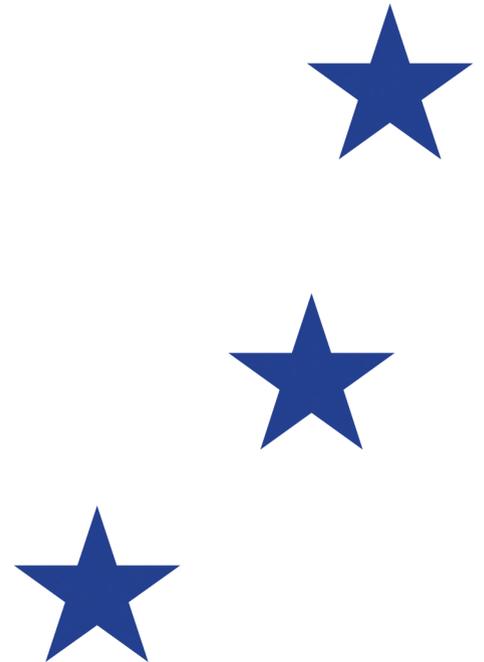




INTERNAL MARKET SCOREBOARD



**No. 39 (updated version including figures on the
EU Member States)
EEA EFTA STATES
of the EUROPEAN ECONOMIC AREA**

July 2017

EFTA SURVEILLANCE
AUTHORITY

39th Internal Market Scoreboard of the EFTA States (second edition including figures on the EU Member States)

The Internal Market aims at guaranteeing the free movement of goods, capital, services, and people across the EEA. A functioning internal market stimulates competition and trade for businesses, improves efficiency, raises quality and helps cut prices for consumers. It also improves living and working conditions for all citizens and strengthens environmental standards. The purpose of monitoring the Member States' timely compliance with EEA law is to ensure the full benefits of the EEA agreement for all stakeholders.

Main Findings

- Iceland's performance remains disappointing on all counts and the Icelandic Government is once again urged to take steps to improve and demonstrate its commitment to the EEA Agreement. With a transposition deficit of 2.2% or 18 directives overdue, Iceland's deficit increased by 0.2% since the last scoreboard. Iceland has had 4 directives outstanding for two years or more. There are 65 overdue regulations, 21 more than at the time of the previous scoreboard, representing a transposition deficit of 2.6%. Iceland has seen a rise in its transposition deficits in the last two scoreboards.
- Norway's transposition deficit increased from 0.1% to 0.4% for directives, reflecting 3 directives not being fully transposed into national law on time. Norway had 5 overdue regulations, 8 less than at the time of the previous scoreboard, resulting in a transposition deficit for regulations of 0.2%.
- Liechtenstein's deficit decreased from 1.1% to 0.9%, with 7 directives which had not been fully transposed of which 3 have been outstanding for two years or more. Liechtenstein still needs to take steps to improve its performance.
- In comparison, the average deficit among the EU Member States increased from 0.7% in November 2015 to 1.5% in December 2016. 20 EU Member States showed a deficit above 1%.
- The total number of infringement cases pursued by the Authority increased from 139 to 172 since the previous scoreboard. Of these, 110 concerned the late transposition of directives or regulations, while 62 concerned the incorrect implementation and application of EEA law.
- Each of the EFTA States must increase their efforts to ensure timely compliance with EFTA Court judgments.

1 Transposition of Internal Market directives into national law

The Internal Market is a key driver of growth and jobs. The EEA States need to transpose Internal Market legislation into their national law within the agreed deadlines. This is important, not only to achieve the policy objectives set out in the relevant legislation but also to protect the credibility of the Internal Market. This is why ESA urges all EFTA States to respect the agreed time limits.

The transposition deficit indicates how many directives and regulations the EEA States have failed to communicate as transposed on time. From 2009, ESA used the interim target of 1% set by the European Council in 2007 as a benchmark. Now, the Authority is looking towards a benchmark of 0.5% in line with the European Commission's Single Market Act proposed in April 2011.

1.1 The EFTA States' performance

Iceland's transposition deficit for directives increased to 2.2%. This corresponds to 18 directives not having been fully transposed, 1 more since the last Scoreboard. This failure to implement all applicable legislation means that the full benefit of the single market cannot be enjoyed by Icelandic citizens and all citizens across the EEA.

Norway's transposition deficit has risen to 0.4%, as 3 directives had not been fully transposed on time.

Liechtenstein's transposition deficit decreased by 0.2% to 0.9%, with 7 directives not having been fully transposed.

