

# **INTERNAL MARKET SCOREBOARD**

**No. 35**

**EFTA STATES  
of the  
EUROPEAN ECONOMIC AREA**

**April 2015**

**EFTA SURVEILLANCE AUTHORITY**

*MAIN FINDINGS –*

**35th INTERNAL MARKET SCOREBOARD of the  
EFTA STATES**

- **The average transposition deficit of the three EEA EFTA States is 2.0%, an increase from 1.9% in the previous scoreboard.**
  - **Of all the 28 EU Member States and the three EEA EFTA States, Iceland has the highest transposition deficit at 2.8% compared to 3.1% in the last Scoreboard. This corresponds to 31 directives not being fully transposed into national law within the foreseen deadlines.**
  - **Norway's deficit increased since the last Scoreboard from 1.9% to 2.0%. This is the second highest deficit in the whole EEA and corresponds to 23 overdue directives.**
  - **In the last three Scoreboards, Iceland and Norway had their worst scores since the introduction of the Scoreboard in 1997.**
  - **Liechtenstein's deficit increased from 0.7% to 1.2%. Liechtenstein has 13 directives where implementation is overdue.**
- **In comparison, the average deficit of the EU Member States is 0.5%. Only one EU Member State shows a deficit above the target of 1%, Slovenia with a 1.4% deficit.**
- **The EFTA Surveillance Authority finds the current trend alarming and strongly urges the Member States to do their utmost to reverse it. The Authority will further step up its efforts to ensure timely transposition.**
- **All EEA EFTA States have two directives outstanding for two years or more, none of which are the same for more than one state.**
- **In November 2014, Iceland had 34 overdue regulations – 42 less than at the time of the previous scoreboard. For Norway, the number decreased by ten, to 20 outstanding regulations.**
- **The total number of infringement cases pursued by the Authority increased from 238 to 244 since the previous scoreboard. Of these, 185 concern the late transposition of directives or regulations, while 59 concern the incorrect implementation and application of EEA provisions.**

## 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 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 is directly applicable once the EEA Joint Committee decision incorporating it into the

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<sup>1</sup> Agreement on the European Economic Area, OJ L 1994/1, 3.

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 of *10 November 2014* for directives which should have been transposed on or before 31 October 2014. 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).

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. TRANSPOSITION OF INTERNAL MARKET DIRECTIVES INTO NATIONAL LAW

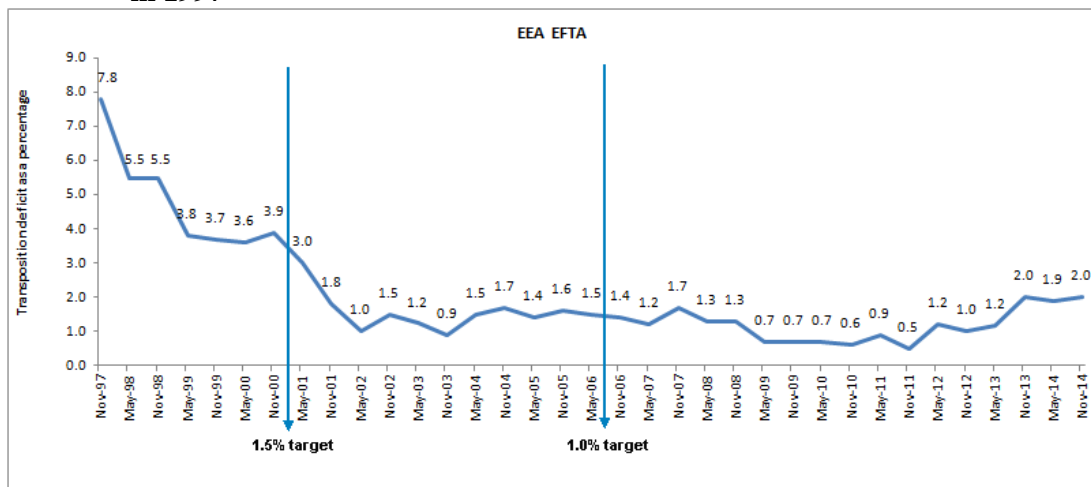
The Internal Market is a key driver of growth and jobs and one of the main engines for economic recovery. In these challenging times, a well-functioning Internal Market is more important than ever as it provides opportunities for businesses and citizens. Yet the Internal Market does not deliver benefits 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 transposed on time.<sup>2</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>3</sup> This interim target, set by the European Council, is used also as a benchmark by the Authority.

### 2.1 Average transposition deficit in November 2014

In November 2014, the average transposition deficit for the EFTA States stood at 2.0%, high above 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 on 10 November 2014 for the EFTA States for directives which should have been transposed on or before 31 October 2014.

<sup>2</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.

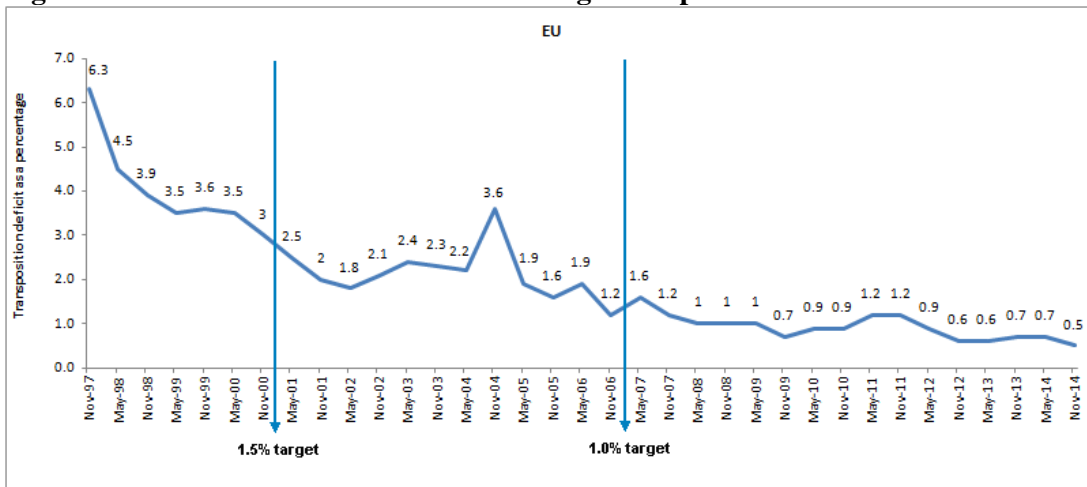
<sup>3</sup> Conclusion of the European Council summit in Brussels (8-9 March 2007).

In absolute terms, the 2.0% deficit indicates that the EFTA States were late with notifications of national transposing measures of 67 directives, which is an increase of 4 since the last Scoreboard.

