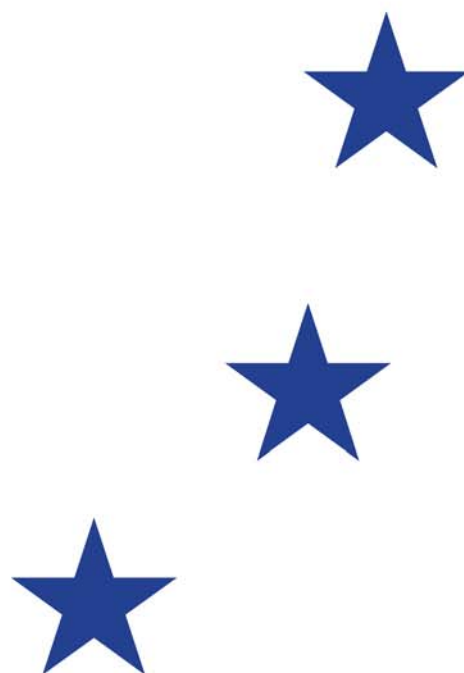




INTERNAL MARKET SCOREBOARD



No. 33
EEA EFTA STATES
of the EUROPEAN ECONOMIC AREA
February 2014

EFTA SURVEILLANCE
AUTHORITY

INTERNAL MARKET SCOREBOARD

No. 33

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

February 2014

EFTA SURVEILLANCE AUTHORITY

MAIN FINDINGS –

**33rd INTERNAL MARKET SCOREBOARD of the
EEA EFTA STATES**

- **The average transposition deficit of the three EEA EFTA States is 2.0 %, a marked increase from 1.2 % in the previous scoreboard.**
 - **Of all the 28 EU Member States and the three EEA EFTA States, Iceland has the highest transposition deficit with 3.2 %. This corresponds to 37 directives not being fully transposed into national law within the foreseen deadlines. Iceland’s deficit has shown a steep increase in the course of the last two years.**
 - **Norway’s deficit has doubled since the last Scoreboard to 1.8 %. This is the second highest deficit in the whole EEA and corresponds to 21 overdue directives.**
 - **For Iceland and Norway, these are the worst scores since the introduction of the Scoreboard in 1997.**
 - **Liechtenstein moves in the wrong direction as well, however still staying within the target of a maximum 1 % transposition deficit. Liechtenstein has 11 directives that are overdue for implementation.**
- **In comparison, the average deficit of the EU Member States is 0.7 %. Five EU Member States show a deficit above the target of 1 %, all within a maximum of 1.5 %.**
- **The EFTA Surveillance Authority finds the current trend alarming and strongly urges the EEA EFTA States to do their utmost to reverse it. The Authority will further step up its efforts to ensure timely transposition.**
- **Iceland has two directives overdue by more than two years. Liechtenstein has one.**
- **In November 2013, Iceland had 117 overdue regulations – 82 more than at the time of the previous scoreboard. For Norway, the number decreased by six, to 24 outstanding regulations.**
- **The total number of infringement cases pursued by the Authority increased from 181 to 236 since the previous scoreboard. Of these, 176 concern the late transposition of directives or regulations, while 60 concern the incorrect implementation and application of EEA provisions.**

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 This is to ensure, by and large, that the businesses and individuals in the EEA EFTA States 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 28 EU Member States and the three EEA EFTA States;³
- 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. 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, but it is left to each State to choose the form and the method of implementation.

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

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.

³ The European Commission has included Croatia as newcomer to the EU in some statistics. Although Croatia is not yet a member of the EEA, it was decided to take Croatia into account as “31st EEA State” where it was done on the EU side being explicitly mentioned to provide a matching overview of the data presented in both Scoreboards.

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 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;
- the number of directives still to be transposed; and
- the average time it takes for the EEA EFTA States to transpose directives.

This Scoreboard records the transposition status for these directives on *10 November 2013*. In addition to the information concerning the transposition of Internal Market directives into national law (chapter 2), 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 (chapter 3).

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.

2. TRANSPOSITION OF INTERNAL MARKET DIRECTIVES INTO NATIONAL LAW

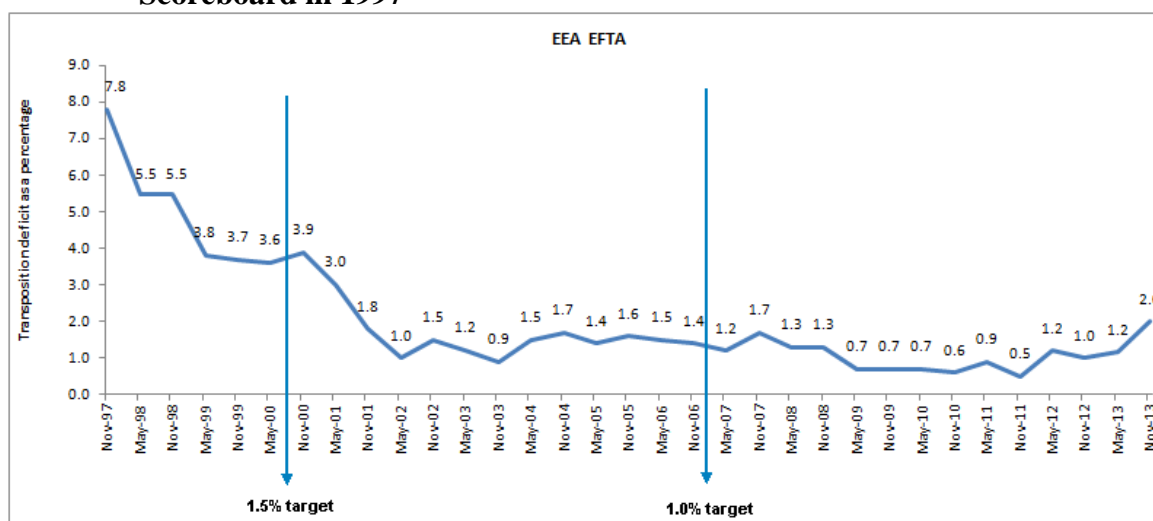
The Internal Market is a key driver of growth and jobs and one of the main engines for economic recovery. In these challenging times, a well-functioning Internal Market is more important than ever as it provides opportunities for businesses and citizens. Yet the Internal Market does not deliver benefits 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 upon 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 also as a benchmark by the Authority.

2.1 Average transposition deficit in November 2013

In November 2013, the average transposition deficit for the EEA EFTA States was at 2.0%, thus high above the 1% transposition deficit target (**Figure 1**).

Figure 1: The EEA EFTA States' average deficits since the first edition of the Scoreboard in 1997



Transposition deficit on 10 November 2013 for the EEA EFTA States for directives which should have been transposed on or before 31 October 2013.

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.

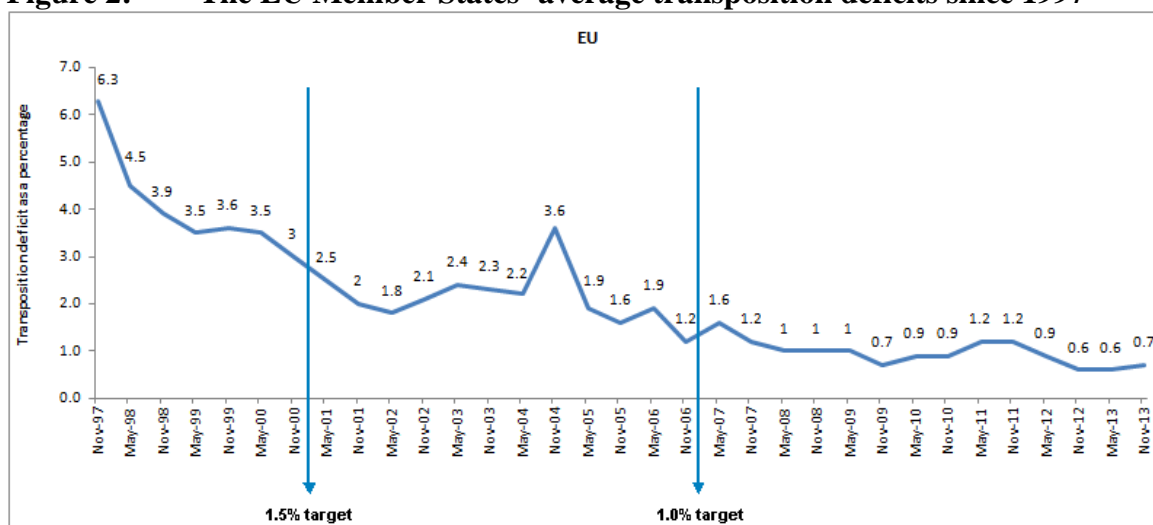
⁵ Conclusion of the European Council summit in Brussels (8-9 March 2007).

