

INTERNAL MARKET SCOREBOARD



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EFTA SURVEILLANCE
AUTHORITY

38th Internal Market Scoreboard of the EFTA States

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

Main Findings

- Norway continues to perform well, with a transposition deficit of 0.1% for directives, reflecting 1 directive not being fully transposed into national law on time.
- Norway had 13 overdue regulations, 8 more than at the time of the previous scoreboard, resulting in a transposition deficit for regulations of 0.5%.
- With a transposition deficit of 2% in respect of directives, Iceland has seen an increase of 0.2% since the last scoreboard. The 2% deficit corresponds to 17 directives not being fully transposed into national law within the foreseen deadlines, 1 more than in the previous scoreboard. Iceland has had 4 directives outstanding for two years or more.
- Iceland had 44 overdue regulations, 10 more than at the time of the previous scoreboard representing a transposition deficit of 1.8%.
- Iceland's performance remains disappointing on all counts and it is once again urged to take steps to improve.
- Liechtenstein's deficit decreased from 1.2% to 1.1%, with 9 directives where implementation was overdue and has had 6 outstanding for two years or more. Liechtenstein still needs to take steps to improve its performance.
- The total number of infringement cases pursued by the Authority increased from 113 to 139 since the previous scoreboard. Of these, 84 concerned the late transposition of directives or regulations, while 55 concerned the incorrect implementation and application of EEA law.

The European Commission is currently undergoing a period of change regarding future editions of its own Internal Market Scoreboard. The scoreboard figures from the EU Member States as at May 2016 will not be officially published. As a result, no data from the EU Member States has been included in this scoreboard.

1 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. The Internal Market does not, however, deliver benefits automatically. Fragmentation and the applicability of divergent sets of rules in the various EEA countries, as measured by the implementation deficit, prevent citizens and businesses from reaping the full benefits of the common Internal Market. The EEA States need to transpose Internal Market legislation into their

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

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. This is particularly true in the EFTA-pillar, where there is no direct effect of EEA Acts. This is why the EFTA States are repeatedly called upon to improve their transposition records.

1.1 Average transposition deficit in May 2016

In May 2016, thanks to Norway's strong performance, the average transposition deficit for the EFTA States stood at 1.1%.

In absolute terms, the 1.1% deficit indicates that the EFTA States were late in notifying national measures for 27 directives, the same number as in the last Scoreboard.

These findings take into account the 843 directives that were incorporated into the EEA Agreement and were in force on 31 May 2016.

1.2 The EFTA States' performance

Iceland's transposition deficit increased by 0.2% from 1.8% to 2.0%. The deficit corresponds to 17 directives not having been fully transposed on time, which is 1 more since the last Scoreboard and a reversal of the downward trend since 2014. Iceland must be encouraged to step up its efforts to demonstrate its commitment to the EEA Agreement.

Norway's transposition deficit is 0.1%, compared to 0% in the last scoreboard, as 1 directive had not been fully transposed on time.

Liechtenstein's transposition deficit decreased by 0.1% from 1.2% to 1.1%, with 9 directives not having been fully transposed.