The above findings take into account the 1126 directives that were incorporated into the EEA Agreement by 31 October 2014. The corresponding figure for the EU is 1246 Internal Market directives. This 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 the EU and the EFTA States was 1014 directives, which corresponds to 81% of the EU *acquis*. This difference arose from two factors. On the one hand, 112 directives were still in force in the EEA, but had already been repealed in the EU. On the other hand, 232 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**



Transposition deficit on 10 November 2014 for the EU 28 for directives which should have been transposed on or before 31 October 2014. Source for EU figures: The European Commission's Internal Market Scoreboard N° 30.

The EU average transposition deficit at 0.5% is the best result ever, and well below the interim target of 1%.

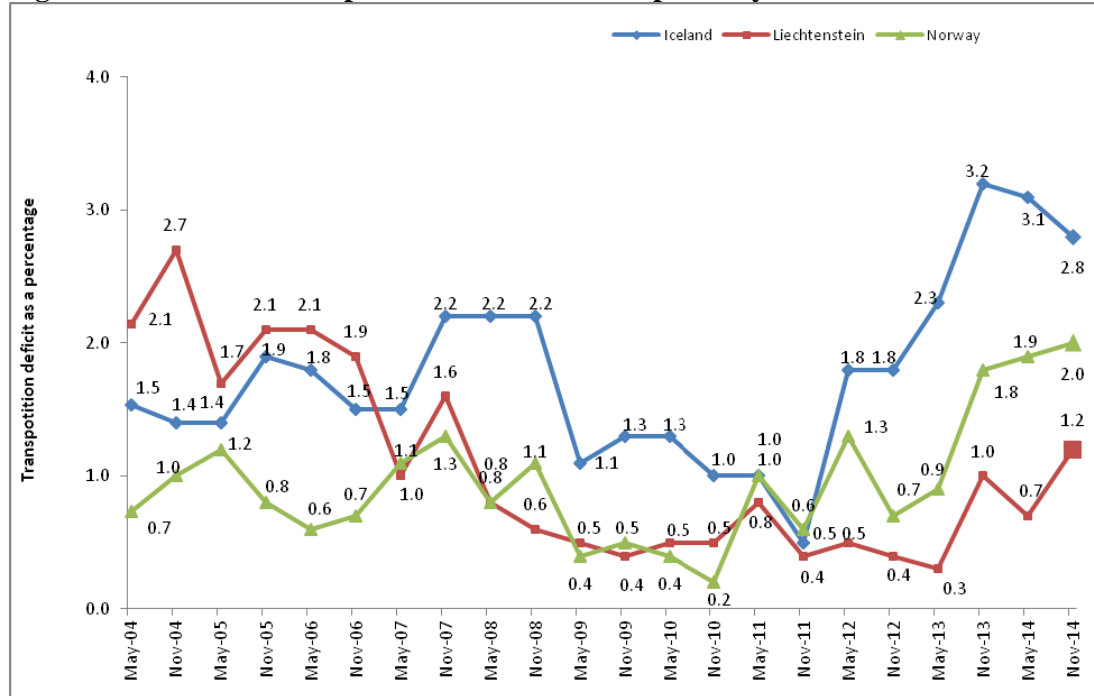
## 2.2 Performance measured against the 1% interim target

Iceland's transposition deficit remains disappointingly high at 2.8%. The deficit corresponds to 31 directives not having been fully transposed on time, which is three directives less than at the time of the last Scoreboard. It must be emphasised that it is absolutely essential that Iceland substantially improves its performance, if it wants to be perceived as a committed partner under the EEA Agreement.

Norway's transposition deficit increased by 0.1% up to 2.0%. This deficit corresponds to 23 directives not having been fully transposed, which is two more compared to the last Scoreboard.

Liechtenstein's transposition deficit increased by 0.5%, up to 1.2%. This corresponds to 13 directives not having been fully transposed, which is five more than at the time of the last Scoreboard.

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

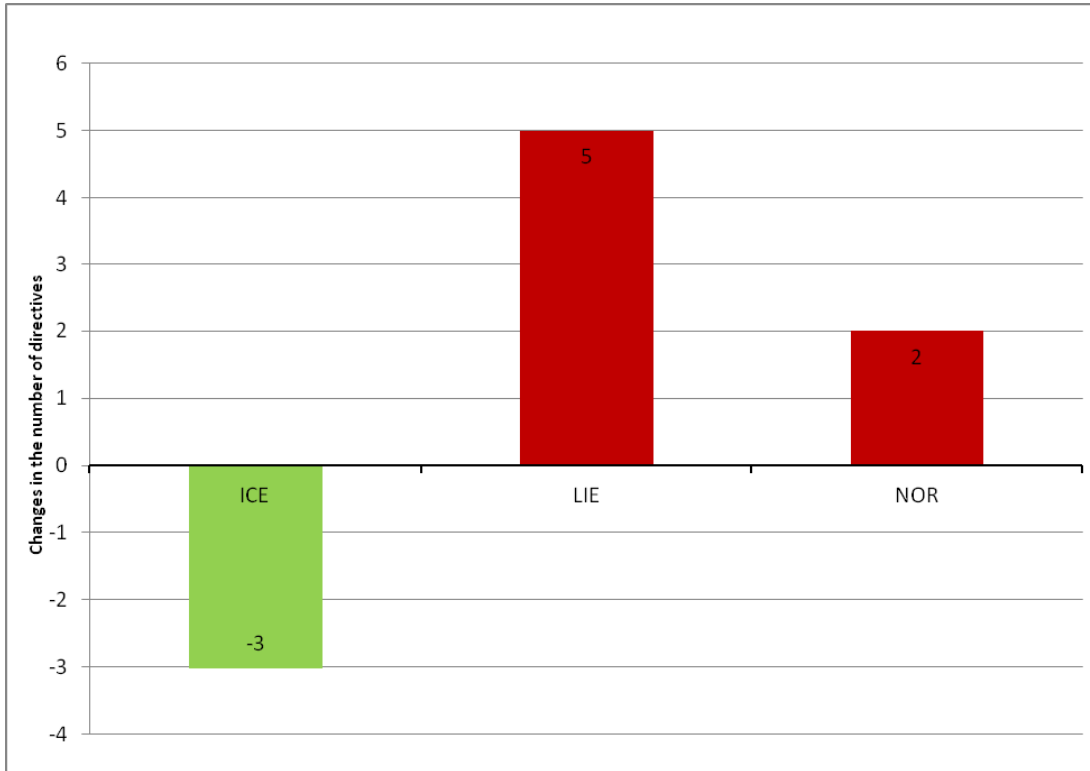


*Transposition deficit on 10 November 2014 for directives which should have been transposed on or before 31 October 2014.*

**Figure 3** illustrates the trend of the past ten years. While Norway had previously mostly met the set targets with only few exceptions, Iceland has traditionally had problems. After doing rather well between 2009 and 2011, it is now way beyond the 1% deficit target. Liechtenstein had problems in the first half of the 10-year period, but had managed to reduce the deficit and had, up until this year, consistently remained within the 1% target since 2008.

