

EFTA SURVEILLANCE  
**AUTHORITY**



EEA EFTA States  
**Internal Market  
Scoreboard**

September 2010

# **INTERNAL MARKET SCOREBOARD**

**No. 26**

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

**21 September 2010**

**EFTA SURVEILLANCE AUTHORITY**

**MAIN FINDINGS -  
26th INTERNAL MARKET SCOREBOARD of the  
EEA EFTA STATES**

- The average transposition deficit of the EEA EFTA States remained at 0.7% the same as at the time of the previous Scoreboard, whilst the EU Member States' average transposition deficit increased by 0.2%, from 0.7% to 0.9%.
- Norway reduced its deficit from 0.5% to 0.4%, which is the same result as in July last year.
- The transposition deficit for Liechtenstein increased slightly, from 0.4% to 0.5%.
- Iceland's deficit, at 1.3%, remained the same as at the time of the previous Scoreboard. Regrettably, therefore, Iceland's deficit remained above the 1% interim target.
- Iceland had four directives overdue by more than two years, Liechtenstein and Norway had none.
- Iceland and Liechtenstein were able to reduce their transposition delays: Iceland from 13.4 months to 10.5 months and Liechtenstein from 9.5 months to 6.5 months. Norway's average transposition delay, at 4.7 months, remains the lowest among the EEA EFTA States.
- Regrettably, the number of overdue regulations in Iceland increased by 6, to 50. In Norway, the number decreased by 1 regulation, to a total of 14.
- The total number of infringement cases pursued by the Authority increased by 29 cases (from 88 to 117) from the time of the previous Scoreboard.
- Almost half of the pending infringement cases concerned *late transposition of regulations*. Regrettably, the number of such infringement cases against Iceland increased from 37 to 56 from the time of the previous Scoreboard.
- The overall number of infringement cases due to *incorrect transposition or incorrect application* of Internal Market rules increased to 29, which is 2 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 24 to 32 since the previous Scoreboard.

## 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 Agreement<sup>1</sup> is to extend the Internal Market to the three EEA EFTA States, namely Iceland, Liechtenstein and Norway.<sup>2</sup> Thus ensuring, by and large, 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. *Directives* must be transposed into national legislation in the EEA States, but it is left to each EEA State to choose the form and the method of implementation. Each directive provides a time limit by which transposition has to take place. EU directives are incorporated into the EEA Agreement through decisions 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.

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

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

<sup>2</sup> 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; and
- the number of directives still to be transposed; and
- the average time it takes for the EEA EFTA states to transpose directives.

The findings in this Scoreboard take into account the 1734 Internal Market directives that were incorporated into the EEA Agreement by 30 April 2010.<sup>3</sup> The Scoreboard records the transposition status for these directives on *10 May 2010*.

In addition to the information concerning the transposition of Internal Market directives into national law, the Scoreboard provides information on the number of infringement proceedings initiated against the EEA EFTA States for failure to apply EEA legislation correctly as well as for failure to transpose directives on time.

Finally, the last chapter of the Scoreboard provides information concerning the transposition of Internal Market regulations by the EEA EFTA States as well as infringement proceedings relating to late transposition of regulations.

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<sup>3</sup> The corresponding figure for the EU is 1425 Internal Market directives. The difference is caused by the fact that some directives become applicable in the EU before they are incorporated into the EEA Agreement, and some directives are repealed in the EU before they are repealed in the EEA EFTA States.

## 2. TRANSPOSITION OF INTERNAL MARKET DIRECTIVES 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 on to improve their transposition records.

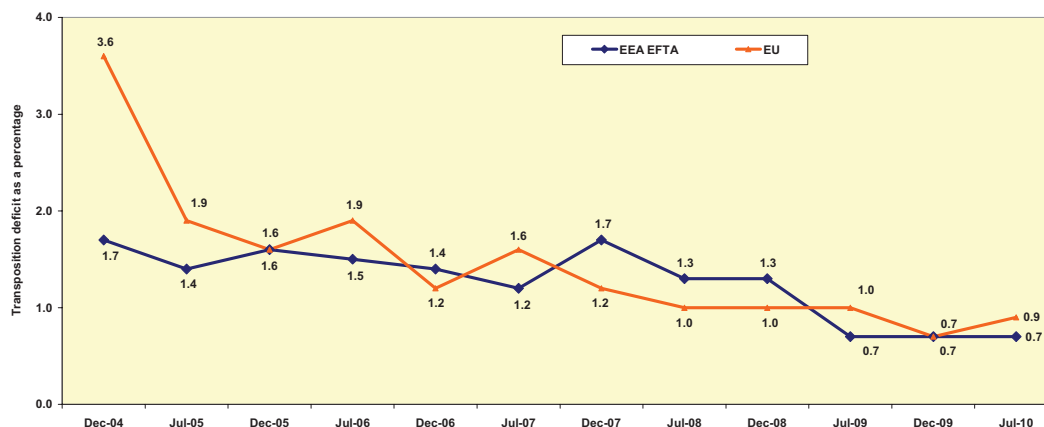
The transposition deficit indicates how many directives containing Internal Market rules and principles the EEA States have failed to communicate as having been transposed on time.<sup>4</sup> As from January 2009, the relevant deficit target to measure transposition performance has been 1% according to the European Council conclusions of March 2007.<sup>5</sup> This interim target set by the European Council is used as a benchmark by the Authority as well.

### 2.1 Average transposition deficit in May 2010

For the third time in a row, the average transposition deficit for the EEA EFTA States was 0.7 % (**Figure 1**). This is a remarkable achievement as, at 0.7%, the average transposition deficit is well below the interim target of 1%. In absolute terms, the 0.7% deficit indicates that the EEA EFTA States were late with 37 notifications of national transposing measures, which is the same result as at the time of the previous Scoreboard.

The EU average transposition deficit, at 0.9%, remained below the interim target of 1%.

**Figure 1: The EEA EFTA States’ average transposition deficit remained at 0.7%**



<sup>4</sup> 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.

