

# INTERNAL MARKET SCOREBOARD

*December 2021*

No. 47

*(Updated version including EU Member States figures)*

EEA EFTA STATES

## 47<sup>th</sup> 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 (situation as at 30 November 2020)*

- The average transposition deficit for directives for the EFTA States decreased from 0.9% to 0.8% since the June 2020 Scoreboard, however this is an increase of 0.2% since the Scoreboard in December 2019.<sup>1</sup>
- **Iceland** has no change to its transposition deficit for directives since the previous Scoreboard in June 2020, remaining at 1.2%, and reflecting a total of 10 directives overdue, one of which has been outstanding for more than two years. The number of outstanding directives is however, double the amount when compared with the December 2019 Scoreboard. The number of regulations which had not been fully transposed into national law on time reduced from 211 to 183, resulting in a transposition deficit for regulations of 5.4%, down from 6.4% at the time of the Scoreboard in June 2020, but is more than three times higher than the situation in the December 2019 Scoreboard. More than 90% of these outstanding regulations fall in the financial services sector.
- **Norway** now has three directives which have not been fully transposed on time, meaning a decrease in its transposition deficit from 0.6% to 0.4% since the previous Scoreboard in June 2020 but is 0.1% higher than the situation one year ago, at the time of the December 2019 Scoreboard. One of these directives, in the social security sector, has been outstanding for more than two years. The number of regulations which had not been fully transposed into national law on time increased from 8 to 22, resulting in a transposition deficit for regulations of 0.7%, the highest for Norway since May 2018. Nearly half of these fall in the financial services sector.
- **Liechtenstein's** deficit since the last Scoreboard decreased from 0.9% to 0.7% since the June 2020 Scoreboard, with six directives outstanding. Four of these, all relating to driving licences, have been outstanding for well over two years.
- In comparison, the average deficit among the EU Member States nearly doubled from 0.6% in December 2019 to 1.1% in December 2020. 14 EU Member States showed a deficit above 1%, with only five EU Member States meeting the 0.5% target proposed by the Commission in the 2011 Single Market Act.

<sup>1</sup> The comparison here is also made with the situation on 1 December 2019 (Scoreboard 45) as these are the figures last officially reported by the European Commission.

Considering the strain placed on both EEA EFTA and EU Member States during the Covid- 19 pandemic, the average increase of 0.2% since the Scoreboard in December 2019 for the EEA EFTA Member States, in comparison with the EU's average increase of 0.5% highlights the efforts made by the EEA EFTA Member States during these difficult times.

- The Authority has seen an increase in the total number of infringement cases at 165 (up from 121 since the December 2019 Scoreboard). 114 of these cases, and making up 69% of all infringement cases, concern the late transposition of directives or regulations, while 51 cases, concern the incorrect implementation and application of EEA law.
- The EFTA States must increase their efforts to ensure timely compliance with EFTA Court judgments.
- For those cases where the EFTA States still have to comply with an EFTA Court judgment, meaning the case remains unresolved at the cut-off date of the Scoreboard of 30 November 2020, the average time that had lapsed since the court judgment was 37.2 months.

The European Commission has taken the decision to publish only one annual Internal Market Scoreboard, taking stock of the situation as at the end of November each year. The EFTA Surveillance Authority will continue to publish two Internal Market Scoreboards per year. One will look at the situation in the EFTA Member States as at the end of November each year ("December Scoreboard") and the other will look at the situation as at the end of May of each year ("June Scoreboard"). A second version of the June Scoreboard to include figures for the EU Member States as at the end of December, as a comparison, will also be published in parallel with the publication of the EU's Scoreboard.

This updated Internal Market Scoreboard (No 47) compares the status of the EFTA Member States with that of the EU Member States and takes into account all transposition notifications made by 10 December 2020 for directives and regulations with a transposition deadline on or before 30 November 2020.

The EU figures and graphs still include the UK results, as this country remained bound by the same rights and obligations under EU law during the transition period that ended on 31 December 2020

*The Covid– 19 crisis may have affected the performance of the EFTA Member States as the authorities have had to focus on priorities other than the implementation of EEA Law. In this regard, the Authority, in line with the European Commission, took a number of measures aimed at relieving the strain on the EFTA Member States' administrative resources, whilst also making it clear that the EFTA Member States' legal obligations to implement directives and incorporate regulations, and to notify to the Authority its national transposition measures by the transposition deadlines, remained unchanged.*

## 1 Transposition of Internal Market directives into national law

The Internal Market is a key driver of growth and jobs. The EEA States need to transpose Internal Market legislation into their national law within the agreed deadlines. This is important, not only to achieve the policy objectives set out in the relevant legislation but also to protect the homogeneity of the Internal Market. This is why it is essential for all the EFTA States to display good transposition records<sup>2</sup>.

### 1.1 The EFTA States' performance

The average transposition deficit for directives for the EFTA States decreased from 0.9% to 0.8% since the June 2020 Scoreboard. As at the end of November 2020, Iceland, at 1.2%, is above the interim target of 1% target set by the European Council in 2007. Norway, at 0.4%, still remains lower than the 0.5% benchmark in line with the European Commission's Single Market Act proposed in April 2011. **(Figure 1).**

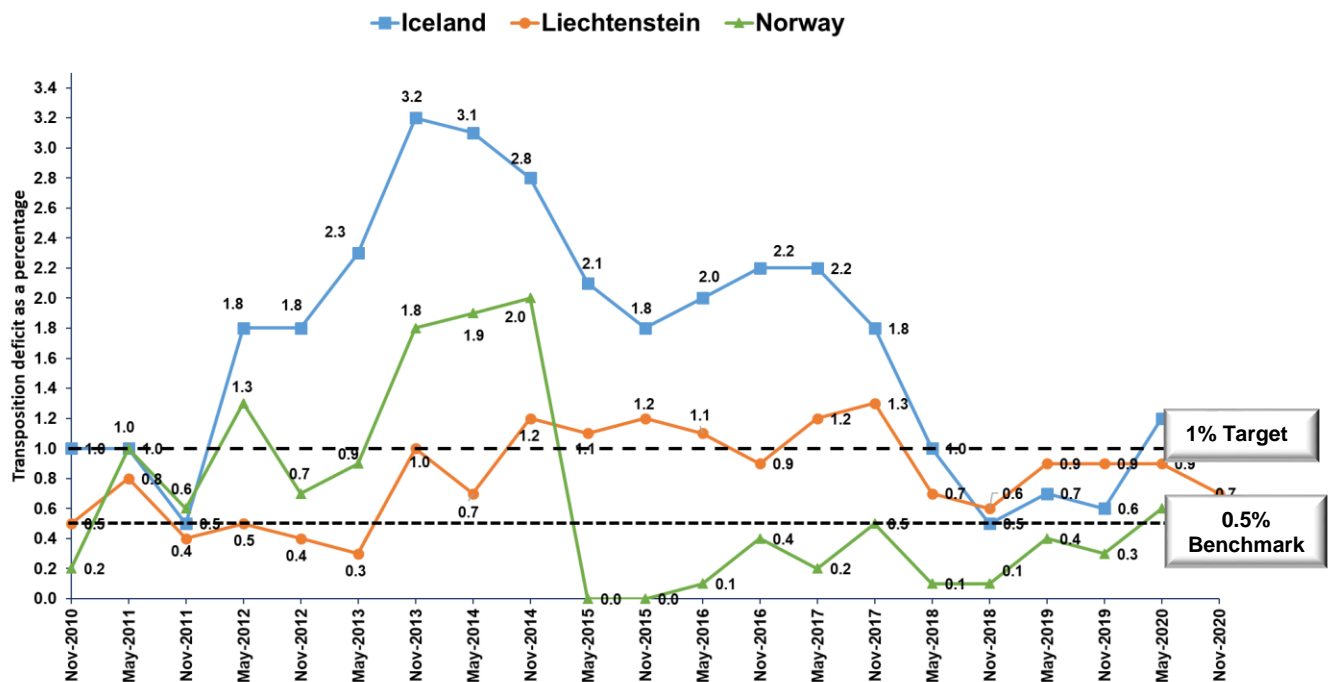
Iceland's transposition deficit for directives remained the same since the June 2020 Scoreboard at 1.2% however the number of outstanding directives is double the amount when compared with the December 2019 Scoreboard.

