



INTERNAL MARKET SCOREBOARD



No. 31

EEA EFTA STATES

of the EUROPEAN ECONOMIC AREA

February 2013

EFTA SURVEILLANCE
AUTHORITY

MAIN FINDINGS –

31st INTERNAL MARKET SCOREBOARD of the EEA EFTA STATES

- The average transposition deficit of the EEA EFTA States decreased to 1.0%. Both Liechtenstein and Norway were below the deficit target of 1%. Iceland remained above.
- The EU Member States' average transposition deficit decreased to 0.6%.
- Norway's deficit decreased from 1.3% to 0.7%. However, the transposition delay in Norway increased by 7.1 months, from 0.4 to 7.5 months.
- The transposition deficit for Liechtenstein decreased from 0.5% to 0.4%. Liechtenstein increased its transposition delay by 6.9 months, from 0.7 to 7.6 months.
- Iceland's deficit remained the same as at the previous Scoreboard at 1.8%. It increased its transposition delay by 5 months, from 8 to 13 months.
- Iceland had 3 directives overdue by more than two years, Liechtenstein and Norway did not.
- The *total* number of infringement cases pursued by the Authority increased by 89 cases (from 109 to 198) since the previous Scoreboard.
- The overall number of infringement cases due to *incorrect transposition or incorrect application* of Internal Market rules increased to 54, which is 6 cases more than in the previous Scoreboard.
- The number of infringement cases concerning the *late transposition of directives* by the EEA EFTA States increased from 44 to 49 since the previous Scoreboard.
- Iceland's number of overdue *regulations* increased, from the time of the previous Scoreboard, from 25 to 40. In Norway, the number decreased by eight regulations, to a total of 11.
- 48% of the pending infringement cases concerned *late transposition of regulations*, 82 cases by Iceland and 13 by 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 Thus ensuring, by and large, that the businesses and individuals in those countries 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 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,

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.

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 November 2012*. 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.

As the Internal Market Scoreboard celebrates its 15th anniversary, some Figures present an overview of statistics back to 1997.

2. TRANSPOSITION OF INTERNAL MARKET DIRECTIVES INTO NATIONAL LAW

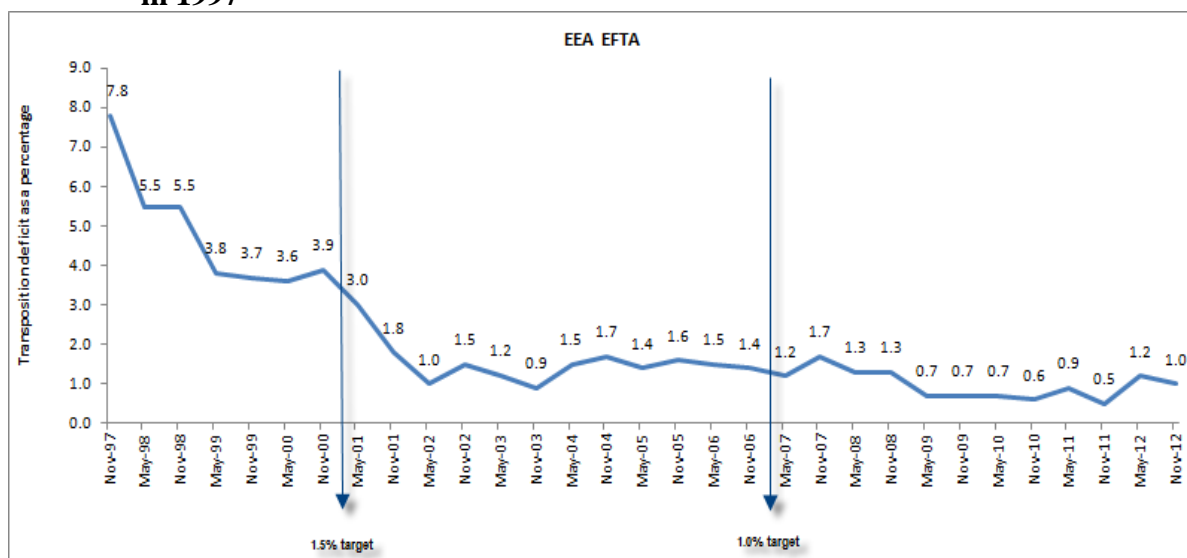
The Internal Market is a key driver of growth and jobs and one of the main engines for economic recovery. In these challenging times, a well-functioning Internal Market is more important than ever as it provides opportunities for businesses and citizens. Yet the Internal Market does not deliver benefits 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 November 2012

In November 2012, the average transposition deficit for the EEA EFTA States was at 1%, thus just meeting the 1% transposition deficit target (**Figure 1**). In absolute terms, the 1% deficit indicates that the EEA EFTA States were late with notifications of national transposing measures of 41 Directives, which is a decrease of 8 since the last Scoreboard.

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



Transposition deficit on 10 November 2012 for the EEA EFTA States for directives which should have been transposed on or before 31 October 2012.

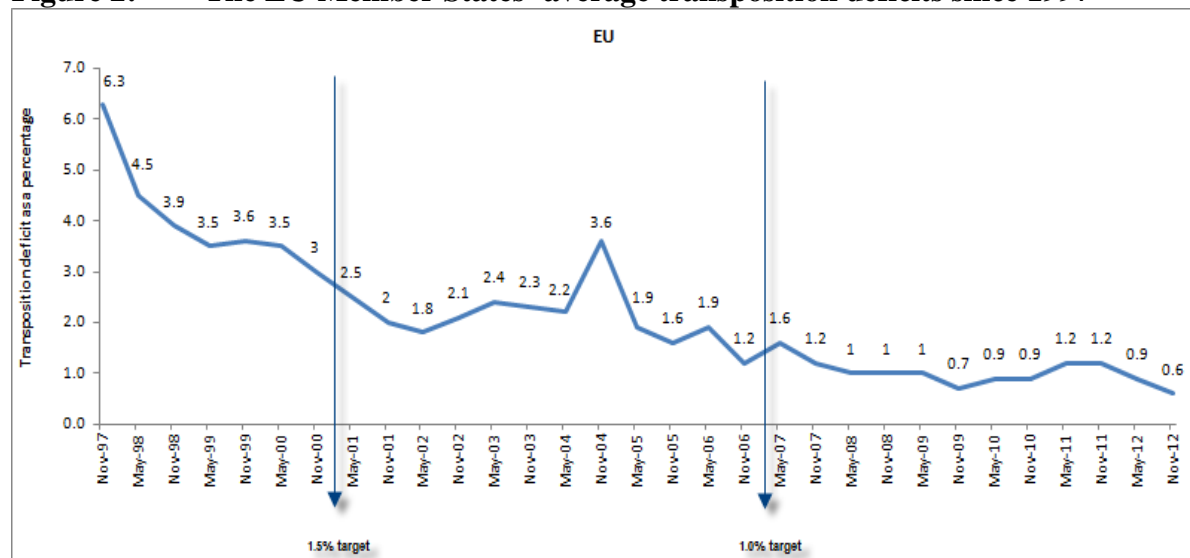
³ The EEA EFTA States' transposition deficit shows the proportion of Internal Market directives not notified to the EFTA Surveillance Authority as fully transposed by the deadline, in relation to the total number of Internal Market directives.