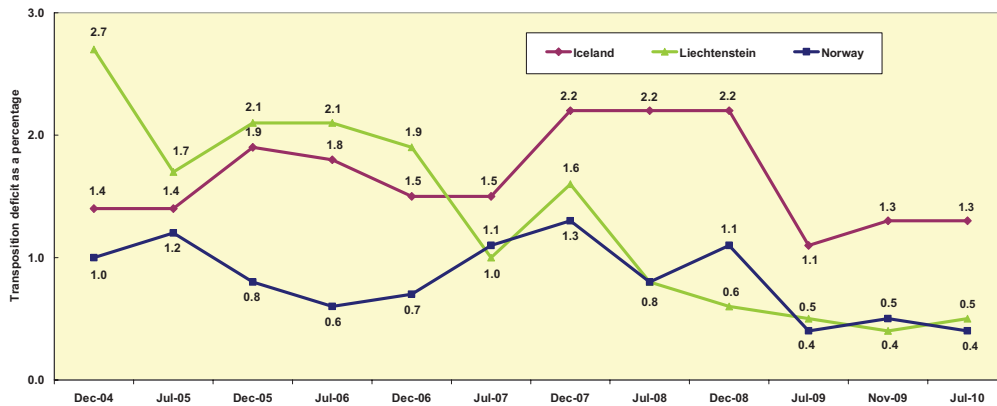
<sup>5</sup> Conclusion of the European Council summit in Brussels (8-9 March 2007).

*Transposition deficit (2010) on 10 May 2010 for the EEA EFTA States and the EU 27 for directives which should have been transposed on or before 30 April 2010. The 1997-2008 deficits for the EEA EFTA States and the EU States have been taken from the second Scoreboards of each year.  
Source for EU figures: The European Commission's Internal Market Scoreboard N° 21.*

## 2.2 Performance measured against the 1.0% interim target

Iceland's transposition deficit, at 1.3%, remained the same as at the time of the previous Scoreboard. The deficit corresponds to 22 directives not fully transposed on time. The Authority urges Iceland to reinforce its efforts to bring the transposition deficit in line with the 1% target.

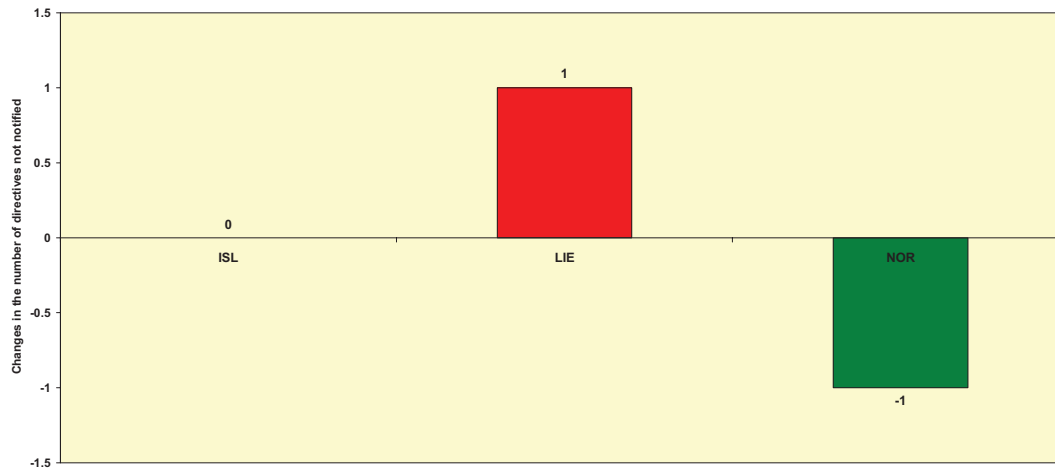
**Figure 2: Liechtenstein and Norway continue to comply with the 1% target, Iceland remains above the target**



*Transposition deficit on 10 May 2010 for directives which should have been transposed on or before 30 April 2010.*

Norway managed to achieve the same result as in July 2009, namely a deficit of 0.4%. This deficit corresponds to seven directives not having been fully transposed, one less than at the time of the previous Scoreboard. Liechtenstein deficit increased slightly, from 0.4% to 0.5%. This corresponds to eight directives not having been fully transposed, i.e. one directive more than at the time of the previous Scoreboard.

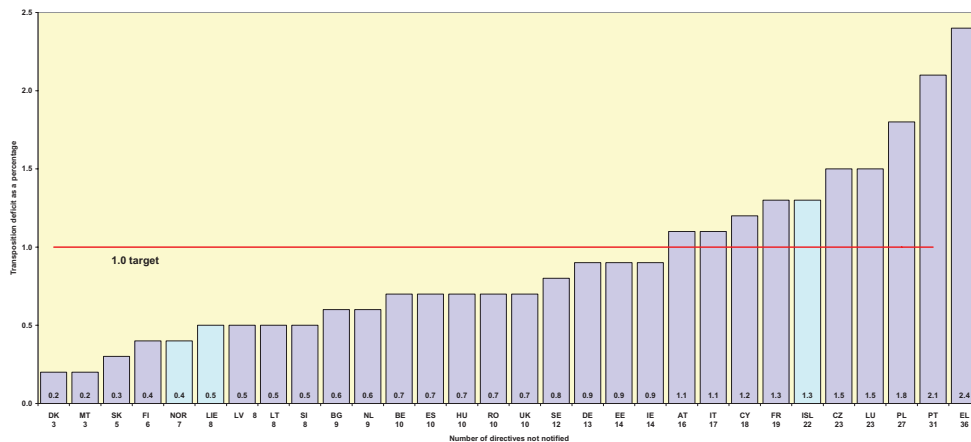
**Figure 3: Change in the number of outstanding directives since the previous Scoreboard**



*The change in the number of outstanding directives by each EEA EFTA State since the March 2010 Scoreboard.*

Out of the 30 EEA States, 20 succeeded in bringing their transposition deficits in line with the 1% interim target, whereas ten EEA States remained above the target. This means that two EU Member States that were in line with the target 6 months ago missed the target this time. Out of the three EEA EFTA States, Liechtenstein and Norway are well below the deficit target of 1%, but Iceland remains above the target (**Figure 4**).

**Figure 4: Iceland, together with nine EU Member States, remains above the 1% target**



*Comparison of transposition deficits within the EEA.*

*Source for EU figures: The European Commission's Internal Market Scoreboard N° 21.*



## 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 are at times 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.<sup>6</sup> Similarly, such delays in the transposition of directives is 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 managed to reduce the average time taken to transpose directives by two months since the time of the previous Scoreboard, from 9.2 to 7.2 months. This reduction seems to indicate that the EEA EFTA States have put increased focus on the need to reduce transposition delays, as called for in the previous Scoreboard, and that good transposition performance does not seemingly depend on external circumstances.