The current development of the deficit levels of the EFTA States is rather alarming, in particular in comparison to the EU. In November 2014, Norway had its highest deficit since the introduction of the Scoreboard. The deficit for Iceland, although decreasing slightly, remained very high, at a level of twice the worst performing EU State. The deficits of Iceland and Norway are higher than those of any other EEA State. The EFTA States are therefore strongly urged to do their utmost to reverse this negative trend.

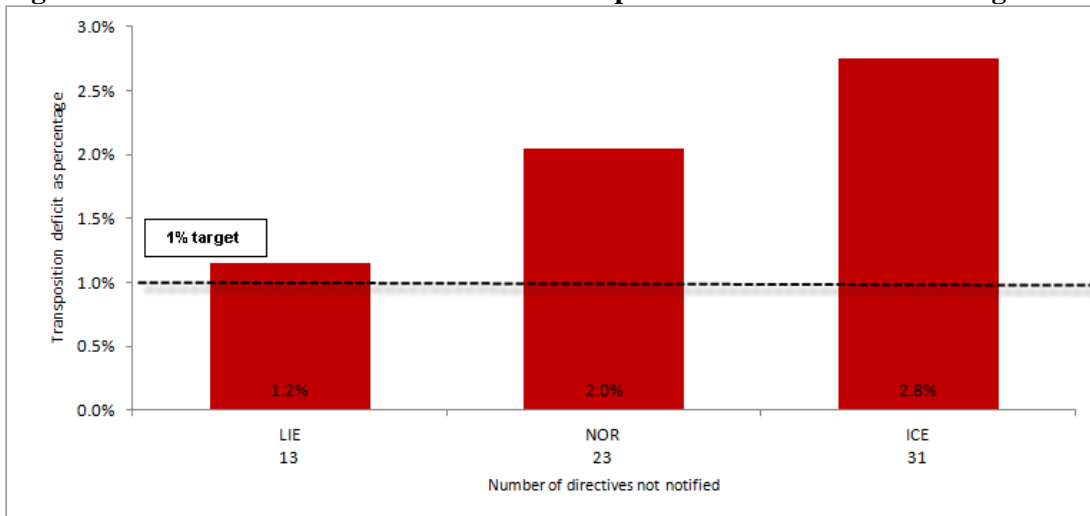
**Figure 4: Change in the number of outstanding directives since the previous Scoreboard**



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

Out of the 31 EEA States, 27 succeeded in bringing their transposition deficits into line with the 1% interim target, whereas only 4 EEA States were above the target (**Figures 5 and 6**), of which only one EU Member State exceeds the 1% and Iceland and Norway are by far the worst performers.

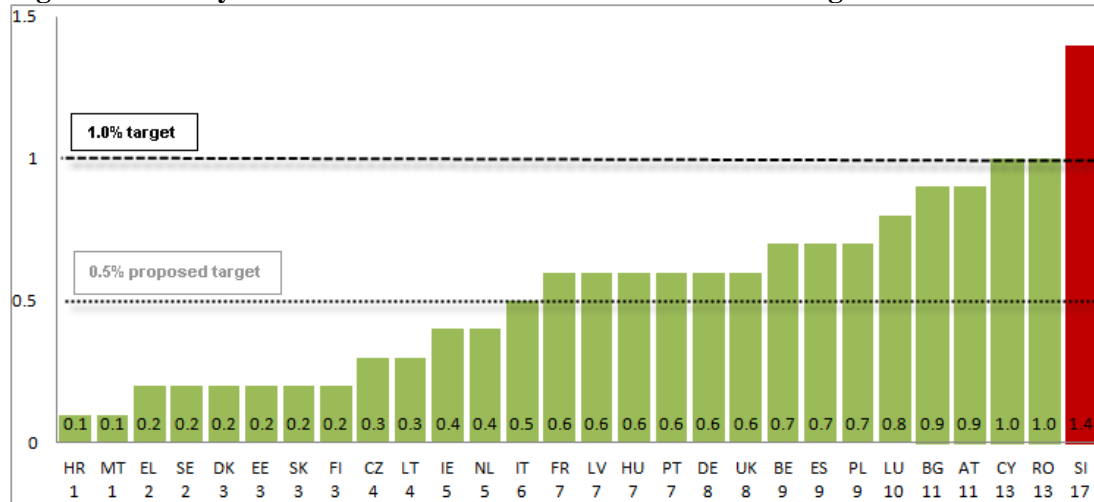
**Figure 5: None of the EEA EFTA States complied with the 1% interim target**



*Comparison of transposition deficits of the EFTA States.*



**Figure 6: Only one EU Member State has not met the 1% target**



*Comparison of transposition deficits between the 28 EU Member States.*

*Source for EU figures: The European Commission's Internal Market Scoreboard N° 30.*

## 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.<sup>4</sup> Similarly, such delays in the transposition of directives are of particular concern to the Authority.

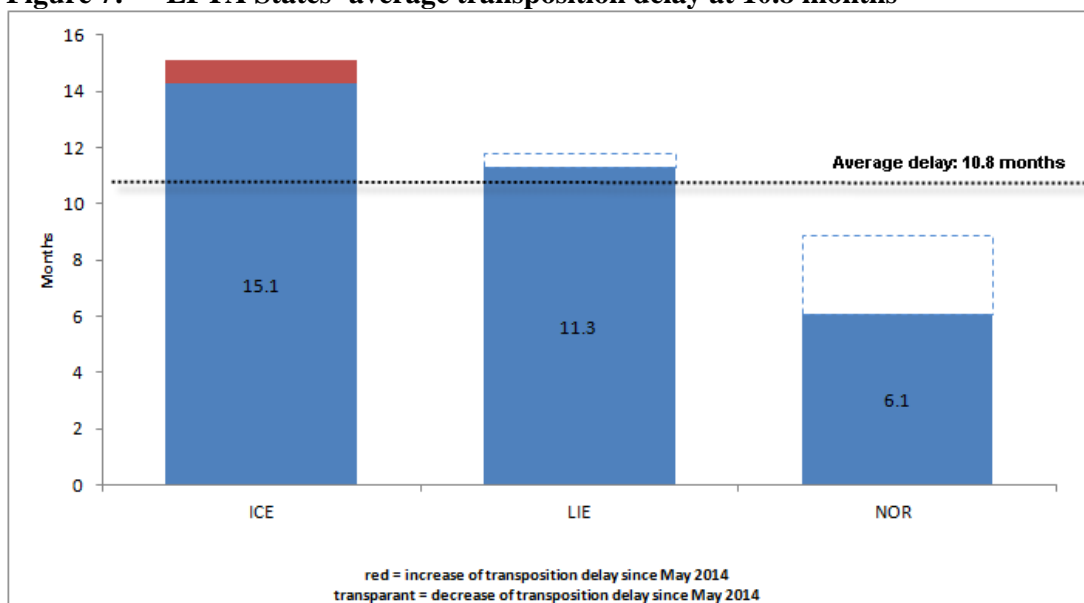
### 2.3.1 Length of transposition delays

It is important that the EEA States ensure that implementation takes place in a timely manner. The EFTA States managed to reduce the average time taken to transpose directives by 0.9 months since the previous Scoreboard, from 11.7 to 10.8. This is mainly due to the fact that Norway notified full transposition of 18 of the Directives that were outstanding in the previous period. The currently outstanding Directives have shorter

<sup>4</sup> Conclusion of the European Council summit in Barcelona (15-16 March 2002).

delays and thus a decreasing effect on the average. Norway's transposition delay decreased by 2.8 months to 6.1 months (**Figure 8**).

