



EEA EFTA States

Internal Market Scoreboard

March 2010

INTERNAL MARKET SCOREBOARD

No. 25

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

1 March 2010

EFTA SURVEILLANCE AUTHORITY

**MAIN CONCLUSIONS FROM THE
25th
EEA EFTA STATES INTERNAL MARKET SCOREBOARD**

- **This Internal Market Scoreboard shows that the average transposition deficit of the EEA EFTA States remained at 0.7% as at the time of the July 2009 Scoreboard.**
- **The EU Member States reduced their average transposition deficit by 0.3%, from 1% to 0.7%.**
- **By reducing its transposition deficit from 0.5% to 0.4%, Liechtenstein achieved its best result ever.**
- **The transposition deficits of Norway and Iceland increased slightly: from 0.4% to 0.5% for Norway and, regrettably, from 1.1% to 1.3% for Iceland. Iceland's deficit, at 1.3%, remained above the 1% interim target.**
- **Iceland had three directives overdue by more than two years.**
- **Norway and Iceland were able to reduce their transposition delays: Norway's average transposition delay was 4.6 months and Iceland's 13.4 months. Liechtenstein's transposition delay, regrettably, increased from 6.1 months to 9.5 months.**
- **Regrettably the number of overdue regulations increased by 6 regulations in Iceland and 8 regulations in Norway since the time of the previous Scoreboard.**
- **The *total* number of infringement cases pursued by the Authority decreased by six cases (from 94 to 88) from the time of the previous Scoreboard.**
- **The overall number of infringement cases due to *lack of conformity with or incorrect application* of Internal Market rules remained the same as at the time of the previous Scoreboard. In comparison to the EU Member States, the number of such infringement proceedings against the EEA EFTA States continued to be low.**
- **With an average early resolution rate of 60%, the EEA EFTA States showed strong performance in early resolution of infringement proceedings.**
- **The number of infringement cases concerning *late transposition of directives* by the EEA EFTA States decreased from 30 to 24 since the previous Scoreboard.**
- **The number of new infringement cases against Iceland due to *late transposition of regulations* doubled 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 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 the internal legal orders by way of national implementing measures.

What is the purpose of the Internal Market Scoreboard?

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

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

- to what extent the EEA EFTA States notify the transposition of new EEA directives on time; and
- the transposition backlog and average delays in transposition of directives.

The findings in this Scoreboard take into account the 1719 Internal Market directives that were incorporated into the EEA Agreement by 31 October 2009.³ The Scoreboard records the transposition status for these directives on *10 November 2009*.

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

Finally, the last chapter of the Scoreboard provides information concerning the transposition of Internal Market regulations by the EEA EFTA States as well as infringement proceedings relating to late transposition of regulations.

³ The corresponding figure for the EU is 1521 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

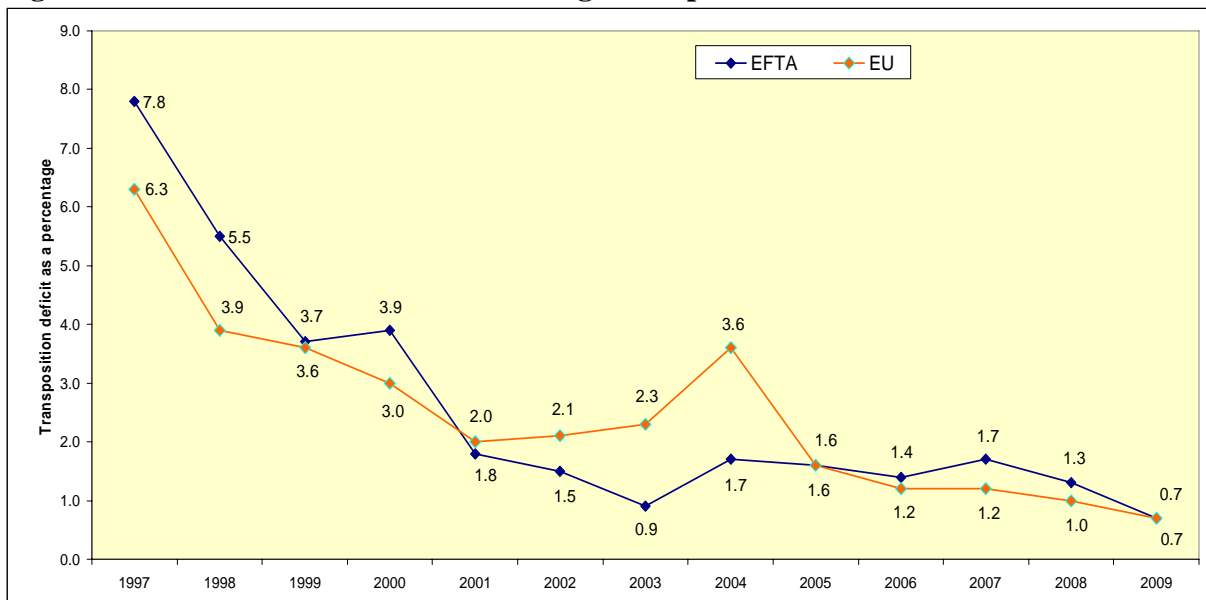
A well-functioning Internal Market results in increased opportunities for businesses and citizens. Yet the Internal Market does not deliver benefits automatically. The EEA States need to transpose Internal Market legislation into their national law within the agreed deadlines. Timely transposition is 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 November 2009

For the second time in a row, the average transposition deficit for the EEA EFTA States was 0.7 % (**Figure 1**). This is a remarkable achievement as, at 0.7%, the average transposition deficit is well below the interim target of 1%. In absolute terms, the 0.7% deficit indicates that the EEA EFTA States are late with 37 notifications of national transposing measures, which is an increase of three since the previous Scoreboard.

Figure 1: The EEA EFTA States’ average transposition deficit remained at 0.7%



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).

Note: Transposition deficit (2009) on 10 November 2009 for the EEA EFTA States and the EU 27 for directives which should have been transposed on or before 31 October 2009. The 1997-2008 deficits for the EEA EFTA States and the EU States have been taken from the second Scoreboards of each year.

