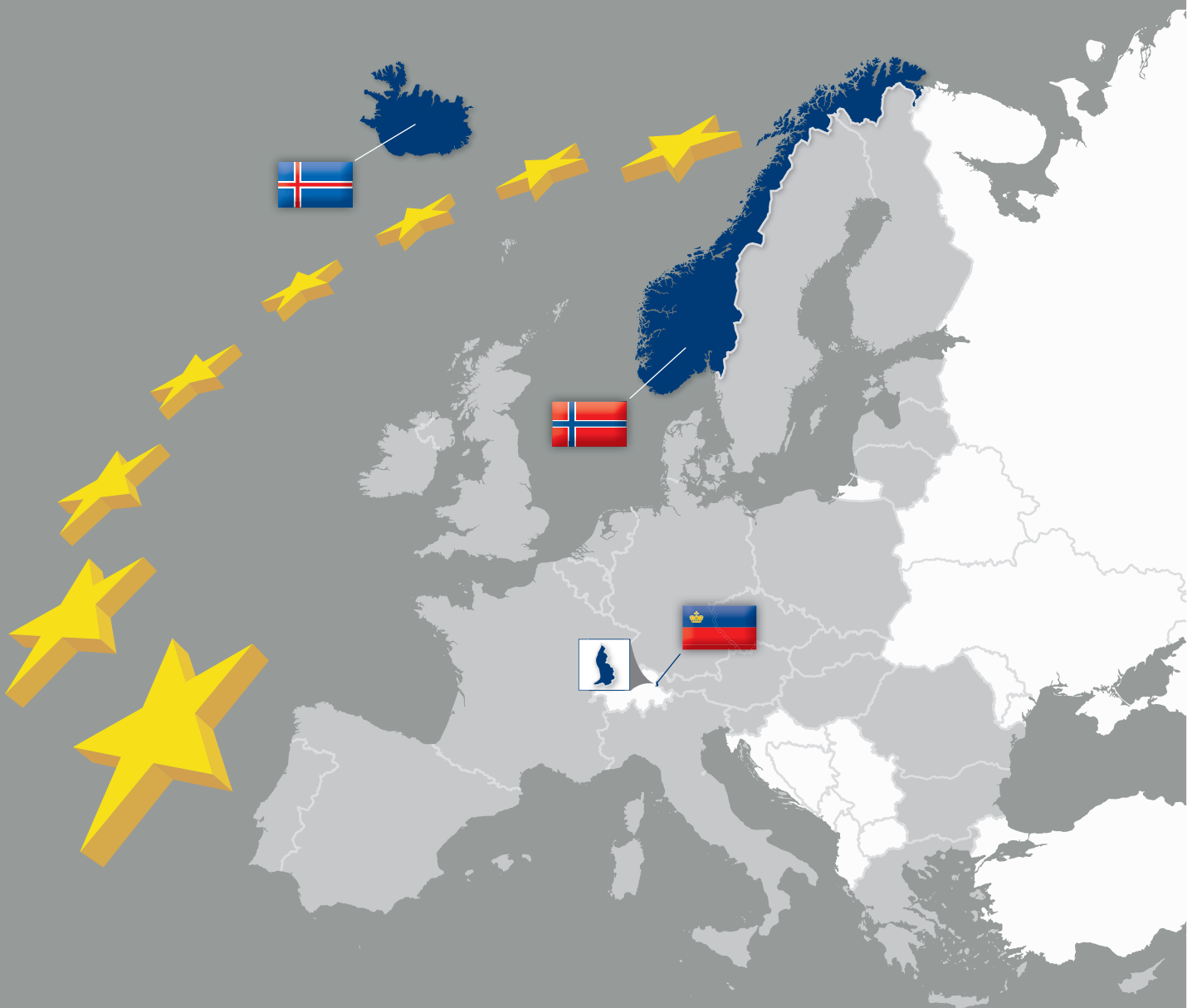


EEA EFTA States

Internal Market Scoreboard

March 2011



INTERNAL MARKET SCOREBOARD

No. 27

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

March 2011

EFTA SURVEILLANCE AUTHORITY

MAIN FINDINGS –

**27th INTERNAL MARKET SCOREBOARD of the
EEA EFTA STATES**

- **The average transposition deficit of the EEA EFTA States decreased to the lowest ever rate of 0.6%. All the three States achieved the deficit target of 1%.**
- **The EU Member States' average transposition deficit remained at 0.9%.**
- **Norway reduced its deficit from 0.4% to an applaudable 0.2%, its best result ever. However, the transposition delay in Norway increased by almost four months.**
- **The transposition deficit for Liechtenstein, at 0.5%, remained the same as at the time of the previous Scoreboard. Liechtenstein was able to reduce its transposition delay by two months.**
- **Iceland reduced its deficit from 1.3% to 1.0%. Accordingly, for the first time since 2003, Iceland reached the 1% interim target.**
- **Iceland had one directive overdue by more than two years, Liechtenstein and Norway had none.**
- **The *total* number of infringement cases pursued by the Authority decreased by 14 cases (from 117 to 103) from the time of the previous Scoreboard.**
- **The overall number of infringement cases due to *incorrect transposition or incorrect application* of Internal Market rules increased to 34, which is 5 cases more than in the previous Scoreboard.**
- **The number of infringement cases concerning the *late transposition of directives* by the EEA EFTA States decreased from 32 to 26 since the previous Scoreboard.**
- **Iceland reduced the number of overdue *regulations* by 34, from 50 to 16. In Norway, the number decreased by one regulation, to a total of 13.**
- **Almost half (42%) of the pending infringement cases concerned *late transposition of regulations*. However, the number of such infringement cases against Iceland decreased by 12 cases and against Norway by one case from the time of the previous Scoreboard.**

1. INTRODUCTION

The Internal Market of the European Union ensures that businesses and citizens of the European Union have the right to trade their goods and services, to work, to invest and to establish themselves wherever they want within the Union. The purpose of the EEA Agreement¹ is to extend the Internal Market to the three EEA EFTA States, namely Iceland, Liechtenstein and Norway.² Thus ensuring, by and large, that the businesses and individuals in those countries have the same rights as those in the EU Member States.

The benefits of the Internal Market include:

- free trade on equal terms within the EEA, which promotes innovation, competition and lower prices for consumers;
- the right to seek work and establish a business in the 27 EU Member States and the three EEA EFTA States;
- competition, e.g. between service providers, which leads to more innovation, better services and lower prices for consumers; and
- more cross-border investment within the EEA.

The Internal Market does not deliver benefits automatically. A prerequisite for the functioning of the Internal Market is that equal conditions exist for competition, based on common, homogeneous rules, across the aforementioned EEA States that are parties to the EEA Agreement. These rules have to be adopted, transposed into national law and properly enforced.

The legal instruments regulating the Internal Market

The common body of law (“*acquis communautaire*”) that regulates the Internal Market consists first and foremost of directives and regulations adopted by the European Union. *Directives* must be transposed into national legislation in the EEA States, but it is left to each EEA State to choose the form and the method of implementation. Each directive provides a time limit by which transposition has to take place. EU directives are incorporated into the EEA Agreement through decisions taken by the EEA Joint Committee. The obligation to transpose a directive into the national law of the EEA EFTA States is triggered by the EEA Joint Committee decisions.

The EFTA Surveillance Authority is required to ensure the fulfilment by the EEA EFTA States of their obligations under the EEA Agreement, including the transposition of the directives in a timely and correct manner. The European Commission is entrusted with the parallel task in relation to the EU Member States. In carrying out its tasks, the Authority co-operates closely with the Commission. This co-operation ensures a uniform implementation and application of the Internal Market rules and principles throughout the whole EEA.

Regulations shall, according to the EEA Agreement, “as such” be made part of the internal legal orders of the EEA EFTA States. According to the legal order of

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.

Liechtenstein, a regulation is directly applicable once the EEA Joint Committee decision incorporating it into the EEA Agreement enters into force. In Iceland and Norway, however, regulations are not directly applicable. Rather, the Icelandic and Norwegian constitutions require that regulations be made part of their internal legal orders by way of national implementing measures.

What is the purpose of the Internal Market Scoreboard?

Since 1997, the European Commission and the EFTA Surveillance Authority have published the Internal Market Scoreboard to monitor how well the EU States and the EEA EFTA States comply with their obligations to ensure timely transposition of Internal Market directives.

