore, not achieved their full effect in the EFTA States. The incompleteness rate in the 28 EU Member States remained unchanged at 4% for the fifth consecutive time.

**Figure 11: Incompleteness rate in the EFTA States**

![Graph showing the incompleteness rate in the EFTA States from November 2009 to May 2015.](image)

*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 a reality 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. As in the previous period, the most incomplete sector in

\(^5\) Formerly referred to as “fragmentation factor”.

the EFTA States is in the area of goods-technical barriers. More efforts are needed to reduce the fragmentation in this sector (Figure 12).

**Figure 12:** Most outstanding directives were in the areas of goods and transport, which were also the most incomplete sectors

<table>
<thead>
<tr>
<th>Persons-other (1)</th>
<th>Health and safety (1)</th>
<th>Service-general (2)</th>
<th>Intellectual property (1)</th>
<th>Financial services (2)</th>
<th>Transport (8)</th>
<th>Environment (4)</th>
<th>Goods-technical barriers (13)</th>
<th>Energy (1)</th>
<th>Total - all EFTA (33)</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>2009/111</td>
<td></td>
<td></td>
<td></td>
<td>2013/38</td>
<td>2009/31</td>
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<td></td>
<td>2007/23</td>
<td>2008/43</td>
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<td></td>
<td>2010/26</td>
<td>2010/84</td>
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<td></td>
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<td></td>
<td></td>
<td>2011/62</td>
<td>2011/88</td>
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<td></td>
<td></td>
<td></td>
<td>2012/4</td>
<td>2012/26</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2012/46</td>
<td>2013/10</td>
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<tr>
<td>LIE</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2006/126</td>
<td>2011/94</td>
<td></td>
<td></td>
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<td>2014/37</td>
<td>2013/47</td>
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<td></td>
<td></td>
<td>2003/35</td>
<td>2009/21</td>
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<td></td>
<td></td>
<td></td>
<td>2010/53</td>
<td>2011/62</td>
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<td></td>
<td></td>
<td></td>
<td>2012/26</td>
<td>2012/26</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fragmentation</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>7</td>
<td>3</td>
<td>11</td>
<td>28</td>
</tr>
</tbody>
</table>

*Breakdown by EFTA State of the non-transposed directives sorted per sector.*

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 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 Surveillance and Court Agreement. 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 EFTA State concerned. The Authority opens infringement proceedings when it is of the view that an 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 only indicates 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 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 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 EFTA States within the time limits. Infringement cases in this category (non-transposition cases) are generally clear-cut and, therefore, seldom the subject of legally complicated disputes between the Authority and the EFTA State concerned. Information on the infringement cases concerning late transposition of directives and regulations is included in chapter five.

3.1. Decrease in the total number of infringement proceedings

On 1 May 2015, a total of 127 infringement cases were being pursued by the Authority (Figure 13). This represents 117 cases less than at the time of the last Scoreboard. This considerable decrease was mainly due to a reduction in the high number of infringement cases concerning non-incorporation of regulations reported in the previous Scoreboard.

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6 Agreement on the Establishment of a Surveillance Authority and a Court of Justice.
7 A pending infringement case is defined as a case where at least a letter of formal notice has been sent to the State concerned.
Of the 127 infringement cases pending on 1 May 2015, 56 cases concerned incorrect implementation or application of Internal Market rules (see chapter 3.2), whereas 41 cases concerned the late transposition of directives (see chapter 5.1). The remaining 30 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 (56 cases) decreased by three since the previous Scoreboard (Figure 14).
Figure 14: The number of infringement cases decreased by three since the previous Scoreboard

<table>
<thead>
<tr>
<th></th>
<th>ISL May 15</th>
<th>Nov 14</th>
<th>LIE May 15</th>
<th>Nov 14</th>
<th>NOR May 15</th>
<th>Nov 14</th>
<th>EEA EFTA May 15</th>
<th>Nov 14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Letter of formal notice</td>
<td>13</td>
<td>9</td>
<td>0</td>
<td>1</td>
<td>19</td>
<td>17</td>
<td>32</td>
<td>27</td>
</tr>
<tr>
<td>Reasoned opinion</td>
<td>9</td>
<td>12</td>
<td>3</td>
<td>3</td>
<td>6</td>
<td>15</td>
<td>18</td>
<td>30</td>
</tr>
<tr>
<td>Referral to EFTA Court</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>5</td>
<td>1</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>22</strong></td>
<td><strong>21</strong></td>
<td><strong>4</strong></td>
<td><strong>5</strong></td>
<td><strong>30</strong></td>
<td><strong>33</strong></td>
<td><strong>56</strong></td>
<td><strong>59</strong></td>
</tr>
</tbody>
</table>

Pending infringement cases against the EFTA States due to lack of conformity with or incorrect application of Internal Market rules, broken down according to the stage reached in infringement proceedings as at 1 May 2015.

