



EEA EFTA States

Internal Market Scoreboard

July 2008

EFTA SURVEILLANCE
AUTHORITY

INTERNAL MARKET SCOREBOARD

No. 22

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

July 2008

EFTA SURVEILLANCE AUTHORITY

MAIN CONCLUSIONS FROM THE 22nd EEA EFTA INTERNAL MARKET SCOREBOARD

- The Internal Market Scoreboard shows that the average transposition deficit of the EEA EFTA States has decreased, being now 1.3% instead of 1.7% at the time of the previous Scoreboard. The average transposition deficit of the EU Member States is 1.0%.
- With transposition deficits of 0.8%, Liechtenstein and Norway comply with the future 1.0% interim target. Regrettably Iceland's deficit, at 2.2%, remains well above the current 1.5% target.
- When comparing the 30 EEA States, Liechtenstein and Norway are amongst the top ten performers. Iceland holds the second last position.
- Iceland has three directives overdue by more than two years, Liechtenstein has one. Norway has no directives overdue by more than two years.
- Norway has an average transposition delay of 5.8 months, Iceland 6.8 and Liechtenstein of 11.1 months. The average transposition delays have increased for all the three States since the previous Scoreboard.
- The total number of infringement cases pursued by the Authority increased by 31 cases from the time of the previous Scoreboard.
- The overall number of infringement cases due to *lack of conformity with or incorrect application of Internal Market rules* remains at the same level as at the time of the previous Scoreboard. In comparison to the EU Member States, the number of such infringement proceedings against the EEA EFTA States remains low.
- The number of infringement cases concerning *non-timely 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-timely transposition of regulations* continued increasing 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 wherever within the Union they want. 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 Member States and 3 EEA EFTA States;
- competition 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 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 orders of the EEA EFTA States. According to the legal order of Liechtenstein, a regulation is directly applicable once the EEA Joint Committee decision

¹ Agreement on the European Economic Area.

² Switzerland is also a member of EFTA, but not a party to the EEA Agreement. Hence, in this Scoreboard, the term “EEA EFTA States” refers to Iceland, Liechtenstein and Norway.

incorporating it into the EEA Agreement enters into force. In Iceland 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 1691 Internal Market directives that were incorporated into the EEA Agreement as per 30 April 2008³. The Scoreboard records the transposition status for these directives on 13 May 2008.

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 non-timely transposition of regulations.

³ The corresponding figure for the EU is 1687 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

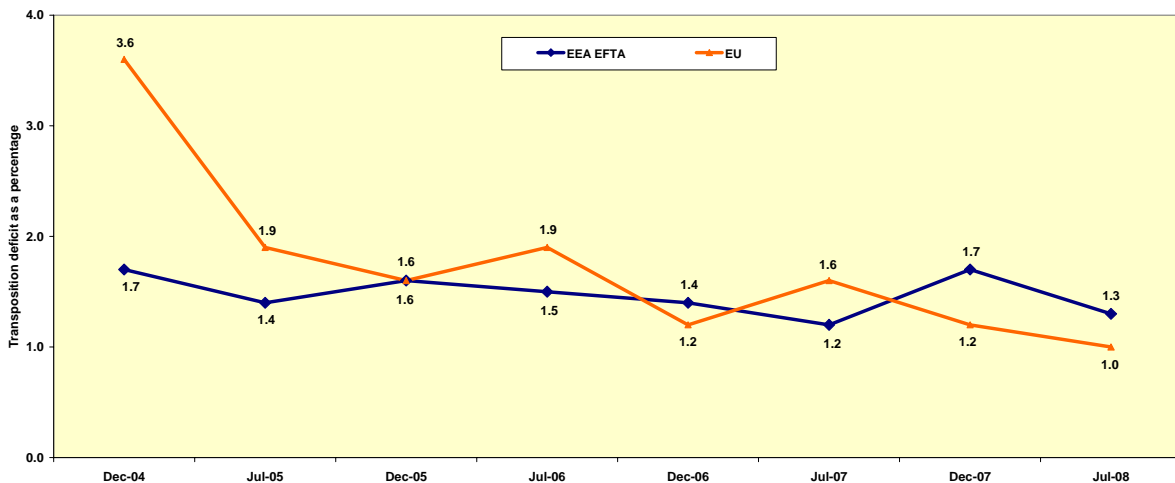
The transposition deficit indicates how many directives containing Internal Market rules and principles the EEA States have failed to notify as transposed on time⁴. While the ideal transposition target is a 0% deficit, the European Council has set an interim target of 1.5% as the maximum transposition deficit⁵.

The European Heads of State and Government decided in March 2007 that the transposition deficit should be below 1.0% by 2009 at the latest⁶.

The interim targets set by the European Council are used as a benchmark by the Authority as well.

2.1. Average transposition deficit in May 2008

Figure 1: The EEA EFTA States' average transposition deficit decreased to 1.3%



Note: Transposition deficit for the EEA EFTA States and the EU 27 for directives which should have been transposed on or before 30 April 2008, as of 13 May 2008.

Source for EU figures: The European Commission's Internal Market Scoreboard N° 17.

Two EEA EFTA States, namely Liechtenstein and Norway, were able to reduce their transposition deficits significantly, bringing down the average transposition deficit for the EEA EFTA States to 1.3 % (**figure 1**). The trend is encouraging and shows a commitment by the States to remedy the problem with late transposition of Internal Market directives. The States should, however, continue their efforts to timely transpose directives and to bring the EEA EFTA States' deficit down to 1%, the level agreed at the European Council, by 2009 at the latest.

