

EU and the EFTA States parties to the Agreement (Iceland, Liechtenstein and Norway), based on common rules and equal conditions of competition

ess target EEA business rights



Internal Market Scoreboard

EEA EFTA States

February 2008

EFTA SURVEILLANCE
AUTHORITY

INTERNAL MARKET SCOREBOARD

No. 21

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

February 2008

EFTA SURVEILLANCE AUTHORITY

MAIN CONCLUSIONS FROM THE 21ST EEA EFTA INTERNAL MARKET SCOREBOARD

- The Internal Market Scoreboard shows that the average transposition deficit of the EEA EFTA States has increased, being now 1.7% instead of 1.2% six months ago. The average transposition deficit of the EU Member States is 1.2%.
- With a transposition deficit of 1.6%, Liechtenstein is slightly above the 1.5% interim target. Iceland's deficit increased significantly from 1.5% to 2.2%. Norway is the only EEA EFTA State with a transposition deficit below the interim target. However, also Norway's transposition deficit increased since last Scoreboard, from 1.1% to 1.3%.
- When comparing the 30 EEA States Norway ranks 22nd (down from 11th), Liechtenstein 24th (down from 6th), and Iceland 27th (down from 18th).
- Liechtenstein has two directives overdue by more than two years, Iceland and Norway have none.
- Norway has an average transposition delay of 3 months, Iceland and Liechtenstein of 5 months.
- The total number of infringement cases pursued by the Authority increased by 58 cases from the time of the previous Scoreboard.
- The overall number of infringement cases due to *non-conformity or incorrect application of Internal Market rules* remains at the same level compared to the previous Scoreboard. In comparison to the EU 27, the number of such infringement proceedings against the EEA EFTA States remains low.
- The number of infringement cases concerning *non-transposition of directives* by the EEA EFTA States remains at the same level as six months ago.
- The number of infringement cases against Iceland due to *non-transposition of regulations* increased sharply in the last six months.

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 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 Norway², thus ensuring, by and large, the same possibilities for businesses and individuals in those countries.

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 States and 3 EEA EFTA States;
- competition between service providers, which leads to more innovation and better services; 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 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 made by the EEA Joint Committee. The obligation to transpose a directive into national law of the EEA EFTA States is triggered by these EEA Joint Committee decisions.

The EFTA Surveillance Authority is required to ensure the fulfillment by the EEA EFTA States of their obligations under the EEA Agreement including the transposition of the directives in a timely manner, and that the transposition measures provide for full and correct implementation of the directive in question. The European Commission is entrusted with the parallel task towards 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, be made “as such” part of the internal legal order 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 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 constitutional orders of Iceland and Norway require that regulations be made part of the 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 issued 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 transposition of new EEA directives on time; and
- the transposition backlog and average delays in transposition of directives;

The findings in this Scoreboard take into account the 1672 Internal Market directives that were incorporated into the EEA Agreement as per 31 October 2007³. The Scoreboard records the transposition status for these directives on 10 November 2007.

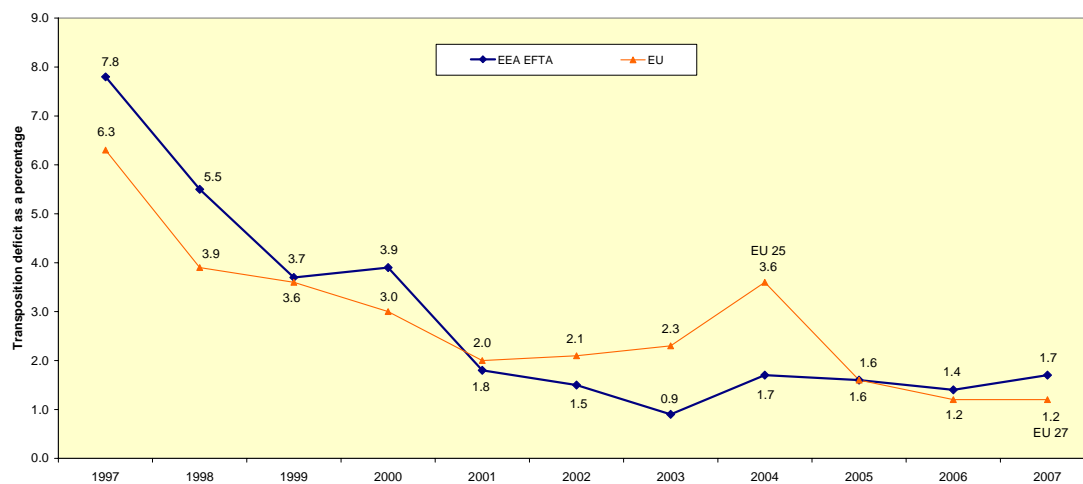
In addition to the information concerning the transposition of Internal Market directives into national law, the Scoreboard provides information on the number of infringement proceedings initiated against the EEA EFTA States for failure to apply EEA legislation correctly as well as for failure to transpose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