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

The above findings take into account the 1423 directives that were incorporated into the EEA Agreement by 31 October 2012. The corresponding figure for the EU is 1420 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 ca 75% of the directives. This difference was due to the fact that certain directives were still in force in the EEA that had already been repealed in the EU consequently to Directives already in force in the EU that 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 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 November 2012 for the EU 27 for directives which should have been transposed on or before 31 October 2012. Source for EU figures: The European Commission's Internal Market Scoreboard N° 26.

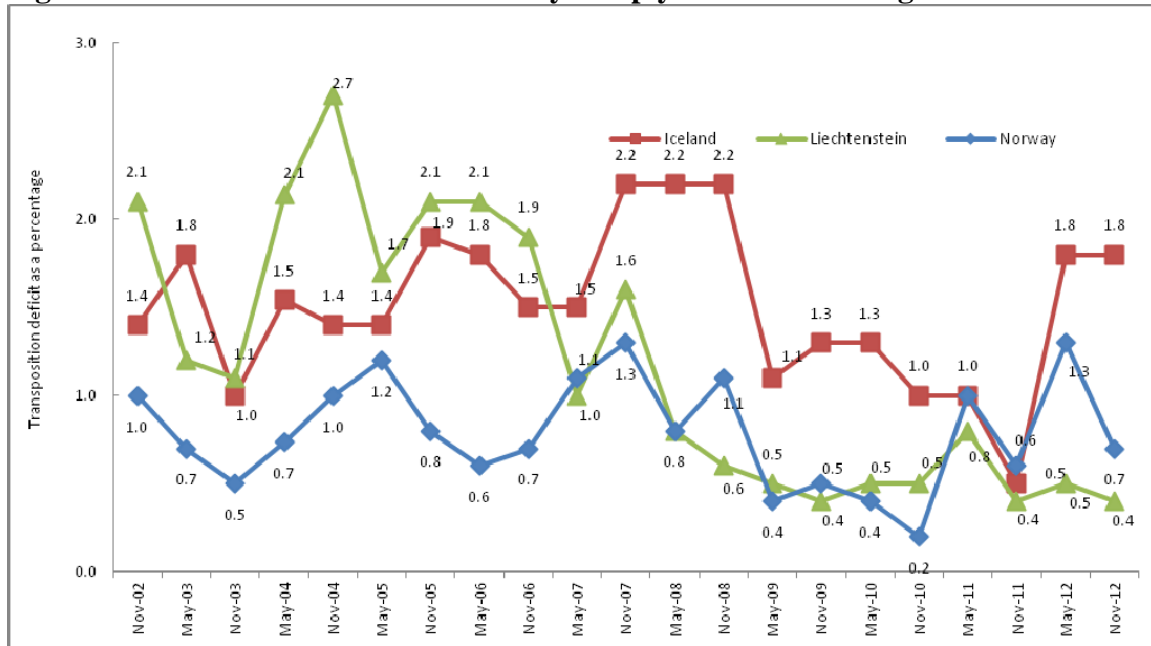
The EU average transposition deficit is well below the interim target of 1% at 0.6%, which represents its best result since the introduction of the Scoreboard in 1997.

2.2 Performance measured against the 1% interim target

Iceland's transposition deficit remained at a disappointing 1.8%. The deficit corresponds to 25 directives not fully transposed on time, which is even one more than at the time of the previous Scoreboard.

Norway managed to reduce its deficit significantly by 0.6%, from 1.3% to 0.7%. This deficit corresponds to 10 directives not having been fully transposed, which is eight less than at the time of the previous Scoreboard.

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

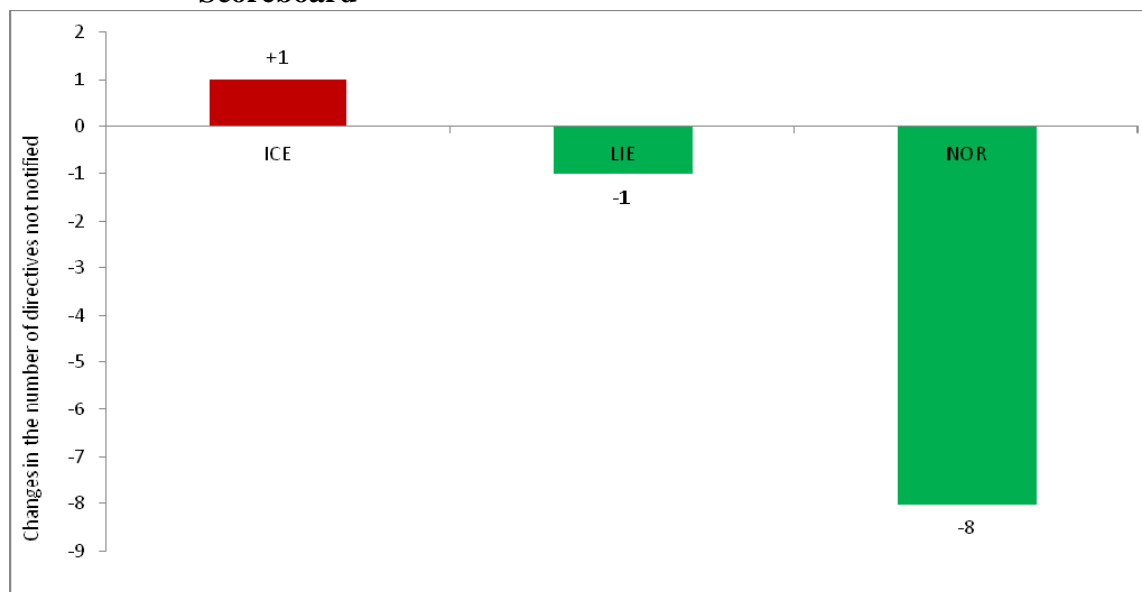


Transposition deficit on 10 November 2012 for directives which should have been transposed on or before 31 October 2012.

Liechtenstein remained well below the interim target of 1% and decreased its deficit slightly by 0.1%, from 0.5% to 0.4%. This corresponds to six directives not having been fully transposed, which is one less than at the time of the previous 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 managed to reduce the deficit and consistently meet the 1% target since 2008. Iceland has traditionally problems to meet the target and after having done rather well between 2009 and 2011, it is again far above the 1% deficit.