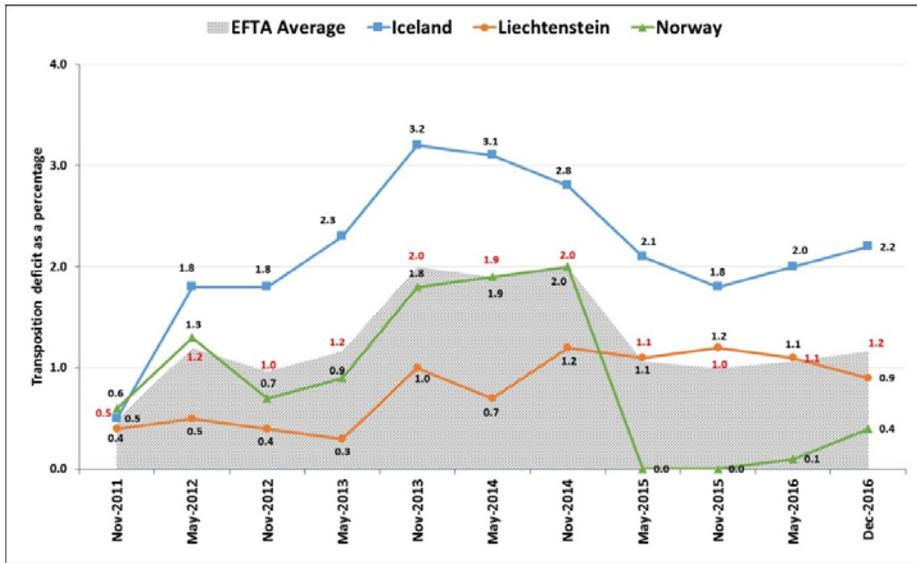


Figure 1: EFTA States' transposition deficit over the past 5 years

Transposition deficit as at 30 November 2016 for directives which should have been transposed on or before 30 November 2016.

1.2 The EFTA States' performance in comparison to the EU States

In comparison, the average deficit among the EU Member States increased from 0.7% in November 2015 to 1.5% in December 2016. Twenty EU Member States showed a deficit above 1%.

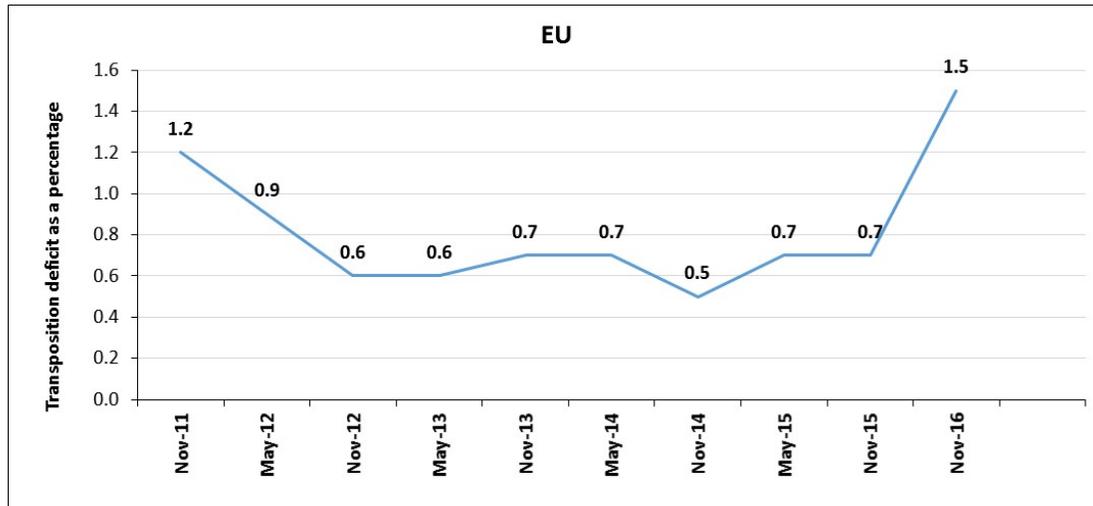


Figure 2: The EU Member States' transposition deficit over the past 5 years

Along with one EU State, Norway maintained the lowest transposition deficit of all EEA States. Liechtenstein's improved performance placed it among the ten best performers. Iceland once again found itself among the worst performers with a deficit in the bottom of all EEA States (Figure 3).