³ The corresponding figure for the EU is 1630 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 transposition deficit indicates how many directives, containing Internal Market rules and principles, the EU States and the EEA EFTA States have failed to notify as transposed on time⁴. While the ideal transposition target is a 0% deficit, the European Council has set an interim target of 1.5% as the maximum transposition deficit⁵. This interim target is used as a benchmark by the Authority as well.

Figure 1:
The EEA EFTA States' average transposition deficit increased to 1.7%



Note: Transposition deficit for the EEA EFTA States and the EU 27 for directives which should have been transposed on or before 31 October 2007, as per 10 November 2007.

Source for EU figures: The European Commission's Internal Market Scoreboard N° 16bis published in February 2008.

After several years of continuous decrease, the average transposition deficit for the EEA EFTA States is now 1.7 % (**figure 1**). This is discouraging, especially so in light of the decision by the European Heads of State and Government of March 2007 that the transposition deficit should be below 1.0% by 2009 at the latest⁶.

In absolute terms, the 1.7% deficit indicates that the EEA EFTA States are late with 86 notifications of national transposing measures, which is 26 directives more than at the time of the previous Scoreboard was published.

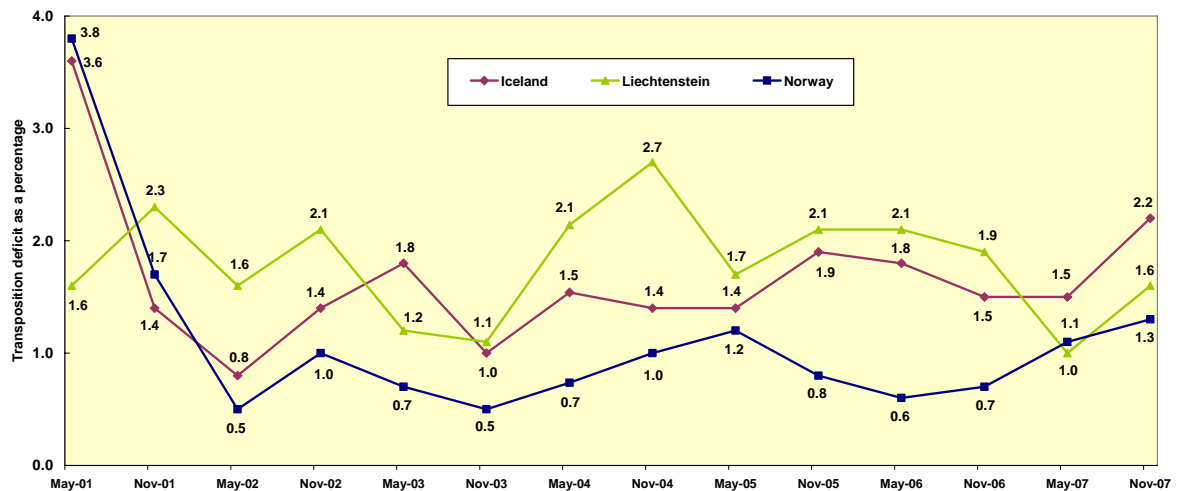
The EU average transposition deficit, at 1.2%, is well below the current 1.5% interim target.

⁴ The EEA EFTA States' transposition deficit shows the proportion of Internal Market directives not notified to the EFTA Surveillance Authority as fully transposed.

⁵ Conclusions of the European Council summit of Stockholm (23-24 March 2001).