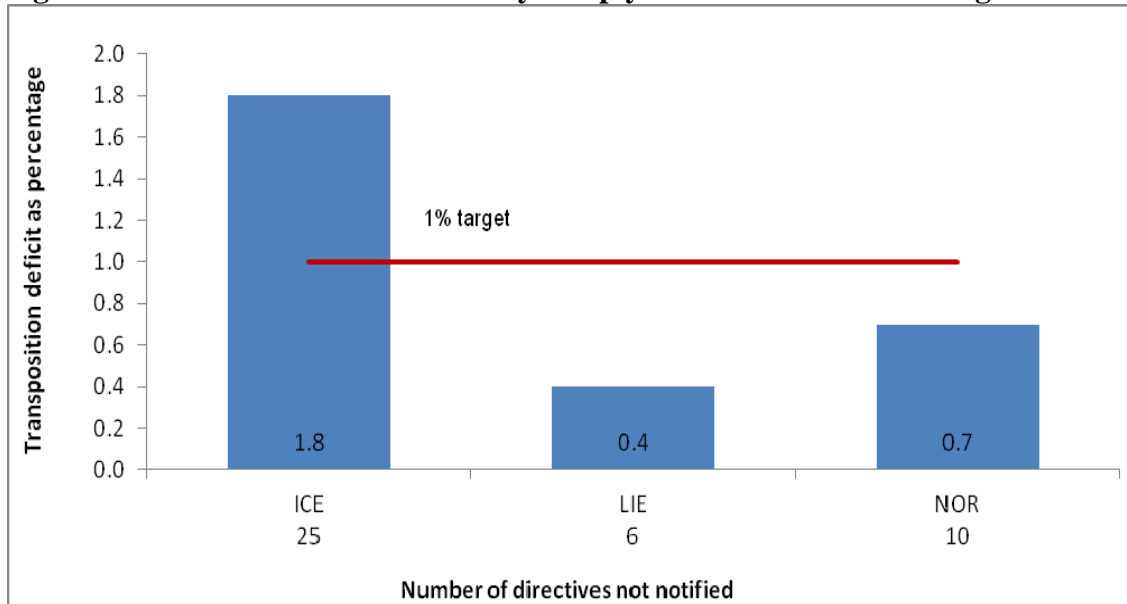
Figure 4: Change in the number of outstanding directives since the previous Scoreboard



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

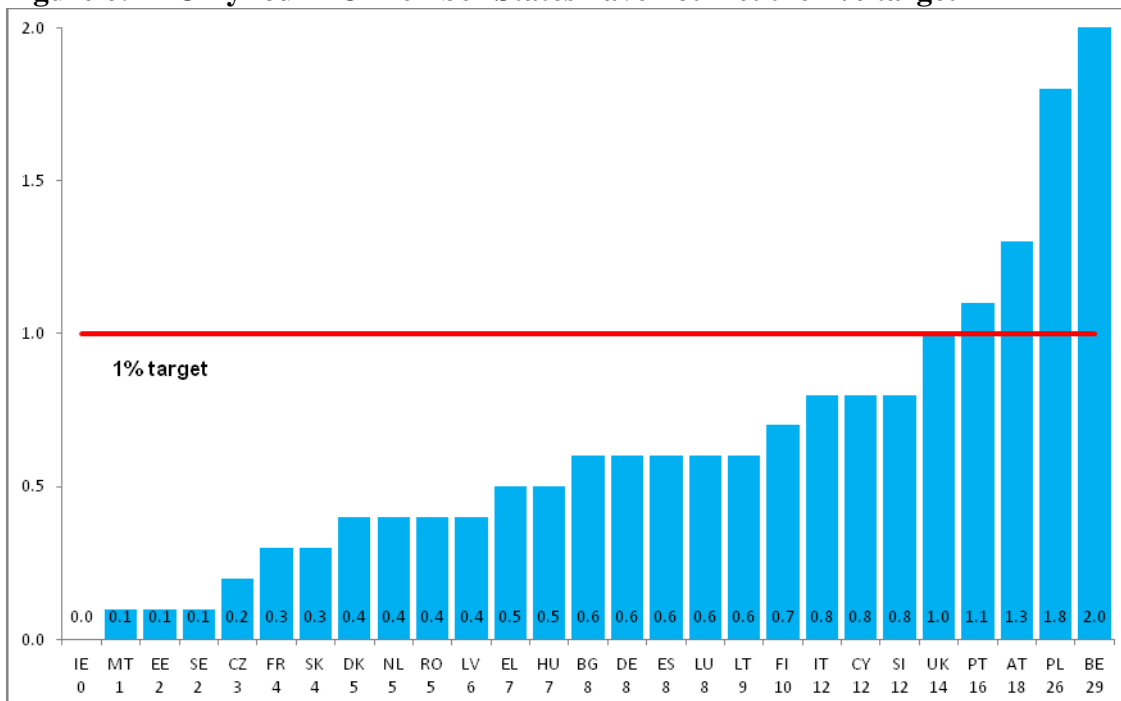
Out of the 30 EEA States, 25 succeeded in bringing their transposition deficits into line with the 1% interim target, whereas 5 EEA States were above the target (**Figures 5 and 6**). This means that within the past 6 months, the number of EU Member States in line with the 1% transposition deficit target increased, from 11 to 23.

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



Comparison of transposition deficits of the EEA EFTA States.

Figure 6: Only four 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° 26.

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.

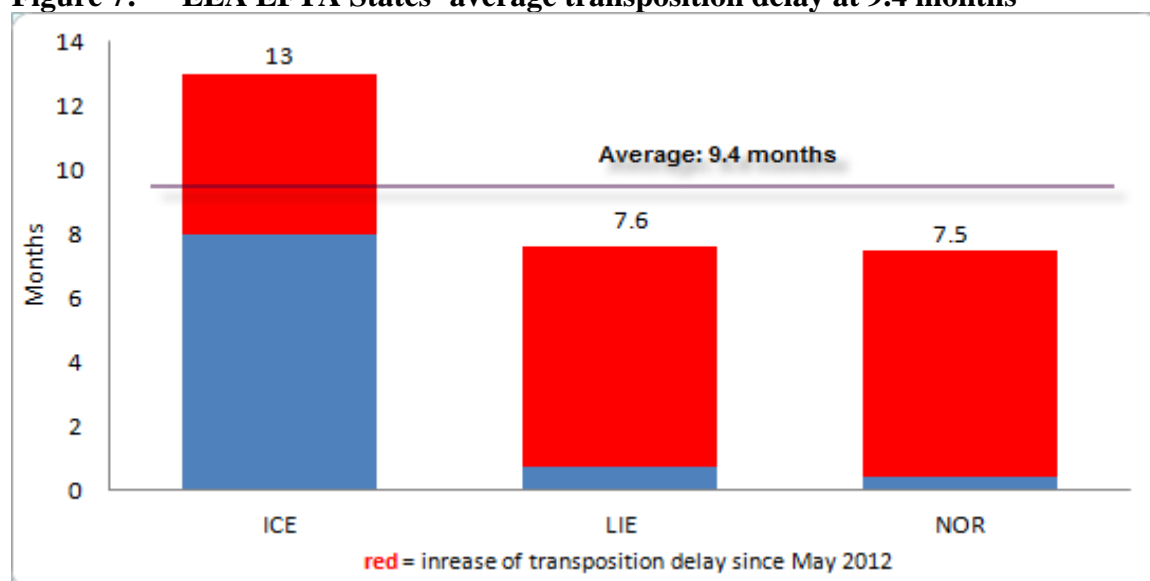
Delays in transposition may occur due to time-consuming legislative processes in the EEA EFTA States. However, directives are usually transposed relatively soon after the expiry of the time limits.