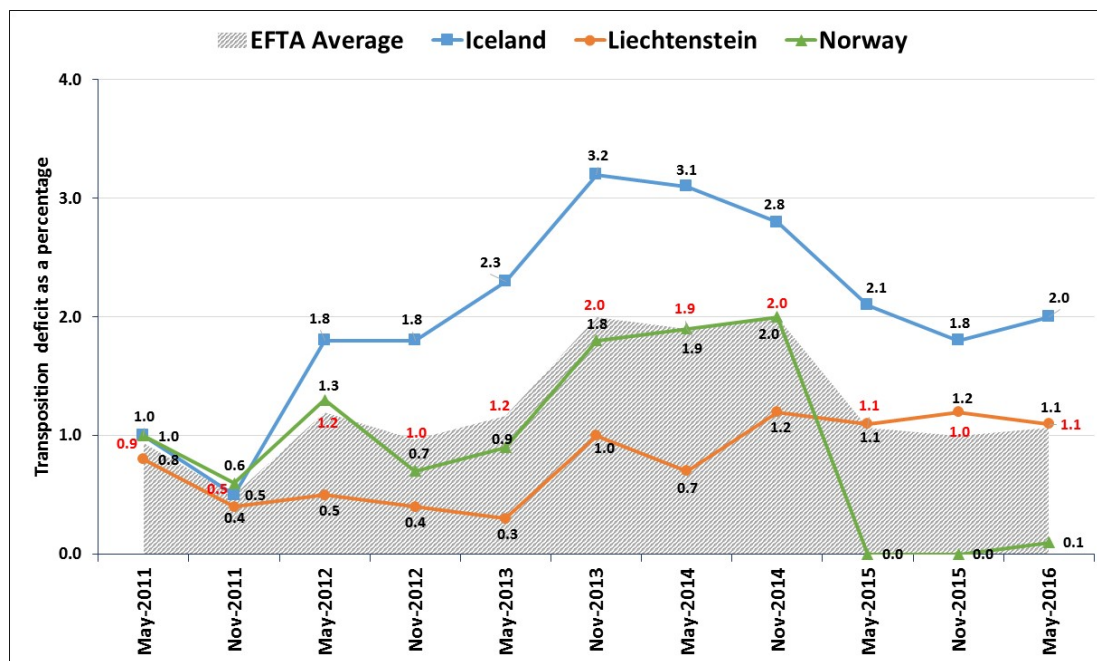


Figure 1: EFTA States' transposition deficit over the past 5 years

Transposition deficit as at 31 May 2016 for directives which should have been transposed on or before 31 May 2016.

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

The incompleteness rate is an overall indicator of gaps in the EEA framework. Whenever one or more EEA States fail to transpose a directive on time, this leaves a gap in the legal framework of the EEA. Instead of the Internal Market covering all EEA States, it remains smaller and fragmented. Consequently, the economic interests of all EEA States are affected even if only one EEA State does not deliver on time.

Hence, the incompleteness rate records the percentage of the outstanding directives which one or more of the three EFTA States have failed to transpose. In total, 3% of the directives in force in the EFTA States on 1 June 2016 had not been transposed by at least one of the three EFTA States (**Figure 2**). The incompleteness rate of 3% translates into 23 directives which had not been transposed by one or more of the EFTA States and which had, therefore, not achieved their full effect in the EFTA States.

¹ Formerly referred to as "fragmentation factor".

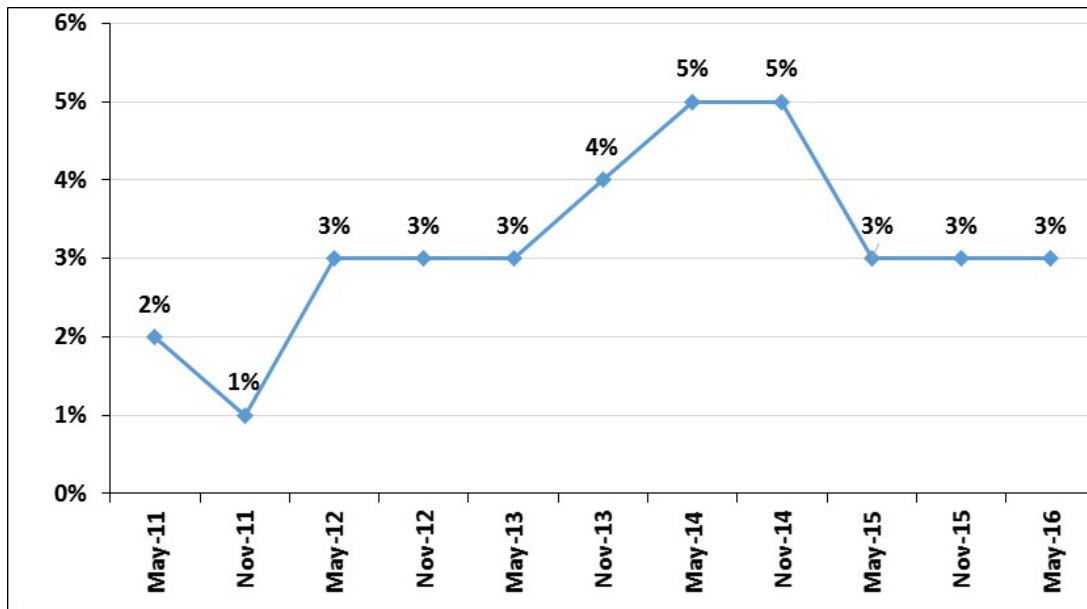


Figure 2: Incompleteness rate in the EFTA States (Directives)