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).

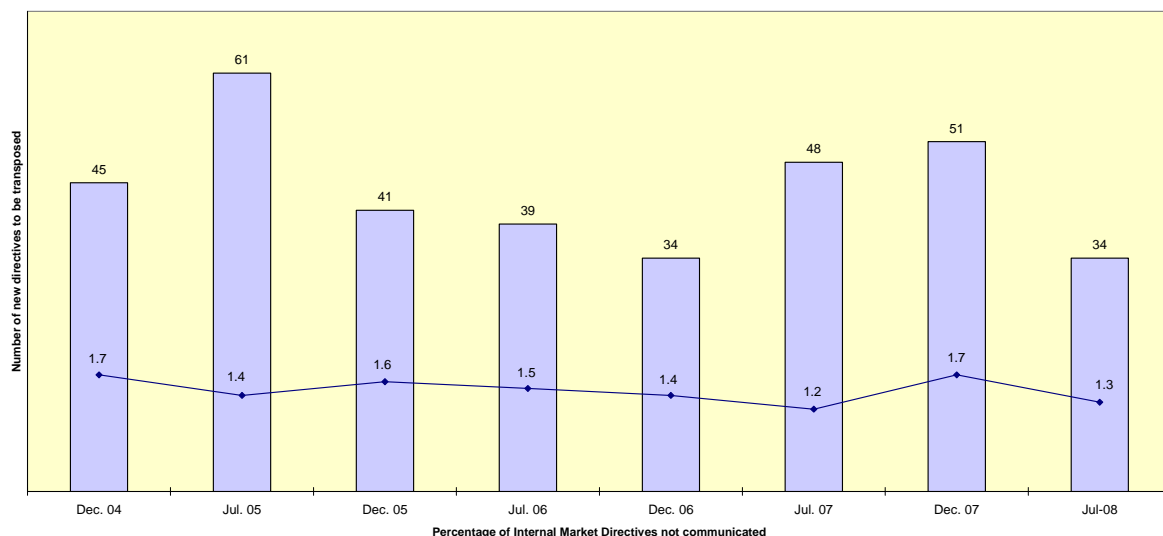
In absolute terms, the 1.3% deficit indicates that the EEA EFTA States are late with 63 notifications of national transposing measures, which is 23 directives fewer than at the time the previous Scoreboard was published.

The EU average transposition deficit, at 1.0%, already corresponds to the future interim target of 1.0%.

2.2. Relationship between new directives and the transposition deficit

Even though the transposition trend in the EEA EFTA States has been mainly positive over the last years, the chart below indicates that the average transposition deficit has somewhat fluctuated from one Scoreboard to the next. After four consecutive reductions in the deficits between December 2006 and July 2007, the deficit increased again in December 2007 even though the number of new directives at the time increased only by three. This seems to imply that the number of new directives to be implemented between two Scoreboards has not greatly influenced the implementation rate. At the same time this could imply that the EEA EFTA States have working methods in place which are sufficiently efficient to cater for fluctuations in the workload.

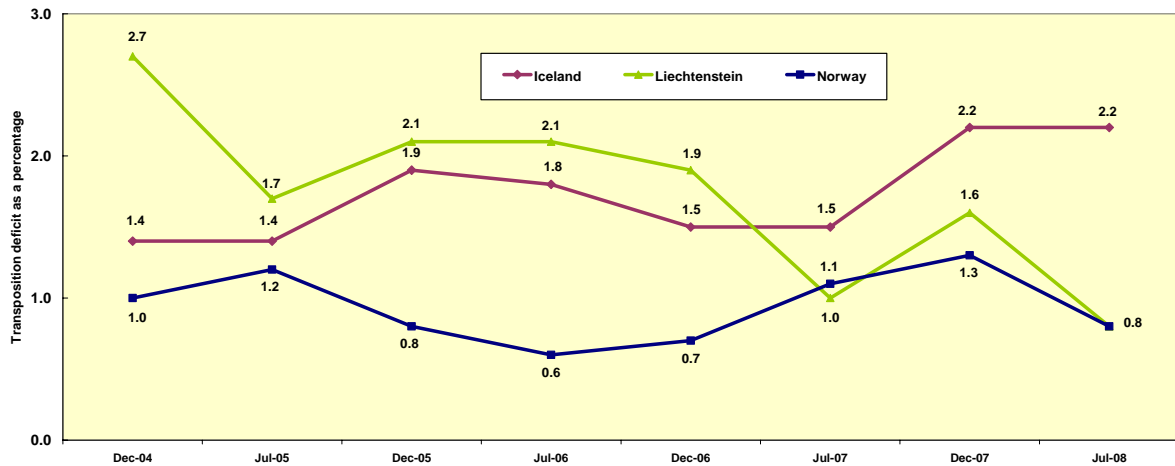
Figure 2: Fluctuation in transposition of new directives between two Scoreboards



Note: Number of new directives to be transposed between two Scoreboards compared to the final transposition deficit. For example, 34 new directives needed to be transposed between November 2007 (Scoreboard 21) and May 2008 (Scoreboard 22). The final score for Scoreboard 22 is 1.3% transposition deficit.