In March 2002, the European Council announced a “zero tolerance” for directives for which the 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, but it increased by 6.4 months since the previous Scoreboard, from 3 to 9.4 months (**Figure 7**). This increase is particularly disappointing as already the last Scoreboard expressed further need of improvement in this respect.

Figure 7: EEA EFTA States' average transposition delay at 9.4 months



Average transposition delay of overdue Internal Market directives with a transposition deadline of 31 October 2012 for which no notification was received by 10 November 2012, broken down by the length of delay.

In the case of Iceland, whose transposition deficit remained at the same high level, in addition the transposition delay increased by 5 months up to 13 months. This means that, on average, more than an extra year is taken by Iceland to transpose directives after the transposition deadlines have expired. Liechtenstein's transposition delay increased by 6.9

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

months, bringing the delay to 7.6 months, and Norway's transposition delay increased from 0.4 months to 7.5 months (**Figure 8**).

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

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

	Number of directives delayed					
	ICE		LIE		NOR	
Length of delay	Nov 12	May 12	Nov 12	May 12	Nov 12	May 12
Less than 6 months	4	22	3	6	3	14
6 to 12 months	16	0	1	0	6	1
12 to 24 months	0	0	1	1	0	2
Over 24 months	3	2	0	0	0	1
Average delay (in months) by 31 October 2012	13	8	7.6	0.7	7.5	0.4

Number of overdue Internal Market directives with a transposition deadline of 31 October 2012 for which no notification was received by 10 November 2012, broken down by the length of delay.

The EU States' average transposition delay, at 9.6 months, is slightly more than the average EEA EFTA States' delay.

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

10 of the directives which have not yet been transposed by the EEA EFTA States are overdue by less than 6 months, and 23 directives are overdue by 6 to 12 months. One directive is overdue between 12 and 24 months. Norway no longer has a directive overdue by more than two years, but Iceland has now three (**Figure 9**).

Figure 9: Iceland has three directives overdue by more than two years, Norway and Liechtenstein have none

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
2008/58/EC	Dangerous substances	ICE	05/12/2009
2007/16/EC	Undertakings for	ICE	01/08/2009

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

	collective investment in transferable securities (UCITS)		
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Number of directives with a deadline for transposition into national law on or before 31 October 2010, which were not transposed by one Member State – Situation as at 10 November 2012.

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.

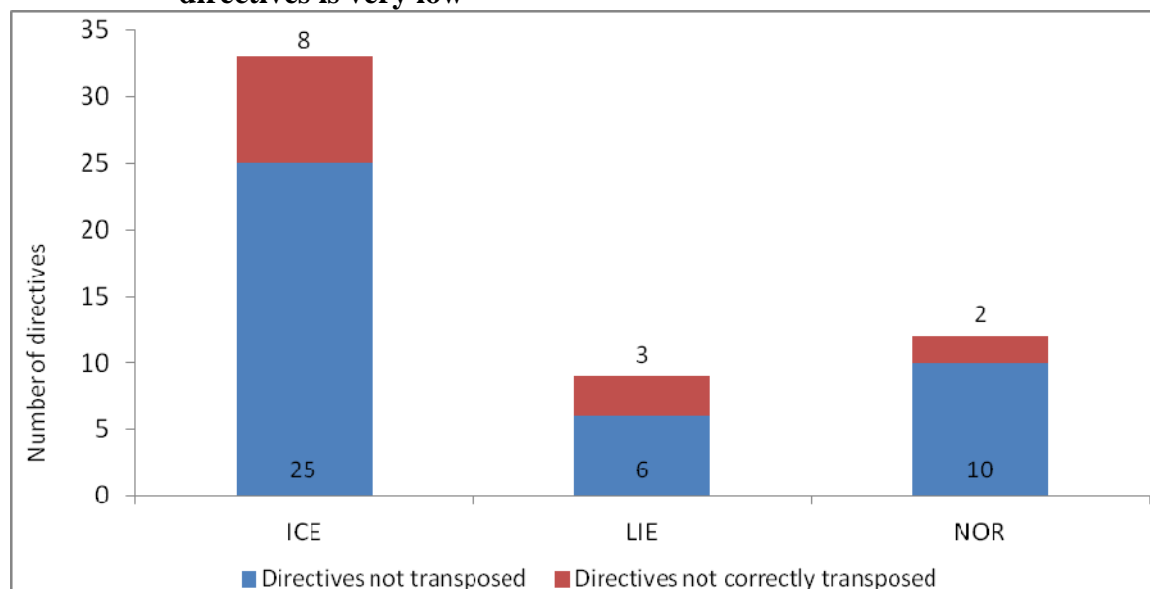
The transposition deficit figures do not indicate the quality of the national legislation. It is important to bear in mind that the transposition deficit figures presented above only indicate the failure by the EEA EFTA States to notify the implementation of directives at a given point in time. The quality 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 November 2012 was 41. This number had decreased by 8 since the time of the previous Scoreboard. The number of infringement proceedings against the EEA EFTA States concerning *incorrect transposition* of directives, at 13, 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.

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

Figure 10: Number of infringement cases concerning incorrectly transposed directives is very low



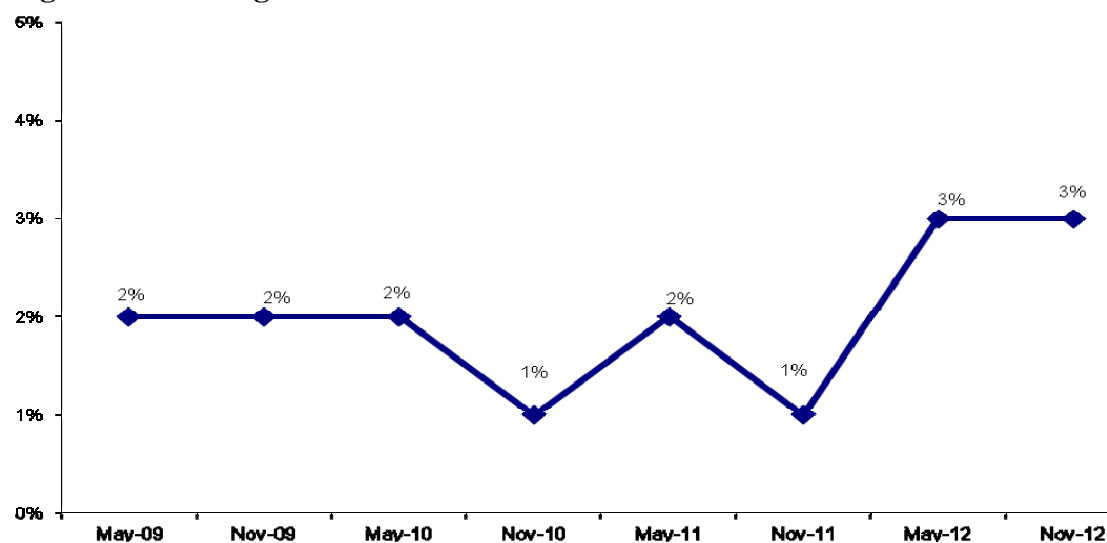
The number of Internal Market directives not yet communicated as having been fully transposed (transposition deficit) added by the number of directives transposed but for which an infringement proceeding for non-conformity has been initiated by the Authority (November 2012).