The incompleteness rate records the percentage of the outstanding directives which one or more of the three EFTA States have failed to transpose with the consequence that the Internal Market is not complete in the 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 EFTA States. As in the previous period, with regard to Directives, the most incomplete sector in the EFTA States is in the area of goods-technical barriers. More efforts are needed to reduce the fragmentation in this sector (**Figure 3**).

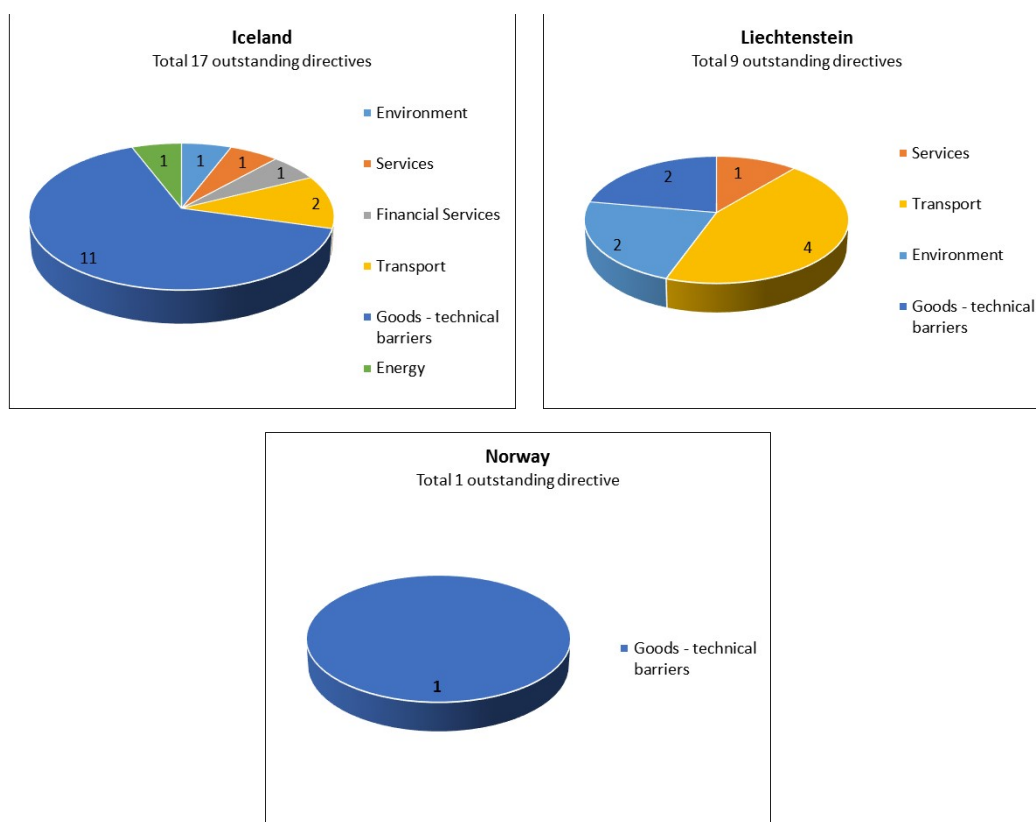


Figure 3: Most outstanding directives were in the areas of goods and transport, which were also the most incomplete sectors

2 Transposition of regulations by the EFTA States

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

Pursuant to the constitutional law of the 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.

2.1 Delays in the transposition of regulations

This means that regulations only become part of the internal legal order of Iceland and Norway following an act of incorporation by the national legislative body. The timely incorporation of regulations is equally important as that of directives in ensuring the completeness of the internal market.