2.3. Performance measured against the 1.5% interim target

Figure 3: Iceland failed to reach the 1.5% target, Liechtenstein and Norway already hit the future 1% target



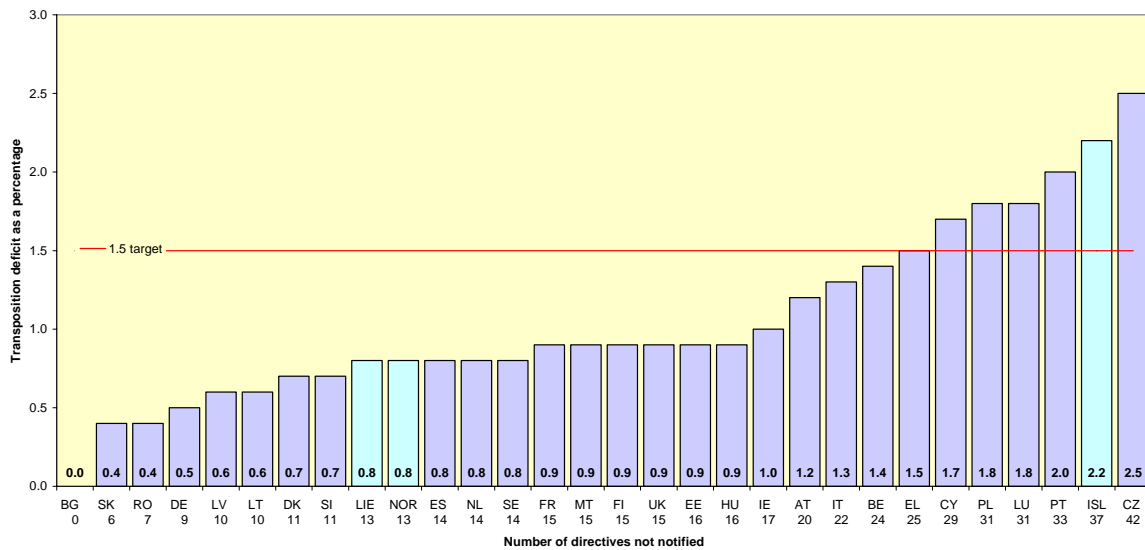
Note: Development of rates of failure to implement EEA Internal Market directives (transposition deficit) between November 2007 (Scoreboard 21) and May 2008 (Scoreboard 22).

Iceland's transposition deficit remained at 2.2%, i.e. exactly the same as at the time of the previous Scoreboard published in February 2008 (**figure 3**). This corresponds to 37 directives not fully transposed on time.

Since the previous Scoreboard, Liechtenstein's transposition deficit decreased significantly, from 1.6% to 0.8%. In fact, Liechtenstein achieved its best result so far. In absolute terms the number of directives decreased by 14 non-transposed directives. The deficit of 0.8% corresponds to 13 not fully transposed directives.

Similarly, Norway's transposition deficit decreased significantly, from 1.3% to 0.8%. This corresponds to 13 directives not fully transposed, i.e. 9 non-transposed directives fewer compared to the previous Scoreboard.

Figure 4: Liechtenstein and Norway improved their position in the EEA



Note: EEA comparison of transposition deficits.

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 17.

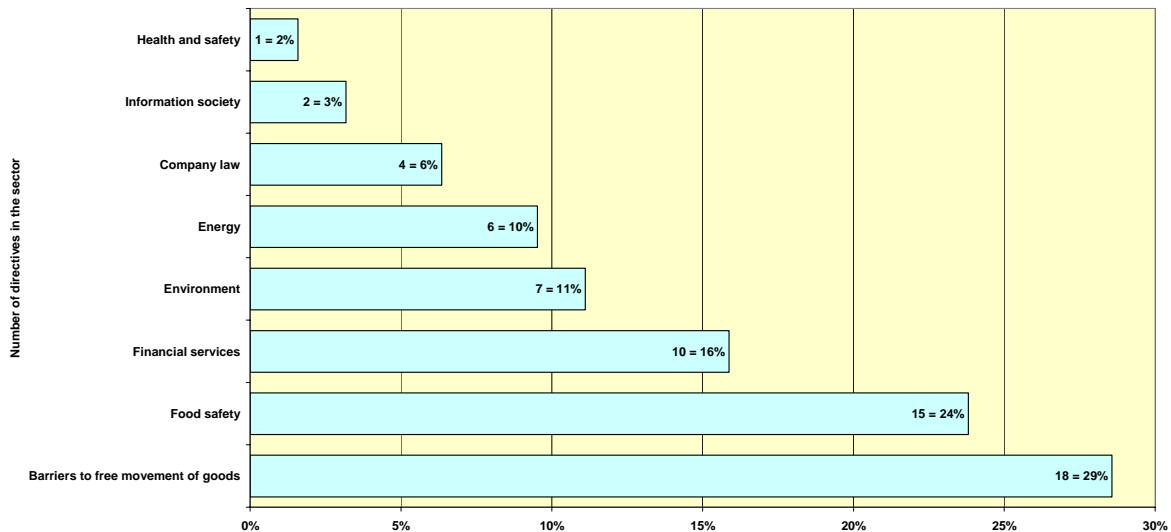
Consequently, Liechtenstein and Norway were able to improve their positions among the 30 EEA States and are now among the top ten performers. Although Iceland equalled its previous result, it is now in the second last position in the EEA, followed only by the Czech Republic (figure 4).

Out of the 30 EEA States, only six remain above the current 1.5% transposition deficit target. Moreover, two-thirds of the States, including Liechtenstein and Norway, are already in line with the future deficit target of 1.0%.

2.4. Breakdown of the overall transposition deficit by sectors

The breakdown (figure 5) shows that barriers hindering free movement of goods as well as food and feed safety rules are the source of the highest amount of overdue directives in the EEA EFTA States.

Figure 5: Breakdown of transposition deficit per sector



Note: Transposition deficit by sector – situation as of 13 May 2008.

