

INTERNAL MARKET SCOREBOARD

April 2023

No. 51

EEA EFTA STATES

51st 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 2022)*

- The average transposition deficit for directives for the EEA EFTA States decreased to 1% although only Iceland and Liechtenstein reduced its number of overdue directives since the last Scoreboard in June 2022. Liechtenstein, the only EEA EFTA State to do so, now returns to below the 0.5% Scoreboard benchmark ¹. Both Liechtenstein and Norway have one directive which has been outstanding for more than two years.
- **Iceland** halved its deficit for directives since the previous Scoreboard in June 2022 from 2% to 1%, with the number of overdue directives by Iceland decreasing from 15 to 8. Over 60% of these directives fall in the field of environment. For the first time since 2007, Iceland does not have any directives that have been outstanding for more than two years, having now implemented the five directives that had been outstanding for more than two years at the time of the Scoreboard in June 2022.
- The number of regulations which had not been fully transposed into national law on time by Iceland decreased from 191 to 143, resulting in a transposition deficit for regulations of 3.7%. 76 of these outstanding regulations fall in the field of food & feed safety, animal health & welfare, with a further 31 cases in the Goods - TBT sector, nearly double in this sector compared to the June 2022 Scoreboard. The number of outstanding regulations in the financial services sector has however greatly reduced from 72 at the time of the June 2022 Scoreboard, to 24.
- **Norway** has again increased its number of overdue directives, from 10 to 12 since the June 2022 Scoreboard, meaning an increase in its transposition deficit from 1.3% to 1.5% - the highest since November 2014. 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 by Norway decreased from 69 to 38, resulting in a transposition deficit for

¹ 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 Commission's Single Market Act proposed in April 2011.

regulations of 1%. Over 70% of these outstanding regulations fall in the field of financial services.

- **Liechtenstein's** deficit is at 0.4%, down from 0.7% at the time of the June 2022 Scoreboard , a decrease from five to three outstanding directives and now takes Liechtenstein, the only EEA EFTA State, below the 0.5% target. One of these directives however, relating to mutual recognition of professionals, has been outstanding for more than two years.
- The Authority has seen a decrease in the total number of infringement cases at 130 (down from 188 since the December 2021 Scoreboard), with all three EEA EFTA Members States reducing its overall number of infringement cases, 94 cases relate to Iceland, a decrease of 39 cases since the December 2021 Scoreboard, three relate to Liechtenstein, two less than the time of the December 2021 Scoreboard, and Norway decreased from 50 to 33.
- Of the above-mentioned total number of pending infringement cases (130), 78 of these cases, and making up 60% of all infringement cases, concern the late transposition of directives or regulations, with 52 cases (40%), concerning 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 this Scoreboard, the average time that had lapsed since the court judgment was 10 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 Internal Market Scoreboard (No 51) version 1, reports on the status of the EFTA Member States only, and takes into account all transposition notifications made by 11 December 2022 for directives and regulations with a transposition deadline on or before 30 November 2022.

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 records².

The transposition deficit indicates how many directives and regulations the EEA States have failed to communicate as transposed on time. In line with the European Commission’s Single Market Act proposed in April 2011, we are looking at a benchmark of 0.5%.

1.1 The EFTA States’ performance

The average transposition deficit for directives for the EFTA States decreased to 1%, since the last Scoreboard in June 2022, however only Liechtenstein falls below the 0.5% benchmark that the Authority is looking at, in line with the European Commission’s Single Market Act proposed in April 2011³. **(Figure 1)**

35% of all outstanding directives fall in the environment sector, one of which is overdue by all three EEA EFTA States. Both Liechtenstein and Norway have one directive which has been outstanding for more than two years in the fields of mutual recognition of professionals, and social security, respectively.

Iceland’s transposition deficit for directives halved since the June 2022 Scoreboard from 2% to 1%, with a decrease in the number of directives from 15 to eight.

Norway has again increased its transposition deficit from 1.3% to 1.5% since the time of the previous Scoreboard in June 2022, with 12 directives not having been fully transposed on time. One of these directives, in the social security sector, has been outstanding for more than two years.

² The findings regarding the transposition deficits of the EFTA States take into account the 783 internal market relevant directives that were incorporated into the EEA Agreement and were in force on 30 November 2022.

³ <https://ec.europa.eu/docsroom/documents/15498/attachments/1/translations>

Liechtenstein’s transposition deficit decreased from 0.7% to 0.4%, reflecting the fact that three directives still had not been fully transposed on time, one of which has been outstanding for more than two years. Liechtenstein is currently the only EEA EFTA State falling below the 0.5% target.