The purpose of the EEA EFTA Internal Market Scoreboard is to monitor:

- to what extent the EEA EFTA States notify the transposition of new EEA directives on time; and
- the number of directives still to be transposed; and
- the average time it takes for the EEA EFTA States to transpose directives.

The findings in this Scoreboard take into account the 1777 Internal Market directives that were incorporated into the EEA Agreement by 31 October 2010.³ The Scoreboard records the transposition status for these directives on *10 November 2010*.

During 2011, the EFTA Surveillance Authority takes part in a project initiated by the EFTA Secretariat, the objective of which is to establish the number of EEA Acts actually in force. The reason why this is necessary is that a number of legal acts that are formally part of the EEA Agreement, and listed in its Annexes as applicable EEA law, may de facto no longer be in force despite not having been formally repealed by the EEA Joint Committee. Should this project reveal a different number of applicable directives, this will influence future calculations⁴.

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 lack of conformity with or failure to apply EEA legislation correctly.

Finally, chapter 5 of the Scoreboard provides information on the number of infringement proceedings concerning failure to transpose Internal Market directives and regulations on time.

³ The corresponding figure for the EU is 1481 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.

⁴ The EEA Joint Committee consists of the EFTA States being part of the EEA Agreement, on the one hand, and the European Union, on the other. The Committee adopts legal acts – Directives, Regulations, Decisions etc, usually already in force in the EU – for inclusion in the EEA Agreement. It has not been consistent practice over time that the Committee repeals legal acts that have previously been included in the annexes of the EEA Agreement.

2. TRANSPOSITION OF INTERNAL MARKET DIRECTIVES INTO NATIONAL LAW

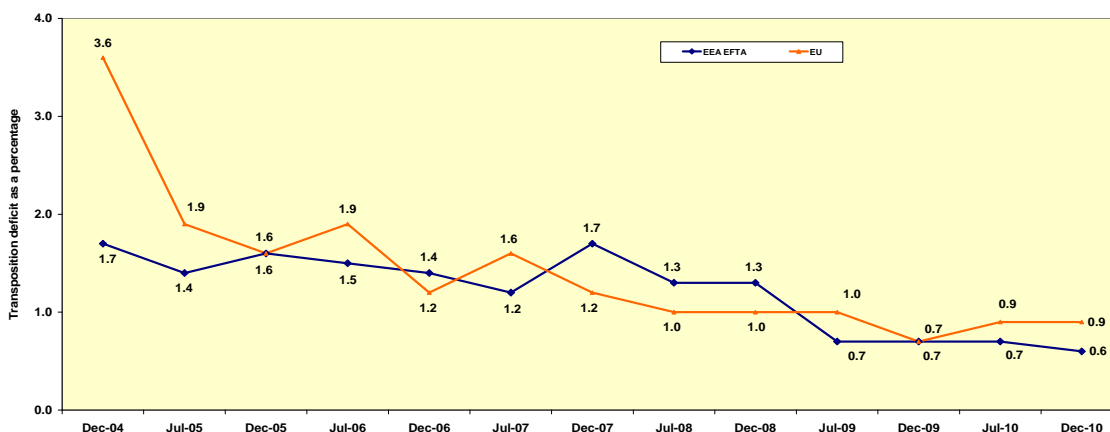
The Internal Market is a key driver of growth and jobs and one of the main engines for economic recovery. In these challenging times, a well-functioning Internal Market is more important than ever as it provides opportunities for businesses and citizens. Yet the Internal Market does not deliver benefits automatically. The EEA States need to transpose Internal Market legislation into their national law within the agreed deadlines. Timely transposition is a necessary condition for achieving the policy objectives set out in the relevant legislation. Moreover, it is important for the credibility of the Internal Market in the eyes of the public. This is why the EEA States are repeatedly called on to improve their transposition records.

The transposition deficit indicates how many directives containing Internal Market rules and principles the EEA States have failed to communicate as having been transposed on time.⁵ As from January 2009, the relevant deficit target to measure transposition performance has been 1% according to the European Council conclusions of March 2007.⁶ This interim target set by the European Council is used as a benchmark by the Authority as well.

2.1 Average transposition deficit in November 2010

In November 2010, the average transposition deficit for the EEA EFTA States was, at 0.6%, at its lowest level ever (**Figure 1**). This is a remarkable achievement as the average transposition deficit is well below the interim target of 1%. In absolute terms, the 0.6% deficit indicates that the EEA EFTA States were late with 28 notifications of national transposing measures, which is a decrease of 9 since the last Scoreboard.

Figure 1: The EEA EFTA States’ average transposition deficit at 0.6%



Transposition deficit on 10 November 2010 for the EEA EFTA States and the EU 27 for directives which should have been transposed on or before 31 October 2010. The 1997-2008 deficits for the EEA EFTA States and the EU States have been taken from the second Scoreboards of each year.

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 22.

⁵ 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.

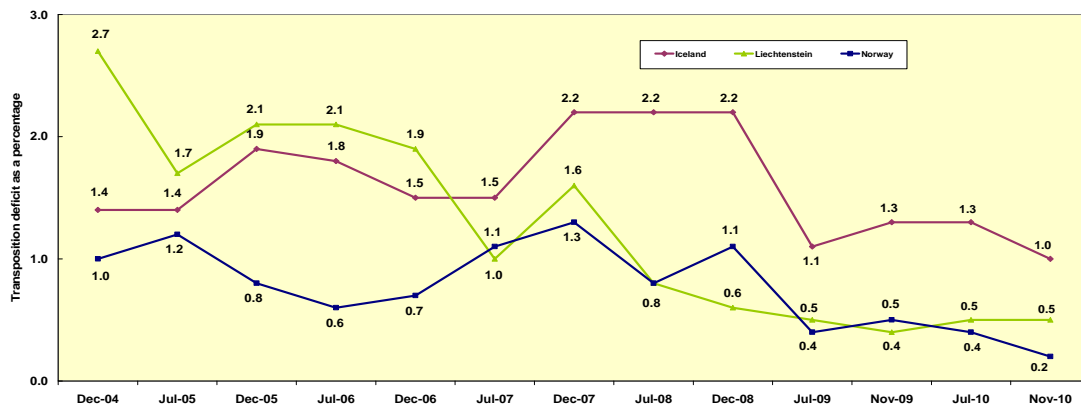
⁶ Conclusion of the European Council summit in Brussels (8-9 March 2007).

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

2.2 Performance measured against the 1.0% interim target

Iceland's transposition deficit, at 1%, was reduced by 0.3% since the last Scoreboard. The deficit corresponds to 17 directives not fully transposed on time. This means that Iceland, for the first time since December 2003, is in line with the 1% target.

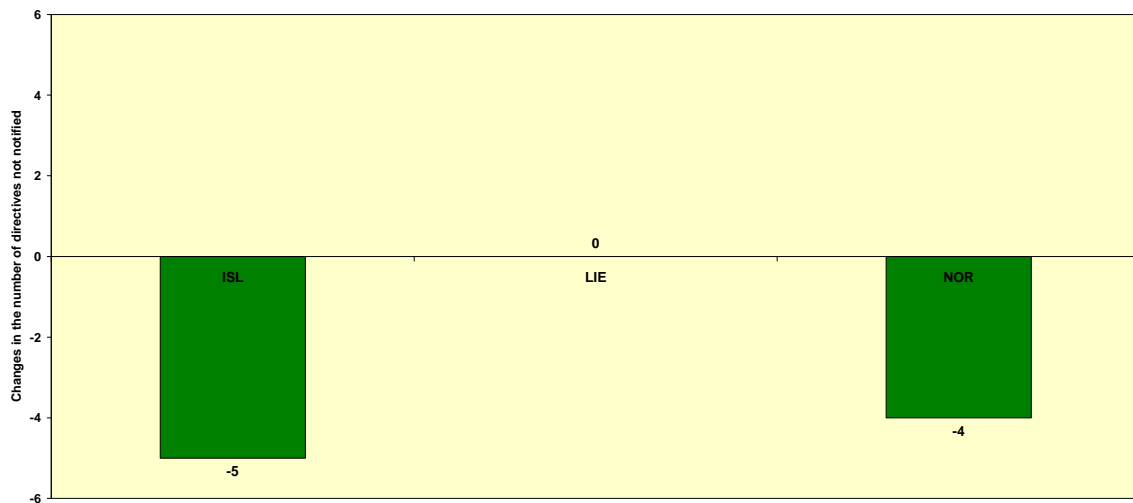
Figure 2: All EEA EFTA States comply with the 1% target



Transposition deficit on 10 November 2010 for directives which should have been transposed on or before 31 October 2010.