**Figure 7: EFTA States' average transposition delay at 10.8 months**



Average transposition delay of overdue Internal Market directives with a transposition deadline of 31 October 2014 for which no notification was received by 10 November 2014, broken down by the length of delay.

Liechtenstein's transposition delay also decreased, from 11.8 to 11.3 months. In the case of Iceland, the transposition delay increased by 0.8 months to 15.1 months.

Substantive improvement in the reduction of transposition delay is still required by all three EFTA States.

**Figure 8: Iceland had the highest transposition delay among the three EFTA States**

Length of delay	Number of directives delayed					
	ISL		LIE		NOR	
	Nov 14	May 14	Nov 14	May 14	Nov 14	May 14
Less than 6 months	11	7	6	4	20	7
6 to 12 months	4	11	3	0	0	11
12 to 24 months	11	10	0	1	1	2
Over 24 months	2	2	2	1	2	0
<b>Average delay (in months) by 31 October 2014</b>	<b>15.1</b>	<b>14.3</b>	<b>11.3</b>	<b>11.8</b>	<b>6.1</b>	<b>8.9</b>

Number of overdue Internal Market directives with a transposition deadline of 31 October 2014 for which no notification was received by 10 November 2014, broken down by the length of delay.

The 28 EU States' average transposition delay, at 9.2 months, is 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.<sup>5</sup>

37 of the directives which have not yet been transposed by the EFTA States were overdue by less than six months, and 7 directives were overdue by six to twelve months. 12 directives were overdue between twelve and 24 months. Iceland, Liechtenstein and Norway all had two directives overdue by more than two years (**Figure 9**).

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

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
2006/38	Charging of heavy goods vehicles for the use of certain infrastructures <sup>7</sup>	ICE	14/07/2012
2006/126/EC	3 <sup>rd</sup> Driving Licence Directive	LIE	19/01/2011
2011/94	Driving licences	LIE	30/06/2012
2010/48	Roadworthiness tests for motor vehicles and their trailers	NOR	31/12/2011
2009/12	Airport charges	NOR	01/06/2012

*Number of directives with a deadline for transposition into national law on or before 31 October 2012, which were not transposed by one Member State – Situation as at 10 November 2014.*

On the EU side, eight directives were outstanding for more than two years in a total of nine Member States.

## 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.

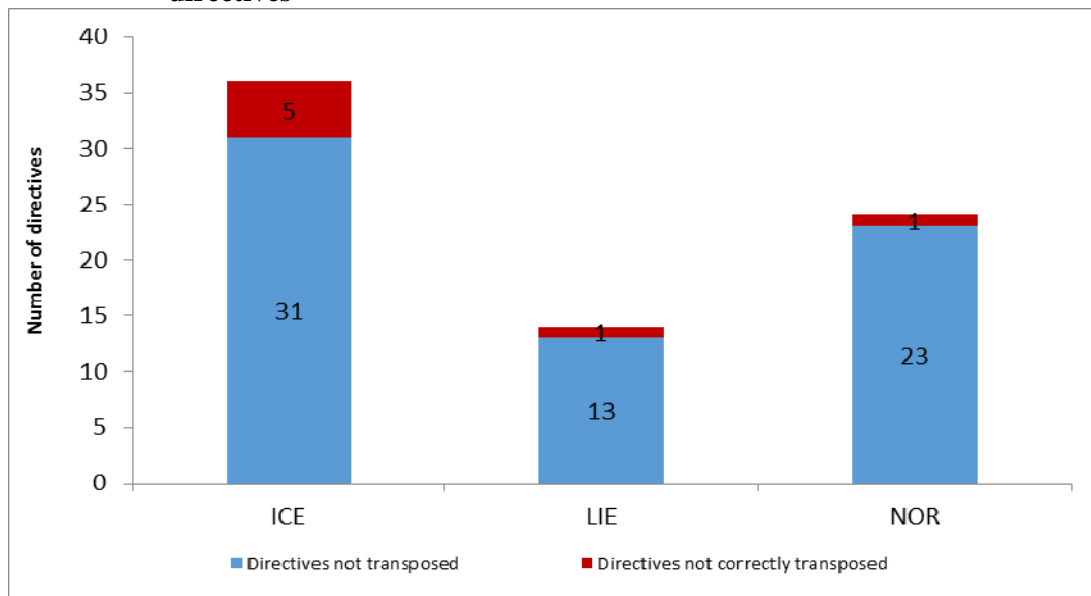
<sup>5</sup> Conclusions of the European Council summit in Barcelona (15-16 March 2002).

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 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 number of infringement proceedings against the EFTA States concerning *incorrect transposition* of directives on the basis of systematic *conformity assessments*, at 7, was significantly lower than the number initiated conformity assessments. This is due to the fact that the majority of such cases is concluded without the need to resort to formal infringement proceedings.

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



*The number of Internal Market directives not yet communicated as fully transposed (transposition deficit) added to the number of directives transposed but for which infringement proceedings for non-conformity have been initiated (1 November 2014).*