In absolute terms, the 2.0% deficit indicates that the EEA EFTA States were late with notifications of national transposing measures of 69 directives, which is an increase of 25 since the last Scoreboard.

The above findings take into account the 1150 directives that were incorporated into the EEA Agreement by 31 October 2013. The corresponding figure for the EU is 1215 Internal Market directives. The difference is caused by the fact that directives mostly enter into force in the EU before they are incorporated into the EEA Agreement, and consequently they are also repealed in the EU before they are repealed under the EEA Agreement.

At the cut off date, the common *acquis* between the EU and the EEA EFTA States was 974 directives, which corresponds to 80% of the EU *acquis*. This difference arose from two factors. On the one hand, 176 directives were still in force in the EEA, but had already been repealed in the EU. On the other hand, 255 directives had already entered into force in the EU, but had not yet been incorporated into the EEA Agreement. A difference in the *acquis* is an inherent consequence of the decision-making process to incorporate new legislation into the EEA Agreement. Any comparison between the EEA EFTA States and the EU Member States in this document has therefore to be made with this reservation.

Figure 2: The EU Member States' average transposition deficits since 1997



Transposition deficit on 10 November 2013 for the EU 28 for directives which should have been transposed on or before 31 October 2013. Source for EU figures: The European Commission's Internal Market Scoreboard N° 28.

The EU average transposition deficit is well below the interim target of 1% at 0.7%.

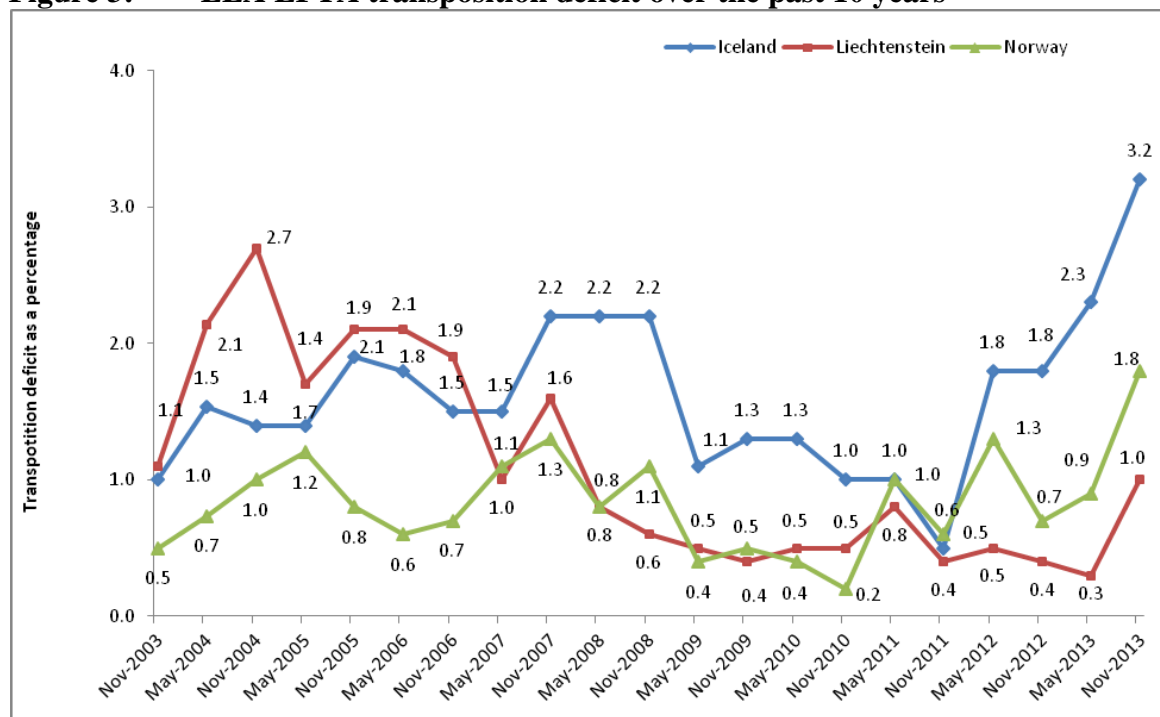
2.2 Performance measured against the 1% interim target

Iceland's transposition deficit increased to a disappointing 3.2%. The deficit corresponds to 37 directives not fully transposed on time, which is eight more directives than at the time of the last Scoreboard. It is absolutely essential that Iceland substantially improves its performance before the next Scoreboard.

Norway's transposition deficit increased by 0.9% from 0.9% to 1.8%. This deficit corresponds to 21 directives not having been fully transposed, which is 10 more than at the time of the last Scoreboard.

Liechtenstein's transposition deficit increased by 0.7% from 0.3% to 1.0%. This corresponds to 11 directives not having been fully transposed, which is 7 more than at the time of the last Scoreboard.

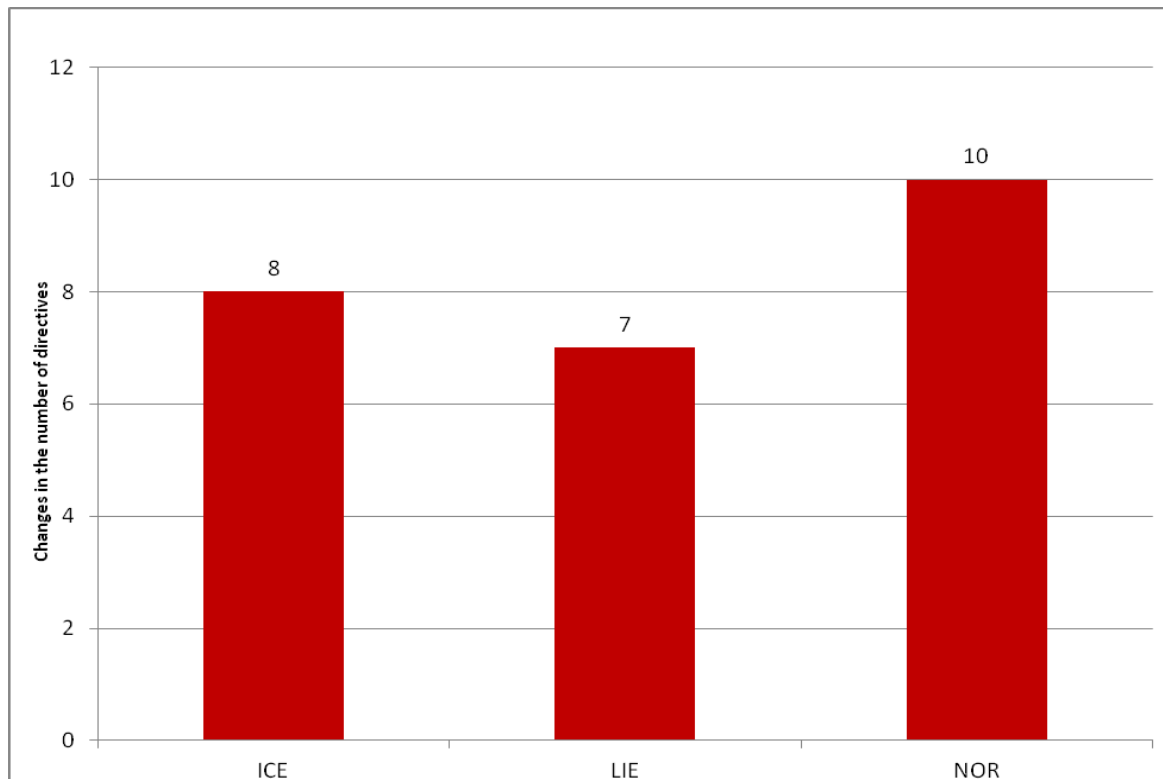
Figure 3: EEA EFTA transposition deficit over the past 10 years



Transposition deficit on 10 November 2013 for directives which should have been transposed on or before 31 October 2013.