Norway managed to reduce its deficit by 0.2%, from 0.4% to 0.2%. This is the lowest deficit ever achieved by an EEA EFTA State. This deficit corresponds to three directives not having been fully transposed, four less than at the time of the previous Scoreboard. Liechtenstein achieved the same result as at the time of the previous Scoreboard, namely a deficit of 0.5%. This corresponds to eight directives not having been fully transposed.

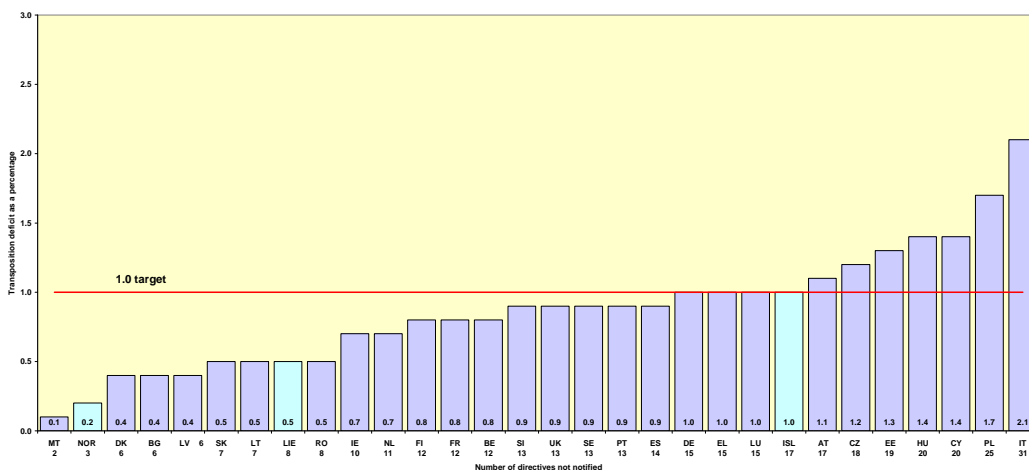
Figure 3: Change in the number of outstanding directives since the previous Scoreboard



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

Out of the 30 EEA States, 23 succeeded in bringing their transposition deficits in line with the 1% interim target, whereas 7 EEA States remained above the target. This means that within the past 6 months, two more EU Member States managed to bring their deficits in line with the target of 1%. The three EEA EFTA States were all in line with the deficit target of 1%, and both Liechtenstein and Norway were well below the target (Figure 4).

Figure 4: The three EEA EFTA States comply with the 1% interim target, seven EU Member States remain above target



Comparison of transposition deficits within the EEA.

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 22.

2.3 How late are the EEA EFTA States in transposing directives?

Ensuring timely and correct transposition of directives is a continuous challenge. It requires a constant effort by the EEA EFTA States' national administrations in order to keep pace with the incorporation of new directives into the EEA Agreement. Failure to do so may undermine the functioning of the Internal Market.

Delays in transposition are at times due to time-consuming legislative processes in the EEA EFTA States. However, directives are usually transposed relatively soon after the expiry of the time limits.

In March 2002, the European Council announced a “zero tolerance” for directives for which the transposition is overdue by two years or more.⁷ 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 EEA EFTA States increased their average time taken to transpose directives by 0.7 months since the time of the previous Scoreboard, from 7.2 to 7.9 months. This slight increase since the previous Scoreboard indicates that the EEA EFTA States still have to continue their focus on reducing transposition delays, as called for in the previous Scoreboards.

Figure 5: EEA EFTA States' average transposition delay at 7.9 months

Length of delay	Number of overdue directives					
	ISL		LIE		NOR	
	Oct 10	Apr 10	Oct 10	Apr 10	Oct 10	Apr 10
Less than 6 months	3	11	2	4	0	4
6 to 12 months	8	4	2	1	2	1
12 to 24 months	2	0	0	1	0	0
Over 24 months	1	4	0	0	0	0
Average delay (in months) by 31 October 2010	10.7	10.5	4.3	6.5	8.6	4.7

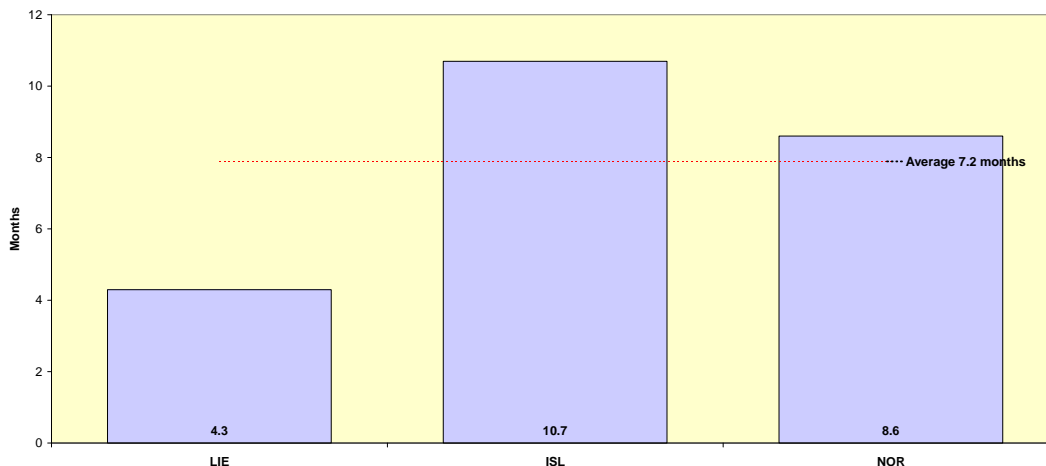
Number of overdue Internal Market directives with a transposition deadline of 31 October 2010 for which no notification was received by 10 November 2010, broken down by the length of delay.

Whilst Iceland's transposition deficit was reduced by 0.3%, its transposition delay was increased slightly by 0.2 months. This means that, on average, an extra 10.7 months is still taken by Iceland to transpose directives after the transposition deadlines expire.

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

Regrettably, Norway’s transposition delay increased from 4.7 months to 8.6 months. Liechtenstein’s transposition delay decreased by 2.2 months, bringing the delay to 4.3 months. Liechtenstein thus has the lowest transposition delay among the three EEA EFTA States.

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



Average transposition delay of overdue Internal Market directives with a transposition deadline of 31 October 2010 for which no notification was received by 10 November 2010, broken down by the length of delay.

The EU States’ average transposition delay, at 5.8 months, is two months shorter than the EEA EFTA States’ delay.

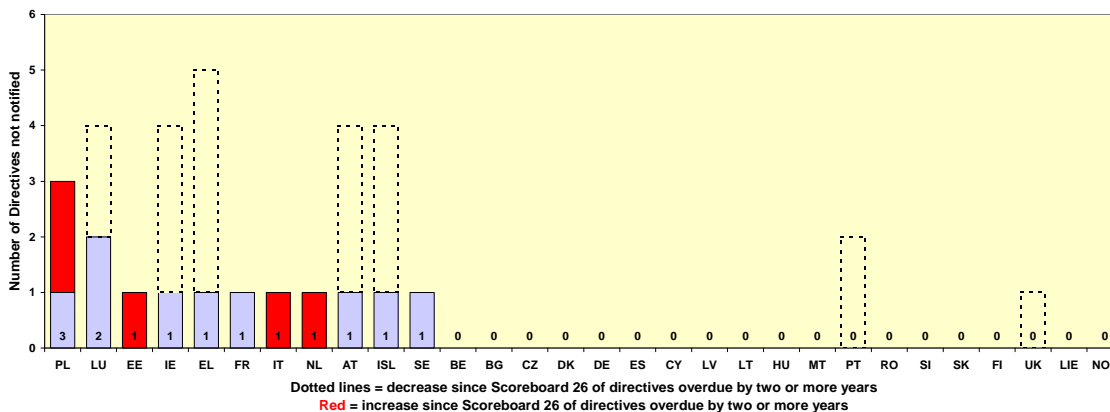
2.3.2. “Zero tolerance” for delays in the transposition of directives of more than two years

If EEA States do not transpose Internal Market directives on time, they deprive citizens and businesses of their rights and of the full benefits of a properly functioning Internal Market. The longer the delay is, the more serious are the consequences. Therefore, a “zero tolerance” target has been set for directives whose transposition is two years or more overdue.⁸

Five of the directives which have not yet been transposed by the EEA EFTA States are overdue by less than 6 months, and 12 directives are overdue by 6 to 12 months. Neither Liechtenstein, nor Norway have any directives overdue by more than twelve months. Regrettably, Iceland has one directive overdue by more than two years, namely Directive 2003/55/EC on common rules for the internal market in natural gas (Second Directive). This is, however, three directives less than at the time of the previous Scoreboard (Figure 7).