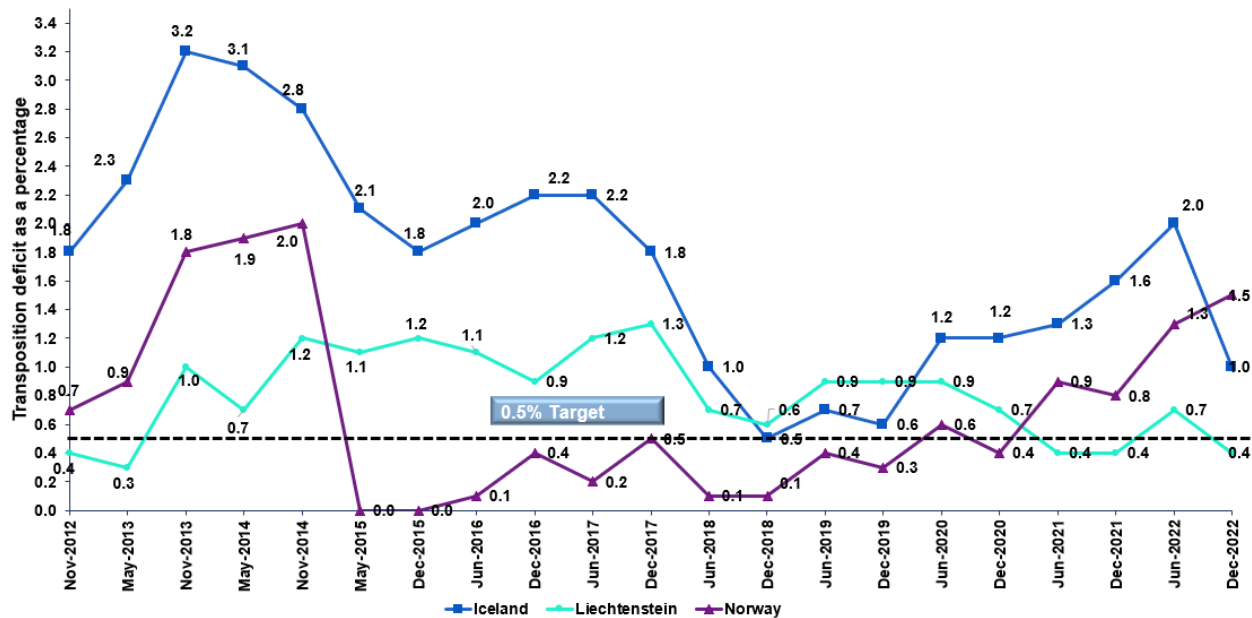


Figure 1: EFTA States’ transposition deficit over the past 10 years

Transposition deficit for directives that should have been transposed on or before 30 November 2022

1.2 Incompleteness rate of the Internal Market in the EFTA States with regard to directives⁴

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 2022 had not been transposed by at least one of the three EFTA States (**Figure 2**). The incompleteness rate of 2% translates into 18 directives (**Figure 3**) 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. Overall, this is a decrease from 23 directives at the time of the last Scoreboard in June 2022, to 18. One of these directives, in the environment sector is outstanding by all three EEA EFTA Member States.

⁴ Formerly referred to as “fragmentation factor”.

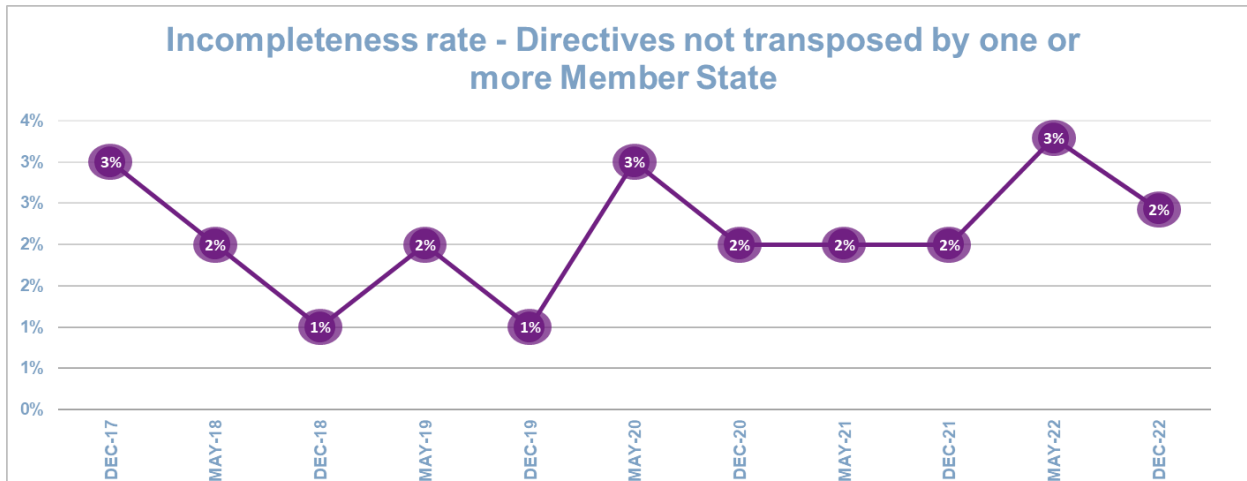


Figure 2: Incompleteness rate in the EFTA States (Directives)

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.