Adding the number of not correctly transposed directives to the number of directives that are not yet transposed, the EEA EFTA States' ranking was Liechtenstein with the lowest number of cases (9), followed by Norway (12) and Iceland (33) (**Figure 10**).

2.5 Fragmentation of the Internal Market in the EEA EFTA States

The fragmentation factor 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 31 October 2012 had not been transposed by at least one of the three EEA EFTA States (**Figure 11**). The fragmentation factor of 3% translates into 36 directives not transposed by all three EEA EFTA States and that have, therefore, not achieved their full effect in the EEA EFTA States. The fragmentation factor in the 27 EU Member States was 5%.

Figure 11: Fragmentation factor in the EEA EFTA States remained at 3%


The so-called fragmentation factor 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 fragmented sector in the EEA EFTA States is in the area of transport. More efforts are needed to reduce the fragmentation in this sector (Figure 12).

Figure 12: Most outstanding directives were in the area of transport

	Company law(1)	Persons-other (2)	Services - general (3)	Financial services (3)	Food Safety (2)	Transport (13)	Environment (4)	Goods - technical barriers (9)	Health and safety (1)	Energy (3)	Total for all EEA EFTA States (41)
ICE		2010/41	2008/122 2008/48 2009/22	2009/111 2009/44 2007/16	90/167	2009/21 2009/17 2010/36 2010/40 2011/15 2011/94 2006/38	2001/81 2003/35	2009/61 2007/46 2008/58 2010/19 2010/35	2009/161	2003/55 2009/28	25
LIE		2010/18				2006/126 2011/94	2009/29 2003/35	2011/84			6
NOR	2006/99				2007/43	2010/47 2010/48 2009/12 2006/38		2011/38 2011/75 2010/35		2009/28	10
Fragmentation factor	1	2	3	3	2	11	3	8	1	2	36

Breakdown by EEA EFTA State of the backlog of non-transposed directives and sector concerned – situation as at 10 November 2012.

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.⁸ 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 opinion 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.

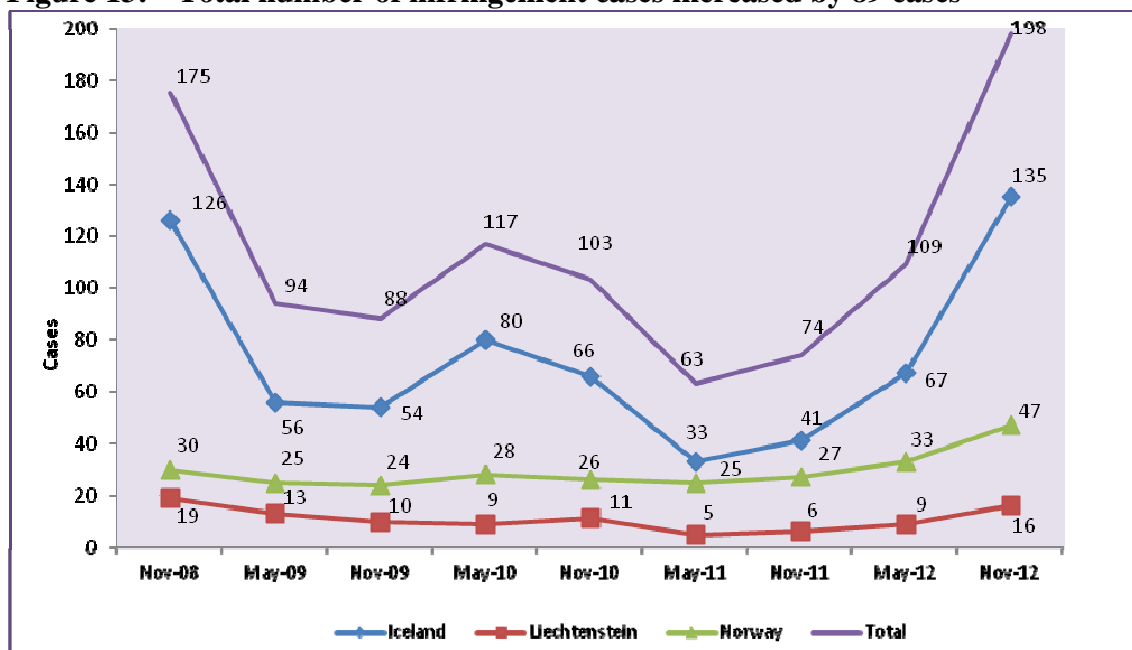
The second category of cases relates to *late transposition*, in other words directives and regulations only partially transposed or not transposed at all into the national legislation of the EEA EFTA States within the time limits. Infringement cases in this category (non-transposition cases) are generally 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. Increase in the *total* number of infringement proceedings

On 1 November 2012, a total of 198 infringement cases were being pursued by the Authority (**Figure 13**).⁹ This represents 89 cases more than at the time of the previous Scoreboard. The increase in the number of infringement cases is mainly due to the increase in the infringement cases concerning timely incorporation of regulations (up to 95 from 17) .

⁸ Agreement on the Establishment of a Surveillance Authority and a Court of Justice.

⁹ 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 increased by 89 cases


Total number of all open infringement proceedings against the three EEA EFTA States on 1 November 2012.

Of the 198 infringement cases pending on 1 November 2012, 54 cases concerned incorrect implementation or application of Internal Market rules (see chapter 3.2), whereas 49 cases concerned the late transposition of directives (see chapter 5.1). The remaining 95 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 (53 cases) increased by 5 since the previous Scoreboard (Figure 14).

Figure 14: The number of infringement cases increased by 6 since the previous Scoreboard