Figure 3 illustrates the trend of the past ten years. It shows that on November 2013 both Iceland and Norway had the worst deficits ever. While Norway had previously mostly met the set targets with only few exceptions, Iceland has traditionally had problems, and after having done rather well between 2009 and 2011, it is now way beyond the 1% deficit target. Liechtenstein had problems in the first half of the 10-year period, but since 2008 has managed to reduce the deficit and consistently met the 1% target. Still, the current trend in the development of deficit levels of the EEA EFTA States is rather alarming, in particular compared to the EU. The EEA EFTA States are therefore strongly urged to do their utmost to reverse this trend.

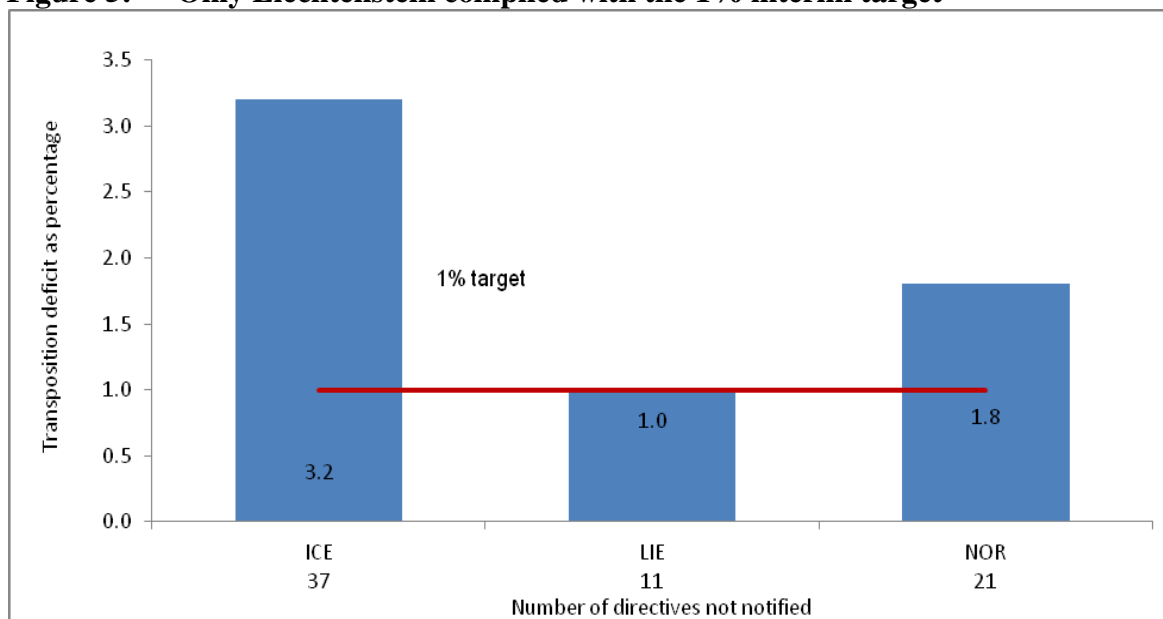
Figure 4: Change in the number of outstanding directives since the previous Scoreboard



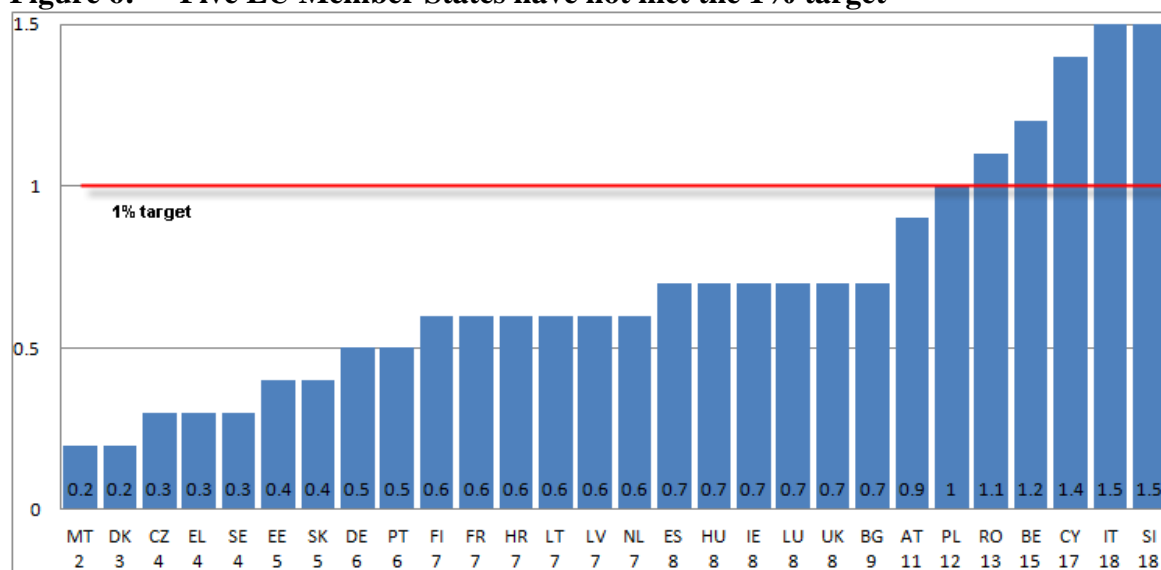
The change in the number of outstanding directives for each EEA EFTA State since the previous Scoreboard.

Out of the 31 EEA States, 24 succeeded in bringing their transposition deficits into line with the 1% interim target, whereas only 7 EEA States were above the target (Figures 5 and 6). This means that within the past 6 months, the number of EU Member States in line with the 1% transposition deficit target decreased, from 25 to 23.

Figure 5: Only Liechtenstein complied with the 1% interim target



Comparison of transposition deficits of the EEA EFTA States.

Figure 6: Five EU Member States have not met the 1% target

Comparison of transposition deficits between the 28 EU Member States.

Source for EU figures: The European Commission's Internal Market Scoreboard N° 28.

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.