⁸ Conclusions of the European Council summit in Barcelona (15-16 March 2002).

Figure 7: Iceland had one directive overdue by more than two years, Liechtenstein and Norway had none



Number of directives with a deadline for transposition into national law on or before 31 October 2010, which were not transposed by 10 November 2010.
 Source for EU figures: The European Commission’s Internal Market Scoreboard N° 22.

It should be noted that long delays in transposing directives cannot be justified by administrative burdens or the complexity of the directives; the long delays simply should not exist. Accordingly, the Authority has launched an infringement proceeding against Iceland regarding the long overdue directive.

The Authority acknowledges the huge efforts made by Iceland to transpose long overdue directives in a more timely manner, and strongly urges Iceland to continue this positive trend.

2.4 Conformity of legislation: Directives not correctly transposed

For the well functioning of the Internal Market, timely transposition of EEA legislation represents only the first step. It is also important that the legislation is transposed correctly.

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

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

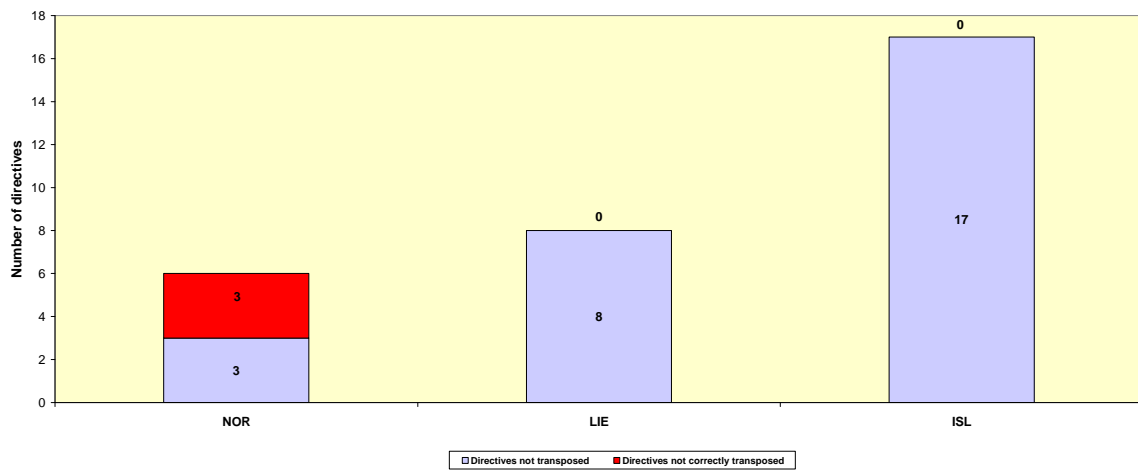
About a quarter of the directives notified to the Authority have been made subject to a systematic assessment of conformity between the text of the directive and the notified

national measures. The majority of such assessments are, however, concluded without the need to resort to formal infringement proceedings.

The overall number of directives *not communicated* to the Authority as having been fully transposed by 10 November 2010 was 28. This number had decreased by nine since the time of the previous Scoreboard. The number of infringement proceedings against the EEA EFTA States concerning *incorrect transposition* of directives, at three, was significantly lower than the number of outstanding directives.⁹

Adding the number of directives not correctly transposed to the number of directives not yet transposed, the EEA EFTA States' ranking remains the same: Norway has the lowest number of cases (6), followed by Liechtenstein (8) and Iceland (17).

Figure 8: Number of infringement cases concerning incorrectly transposed directives is very low



The number of Internal Market directives not yet communicated as having been fully transposed (transposition deficit) added by the number of directives transposed but for which an infringement proceeding for non-conformity has been initiated by the Authority (November 2010).

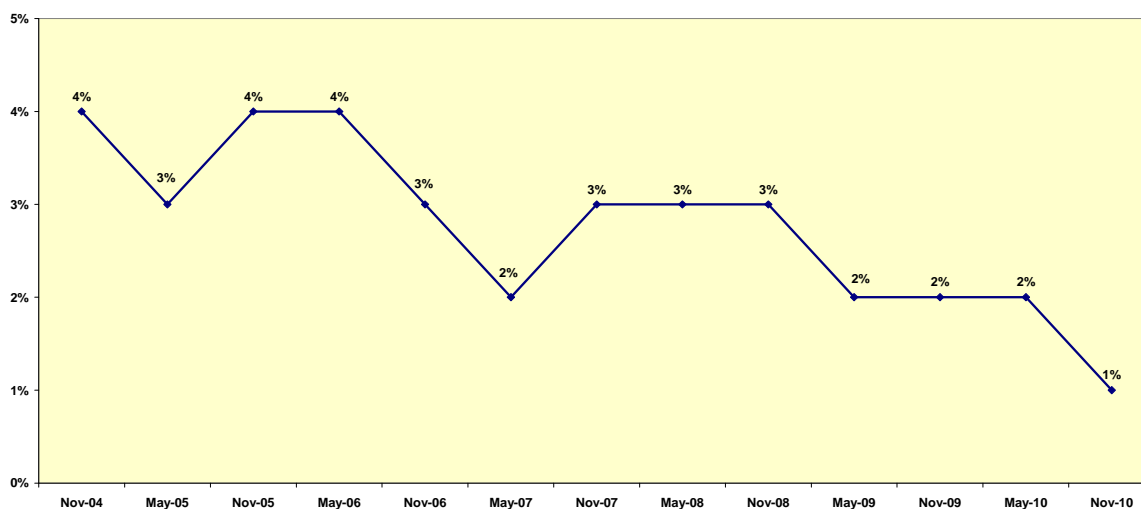
2.5 Fragmentation of the Internal Market in the EEA EFTA States

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

In total, 1% of the directives in force in the EEA EFTA States on 31 October 2010 had not been transposed by all three EEA EFTA States (**Figure 9**). The fragmentation factor of 1% translates into 20 directives not transposed by all three EEA EFTA States and that have, therefore, not achieved their full effect in the EEA EFTA States. The Internal Market is thus operating at 99% of its full potential in the EEA EFTA States.

⁹ This figure only includes problems with the correct transposition of directives as established on the basis of systematic *conformity assessments*.

Figure 9: Fragmentation factor in the EEA EFTA States reduced to 1%



The so-called fragmentation factor records the percentage of the outstanding directives which one or more of the three EEA EFTA States have failed to transpose with the consequence that the Internal Market is not a reality in the EEA EFTA States in the areas covered by those directives.

When the transposition delays are broken down by sector, the pattern of implementation varies between the EEA EFTA States. The sector most fragmented in the EEA EFTA States is the area of technical barriers to free movement of goods. More efforts are needed to reduce the fragmentation in this sector.

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

	Services - general (2)	Health and Safety (2)	Persons – general (4)	Transport (5)	Environment (3)	Company law (2)	Goods - technical barriers (9)	Energy (1)	Total for all EEA EFTA States (28)
ISL	2006/123	2006/25	2005/36	2008/68 2009/112 2009/113	2000/60 2003/87	2006/46	2004/24 2004/27 2004/28 2005/28 2007/47 2008/58 2009/9	2003/55	17
LIE	2006/123		2005/36 2006/54	2009/112 2009/113	2000/60	2006/43	2005/28		8
NOR		2009/104	2005/36				2008/58		3
Fragmentation factor	1	2	2	3	2	2	7	1	20

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

The fragmentation factor in the 27 EU Member States was 5%, meaning that the Internal Market is operating at 95% of its potential in the EU Member States.