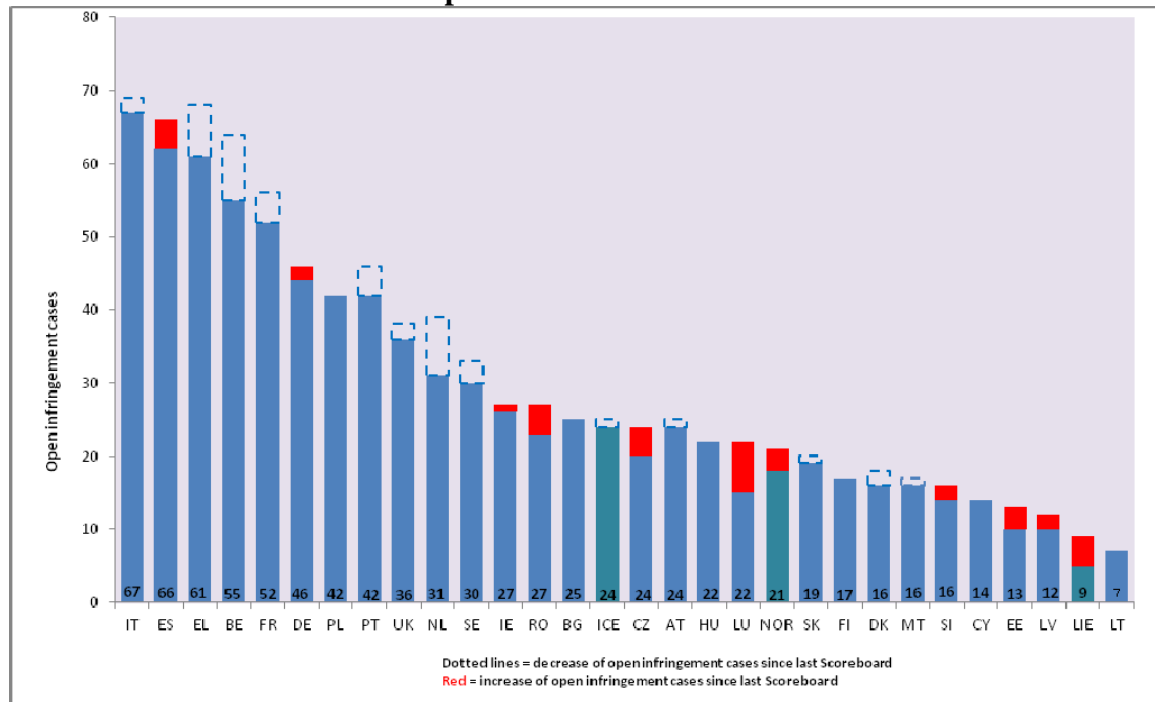
	ICE		LIE		NOR		EEA EFTA	
	Nov 12	May 12	Nov 12	May 12	Nov 12	May 12	Nov 12	May 12
Letter of formal notice	18	22	5	3	13	12	36	37
Reasoned opinion	4	1	4	2	7	3	15	6
Referral to EFTA Court	1	2	0	0	1	3	3	5
Total	23	25	9	5	21	18	53	48

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 November 2012.

Both Liechtenstein and Norway saw an increase in the number of infringement cases brought against them since the previous Scoreboard. Liechtenstein by 4 cases and Norway by 3 cases. Iceland saw a decrease in the number of cases brought against it by 2.

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

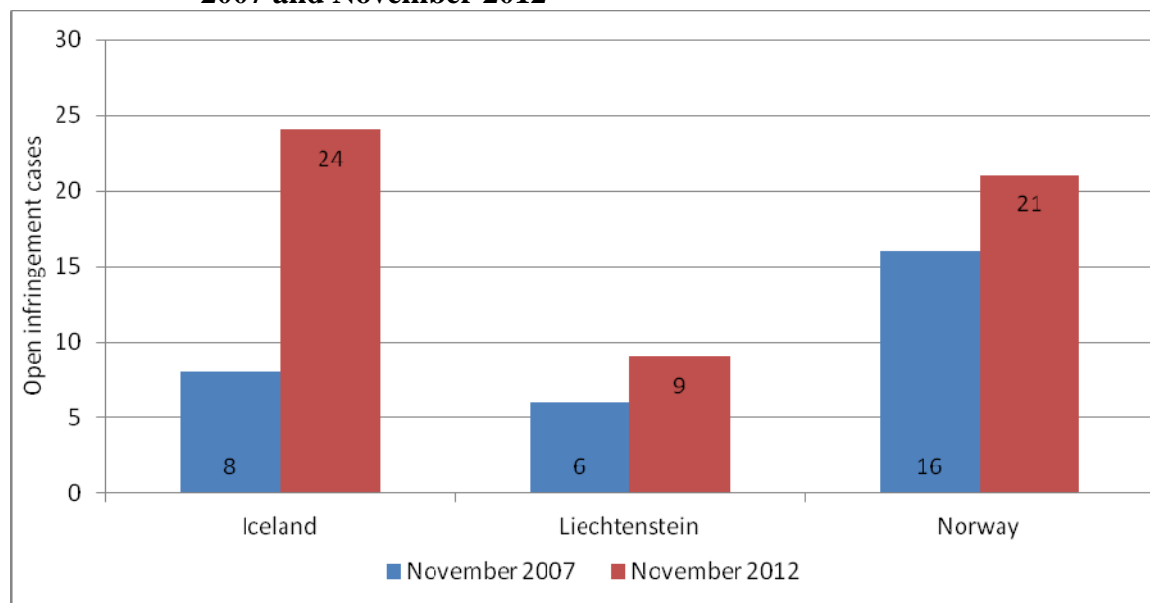


Pending infringement cases due to lack of conformity with or incorrect application of Internal Market rules on 1 November 2012 compared to the situation in May 2012.

Source for EU figures: The European Commission's Internal Market Scoreboard N° 26.

A comparison between the number of infringement proceedings pursued against the EEA EFTA States in November 2007 and November 2012 shows that infringement proceedings against Iceland increased by 16 cases, from eight to 24. For Liechtenstein the number increased by three from 6 to 9 cases, and for Norway the number of cases increased by 5, from 16 to 21. (**Figure 16**).

Figure 16: Comparison of open infringement cases concerning lack of conformity with or incorrect application of Internal Market rules in November 2007 and November 2012



Open infringement cases concerning lack of conformity with or incorrect application of Internal Market rules as at 1 November 2012 (in red) compared to corresponding figures as at 1 November 2007 (in blue).

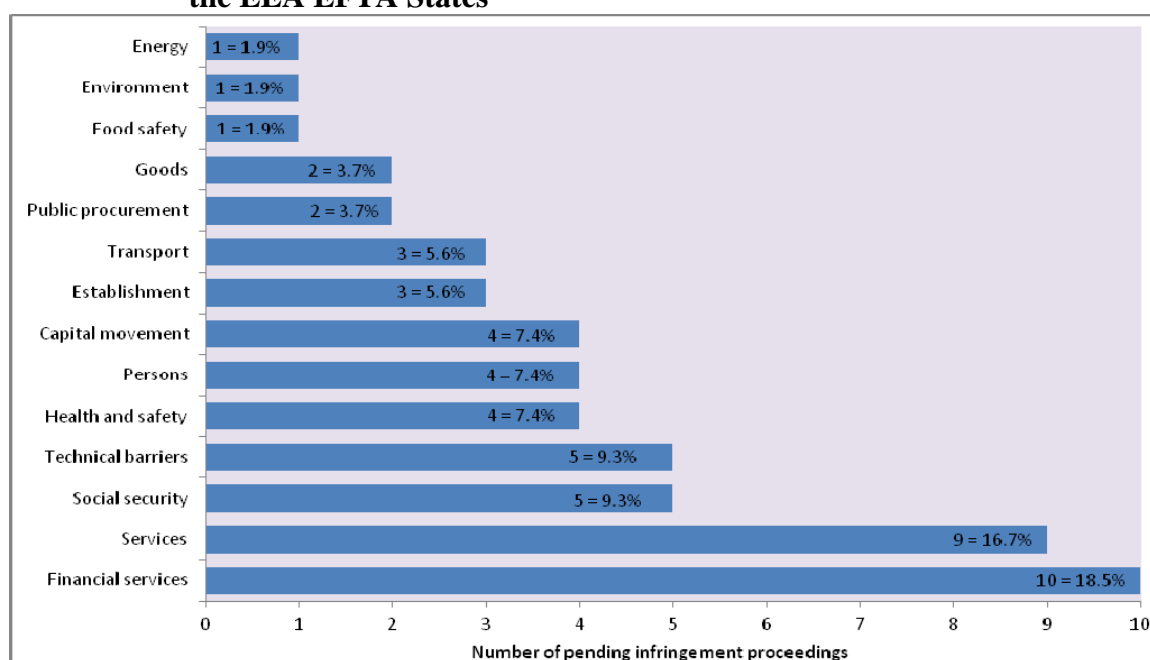
Undertakings and citizens may lodge a complaint with the Authority if they believe that they have not been able to exercise their rights under the EEA Agreement due to the failure of an EEA EFTA State to apply the EEA Agreement correctly.