**Figure 5: EEA EFTA States’ average transposition delay at 7.2 months**

Length of delay	Number of overdue directives					
	ISL		LIE		NOR	
	Oct 09	Apr 09	Oct 09	Apr 09	Oct 09	Apr 09
Less than 6 months	11	8	4	1	4	3
6 to 12 months	4	6	1	3	1	1
12 to 24 months	0	3	1	1	0	0
Over 24 months	4	3	0	0	0	0
<b>Average delay</b> (in months) by 30 April 2010	<b>10.5</b>	13.4	<b>6.5</b>	9.5	<b>4.7</b>	4.6

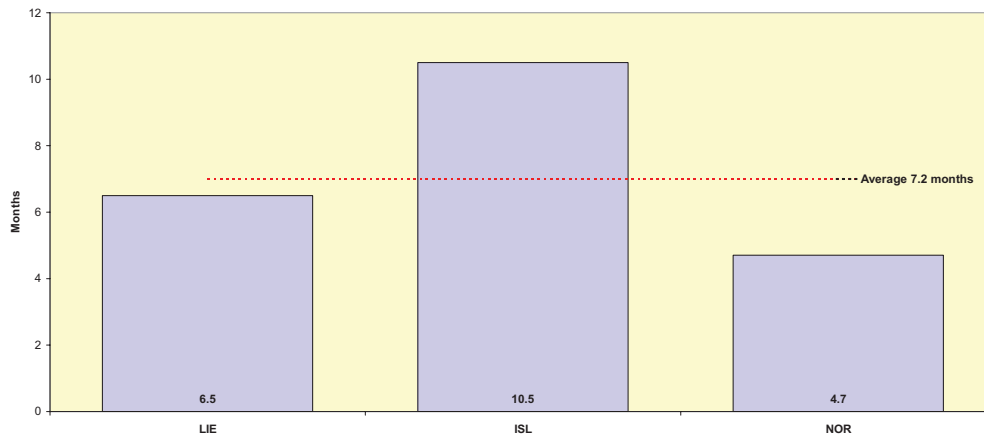
*Number of overdue Internal Market directives with a transposition deadline of 30 April 2010 for which no notification was received by 10 May 2010, broken down by the length of delay.*

Whilst Iceland’s transposition deficit remained the same as at the time of the previous Scoreboard, it managed to reduce its transposition delay by 2.9 months. However, it should not be forgotten that, on average, an extra 10.5 months is still taken by Iceland to transpose directives after the transposition deadlines expire.

<sup>6</sup> Conclusion of the European Council summit in Barcelona (15-16 March 2002).

Similarly to Iceland, Liechtenstein’s transposition delay decreased by 3 months, bringing the delay to 6.5 months. Norway’s transposition delay, at 4.7, remains the lowest transposition delay among the three EEA EFTA States.

**Figure 6: Norway has the lowest transposition delay among the three EEA EFTA States**



*Average transposition delay of overdue Internal Market directives with a transposition deadline of 30 April 2010 for which no notification was received by 10 May 2010, broken down by the length of 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 is, the more serious are the consequences. Therefore, a “zero tolerance” target has been set for directives whose transposition is two years or more overdue.<sup>7</sup>

Most of the directives which have not yet been transposed by the EEA EFTA States are overdue by less than 6 months (19 directives), with 6 directives overdue by 6 to 12 months. Neither Liechtenstein, nor Norway have any directives overdue by more than two years. Regrettably, Iceland has four directives overdue by more than two years, one more than at the time of the previous Scoreboard (**Figure 7**). The directives in question are:

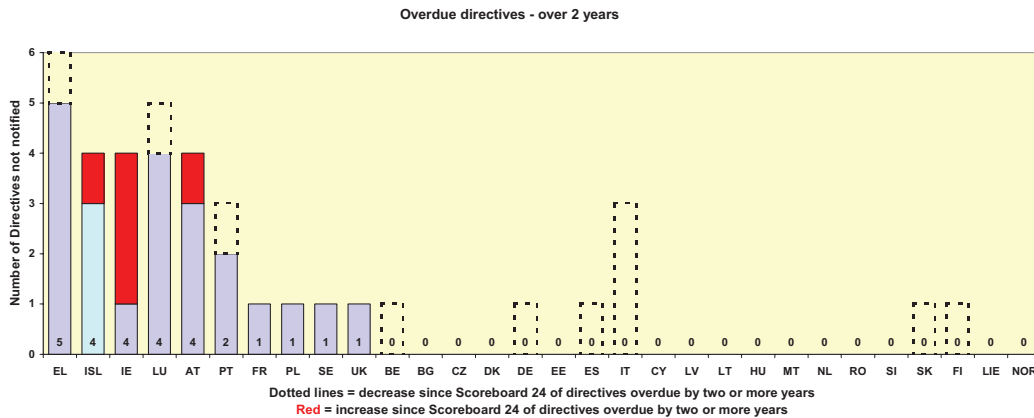
- Directive 2006/22/EC on social legislation relating to road transport;
- Directive 2005/68/EC on reinsurance;
- Directive 2003/55/EC on common rules for the internal market in natural gas; and
- Directive 2004/8/EC on the promotion of cogeneration based on useful heat.

It should be noted that long delays in transposing directives cannot be justified by administrative burdens or the complexity of the directives; the long delays simply should not exist. The Authority has launched infringement proceedings against Iceland regarding three of the directives.

<sup>7</sup> Conclusions of the European Council summit in Barcelona (15-16 March 2002).

The Authority strongly urges Iceland to take the necessary action to transpose directives that are more than two years overdue as a matter of urgency.

**Figure 7: Iceland had four directives overdue by more than two years, Liechtenstein and Norway had none**



Number of directives with a deadline for transposition into national law on or before 30 April 2010, which were not transposed by 10 May 2010.

Source for EU figures: The European Commission's Internal Market Scoreboard N° 21.

## 2.4 Conformity of legislation: Directives not correctly transposed

For the well functioning of the Internal Market, timely transposition of EEA legislation represents only the 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.