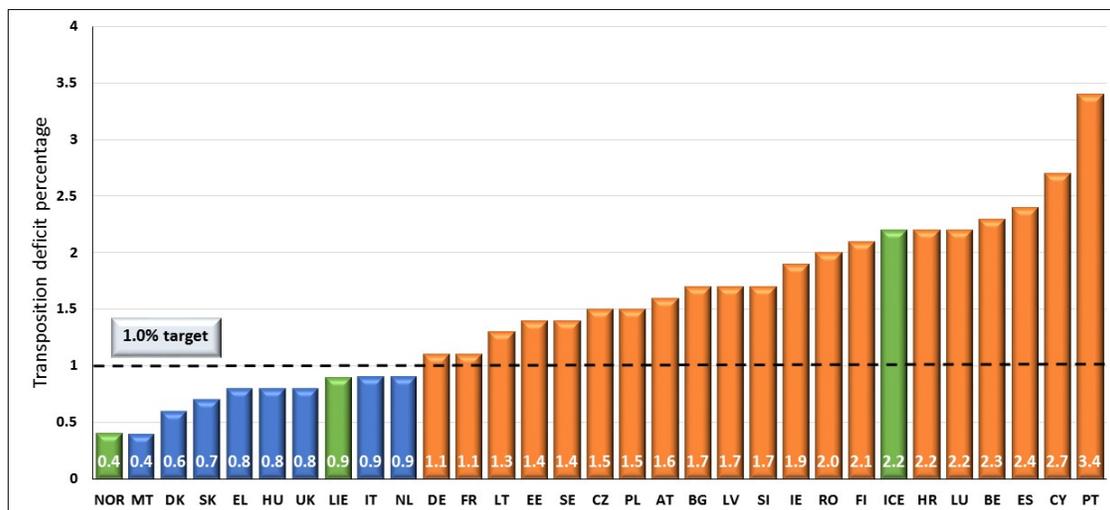


Figure 3: 21 EEA States did not meet the 1% target

Comparison of transposition deficits between the 31 EEA Member States

These findings take into account the 823 directives that were incorporated into the EEA Agreement and were in force on 30 November 2016. The corresponding figure for the EU is 1071 Internal Market directives. This difference is due to the fact that directives will

typically 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. Any comparison between the EFTA States and the EU Member States in this document has therefore to be made with this in mind.

1.3 Incompleteness rate of the Internal Market in the EFTA States with regard to directives¹

The incompleteness rate is an overall indicator of gaps in the EEA framework. Whenever one or more EEA States fail to transpose a directive on time, this leaves a gap meaning that instead of covering all EEA States, the internal market remains fragmented. Consequently, the economic interests of all EEA States are affected even if only one EEA State does not deliver on time.

The incompleteness rate records the percentage of directives which one or more of the three EFTA States have failed to transpose. In total, 3% of the directives in force in the EFTA States on 30 November 2016 had not been transposed by at least one of the three EFTA States. The incompleteness rate of 3% translates into 25 directives which had not been transposed by one or more of the EFTA States and which had, therefore, not achieved their full effect in the EFTA States. The incompleteness rate in the 28 EU Member States increased from the 4% recorded in the previous six scoreboards to 7%.

When the transposition delays are broken down by sector, the pattern of implementation varies between the EFTA States. As in the previous period, with regard to Directives, 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 4**).

¹ Formerly referred to as “fragmentation factor”.