Iceland’s main deficit is in the food and feed safety sector, whereas the biggest share of Norway’s total number of outstanding directives is in the barriers to free movement of goods sector. Liechtenstein has the highest deficit in the financial services sector.

2.5. 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.

Although the EEA EFTA States managed to decrease their average transposition deficit from the time of the previous Scoreboard, the average delay in the transposition of directives almost doubled, being now at 7.9 months. It is important that the States reverse this negative trend right away by ensuring that implementation takes place in a timely manner.

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

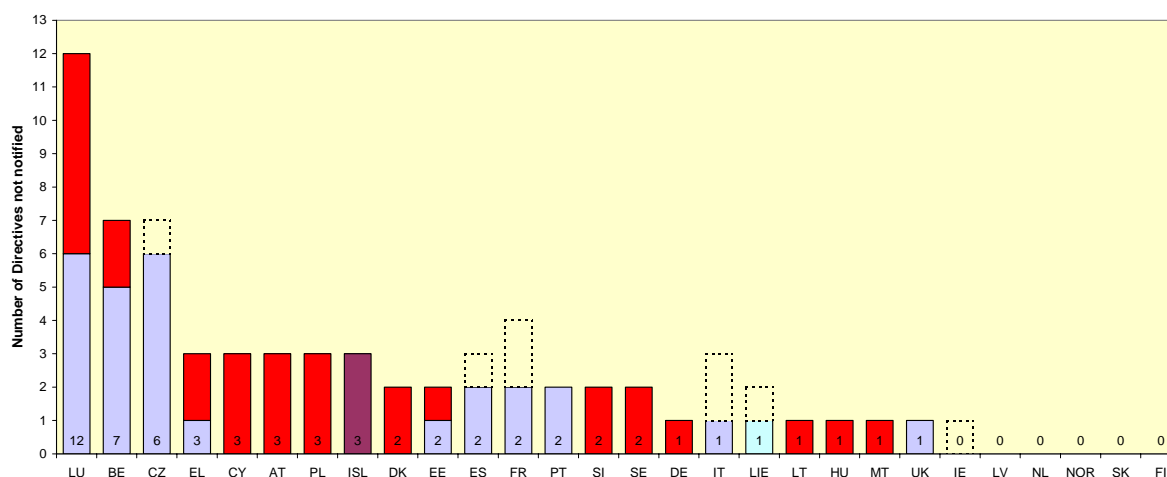
Figure 6: EEA EFTA States’ average transposition delay almost doubled being now at 7.9 months

Length of delay	Number of directives delayed					
	ISL		LIE		NOR	
	Apr 08	Oct 07	Apr 08	Oct 07	Apr 08	Oct 07
Less than 6 months	19	22	5	21	7	17
6 to 12 months	8	4	2	1	2	0
12 to 24 months	1	5	2	1	1	1
Over 24 months	3	0	1	2	0	0
Average delay (in months) by 30 April 2008	6.8	5.3	11.1	5.3	5.8	3.0

Note: Number of overdue Internal Market directives with a transposition deadline of 30 April 2008 for which no notification was received by 13 May 2008, broken down by the length of delay.

Although most of the non-transposed directives in the EEA EFTA States are overdue by less than six months, only Norway achieved the 0% target set by the European Council for directives overdue by two years or more (figure 6).

Figure 7: Iceland has three directives overdue by more than two years



dotted lines = decrease since Scoreboard 21 (February 2008) of directives overdue by two or more years
red = increase since Scoreboard 21 (February 2008) of directives overdue by two or more years

Note: Number of directives with a deadline for transposition into national law on or before 30 April 2006, which were not transposed by 13 May 2008.

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 17.

Liechtenstein has one directive which has been outstanding for almost four years, namely Directive 2002/49/EC relating to environmental noise (figure 7).⁸

Furthermore, contrary to the previous Scoreboard when Iceland had no overdue directives, it now has three directives overdue by more than two years. These are Directive 2002/96/EC on waste electrical and electronic equipment (WEEE), Directive

⁸ The case concerning the non-transposition by Liechtenstein of Directive 2002/49/EC was referred to the EFTA Court on 30 June 2008.

2003/108/EC amending Directive 2002/96/EC⁹ and Directive 2004/26/EC amending Directive 97/68/EC relating to measures against emission of pollutants from internal combustion engines in non-road mobile machinery.¹⁰

The transposition deficit figures do not indicate the quality of the national legislation

It is important to bear in mind that the transposition deficit figures presented above only indicate the failure by the EEA EFTA States to notify the implementation of directives at a given point in time. The quality of the national implementing legislation is only assessed at a later stage. Such conformity assessments may prompt the Authority to take further action if it finds that the notified measures do not ensure full and correct implementation.

Furthermore, failure to comply with the basic principles of the EEA Agreement itself, such as the free movement of goods, persons, services and capital, impairs the functioning of the Internal Market and might, therefore, also prompt action by the Authority.

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

⁹ The Authority has initiated infringement proceedings against Iceland concerning the non-transposition of Directives 2002/96/EC and 2003/108/EC.

¹⁰ The infringement case concerning the non-transposition by Iceland of Directive 2004/26/EC was referred to the EFTA Court on 20 February 2008.

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 Agreement¹¹. 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 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 rule definitely that a breach of EEA law has occurred. Until the Court renders its judgement, the fact that an infringement procedure has been opened shows only that, in the Authority's opinion, 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. 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 transposition, 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.

Information on the infringement cases concerning non-timely transposition of regulations is included in Chapter 4 covering the issue of transposition of Internal Market regulations by the EEA EFTA States.