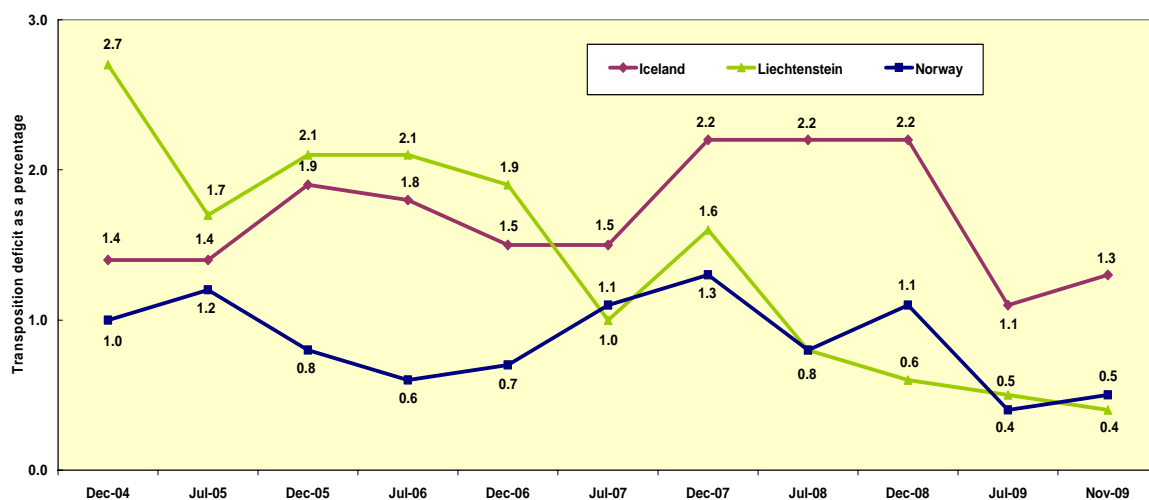
Source for EU figures: The European Commission’s Internal Market Scoreboard N° 20.

The EU average transposition deficit, at 0.7%, was, for the first time ever, better than the interim target of 1%.

2.2. Performance measured against the 1.0% interim target

Regrettably, Iceland’s transposition deficit increased since the previous Scoreboard, from 1.1% to 1.3%, corresponding to 22 directives not fully transposed on time. Iceland is called upon to reinforce its efforts to bring the transposition deficit in line with the 1% target.

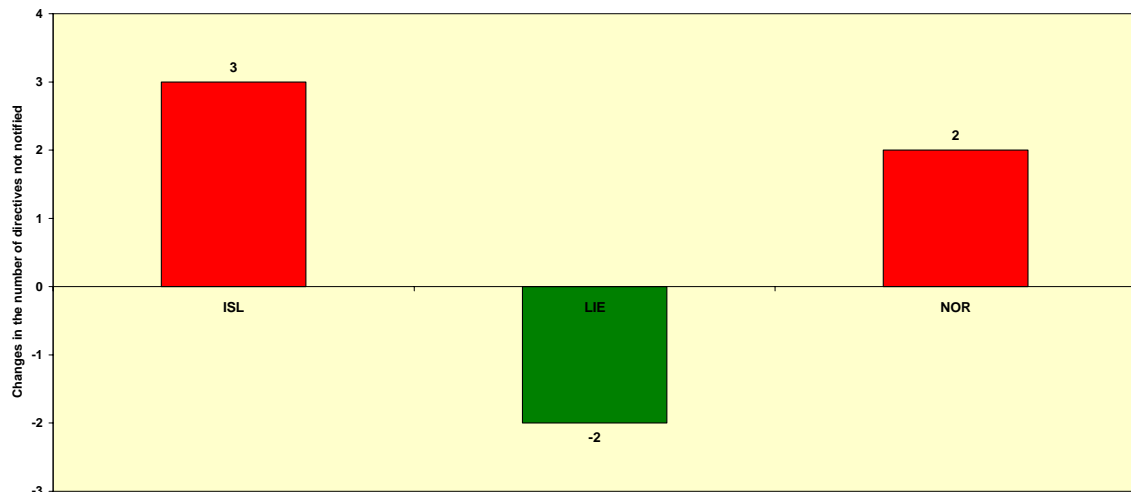
Figure 2: Liechtenstein and Norway continue to comply with the 1% target, Iceland remains above the target



Note: Transposition deficit on 10 November 2009 for directives which should have been transposed on or before 31 October 2009.

Liechtenstein achieved its best result ever: since the previous Scoreboard, Liechtenstein’s transposition deficit decreased from 0.5% to 0.4%. The deficit of 0.4% corresponds to seven directives not having been fully transposed. In absolute terms, the number of outstanding directives decreased by two directives. Norway’s transposition deficit increased from 0.4% to 0.5%. This corresponds to eight directives not having been fully transposed, i.e. two directives more than at the time of the previous Scoreboard.

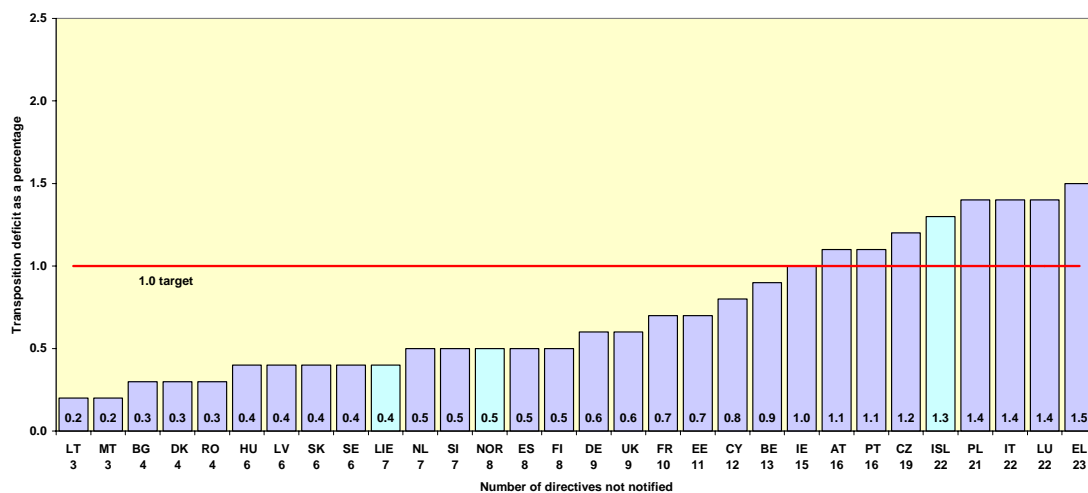
Figure 3: Change in the number of outstanding directives since the previous Scoreboard



Note: The change in the number of outstanding directives of each EEA EFTA State between the Scoreboard of July 2009 and the Scoreboard of February 2010.