⁶ Conclusion of the European Council summit of Brussels (8-9 March 2007).

Figure 2:
Iceland and Liechtenstein failed to reach the 1.5% target



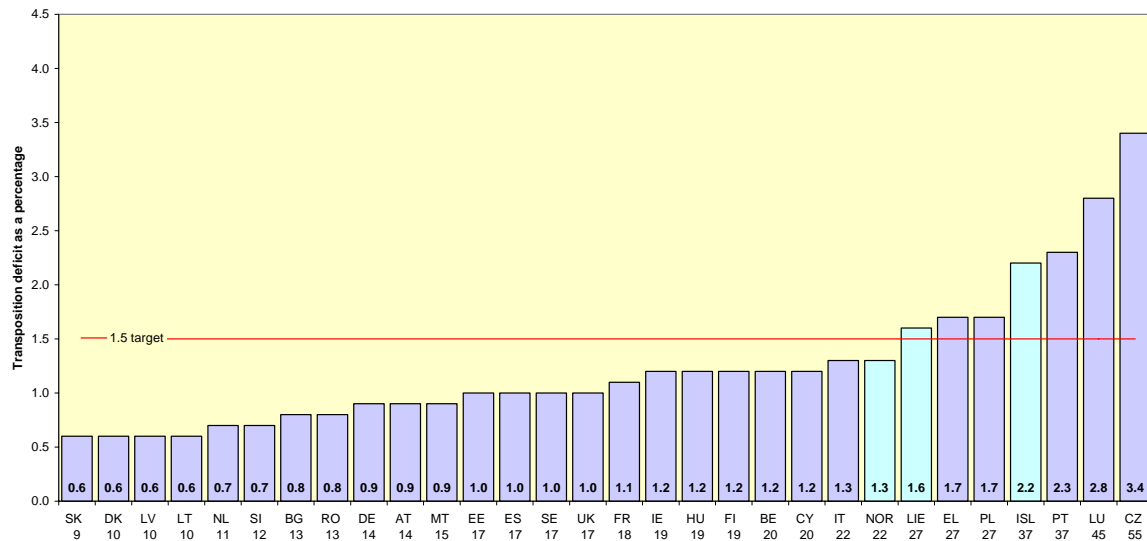
Note: Development of rates of failure to implement EEA Internal Market directives (transposition deficit) between November 1997 and November 2007.

Iceland’s transposition deficit increased significantly from 1.5% to 2.2% since the previous Scoreboard published in July 2007 (**figure 2**) which corresponds to 12 more directives which have not been fully transposed compared to the previous Scoreboard. This is the first time Iceland’s transposition deficit has been above 2% since May 2001.

Similarly, since the Scoreboard published in July 2007, Liechtenstein’s transposition deficit increased from 1.0% to 1.6% which is 10 more directives not fully transposed.

Norway’s transposition deficit rose from 1.1% to 1.3%, due to four more overdue directives compared to the previous Scoreboard.

Figure 3:
Norway 22nd, Liechtenstein 24th and Iceland 27th in the EEA



Note: EEA comparison of transposition deficits.

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 16bis published in February 2008.

Among the 30 EEA States, Liechtenstein ranks now in 24th place compared to 6th in the previous Scoreboard. Norway is now in shared 22nd place (together with Italy) compared to 11th and Iceland 27th compared to 18th in the previous Scoreboard (**figure 3**).

Out of the 30 EEA States, 23 are below the current 1.5% transposition deficit target. Norway is the only EEA EFTA State in this group. Moreover, altogether 15 States are already in line with the future deficit target of 1.0%, all of these States being EU States.

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, the 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 more⁷. Similarly, long overdue directives are of particular concern to the Authority.

⁷ European Council summit of Barcelona (15-16 March 2002).