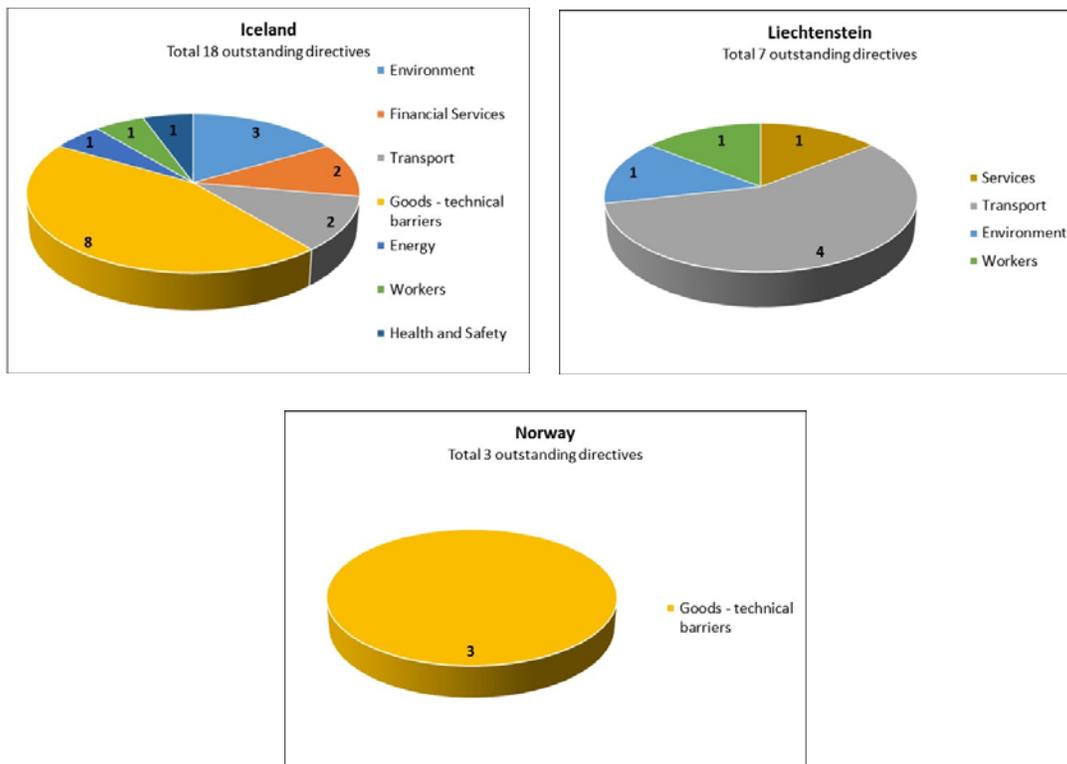


Figure 4: Most outstanding directives were in the areas of goods and transport, which were also the most incomplete sectors

2 Transposition of regulations 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 its monistic legal tradition, regulations become part of Liechtenstein’s internal legal order once they have been incorporated into the EEA Agreement through an EEA Joint Committee decision and are published. Iceland and Norway are, on the other hand, obliged to adopt legal measures in order to make regulations “as such” part of their internal legal orders.

2.1 Delays in the transposition of regulations

The timely incorporation of regulations is as important as that of directives in ensuring the completeness of the internal market.

On 30 November 2016, 2526 regulations incorporated into the EEA Agreement were in force. Iceland had 65 regulations which had not been notified as incorporated into its national law. This is 21 more than at the time of the last Scoreboard, a significant drop in performance, and represents a transposition deficit of 2.6%.

For Norway, the number of regulations not notified as incorporated into national law decreased by 8, bringing the number of outstanding regulations down to 5. This represents a transposition deficit of 0.2%.

2.2 Incompleteness rate of the Internal Market in the EFTA States with regard to regulations

Alongside directives, the implementation of regulations in a timely manner is crucial to delivering the benefits of the internal market to businesses and consumers across the EEA. In total, 3% of the 2526 regulations in force in the EFTA States on 30 November 2016 had not been transposed by both Iceland and Norway. The figure translates into 67 regulations which had not been transposed by both States and which had, therefore, not achieved their full effect in the EFTA States. Iceland has not transposed 65 regulations and 5 have not been transposed by Norway, meaning that a small number (3) of the regulations had not been transposed by either State.

With regard to regulations, the most incomplete sectors in Iceland are in the areas of food and feed, animal health and welfare and financial services. Of the 5 outstanding regulations in Norway, transport is the most incomplete sector. (Figure 5).

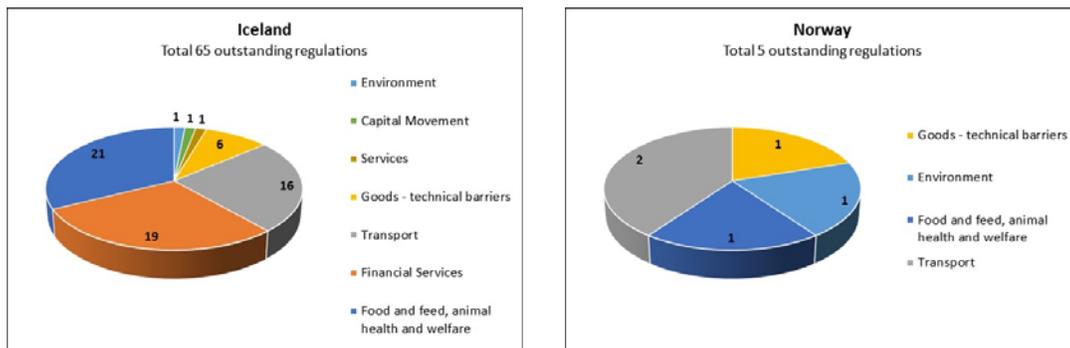


Figure 5: Most outstanding regulations were in the areas of food and feed, animal health and welfare, financial services and transport

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 Proceedings²

The Authority opens infringement proceedings when it is of the view that an EFTA State has failed to fulfil its obligations under the EEA Agreement. When interpreting the statistics on infringement procedures below it should be noted that only the EFTA Court can declare that a breach of EEA law has occurred.