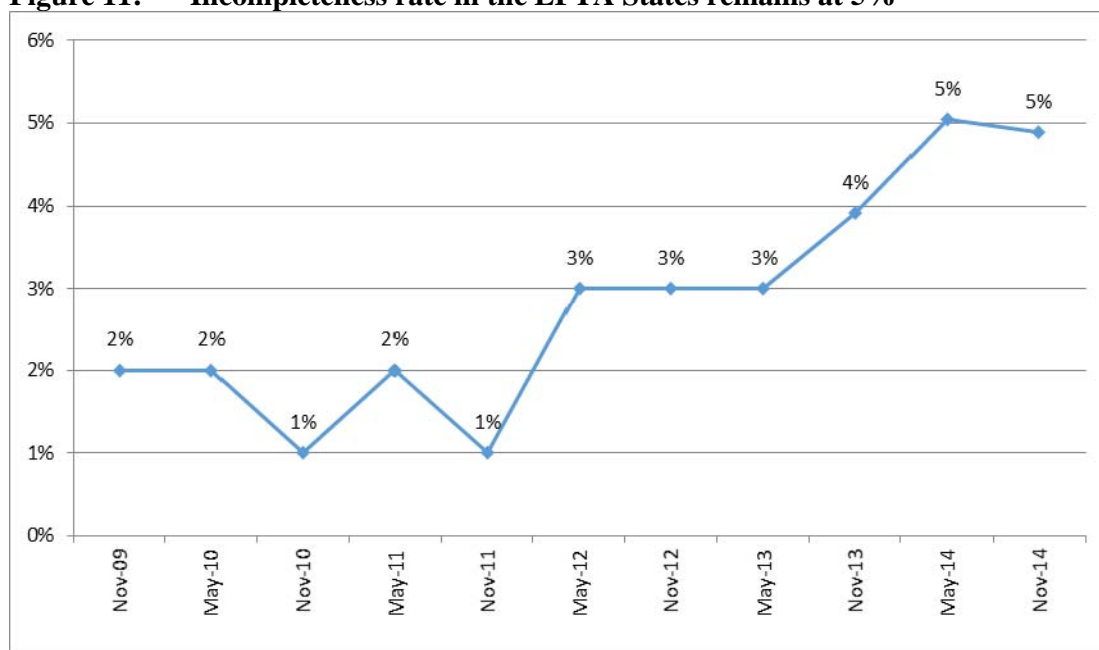
Adding the number of incorrectly transposed directives to the number of directives that are not yet transposed, the EFTA States' ranking was as follows: Liechtenstein has the lowest number of cases (14), followed by Norway (24) and Iceland (36) (**Figure 10**).

## 2.5 Incompleteness rate of the Internal Market in the EFTA States<sup>6</sup>

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

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, 5% of the directives in force in the EFTA States on 31 October 2014 had not been transposed by at least one of the three EFTA States (**Figure 11**). The incompleteness rate of 5% translates into 55 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 fourth consecutive time.

**Figure 11: Incompleteness rate in the EFTA States remains at 5%**



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

<sup>6</sup> Formerly referred to as “fragmentation factor”.

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

	Capital movement (1)	Persons-other (1)	Health and safety (2)	Services-general (2)	Intellectual property (1)	Financial services (3)	Transport (10)	Environment (7)	Goods-technical barriers (37)	Workers (1)	Energy (1)	Food and Feed safety, animal health and welfare (1)	Total - all EFTA (67)
ICE	2011/7	2004/113	2009/13 2010/32	2011/83	2011/77	2009/44 2009/10 2009/111	2005/35 2006/38 2010/65 2013/47	2009/126 2009/31 2012/33	2007/23 2008/43 2009/125 2010/26 2010/30 2010/53 2010/84 2011/62 2011/88 2012/4 2012/26 2012/46 2013/10	2009/38	2003/55		31
LIE				2011/83			2006/126 2011/94 2012/36 2013/47	2003/35 2009/31	2010/53 2011/62 2011/88 2012/26 2012/46 2013/10				13
NOR							2009/12 2010/48	2009/31 2012/33	2012/46 2014/1 2014/2 2014/3 2014/4 2014/5 2014/6 2014/7 2014/8 2014/9 2014/10 2014/11 2014/12 2014/13 2014/14 2014/15 2014/16 2014/18			2010/60	23
Fragmentation factor	1	1	2	1	1	3	9	4	30	1	1	1	55

*Breakdown by EFTA State of the non-transposed directives sorted per sector – situation as at 10 November 2014.*

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 fulfil an obligation under the EEA Agreement, it may initiate formal infringement proceedings pursuant to Article 31 of the Surveillance and Court Agreement.<sup>7</sup> 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 shows only that it is the Authority's view that the State concerned has failed to fulfil its obligations under the EEA Agreement. This should be kept in mind when interpreting the statistics on infringement procedures below.

Infringement cases can be divided into two categories. The first category relates to cases concerning *lack of conformity with, or incorrect application of*, EEA provisions, opened either on the basis of complaints or on the Authority's own initiative. These cases concern, for example, situations in which the Authority, after having acknowledged transposition of a directive by an 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.

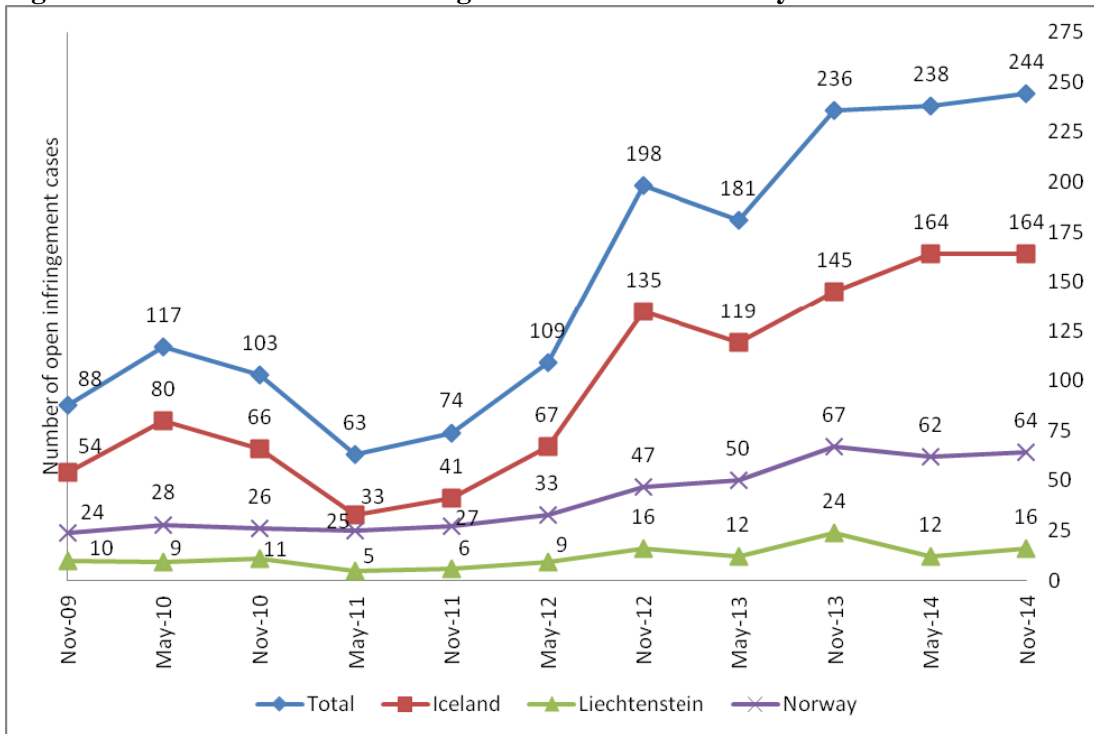
#### 3.1. Increase in the *total* number of infringement proceedings

On 1 November 2014, a total of 244 infringement cases were being pursued by the Authority (**Figure 13**).<sup>8</sup> This represents six cases more than at the time of the last Scoreboard. The increase in and current level of the number of infringement cases is mainly due to the high number of infringement cases concerning non-incorporation of regulations.