On 30 April 2008, a total number of 183 infringement cases were being pursued by the Authority. This represents 31 cases more than at the time of the previous Scoreboard.

Out of the 183 infringement cases, 29 cases concerned incorrect implementation or application of Internal Market rules (see point 3.1.) whereas 34 cases concerned non-

¹¹ Agreement on the Establishment of a Surveillance Authority and a Court of Justice.

timely transposition of directives (see point 3.2.). The remaining 120 cases concerned non-timely transposition of regulations (see point 4.3.).

3.1. Infringements due to lack of conformity with or incorrect application of Internal Market rules

The overall number of infringement cases due to lack of conformity with or incorrect application of Internal Market rules remains at the same level as in the previous Scoreboard. Although the number of cases against Iceland and Liechtenstein increased slightly, the number of cases against Norway decreased (**figure 8**).

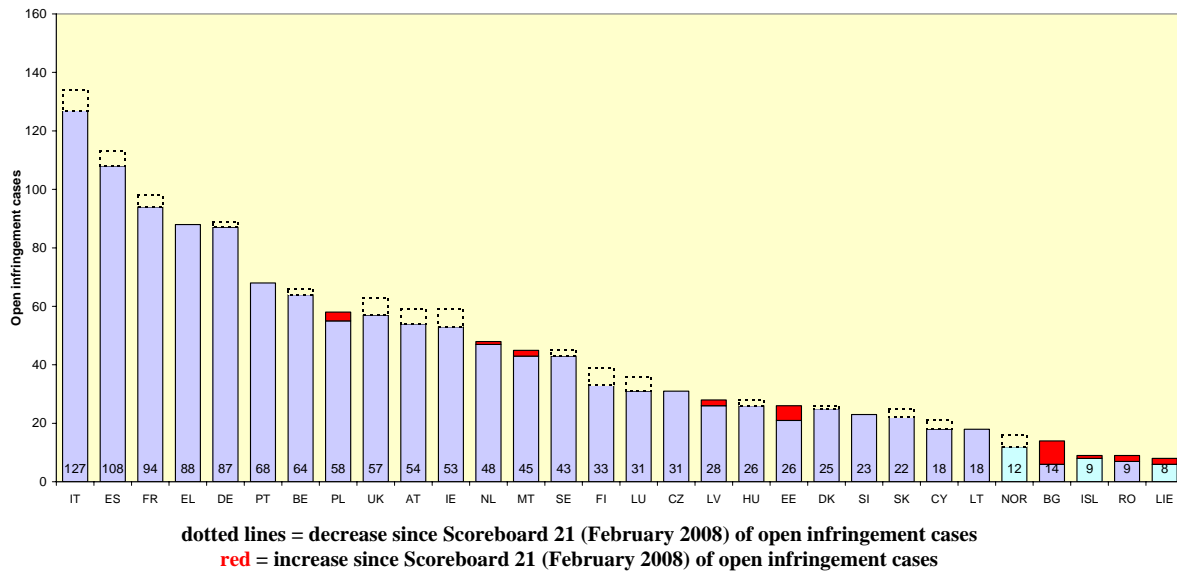
Figure 8: The number of infringement cases against the EEA EFTA States due to lack of conformity with or incorrect application remains at the same level as in the previous Scoreboard

	ISL		LIE		NOR		EEA EFTA	
	Apr 08	Oct 07	Apr 08	Oct 07	Apr 08	Oct 07	Apr 08	Oct 07
Letter of formal notice	8	7	6	3	6	9	20	19
Reasoned opinion	1	1	2	2	6	6	9	9
Referral to EFTA Court	0	0	0	1	0	1	0	2
Total	9	8	8	6	12	16	29	30

Note: Pending infringement cases due to lack of conformity with or incorrect application, according to stage of infringement proceedings, as of 30 April 2008.

In comparison to the EU 27, the number of infringement proceedings against the EEA EFTA States remains low (**figure 9**). With 8 cases, Liechtenstein has the lowest number of infringement proceedings in this category out of the 30 EEA States.

Figure 9: The number of EEA EFTA States infringement cases concerning lack of conformity with or incorrect application remains low



Note: Pending infringement cases due to lack of conformity with or incorrect application as of 30 April 2008.

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 17.