The number of pending infringement proceedings initiated as a result of complaints increased by five since the time of the previous Scoreboard (from 15 to 20). The 20 pending infringement proceedings initiated on the basis of complaints represent 37% of the 54 pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Ten of these complaint cases related to Norway, five to Iceland and five to Liechtenstein.

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 18.5% of all infringement proceedings (**Figure 17**).

Figure 17: 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 November 2012 divided by sector.

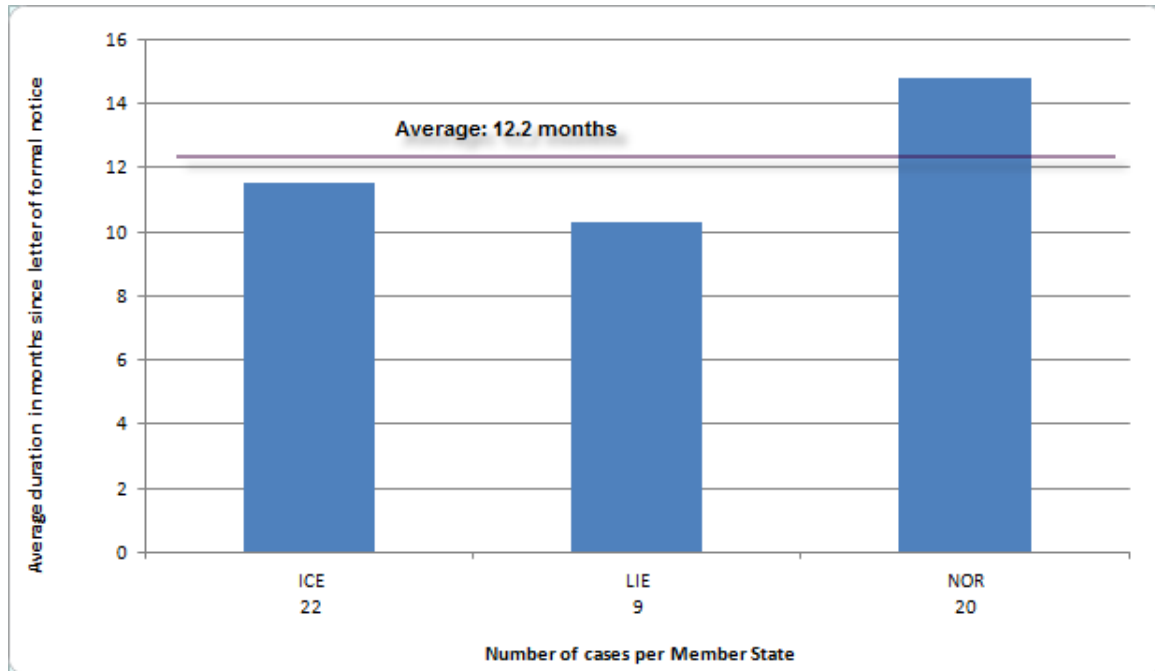
3.2.3. Duration of infringement proceedings

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 12.2 months at the cut-off date of 1 November 2012 (**Figure 18**). This is an increase of 2.5 months compared to the last Scoreboard. The average duration of the EU Member States' infringement proceedings still exceeds the two years mark (26.1 months).

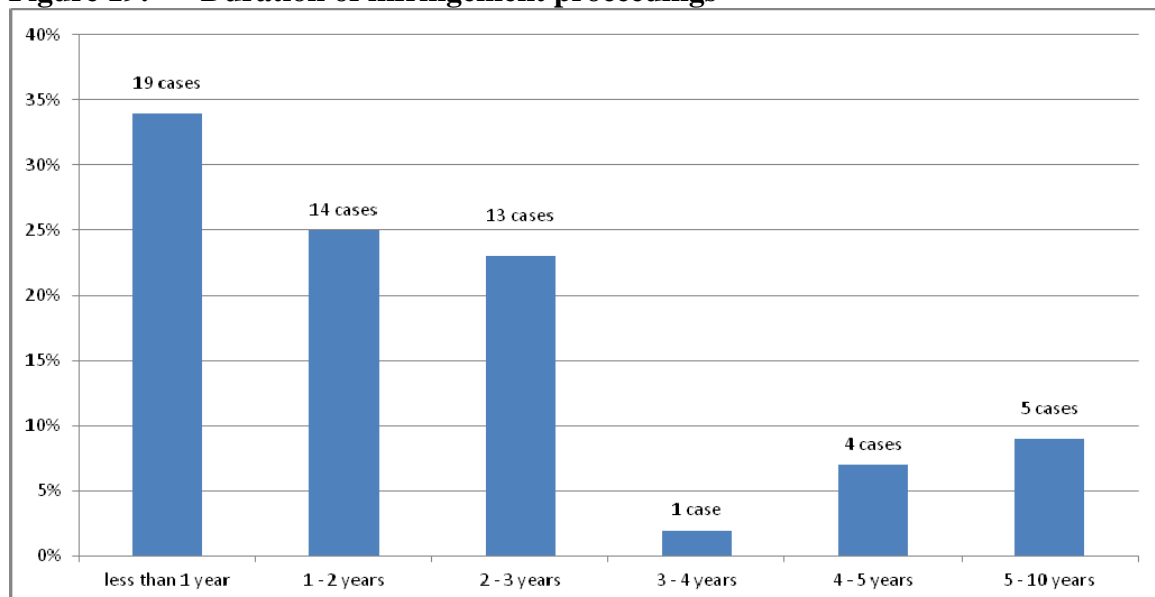
Figure 18: Pending infringement cases not yet sent to the EFTA Court as of 1 November 2012



Pending infringement cases not yet sent to the EFTA Court as at 1 November 2012 (51 cases): average time in months from the moment the letter of formal notice was issued.

Observed over a period of three years, the statistics show that the vast majority of cases (46 out of 55) are closed or referred to the EFTA Court within three years of issuing a letter of formal notice. Nearly two thirds of the cases (33 out of 56) are dealt with within the first 2 years (**Figure 19**). For the EU27, half of all infringement procedures take more than two years.