Out of the 30 EEA States, 22 have succeeded in bringing their transposition deficits in line with the 1% interim target, whereas eight EEA States remain above the target. Out of the three EEA EFTA States, Liechtenstein and Norway are well below the deficit target of 1%, but Iceland remains above the target (Figure 3).

Figure 4: Iceland, together with seven EU Member States, remains above the 1% target



Note: Comparison of transposition deficits within the EEA.

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 20.

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 long overdue 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. Regrettably, the average delay in the transposition of directives in the EEA EFTA States increased by 0.6 months since the time of the previous Scoreboard, being now at 9.2 months. These 9 extra months after the transposition deadlines have expired undermine the effective functioning of the Internal Market. Hence, the EEA EFTA States are called on to make serious efforts to reduce their transposition delays.

Figure 5: EEA EFTA States’ average transposition delay at 9.2 months

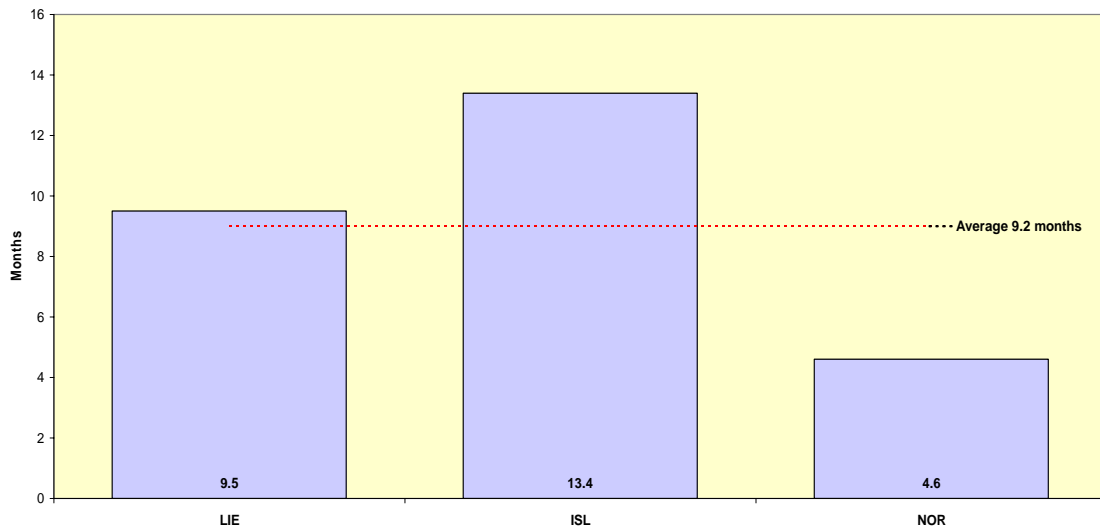
	Number of directives delayed					
	ISL		LIE		NOR	
	Oct 09	Apr 09	Oct 09	Apr 09	Oct 09	Apr 09
Length of delay	Oct 09	Apr 09	Oct 09	Apr 09	Oct 09	Apr 09
Less than 6 months	8	7	1	6	3	2
6 to 12 months	6	3	3	1	1	1
12 to 24 months	3	3	1	2	0	0
Over 24 months	3	2	0	0	0	0
Average delay (in months) by 31 October 2009	13.4	14.7	9.5	6.1	4.6	5.0

Note: Number of overdue Internal Market directives with a transposition deadline of 31 October 2009 for which no notification was received by 10 November 2009, broken down by the length of delay.

Although Iceland’s transposition deficit increased since the previous Scoreboard, it managed to reduce its transposition delays by 1.3 months. Similarly, Norway’s transposition delay decreased by 0.4 months. Regrettably, Liechtenstein’s transposition delay increased by 3.4 months since the previous Scoreboard.

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

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



Note: Average transposition delay of overdue Internal Market directives with a transposition deadline of 31 October 2009 for which no notification was received by 10 November 2009, broken down by the length of delay.

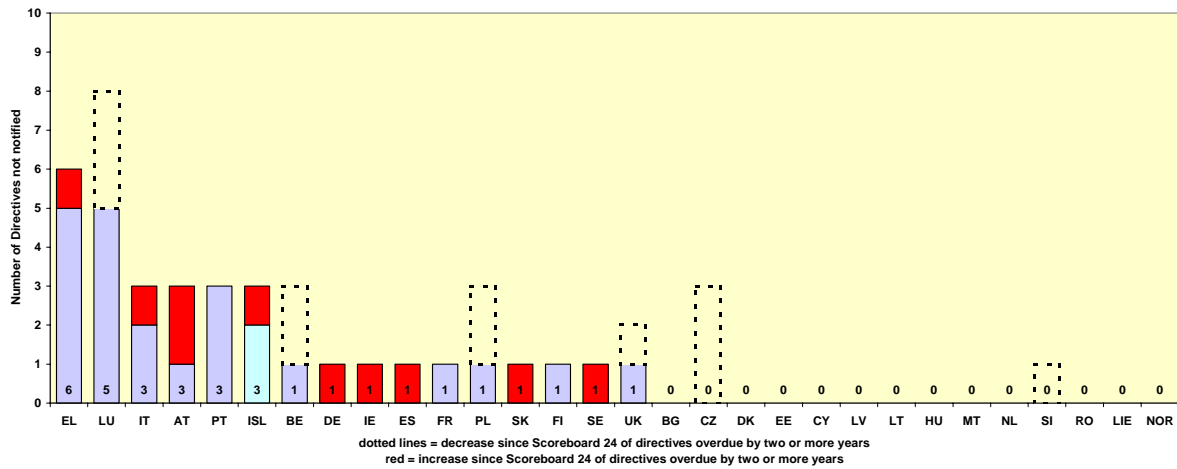
2.3.2. Long overdue directives

Most of the directives which have not been transposed by the EEA EFTA States were overdue by less than 6 months (12 directives), with 10 directives overdue by 6 to 12 months. Neither Liechtenstein, nor Norway, had any directives overdue by more than two years. Regrettably, Iceland had three directives overdue by more than two years, one more than at the time of the previous Scoreboard (**Figure 7**). The directives in question were:

- Directive 2002/30/EC on airport noise restrictions;
- Directive 2003/55/EC on common rules for the internal market in natural gas; and
- Directive 2004/8/EC on the promotion of cogeneration based on useful heat.