<sup>7</sup> Agreement on the Establishment of a Surveillance Authority and a Court of Justice.

<sup>8</sup> A pending infringement case is defined as a case where at least a letter of formal notice has been sent to the State concerned, but the case has not yet been referred to the EFTA Court.

**Figure 13: Total number of infringement cases increased by six cases**



Total number of all open infringement proceedings against the three EFTA States on 1 November 2014.

Of the 244 infringement cases pending on 1 November 2014, 59 cases concerned incorrect implementation or application of Internal Market rules (see chapter 3.2), whereas 54 cases concerned the late transposition of directives (see chapter 5.1). The remaining 131 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 (59 cases) decreased by two since the previous Scoreboard (Figure 14).



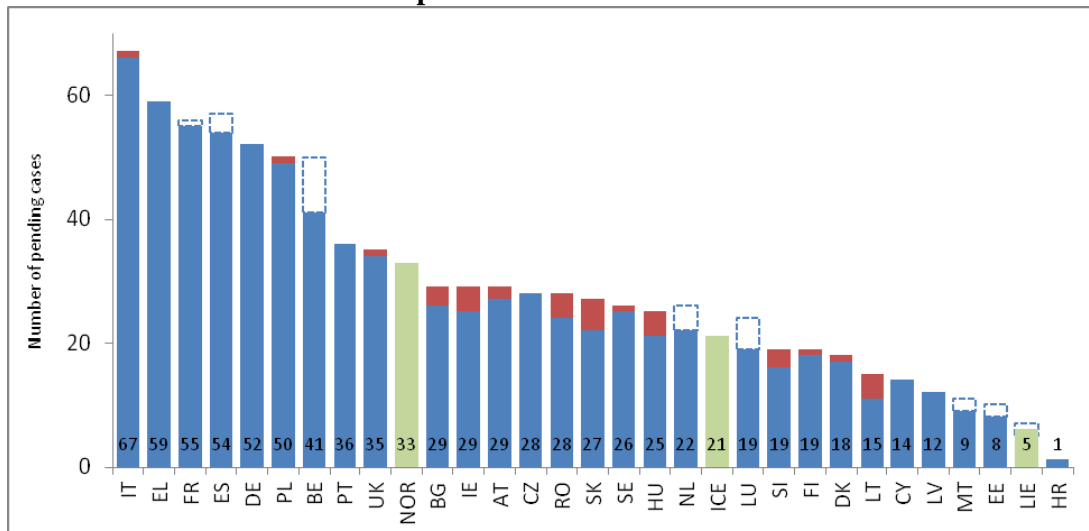
**Figure 14: The number of infringement cases decreased by two since the previous Scoreboard**

	ISL		LIE		NOR		EEA EFTA	
	Nov 14	May 14	Nov 14	May 14	Nov 14	May 14	Nov 14	May 14
Letter of formal notice	9	12	1	3	17	17	27	32
Reasoned opinion	12	9	3	4	15	15	30	28
Referral to EFTA Court	0	0	1	0	1	1	2	1
<b>Total</b>	<b>21</b>	<b>21</b>	<b>5</b>	<b>7</b>	<b>33</b>	<b>33</b>	<b>59</b>	<b>61</b>

*Pending infringement cases against the 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 2014.*

The number of infringement cases brought against Norway and Iceland remained the same since the previous Scoreboard, at 33 and 21 respectively. The number of infringement cases brought against Liechtenstein dropped by two cases. In comparison with the EU28, the number of infringement proceedings against the EFTA States remained rather low (Figure 15).

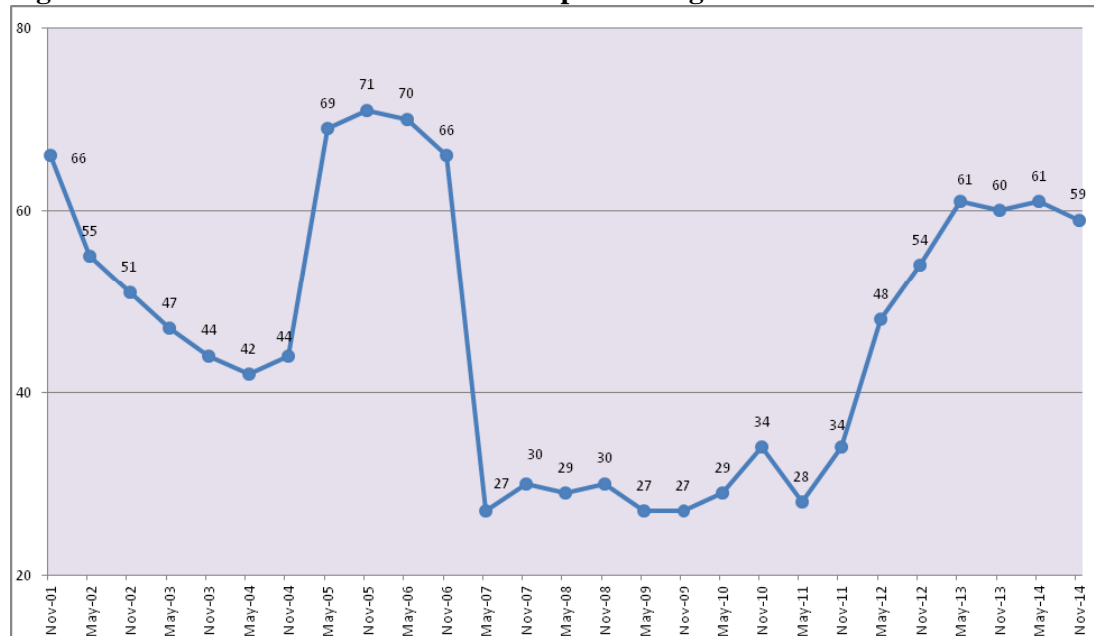
**Figure 15: The number of EFTA States' infringement cases concerning lack of conformity with or incorrect application of Internal Market rules remains low in comparison to the other EEA States**



*Pending infringement cases due to lack of conformity with or incorrect application of Internal Market rules on 1 November 2014 compared to the situation in May 2013. The transparent part of the chart represents the decrease of the number of pending cases (not counting for the final result), while the red part shows the increase of the number of pending cases since May 2014 (in summer 2014 Single Market Scoreboard).*

*Source for EU figures: The European Commission's Internal Market Scoreboard N° 30.*

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



*Open infringement cases concerning lack of conformity with or incorrect application of Internal Market rules as at 1 November 2014 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 four Scoreboards. Since May 2011, where 28 pending cases were reported, the number has doubled. The number of open infringement cases against the EFTA States has been rising again, after a peak was reached due to a growing number of complaint cases lodged against Norway in spring 2005 (**Figure 16**).