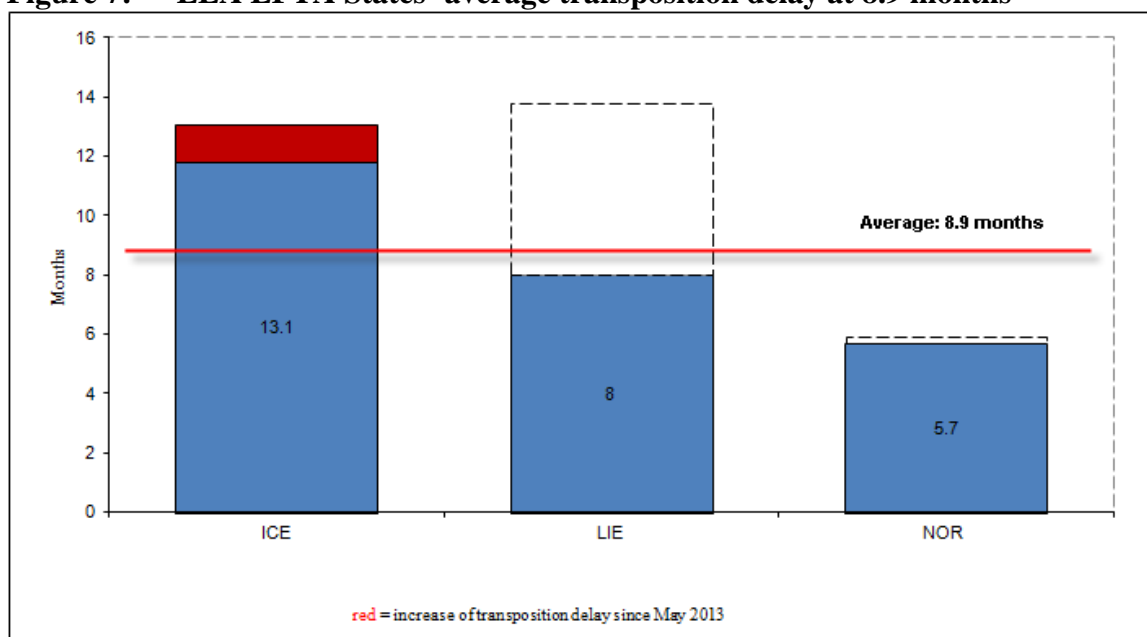
Delays in transposition may occur due to time-consuming legislative processes in the EEA EFTA States. However, directives are usually transposed relatively soon after the expiry of the time limits.

In March 2002, the European Council announced a “zero tolerance” for directives for which 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 managed to reduce their average time taken to transpose directives by 1.5 months since the previous Scoreboard, from 10.4 months to 8.9 months. However, the decreased average is not due to improved transposition time but rather to an increased number of directives overdue by less than 12 months, consequently altering the delay average (Figure 7).

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

Figure 7: EEA EFTA States' average transposition delay at 8.9 months

Average transposition delay of overdue Internal Market directives with a transposition deadline of 31 October 2013 for which no notification was received by 10 November 2013, broken down by the length of delay.

Liechtenstein's transposition delay decreased by 5.4 months, bringing the delay to 8.0 months. In the case of Iceland, whose transposition deficit increased considerably, the transposition delay also increased by 1.3 months to 13.1 months. Norway's transposition delay decreased from 5.9 to 5.7 months (**Figure 8**).

In the light of the above, substantive improvement in the reduction of transposition delay is required by all three EEA EFTA States.

Figure 8: Iceland had the highest transposition delay among the three EEA EFTA States

	Number of directives delayed					
	ISL		LIE		NOR	
	Nov 13	May 13	Nov 13	May 13	Nov 13	May 13
Length of delay	Nov 13	May 13	Nov 13	May 13	Nov 13	May 13
Less than 6 months	11	16	5	1	15	6
6 to 12 months	13	2	2	1	3	2
12 to 24 months	6	5	1	0	2	1
Over 24 months	2	2	1	1	0	0
Average delay (in months) by 31 October 2013	13.1	11.8	8.0	13.4	5.7	5.9

Number of overdue Internal Market directives with a transposition deadline of 31 October 2013 for which no notification was received by 10 November 2013, broken down by the length of delay.

The 28 EU States' average transposition delay, at 7.3 months, is now less than the average delay of the EEA EFTA States.

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, the more serious the consequences. Therefore, a “zero tolerance” target has been set for directives whose transposition is two years or more overdue.⁷

31 of the directives which have not yet been transposed by the EEA EFTA States were overdue by less than six months, and 18 directives were overdue by six to twelve months. Nine directives were overdue between twelve and 24 months. Iceland had two directives overdue by more than two years. Liechtenstein had one directive whose transposition was more than two years overdue (**Figure 9**).

Figure 9: Iceland had two directives overdue by more than two years, Liechtenstein had one

Number	Title	Not transposed by	Transposition deadline
2003/55/EC	Common rules for the internal market in natural gas (Second Directive)	ICE	01/06/2007
2007/16/EC	Undertakings for collective investment in transferable securities (UCITS)	ICE	01/08/2009
2006/126/EC	3rd Driving Licence Directive	LIE	19/01/2011

Number of directives with a deadline for transposition into national law on or before 31 October 2011, which were not transposed by one Member State – Situation as at 10 November 2013.

On the EU side, six Directives (all of which relate to the energy field and climate change) were outstanding for more than two years in a total of nine Member States.

2.4 Conformity of legislation: Directives not correctly transposed

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

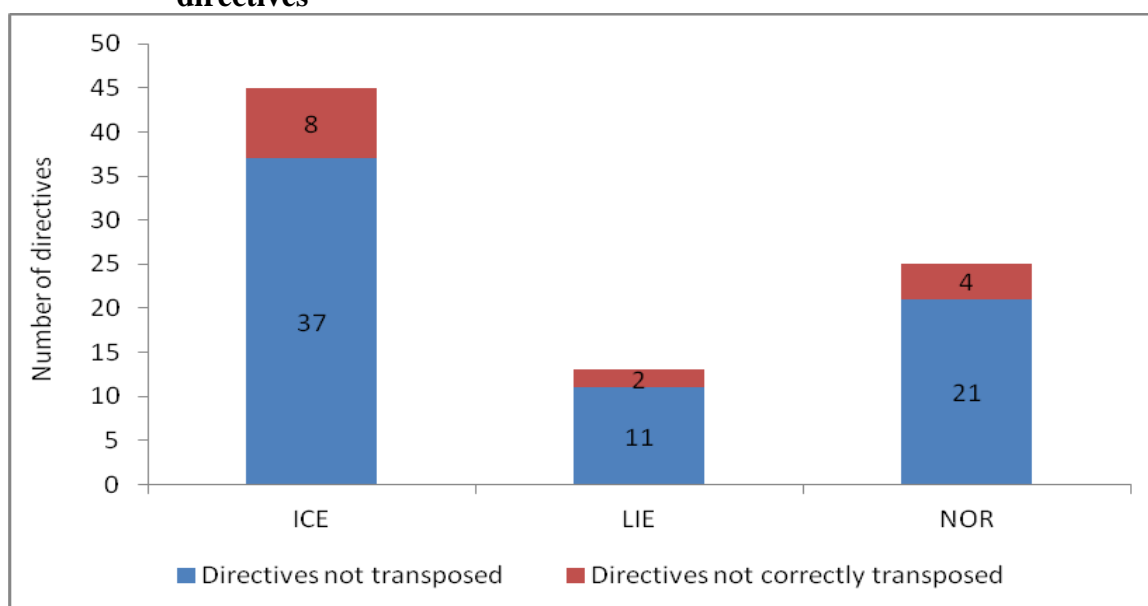
⁷ Conclusions of the European Council summit in Barcelona (15-16 March 2002).

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 that were *not communicated* to the Authority as having been fully transposed by 10 November 2013 was 69. This number had increased by 25 since the time of the previous Scoreboard. The number of infringement proceedings against the EEA EFTA States concerning *incorrect transposition* of directives, at 14, 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.

Figure 10: Number of infringement cases concerning incorrectly transposed directives



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 2013).

Adding the number of incorrectly transposed directives to the number of directives that are not yet transposed, the EEA EFTA States' ranking was as follows: Liechtenstein has the lowest number of cases (13), followed by Norway (25) and Iceland (45) (**Figure 10**).