It should be noted that the long delays cannot be justified by administrative burdens or the complexity of the directives; the delays simply should not exist. The Authority has launched infringement proceedings against Iceland regarding these three directives.

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



Note: Number of directives with a deadline for transposition into national law on or before 31 October 2009, which were not transposed by 10 November 2009.

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 20.

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.

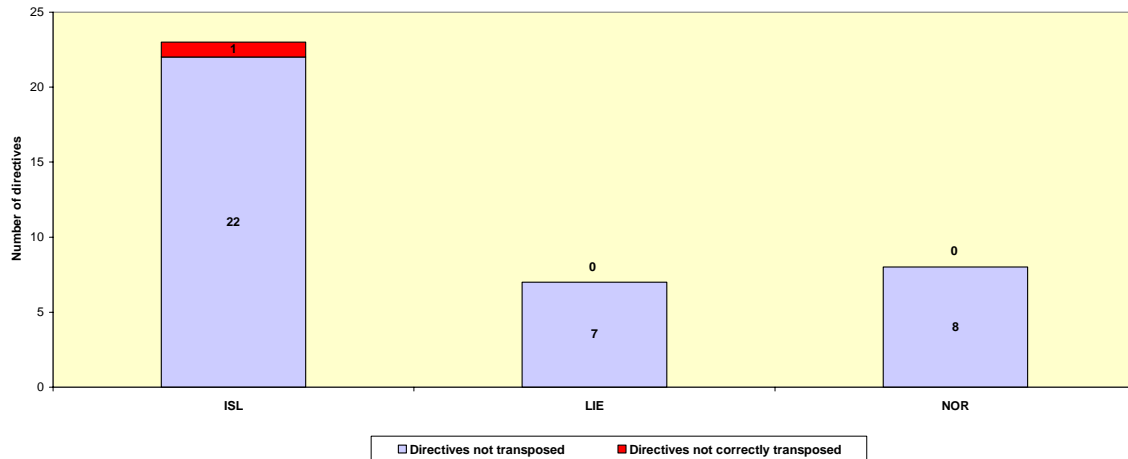
Furthermore, failure to comply with the basic principles of the EEA Agreement itself, such as the free movement of goods, persons, services and capital, impairs the functioning of the Internal Market and might, therefore, also prompt action by the Authority.

About one third 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 concluded without the need to resort to formal infringement proceedings.

Despite the fact that the overall number of directives not communicated to the Authority as having been fully transposed increased by three since the previous Scoreboard, it seems that the transposition has been done correctly. The number of infringement proceedings against the EEA EFTA States concerning incorrect transposition of directives

established on the basis of systematic conformity assessments was significantly lower than the number of outstanding directives.

Figure 8: Number of infringement cases concerning not correctly transposed directives is very low



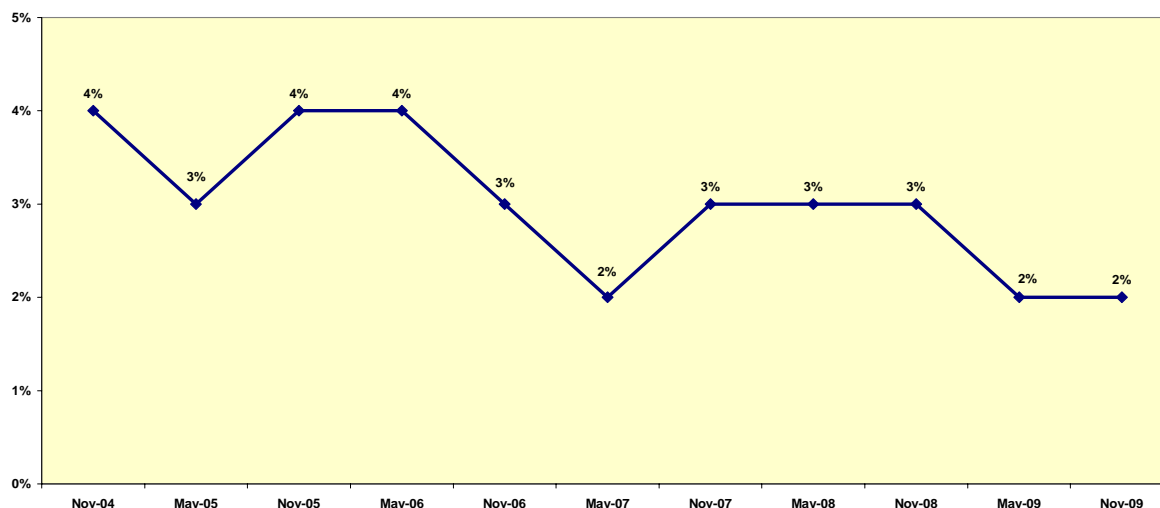
Note: Number of Internal Market directives not yet communicated as having been fully transposed (transposition deficit) added to the number of directives transposed but for which an infringement proceeding for non-conformity has been initiated by the Authority (November 2009).

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 just one EEA State does not deliver on time.

In total, 2% of the directives in force in the EEA EFTA States in November 2009 had not been transposed by all three EEA EFTA States (**Figure 9**). The fragmentation factor of 2% translates into 28 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.

Figure 9: Fragmentation factor in the EEA EFTA States remains at 2%



Note: 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.

The fragmentation factor in the 27 EU Member States in November 2009 was 5%.

When the transposition delays are broken down by sector, the pattern of implementation varies between the EEA EFTA States. The highest number of outstanding directives falls within the areas of transport and goods.

Figure 10: Most outstanding directives were in the area of transport

	Financial services (3)	Workers (1)	Persons – general (5)	Transport (9)	Environment (3)	Company law (1)	Food safety (4)	Goods - technical barriers (7)	Energy (4)	Total
ISL	2		1	6	2		3	5	3	22
LIE	1	1	2	1	1	1				7
NOR			2	2			1	2	1	8

Note: Breakdown by EEA EFTA States of the backlog of non-transposed directives and sector concerned – situation as of 10 November 2009.

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.⁷ Such infringement proceedings correspond to those initiated by the European Commission under Article 258 TEU.

To the extent possible, the Authority endeavours to solve all matters by informal means, through contacts with the national administrations concerned. Formal infringement proceedings are opened, 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 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 non-timely transposition of regulations is included in chapter four covering the issue of transposition of Internal Market regulations by the EEA EFTA States.