On 31 May 2016, 2411 regulations had been incorporated into the EEA Agreement and were in force. Iceland had 44 overdue regulations which had not been notified as fully

incorporated into its national law. This is 10 more than at the time of the last Scoreboard and represents a transposition deficit of 1.8%.

For Norway, the number of regulations not notified as fully incorporated into national law increased by 8, bringing the number of outstanding regulations up to 13. This represents a transposition deficit of 0.5%.

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

Alongside directives, the implementation of regulations in a timely manner is crucial to delivering the benefits of the internal market to businesses and consumers across the EEA. In total, 2% of the 2411 regulations in force in the EFTA States on 31 May 2016 had not been transposed by both Iceland and Norway. The incompleteness rate of 2% translates into 48 regulations which had not been transposed by both States and which had, therefore, not achieved their full effect in the EFTA States. This corresponds to 44 regulations which had not been transposed by Iceland and 13 which not been transposed by Norway.

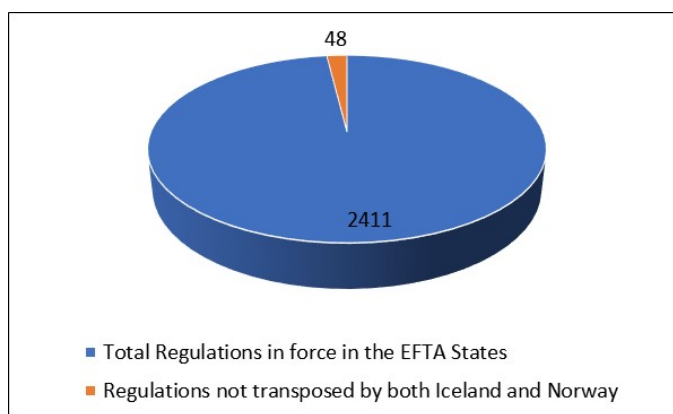


Figure 4: Incompleteness rate in the EFTA States (Regulations) is 2%

As with directives, with regard to regulations, the most incomplete sector in the EFTA States is in the area of goods-technical barriers (Figure 5).

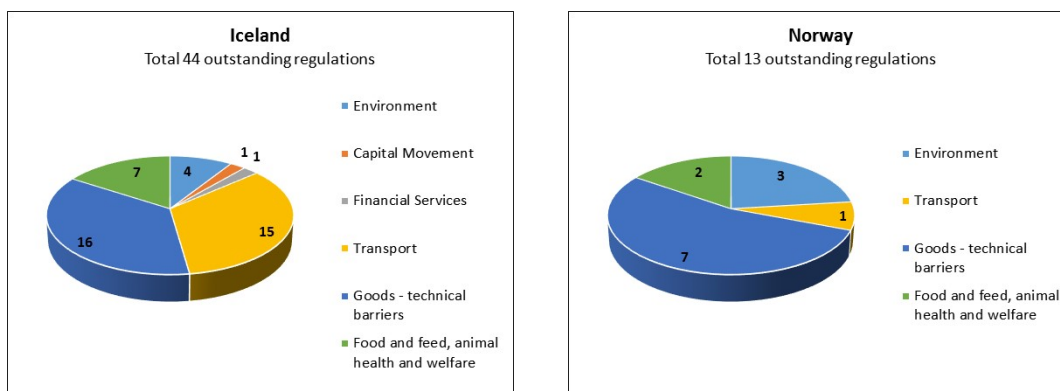


Figure 5: Most outstanding regulations were in the areas of goods and transport sectors

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

3 Infringement Proceedings²

The Authority opens infringement proceedings when it is of the view that an EFTA State has failed to fulfil its obligations under the EEA Agreement. It should be noted that only the EFTA Court can declare that a breach of EEA law has occurred. 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 EFTA State, concludes at a later stage that the national legislation is not in full conformity with the requirements of the relevant directive or that the EFTA State is not complying with the Internal Market rules, i.e. the free movement principles, in some other way. When EEA rules are not correctly implemented or applied in practice, citizens and businesses can be deprived of their rights.