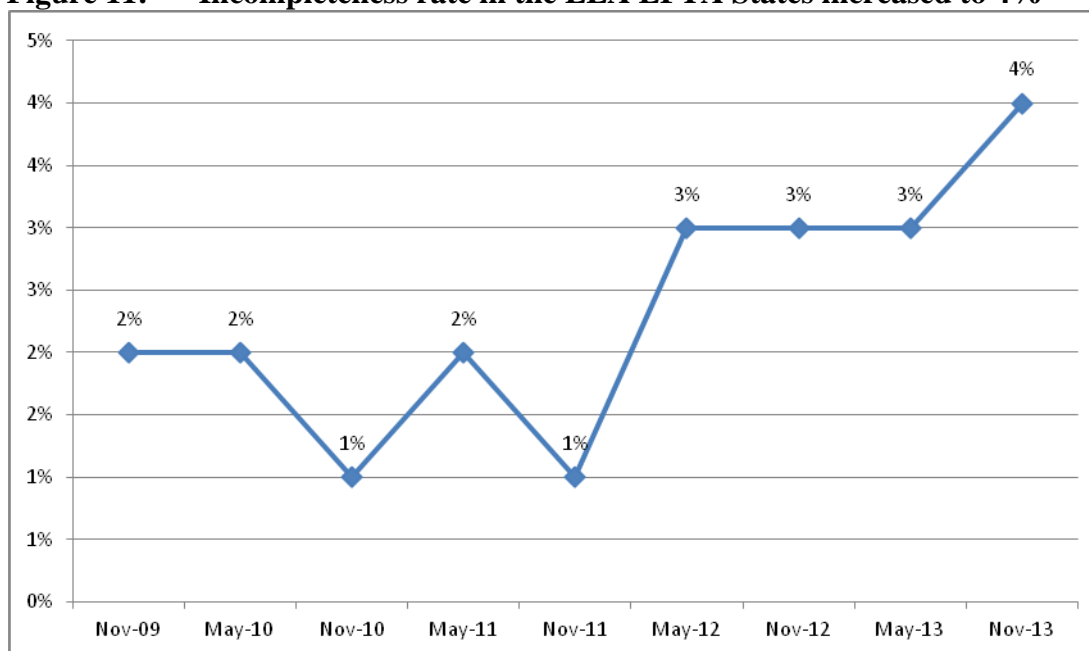
⁸ This figure only includes problems with the correct transposition of directives as established on the basis of systematic *conformity assessments*.

2.5 Incompleteness rate of the Internal Market in the EEA EFTA States⁹

The incompleteness rate 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 smaller and fragmented. Consequently, the economic interests of all EEA States are hampered even if only one EEA State does not deliver on time.

In total, 4% of the directives in force in the EEA EFTA States on 31 October 2013 had not been transposed by at least one of the three EEA EFTA States (**Figure 11**). The incompleteness rate of 4% translates into 45 directives which had not been transposed by all three EEA EFTA States and which had, therefore, not achieved their full effect in the EEA EFTA States. The incompleteness rate in the 28 EU Member States remained unchanged at 4%.

Figure 11: Incompleteness rate in the EEA EFTA States increased to 4%



The so-called incompleteness rate 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 most incomplete sector in the EEA EFTA States is in the area of goods-technical barriers. More efforts are needed to reduce the fragmentation in this sector (**Figure 12**).

⁹ Formerly referred to as “fragmentation factor”.

Figure 12: Most outstanding directives were in the area of transport and goods – whereas the most incomplete sector is in the area of goods

	Capital movement(2)	Company law (1)	Persons-other (2)	Health and safety(3)	Services - general (3)	Financial services (7)	Transport (10)	Environment (9)	Goods - technical barriers (28)	Workers (2)	Energy (1)	Total for all EEA EFTA States (69)
ICE	2011/7		2004/113 2010/41	2009/13 2010/32	2008/122 2008/48 2009/22	2007/16 2009/110 2009/111 2009/44 2010/43 2010/44 2010/76	2012/32 2005/35 2006/38	2001/81 2007/2 2008/50 2008/98 2009/31 2011/97	2007/23 2008/43 2009/125 2009/48 2010/26 2010/30 2011/65 2012/24 2012/47 2012/50 2012/51	2009/38	2003/55	37
LIE	2011/7						2006/126 2011/94	2003/35 2009/31	2012/38 2012/40 2012/41 2012/42 2012/43	2008/104		11
NOR		2012/30		2010/32			2012/32 2004/52 2006/38 2009/12 2010/48	2009/31	2009/48 2012/14 2012/15 2012/16 2012/20 2012/22 2012/38 2012/40 2012/41 2012/42 2012/43 2012/47 2008/112			21
Fragmentation factor	1	1	2	2	3	7	8	7	22	2	1	45

Breakdown by EEA EFTA State of the backlog of non-transposed directives and sector concerned – situation as at 10 November 2013.

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.¹⁰ Such infringement proceedings correspond to those initiated by the European Commission under Article 258 of the Treaty on the Functioning of the EU (TFEU).

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 of the 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 a judgment, the fact that infringement proceedings have been opened shows only that it is the Authority's view 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 rules are not correctly implemented or applied in practice, citizens and businesses are often deprived of their rights.

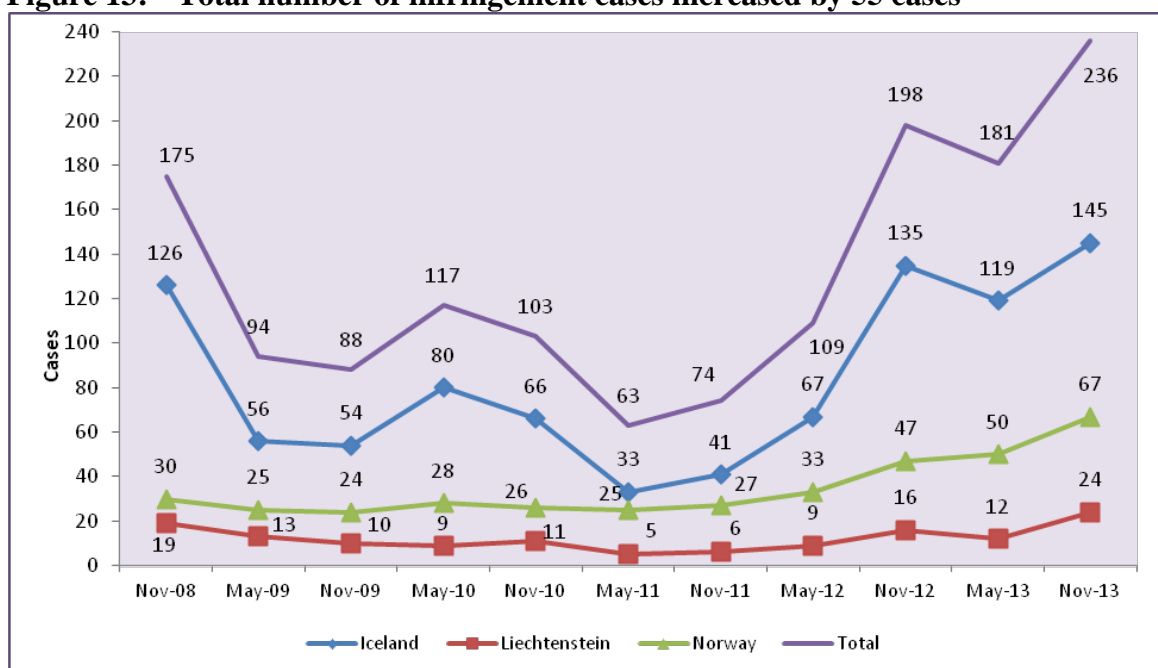
The second category of cases relates to *late transposition*, in other words directives and regulations only partially transposed or not transposed at all into the national legislation of the EEA EFTA States within the time limits. Infringement cases in this category (non-transposition cases) are generally 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. Increase in the *total* number of infringement proceedings

On 1 November 2013, a total of 236 infringement cases were being pursued by the Authority (**Figure 13**).¹¹ This represents 55 cases more than at the time of the last Scoreboard. The increase in the number of infringement cases is mainly due to the increase in the infringement cases concerning non-incorporation of regulations (from 82 to 104) and non-implementation of directives (from 38 to 72).