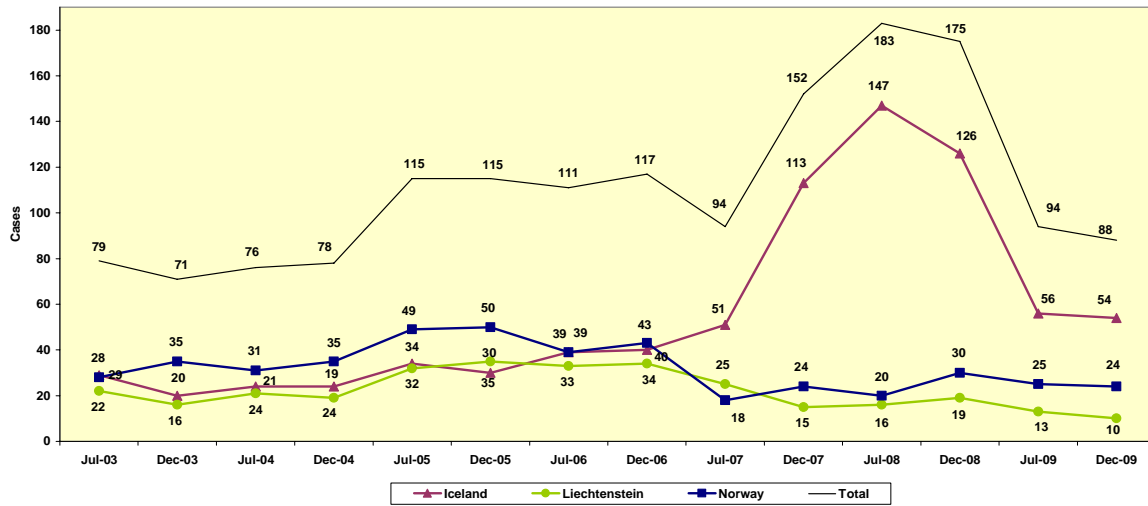
3.1. Evolution of the total number of infringement proceedings

On 1 November 2009, a total of 88 infringement cases were being pursued by the Authority (**Figure 11**). This represents six cases less than at the time of the previous

⁷ Agreement on the Establishment of a Surveillance Authority and a Court of Justice.

Scoreboard. The slight decrease in the number of infringement cases is mainly due to the decrease in infringement cases concerning timely implementation of directives.

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



Note: Total number of all open infringement proceedings against the three EEA EFTA States on 1 November 2009.

Of the 88 infringement cases pending in November 2009, 27 cases concerned incorrect implementation or application of Internal Market rules (see point 3.2) whereas 24 cases concerned non-timely transposition of directives (see point 3.3). The remaining 37 cases concerned non-timely transposition of regulations (see point 4.3).

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

3.2.1. Number of infringement proceedings

The overall number of infringement cases due to lack of conformity with or incorrect application of Internal Market rules remained the same (27 cases) as at 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 remained the same as in the previous Scoreboard

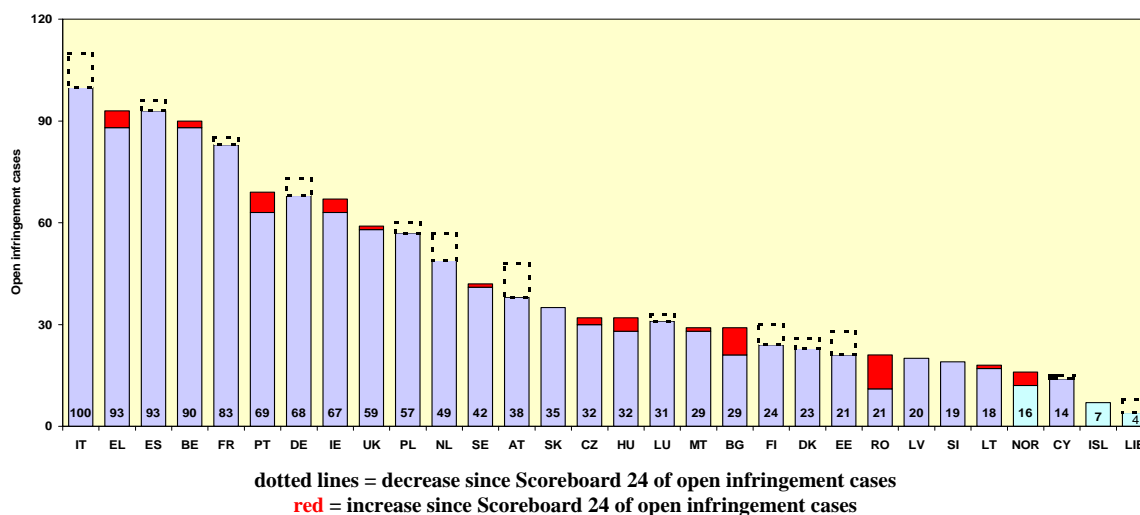
	ISL		LIE		NOR		EEA EFTA	
	Oct 09	Apr 09	Oct 09	Apr 09	Oct 09	Apr 09	Oct 09	Apr 09
Letter of formal notice	6	5	2	4	12	7	20	16
Reasoned opinion	1	2	0	2	4	5	5	9
Referral to EFTA Court	0	0	2	2	0	0	2	2
Total	7	7	4	8	16	12	27	27

Note: Pending infringement cases due to lack of conformity with or incorrect application, according to stage of infringement proceedings, on 1 November 2009.

Whilst Liechtenstein managed to reduce the number of infringement proceedings by half and the number of infringement proceedings against Iceland remained the same as at the time of the previous Scoreboard, the number of infringement proceedings against Norway increased by 33%.

In comparison to the EU27, the number of infringement proceedings against the EEA EFTA States remains low (Figure 13). Liechtenstein, with four cases, and Iceland, with seven 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



Note: Pending infringement cases due to lack of conformity with or incorrect application on 1 November 2009 compared to the situation in April 2009.

Source for EU figures: The European Commission's Internal Market Scoreboard N° 20.

