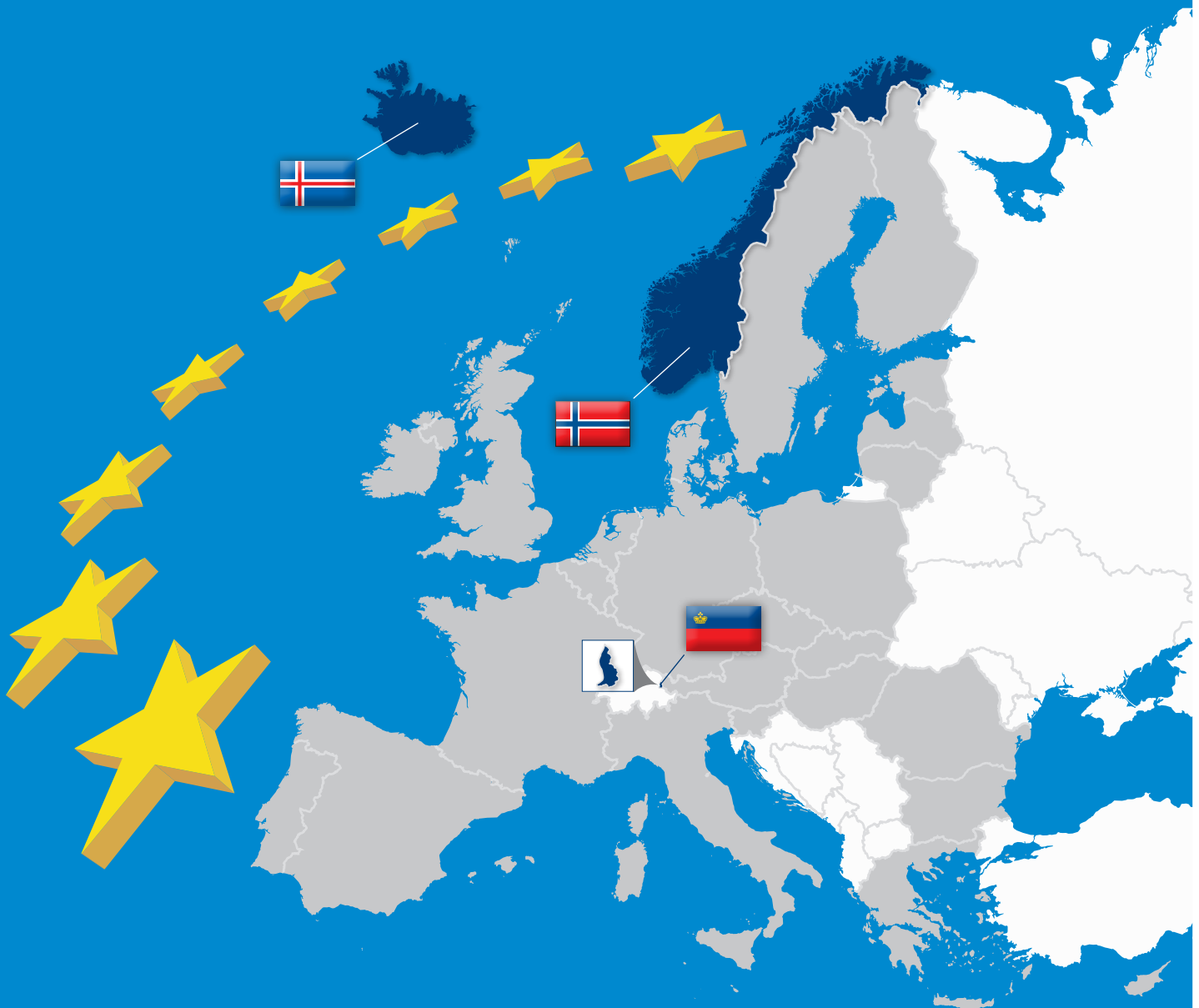


EEA EFTA States

Internal Market Scoreboard

September 2011



INTERNAL MARKET SCOREBOARD

No. 28

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

September 2011

EFTA SURVEILLANCE AUTHORITY

MAIN FINDINGS –

**28th INTERNAL MARKET SCOREBOARD of the
EEA EFTA STATES**

- **The average transposition deficit of the EEA EFTA States increased to 0.9%. Despite the increase, all three States achieved the deficit target of 1%.**
- **The EU Member States' average transposition deficit increased to 1.2%.**
- **With the increase of 11 more overdue directives, Norway's deficit increased from 0.2% to 1%. However, the transposition delay in Norway decreased by 4.2 months.**
- **The transposition deficit for Liechtenstein increased from 0.5% to 0.8%. Liechtenstein was able to reduce its transposition delay by 2.6 months.**
- **Iceland's deficit remained the same as at the time of the previous Scoreboard, at 1%. However, its transposition delay increased by two months.**
- **Iceland still had one directive overdue by more than two years, Liechtenstein and Norway had none.**
- **Due to the timelier transposition by the EEA EFTA States, the *total* number of infringement cases pursued by the Authority decreased by 40 cases (from 103 to 63) since the previous Scoreboard.**
- **The overall number of infringement cases due to *incorrect transposition or incorrect application* of Internal Market rules decreased to 28, which is 6 cases less than in the previous Scoreboard.**
- **The number of infringement cases concerning the *late transposition of directives* by the EEA EFTA States decreased from 26 to 21 since the previous Scoreboard.**
- **Iceland's number of overdue *regulations* remained the same as at the time of the previous Scoreboard, at 16. In Norway, the number increased by one regulation, to a total of 14.**
- **A fifth (22%) of the pending infringement cases concerned *late transposition of regulations*. However, the number of such infringement cases against Iceland decreased by 31 cases and increased against Norway by 2 cases 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.

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.

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 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 1445 directives that were incorporated into the EEA Agreement by 30 April 2011.³ The Scoreboard records the transposition status for these directives on *10 May 2011*.

During the first half of 2011, the EFTA Surveillance Authority took part in a project initiated by the EFTA Secretariat, the objective of which was to establish the number of EEA Acts actually in force. As a result of this, the number of EEA Acts in force was adjusted from 1777 to 1445.