The number of infringement cases brought against Iceland increased by one since the previous Scoreboard from 21 to 22. The number of infringement cases brought against Norway decreased by three from 33 to 30. The number of infringement cases brought against Liechtenstein dropped by one case to four. In comparison with the EU28, the number of infringement proceedings against the EFTA States remained rather low (Figure 15).

Figure 15: The number of 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 2015 compared to the situation in November 2014. The transparent part of the chart represents the decrease in the number of pending cases (not counting for the final result), while the red part shows the increase in the number of pending cases since November 2014 (in spring 2015 Single Market Scoreboard).

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 31.
Open infringement cases concerning lack of conformity with or incorrect application of Internal Market rules as at 1 May 2015 compared to previous years

It seems that the number of infringement cases concerning incorrect transposition/application has settled at around 60 cases for the EFTA States. This number has been stable for the last five Scoreboards. Since May 2011, where 28 pending cases were reported, the number has doubled. The number of open infringement cases against the EFTA States dropped slightly to 56 since the previous Scoreboard (Figure 16).

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 EFTA State to apply the EEA Agreement correctly.

The number of pending infringement proceedings initiated as a result of complaints increased by three from 22 to 25 since the previous Scoreboard. This represents 45% of the total 56 pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Of these complaint cases, 18 related to Norway, five to Iceland and two to Liechtenstein.

3.2.2. Breakdown of infringement proceedings per sector

The highest number of infringement proceedings concerning the lack of conformity with or incorrect application of Internal Market rules related to the field of Services - other. This sector accounted for 16% of all infringement proceedings (Figure 17).

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8 The field of “Services – other” includes postal services, consumer protection and freedom to provide services.
3.2.3. **Duration of infringement proceedings**

When problems with the application of Internal Market rules 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 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 referred to the EFTA Court for the EFTA States was 17.5 months at the cut-off date of 1 May 2015 (Figure 18). This is an increase of 0.8 months compared to the last Scoreboard. The average duration of the EU Member States’ infringement proceedings still exceeded the two-year mark (29.1 months).

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*Figure 17: The sector Services - other accounted for most of the infringement proceedings in the EFTA States*

Pending infringement proceedings due to lack of conformity with or incorrect application of Internal Market rules on 1 May 2015 divided by sector.
3.2.3.2. Compliance with Court judgments

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

The average time taken by the EFTA States in cases to comply with an EFTA Court ruling that were closed during the last 5 years was 18.5 months (Figure 19), slightly less than reported in the previous Scoreboard.

In comparison, the EU average increased by 0.1 months since the previous Scoreboard, with an average duration of 19.8 months.

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10 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 ECLI:EU:C:2008:487, paragraph 31; Case C-89/03 Commission v Luxembourg ECLI:EU:C:2003:542, paragraph 5; Case C-140/00 Commission v United Kingdom ECLI:EU:C:2002:653, paragraph 60 and Case C-52/91 Commission v Netherlands ECLI:EU:C:1993:225, paragraph 3.
Figure 19: EFTA States took an average of 18.5 months to comply with EFTA Court judgments

Cases closed between 1 May 2010 and 30 April 2015 inclusive (11 such cases): Average duration between the judgment of the EFTA Court and the resolution of the case.
4. PERFORMANCE PER INDICATOR – EFTA STATES

As illustrated at several points 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 EFTA States’ compliance with the implementation and application of Internal Market rules. The legend rates the performance of the EFTA States against the EFTA average.11

<table>
<thead>
<tr>
<th>Indicator</th>
<th>ICE</th>
<th>LIE</th>
<th>NOR</th>
<th>EFTA average</th>
<th>EU average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transposition deficit</td>
<td>2.1%</td>
<td>1.1%</td>
<td>0%</td>
<td>1.1%</td>
<td>0.7%</td>
</tr>
<tr>
<td>Progress over the last 6 months (change in the number of outstanding directives)</td>
<td>-10</td>
<td>-2</td>
<td>-23</td>
<td>-12</td>
<td>→1</td>
</tr>
<tr>
<td>Number of directives two years or more overdue</td>
<td>6</td>
<td>3</td>
<td>0</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Transposition delay on overdue directives (in months)</td>
<td>23.4</td>
<td>22.7</td>
<td>0</td>
<td>15.4</td>
<td>7.4</td>
</tr>
<tr>
<td>Compliance deficit12</td>
<td>0.3%</td>
<td>0.1%</td>
<td>0%</td>
<td>0.1%</td>
<td>0.7%</td>
</tr>
<tr>
<td>Number of pending infringement proceedings</td>
<td>22</td>
<td>4</td>
<td>30</td>
<td>18.7</td>
<td>27</td>
</tr>
<tr>
<td>Duration of infringement proceedings (in months)</td>
<td>12.8</td>
<td>22.5</td>
<td>17.1</td>
<td>17.5</td>
<td>29.1</td>
</tr>
<tr>
<td>Duration since Court's judgments - closed cases (in months)</td>
<td>13</td>
<td>12.7</td>
<td>29.8</td>
<td>18.5</td>
<td>19.8</td>
</tr>
</tbody>
</table>