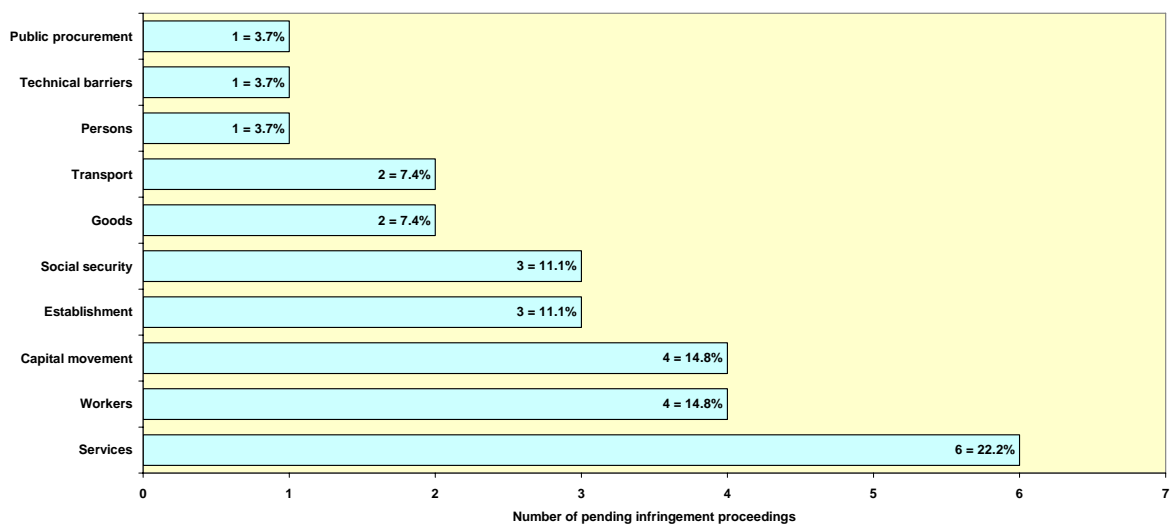
Undertakings and citizens may lodge a complaint with the Authority if they believe that they have not been able to exercise their rights under the EEA Agreement because of the failure by an EEA EFTA State to apply the EEA Agreement correctly. Compared to the previous Scoreboard, the number of pending infringement proceedings initiated as a result of a complaint increased from 8 to 11.

The 11 pending infringement proceedings initiated on the basis of complaints represent 41% of the 27 pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Eight of these cases (73%) relate to Norway, two to Iceland (18%) and one to Liechtenstein (9%).

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 took place in the field of services, workers and, capital movements. Together these three sectors accounted for over 50% of infringement proceedings.

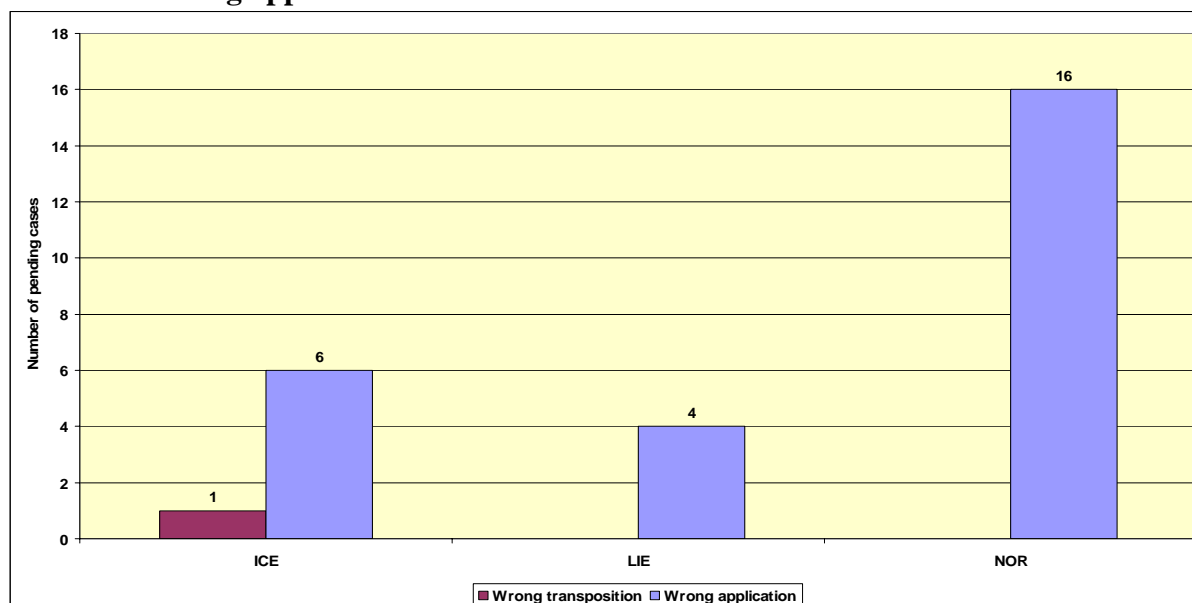
Figure 14: Services sector accounts for most of the infringement proceedings in the EEA EFTA States



Note: Pending infringement proceedings due to lack of conformity with or incorrect application of Internal Market rules on 1 November 2009 divided by sector.

3.2.3. Breakdown of infringement proceedings by type

Figure 15: Most infringement proceedings against the EEA EFTA States concern wrong application of Internal Market rules



Note: Number of pending infringement proceedings due to wrong application or incorrect transposition of Internal Market rules on 1 November 2009.

Figure 15 shows that most infringement proceedings against the EEA EFTA States concerned the wrong application of EEA rules rather than the incorrect transposition of the rules (26 proceedings compared to one). 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 EU legislation rather than the wrong transposition.⁸

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.