Norway has decreased its transposition deficit from 0.6%, to 0.4% at the time of the previous Scoreboard in June 2020, with three directives not having been fully transposed on time.

Liechtenstein's transposition deficit decreased from 0.9% to 0.7% since the previous Scoreboard in June 2020, reflecting the fact that six directives still had not been fully transposed on time

The transposition deficit indicates how many directives and regulations 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, we are looking towards a benchmark of 0.5%, in line with the European

<sup>2</sup> The findings regarding the transposition deficits of the EFTA States take into account the 806 directives that were incorporated into the EEA Agreement and were in force on 30 November 2020.

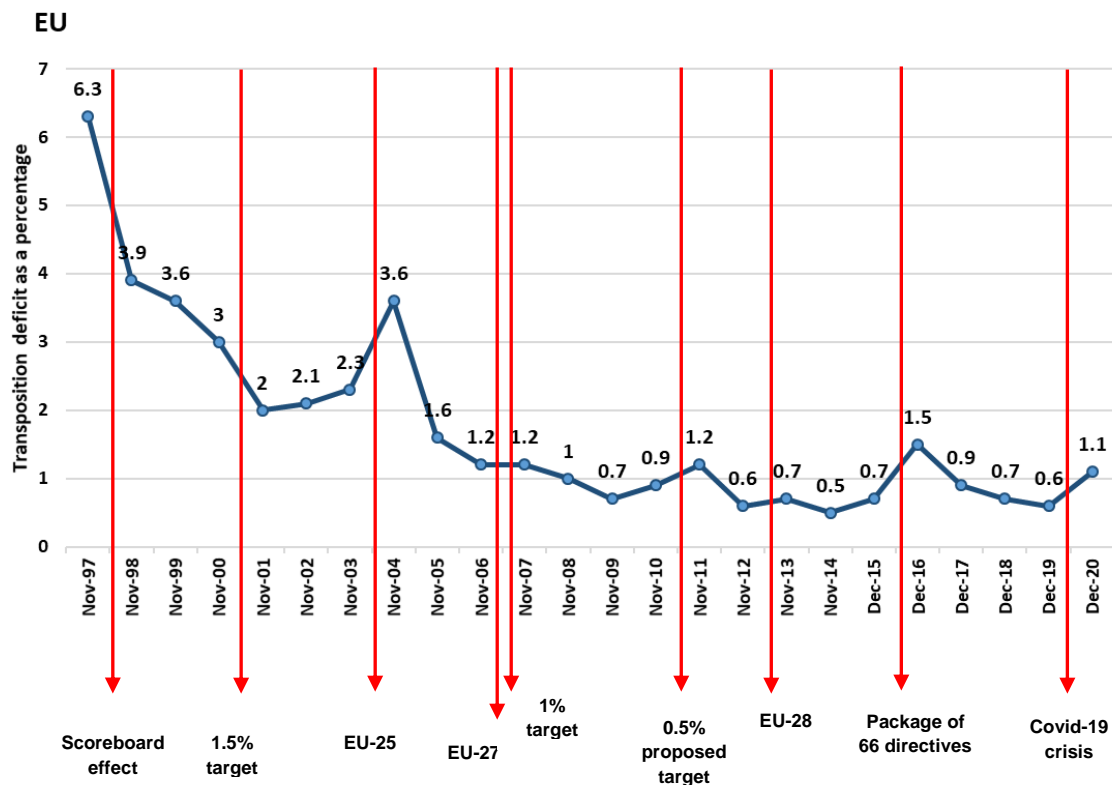


**Figure 1: EFTA States' transposition deficit over the past 10 years**

Transposition deficit for directives that should have been transposed on or before 30 November 2020

## 1.2 The EFTA States' performance in comparison to the EU States

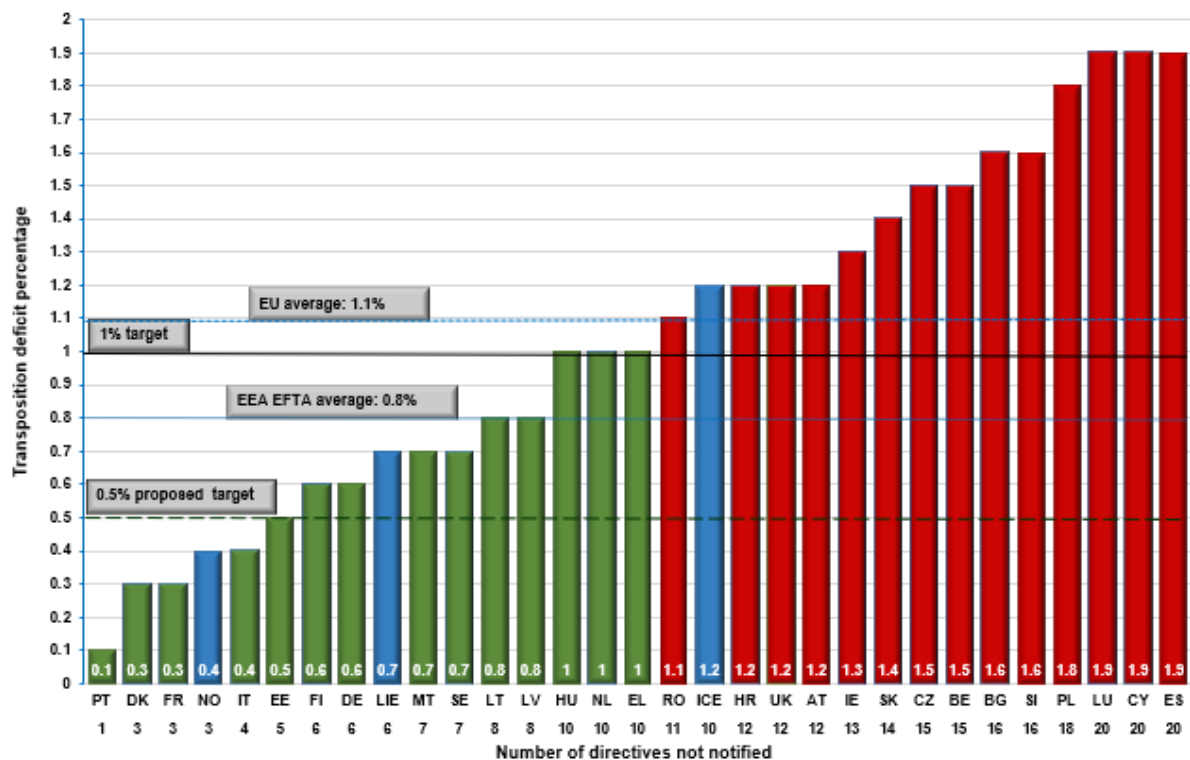
In comparison, the average deficit among the EU Member States nearly doubled from 0.6% in December 2019 to 1.1% in December 2020. (Figure 2).