The Index shows that, overall, Norway was the best-performing EFTA State. However, there is room for improvement for all EFTA States (orange or red fields).

11 The indicator for the transposition delay on overdue directives is based on the EU average.
12 The compliance deficit measures the number of directives transposed where infringement proceedings for non-conformity have been initiated by the Authority, as a percentage of the number of Single Market directives notified as transposed to the Authority.
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 EFTA States for non-transposition of directives decreased by 13 cases from the time of the previous Scoreboard (Figure 20). In comparison with the last Scoreboard, Liechtenstein had an increase of eight cases, while Iceland and Norway had a decrease of 15 and six cases respectively.

Figure 20: The number of infringement cases against the EFTA States due to non-transposition of directives

<table>
<thead>
<tr>
<th>юEEA EFTA</th>
<th>ISL</th>
<th>LIE</th>
<th>NOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 15</td>
<td>Nov 14</td>
<td>May 15</td>
<td>Nov 14</td>
</tr>
<tr>
<td>Letter of formal notice</td>
<td>6</td>
<td>17</td>
<td>12</td>
</tr>
<tr>
<td>Reasoned opinion</td>
<td>12</td>
<td>9</td>
<td>6</td>
</tr>
<tr>
<td>Referral to EFTA Court</td>
<td>3</td>
<td>10</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>36</td>
<td>19</td>
</tr>
</tbody>
</table>

Pending EFTA States infringement cases due to non-transposition of directives, broken down according to the stage of infringement proceedings reached, on 1 May 2015.

Since the last Scoreboard, four cases concerning non-transposition of directives were referred to the EFTA Court. Three cases concerned Iceland, namely Directive 2010/26/EU on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery, Directive 2009/126/EC on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations, and Directive 2011/83/EU on consumer rights. One case concerned Liechtenstein, Directive 2011/83/EU on consumer rights.

5.2. Non-transposition of regulations

5.2.1 Transposition of regulations “as such” 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 the constitutional law of the 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.

At the relevant time, Iceland had 22 overdue regulations which had not been notified as fully incorporated into its national law. This is 12 less than at the time of the last Scoreboard. For Norway, the number of regulations not notified as fully incorporated into national law decreased by 11, bringing the number of outstanding regulations down to 9.

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

The timely transposition of regulations in Iceland and Norway is essential 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 127 infringement cases pending in May 2015, 24% concerned the late transposition of regulations by Iceland (23 cases) and Norway (7 cases). This represents a decrease of 84 infringement proceedings against Iceland and 17 against Norway since the time of the last Scoreboard (Figure 21).

Figure 21: The number of infringement cases initiated against Iceland and Norway concerning failure to transpose regulations decreased since the previous Scoreboard

<table>
<thead>
<tr>
<th></th>
<th>ISL May 15</th>
<th>ISL Nov 14</th>
<th>NOR May 15</th>
<th>NOR Nov 14</th>
<th>EEA EFTA May 15</th>
<th>EEA EFTA Nov 14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Letter of formal notice</td>
<td>16</td>
<td>88</td>
<td>4</td>
<td>23</td>
<td>20</td>
<td>111</td>
</tr>
<tr>
<td>Reasoned opinion</td>
<td>7</td>
<td>16</td>
<td>3</td>
<td>1</td>
<td>10</td>
<td>17</td>
</tr>
<tr>
<td>Referral to EFTA Court</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>23</strong></td>
<td><strong>107</strong></td>
<td><strong>7</strong></td>
<td><strong>24</strong></td>
<td><strong>30</strong></td>
<td><strong>131</strong></td>
</tr>
</tbody>
</table>

Pending infringement cases against Iceland and Norway due to non-transposition of regulations, according to stage of infringement proceedings, on 1 May 2015.

The total number of infringement cases concerning the non-transposition of directives and regulations decreased by 114 cases from 185 to 71 since the last Scoreboard.