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

3.1 Increase in the total number of infringement proceedings

As at 31 May 2016, a total of 139 infringement cases were being pursued by the Authority (**Figure 6**)³. This represents 26 cases more than at the time of the last Scoreboard.

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

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

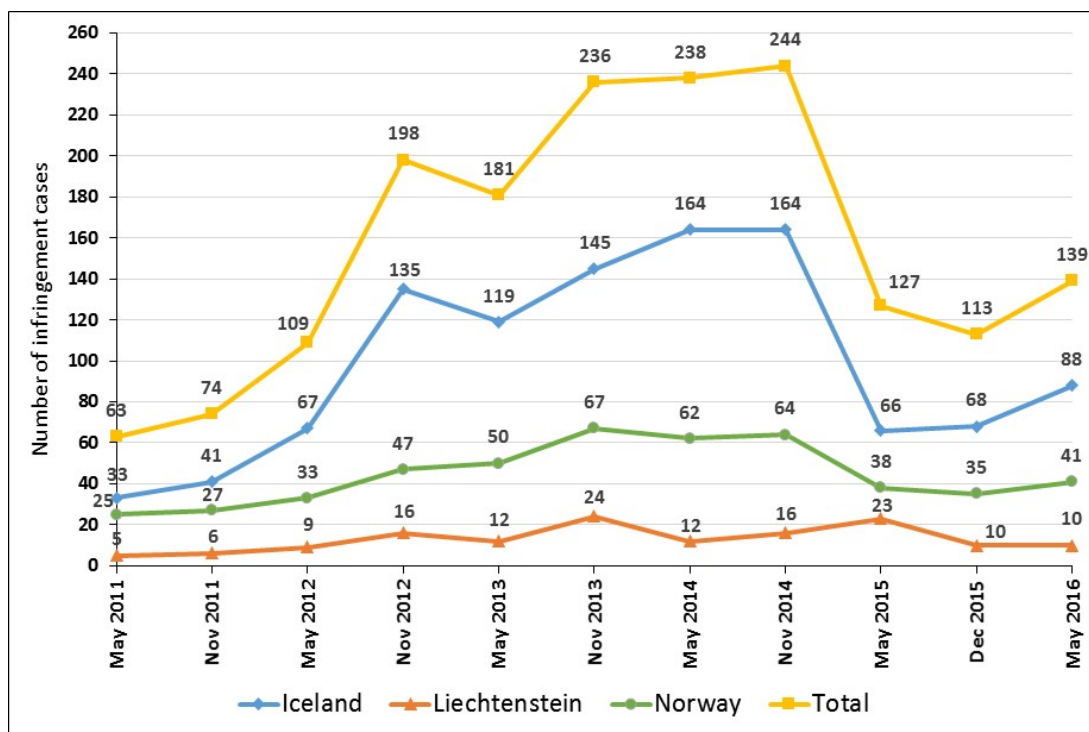


Figure 6: Total number of infringement cases

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

Of the 139 pending infringement cases, 55 concerned the incorrect implementation or application of Internal Market rules (see chapter 3.2), whereas 21 cases concerned the late transposition of directives (see chapter 3.3). The remaining 63 cases concerned the late transposition of regulations (see chapter 3.4).

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

3.2.1 The number of infringement proceedings concerning the lack of conformity with or incorrect application of rules

The overall number of infringement cases (55 cases) due to lack of conformity with, or incorrect application of, Internal Market rules increased by three since the previous Scoreboard.

The number of infringement cases brought against Iceland decreased by one since the previous Scoreboard from 21 to 20. The number of infringement cases brought against Norway increased from 28 to 32. The number of infringement cases brought against Liechtenstein remained the same at three.

The number of pending infringement proceedings initiated as a result of complaints increased by three from 20 to 23 since the previous Scoreboard. This represents 42% of all pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Of these complaint cases, 18 related to Norway and five to Iceland.

Undertakings and citizens may lodge a complaint with the Authority if they believe that they have not been able to exercise their rights under the EEA Agreement.