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 can be 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

As at 1 December 2016, a total of 172 infringement cases were being pursued by the Authority (**Figure 6**)³. This represents 33 cases more than at the time of the last Scoreboard.

² If the Authority considers that an EFTA State has failed to correctly implement and apply legislation under the EEA Agreement, it may initiate formal infringement proceedings pursuant to Article 31 of the Agreement on the Establishment of a Surveillance Authority and a Court of Justice. Such infringement proceedings correspond to those initiated by the European Commission under Article 258 of the Treaty on the Functioning of the EU (TFEU).

³ A pending infringement case is defined as a case where at least a letter of formal notice has been sent to the State concerned.

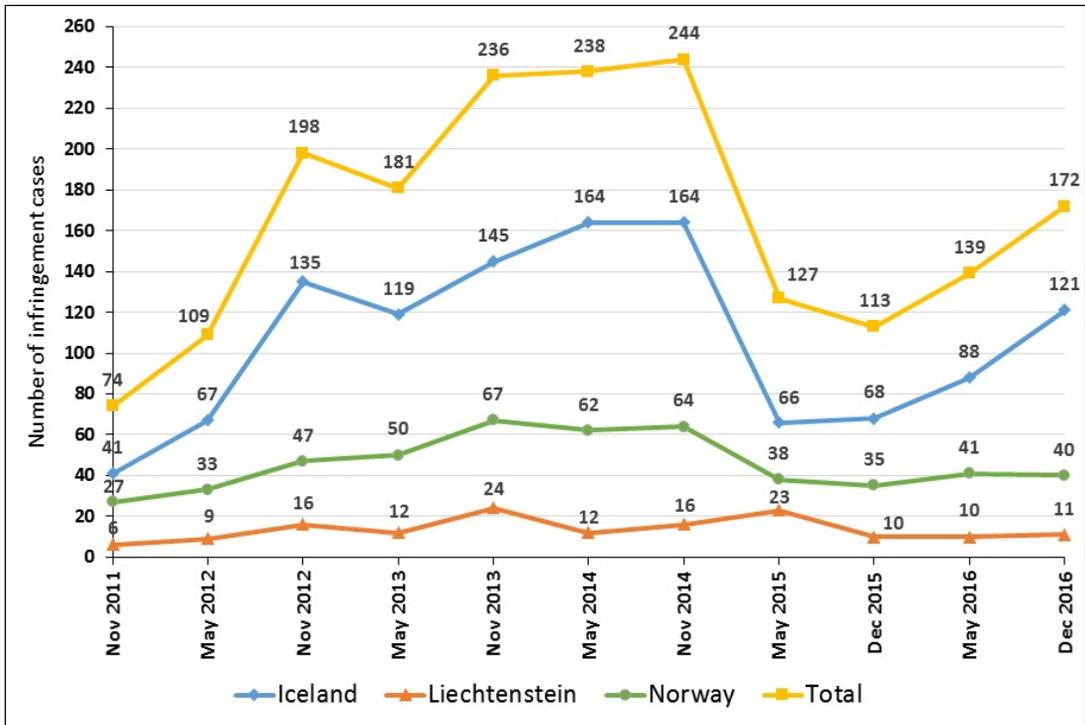


Figure 6: Total number of infringement cases

Total number of all open infringement proceedings against the three EFTA States on 1 December 2016.

Of the 172 pending infringement cases, 62 concerned the incorrect implementation or application of Internal Market rules (see chapter 3.2), whereas 24 cases concerned the late transposition of directives (see chapter 3.3). The remaining 86 cases concerned the late transposition of regulations (see chapter 3.4).

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

3.2.1 Number of cases

The overall number of infringement cases, 62 cases, due to lack of conformity with, or incorrect application of, Internal Market rules increased by seven since 1 June 2016⁴.