**Figure 2: The EU Member States' changes in the transposition deficit**

Norway remains third of all 31 EEA States and remains under the 0.5% proposed target; the only EFTA Member State to be below this target. Liechtenstein, with 0.7%, remains under the 1% target. Iceland, at 1.2% now sees itself at the lower end of the table, not meeting the 1% target and is above both the EEA EFTA and EU averages. (Figure 3).

Only five EU Member States met the 0.5% target proposed by the Commission in 2011 in comparison with 12 EU Member States a year ago. 14 EU Member States, an increase of 12 EU Member States, were above the 1% target.



**Figure 3: 15 EEA States did not meet the 1% target**  
**Comparison of transposition deficits between the 31 EEA Member States**

Compared to one year ago, only two EU Member States have decreased their number of outstanding directives, (last report 21) with 21 EU Member States having increased the number of non-implemented Directives (up from six at the time of the December 2019 Scoreboard). Looking at the same time-frame for the EEA EFTA Member States, comparing the December 2019 figures with December 2020, only Liechtenstein has decreased the number of non-implemented Directives. (Figure 4).

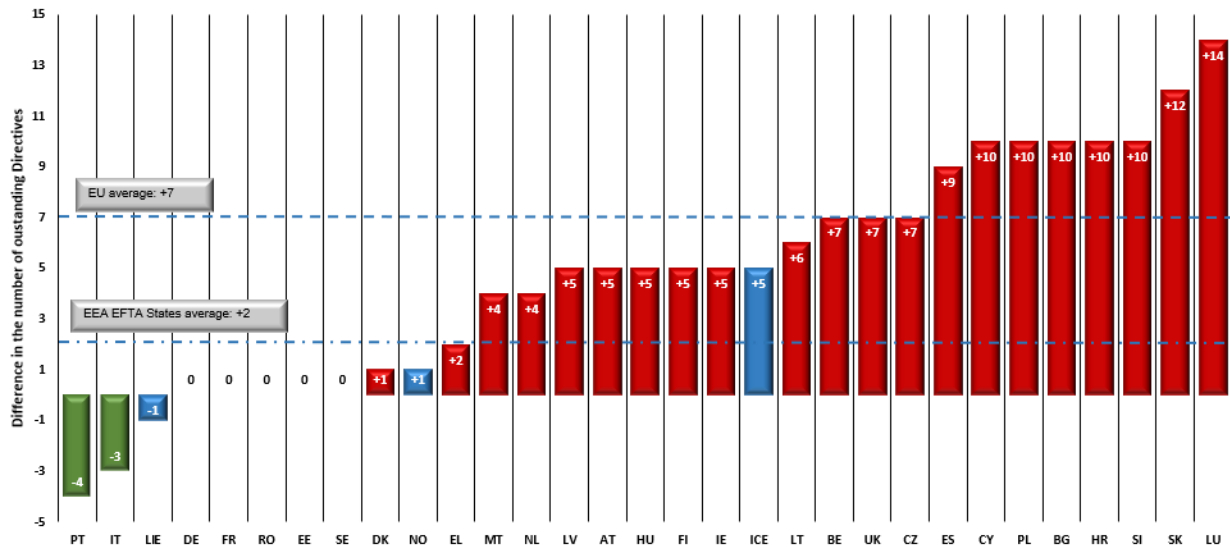


Figure 4: Change in the number of outstanding directives comparing December 2020 with December 2019

These findings for the EFTA States take into account the 806 directives that were incorporated into the EEA Agreement and were in force on 30 November 2020. The corresponding figure for the EU is 1027 Internal Market directives. This difference is due to the fact that directives will typically 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. Any comparison between the EFTA States and the EU Member States in this document has therefore to be made with this in mind.

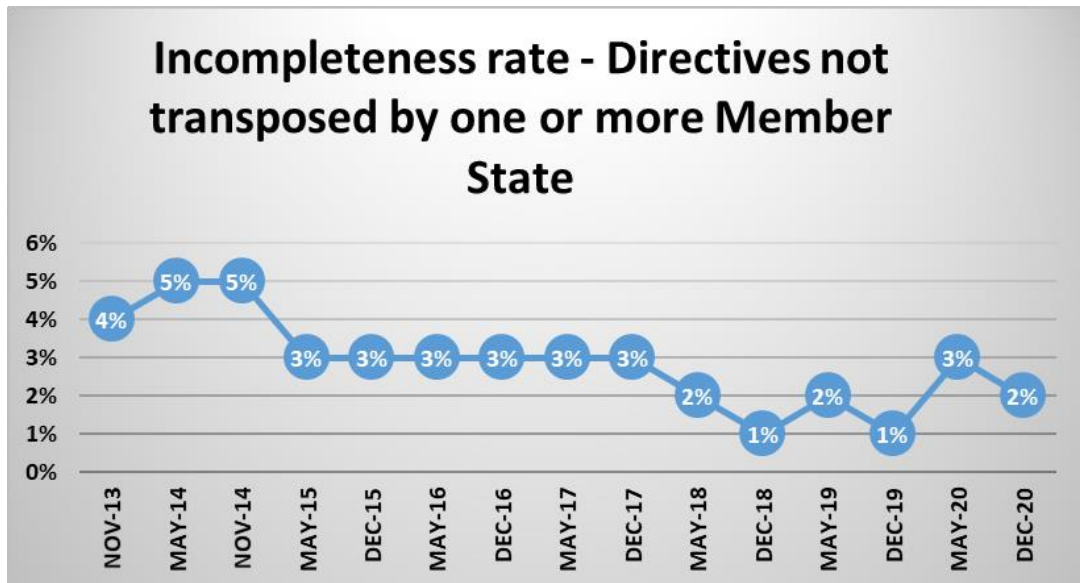
### 1.3 Incompleteness rate of the Internal Market in the EFTA States with regard to directives<sup>3</sup>

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, meaning that instead of covering all EEA States, the internal market remains fragmented. Consequently, the economic interests of all EEA States are affected even if only one EEA State does not deliver on time.

The incompleteness rate records the percentage of directives which one or more of the three EFTA States have failed to transpose. In total, 2% of the directives applicable in the EFTA States on 30 November 2020 had not been transposed by at least one of the three EFTA States (**Figure 5**). The incompleteness rate of 2% translates into 18 directives that 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. This is a decrease from 21 directives at the time of the last Scoreboard in June 2020.

<sup>3</sup> Formerly referred to as “fragmentation factor”.