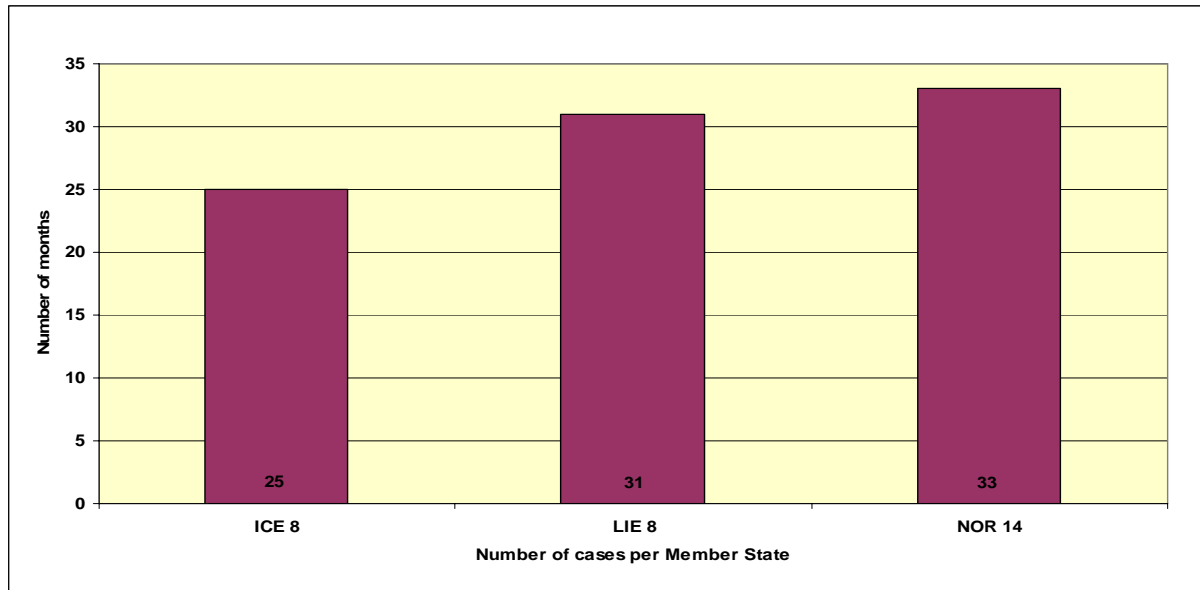
During the period between 31 October 2007 and 31 October 2009, the average time between the sending of the letter of formal notice and the closure of the case or its referral to the EFTA Court in the EEA EFTA States was 30 months (**Figure 16**).

The EEA EFTA States' average time of 30 months is slightly higher than the average speed of infringement resolution of 28 months in EU15 (DK, ES, IE, FR, PT, BE, NL, FI,

⁸ Source for EU figure: The European Commission's Internal Market Scoreboard N° 20, Figure 17.

SE, AT, DE, EL, IT, UK, LU) but is well above the average speed of 16 months in EU12 (PL, EE, LV, MT, CZ, SK, HU, LT, SI, CY, RO, BG).⁹

Figure 16: Average speed of infringement resolution

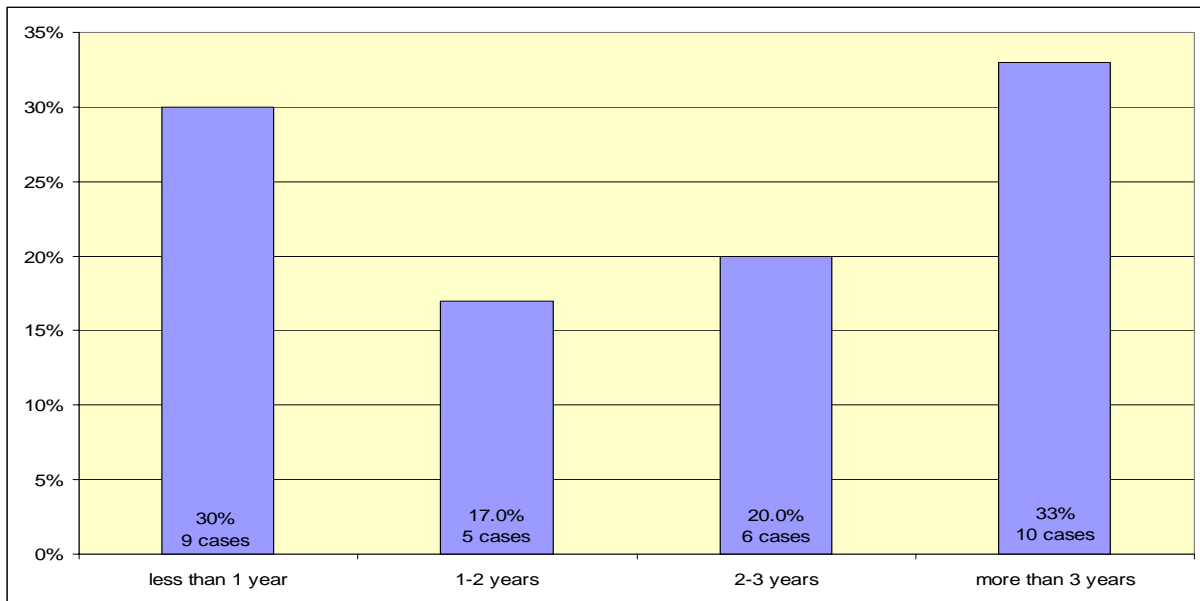


Note: Infringement cases closed or brought before the EFTA Court between 31 October 2007 and 31 October 2009: average time in months needed to either close an infringement case or to bring it before the EFTA Court counted from the moment the letter of formal notice was issued.

Although one third of the infringement cases took less than one year to be resolved or brought before the EFTA Court, an equally high percentage of cases took more than three years before being resolved or referred to the EFTA Court (**Figure 17**). This is by far too long given that infringement proceedings create legal uncertainty and undermine the well-functioning of the Internal Market. Therefore, the EEA EFTA States are called on to increase their efforts to resolve ongoing infringement proceedings faster.

⁹ Source for EU figure: The European Commission's Internal Market Scoreboard N° 20, Figure 18.

Figure 17: One third of the cases took less than one year and one third of the cases took more than three years to be resolved or brought before the EFTA Court