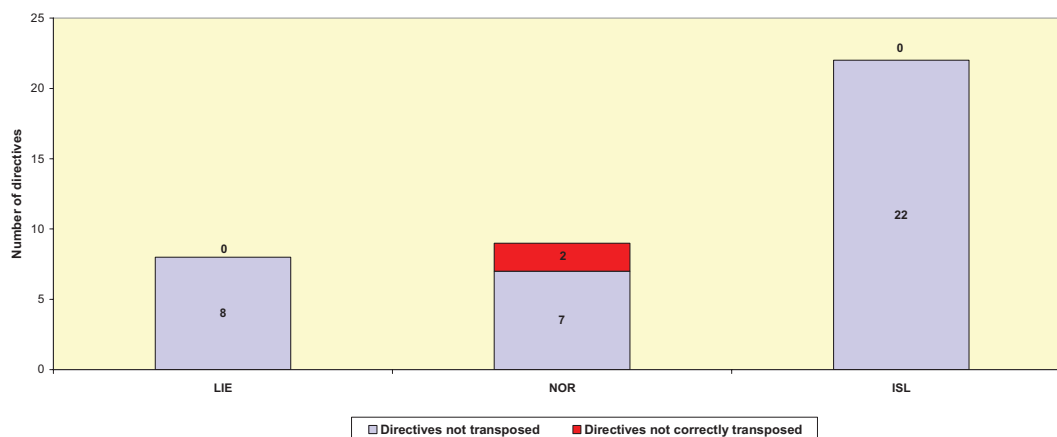
About a quarter of the directives notified to the Authority have been made subject to a systematic assessment of conformity between the text of the directive and the notified national measures. The majority of such assessments are, however, concluded without the need to resort to formal infringement proceedings.

The overall number of directives not communicated to the Authority as having been fully transposed, at 37, remained the same as at the time of the previous Scoreboard. The number of infringement proceedings against the EEA EFTA States concerning incorrect

transposition of directives, at two, was significantly lower than the number of outstanding directives.<sup>8</sup>

Adding the number of directives not correctly transposed to the number of directives not yet transposed, the EEA EFTA States' ranking is as follows: Liechtenstein has the lowest number of cases (8), followed by Norway (9) and Iceland (22).

**Figure 8: Number of infringement cases concerning not correctly transposed directives is very low**



*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 2010).*

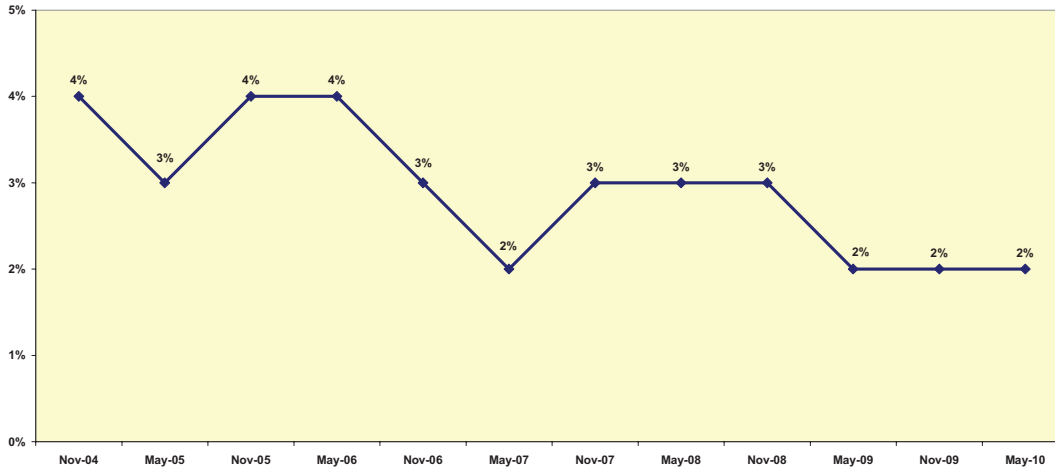
## 2.5 Fragmentation of the Internal Market in the EEA EFTA States

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 much smaller and fragmented. Consequently, the economic interests of all EEA States are hampered if only one EEA State does not deliver on time.

In total, 2% of the directives in force in the EEA EFTA States in April 2010 had not been transposed by all three EEA EFTA States (**Figure 9**). The fragmentation factor of 2% translates into 27 directives not transposed by all three EEA EFTA States and that have, therefore, not achieved their full effect in the EEA EFTA States. The Internal Market is thus operating at 98% of its full potential in the EEA EFTA States.

<sup>8</sup> This figure only includes problems with the correct transposition of directives as established on the basis of systematic *conformity assessments*.

**Figure 9: Fragmentation factor in the EEA EFTA States remains at 2%**



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. Among the sectors most fragmented in the EEA EFTA States are the areas of goods – technical barriers and transport. More efforts are needed to reduce the fragmentation in these sectors.

**Figure 10: Most outstanding directives were in the area of goods – technical barriers**

	Financial services (2)	Health and Safety (1)	Persons – general (4)	Transport (10)	Environment (3)	Company law (2)	Food safety (1)	Goods - technical barriers (11)	Energy (3)	Total
ISL	2	1	1	7	2			7	2	22
LIE			2	1	1	2		2		8
NOR			1	2			1	2	1	7

Note: Breakdown by EEA EFTA State of the backlog of non-transposed directives and sector concerned – situation as of 10 May 2010.

The fragmentation factor in the 27 EU Member States was 6%, meaning that the Internal Market is operating at only 94% of its potential in the EU Member States.

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 PROCEDURES

If the Authority considers that an EEA EFTA State has failed to fulfil an obligation under the EEA Agreement, it may initiate formal infringement procedures pursuant to Article 31 of the Surveillance and Court Agreement.<sup>9</sup> Such infringement proceedings correspond to those initiated by the European Commission under Article 258 TEU.

The Authority endeavours to solve all matters by informal means, through contacts with the national administrations concerned. Formal infringement proceedings are opened, however, where an informal exchange of views fails to solve the problem at hand.

The opening of an infringement procedure provides an opportunity for a more formal dialogue between the Authority and the EEA EFTA State concerned. It should be noted that only the EFTA Court can declare that a breach of EEA law has occurred. Until the Court renders its judgment, the fact that an infringement procedure has 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 EEA Internal Market rules and principles in some other way. When EEA legislation/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 only partially transposed or not transposed at all into the national legislation of the EEA EFTA States within the set time limits. Infringement cases in this category (non-transposition cases) are generally clear-cut and, therefore, seldom the subject of legally complicated disputes between the Authority and the EEA EFTA State concerned.

Information on the infringement cases concerning non-timely transposition of regulations is included in chapter four covering the issue of transposition of Internal Market regulations by the EEA EFTA States.