3.2.2 Breakdown 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 food and feed, animal health and welfare. This sector accounted for 18% of these infringement proceedings (**Figure 7**).

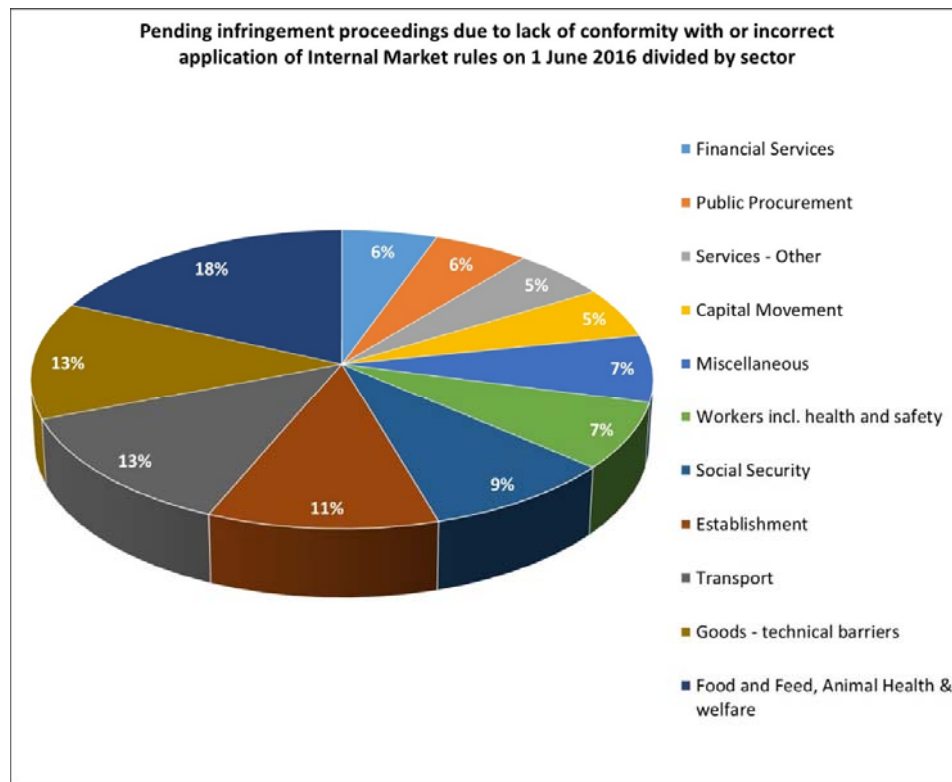


Figure 7: The sector food and feed, animal health and welfare accounted for most of the infringement proceedings in the EFTA States

3.2.3 Compliance with Court judgments

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

Looking back over the cases that have been closed in the last 5 years, the average time taken by the EFTA States to comply with an EFTA Court ruling in cases concerning lack of conformity with or incorrect application of Internal Market rules was 16.1 months (**Figure 8**), 0.3 months quicker than reported in the previous Scoreboard.

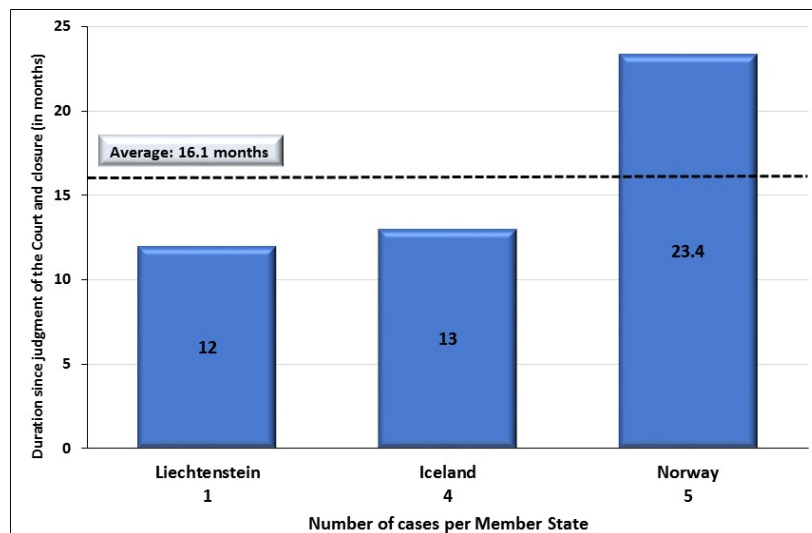


Figure 8: Time taken to comply with EFTA Court judgments in cases concerning lack of conformity with or incorrect application of Internal Market rules.