**Figure 5: 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.

The incompleteness rate in the 28 EU Member States has increased to 5%, meaning that 48 out of 1027 directives have not been transposed in at least one EU Member State, and therefore, for the sectors concerned, the Single Market is not yet a reality. **(Figure 6)**



**Figure 6: Incompleteness rate in the EU (Directives)**

When the transposition delays are broken down by sector, the pattern of implementation varies between the EFTA States. **(Figure 7)**



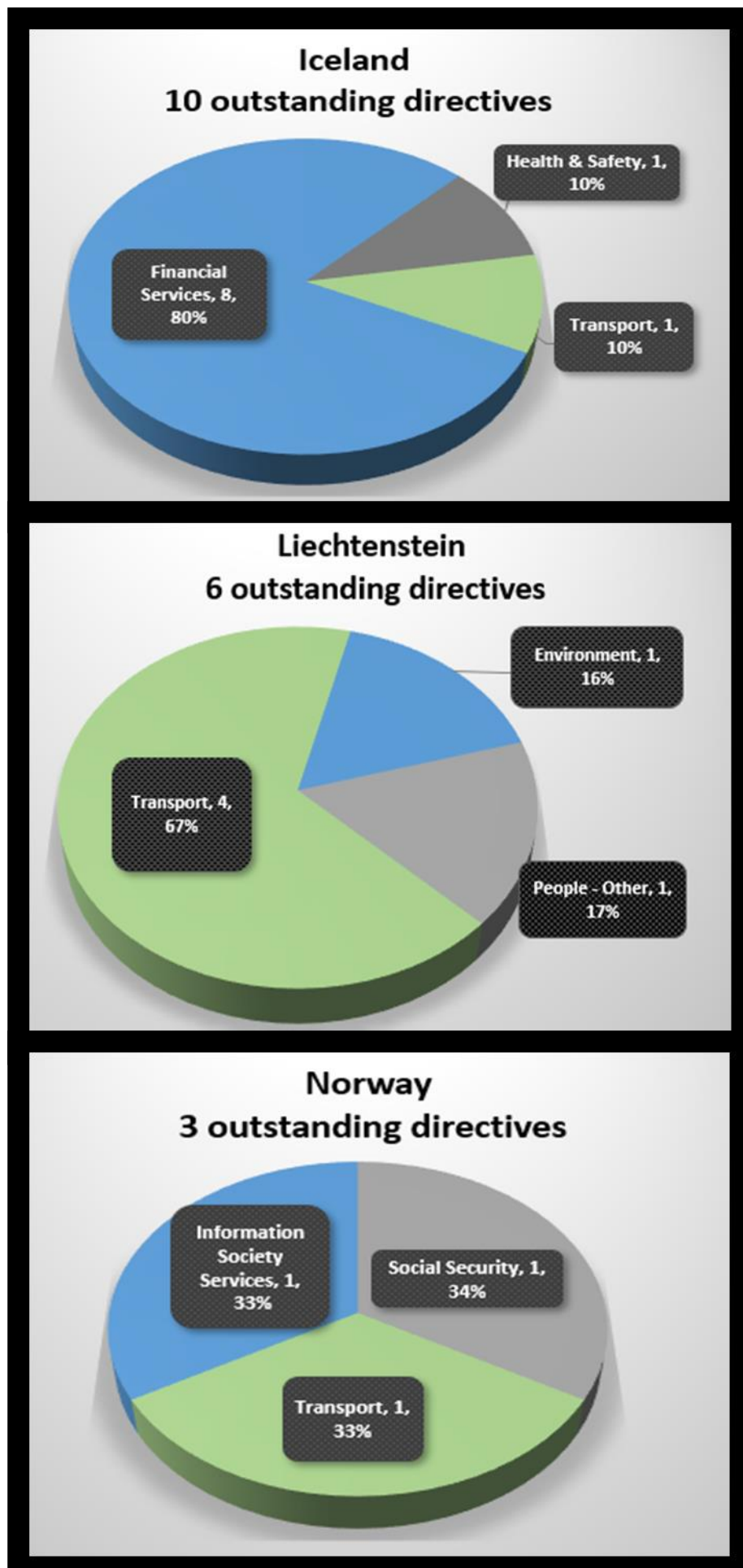


Figure 7: Outstanding directives broken down by sector in each EFTA State

## 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 its monistic legal tradition, regulations become part of Liechtenstein’s internal legal order once they have been incorporated into the EEA Agreement through an EEA Joint Committee decision and are published. Iceland and Norway are, on the other hand, 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

The timely incorporation of regulations is as important as that of directives in ensuring the completeness of the internal market.

On 30 November 2020, 3388 regulations incorporated into the EEA Agreement were in force. Of these, there were 183 regulations that Iceland had not notified as having been incorporated into its national law. This is a decrease in outstanding regulations, down from 211 at the time of the last Scoreboard in June 2020, but is more than three times higher than the situation in the December 2019 Scoreboard, representing a transposition deficit of 5.4%.

For Norway, the number of regulations not notified as incorporated into national law increased from 8 to 22 outstanding regulations. This represents a transposition deficit of 0.7%, which is an increase of 0.5%, since the previous Scoreboard in June 2020.

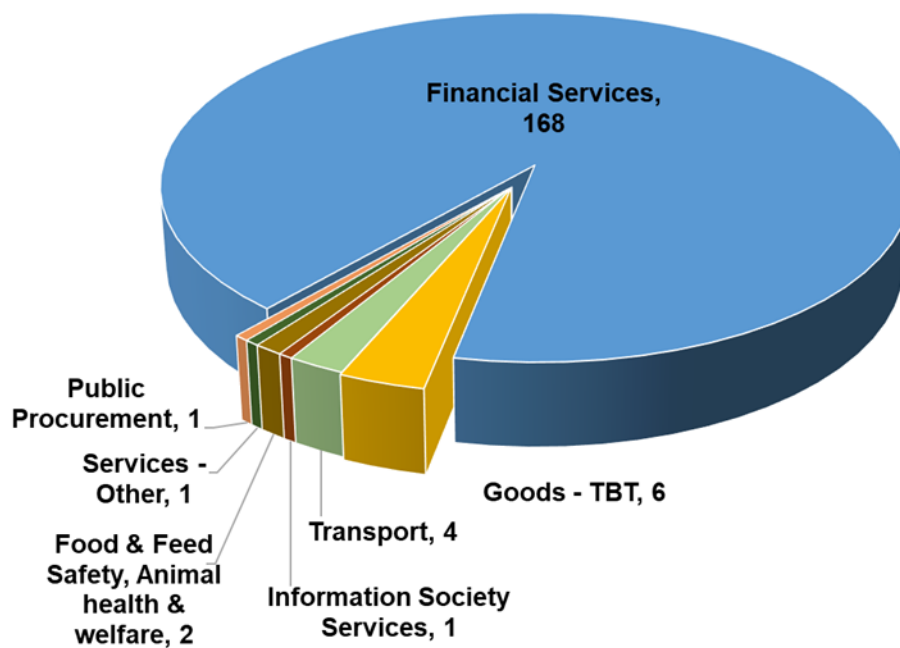
The corresponding figure for the number of regulations in force in the EU is 5409 regulations. This difference is due to the fact that regulations will typically enter into force in the EU before they are incorporated into the EEA Agreement, and consequently they are also repealed in the EU before they are repealed under the EEA Agreement.