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 1525 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

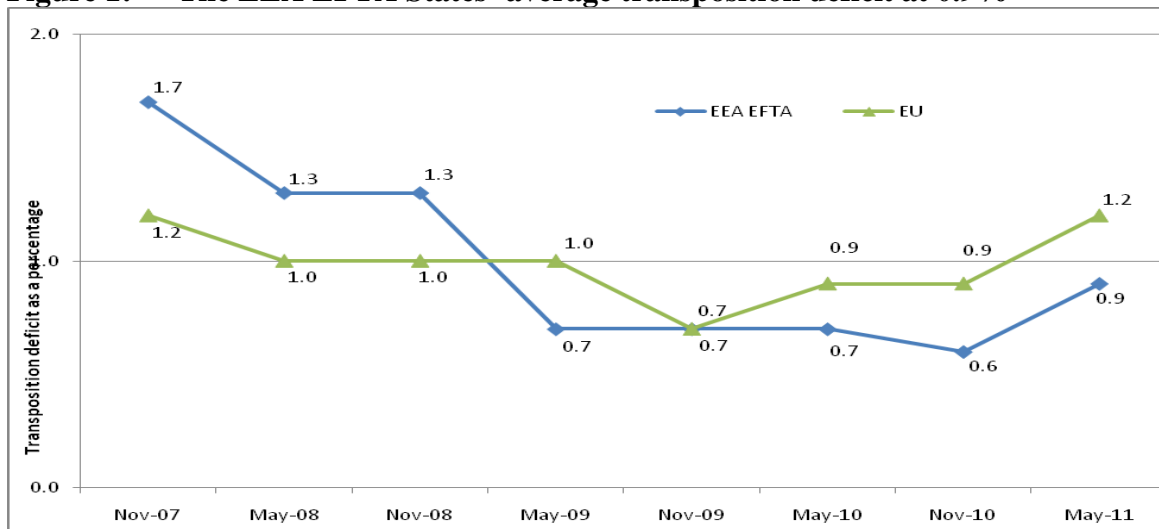
The Internal Market is a key driver of growth and jobs and one of the main engines for economic recovery. In these challenging times, a well-functioning Internal Market is more important than ever as it provides opportunities for businesses and citizens. Yet the Internal Market does not deliver benefits 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.⁴ As from January 2009, the relevant deficit target to measure transposition performance has been 1% according to the European Council conclusions of March 2007.⁵ This interim target set by the European Council is used as a benchmark by the Authority as well.

2.1 Average transposition deficit in May 2011

In May 2011, the average transposition deficit for the EEA EFTA States was at 0.9%, just below the 1% transposition deficit target (**Figure 1**). In absolute terms, the 0.9% deficit indicates that the EEA EFTA States were late with 39 notifications of national transposing measures, which is an increase of 11 since the last Scoreboard.

Figure 1: The EEA EFTA States’ average transposition deficit at 0.9%



Transposition deficit on 10 May 2011 for the EEA EFTA States and the EU 27 for directives which should have been transposed on or before 30 April 2011. The 2007-2010 deficits for the EEA EFTA States and the

⁴ 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.

⁵ Conclusion of the European Council summit in Brussels (8-9 March 2007).

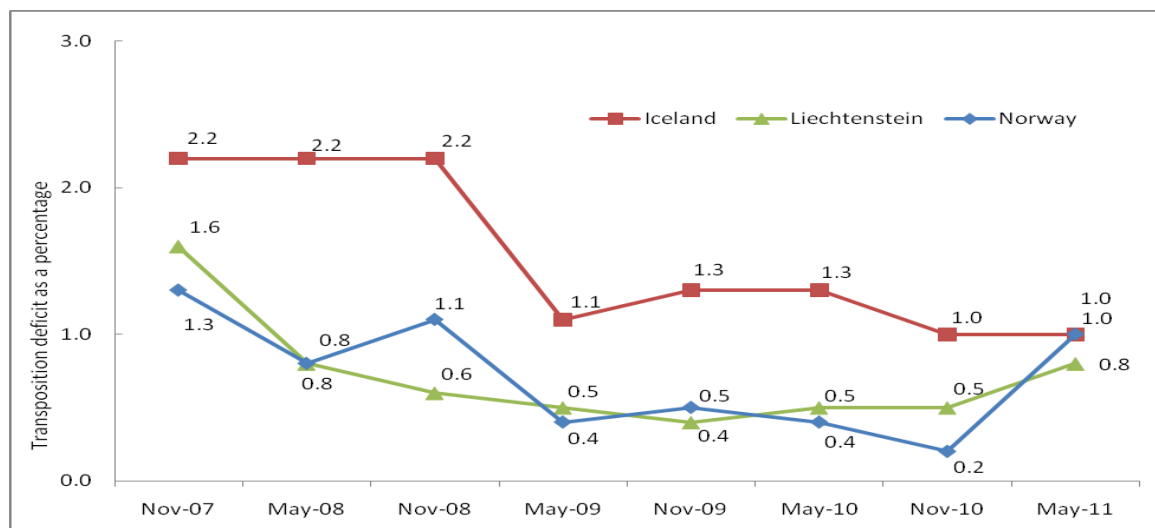
EU States have been taken from the second Scoreboards of each year. Source for EU figures: The European Commission's Internal Market Scoreboard N° 23.

The EU average transposition deficit, at 1.2%, was above the interim target of 1% for the first time since November 2007.

2.2 Performance measured against the 1.0% interim target

Iceland's transposition deficit, at 1%, remained the same as at the time of the previous Scoreboard. The deficit corresponds to 14 directives not fully transposed on time.

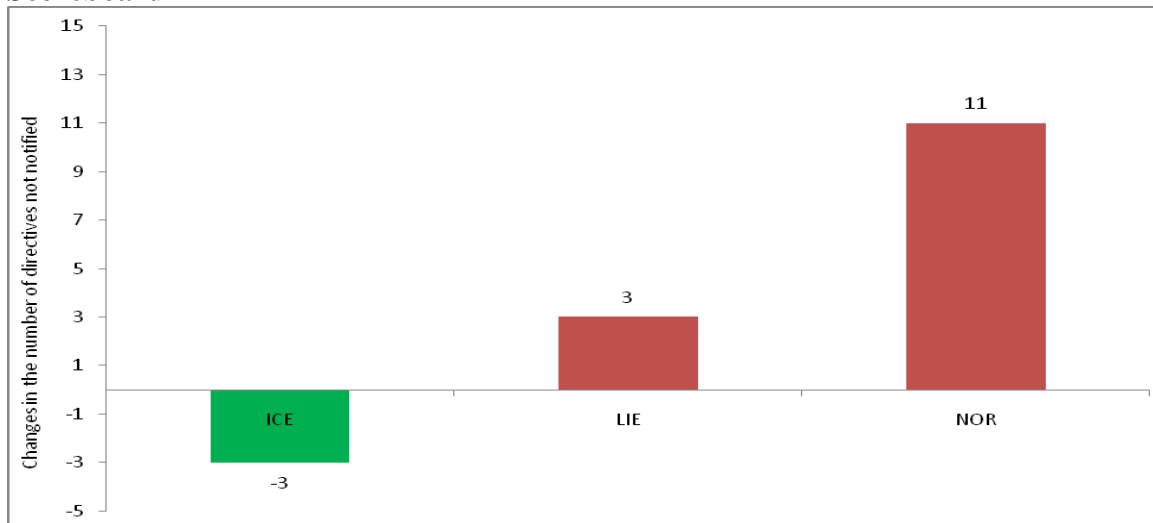
Figure 2: All EEA EFTA States comply with the 1% target



Transposition deficit on 10 May 2011 for directives which should have been transposed on or before 30 April 2011.