The next chapter of the Scoreboard highlights the infringement proceedings initiated by the Authority, many of which relate to lack of conformity with or incorrect application of Internal Market rules.

3. INFRINGEMENT PROCEDURES

If the Authority considers that an EEA EFTA State has failed to fulfil an obligation under the EEA Agreement, it may initiate formal infringement procedures pursuant to Article 31 of the Surveillance and Court Agreement.¹⁰ Such infringement proceedings correspond to those initiated by the European Commission under Article 258 TEU.

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

The opening of an infringement procedure provides an opportunity for a more formal dialogue between the Authority and the EEA EFTA State concerned. It should be noted that only the EFTA Court can declare that a breach of EEA law has occurred. Until the Court renders its judgment, the fact that an infringement procedure has been opened shows only that it is the Authority's opinion that the State concerned has failed to fulfil its obligations under the EEA Agreement. This should be kept in mind when interpreting the statistics on infringement procedures below.

Infringement cases can be divided into two categories. The first category relates to cases concerning *lack of conformity with or incorrect application* of EEA provisions, opened either on the basis of complaints or on the Authority's own initiative. These cases concern, for example, situations in which the Authority, after having acknowledged transposition of a directive by an EEA EFTA State, concludes at a later stage that the national legislation is not in full conformity with the requirements of the relevant directive or that the EEA EFTA State is not complying with the EEA Internal Market rules and principles in some other way. When EEA legislation/rules are not correctly implemented or applied in practice, citizens and businesses are often deprived of their rights.

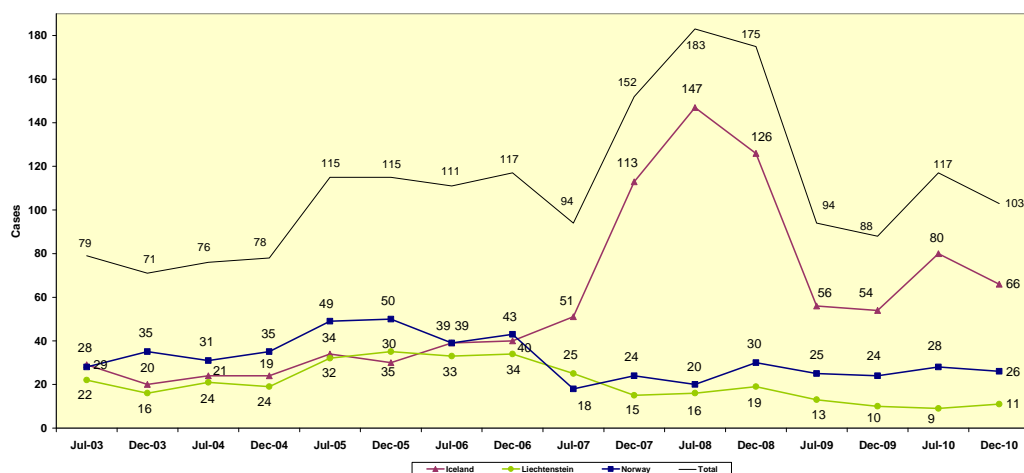
The second category of cases relates to *late transposition*, in other words directives and regulations only partially transposed or not transposed at all into the national legislation of the EEA EFTA States within the set time limits. Infringement cases in this category (non-transposition cases) are generally clear-cut and, therefore, seldom the subject of legally complicated disputes between the Authority and the EEA EFTA State concerned. Information on the infringement cases concerning late transposition of directives and regulations is included in chapter five.

3.1. Decrease in the *total* number of infringement proceedings

On 1 November 2010, a total of 103 infringement cases were being pursued by the Authority (**Figure 11**). This represents 14 cases less than at the time of the previous Scoreboard. The decrease in the number of infringement cases is mainly due to the decrease in the infringement cases concerning timely incorporation of regulations (down to 43 from 56) and timely implementation of directives (down to 26 from 32).

¹⁰ Agreement on the Establishment of a Surveillance Authority and a Court of Justice.

Figure 11: Total number of infringement cases decreased by 14 cases



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

Of the 103 infringement cases pending on 1 November 2010, 34 cases concerned incorrect implementation or application of Internal Market rules (see point 3.2) whereas 26 cases concerned the late transposition of directives (see point 5.1). The remaining 43 cases concerned the late transposition of regulations (see point 5.2).

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

3.2.1. Increase in 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 (34 cases) increased by five cases since the time of the previous Scoreboard (Figure 12).

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

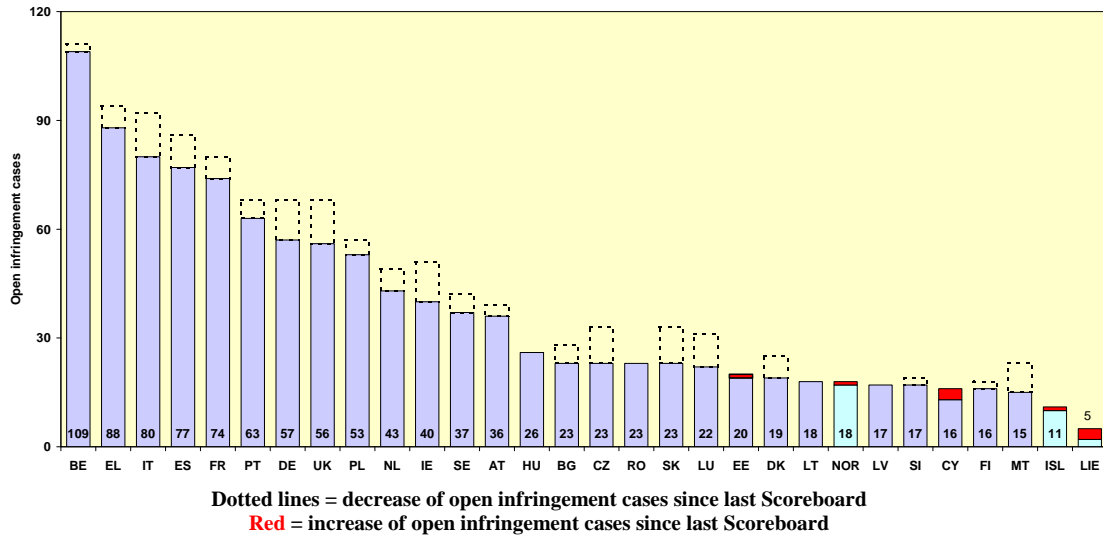
	ISL		LIE		NOR		EEA EFTA	
	Oct 10	Apr 10	Oct 10	Apr 10	Oct 10	Apr 10	Oct 10	Apr 10
Letter of formal notice	8	7	3	1	14	13	25	21
Reasoned opinion	2	3	2	1	4	4	8	8
Referral to EFTA Court	1	0	0	0	0	0	1	0
Total	11	10	5	2	18	17	34	29

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

All three EEA EFTA States increased their number of infringement cases since the previous Scoreboard. Iceland and Norway by one and Liechtenstein by three.

In comparison to the EU27, the number of infringement proceedings against the EEA EFTA States remained low (**Figure 13**). Liechtenstein, with five cases, and Iceland, with 11 cases, had the lowest number of infringement proceedings out of the 30 EEA States.