Total number of directives not transposed

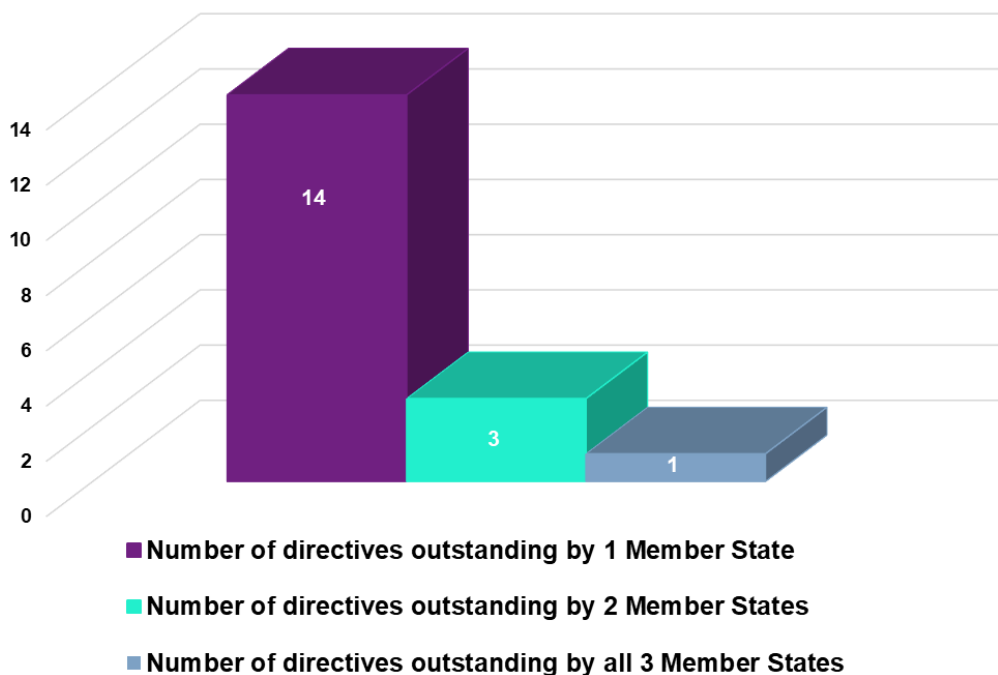


Figure 3: Number of directives outstanding by one or more Member State

When the transposition delays are broken down by sector, the pattern of implementation varies between the EFTA States. **(Figure 4)**