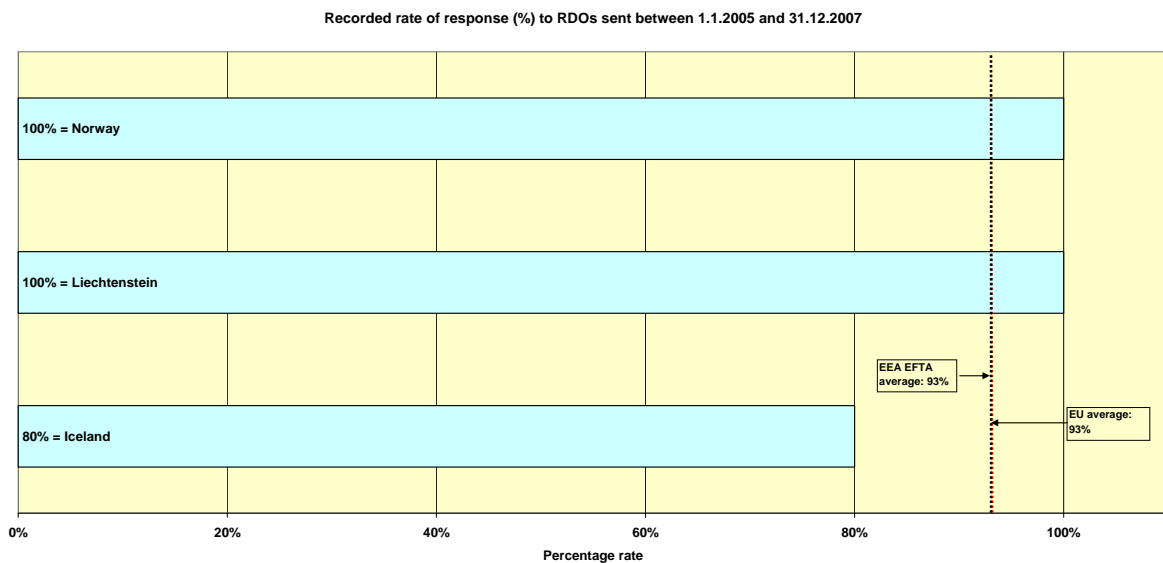
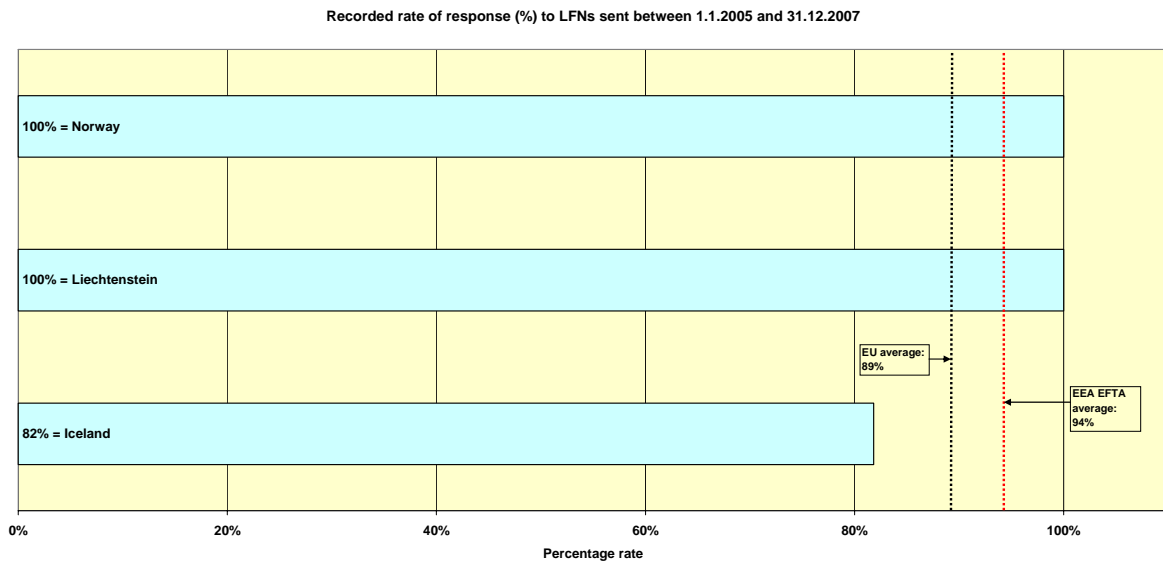
The Authority initiates formal infringement proceedings by sending a letter of formal notice and inviting the Government of the EEA EFTA State concerned to submit its observations on the matter within a specified time limit.

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 still not resolved following a reasoned opinion, the Authority may bring the matter before the EFTA Court, whose judgment is binding on the EEA EFTA State concerned.

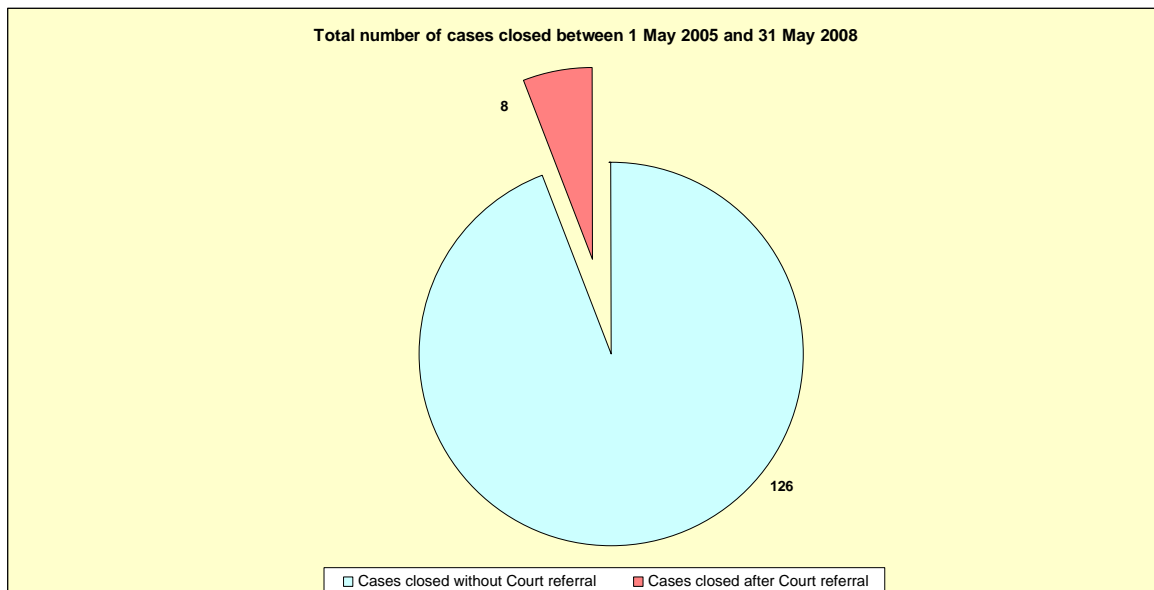
A constructive and timely handling of infringement proceedings depends partly on the active participation of the EEA EFTA States and their respect of the time limits for reply. In the vast majority of cases, the Authority receives responses to letters of formal notice and reasoned opinions. Regarding letters of formal notice sent between 1 January 2005 and 31 December 2007, a reply was received in 94% of the cases. A reply to reasoned opinions delivered during the same period was received in 93% of the cases (**figure 10**).