Figure 13: The number of EEA EFTA States’ infringement cases concerning lack of conformity with or incorrect application of Internal Market rules remains low in comparison to the other EEA States

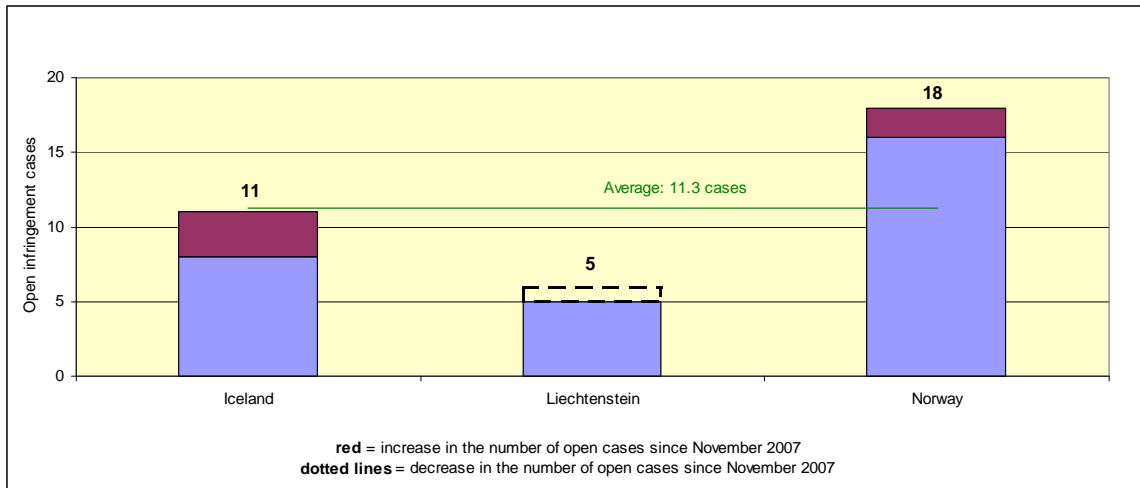


Pending infringement cases due to lack of conformity with or incorrect application of Internal Market rules on 1 November 2010 compared to the situation in May 2010.

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 22.

A comparison between the number of infringement proceedings pursued against the EEA EFTA States in November 2007 and in November 2010 shows that Liechtenstein has managed to reduce its infringement proceedings by 17% during the three year period. During the same period, infringement proceedings against Iceland and Norway increased by 27% and 11%, respectively.

Figure 14: Comparison of open infringement cases in November 2007 and November 2010



Open infringement cases as of 1 November 2010 compared to corresponding figures as at 1 November 2007.

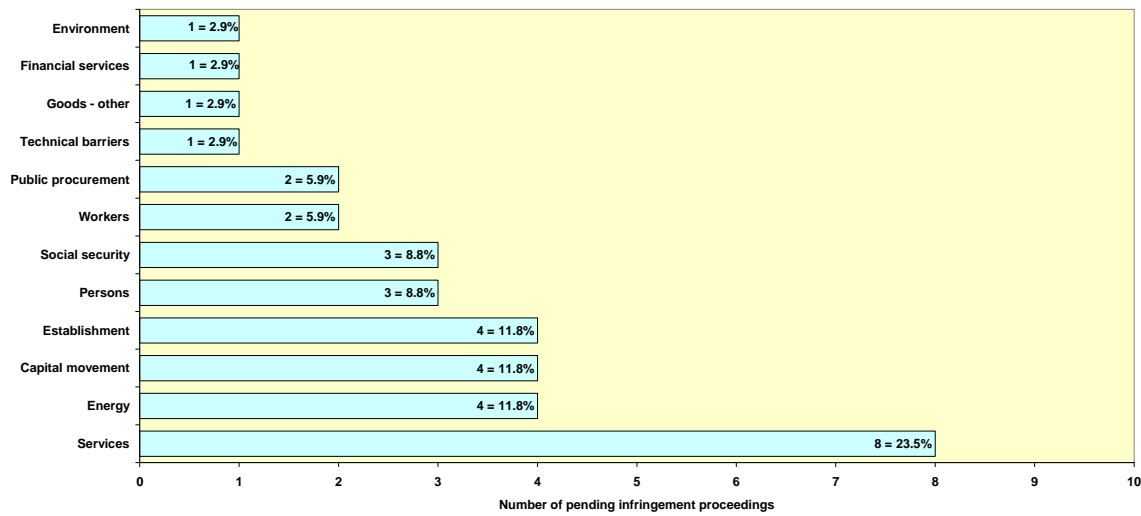
Undertakings and citizens may lodge a complaint with the Authority if they believe that they have not been able to exercise their rights under the EEA Agreement because of the failure by an EEA EFTA State to apply the EEA Agreement correctly. The number of pending infringement proceedings initiated as a result of a complaint decreased by one since the time of the previous Scoreboard (10).

The 10 pending infringement proceedings initiated on the basis of complaints represent 29% of the 34 pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Seven of these cases related to Norway, two to Iceland and one to Liechtenstein.

3.2.2. Breakdown of infringement proceedings per sector

The biggest number of infringement proceedings concerning the lack of conformity with or incorrect application of Internal Market rules took place in the field of services. This sector accounted for nearly one fourth of the infringement proceedings.

Figure 15: Services sector accounts for most of the infringement proceedings in the EEA EFTA States

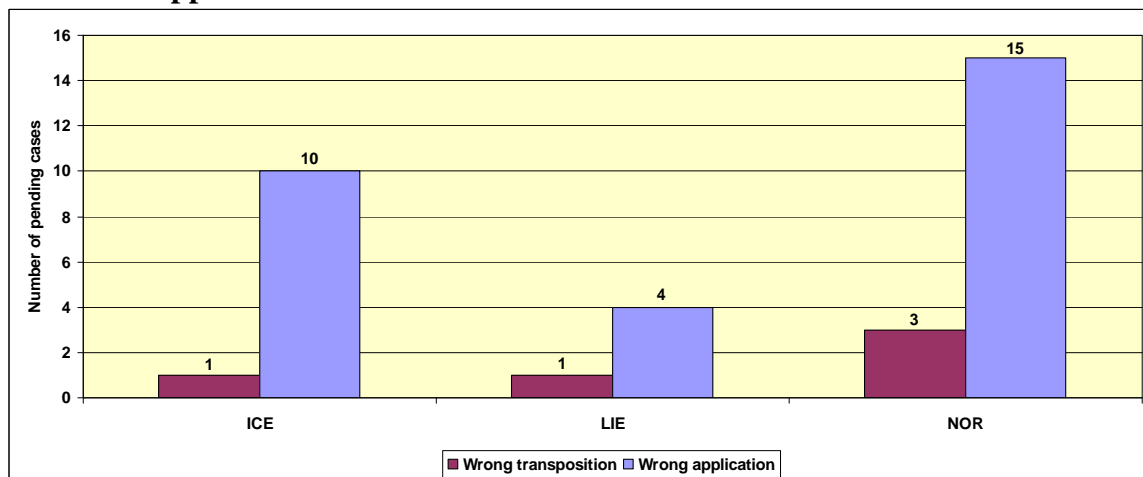


Pending infringement proceedings due to lack of conformity with or incorrect application of Internal Market rules on 1 November 2010 divided by sector.

3.2.3. Breakdown of infringement proceedings by type

Most infringement proceedings (85%) against the EEA EFTA States concerned wrong application, rather than wrong transposition, of EEA rules (Figure 16).

Figure 16: Most infringement proceedings against the EEA EFTA States concern application of Internal Market rules.



Number of pending infringement proceedings due to incorrect transposition of directives (red pillars) or wrong application of Internal Market rules (blue pillars) on 1 November. The red part of the column shows the number of pending infringement cases relating to incorrect transposition of directives. The blue part shows the number of cases opened due to wrong application of Internal Market rules, such as the provisions of the EEA Agreement and regulations, on 1 November 2010.

Similarly, a vast majority (73%) of the infringement cases pursued by the European Commission against the EU Member States during the same time period related to the incorrect application of Internal Market rules rather than the wrong transposition.¹¹

¹¹ Source for EU figure: The European Commission’s Internal Market Scoreboard N° 22, Figure 14.