Figure 19: Duration of infringement proceedings



Infringement cases closed or brought before the Court between 1 May 2009 and 31 October 2012: average time in years needed either to close an infringement case or to bring it before the Court from the moment the letter of formal notice is sent (56 such cases)

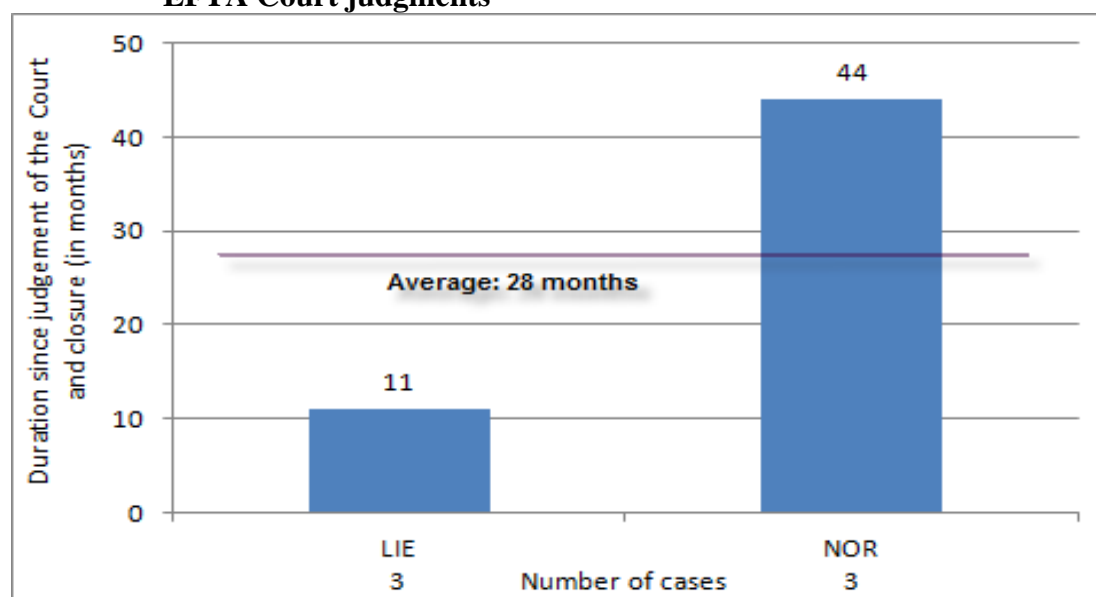
3.2.3.2. Compliance with Court judgements

Court rulings establishing a breach of EEA legislation require that the State concerned takes immediate action to ensure EEA law compliance as soon as possible¹⁰. Internal circumstances or practical difficulties cannot justify non-compliance with obligations and time-limits arising from EEA law.¹¹

The average time taken by the EEA EFTA States to comply with an EFTA Court ruling is 28 months (**Figure 21**). This is an increase since the assessment 6 months ago, when the average was 22.7 months. This long delay is 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 2007.¹² This resulted in yet 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 the previous judgment.¹³ Therefore, as already expressed in previous Scoreboards, the EEA EFTA States are called upon to make compliance with EFTA Court rulings a higher priority.

In comparison, the EU average has remained the same since the assessment one year ago, with an average duration of 17.4 months.

Figure 21: EEA EFTA States take an average of more than 2 years to comply with EFTA Court judgments



Cases closed between 1 November 2007 and 31 October 2012 (6 cases): Average duration between the judgment of the EFTA Court and the resolution of the case.

¹⁰ 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.

¹¹ 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.

¹² Case E-2/07 *EFTA Surveillance Authority v The Kingdom of Norway*, 2007 EFTA Court Report, 280.

¹³ Case E-18/10 *EFTA Surveillance Authority v The Kingdom of Norway*, 2011 EFTA Court Report, 204.

4. INTERNAL MARKET ENFORCEMENT TABLE – EEA EFTA STATES

As illustrated on several occasions above, the good 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 so-called Internal Market Enforcement Index 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	1.8%	0.4%	0.7%	1.0%	0.6%
Progress over the last 6 months (change in the number of outstanding directives)	+1	-1	-8	-3	-4
Number of directives two years or more overdue	3	0	0	1	0
Transposition delay on overdue directives (in months)	13	7.6	7.5	9.4	9.8
Compliance deficit	0.6%	0.2%	0.1%	0.3%	0.6%
Number of pending infringement cases	24	9	21	18	31
Average speed of infringement resolution - pending cases (in months)	12	10	15	12.2	26.1
Duration since Court's judgements - closed cases (in months)	NA	11	44	28	17.4

Legend

< average	average ± 10%	> average
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except

Transposition deficit	≤1%	/	≥1%
Change in the number of outstanding directives	decrease	no change	increase
Duration since Court's Judgment	<8 months	8-18 months	>18 months
NA = not applicable			

The Index shows that, overall, Liechtenstein is the best performing EEA EFTA State. However, each of the EEA EFTA States has several areas where more attention is needed.

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 increased by 10% (corresponding to 5 cases) from the time of the previous Scoreboard (**Figure 22**). Liechtenstein had an increase of three cases in comparison with the previous Scoreboard. Both Iceland and Norway had an increase of 1 case each.

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

	ICE		LIE		NOR		EEA EFTA	
	Nov 12	May 12	Nov 12	May 12	Nov 12	May 12	Nov 12	May 12
Letter of formal notice	11	24	7	4	8	9	26	37
Reasoned opinion	18	4	0	0	5	3	23	7
Referral to EFTA Court	0	0	0	0	0	0	0	0
Total	29	28	7	4	13	12	49	44

Pending EEA EFTA States infringement cases due to non-transposition of directives, broken down according to the stage of infringement proceedings reached, on 1 November 2012.

Since the previous Scoreboard, no cases concerning non-transposition of directives have been referred to the EFTA Court.

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 November 2012, Iceland had 40 overdue regulations which had not been notified as fully incorporated into its national law. This is 15 more than at the time of the previous Scoreboard. For Norway, the number of regulations not notified as fully incorporated into national law decreased by eight regulations, bringing the number of outstanding regulations to 11.

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 198 infringement cases pending in November 2012, 48% concerned the late transposition of regulations by Iceland (82 cases) and Norway (13 cases). This is an increase of 68 infringement proceedings against Iceland and of 10 against Norway since the time of the previous Scoreboard (**Figure 23**).

Figure 23: The number of infringement cases initiated against Iceland and Norway due to non-transposition of regulations increased since the previous Scoreboard

	ICE		NOR		EEA EFTA	
	Nov 12	May 12	Nov 12	May 12	Nov 12	May 12
Letter of formal notice	72	14	7	3	79	17
Reasoned opinion	10	0	6	0	16	0
Referral to EFTA Court	0	0	0	0	0	0
Total	82	14	13	3	95	17

Pending infringement cases against Iceland and Norway due to non-transposition of regulations, according to stage of infringement proceedings, on 1 November 2012.

Due to a substantial increase of letters of formal notice issued to Iceland for non-transposition of regulations, the overall number of infringement actions against Iceland and Norway multiplied roughly by five since the previous Scoreboard. An increase also be observed at the reasoned opinion stage for both States.