#### 3.1. Increase in the total number of infringement proceedings

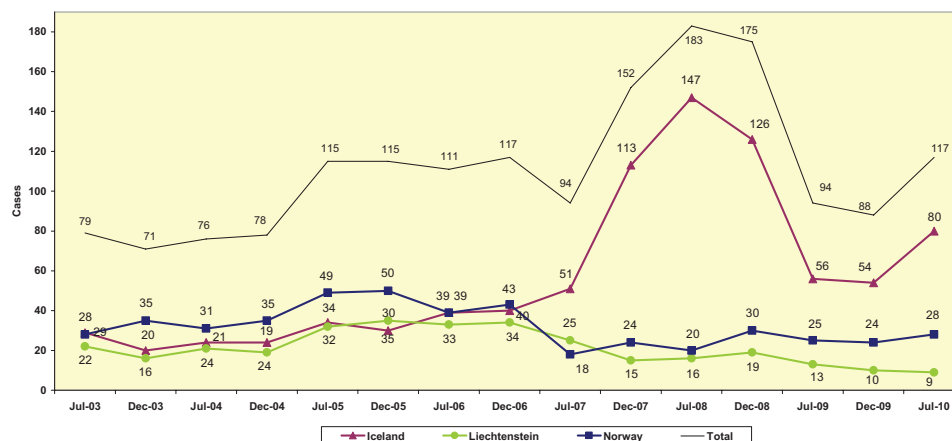
On 1 May 2010, a total of 117 infringement cases were being pursued by the Authority (**Figure 11**). This represents 29 cases more than at the time of the previous Scoreboard. The increase in the number of infringement cases is mainly due to the increase in the

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<sup>9</sup> Agreement on the Establishment of a Surveillance Authority and a Court of Justice.

infringement cases concerning timely incorporation of regulations (up from 37 to 56) and timely implementation of directives (up from 24 to 32).

**Figure 11: Total number of infringement cases increased by 29 cases**



Total number of all open infringement proceedings against the three EEA EFTA States on 1 May 2010.

Of the 117 infringement cases pending on 1 May 2010, 29 cases concerned incorrect implementation or application of Internal Market rules (see point 3.2) whereas 32 cases concerned the late transposition of directives (see point 3.3). The remaining 56 cases concerned the late transposition of regulations (see point 4.3).

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

#### 3.2.1. Number of infringement proceedings

The overall number of infringement cases due to lack of conformity with or incorrect application of Internal Market rules (29 cases) increased by two cases since the time of the previous Scoreboard (Figure 12).

**Figure 12: The number of infringement cases against the EEA EFTA States due to lack of conformity with or incorrect application of Internal Market rules increased by two since the previous Scoreboard**

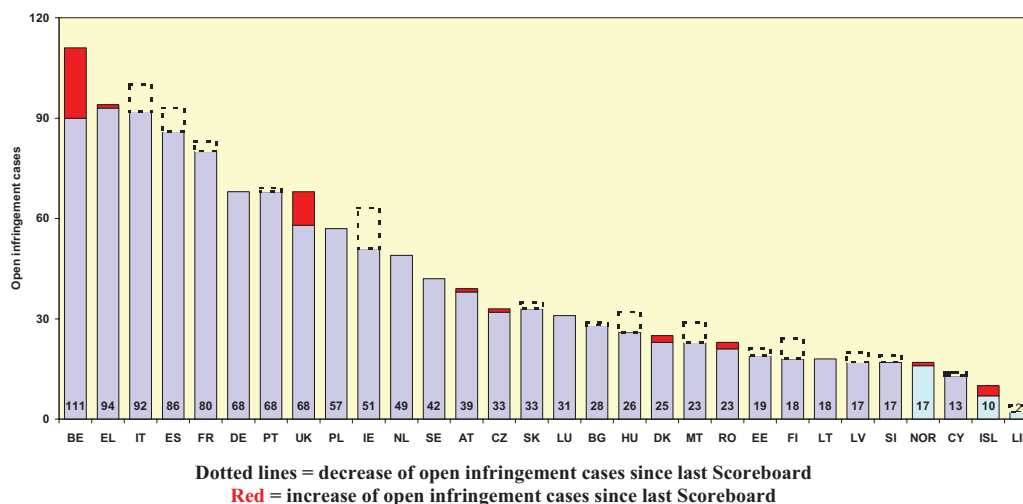
	ISL		LIE		NOR		EEA EFTA	
	Apr 10	Oct 09	Apr 10	Oct 09	Apr 10	Oct 09	Apr 10	Oct 09
Letter of formal notice	7	6	1	2	13	12	21	20
Reasoned opinion	3	1	1	0	4	4	8	5
Referral to EFTA Court	0	0	0	2	0	0	0	2
<b>Total</b>	<b>10</b>	<b>7</b>	<b>2</b>	<b>4</b>	<b>17</b>	<b>16</b>	<b>29</b>	<b>27</b>

*Pending infringement cases due to lack of conformity with or incorrect application, broken down according to the stage of infringement proceedings reached, on 1 May 2010.*

Whilst Liechtenstein managed to reduce the number of infringement proceedings by half, Iceland and Norway increased their number of infringement proceedings: Iceland by three and Norway by one.

In comparison to the EU27, the number of infringement proceedings against the EEA EFTA States remained low (**Figure 13**). Liechtenstein, with two cases, and Iceland, with ten cases, had the lowest number of infringement proceedings out of the 30 EEA States.

**Figure 13: 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 2010 compared to the situation in November 2010.*

*Source for EU figures: The European Commission’s Internal Market Scoreboard N° 21.*



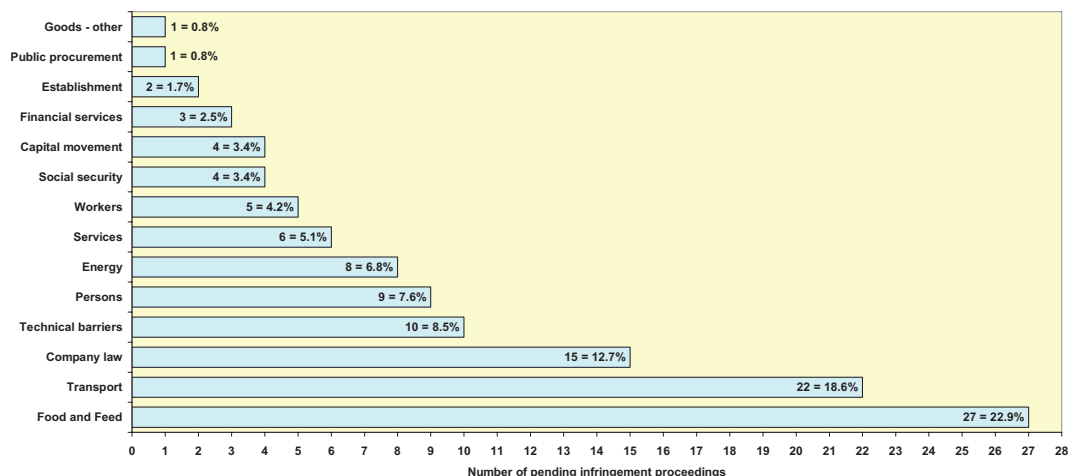
Undertakings and citizens may lodge a complaint with the Authority if they believe that they have not been able to exercise their rights under the EEA Agreement because of the failure by an EEA EFTA State to apply the EEA Agreement correctly. The number of pending infringement proceedings initiated as a result of a complaint remained the same as at the time of the previous Scoreboard (11).