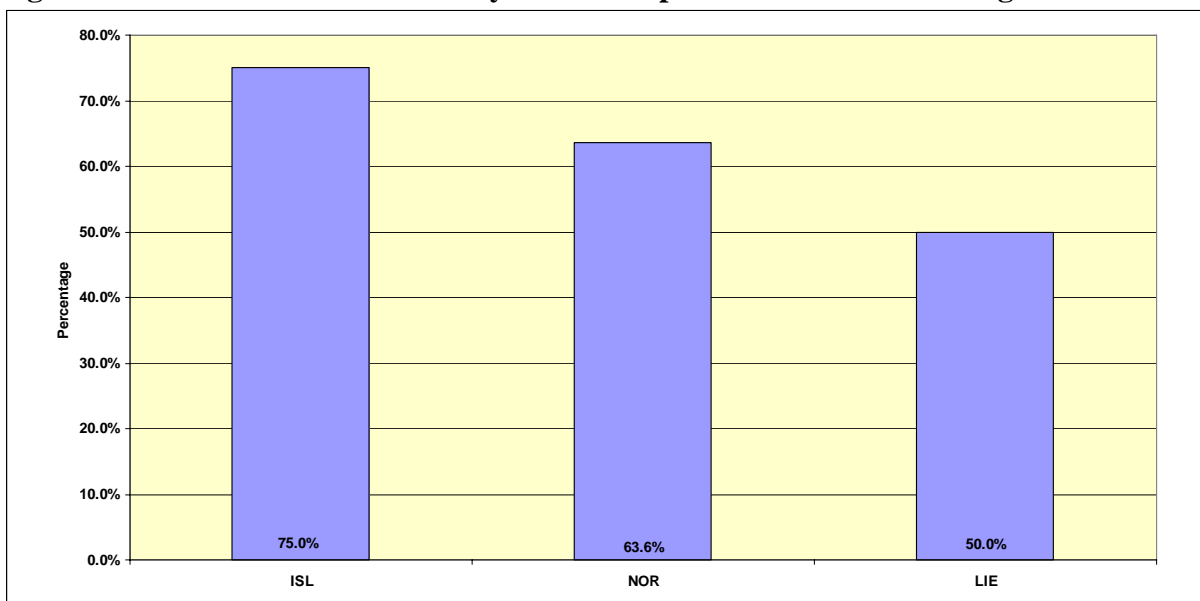


Note: Infringement cases closed or brought before the EFTA Court between 31 October 2007 and 31 October 2009: average time in years needed to either close an infringement case or to bring it before the EFTA Court counted from the moment the letter of formal notice was issued.

3.2.4.2. Early resolution rate

Looking, however, at the infringement proceedings initiated by the Authority between 1 March 2007 and 28 February 2009, and noting that by 31 October 2009 62.9% of these cases had been closed, one can note that the *early* resolution performance by the EEA EFTA States was rather good (Figure 18). The corresponding EU average during the same time period was 38.6%.

Figure 18: EEA EFTA States’ early resolution performance was rather good



Note: Number of cases closed by 31 October 2009 as a percentage of the number of cases initiated between 1 March 2007 and 28 February 2009.

3.3. Infringement proceedings concerning non-transposition of directives

The number of infringement cases initiated against the EEA EFTA States concerning the non-transposition of directives decreased by 20% (six cases) from the time of the previous Scoreboard (Figure 19).

Figure 19: The number of infringement cases against the EEA EFTA States due to non-transposition of directives decreased

	ISL		LIE		NOR		EEA EFTA	
	Oct 09	Apr 09	Oct 09	Apr 09	Oct 09	Apr 09	Oct 09	Apr 09
Letter of formal notice	8	5	4	2	1	4	13	11
Reasoned opinion	6	9	0	2	1	5	7	16
Referral to EFTA Court	1	1	2	1	1	1	4	3
Total	15	15	6	5	3	10	24	30

Note: Pending EEA EFTA States infringement cases due to non-transposition of directives, according to stage of infringement proceedings, on 1 November 2009.

Since the previous Scoreboard one new case concerning non-transposition of directives was referred to the EFTA Court. The case concerned Liechtenstein's failure to implement Directive 2005/56 on cross-border mergers of limited liability companies.¹⁰ 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 cases against Iceland and Liechtenstein for failure to implement Directive 2005/68 on reinsurance,¹¹ and Norway for failure to implement Directive 2002/91 on the energy performance of buildings.¹²

¹⁰ The infringement case concerning the non-transposition by Liechtenstein of Directive 2005/56 was referred to the EFTA Court on 17 June 2009. The judgment of the Court was rendered 1 December 2009 (Case E-7/09).

¹¹ The infringement case concerning the non-transposition by Liechtenstein of Directive 2005/68 was referred to the EFTA Court on 27 March 2009. The judgment of the Court was rendered 1 December 2009 (case E-3/09). 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).

¹² The infringement case concerning the non-transposition by Norway of Directive 2002/91 was referred to the EFTA Court on 12 November 2008. A judgment was rendered 13 May 2009 (case E-6/08).

4. TRANSPOSITION OF INTERNAL MARKET REGULATIONS INTO NATIONAL LAW

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

A particular situation arises with regard to the incorporation of Internal Market regulations into the EEA Agreement. It follows from Article 7 of the EEA Agreement that regulations that are 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.

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.

4.2. 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 a prior translation of regulations into the national language, followed by a publication of the translated regulations in the EEA Supplement to the Official Journal. 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 2009, Iceland had 44 overdue regulations which had not been notified as fully incorporated into its national law. Regrettably this represented an increase of six outstanding regulations from the time of the previous Scoreboard. Similarly, the number of regulations not notified by Norway as fully incorporated into its national law increased by eight regulations, bringing the number of outstanding regulations in Norway to 15. Although part of the reason for the increase in the number of outstanding regulations both in Iceland and Norway may relate to the high number of new regulations incorporated into the EEA Agreement since the previous Scoreboard (67 regulations), the Authority encourages Iceland and Norway to make serious efforts to revert to the earlier positive trend in the incorporation of regulations.

4.3. Infringement proceedings concerning failure to transpose regulations in a timely manner

The Authority considers the timely transposition of regulations in Iceland and Norway to be necessary for the smooth functioning of the Internal Market. Consequently, the enforcement of the non-transposed regulations is handled swiftly and systematically by the Authority. Out of the 88 infringement cases pending in November 2009, 42% concerned late transposition of regulations by Iceland (32 cases) and Norway (5 cases).

Since the time of the previous Scoreboard, 22 new infringement proceedings concerning non-timely transposition of regulations were initiated against Iceland. The corresponding number of cases initiated against Norway was three (**Figure 20**).

Figure 20: The number of new infringement cases initiated against Iceland (letters of formal notice sent out) due to non-transposition of regulations doubled since the time of the previous Scoreboard

	ISL		NOR		EEA EFTA	
	Oct 09	Apr 09	Oct 09	Apr 09	Oct 09	Apr 09
Letter of formal notice	25	12	3	2	28	14
Reasoned opinion	7	22	2	1	9	23
Referral to EFTA Court	0	0	0	0	0	0
Total	32	34	5	3	37	37

Note: Pending infringement cases against Iceland and Norway due to non-transposition of regulations, according to stage of infringement proceedings, on 1 November 2009.

Due to the considerable decrease in the number of reasoned opinions delivered to Iceland for non-transposition of regulations, the overall number of infringement actions against Iceland and Norway remained the same as at the time of the previous Scoreboard. No cases concerning non-transposition of regulations were referred to the EFTA Court since the time of the previous Scoreboard.

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.

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