Average duration between the judgment of the EFTA Court and the resolution of the case (June 2011 – May 2016)

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

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

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

In respect of those cases where the EFTA States have still to comply with a judgment of the EFTA Court, at the cut-off date of the scoreboard of 31 May 2016, the average time which had elapsed since the court judgment is 18.9 months, (see **Figure 10** and **Figure 11** for the details of these cases). The EFTA States are urged to increase their efforts to ensure timely compliance with EFTA Court judgments.

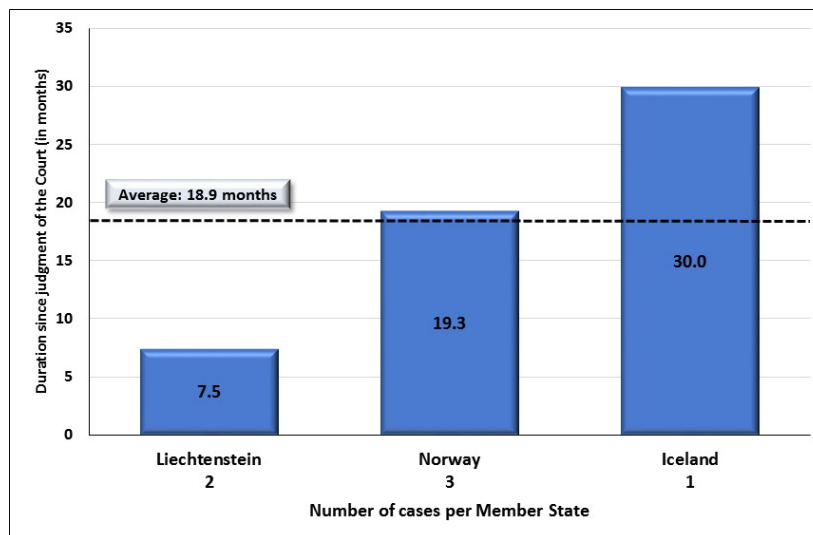


Figure 10: Ongoing cases concerning lack of conformity with or incorrect application of Internal Market rules referred to the EFTA Court which on 31 May 2016 remained unresolved
Duration in months since the judgment of the EFTA Court

EFTA State	Case	Duration in months
Iceland	Conformity assessment of the national measures implementing Directive 2002/92/EC (insurance mediation) in Iceland	30
Norway	Complaint concerning the temporary import of foreign-registered rental cars	20
Norway	Conformity assessment of national measures implementing Directive 2005/60/EC (Third Anti-Money Laundering Directive)	30
Norway	Implementation of the Directive on ambient air quality	8
Liechtenstein	Establishment of Austrian trained 'Dentist'	14
Liechtenstein	Liechtenstein Trade Act and the Services Directive	1

Figure 11: Ongoing cases concerning lack of conformity with or incorrect application of Internal Market rules referred to the EFTA Court which on 31 May 2016 remained unresolved
Duration in months since the judgment of the EFTA Court

3.3 **Infringement proceedings concerning failure to transpose directives into national law**

The number of infringement cases initiated against the EFTA States for non-transposition of directives decreased by 1 case from the time of the previous Scoreboard. (**Figure 12**).