Norway increased its deficit by 0.8%, from 0.2% to 1%. This deficit corresponds to 14 directives not having been fully transposed, which is 11 more than at the time of the previous Scoreboard. Liechtenstein increased its deficit by 0.3% , from 0.5% to 0.8%. This corresponds to 11 directives not having been fully transposed.

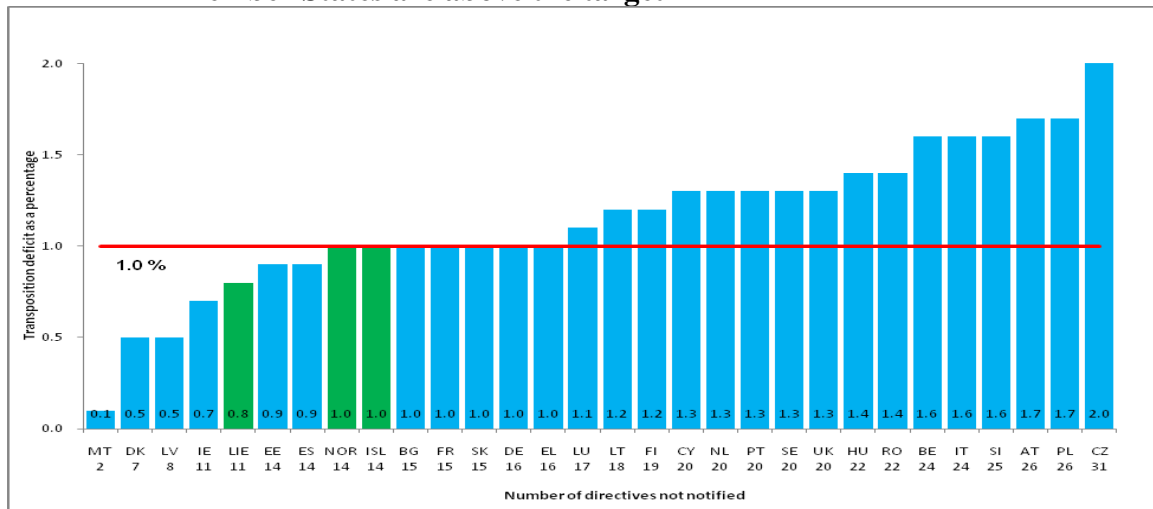
Figure 3: Change in the number of outstanding directives since the previous Scoreboard



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

Out of the 30 EEA States, only 14 succeeded in bringing their transposition deficits in line with the 1% interim target, whereas 16 EEA States were above the target. This means that within the past 6 months, the number of EU Member States in line with the 1% transposition deficit target decreased drastically, from 20 to 11 (Figure 4).

Figure 4: The three EEA EFTA States comply with the 1% interim target, 16 EU Member States are above the target



Comparison of transposition deficits within the EEA.

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 23.

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.⁶ 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 decreased their average time taken to transpose directives by 1.6 months since the time of the previous Scoreboard, from 7.9 to 6.3 months. This decrease seems to indicate that the focus on reducing transposition delays taken by the EEA EFTA States begins to show effect. Still, further improvement is required, as called for in the previous Scoreboards (**Figure 5**).

Figure 5: EEA EFTA States’ average transposition delay at 6.3 months

| Length of delay | Number of directives delayed | | | | | |
|---|------------------------------|--------|------------|--------|------------|--------|
| | ISL | | LIE | | NOR | |
| | May 11 | Nov 10 | May 11 | Nov 10 | May 11 | Nov 10 |
| Less than 6 months | 6 | 3 | 9 | 2 | 12 | 0 |
| 6 to 12 months | 2 | 8 | 0 | 2 | 1 | 2 |
| 12 to 24 months | 2 | 2 | 0 | 0 | 1 | 0 |
| Over 24 months | 1 | 1 | 0 | 0 | 0 | 0 |
| Average delay (in months) by 30 April 2011 | 12.7 | 10.7 | 1.7 | 4.3 | 4.4 | 8.6 |

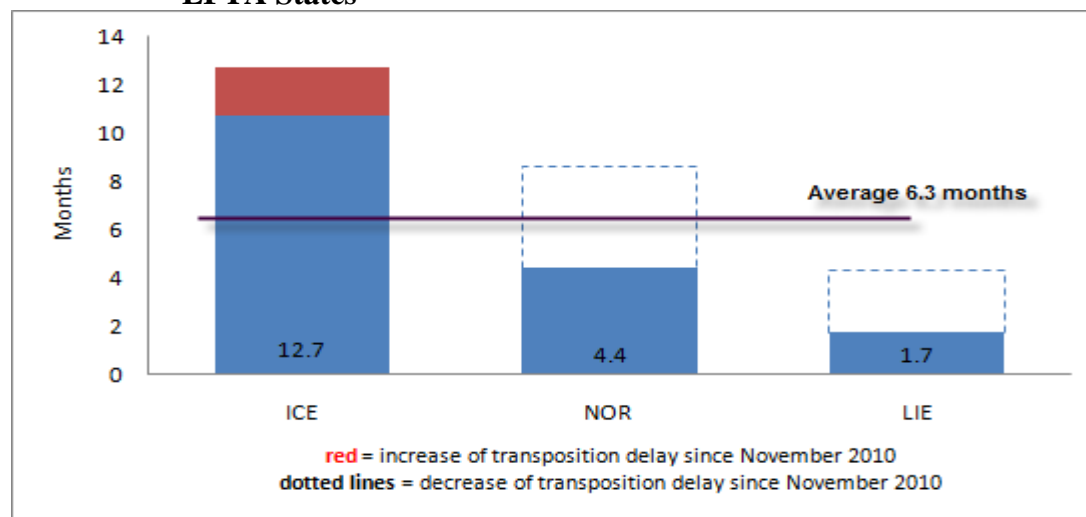
Number of overdue Internal Market directives with a transposition deadline of 30 April 2011 for which no notification was received by 10 May 2011, broken down by the length of delay.

Whilst Iceland’s transposition deficit remained the same, its transposition delay increased slightly by 2 months. This means that, on average, an extra 12.7 months is still taken by Iceland to transpose directives after the transposition deadlines expire.

⁶ Conclusion of the European Council summit in Barcelona (15-16 March 2002).

Norway’s transposition delay decreased from 8.6 months to 4.4 months. Liechtenstein’s transposition delay decreased by 2.6 months, bringing the delay to 1.7 months. Liechtenstein thus has the lowest transposition delay among the three EEA EFTA States (Figure 6).