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

¹¹ A pending infringement case is defined as a case where at least a letter of formal notice has been sent to the State concerned, but the case has not yet been referred to the EFTA Court.

Figure 13: Total number of infringement cases increased by 55 cases

Total number of all open infringement proceedings against the three EEA EFTA States on 1 November 2013.

Of the 236 infringement cases pending on 1 November 2013, 60 cases concerned incorrect implementation or application of Internal Market rules (see chapter 3.2), whereas 72 cases concerned the late transposition of directives (see chapter 5.1). The remaining 104 cases concerned the late transposition of regulations (see chapter 5.2).

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

3.2.1. 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 (60 cases) decreased by one since the previous Scoreboard (Figure 14).

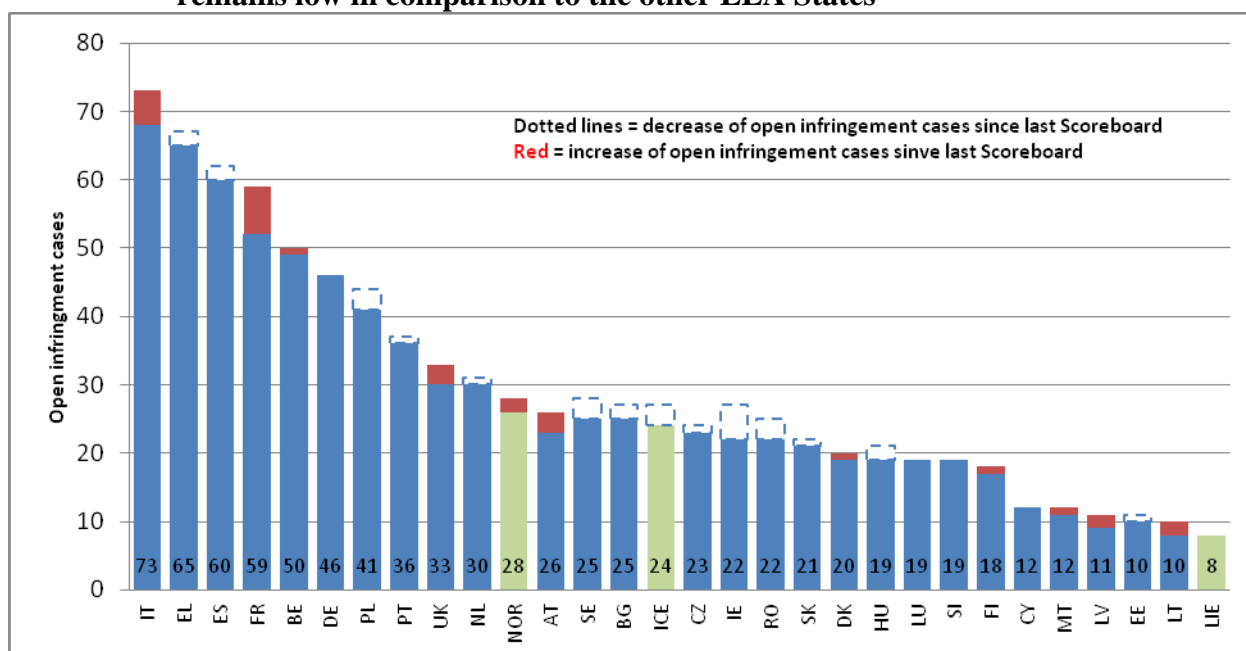
Figure 14: The number of infringement cases increased by seven since the previous Scoreboard

	ISL		LIE		NOR		EEA EFTA	
	Nov 13	May 13	Nov 13	May 13	Nov 13	May 13	Nov 13	May 13
Letter of formal notice	12	17	7	5	16	14	35	37
Reasoned opinion	8	10	1	2	11	11	20	22
Referral to EFTA Court	4	0	0	1	1	1	5	2
Total	24	27	8	8	28	26	60	61

Pending infringement cases against the EEA EFTA States due to lack of conformity with or incorrect application, broken down according to the stage reached in the infringement proceedings as at 1 November 2013.

Norway saw an increase in the number of infringement cases brought against it since the previous Scoreboard: from 26 to 28. The number of infringement cases brought against Liechtenstein remained the same. Iceland saw a decrease in the number of cases brought against it by three cases. In comparison to the EU27, the number of infringement proceedings against the EEA EFTA States remained low (see **Figure 15**).

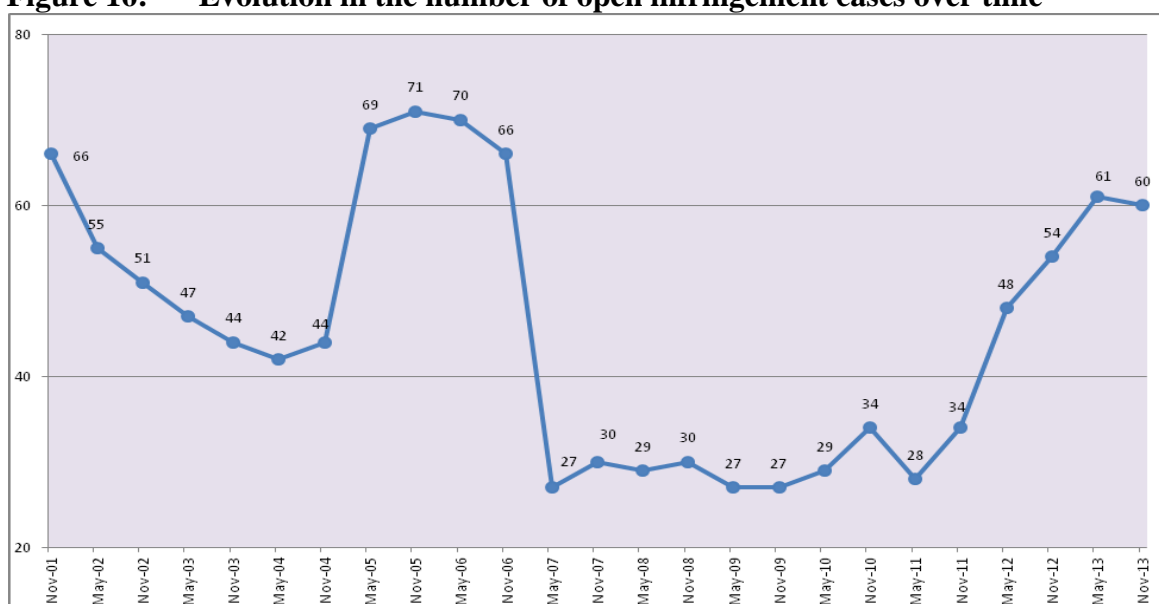
Figure 15: The number of EEA EFTA States’ infringement cases concerning lack of conformity with or incorrect application of Internal Market rules remains low in comparison to the other EEA States



Pending infringement cases due to lack of conformity with or incorrect application of Internal Market rules on 1 November 2013 compared to the situation in May 2013.

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 28.

Figure 16: Evolution in the number of open infringement cases over time



Open infringement cases concerning lack of conformity with or incorrect application of Internal Market rules as at 1 November 2013 compared to previous years

The number of open infringement cases for the EEA EFTA States seems to be rising again, after a peak was reached due to a growing number of complaint cases lodged against Norway in spring 2005.