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

The implementation of regulations in a timely manner is crucial in order to deliver the benefits of the internal market to businesses and consumers across the EEA. In total, 6% of the 3388 regulations incorporated into the EEA Agreement on 30 November 2020 had not been transposed by both Iceland and Norway. The figure translates into 188 regulations which had not been transposed by both States and which had, therefore, not achieved their full effect in the EFTA States. Iceland has not transposed 183 regulations and 22 have not been transposed by Norway.

With regard to regulations, the most incomplete sector in Iceland, with more than 90% of cases, is in the area of financial services. In Norway, nearly half of these regulations also fall in the financial services sector (**Figure 8**).

### ICELAND - 183 OUTSTANDING REGULATIONS



### NORWAY - 22 OUTSTANDING REGULATIONS

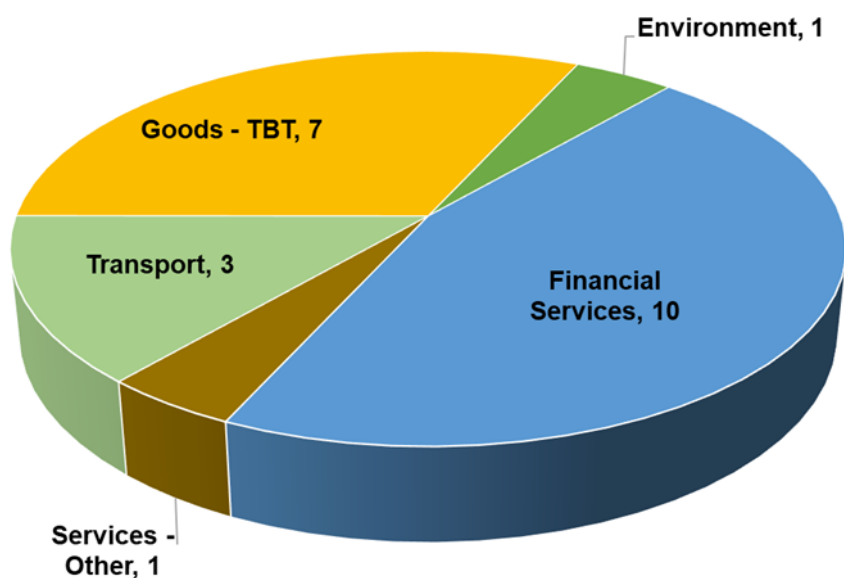


Figure 8: Outstanding regulations as at 30 November 2020

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<sup>4</sup>

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. When interpreting the statistics on infringement procedures below it should be noted that only the EFTA Court can declare that a breach of EEA law has occurred.

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 sections 3.3 and 3.4.

#### 3.1 Increase in the total number of infringement proceedings

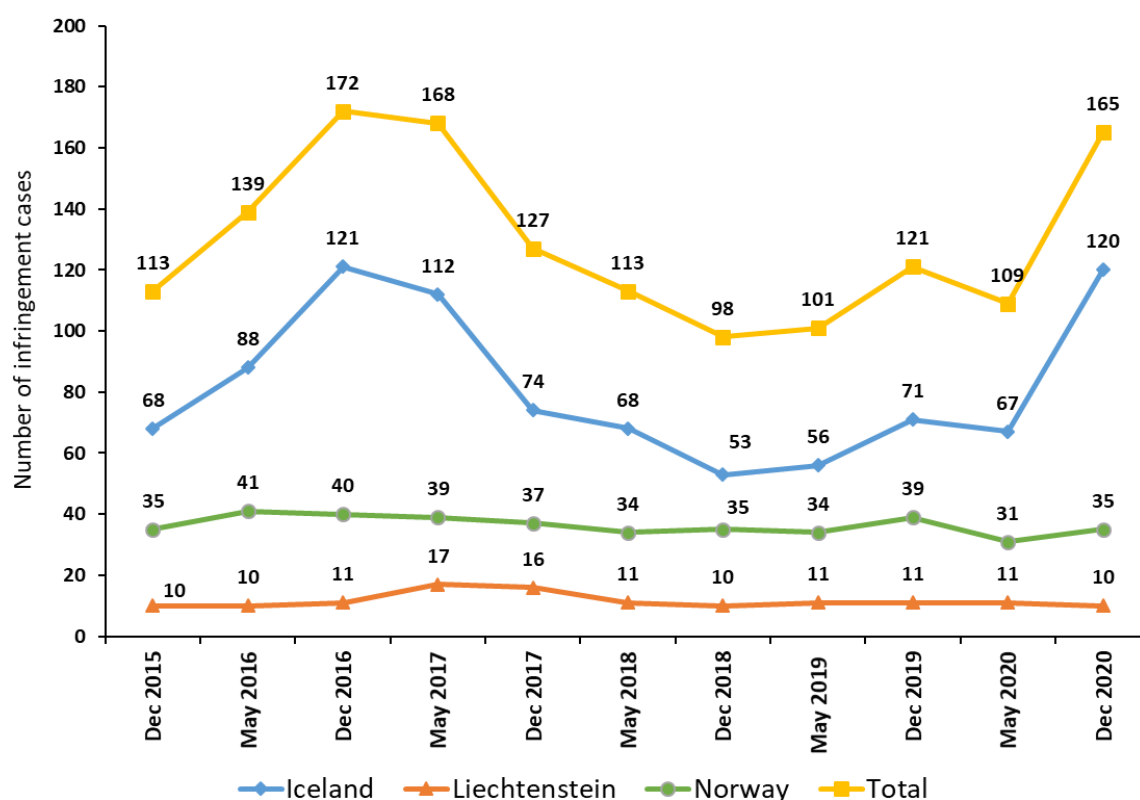
As at 1 December 2020, the Authority was pursuing a total of 165 infringement cases against the EFTA States in the internal market field (**Figure 9**)<sup>5</sup>. This is 44 cases more than at the time of the last Scoreboard in December 2019.

Of the 165 pending infringement cases, 51 concerned the incorrect implementation or application of Internal Market rules - see chapter 3.2, whereas 13 cases concerned the late transposition of directives - see chapter 3.3. The number of cases concerning the late transposition of regulations - see chapter 3.4 has nearly doubled, to 101, since the December 2019 Scoreboard.<sup>6</sup>

<sup>4</sup> 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).

<sup>5</sup> A pending infringement case is defined as a case where at least a letter of formal notice has been sent to the State concerned.

<sup>6</sup> The comparison here is made with the situation on 1 December 2019 (Scoreboard 45) as these are the figures last officially reported by the European Commission.



**Figure 9: Total number of infringement cases**

Total number of all open infringement proceedings against the three EFTA States on 1 December 2020.