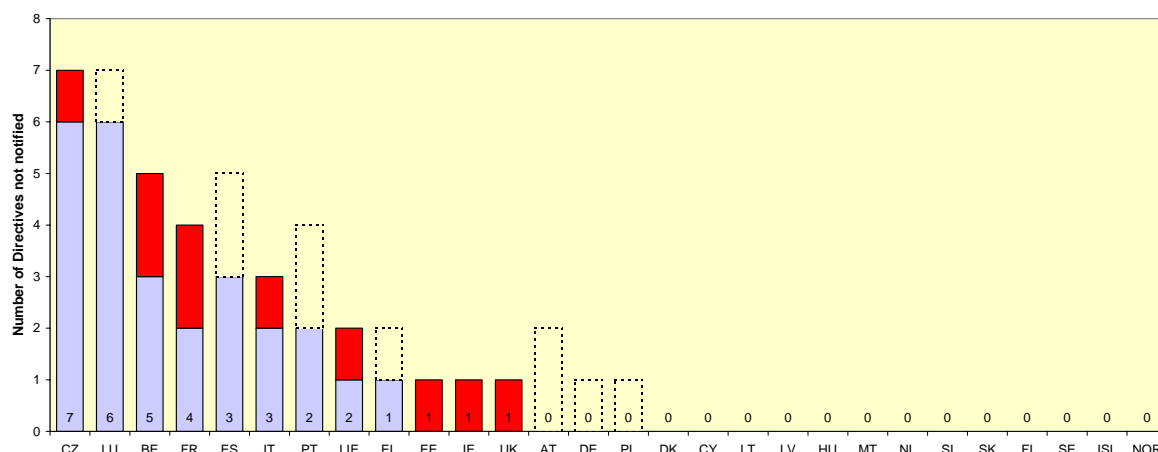
Figure 4:
EEA EFTA States' average transposition delay at 4.5 months

Length of delay	Number of directives delayed					
	ISL		LIE		NOR	
	10/07	04/07	10/07	04/07	10/07	04/07
Less than 6 months	22	15	21	9	17	12
6 to 12 months	4	2	1	2	0	2
12 to 24 months	5	4	1	4	1	1
Over 24 months	0	0	2	1	0	0
Average delay (in months) by 31 October 2007	5.3	4.1	5.3	8.53	3.0	2.54

Note: Number of overdue Internal Market directives with a transposition deadline of 31 October 2007 for which no notification was received by 10 November 2007, broken down by the length of delay.

Of Norway's non-transposed directives all but one have a delay of less than six months (figure 4). Likewise, both Iceland and Liechtenstein were late by less than six months with the majority of their directives.

Figure 5:
Liechtenstein has two directives overdue by more than two years



dotted lines = decrease since Scoreboard 20 (July 2007) of directives overdue by two or more years
 red = increase since Scoreboard 20 (July 2007) of directives overdue by two or more years

Note: Number of directives with a deadline for transposition into national law on or before 31 October 2005, which were not transposed by 10 November 2007.

Source for EU figures: The European Commission's Internal Market Scoreboard N° 16bis published in February 2008.

Liechtenstein has two directives which have been outstanding for more than two years, namely the Directive relating to financial collateral arrangements and the Directive relating to environmental noise (figure 5).

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 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 EFTA Surveillance 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 EFTA Surveillance Authority.

The next chapter of the Scoreboard highlights the infringement proceedings initiated by the Authority, many of which relate to the incorrect transposition of directives or incorrect application of the EEA Agreement itself.

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 Agreement⁸. Such infringement proceedings correspond to those initiated by the European Commission under Article 226 of the EC Treaty.

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

The Authority initiates formal infringement proceedings by sending a letter of formal notice, inviting the EFTA Government in question to submit its observations on the matter within a specified time limit. If the matter is not resolved during the given time limit, the Authority may take the second step in the proceedings by delivering a reasoned opinion. A reasoned opinion defines the final position of the Authority, states the grounds for the opinion and requests the Government to take the measures necessary to end the infringement. If a matter is not resolved following a reasoned opinion, the Authority may bring it before the EFTA Court, whose judgment is binding on the State concerned.

Infringement cases can be divided into two categories. The first category relates to non-conformity or incorrect application of EEA provisions. This concerns, 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 otherwise does not comply with the EEA Internal Market rules and principles. 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 implementation, meaning that directives are not at all or not fully transposed 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.