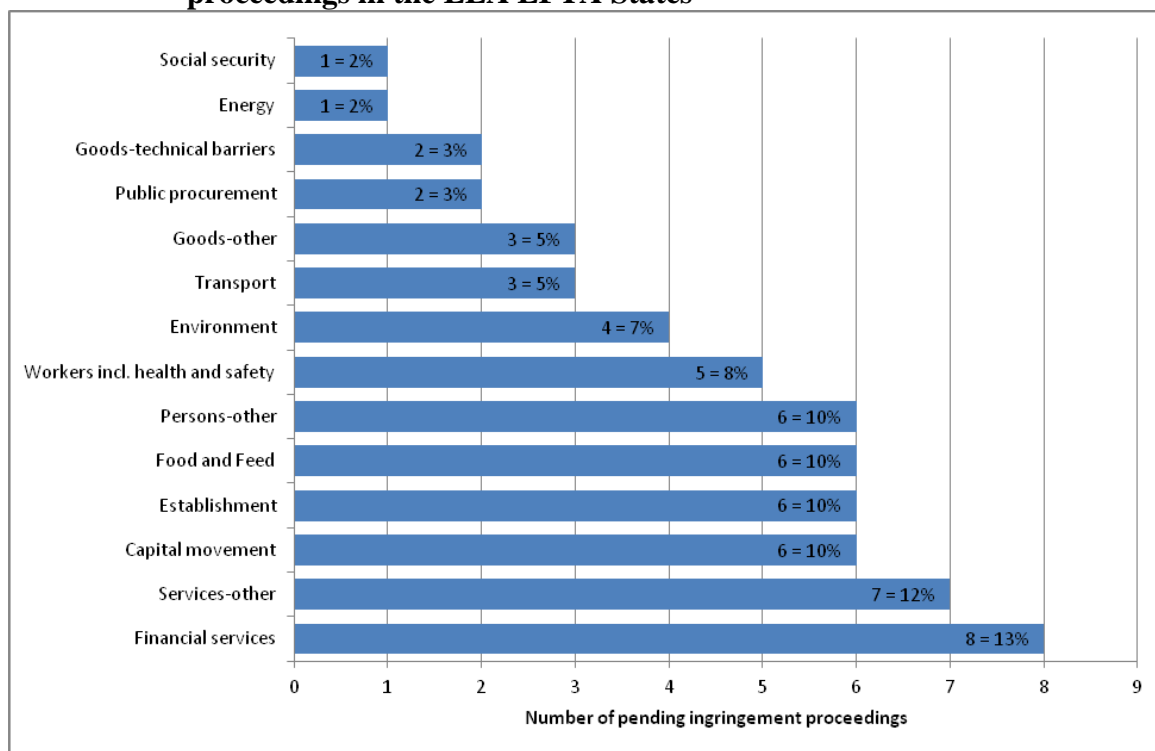
Undertakings and citizens may lodge a complaint with the Authority if they believe that they have not been able to exercise their rights under the EEA Agreement due to the failure of an EEA EFTA State to apply the EEA Agreement correctly.

The number of pending infringement proceedings initiated as a result of complaints decreased by two since the time of the previous Scoreboard (from 22 to 20). The 20 pending infringement proceedings initiated on the basis of complaints represent 33% of the 60 pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Ten of these complaint cases related to Norway, four to Liechtenstein and six to Iceland.

3.2.2. Breakdown of infringement proceedings per sector

The highest number of infringement proceedings concerning the lack of conformity with, or incorrect application of, Internal Market rules related to the field of financial services. This sector accounted for 18% of all infringement proceedings (**Figure 17**).

Figure 17: Financial 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 2013 divided by sector.

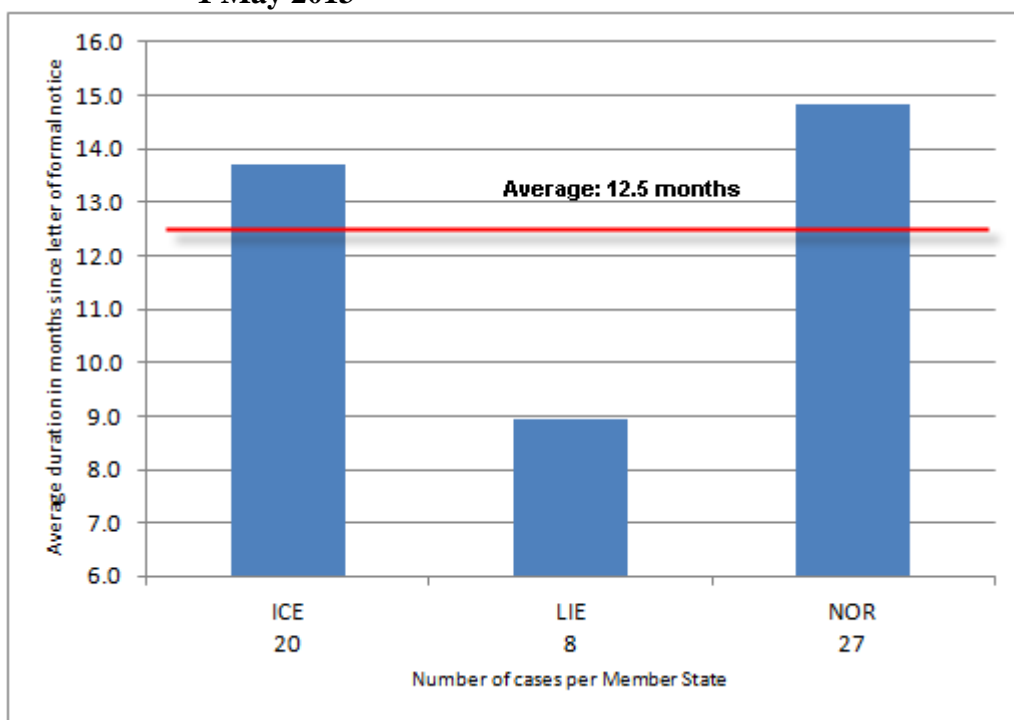
3.2.3. Duration of infringement proceedings

When problems with the application of Internal Market rules 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 solve 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 was 12.5 months at the cut-off date of 1 November 2013 (**Figure 18**). This is a decrease of 0.7 months compared to the last Scoreboard. The average duration of the EU Member States' infringement proceedings still exceeds the two-year mark (27.9 months).

Figure 18: Pending infringement cases not yet sent to the EFTA Court as of 1 May 2013



Pending infringement cases not yet sent to the EFTA Court as at 1 November 2013 (59 such cases): average time in months from the moment the letter of formal notice was issued.

3.2.3.2. Compliance with Court judgments

Court rulings establishing a breach of EEA legislation require that the State concerned takes immediate action to ensure EEA law compliance as soon as possible¹². Internal