Since June 2016, the number of infringement cases against all States saw an increase. In Iceland the figure rose by one from 20 to 21, whereas in Norway it went from 32 to 34. In Liechtenstein the number more than doubled from 3 to 7.

In comparison with the 28 EU Member States, the number of infringement proceedings against the EFTA States remains rather low (**Figure 7**).

⁴ The comparison here is made with the status on 1 June 2016 since these were the last officially reported figures regarding the EFTA States (Scoreboard 38).

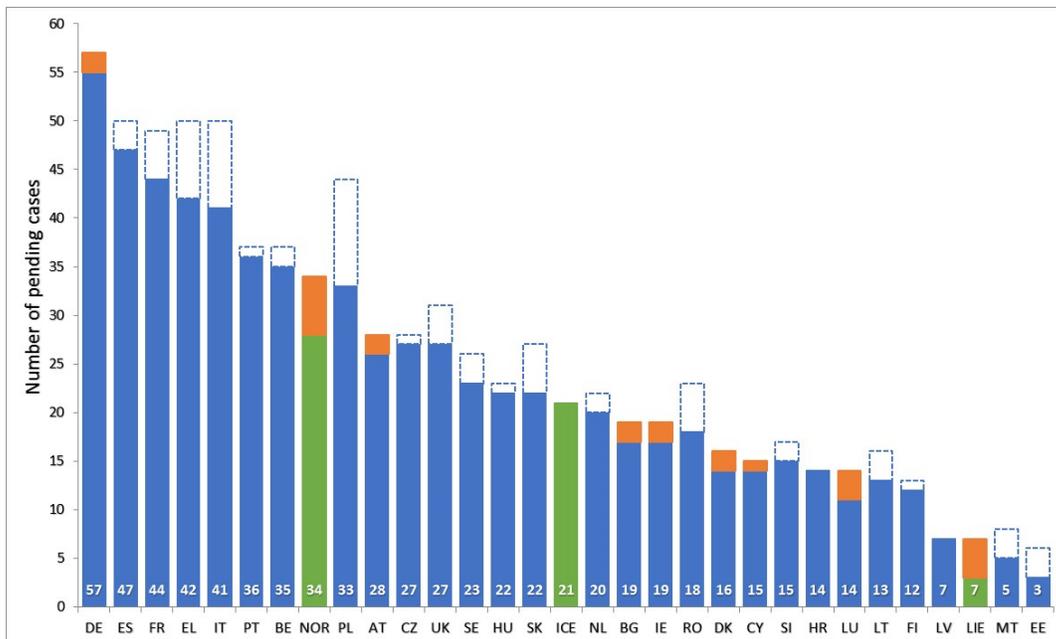


Figure 7: The number of EFTA State’s infringement cases concerning lack of conformity with or incorrect application of Internal Market rules remains low in comparison to the other EEA States Situation on 1 December 2016 compared to the situation on 1 December 2015⁵

Complaint cases rose from 23 to 25 since the previous Scoreboard, representing 40% of all pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Of these complaint cases, 19 related to Norway, five to Iceland and one to Liechtenstein.

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.

3.2.2 Breakdown 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 food and feed, animal health and welfare. This sector accounted for 16% of these infringement proceedings (Figure 8).

⁵ The comparison here is made with the situation on 1 December 2015 (Scoreboard 37) since these are the figures last officially reported by the European Commission . The transparent part of the chart represents the decrease in the number of pending cases, while the orange part shows the increase in the number of pending cases. Source for EU figures: The European Commission’s Single Market Scoreboard.