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 30 April 2011 for which no notification was received by 10 May 2011, broken down by the length of delay.

The EU States’ average transposition delay, at 5.5 months, is slightly shorter than the EEA EFTA States’ delay.

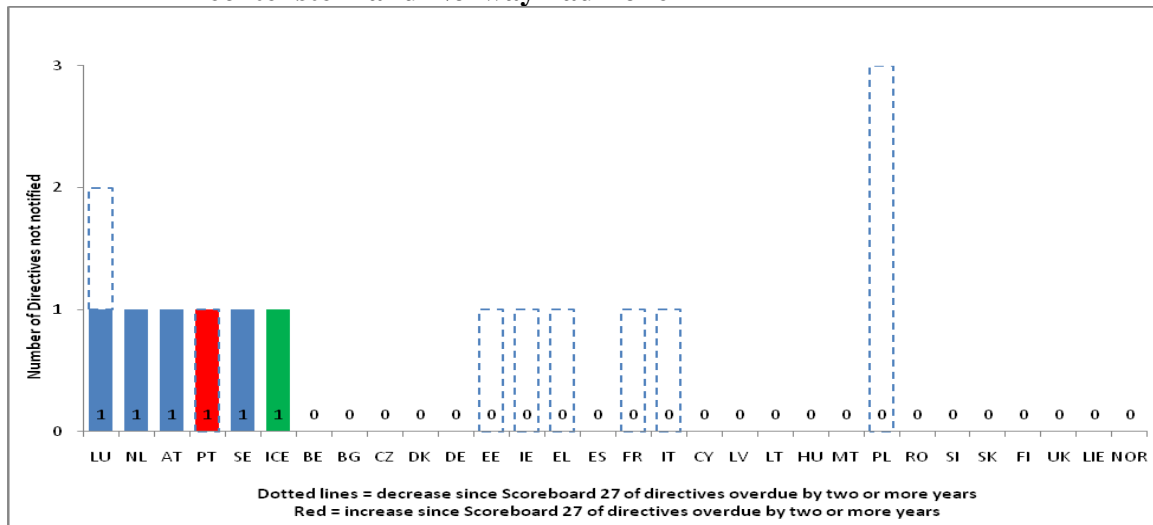
2.3.2. “Zero tolerance” for delays in the transposition of directives of more than two years

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.⁷

27 of the directives which have not yet been transposed by the EEA EFTA States are overdue by less than 6 months, and three directives are overdue by 6 to 12 months. 3 directives are overdue by 12 to 24 months. Iceland continues to have 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)(Figure 7).

⁷ 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 30 April 2009, which were not transposed by 10 May 2011.

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 23.

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 commenced infringement proceedings against Iceland regarding the long overdue directive.

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.

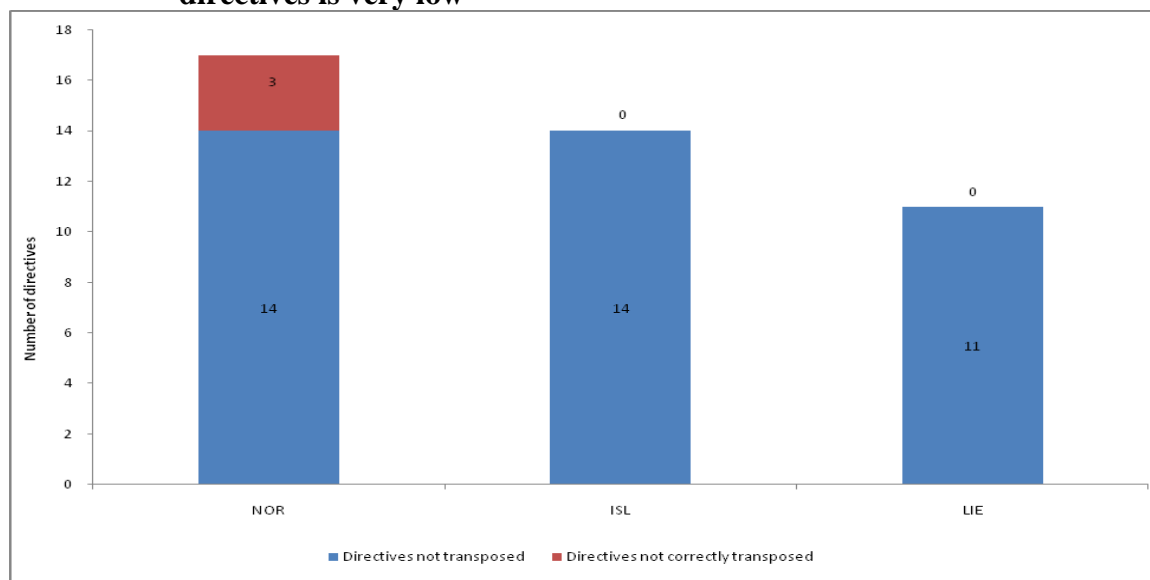
Furthermore, failure to comply with the basic principles of the EEA Agreement itself, such as the free movement of goods, persons, services and capital, impairs the functioning of the Internal Market and might, therefore, also prompt action by the Authority.

The overall number of directives *not communicated* to the Authority as having been fully transposed by 10 May 2011 was 39. This number had increased by 11 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.⁸ The majority of such conformity assessments are, however, concluded without the need to resort to formal infringement proceedings.

Adding the number of directives not correctly transposed to the number of directives not yet transposed, the EEA EFTA States' ranking was Liechtenstein with the lowest number of cases (11), followed by Iceland (14) and Norway (17) (**Figure 8**).

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 (May 2011).

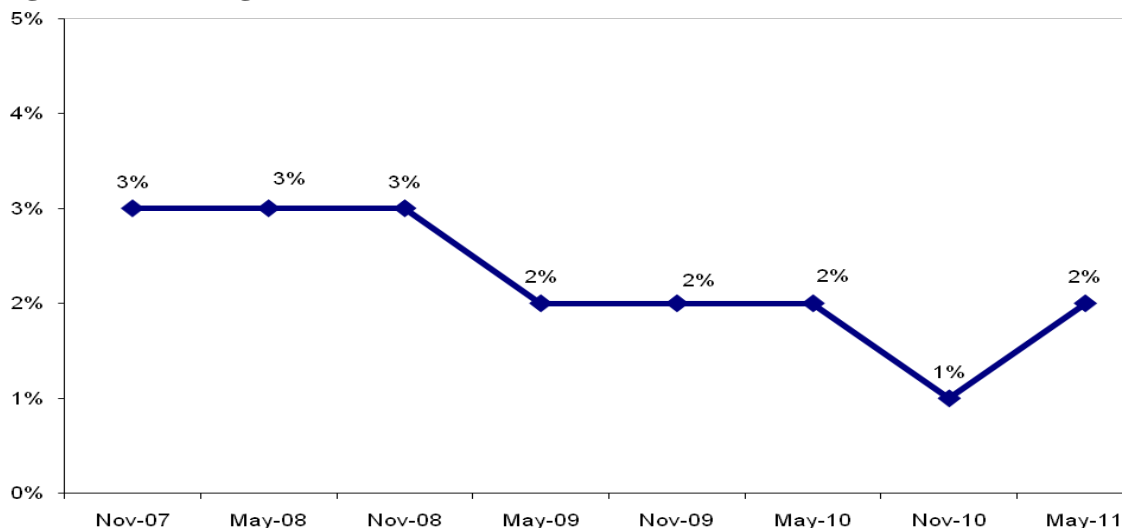
2.5 Fragmentation of the Internal Market in the EEA EFTA States

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, 2% of the directives in force in the EEA EFTA States on 30 April 2011 had not been transposed by at least one of the three EEA EFTA States (**Figure 9**). The fragmentation factor of 2% translates into 27 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 98% of its full potential in the EEA EFTA States.