3.2.4. Duration of infringement proceedings

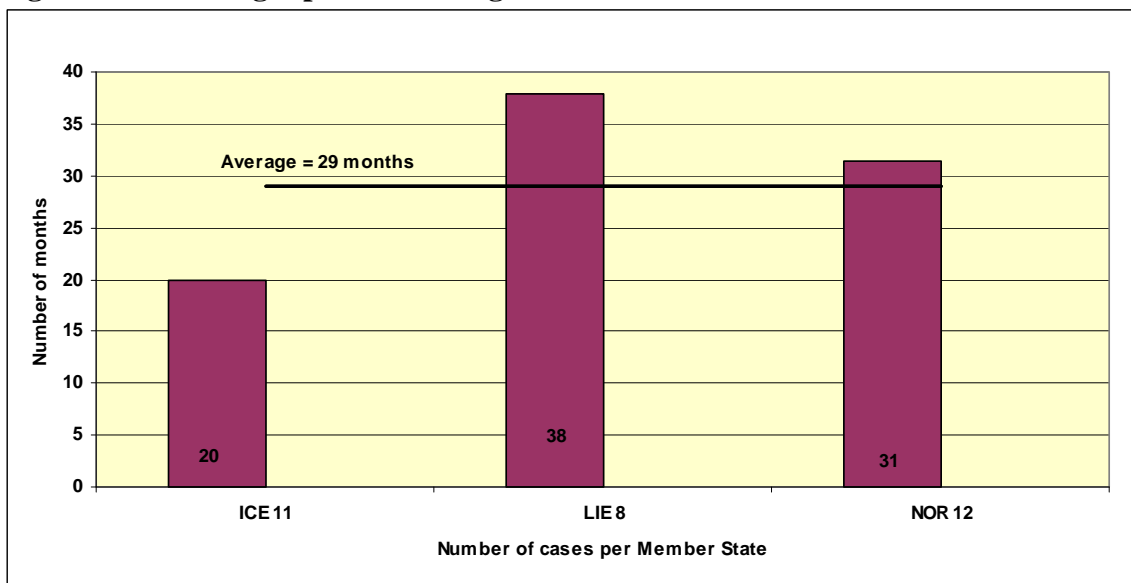
3.2.4.1. Time required to resolve infringement proceedings

When problems with the application of Internal Market rules do arise, they need to be solved quickly to ensure that citizens and businesses are able to exercise their rights. Therefore, special focus should be placed on the time required to resolve infringement proceedings and/or the time taken by the EEA EFTA States to comply with Court judgments.

During the period between 1 November 2008 and 31 October 2010, the average time between the sending of the letter of formal notice and the closure of the case or its referral to the EFTA Court in the EEA EFTA States was 29 months (**Figure 17**).

The EEA EFTA States' average time of 29 months is slightly higher than the average speed of infringement resolution of 26.4 months in the EU15 (DK, ES, IE, FR, PT, BE, NL, FI, SE, AT, DE, EL, IT, UK, LU). Within the EU12, the resolution time needed increased from 16 to almost 19 months within one year (PL, EE, LV, MT, CZ, SK, HU, LT, SI, CY, RO, and BG).¹²

Figure 17: Average speed of infringement resolution

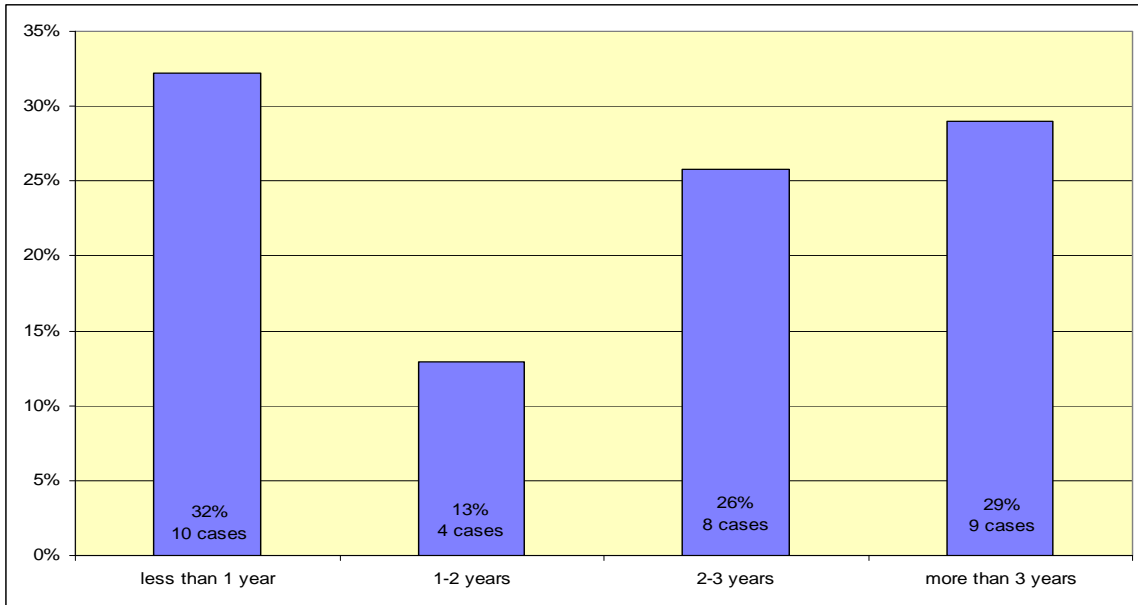


Infringement cases closed or brought before the EFTA Court between 1 November 2008 and 31 October 2010: average time in months needed to either close an infringement case or to bring it before the EFTA Court taken from the moment the letter of formal notice was issued.

Although 32% of the infringement cases took less than one year to be resolved or brought before the EFTA Court, 29% of the cases took more than three years before being resolved or referred to the EFTA Court (**Figure 18**). This is by far too long given that infringement proceedings create legal uncertainty and undermine the well-functioning of the Internal Market. The EEA EFTA States are, therefore, urged to increase efforts to resolve ongoing infringement proceedings faster.

¹² Source for EU figure: The European Commission's Internal Market Scoreboard N° 22, Figure 16.

Figure 18: 32% of the infringement cases took less than one year but 29% took more than three years to be resolved or brought before the EFTA Court



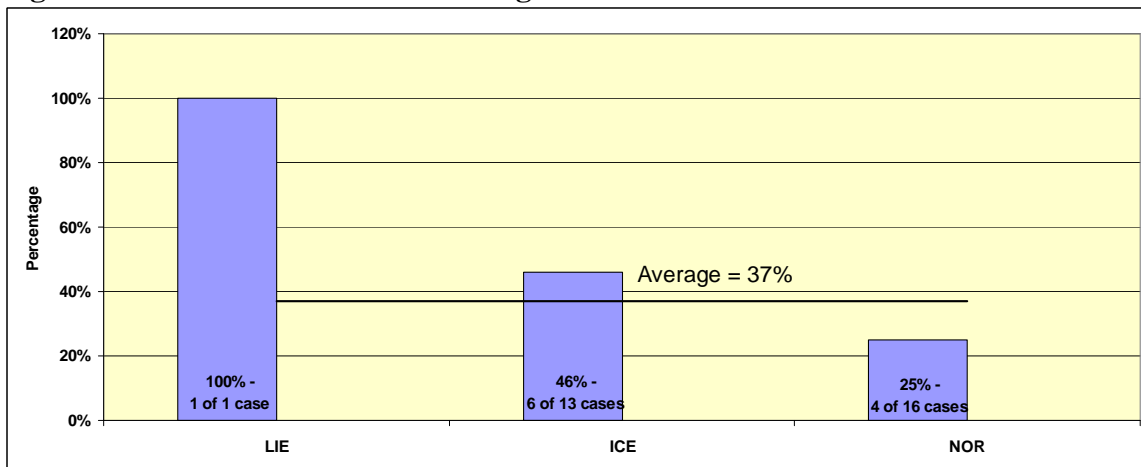
Infringement cases closed or brought before the EFTA Court between 1 November 2008 and 31 October 2010: average time in years needed to either close an infringement case or to bring it before the EFTA Court taken from the moment the letter of formal notice was issued.

3.2.4.2. Early resolution rate

Out of the 30 infringement proceedings initiated by the Authority between 1 May 2008 and 30 April 2010, 11 had been closed by 31 October 2010. This amounts to an “early resolution” performance rate of 37% by the EEA EFTA States (**Figure 19**).

In the EU27, during the same time period, the average number of cases resolved at an early stage increased from 36.2% to 45.2%.