The 11 pending infringement proceedings initiated on the basis of complaints represent 38% of the 29 pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Eight of these cases (73%) related to Norway, two to Iceland (18%) and one to Liechtenstein (9%).

### 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 took place in the field of food and feed safety, transport and company law. Together these three sectors accounted for over 50% of the infringement proceedings.

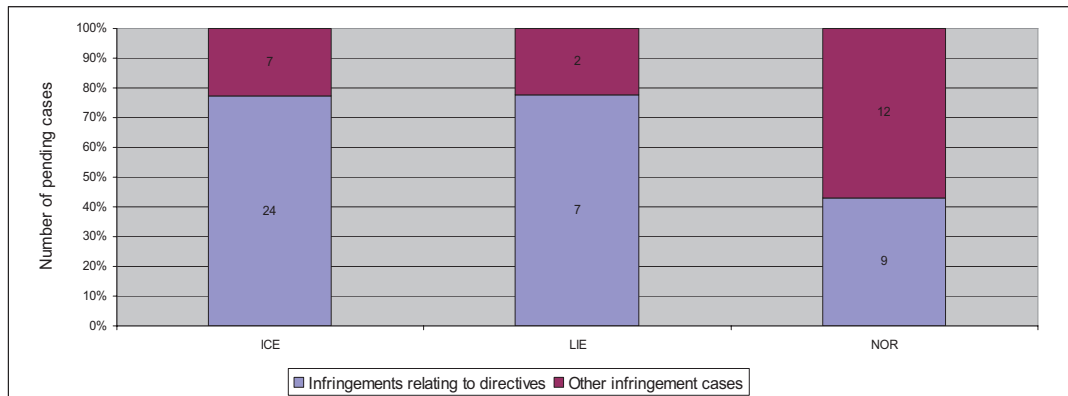
**Figure 14: Food sector accounts for most of the infringement proceedings in the EEA EFTA States**



*Pending infringement proceedings due to lack of conformity with or incorrect application of Internal Market rules on 1 May 2010 divided by sector.*

### 3.2.3. Breakdown of infringement proceedings by nature of cases

**Figure 15: Nearly twice as many infringement proceedings against the EEA EFTA States concerned directives rather than other Internal Market rules**



The blue part of the column shows the number of pending infringement cases relating to non-transposition, incorrect transposition or misapplication of directives. The red part shows the number of cases opened due to wrong application of Internal Market rules other than directives, such as the provisions of the EEA Agreement and regulations, on 1 May 2010.

Figure 15 shows that most infringement proceedings against the EEA EFTA States concerned directives (whether non-communication of national transposition measures, incorrect transposition, or misapplication of the measures) rather than infringements relating to Internal Market rules other than directives, such as the provisions of the EEA Agreement and regulations (40 proceedings compared to 21). Similarly, the vast majority (73%) of infringement cases pursued by the European Commission against the EU Member States during the same time period related to the non-communication, incorrect transposition or misapplication of directives.<sup>10</sup>

### 3.2.4. Duration of infringement proceedings

#### 3.2.4.1. Time required to resolve 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 resolve infringement proceedings and/or the time taken by the EEA EFTA States to comply with Court judgments.

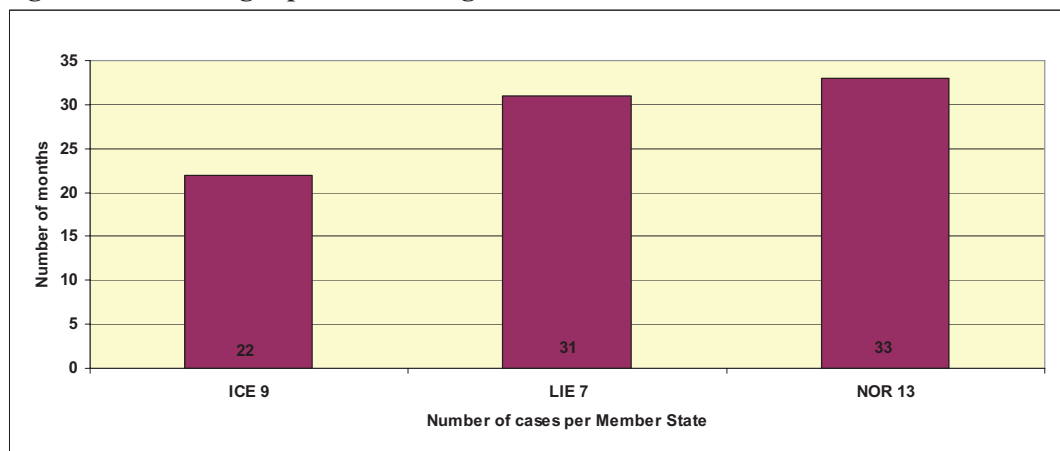
During the period between 30 April 2008 and 30 April 2010, the average time between the sending of the letter of formal notice and the closure of the case or its referral to the EFTA Court in the EEA EFTA States was 29 months (**Figure 16**).

The EEA EFTA States' average time of 29 months is slightly higher than the average speed of infringement resolution of 27 months in the EU15 (DK, ES, IE, FR, PT, BE, NL,

<sup>10</sup> Source for EU figure: The European Commission's Internal Market Scoreboard N° 21, Figure 14.