⁸ 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 increased to 2%



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).

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

| | Services - general (1) | Financial services (1) | Food Safety (1) | Information society services (1) | Persons – general (3) | Transport (5) | Environment (3) | Company law (1) | Goods - technical barriers (21) | Health and safety (1) | Energy (1) | Total for all EEA EFTA States (39) |
|----------------------|------------------------|------------------------|-----------------|----------------------------------|-----------------------|--------------------------------|-------------------------------|-----------------|---|-----------------------|------------|------------------------------------|
| ISL | 2006/123 | | | 2008/63 | 2005/36 | 2006/126 2008/96 2009/16 | 2000/60 2003/87 2001/18 | 2006/46 | 2006/66 2008/103 2008/58 | | 2003/55 | 14 |
| LIE | | 2009/27 | | | 2005/36 2006/54 | 2006/126 | | | 2009/142 2010/10 2010/11 2010/5 2010/71 2010/8 2010/9 | | | 11 |
| NOR | | | 2009/145 | | | 2008/96 | | | 2006/66 2008/103 2008/58 2009/107 2010/10 2010/11 2010/5 2010/7 2010/71 2010/8 2010/9 | 2009/104 | | 14 |
| Fragmentation factor | 1 | 1 | 1 | 1 | 2 | 3 | 3 | 1 | 12 | 1 | 1 | 27 |

Breakdown by EEA EFTA State of the backlog of non-transposed directives and sector concerned – situation as of 10 May 2011.

The fragmentation factor in the 27 EU Member States was 6%, meaning that the Internal Market is operating at 94% 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 PROCEEDINGS

If the Authority considers that an EEA EFTA State has failed to fulfil an obligation under the EEA Agreement, it may initiate formal infringement proceedings pursuant to Article 31 of the Surveillance and Court Agreement.⁹ Such infringement proceedings correspond to those initiated by the European Commission under Article 258 TFEU.

The Authority endeavours, to the extent possible, 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 infringement proceedings provides an opportunity for a more formal dialogue between the Authority and the EEA EFTA State concerned. The Authority opens infringement proceedings when it is its view that an EEA EFTA State is failing to fulfil its obligations under the EEA Agreement. It should be noted that only the EFTA Court can declare that a breach of EEA law has occurred. Until the Court renders such judgment, the fact that infringement proceedings have 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 Internal Market rules, i.e. the free movement 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

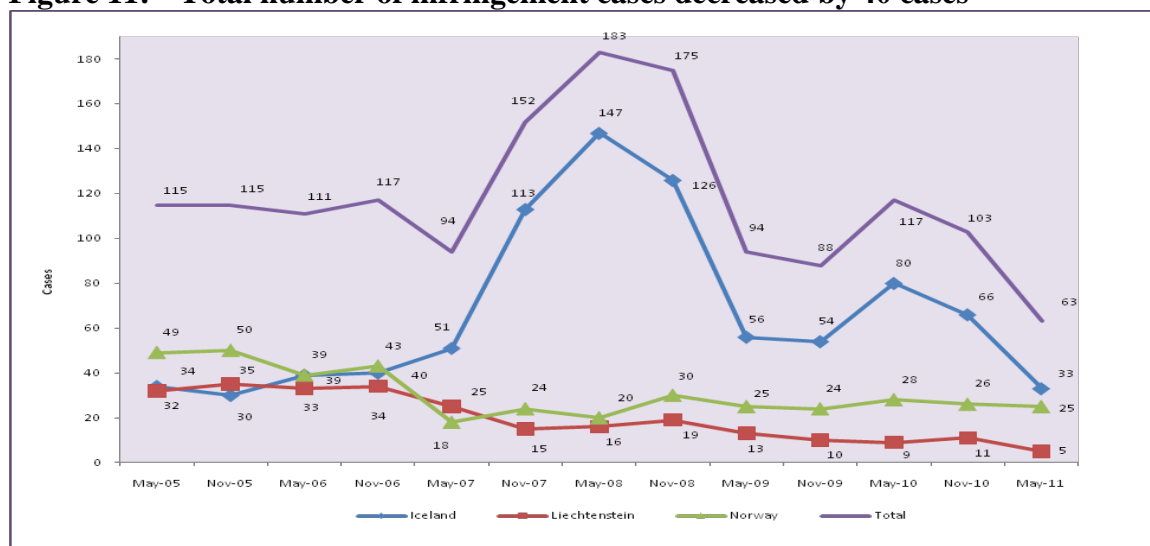
On 1 May 2011, a total of 63 infringement cases were being pursued by the Authority (**Figure 11**).¹⁰ This represents 40 cases less than at the time of the previous Scoreboard.

⁹ Agreement on the Establishment of a Surveillance Authority and a Court of Justice.

¹⁰ A pending infringement case is defined as a case where at least a letter of formal notice has been sent to the State, but the case has not yet been referred to the EFTA Court.

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 14 from 43) and timely implementation of directives (down to 21 from 26).

Figure 11: Total number of infringement cases decreased by 40 cases



Total number of all open infringement proceedings against the three EEA EFTA States on 1 May 2011.