Figure 10: Recorded rate of response (%) to letters of formal notice and reasoned opinions sent between 1 January 2005 and 31 December 2007



The main purpose of infringement proceedings is to bring national rules and practices in line with EEA law, not to bring the EEA EFTA States before the EFTA Court. Most of the infringement cases are in fact resolved without a need to resort to court proceedings. Indeed, out of the 134 infringement procedures closed between May 2005 and May 2008, 126 were closed without a need to refer the cases to the Court and only 8 after a Court referral.

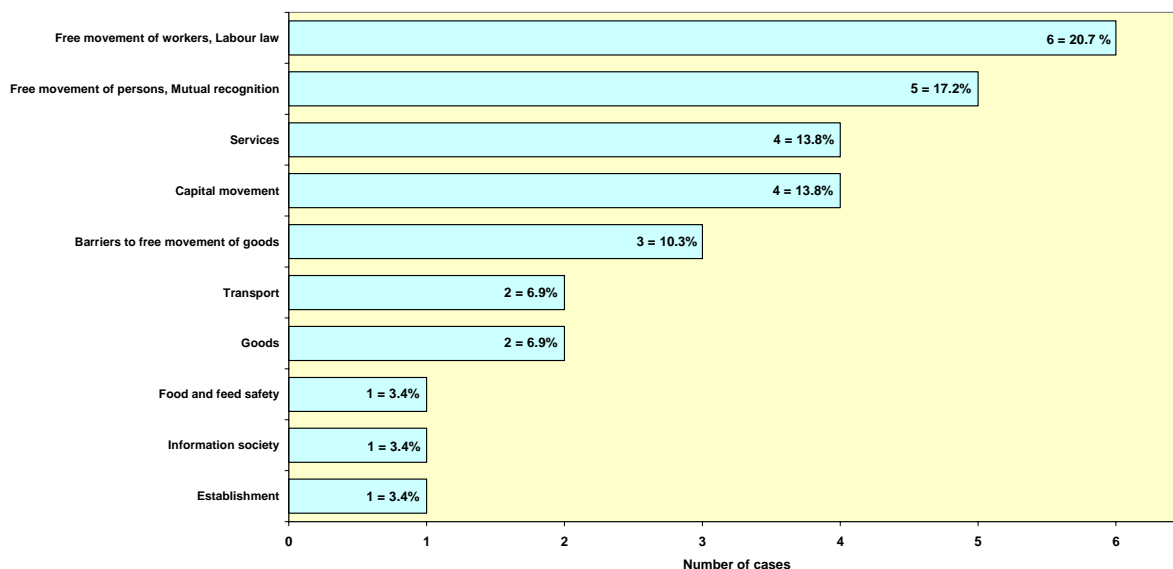
Figure 11: Court referral



Note: Number of infringement cases closed without or after Court referral.

A breakdown to sectors of the pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules indicates that the largest number of cases concerns free movement of workers and labour law with six infringement cases (**figure 12**).

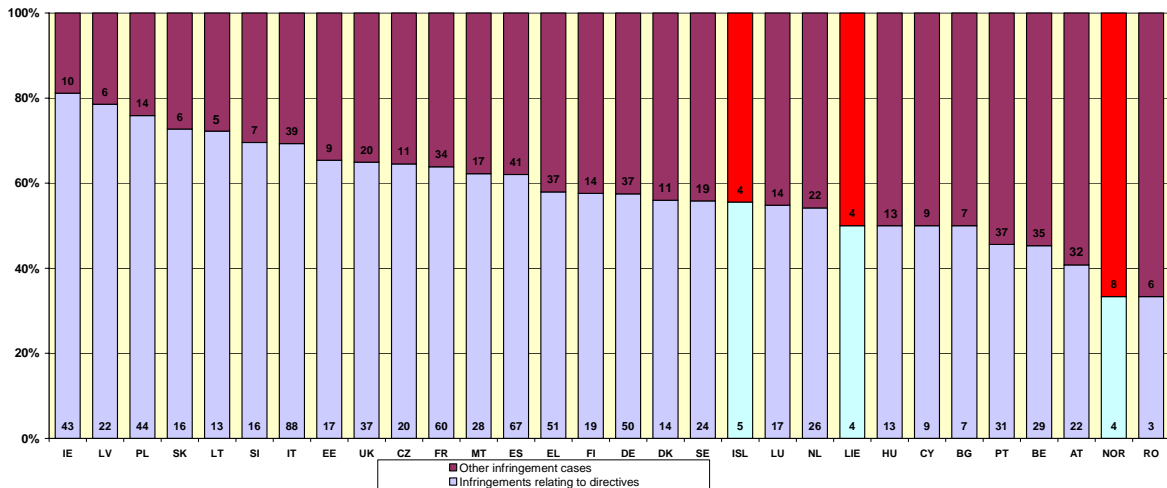
Figure 12: Breakdown of infringement cases per sector



Note: Infringement cases per sector as of 30 April 2008.