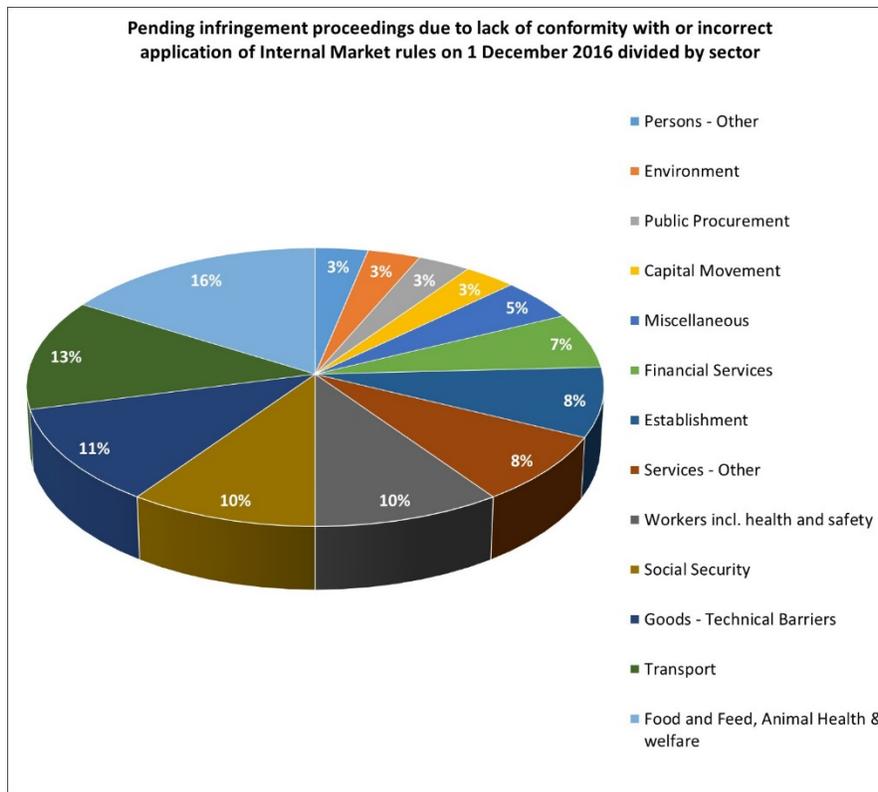


Figure 8: The sector food and feed, animal health and welfare accounted for most of the infringement proceedings in the EFTA States

3.2.3 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. Internal circumstances or practical difficulties cannot justify non-compliance with obligations and time-limits arising from EEA law.

Looking back over the cases that have been closed in the last 5 years (**Figure 9**), the average time taken by the EFTA States to comply with an EFTA Court ruling in cases concerning lack of conformity with or incorrect application of Internal Market rules was 16.1 months. This figure has remained unchanged since the previous Scoreboard. In comparison, the average time taken by the EU Member States to comply with Court judgments increased by 1.4 months from 21 months on 30 November 2015 to 22.4 months on 30 November 2016.

EFTA State	Case	Duration in months
Iceland	Compliance of the Posting Act with Article 36 EEA and the Posting of Workers Directive 96/71	26
Iceland	Failure to comply with the requirements of the Environmental Noise Directive 2002/49	13
Iceland	Complaint and incorrect implementation/application case concerning exit taxation of cross-border mergers	4
Iceland	Conformity assessment of the national measures implementing the Equal Treatment Directive 2006/54/EC	9
Norway	Complaint regarding equal treatment/discrimination in national legislation regarding pension rights	56
Norway	Calculation of survivor's pension from the Public Service Pension Fund	12
Norway	Ownership restrictions in Financial Services Infrastructure Institutions	35
Norway	Access to family benefits in Norway for unmarried/divorced parents where one partner is living outside of Norway	12
Norway	Complaint concerning licensing under the Building and Planning Act - provision of services and recognition of qualifications	2
Liechtenstein	Complaint concerning deposits for staffing agencies	12

Figure 9: Cases concerning lack of conformity with or incorrect application of Internal Market rules referred to the EFTA Court and subsequently closed in the last five years

Duration in months between the judgment of the EFTA Court and the resolution of the case

In cases where the EFTA States have still to comply with a judgment of the EFTA Court, at the cut-off date of the scoreboard of 30 November 2016, the average time since the court judgment was 23.1 months, (see **Figure 10** for the details of these cases). This is over four months longer than the comparable figure from the last scoreboard.

EFTA State	Case	Duration in months
Iceland	Conformity assessment of the national measures implementing Directive 2002/92/EC (insurance mediation) in Iceland	36
Norway	Complaint concerning the temporary import of foreign-registered rental cars	26
Norway	Conformity assessment of national measures implementing Directive 2005/60/EC (Third Anti-Money Laundering Directive)	35
Norway	Implementation of the Directive on ambient air quality	14
Norway	Incorrect implementation of Directive 2000/59 on port reception facilities	4
Liechtenstein	Establishment of Austrian trained 'Dentist'	20
Liechtenstein	Liechtenstein Trade Act and the Services Directive	7

Figure 10: Ongoing cases concerning lack of conformity with or incorrect application of Internal Market rules referred to the EFTA Court which on 30 November 2016 remained unresolved

Duration in months since the judgment of the EFTA Court

3.3 Infringement proceedings concerning failure to transpose directives into national law

The number of infringement cases initiated against the EFTA States for non-transposition of directives increased by 3 cases from 21 to 24 from the time of the previous Scoreboard. (Figure 11).