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

### 3.2.1 Number of cases

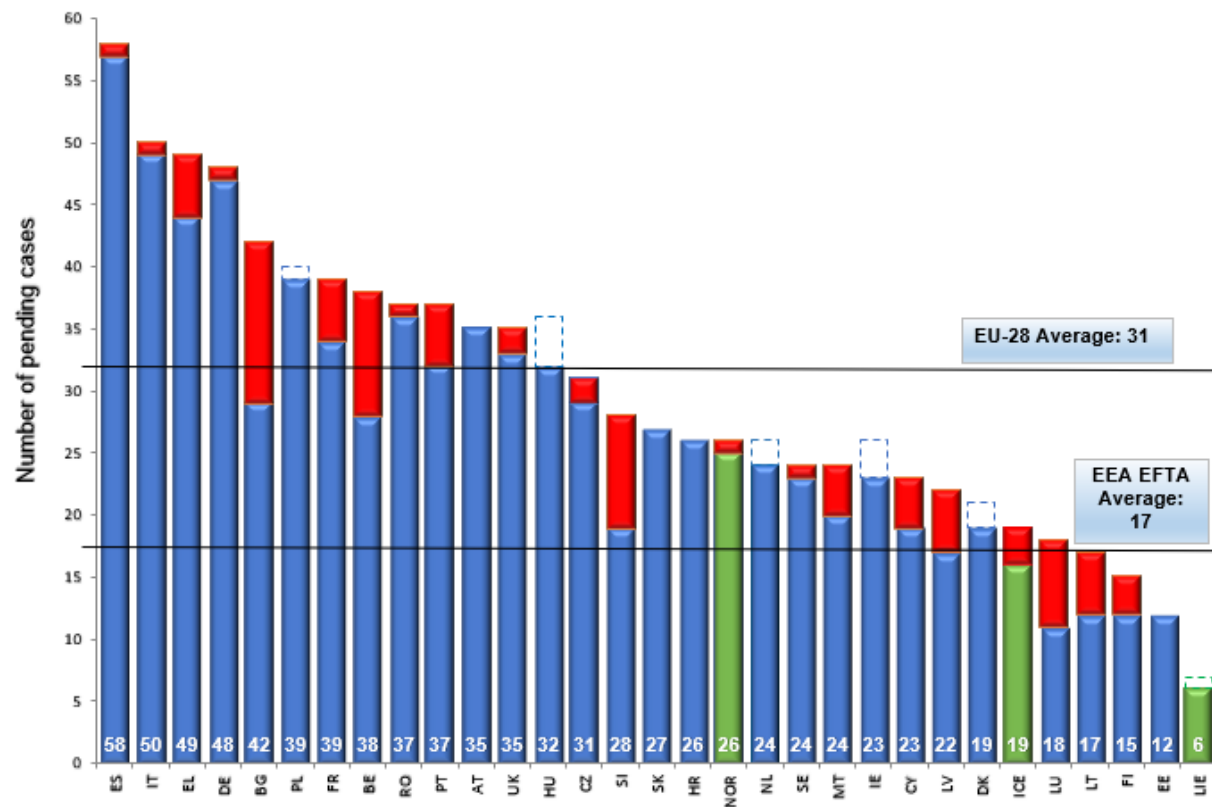
The overall number of infringement cases which were being pursued on the grounds of lack of conformity with or incorrect application of Internal Market rules was 51. This reflects an increase of three since the previous Scoreboard in December 2019.

Only Liechtenstein reduced the number of infringement cases which were being pursued on the grounds of lack of conformity with, or incorrect application of, Internal Market rules, with a decrease of one case, down to six since the last Scoreboard in December 2019. Iceland increased from 16, up to 19, and Norway from 25, up to 26.

In comparison with the 28 EU Member States, the average number of infringement proceedings against the EFTA States remains low (**Figure 10**). Liechtenstein has the lowest number of cases, with just six open infringement cases concerning lack of conformity with or incorrect application of Internal Market rules. Iceland stands joint sixth when all EEA States are taken into account and Norway still finds itself joint 10<sup>th</sup>.

19 of the EU Member States showed an increased in the number of pending infringement cases, five decreased, and four remained the same, whereas of all three

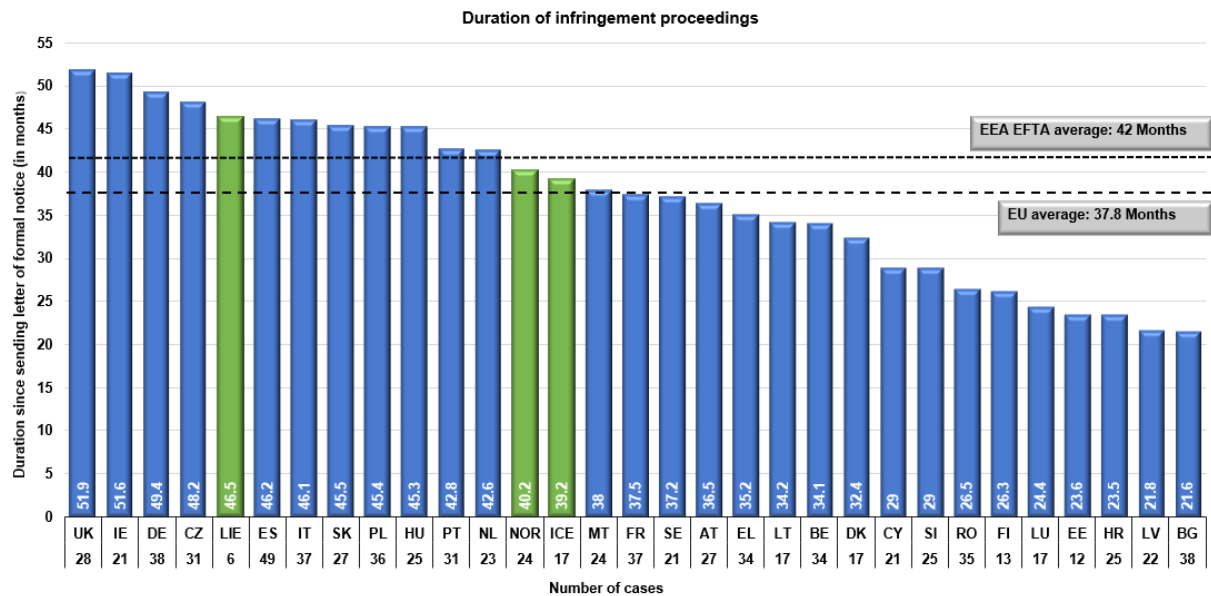
EFTA Member States, only Liechtenstein showed a reduction in the number of pending infringement proceedings. Even though Norway has the highest number of pending infringement cases of the EFTA Member States, this is still more than half the number of the worst EU Member States' figure of 58 open infringement cases concerning lack of conformity of incorrect application of the Internal Market Rules.



**Figure 10: The average number of EFTA State's infringement cases concerning lack of conformity with, or incorrect application of Internal Market rules remains low in comparison with the other EEA States**

**Situation on 1 December 2020 compared with the situation on 1 December 2019**

The average duration of pending infringement cases not yet sent to the EFTA Court, calculated in months from the when the letter of formal notice is sent, stands at 42 months at the time of the December 2020 Scoreboard for the EEA EFTA Member States up from 38.2 months in December 2019. This is higher than the equivalent comparison with the EU Member States, which although increased its average case duration, stands lower than the EFTA States' average at 37.8 months (up from 34.8 months in December 2019). (Figure 11):