A particular situation arises with regard to the application of EU regulations in the EEA Agreement. For the EU Member States, regulations, once adopted, automatically become part of the internal national legal order. The same is the case for Liechtenstein, due to its monistic legal tradition. For Iceland and Norway, on the other hand, regulations only become part of the internal legal order following an act of incorporation by the appropriate national legislative body. This usually requires a prior translation of regulations into the national language and subsequent publication. As the EEA EFTA States are under no obligation to notify incorporation measures to the Authority, the Authority must request (pursuant to Article 6 of the Surveillance and Court Agreement)

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

that the EEA EFTA State concerned inform it of the national measures taken for the incorporation of EEA regulations. The Authority initiates infringement proceedings if the State fails to respond to the Authority’s request for information or if an inquiry reveals that incorporation has not taken place on time.

Cases concerning regulations, due to their particular EEA-specific nature, are counted within the second category of cases.

On 31 October 2007, a total number of 152 infringement cases were being pursued by the Authority. This represents 58 cases more than at the time of the previous Scoreboard.

Out of the 152 infringement cases, 30 cases concerned incorrect application of internal market rules (see point 3.1.) whereas 33 cases concerned non-transposition of directives (see point 3.2.). The remaining 89 cases concerned non-transposition of regulations or the failure to respond to the Authority’s requests for information concerning the transposition of regulations (see point 3.3.).

3.1. Infringements for incorrect application of internal market rules

Figure 6:

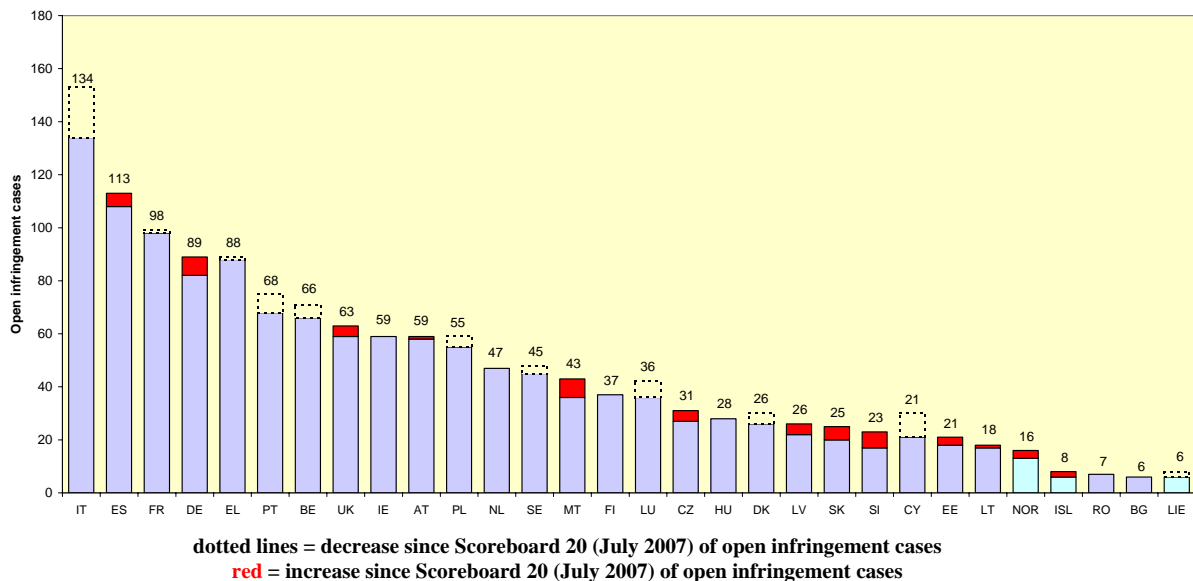
The number of infringement cases against the EEA EFTA States due to non-conformity or incorrect application remains at the same level as in the previous Scoreboard

	ISL		LIE		NOR		EEA EFTA	
	Oct 07	Apr 07	Oct 07	Apr 07	Oct 07	Apr 07	Oct 07	Apr 07
Letter of formal notice	7	5	3	5	9	7	19	17
Reasoned opinion	1	1	2	2	6	4	9	7
Referral to EFTA Court	0	0	1	1	1	2	2	3
Total	8	6	6	8	16	13	30	27

Note: Pending infringement cases due to non-conformity or incorrect application, according to stage of infringement proceedings, on 31 October 2007.