Figure 19: EEA EFTA States’ average resolution rate was 37%

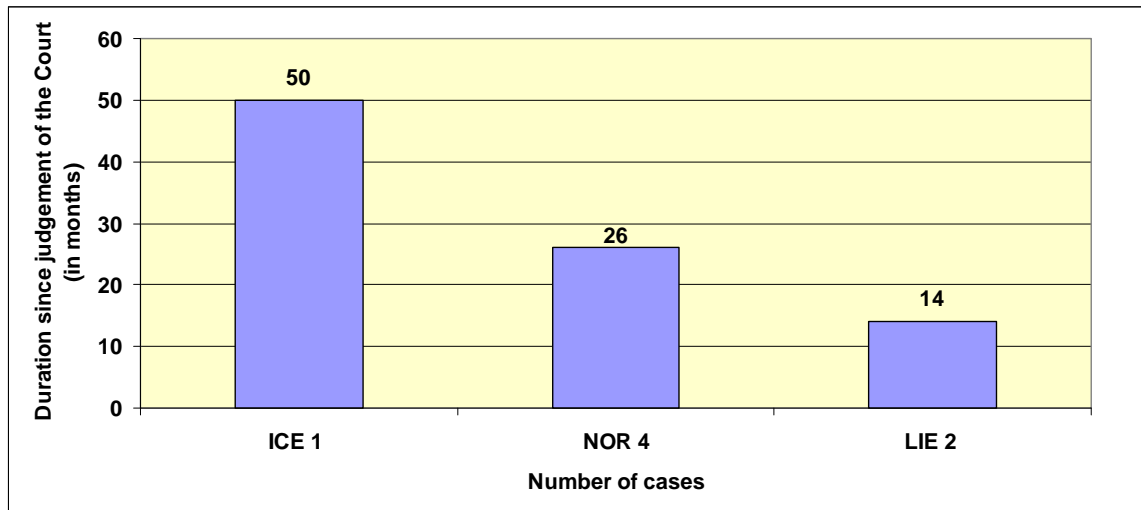


Number of cases closed by 31 October 2010 as a percentage of the number of cases initiated between 1 May 2008 and 30 April 2010.

The EEA EFTA States are urged to take more effective action in resolving infringement proceedings quickly and to take rapid measures where proper implementation goes wrong.

Closely linked to the need to take timely and effective action in resolving infringement proceedings is the need to take immediate action to comply with court judgments where the EFTA Court has condemned an EEA EFTA State for a breach of EEA rules.

Figure 20: EEA EFTA States take an average time of 30 months to comply with EFTA Court judgments



Cases closed between 1 November 2005 and 31 October 2010: Average duration between the judgment of the EFTA Court and the resolution of the case.

The average time of 30 months (**Figure 20**) taken by the EEA EFTA States to comply with a court ruling is too long. The EEA EFTA States are called for to make compliance with EFTA Court rulings a high priority.

4. INTERNAL MARKET ENFORCEMENT TABLE – EEA EFTA STATES

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

The so-called Internal Market Enforcement Index links the relevant indicators together in order to provide a better overview of EEA EFTA States' compliance with the implementation and application of Internal Market rules.

	ICE	LIE	NOR	EEA EFTA average
Transposition deficit	1%	0.5%	0.2%	0.6%
Progress over the last 6 months (change in the number of outstanding directives)	-5	0	-4	-3
Number of directives two years or more overdue	1	0	0	0
Transposition delay (on overdue directives)	10.7	4.3	8.6	8
Number of directives not timely or correctly transposed	17	8	6	10
Number of infringement cases: progress since November 2007*	27%	-17%	11%	7%
Pending infringement cases (after LFN)*	11	5	18	11
Average speed of infringement resolution (in months)*	20	38	31	30
Early resolution rate*	46%	100%	25%	37%
Duration since Court judgments	50	14	26	30
Overall ranking**	3rd	1st	2nd	
Legend	< average	average ± 10%	> average	
Transposition deficit Scoreboard	<1%	1%	>1%	
Duration since Court Judgment	-	<6 months	>6 months	

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

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

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

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 EEA EFTA States for non-transposition of directives decreased by 19% (six cases) from the time of the previous Scoreboard (**Figure 21**). Iceland had a decrease of three cases in comparison with the previous Scoreboard. Norway had a decrease of two cases and Liechtenstein of one case.

Figure 21: The number of infringement cases against the EEA EFTA States due to non-transposition of directives decreased

	ISL		LIE		NOR		EEA EFTA	
	Oct 10	Apr 10	Oct 10	Apr 10	Oct 10	Apr 10	Oct 10	Apr 10
Letter of formal notice	11	12	2	4	0	1	13	17
Reasoned opinion	4	8	2	3	1	2	7	13
Referral to EFTA Court	3	1	2	0	1	1	6	2
Total	18	21	6	7	2	4	26	32

Pending EEA EFTA States infringement cases due to non-transposition of directives, broken down according to the stage of infringement proceedings reached, on 1 November 2010.

Since the previous Scoreboard, four cases concerning non-transposition of directives have been referred to the EFTA Court. The cases concerned non-notification by the three EEA EFTA States of Directive 2005/36 on the recognition of professional qualifications, and non-notification by Liechtenstein of Directive 2006/54 on the principle of equal treatment of men and women.

The other Court referrals included in the above table concern cases which were already pending at the EFTA Court at the time of the previous Scoreboard, namely the case against Iceland for failure to implement Directive 2005/68 on reinsurance,¹³ and partial implementation by Iceland of Directive 2002/87/EC (financial conglomerates)¹⁴.

5.2. Non-transposition of regulations

5.2.1 Transposition of regulations “as such” by the EEA EFTA States

A particular situation arises with regard to the incorporation of Internal Market regulations into the EEA Agreement. It follows from Article 7 of the EEA Agreement that regulations incorporated into the Agreement shall “as such” be made part of the internal legal order of the EEA EFTA States.

¹³ The infringement case concerning the non-transposition by Iceland of Directive 2005/68 was referred to the EFTA Court on 30 April 2009. The judgment of the Court was rendered on 1 December 2009 (Case E-5/09).

¹⁴ The infringement case concerning the non-transposition by Iceland of Directive 2002/87 was referred to the EFTA Court on 21 April 2010. The judgment of the Court was rendered on 18 October 2010 (Case E-3/10).

Pursuant to the constitutional law of the three EEA EFTA States, regulations become part of Liechtenstein’s internal legal order, due to its monistic legal tradition, once they have been incorporated into the EEA Agreement through an EEA Joint Committee decision, whereas Iceland and Norway are obliged to adopt legal measures in order to make regulations “as such” part of their internal legal orders.

Due to the fact that regulations do not contain a provision setting out an obligation to notify implementing measures (as directives do), the Authority systematically requests that, pursuant to Article 6 of the Surveillance and Court Agreement, Iceland and Norway notify the national measures taken to transpose regulations.

5.2.2 Delays in the transposition of regulations

As explained above, regulations only become part of the internal legal order of Iceland and Norway following an act of incorporation by the national legislative body. This usually requires the prior translation of regulations into the national language, followed by the publication of the translated regulations in the EEA Supplement to the Official Journal. In recent years, the delays in the translation and publication of regulations in Icelandic have created a backlog of overdue regulations in Iceland.

On 10 November 2010, Iceland had 16 overdue regulations which had not been notified as fully incorporated into its national law. This is a decrease of 34 outstanding regulations from the time of the previous Scoreboard. For Norway, the number of regulations not notified as fully incorporated into its national law decreased by one regulation, bringing the number of outstanding regulations in Norway to 13.

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. Out of the 103 infringement cases pending in November 2010, 42% concerned the late transposition of regulations by Iceland (37 cases) and Norway (6 cases).

Since the time of the previous Scoreboard, there was a decrease of 18 *new* infringement proceedings against Iceland concerning the late transposition of regulations. The corresponding number of new proceedings initiated against Norway remained the same as at the time of the previous Scoreboard (**Figure 22**).

Figure 22: The number of new infringement cases initiated against Iceland (letters of formal notice sent out) due to non-transposition of regulations decreased since the time of the previous Scoreboard

	ISL		NOR		EEA EFTA	
	Oct 10	Apr 10	Oct 10	Apr 10	Oct 10	Apr 10
Letter of formal notice	24	42	1	1	25	43
Reasoned opinion	13	7	4	6	17	13
Referral to EFTA Court	0	0	1	0	1	0
Total	37	49	6	7	43	56

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

Due to the considerable decrease in the number of letters of formal notice issued to Iceland for non-transposition of regulations, the overall number of infringement actions against Iceland and Norway decreased significantly since the previous Scoreboard. One case concerning non-transposition of regulations against Norway was referred to the EFTA Court since the time of the previous Scoreboard.¹⁵

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

¹⁵ The infringement case concerning the non-incorporation by Norway of Regulation 1430/2007 amending Directive 2005/36 on the recognition of professional qualifications was referred to the EFTA Court on 7 July 2010. The judgment of the Court was rendered on 10 December 2010 (Case E-10/10).

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