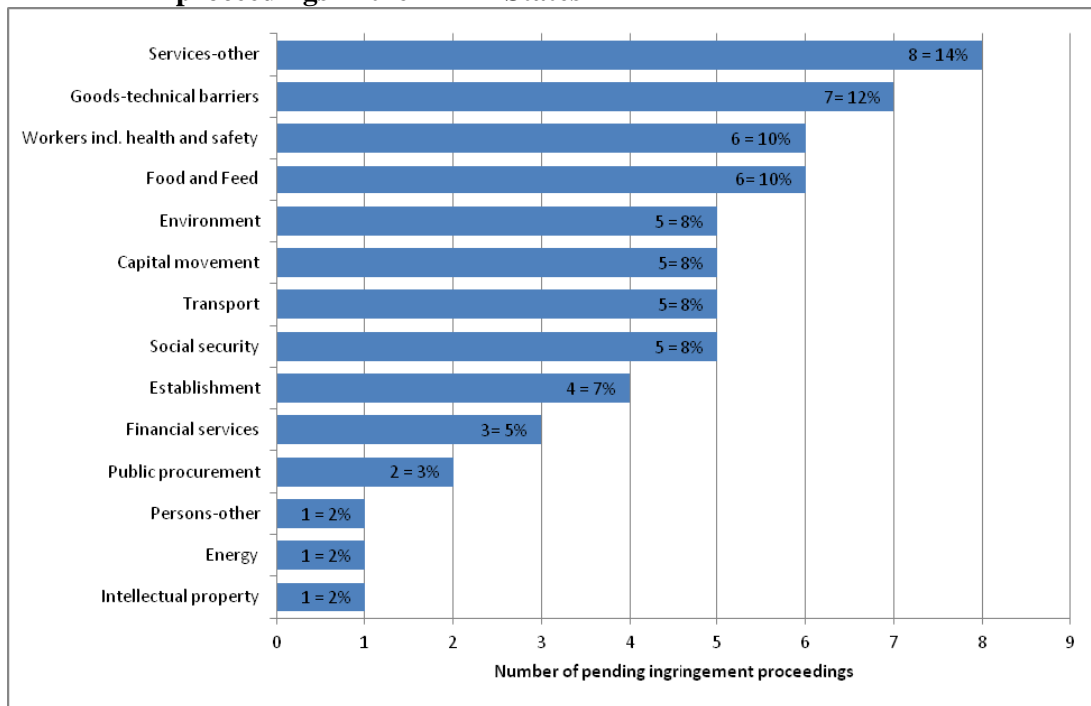
Undertakings and citizens may lodge a complaint with the Authority if they believe that they have not been able to exercise their rights under the EEA Agreement due to the failure of an EFTA State to apply the EEA Agreement correctly.

The number of pending infringement proceedings initiated as a result of complaints remained the same as for the previous Scoreboard at 22. These 22 pending infringement proceedings initiated on the basis of complaints represent 37% of the 59 pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. 16 of these complaint cases related to Norway, three to Liechtenstein and three to Iceland.

### 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 14% of all infringement proceedings (**Figure 17**).

**Figure 17: The sector Services - other accounts 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 November 2014 divided by sector.*

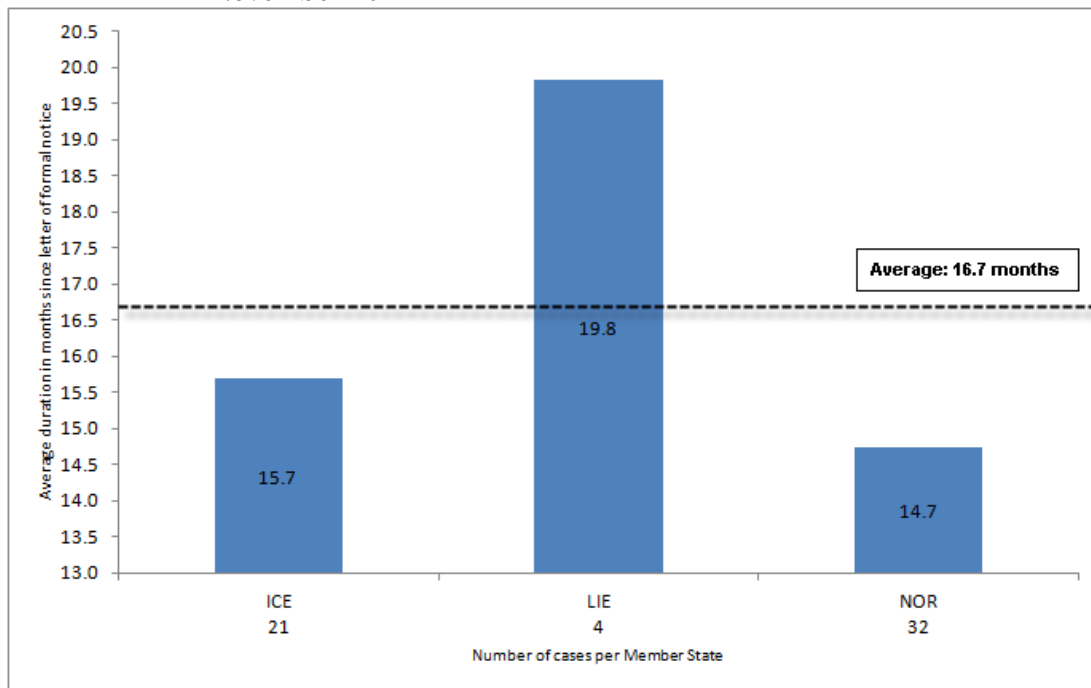
### 3.2.3. Duration of infringement proceedings

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 sent to the Court for the EFTA States was 16.7 months at the cut-off date of 1 November 2014 (**Figure 18**). This is an increase of 1.5 months compared to the last Scoreboard. The average duration of the EU Member States' infringement proceedings still exceeds the two-year mark (26.9 months).

**Figure 18: Pending infringement cases not yet sent to the EFTA Court as at 1 November 2014**



*Pending infringement cases not yet sent to the EFTA Court as at 1 November 2014 (57 such cases): average time in months from the moment the letter of formal notice was issued.*

### 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<sup>9</sup>. Internal circumstances or practical difficulties cannot justify non-compliance with obligations and time-limits arising from EEA law.<sup>10</sup>

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 is 19 months (**Figure 19**). This is a slight decrease since the assessment 6 months ago, when the average was 21 months. This long delay was primarily due to Norway's non-implementation of the judgment by the EFTA Court in Case E-2/07, which was delivered on 30 October 2007.<sup>11</sup> This resulted in another

<sup>9</sup> 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.