The overall number of infringement cases due to non-conformity or incorrect application remains at approximately the same level as in the previous Scoreboard. The number of cases against Iceland and Norway increased (**figure 6**) whereas the number of cases against Liechtenstein decreased.

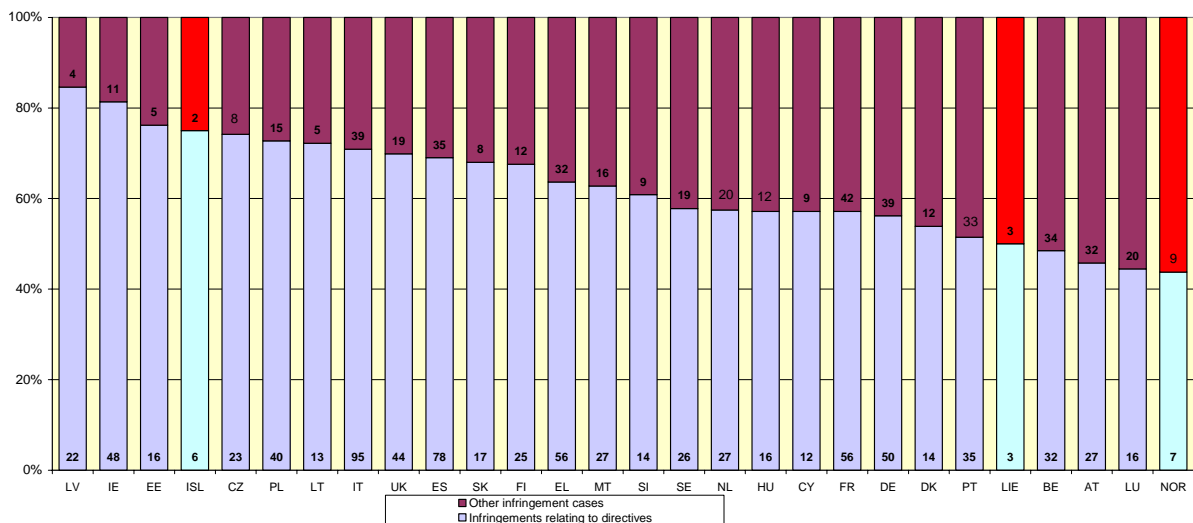
Figure 7:
The number of EEA EFTA States infringement cases concerning non-conformity or incorrect application remains low



Note: Pending infringement cases due to non-conformity or incorrect application on 31 October 2007. Source for EU figures: The European Commission’s Internal Market Scoreboard N° 16bis published in February 2008.

In comparison to the EU 27, the number of infringement proceedings against the EEA EFTA States remains low (figure 7). With 6 cases, Liechtenstein together with Bulgaria has the lowest number of infringement proceedings in this category out of the 30 EEA States.

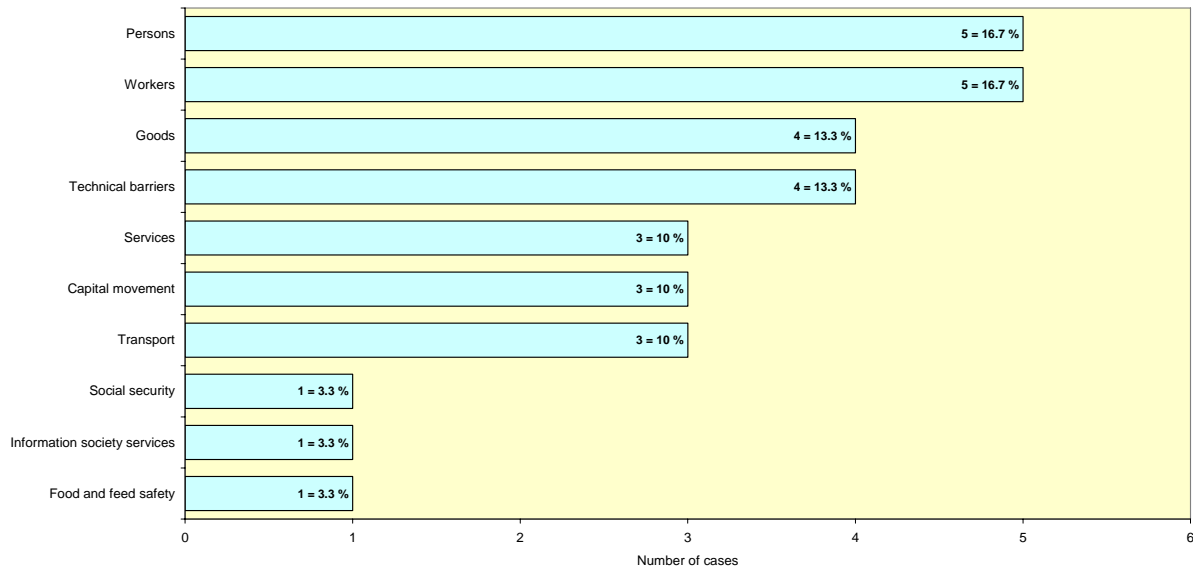
Figure 8:
EEA States still need to ensure that Internal Market directives are correctly transposed and applied