Three of the six infringement cases in the field of free movement of workers and labour law concern Norway, whereas Liechtenstein has the highest number of cases (3) in the sector concerning free movement of persons and mutual recognition. In the services and capital movement sectors, four out of the total of eight cases concern Norway.

Figure 13: EEA States still need to ensure that Internal Market directives are correctly transposed and applied



Note: Breakdown of infringement cases as of 30 April 2008.

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 17.

In addition to timely and correct transposition of directives, EEA States must ensure that the rules contained in directives are correctly applied. **Figure 13** 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 type of infringement cases.

Unlike in the EU Member States where the majority (60%) of the infringement cases relate to incorrect transposition or wrong application of directives, it appears that the majority of the infringement cases against the EEA EFTA States (16 cases) relate to incorrect application of other sources of EEA law than directives, such as a provision of the EEA Agreement, a regulation or a decision.

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 the time of the previous Scoreboard, the number of pending infringement proceedings initiated as a result of a complaint decreased slightly from 12 to 11.

The 11 pending infringement proceedings initiated on the basis of complaints represent 37.9% of the pending 29 infringement proceedings concerning lack of conformity with or incorrect application. Seven of these cases (63.6%) 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 increased by 3% (1 case) from the time of the previous Scoreboard (figure 14).

Figure 14: 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	
	Apr 08	Oct 07	Apr 08	Oct 07	Apr 08	Oct 07	Apr 08	Oct 07
Letter of formal notice	16	13	5	5	3	4	24	22
Reasoned opinion	4	5	2	3	2	1	8	9
Referral to EFTA Court	1	1	1 ¹²	1	0	0	2	2
Total	21	19	8	9	5	5	34	33

Note: Pending EEA EFTA States infringement cases due to non-transposition of directives, according to stage of infringement proceedings, as of 30 April 2008.

Between 31 October 2007 and 30 April 2008, one case against Iceland concerning non-transposition of directives prompted action before the EFTA Court. The case concerns Directive 2004/26/EC on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery. This is one of the three directives that Iceland has had outstanding for more than two years (see figure 7 earlier).

3.3. Package meetings

So called “Package meetings” involve the Authority’s experts and their counterparts in an EEA EFTA State who meet informally to discuss a “package of cases” with a view to solving the cases without a need for further legal action. Such Package meetings are organised on a yearly basis with each of the EEA EFTA State.

Package meetings are a useful tool for solving problematic cases or for accelerating the handling of the cases. In the latest Package meetings with Iceland, Liechtenstein and

¹² Infringement case referred to EFTA Court in December 2006 concerning the implementation of the directive relating to the assessment and management of environmental noise.

Norway, altogether 232 cases were discussed. Most of the cases discussed concerned the fields of transport, barriers hindering free movement of goods and workers.

4. TRANSPOSITION OF INTERNAL MARKET REGULATIONS INTO NATIONAL LAW

4.1. 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. 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. Pursuant to the constitutional law of the three EEA EFTA States, regulations become part of the Liechtenstein 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 requests Iceland and Norway, pursuant to Article 6 of the Surveillance and Court Agreement, to notify the national measures taken to transpose regulations.

4.2. Delays in the transposition of regulations

For reasons 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 a prior translation of regulations into the national language, followed by a publication of the translated regulations in the EEA Supplement to the Official Journal. The delays in the translation and publication of regulations in Icelandic have created a backlog of overdue regulations in Iceland. In May 2008, Iceland had 124 overdue regulations which had not been notified as fully transposed into the national law by 30 April 2008. The corresponding number of regulations for Norway was 19 regulations.¹³ However, a positive trend can be seen in the transposition of regulations by both States: although 58 new regulations were incorporated into the EEA Agreement between 31 October 2007 and 30 April 2008, Iceland managed to reduce the number of outstanding regulations during the same period from 165 to 124, i.e. by 25%, and Norway from 63 to 19, i.e. by 70%.

The Icelandic Government has informed the Authority that the current backlog will be further reduced by the forthcoming translation and publication of a considerable number of outstanding regulations in Icelandic in autumn 2008.

¹³ This number does not include regulations in the field of statistics (Annex XXI to the EEA Agreement).

4.3. 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, the enforcement of the non-transposed regulations is now handled swiftly and systematically by the Authority. Indeed, out of the 183 infringement cases currently pending before the Authority, 66% concern non-timely transposition of regulations by Iceland (117 cases) and Norway (3 cases).

Despite Iceland’s commitment to transpose regulations in a timelier manner, 21 new infringement cases were opened against Iceland since the time of the previous Scoreboard. The number of the pending infringement cases against Norway remained at three.

Figure 15: The number of infringement cases against Iceland due to non-transposition of regulations continued to increase

	ISL		NOR		EEA EFTA	
	Apr 08	Oct 07	Apr 08	Oct 07	Apr 08	Oct 07
Letter of formal notice	88	67	3	3	91	70
Reasoned opinion	28	19	0	0	28	19
Referral to EFTA Court	1	0	0	0	1	0
Total	117	86	3	3	120	89

Note: Pending infringement cases against Iceland and Norway due to non-transposition of regulations, according to stage of infringement proceedings, as of 30 April 2008.

The Authority aims at being able to bring cases before the EFTA Court one year after the date by which Iceland and Norway were supposed to have their national transposition measures in place. In February 2008, the Authority referred, for the first time, a case concerning non-transposition of a regulation to the EFTA Court. The case concerns Regulation 648/2004 on detergents which was supposed to be transposed into the Icelandic legal order more than two years ago.

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

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