**Figure 11: Average case duration – infringement proceedings**

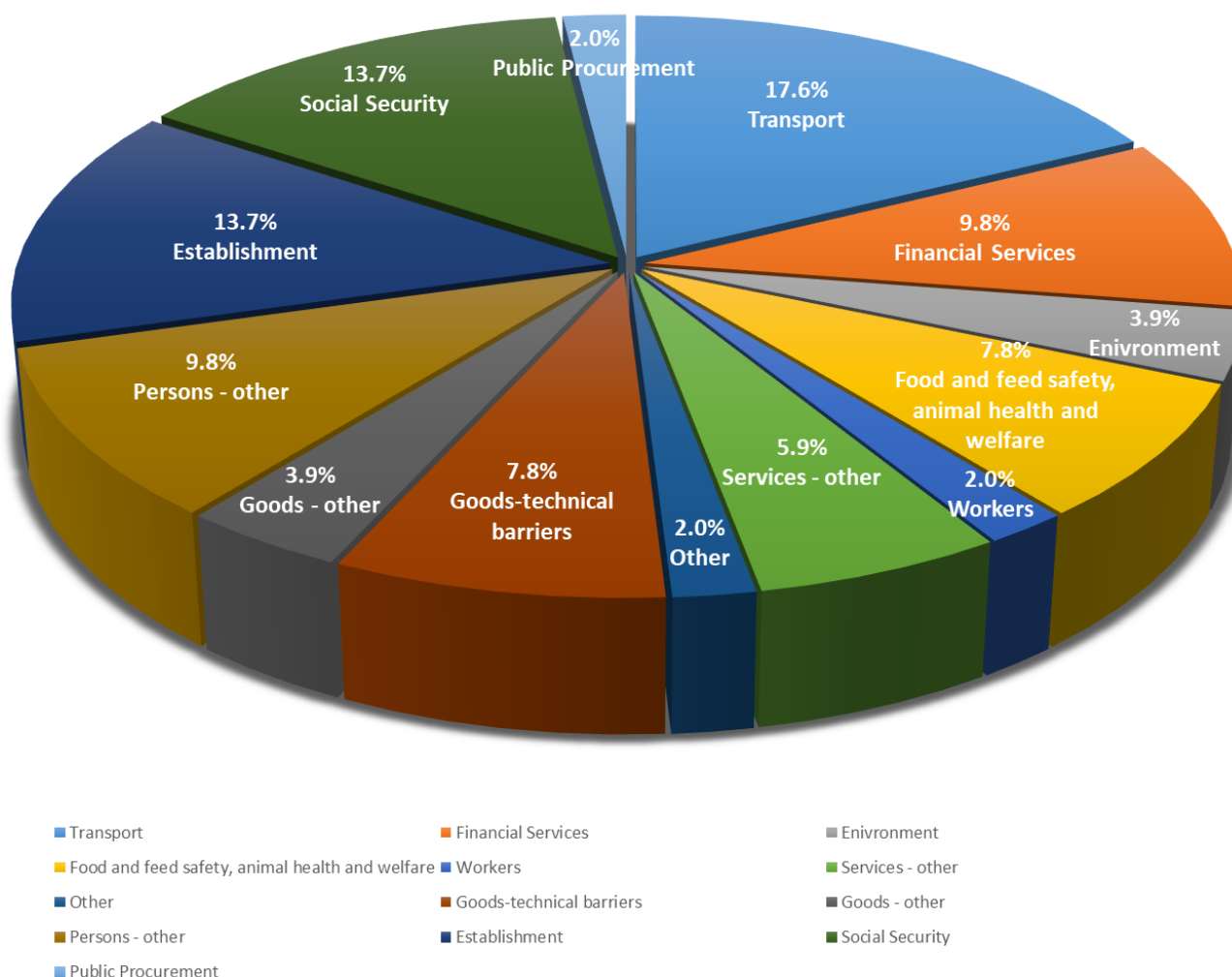
The number of infringement proceedings stemming from complaint cases reduced slightly from 17 to 15 since the Scoreboard in December 2019. This figure represents 29% of all pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Broken down by State, 11 of these cases related to Norway, and four 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 per sector

**Pending infringement proceedings due to lack of conformity with or incorrect application of Internal Market rules on 1 December 2020 divided by sector**



**Figure 12: Pending infringement proceedings as at 1 December 2020**

The fields of Transport, Right of Establishment, Social Security, Financial Services and Persons-other, accounted for the highest number of infringement proceedings concerning the lack of conformity with or incorrect application of Internal Market rules. Together these sectors accounted for 65% of the infringement proceedings (**Figure 12**).

### 3.2.3 Compliance with Court judgments

Court rulings establishing a breach of EEA law require that the State concerned takes immediate action to ensure 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 five years (**Figure 13**), 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 18.5 months. This is 0.5 months shorter than the comparable figure (19 months) from the previous Scoreboard in December 2019<sup>7</sup>.

In comparison, the average time taken by the EU Member States to comply with Court judgments increased by two months from 29.5 months on 1 December 2019 to 31.5 months on 1 December 2020.

EFTA State	Case	Duration in months
<b>Norway</b>	Complaint against Norway concerning the temporary import of foreign-registered rental cars	61
<b>Norway</b>	Conformity assessment of national measures implementing Directive 2005/60/EC (Third Anti-Money Laundering Directive) in Norway	55
<b>Norway</b>	Implementation of Directive on ambient air quality / Complaint regarding ambient air quality	54
<b>Iceland</b>	Conformity assessment of national measures implementing Directive 2002/92/EC (insurance mediation) in Iceland	50
<b>Norway</b>	Construction of an underground parking and the award of a concession for its operation	31
<b>Iceland</b>	Complaint against Iceland concerning imports of raw meat & Own initiative case concerning requirements imposed by Iceland on imports of egg and dairy products	31
<b>Iceland</b>	CoA Directive 2000/30/EC on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community	3
<b>Iceland</b>	Checks on transport of dangerous goods by road under Directive 95/50/EC	3
<b>Norway</b>	Complaint concerning licensing under the Building and Planning Act - provision of services and recognition of qualifications	2
<b>Norway</b>	Right to parental leave in Norway	0

**Figure 13: 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*

For those cases where the EFTA States still have to comply with an EFTA Court judgment, meaning the case remains unresolved at the cut-off date of the Scoreboard of 30 November 2020, the average time that had lapsed since the court judgment was 37.2 months (see **Figure 14** for details of these cases). This is 1 month longer than the comparable figure (36.2 months) from the Scoreboard in December 2019<sup>7</sup>.

<sup>7</sup> The comparison here is made with the situation on 1 December 2019 (Scoreboard 45) as these are the figures last officially reported by the European Commission.