Note: Breakdown of infringement cases as at 31 October 2007. Source for EU figures: The European Commission’s Internal Market Scoreboard N° 16bis published in February 2008.

In addition to correctly transposing directives, EEA States must ensure that the rules contained in the directives are correctly applied. **Figure 8** illustrates, for each EEA State, the number and proportion of infringement proceedings related to the incorrect transposition of directives (blue) while figures in red refer to other infringement cases.

Figure 9:
Breakdown of infringement cases per sector



Note: Infringement cases per sector.

A breakdown of infringement proceedings on non-conformity or incorrect application according to sectors indicates that the two largest sectors are persons and workers with five infringement cases pending in both sectors (16.7%).

3.1.1. Infringement cases initiated through complaints to the Authority

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. Compared to six months ago, the number of pending infringement proceedings initiated as a result of a complaint increased slightly from 8 to 12.

The 12 pending infringement proceedings initiated as a result of a complaint represent 40% of the 30 pending infringement proceedings concerning non-conformity or incorrect application. Eight of these cases (66.7%) relate to Norway, two to Liechtenstein and two to Iceland.

3.2. Infringements for non-transposition of directives

The number of infringement cases for non-transposition of directives pursued against the EEA EFTA States decreased by 3% (or 1 case) in the last six months (**figure 10**).

Figure 10:

The number of infringement cases against the EEA EFTA States due to non-transposition of directives remains on the same level

	ISL		LIE		NOR		EEA EFTA	
	Oct 07	Apr 07	Oct 07	Apr 07	Oct 07	Apr 07	Oct 07	Apr 07
Letter of formal notice	13	8	5	5	4	3	22	16
Reasoned opinion	5	3	3	6	1	2	9	11
Referral to EFTA Court	1	1	1	6 ⁹	0	0	2	7
Total	19	12	9	17	5	5	33	34

Note: Pending EEA EFTA States infringement cases due to non-transposition of directives, according to stage of infringement proceedings, on 31 October 2007.

Between 1 May 2007 and 31 October 2007, no cases concerning non-transposition of directives prompted action before the EFTA Court.

3.3. Infringements for non-transposition of regulations

According to Article 7 of the EEA Agreement, regulations that are incorporated into the Agreement shall "as such" be made part of the internal legal order of the EFTA States. It is assumed that under the constitutional law of the three EFTA States, regulations are already part of the Liechtenstein legal order once they have been incorporated into the EEA Agreement through an EEA Joint Committee decision, but that Iceland and Norway are obliged to adopt legal measures in order to make regulations as such part of their internal legal orders. However, due to the fact that regulations do not contain a provision setting out an obligation to notify implementing measures (as directives do), the Authority has to request Iceland and Norway, pursuant to Article 6 of the Surveillance and Court Agreement, to notify the national measures taken to incorporate regulations.

⁹ This number includes the five infringement cases concerning the implementation by Liechtenstein of the Electronic Communication Regulatory Package which were ruled upon jointly by the EFTA Court on 29 June 2006, Joined cases E-5/6/7/8/9/05 as well as one other infringement case referred to EFTA Court in December 2006 concerning the implementation of the directive relating to the assessment and management of environmental noise.