Of the 63 infringement cases pending on 1 May 2011, 28 cases concerned incorrect implementation or application of Internal Market rules (see point 3.2) whereas 21 cases concerned the late transposition of directives (see point 5.1). The remaining 14 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. Decrease 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) decreased by six 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 decreased by six cases since the previous Scoreboard

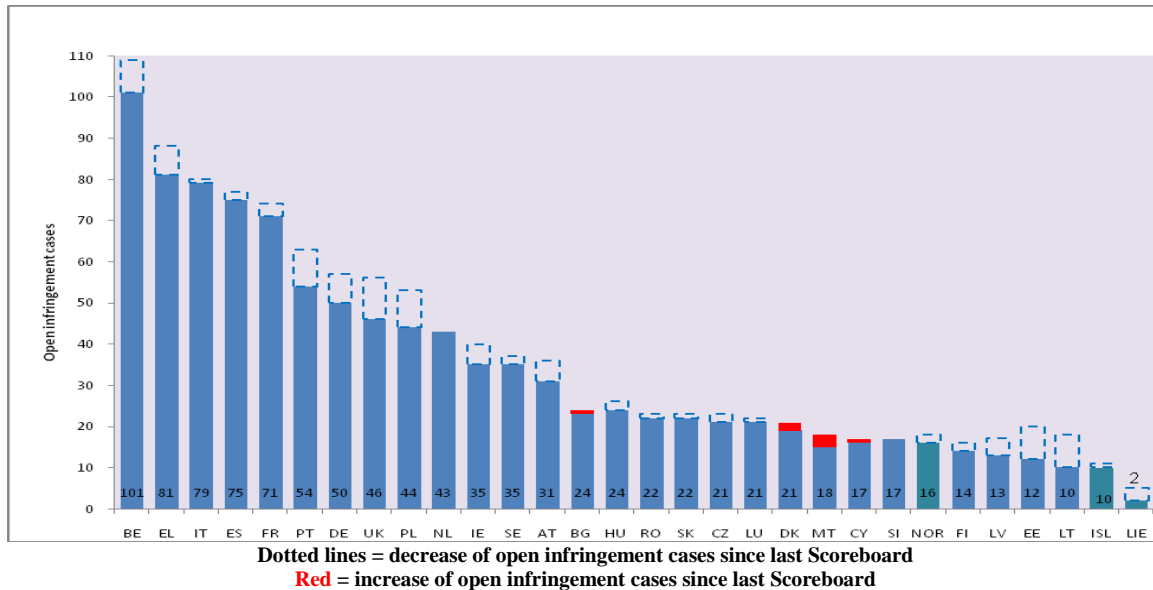
| | ISL | | LIE | | NOR | | EEA EFTA | |
|-------------------------|-----------|-----------|----------|----------|-----------|-----------|-----------|-----------|
| | May 11 | Nov 10 | May 11 | Nov 10 | May 11 | Nov 10 | May 11 | Nov 10 |
| Letter of formal notice | 8 | 8 | 2 | 3 | 12 | 14 | 22 | 25 |
| Reasoned opinion | 0 | 2 | 0 | 2 | 3 | 4 | 3 | 8 |
| Referral to EFTA Court | 2 | 1 | 0 | 0 | 1 | 0 | 3 | 1 |
| Total | 10 | 11 | 2 | 5 | 16 | 18 | 28 | 34 |

Pending infringement cases due to lack of conformity with or incorrect application, broken down according to the stage of infringement proceedings reached, on 1 May 2011.

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

In comparison to the EU27, the number of infringement proceedings against the EEA EFTA States remained low (**Figure 13**). Liechtenstein, with two 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

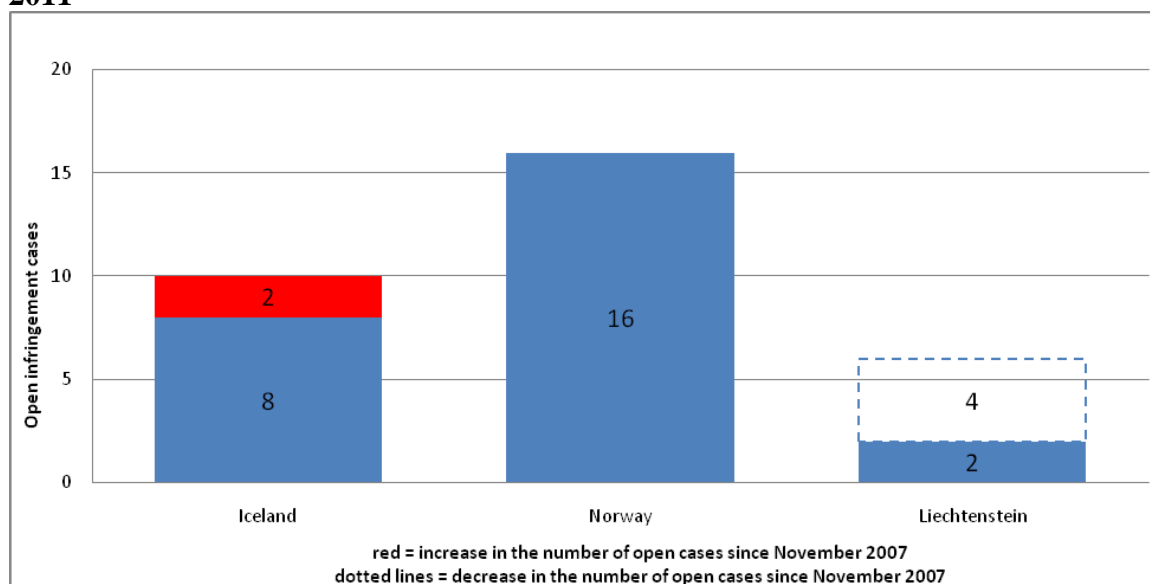


Pending infringement cases due to lack of conformity with or incorrect application of Internal Market rules on 1 May 2011 compared to the situation in November 2010.

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 23.

A comparison between the number of infringement proceedings pursued against the EEA EFTA States in November 2007 and in May 2011 shows that Liechtenstein has managed to reduce its infringement proceedings by four cases, from six to two. During the same period, infringement proceedings against Iceland increased by two cases, while for Norway the number remained unchanged (**Figure 14**).

Figure 14: Comparison of open infringement cases in November 2007 and May 2011



Open infringement cases as of 1 May 2011 compared to corresponding figures as at 1 November 2007.