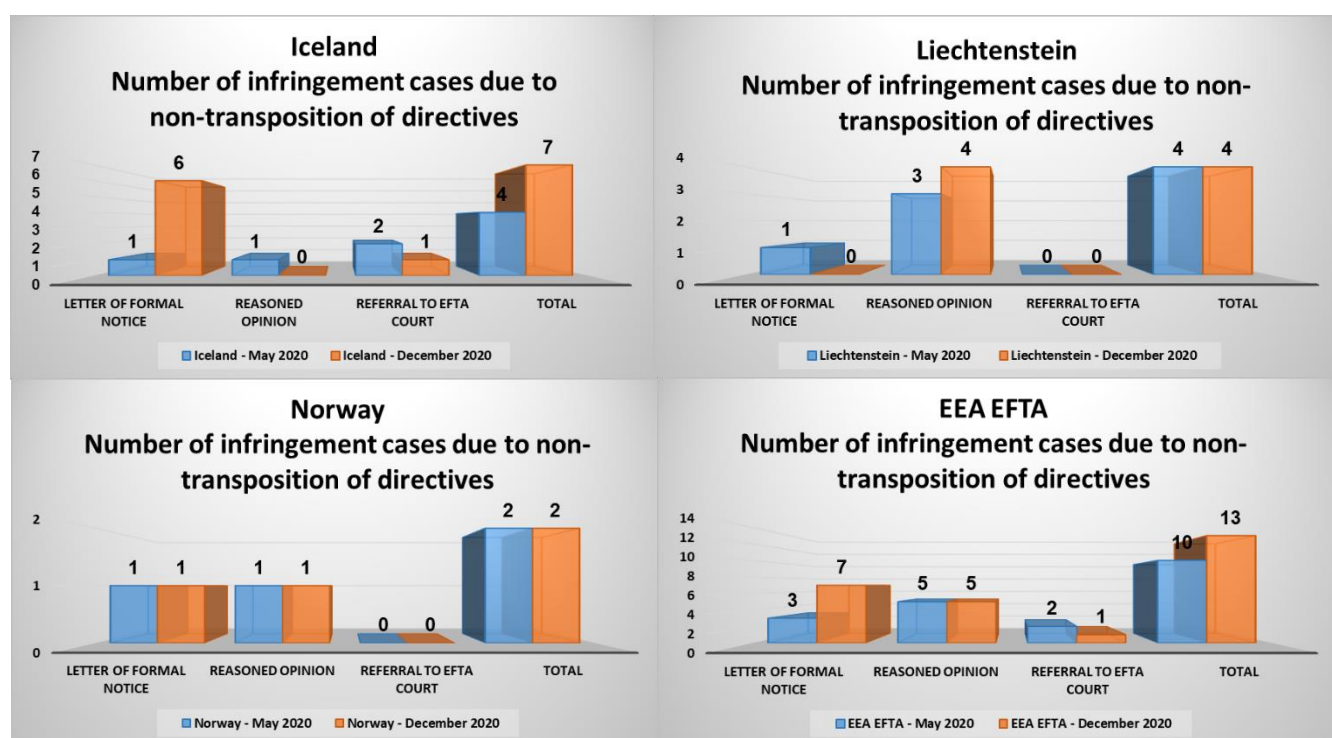
EFTA State	Case	Duration in months
Liechtenstein	Establishment of an Austrian trained 'Dentist'	67
Liechtenstein	Liechtenstein Trade Act and the Services Directive	54
Norway	Incorrect implementation of Directive 2000/59 on port reception facilities	51

**Figure 14: Ongoing cases concerning lack of conformity with or incorrect application of Internal Market rules referred to the EFTA Court which on 1 December 2020 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 increased by three cases from 10 to 13 from the time of the previous Scoreboard in June 2020. (Figure 15).

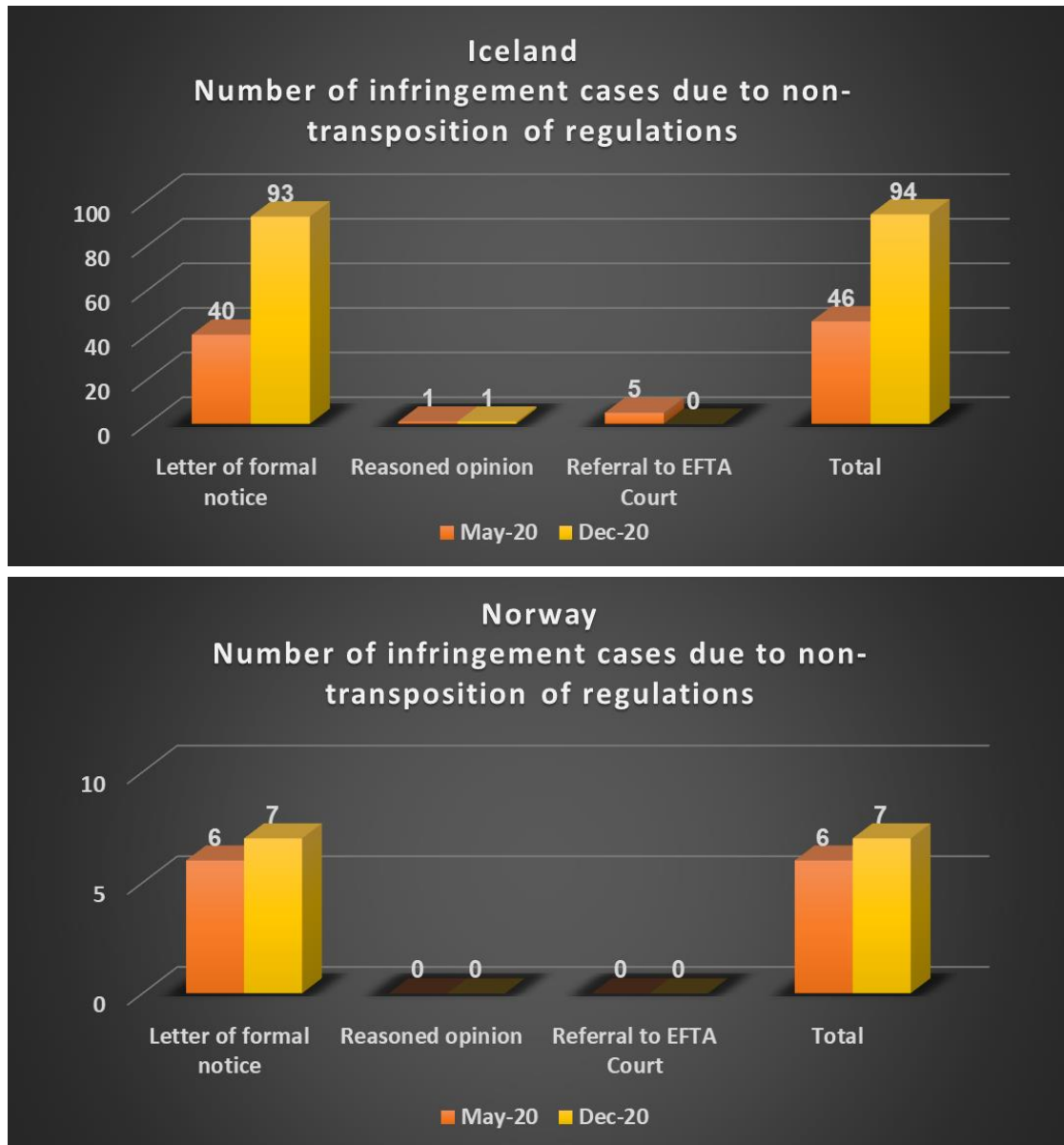


**Figure 15: The number of infringement cases against the EFTA States due to non-transposition of directives.**

### 3.4 Infringement proceedings concerning failure to transpose regulations into national law

Of the 165 infringement cases pending on 1 December 2020, 61% concerned the late transposition of regulations. For Iceland, this means 94 cases, more than double the

amount (46) at the time of the June 2020 Scoreboard, and for Norway, the figure increased from six to seven. (**Figure 16**).



**Figure 16: The number of infringement cases against the EFTA States due to non-transposition of regulations.**

The total number of infringement cases concerning the non-transposition of directives and regulations increased by 52 cases from 62 to 114 since the Scoreboard in June 2020.



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