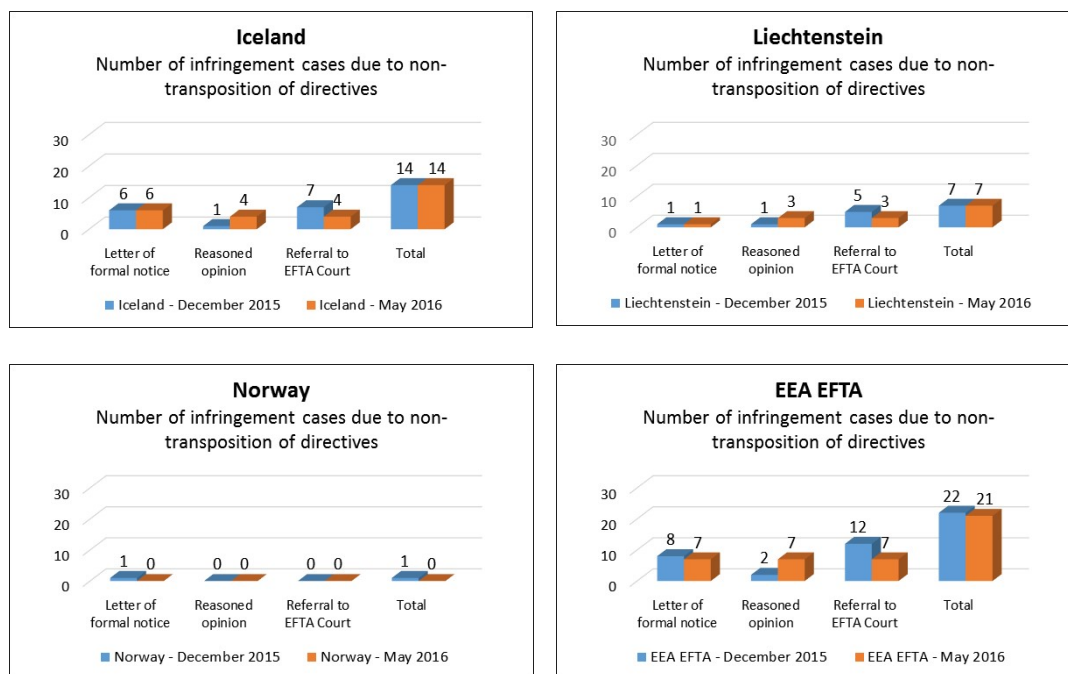


Figure 12: The number of infringement cases against the EFTA States due to non-transposition of directives.

Since the last Scoreboard, no cases concerning non-transposition of directives were referred to the EFTA Court.

3.4 Infringement proceedings concerning failure to transpose regulations into national law

The timely transposition of regulations in Iceland and Norway is essential 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 139 infringement cases pending in May 2016, 45% concerned the late transposition of regulations by Iceland (54 cases) and Norway (9 cases). This represents an increase of 21 infringement proceedings against Iceland and an increase of 3 against Norway since the time of the last Scoreboard (Figure 13).

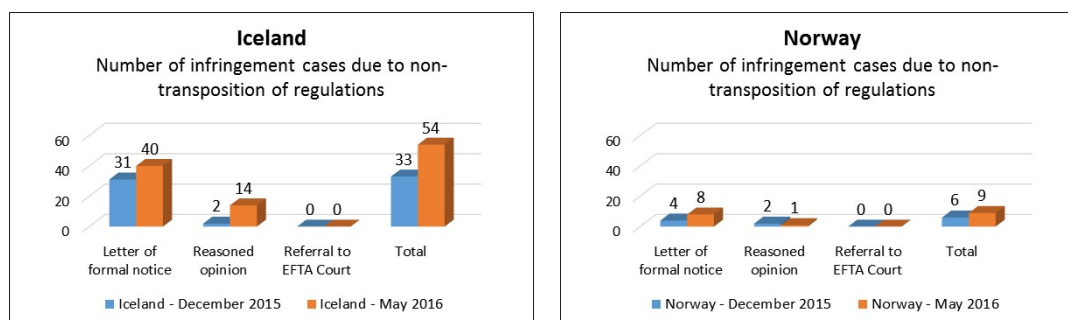


Figure 13: The number of infringement cases initiated against Iceland and Norway concerning failure to transpose regulations decreased since the previous Scoreboard

The total number of infringement cases concerning the non-transposition of directives and regulations increased by 23 cases from 61 to 84 since the last Scoreboard.

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