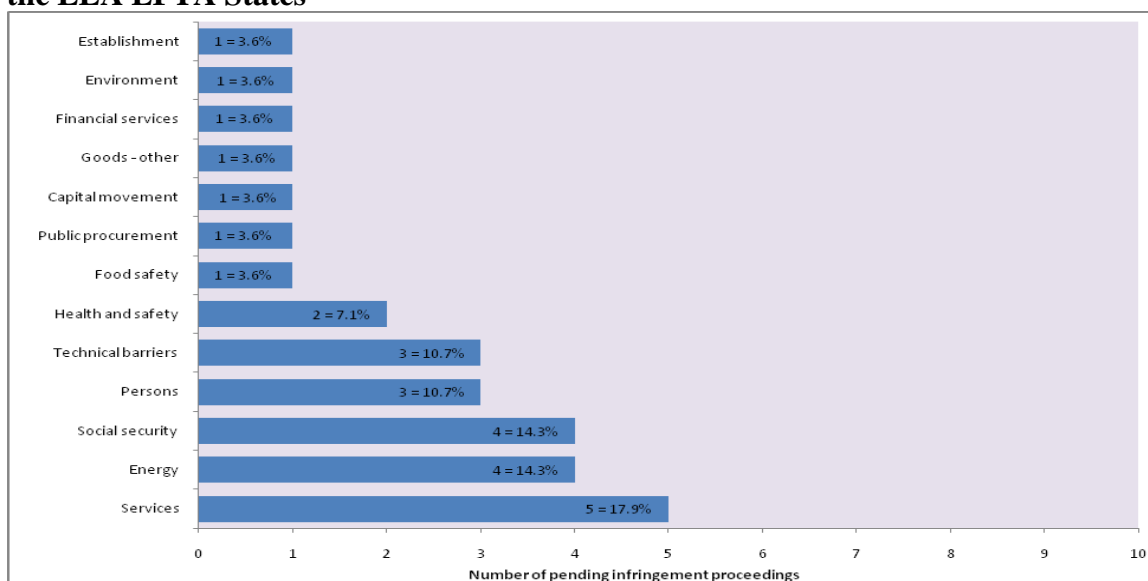
Undertakings and citizens may lodge a complaint with the Authority if they believe that they have not been able to exercise their rights under the EEA Agreement because of the failure by an EEA EFTA State to apply the EEA Agreement correctly.

The number of pending infringement proceedings initiated as a result of a complaint decreased by four since the time of the previous Scoreboard (down to 6 from 10). The 6 pending infringement proceedings initiated on the basis of complaints represent 21% of the 28 pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Five of these cases related to Norway 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 fifth of the infringement proceedings (**Figure 15**).

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 May 2011 divided by sector.

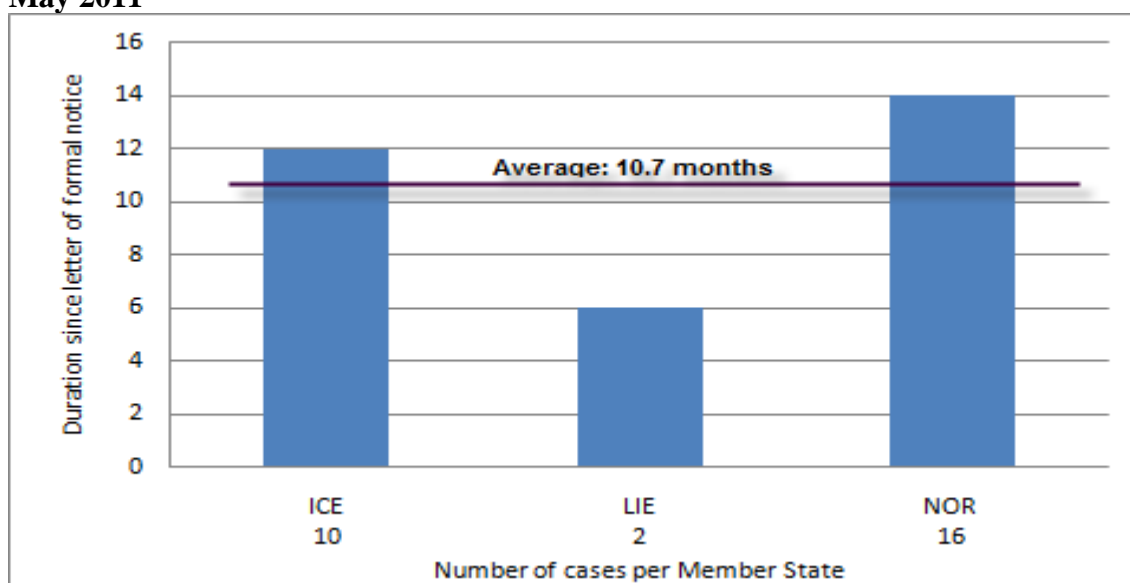
3.2.3. Duration of infringement proceedings

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 for infringement proceedings and/or the time taken by the EEA EFTA States to comply with Court judgments.

3.2.3.1. Time required for infringement proceedings

The average time of pending infringement cases not yet sent to the Court for the EEA EFTA states is 10.7 months at the cut-off date of 1 May 2011 (**Figure 16**). The average duration of the EU Member States' infringement proceedings exceeds the two years mark (24,7 months).

Figure 16: Pending infringement cases not yet sent to the EFTA Court as of 1 May 2011



Pending infringement cases not yet sent to the EFTA Court as of 1 May 2011 (28 cases): average time in months from the moment the letter of formal notice was issued.

3.2.3.2. Compliance with Court judgements

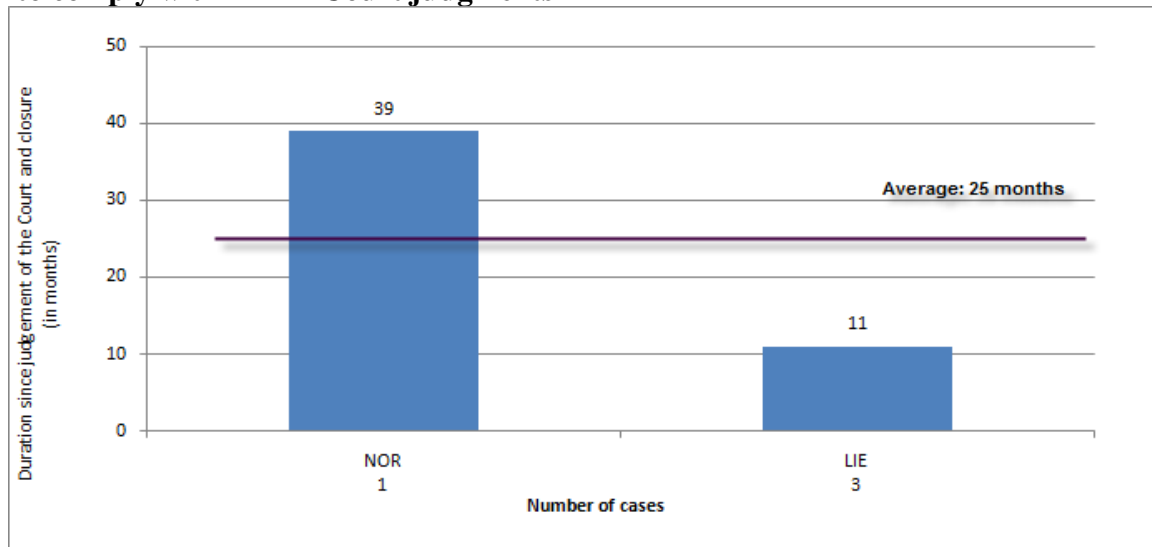
Court rulings establishing a breach of EEA legislation require that the State concerned takes immediate action to ensure EEA law compliance as soon as possible¹¹. Internal circumstances or practical difficulties cannot justify non-compliance with obligations and time-limits arising from rules of EEA law.¹²

The average time taken by the EEA EFTA States to comply with an EFTA Court ruling is 25 months (**Figure 17**). This is a decrease of 5 months since the previous Scoreboard. This is still too long. In comparison, the EU average fell by one month since the last assessment six months ago to an average duration of 17.4 months. The EEA EFTA States are called to make compliance with EFTA Court rulings a higher priority.