Figure 11:
The number of infringement cases against Iceland due to non-transposition of regulations increased sharply

	ISL		NOR		EEA EFTA	
	Oct 07	Apr 07	Oct 07	Apr 07	Oct 07	Apr 07
Letter of formal notice	67	31	3	0	70	31
Reasoned opinion	19	2	0	0	19	2
Referral to EFTA Court	0	0	0	0	0	0
Total	86	33	3	0	89	33

Note: Pending infringement cases against Iceland and Norway due to non-transposition of regulations, according to stage of infringement proceedings, on 31 October 2007.

The main reason for the sharp increase of infringement cases against Iceland falling within this category is Iceland’s failure to provide information on incorporation of regulations into the Icelandic legal order. The 89 infringement cases comprise 35 such cases against Iceland and two against Norway. The 51 remaining cases against Iceland concern delay in incorporation of regulations.

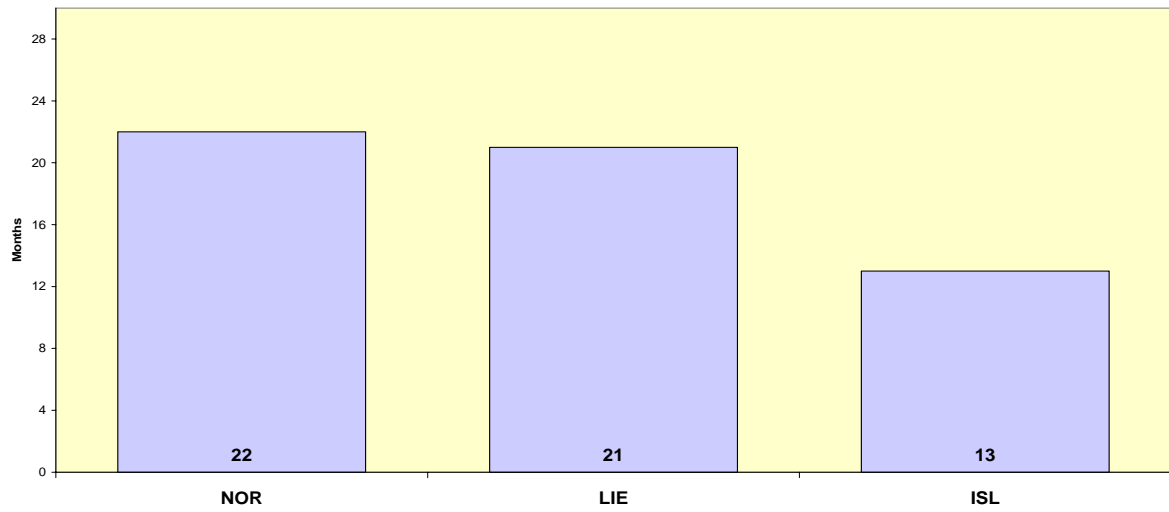
The Authority considers that the high number of cases concerning delay in transposition of regulations constitutes a considerable problem and challenge for the smooth functioning of the EEA Agreement. The matter has been brought to the attention of the Icelandic and Norwegian authorities respectively. Furthermore, the Authority is currently devoting more enforcement resources to the issue of regulations. Today, an increasing number of infringement cases dealt with by the Authority relate to delays in the incorporation of regulations by Iceland and Norway.

3.4. How fast are infringement cases solved?

Quick and out-of-court resolution of infringement proceedings is important for the good functioning of the Internal Market.

Taking into account all the aforementioned categories of infringement cases, Iceland has the highest resolution speed with an average of 13 months of the three EEA EFTA States (**figure 12**). For Liechtenstein the average time taken to solve infringement cases remains at 21 months whereas the average resolution time for Norway is 22 months.

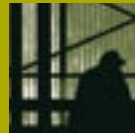
Figure 12:
Infringement resolution speed per EEA EFTA State



Note: All infringement cases closed or brought before the ECJ/EFTA Court between 31 October 2005 and 31 October 2007: average time in months needed either to close an infringement case or to bring it before the ECJ/EFTA Court counted from the moment of the sending of the letter of formal notice.

The objective of the Agreement of the European Economic Area (EEA Agreement) is to establish a dynamic and homogeneous EEA between the

future statistics directive progr



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