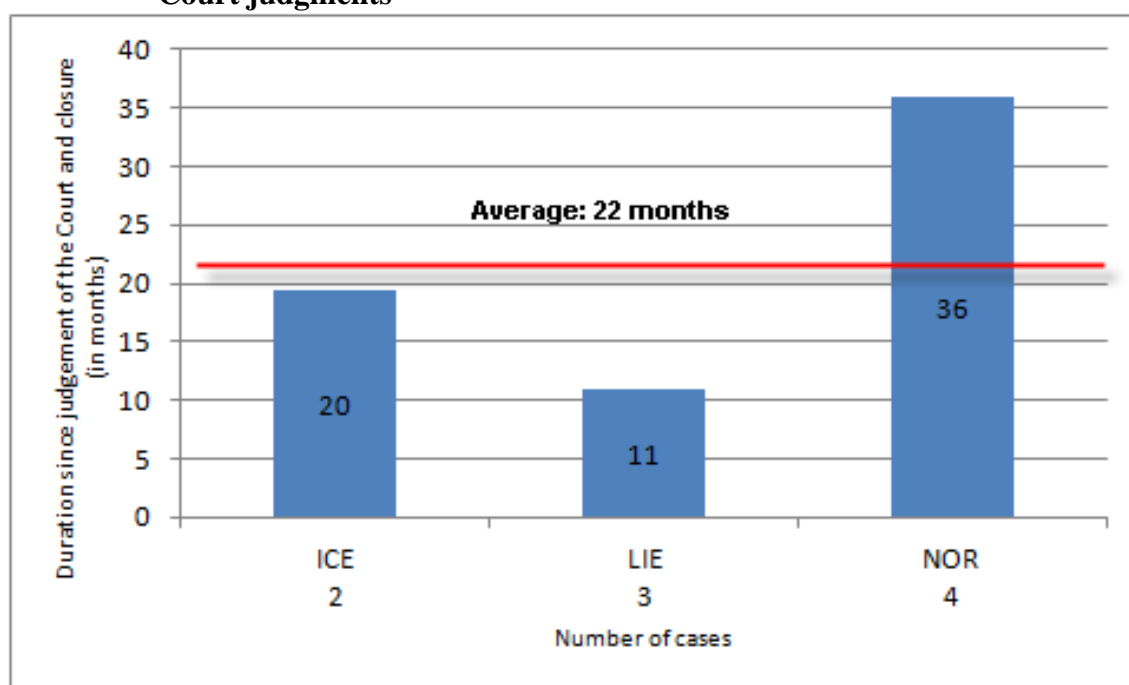
¹² See, in particular, Case E-18/10 *EFTA Surveillance Authority v Norway*, 2011 EFTA Court Report, 204, paragraph 29; Case C-291/93 *Commission v Italian Republic* [1994] ECR I-859, paragraph 6; Case C-101/91 *Commission v Italian Republic* [1993] ECR I-191, paragraph 20; and Case C-328/90 *Commission v Hellenic Republic* [1992] ECR I-425, paragraph 6.

circumstances or practical difficulties cannot justify non-compliance with obligations and time-limits arising from EEA law.¹³

The average time taken by the EEA EFTA States in cases to comply with an EFTA Court ruling that were closed during the last 5 years is 22 months (**Figure 19**). This is an increase since the assessment 6 months ago, when the average was 18 months. This long delay was primarily due to Norway's non-implementation of the judgment by the EFTA Court in Case E-2/07, which was delivered on 30 October 2007.¹⁴ This resulted in another judgment by the Court on 28 June 2011 (Case E-18/10), which declared that Norway has failed to take the measures necessary to comply with its previous judgment.¹⁵

In comparison, the EU average has increased by 0.2 months since the previous Scoreboard, with an average duration of 17.6 months.

Figure 19: EEA EFTA States take an average of 22 months to comply with EFTA Court judgments



Cases closed between 1 November 2008 and 31 October 2013 (10 such cases): Average duration between the judgment of the EFTA Court and the resolution of the case.

¹³ 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.

¹⁴ Case E-2/07 *EFTA Surveillance Authority v The Kingdom of Norway*, 2007 EFTA Court Report, 280.

¹⁵ Case E-18/10 *EFTA Surveillance Authority v The Kingdom of Norway*, 2011 EFTA Court Report, 204.

4. PERFORMANCE PER INDICATOR – EEA EFTA STATES

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

The table below 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	EU average
Transposition deficit	3.2%	1.0%	1.8%	2.0%	0.7%
Progress over the last 6 months (change in the number of outstanding directives)	+8	+7	+10	+8	-2
Number of directives two years or more overdue	2	1	0	1	0.6
Transposition delay on overdue directives (in months)	13.1	8	5.7	8.9	7.3
Compliance deficit ¹⁶	0.7%	0.2%	0.4%	0.4%	0.7%
Number of pending infringement proceedings	24	8	28	20	30
Duration of infringement proceedings (in months)	13.7	8.9	14.8	12.5	27.9
Duration since Court's judgments - closed cases (in months)	20	11	36	22	18.2

good performance	caution zone	under-performance
------------------	--------------	-------------------

Legend

< average	average ± 10%	> average
-----------	---------------	-----------

except

Transposition deficit	≤1%	/	≥1%
Change in the number of outstanding directives	decrease	no change	increase
Duration since Court's Judgment	<8 months	8-18 months	>18 months
NA = not applicable			

The Index shows that, overall, Liechtenstein was the best-performing EEA EFTA State. All EEA EFTA States have areas where more attention is needed (orange and red fields). This time, Iceland did not perform well in respect to any of the indicators on the implementation and application of Internal Market rules.

¹⁶ The compliance deficit measures the number of directives transposed where infringement proceedings for non conformity have been initiated by the Authority, as a percentage of the number of Single Market directives notified as transposed to the Authority.

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 increased by 47% (corresponding to 34 cases) from the time of the previous Scoreboard (**Figure 20**). In comparison with the last Scoreboard, Iceland had an increase of 14 cases, Liechtenstein of twelve and Norway of eight cases.

Figure 20: The number of infringement cases against the EEA EFTA States due to non-transposition of directives increased for all three states

	ISL		LIE		NOR		EEA EFTA	
	Nov 13	May 13	Nov 13	May 13	Nov 13	May 13	Nov 13	May 13
Letter of formal notice	25	16	15	4	10	2	50	22
Reasoned opinion	12	11	1	0	2	3	15	14
Referral to EFTA Court	6	2	0	0	1	0	7	2
Total	43	29	16	4	13	5	72	38

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 2013.

Since the last Scoreboard, six cases concerning non-transposition of directives were referred to the EFTA Court. Five of these concerned Iceland and are Directive 2009/44 (amending the Settlement Finality Directive and the Financial Collateral Directive), Directive 2009/111 (Capital Requirements Directive II), Directive 2008/122 (Protection of the consumer in time-sharing contracts), Directive 2009/22 (Protection of consumers' interests), Directive 2001/81/EC (National Emission Ceilings Directive). One case, Directive 2010/48 (Roadworthiness tests for motor vehicles and their trailers), concerns Norway.

5.2. Non-transposition of regulations

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

It follows from Article 7 of the EEA Agreement that regulations incorporated into the Agreement shall “as such” be made part of the internal legal order of the 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.

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.

On 10 November 2013, Iceland had 117 overdue regulations which had not been notified as fully incorporated into its national law. This is 82 more than at the time of the last Scoreboard. For Norway, the number of regulations not notified as fully incorporated into national law decreased by six regulations, bringing the number of outstanding regulations down to 24.

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. Of the 236 infringement cases pending in November 2013, 44% concerned the late transposition of regulations by Iceland (78 cases) and Norway (26 cases). This is an increase of 15 infringement proceedings against Iceland and an increase of seven cases against Norway since the time of the last Scoreboard (**Figure 21**).

Figure 21: The number of infringement cases initiated against Iceland and Norway increased since the previous Scoreboard

	ISL		NOR		EEA EFTA	
	Nov 13	May 13	Nov 13	May 13	Nov 13	May 13
Letter of formal notice	68	33	18	14	86	47
Reasoned opinion	10	30	8	5	18	35
Referral to EFTA Court	0	0	0	0	0	0
Total	78	63	26	19	104	82

Pending infringement cases against Iceland and Norway due to non-transposition of regulations, according to stage of infringement proceedings, on 1 November 2013.

The total number of infringement cases concerning the non-transposition of directives and regulations increased by 56 to 176 since the last Scoreboard. Substantial improvement in performance is therefore expected from both countries, in particular from Iceland.

EFTA Surveillance Authority
Rue Belliard 35
B-1040 Brussels
Belgium

Tel. +32 2 286 18 11
Fax +32 2 286 18 10
E-mail: registry@eftasurv.int
Internet: <http://www.eftasurv.int>
Twitter: @eftasurv

EFTA SURVEILLANCE
AUTHORITY