FI, SE, AT, DE, EL, IT, UK, LU) but is well above the average speed of 17 months in the EU12 (PL, EE, LV, MT, CZ, SK, HU, LT, SI, CY, RO, BG).<sup>11</sup>

**Figure 16: Average speed of infringement resolution**

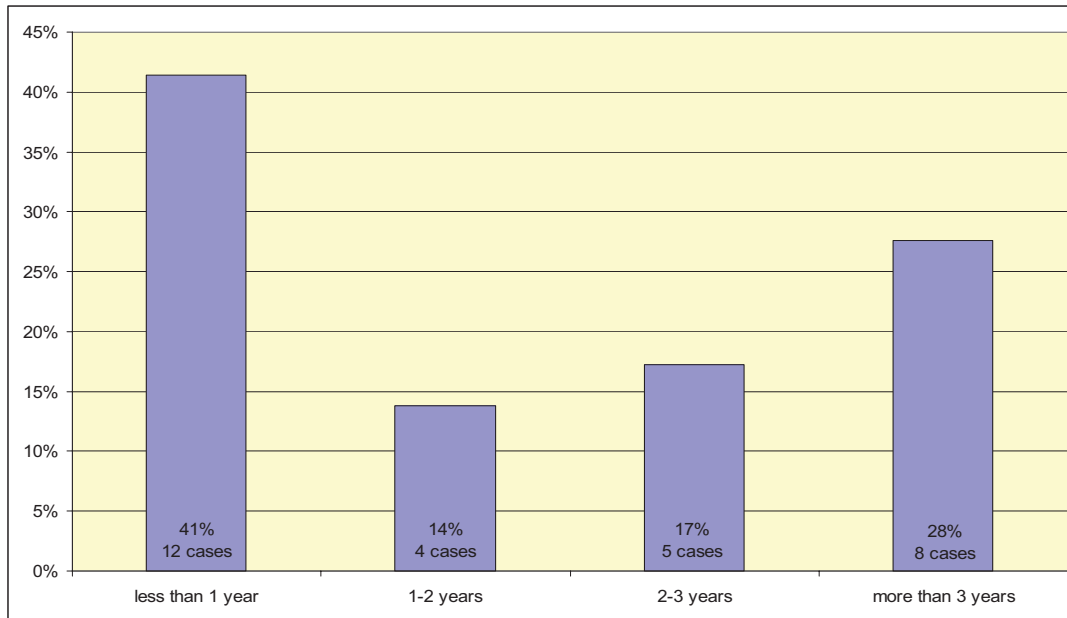


*Infringement cases closed or brought before the EFTA Court between 30 April 2008 and 30 April 2010: average time in months needed to either close an infringement case or to bring it before the EFTA Court taken from the moment the letter of formal notice was issued.*

Although 41% of the infringement cases took less than one year to be resolved or brought before the EFTA Court, 28% of the cases took more than three years before being resolved or referred to the EFTA Court (**Figure 17**). This is too long by far given that infringement proceedings create legal uncertainty and undermine the well-functioning of the Internal Market. The EEA EFTA States are, therefore, urged to increase efforts to resolve ongoing infringement proceedings faster.

**Figure 17: 41% of the infringement cases took less than one year but 28% took more than three years to be resolved or brought before the EFTA Court**

<sup>11</sup> Source for EU figure: The European Commission's Internal Market Scoreboard N° 21, Figure 16.



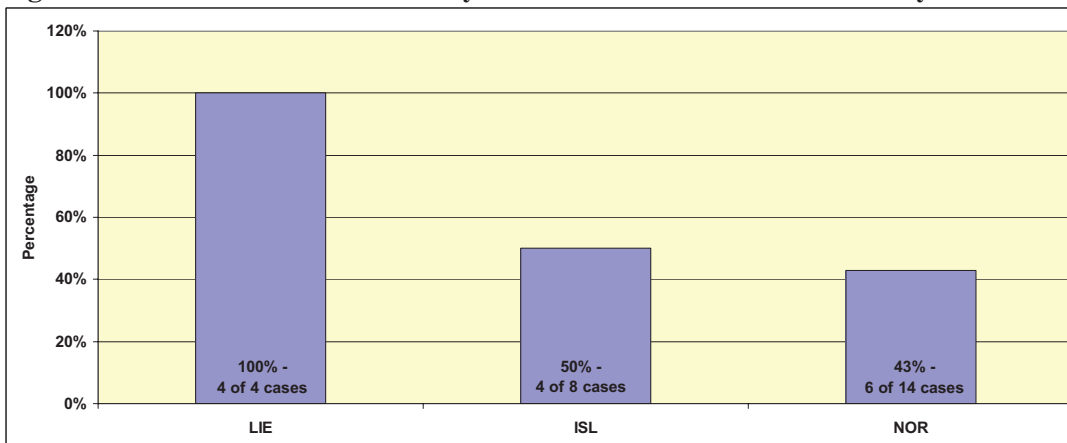
*Infringement cases closed or brought before the EFTA Court between 30 April 2008 and 30 April 2010: average time in years needed to either close an infringement case or to bring it before the EFTA Court taken from the moment the letter of formal notice was issued.*

### 3.2.4.2. Early resolution rate

Looking at the infringement proceedings initiated by the Authority between 1 September 2007 and 31 August 2009, and noting that by 30 April 2010 over half of these cases had been closed, one can note that the *early* resolution of cases by the EEA EFTA States was good and even improved from 62.9% at the time of the previous Scoreboard, to 64.3% in this Scoreboard. **(Figure 18).**

In the EU27, during the same time period, the average number of cases resolved at an early stage went down from 38.6% to 36.2%.

**Figure 18: EEA EFTA States’ early resolution of cases was satisfactory**



*Number of cases closed by 30 April 2010 as a percentage of the number of cases initiated between 1 September 2007 and 31 August 2009.*

### 3.3. 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 25% (eight cases) from the time of the previous Scoreboard (**Figure 19**). The increase concerned mainly Iceland (up from 15 cases to 21).

**Figure 19: The number of infringement cases against the EEA EFTA States due to non-transposition of directives increased**

	ISL		LIE		NOR		EEA EFTA	
	Apr 10	Oct 09	Apr 10	Oct 09	Apr 10	Oct 09	Apr 10	Oct 09
Letter of formal notice	12	8	4	4	1	1	17	13
Reasoned opinion	8	6	3	0	2	1	13	7
Referral to EFTA Court	1	1	0	2	1	1	2	4
Total	21	15	7	6	4	3	32	24

*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 2010.*

Since the previous Scoreboard, no cases concerning non-transposition of directives were referred to the EFTA Court. The other Court referrals included in the above table concern cases which were already pending at the EFTA Court at the time of the previous Scoreboard, namely the case against Iceland for failure to implement Directive 2005/68 on reinsurance,<sup>12</sup> and Norway for failure to implement Directive 2002/91 on the energy performance of buildings.<sup>13</sup>

<sup>12</sup> The infringement case concerning the non-transposition by Iceland of Directive 2005/68 was referred to the EFTA Court on 30 April 2009. The judgment of the Court was rendered on 1 December 2009 (Case E-5/09).