¹¹ See, in particular, Case E-18/10 *EFTA Surveillance Authority v Norway*, not yet published, paragraph 29; Case C-291/93 *Commission v Italian Republic* [1994] ECR I-859, paragraph 6; Case C-101/91 *Commission v Italian Republic* [1993] ECR I-191, paragraph 20; and Case C-328/90 *Commission v Hellenic Republic* [1992] ECR I-425, paragraph 6.

¹² Joined Cases E-5/05, E-6/05, E-7/05, E-8/05 and E-9/05 *EFTA Surveillance Authority v Liechtenstein*, 2006 EFTA Court Report, 142, paragraph 21 and see also *e.g.* Case C-316/06 *Commission v Ireland* [2008] ECR I-124, paragraph 31; Case C-89/03 *Commission v Luxembourg* [2003] ECR I-11659, paragraph 5; Case C-140/00 *Commission v United Kingdom* [2002] ECR I-10379, paragraph 60 and Case C-52/91 *Commission v Netherlands* [1993] ECR I-3069, paragraph 3.

Figure 17: EEA EFTA States take an average time of more than 2 years to comply with EFTA Court judgments



Cases closed between 1 May 2006 and 30 April 2011 (4 cases): Average duration between the judgment of the EFTA Court and the resolution of the case.

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 | NOR | LIE | EEA EFTA average |
|--|-------|--------|-------|------------------|
| Transposition deficit | 1.0% | 1.0% | 0.8% | 1.0% |
| Progress over the last 6 months (change in the number of outstanding directives) | -3 | 11 | 3 | 4 |
| Development of transposition deficit since Nov. 2007 | -1.2% | -0.30% | -0.8% | -0.8% |
| Number of directives two years or more overdue | 1 | 0 | 0 | 1 |
| Transposition delay on overdue directives (in months) | 12.7 | 4.4 | 1.7 | 9 |
| Compliance deficit* | 0% | 0.2% | 0% | 0.1% |
| Development of infringement cases since nov. 2007 | 2 | 0 | -4 | -1 |
| Number of pending infringement cases | 10 | 16 | 2 | 9 |
| Average speed of infringement resolution (in months) | 12 | 14 | 6 | 10.7 |
| Compliance with Court judgments (duration in months) | NA | 39 | 11 | 25 |

| | | | |
|-------------------|-----|-----|-----|
| Overall ranking** | 2nd | 3rd | 1st |
|-------------------|-----|-----|-----|

| Legend | < average | average ± 10% | > average |
|----------------------------------|-----------|---------------|-----------|
| Transposition deficit Scoreboard | <1% | 1% | >1% |
| Duration since Court Judgment | - | <6 months | >6 months |

*Number of directives transposed where an infringement proceeding for non-conformity has been initiated by the Authority as a percentage of the number of Internal Market directives communicated to the Authority as having been transposed

**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 17% (five cases) from the time of the previous Scoreboard (**Figure 18**). Liechtenstein had a decrease of three cases in comparison with the previous Scoreboard. Norway and Iceland had a decrease of one case.

Figure 18: The number of infringement cases against the EEA EFTA States due to non-transposition of directives decreased

| | ISL | | LIE | | NOR | | EEA EFTA | |
|-------------------------|--------|--------|--------|--------|--------|--------|----------|--------|
| | May 11 | Nov 10 | May 11 | Nov 10 | May 11 | Nov 10 | May 11 | Nov 10 |
| Letter of formal notice | 13 | 11 | 3 | 2 | 1 | 0 | 17 | 13 |
| Reasoned opinion | 4 | 4 | 0 | 2 | 0 | 1 | 4 | 7 |
| Referral to EFTA Court | 0 | 3 | 0 | 2 | 0 | 1 | 0 | 6 |
| Total | 17 | 18 | 3 | 6 | 1 | 2 | 21 | 26 |

Pending EEA EFTA States infringement cases due to non-transposition of directives, broken down according to the stage of infringement proceedings reached, on 1 May 2011.

Since the previous Scoreboard, no cases concerning non-transposition of directives have been referred to the EFTA Court. The Court referrals included in the above table concern cases which were already pending at the EFTA Court at the time of the previous Scoreboard.¹³

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.

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.

¹³ The cases concerned the non-notification of Directive 2005/36 on the recognition of professional qualifications by the three EEA EFTA States. The Directive has now been fully implemented by all three EEA EFTA States.

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 May 2011, Iceland had 16 overdue regulations which had not been notified as fully incorporated into its national law. This is the same number as at the time of the previous Scoreboard. For Norway, the number of regulations not notified as fully incorporated into its national law increased by one regulation, bringing the number of outstanding regulations in Norway to 14.

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 63 infringement cases pending in May 2011, 22% concerned the late transposition of regulations by Iceland (6 cases) and Norway (8 cases).

Since the time of the previous Scoreboard, there has been a decrease of 19 *new* infringement proceedings against Iceland concerning the late transposition of regulations. The corresponding number of new proceedings initiated against Norway increased by 5 since the time of the previous Scoreboard (**Figure 19**).

Figure 19: The number of new infringement cases initiated against Iceland and Norway (letters of formal notice sent out) due to non-transposition of regulations decreased considerably since the time of the previous Scoreboard

| | ISL | | NOR | | EEA EFTA | |
|-------------------------|----------|--------|----------|--------|-----------|--------|
| | May 11 | Nov 10 | May 11 | Nov 10 | May 11 | Nov 10 |
| Letter of formal notice | 5 | 24 | 6 | 1 | 11 | 25 |
| Reasoned opinion | 1 | 13 | 0 | 4 | 1 | 17 |
| Referral to EFTA Court | 0 | 0 | 2 | 1 | 2 | 1 |
| Total | 6 | 37 | 8 | 6 | 14 | 43 |

Pending infringement cases against Iceland and Norway due to non-transposition of regulations, according to stage of infringement proceedings, on 1 May 2011.

Due to the considerable decrease in the number of letters of formal notice and reasoned opinions issued to Iceland for non-transposition of regulations, the overall number of infringement actions against Iceland and Norway decreased significantly since the previous Scoreboard. Two cases concerning non-transposition of regulations against Norway were referred to the EFTA Court since the time of the previous Scoreboard.¹⁴

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.

¹⁴ The infringement cases concerning the non-incorporation by Norway of Regulation 1891/2006 concerning multiannual funding for the European Maritime Safety Agency and Regulation 1406/2002 concerning the EMSA Framework regulation were both referred to the EFTA Court on 2 February 2011.

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