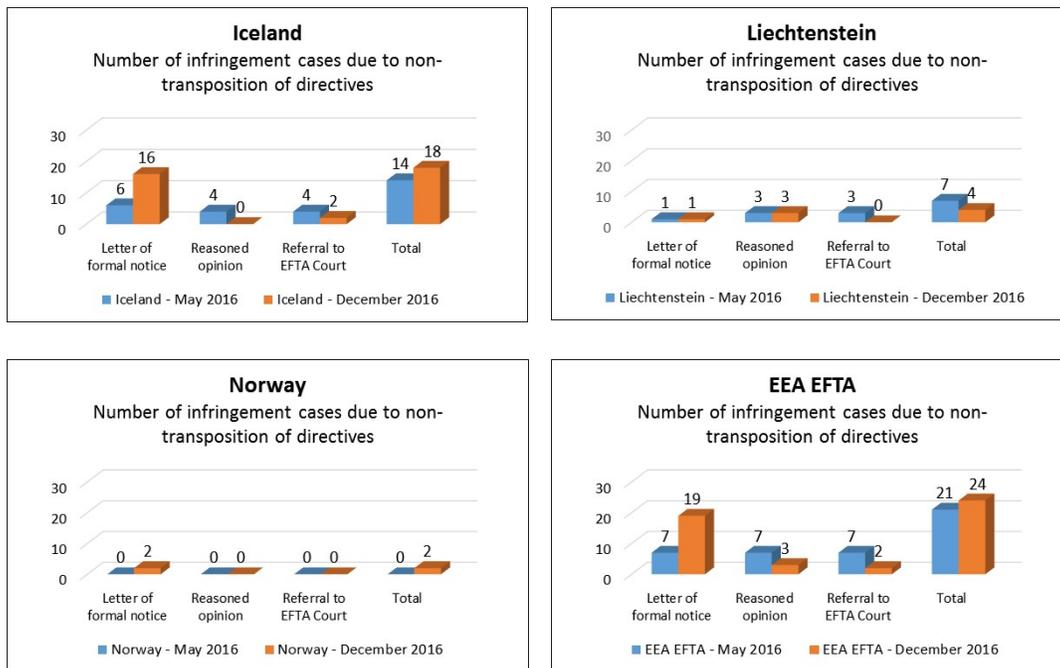


Figure 11: The number of infringement cases against the EFTA States due to non-transposition of directives.

Since the last Scoreboard, one case against Iceland concerning non-transposition of directives was referred to the EFTA Court.

3.4 Infringement proceedings concerning failure to transpose regulations into national law

Of the 172 infringement cases pending in December 2016, 50% concerned the late transposition of regulations by Iceland, 82 cases, and Norway, 4 cases. This represents a significant increase of 28 infringement proceedings against Iceland and a decrease of 5 against Norway since the time of the last Scoreboard (Figure 12).

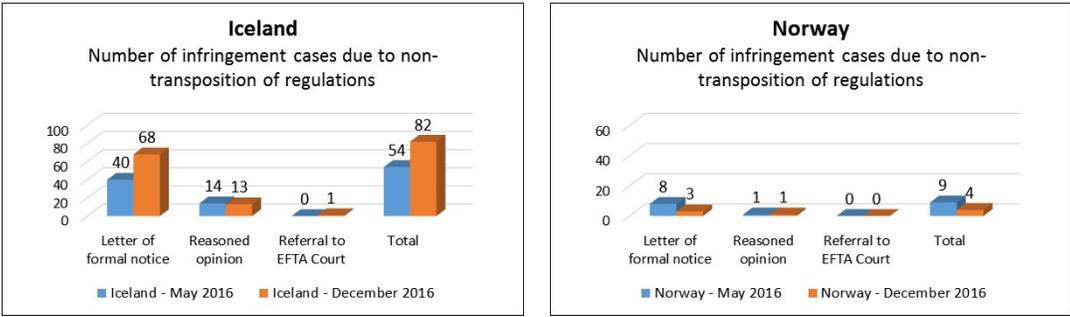


Figure 12: The number of infringement cases initiated against Iceland and Norway concerning failure to transpose regulations increased since the previous Scoreboard

The total number of infringement cases concerning the non-transposition of directives and regulations increased by 26 cases from 84 to 110 since the last Scoreboard.

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