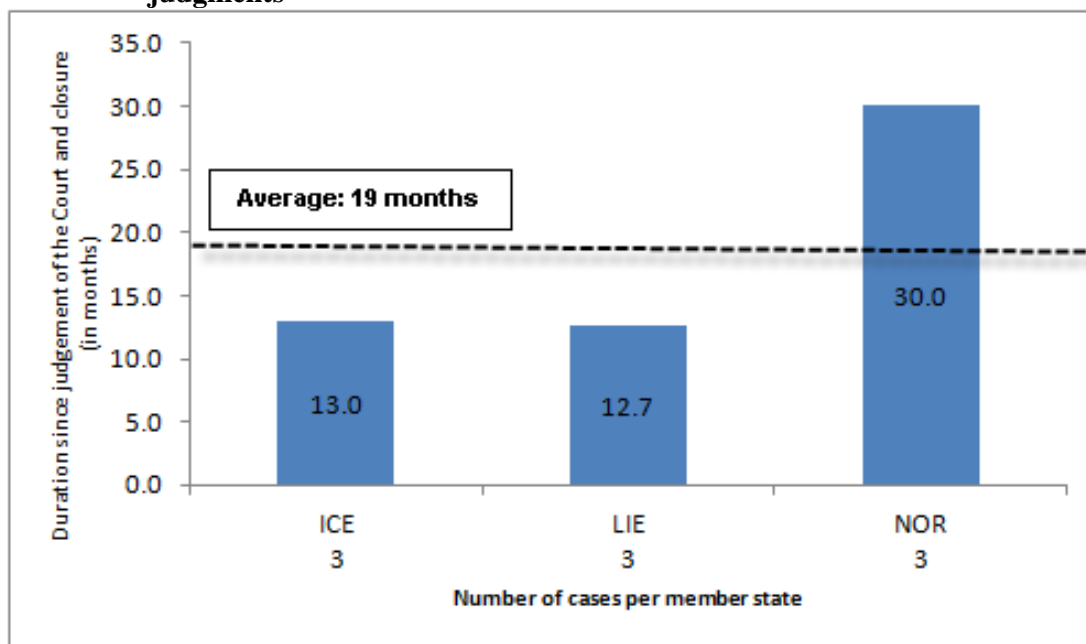
<sup>10</sup> Joined Cases E-5/05, E-6/05, E-7/05, E-8/05 and E-9/05 *EFTA Surveillance Authority v Liechtenstein*, 2006 EFTA Court Report, 142, paragraph 21 and see also e.g. Case C-316/06 *Commission v Ireland* [2008] ECR I-124, paragraph 31; Case C-89/03 *Commission v Luxembourg* [2003] ECR I-11659, 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.

<sup>11</sup> Case E-2/07 *EFTA Surveillance Authority v The Kingdom of Norway*, 2007 EFTA Court Report, 280.

judgment by the Court on 28 June 2011 (Case E-18/10), which declared that Norway has failed to take the measures necessary to comply with its previous judgment.<sup>12</sup>

In comparison, the EU average has increased by 1.4 months since the previous Scoreboard, with an average duration of 19.7 months.

**Figure 19: EFTA States take an average of 19 months to comply with EFTA Court judgments**



Cases closed between 1 November 2009 and 31 October 2014 inclusive (9 such cases): Average duration between the judgment of the EFTA Court and the resolution of the case.

<sup>12</sup> Case E-18/10 *EFTA Surveillance Authority v The Kingdom of Norway*, 2011 EFTA Court Report, 204.

#### 4. PERFORMANCE PER INDICATOR – EFTA STATES

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

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

	ICE	LIE	NOR	EEA EFTA average	EU average
Transposition deficit	2.8%	1.2%	2.0%	2.0%	0.5%
Progress over the last 6 months (change in the number of outstanding directives)	-3	+5	+2	+4	-1.25
Number of directives two years or more overdue	2	2	2	2	0
Transposition delay on overdue directives (in months)	15.1	11.3	6.1	10.8	9.2
Compliance deficit <sup>13</sup>	0.5%	0.1%	0.1%	0.2%	0.7%
Number of pending infringement proceedings	21	5	33	20	30
Duration of infringement proceedings (in months)	15.7	19.8	14.7	16.7	26.9
Duration since Court's judgments - closed cases (in months)	13	12.7	30	19	19.7

good performance	caution zone	under-performance
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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 was the best-performing EFTA State. All EFTA States have areas where more attention is needed (orange or red fields). This time, Iceland did performed only well in respect to one of the indicators on the implementation and application of Internal Market rules.

<sup>13</sup> 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 two cases from the time of the previous Scoreboard (**Figure 20**). In comparison with the last Scoreboard, Iceland had a increase of four cases, Liechtenstein of six, while Norway had a decrease of 12 cases.

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

	ISL		LIE		NOR		EEA EFTA	
	Nov 14	May 14	Nov 14	May 14	Nov 14	May 14	Nov 14	May 14
Letter of formal notice	17	10	9	2	4	7	30	19
Reasoned opinion	9	16	2	3	1	10	12	29
Referral to EFTA Court	10	6	0	0	2	2	12	8
<b>Total</b>	<b>36</b>	<b>32</b>	<b>11</b>	<b>5</b>	<b>7</b>	<b>19</b>	<b>54</b>	<b>56</b>

*Pending EFTA States infringement cases due to non-transposition of directives, broken down according to the stage of infringement proceedings reached, on 1 November 2014.*

Since the last Scoreboard, five cases concerning non-transposition of directives were referred to the EFTA Court. All five cases concerned Iceland and are Directive 2010/30/EU *on the labelling and standard product information of the consumption of energy and other resources by energy-related products*, Directive 2009/125/EC *on ecodesign requirements for energy related products*, Directive 2004/113 *on equal treatment between men and women in the access to and supply of goods and services*, Directive 2009/48/EC *on the safety of toys*, and Directive 2011/7 *on late payment*.

### 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.

On 10 November 2014, Iceland had 34 overdue regulations which had not been notified as fully incorporated into its national law. This is 42 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 ten, bringing the number of outstanding regulations down to 20.

## 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 244 infringement cases pending in November 2014, 54% concerned the late transposition of regulations by Iceland (107 cases) and Norway (24 cases). This is an decrease of four infringement proceedings against Iceland and an increase of 14 cases 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 increased since the previous Scoreboard**

	ISL		NOR		EEA EFTA	
	Nov 14	May 14	Nov 14	May 14	Nov 14	May 14
Letter of formal notice	88	73	23	6	111	79
Reasoned opinion	16	38	1	4	17	42
Referral to EFTA Court	3	0	0	0	3	0
<b>Total</b>	<b>107</b>	<b>111</b>	<b>24</b>	<b>10</b>	<b>131</b>	<b>121</b>

*Pending infringement cases against Iceland and Norway due to non-transposition of regulations, according to stage of infringement proceedings, on 1 November 2014.*

The total number of infringement cases concerning the non-transposition of directives and regulations increased by eight cases to 185 since the last Scoreboard. Substantial improvement in performance is expected from both countries, in particular from Iceland.