<sup>13</sup> The infringement case concerning the non-transposition by Norway of Directive 2002/91 was referred to the EFTA Court on 12 November 2008. A judgment was rendered 13 May 2009 (Case E-6/08). On 24 March 2010, a letter of formal notice was sent to Norway for non-compliance with the judgment.

#### 4. Internal Market Enforcement Index – EEA EFTA States

As illustrated on several occasions above, the well functioning of the Internal Market does not only depend on timely implementation, but also on proper application of the Internal Market rules. This is the reason why the Internal Market Scoreboard uses a set of different indicators to measure the performance of the EEA States. This edition of the Internal Market Scoreboard is the first to provide an overall ranking of the EEA EFTA States on the basis of all the criteria shown in this edition.

The so-called Internal Market Enforcement Index links the different indicators better and to gives a more detailed overview of EEA EFTA States’ compliance with the implementation and application of Internal Market rules.

	ICE	LIE	NOR	EEA EFTA average
Transposition deficit	1.3%	0.5%	0.4%	0.7%
Progress over the last 6 months (change in the number of outstanding directives)	0	1	-1	0
Number of directives two years or more overdue	4	0	0	1
Transposition delay (on overdue directives)	10.5	6.5	4.7	7
Number of directives not timely or correctly transposed	24	7	9	13
Number of infringement cases: progress since November 2007*	-20%	33%	-6%	2%
Pending infringement cases (after LFN)*	10	2	17	10
Average speed of infringement resolution (in months)*	22	31	33	29
Early resolution rate*	50%	100%	43%	64%

Overall ranking**	3rd	1st	1st
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Legend	< average	average ± 10%	> average
Transposition deficit Scoreboard	<1%	1%	>1%
Ranking	1st	2nd	3rd

\*Excluding infringement cases concerning non-transposition of directives and non-incorporation of regulations

\*\*The overall ranking has been calculated as the average of the ranking obtained for each single indicator

The Index shows that, overall, Liechtenstein and Norway are the best performing EEA EFTA States. However, each of the EEA EFTA States have several areas in which more attention is needed.

## **5. TRANSPOSITION OF INTERNAL MARKET REGULATIONS INTO NATIONAL LAW**

### **5.1 Transposition of regulations “as such” by the EEA EFTA States**

A particular situation arises with regard to the incorporation of Internal Market regulations into the EEA Agreement. 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 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 2010, Iceland had 50 overdue regulations which had not been notified as fully incorporated into its national law. Regrettably this represented an increase of six outstanding regulations from the time of the previous Scoreboard. For Norway, the number of regulations not notified as fully incorporated into its national law decreased by one regulation, bringing the number of outstanding regulations in Norway to 14. Although part of the reason for the increase in the number of outstanding regulations in Iceland and Norway may relate to the high number of new regulations incorporated into the EEA Agreement since the previous Scoreboard (71 regulations), the Authority urges Iceland to make serious efforts to revert to its earlier positive trend in the incorporation of regulations.

### **5.3 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. Out of the 117 infringement cases pending in May 2010, 47% concerned the late transposition of regulations by Iceland (49 cases) and Norway (7 cases).

Since the time of the previous Scoreboard, 17 new infringement proceedings concerning the late transposition of regulations were initiated against Iceland. The corresponding number of new cases initiated against Norway was two (**Figure 20**).

**Figure 20: The number of new infringement cases initiated against Iceland (letters of formal notice sent out) due to non-transposition of regulations increased since the time of the previous Scoreboard**

	ISL		NOR		EEA EFTA	
	Apr 10	Oct 09	Apr 10	Oct 09	Apr 10	Oct 09
Letter of formal notice	42	25	1	3	43	28
Reasoned opinion	7	7	6	2	13	9
Referral to EFTA Court	0	0	0	0	0	0
<b>Total</b>	<b>49</b>	<b>32</b>	<b>7</b>	<b>5</b>	<b>56</b>	<b>37</b>

*Pending infringement cases against Iceland and Norway due to non-transposition of regulations, according to stage of infringement proceedings, on 1 May 2010.*

Due to the considerable increase in the number of letters of formal notice issued to Iceland for non-transposition of regulations, the overall number of infringement actions against Iceland and Norway increased significantly since the previous Scoreboard. No cases concerning non-transposition of regulations were referred to the EFTA Court since the time of the previous Scoreboard.

The Authority is determined to enhance the transparency and level of public information about the performance of the EEA EFTA States in transposing regulations and will therefore continue monitoring the transposition situation carefully and reporting on the situation to the public.

## **6. RECOGNITION OF PROFESSIONAL QUALIFICATIONS: IMPLEMENTATION OF DIRECTIVE 2005/36/EC IN THE EEA EFTA STATES**

Citizens of EEA States have a right to work in other EEA States irrespective of the State where they acquired their professional qualifications. However, an EEA State may make access to a profession conditional upon the possession of a professional qualification under its domestic regulations. Recognition of professional qualifications between EEA States is therefore key to making it attractive for citizens to work in other EEA States and for the markets to get the qualified professionals they need. The objective of the Professional Qualifications Directive is to facilitate the recognition of professional qualifications between EEA States. The Directive consolidated 15 previous Directives<sup>14</sup> whilst leaving major parts of the *acquis* untouched.

The EEA EFTA States were supposed to have transposed the Professional Qualifications Directive by 1 July 2009. Ten months after the entry into force date, Iceland, Liechtenstein and Norway have notified only partial implementation of the Directive.<sup>15</sup>

<sup>14</sup> Council Directives 89/48/EEC, 92/51/EEC, 1999/42/EEC, 77/452/EEC, 77/453/EEC, 78/686/EE, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC.

<sup>15</sup> This Scoreboard reflects the situation regarding notifications received by the Authority by 10 May 2010.



On 25 November 2009, the Authority issued letters of formal notice and, on 10 March 2010, delivered reasoned opinions to each of the three EEA EFTA States for not having implemented the entire Directive on time.

One of the reasons for the delay in the implementation of the Directive might be that the States underestimated the complexity of the transposition. Also, Norway chose to implement the Directive by laying down, for each profession or group of professions, the relevant provisions in a separate regulation rather than implementing the Directive on a horizontal level. Liechtenstein faces particular problems in the craft sector, as the relevant national act needs to be fundamentally revised and new regulations adopted.

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