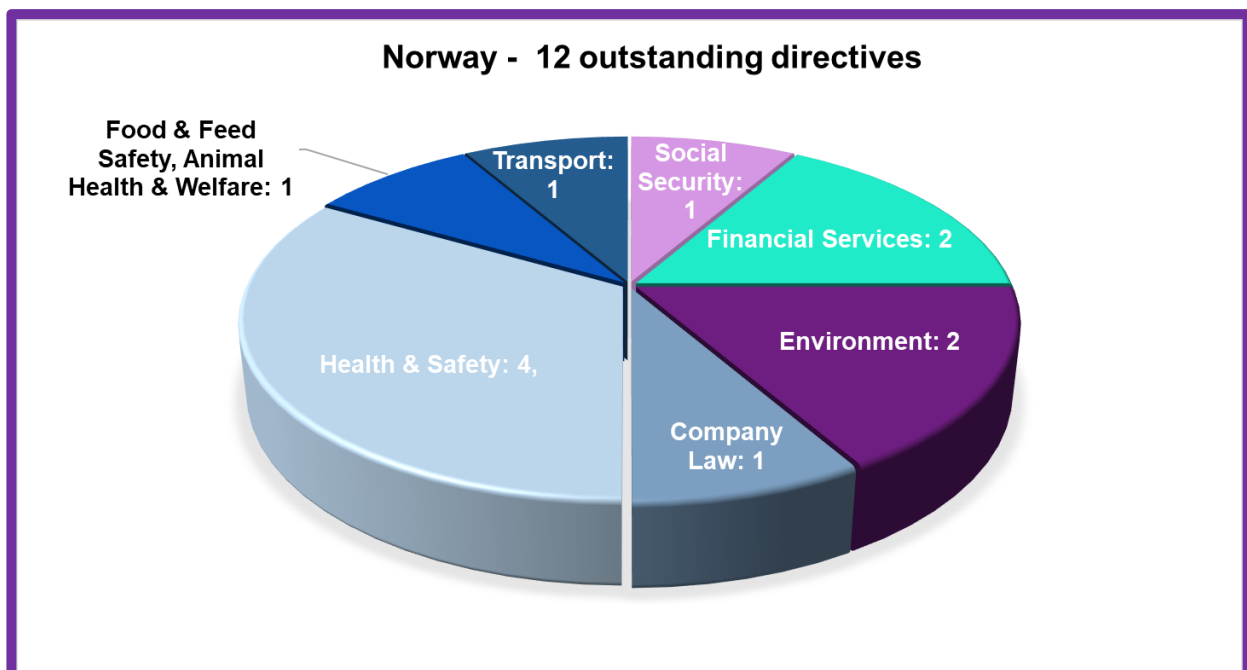
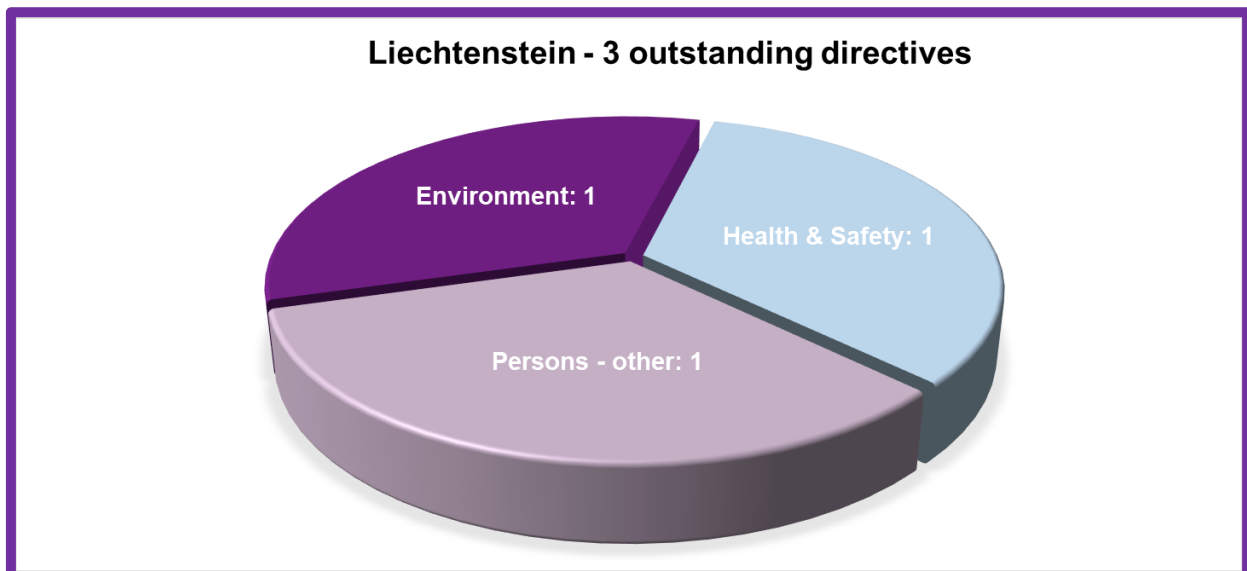


Figure 4: Outstanding directives broken down by sector in each EFTA State as at 30 November 2022

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 2022, 3.875 internal market relevant regulations incorporated into the EEA Agreement were in force. Of these, there were 143 regulations that Iceland had not notified as having been incorporated into its national law. This is a decrease in outstanding regulations, from 191 at the time of the last Scoreboard in June 2022, representing a transposition deficit of 3.7%. 53% of these outstanding regulations fall in the food & feed safety, animal health & welfare, with a further 21% in the Goods – TBT and 16% in financial services sectors.

For Norway, the number of regulations not notified as incorporated into national law decreased from 69 to 38, representing a transposition deficit for regulations of 1%. Over 70% of these outstanding regulations fall in the field of financial services.

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, 4% of the 3.875 regulations incorporated into the EEA Agreement had not been transposed by both Iceland and Norway. The figure translates into 167 regulations (**Figure 5**) which had not achieved their full effect in the EFTA States. Iceland has not transposed 143 regulations and 38 have not been transposed by Norway. 14 regulations have not been transposed by both Norway and Iceland, 11 of which fall in the financial services sector.

The most incomplete sectors in Iceland are in the areas of food & feed safety, animal health & welfare (76 cases) and Goods – TBT (31 cases) and financial services (24 cases). In Norway, 27 of the 38 outstanding regulations fall in the financial services sector. (**Figure 6**).



Figure 5: Number of regulations outstanding by one or more Member State

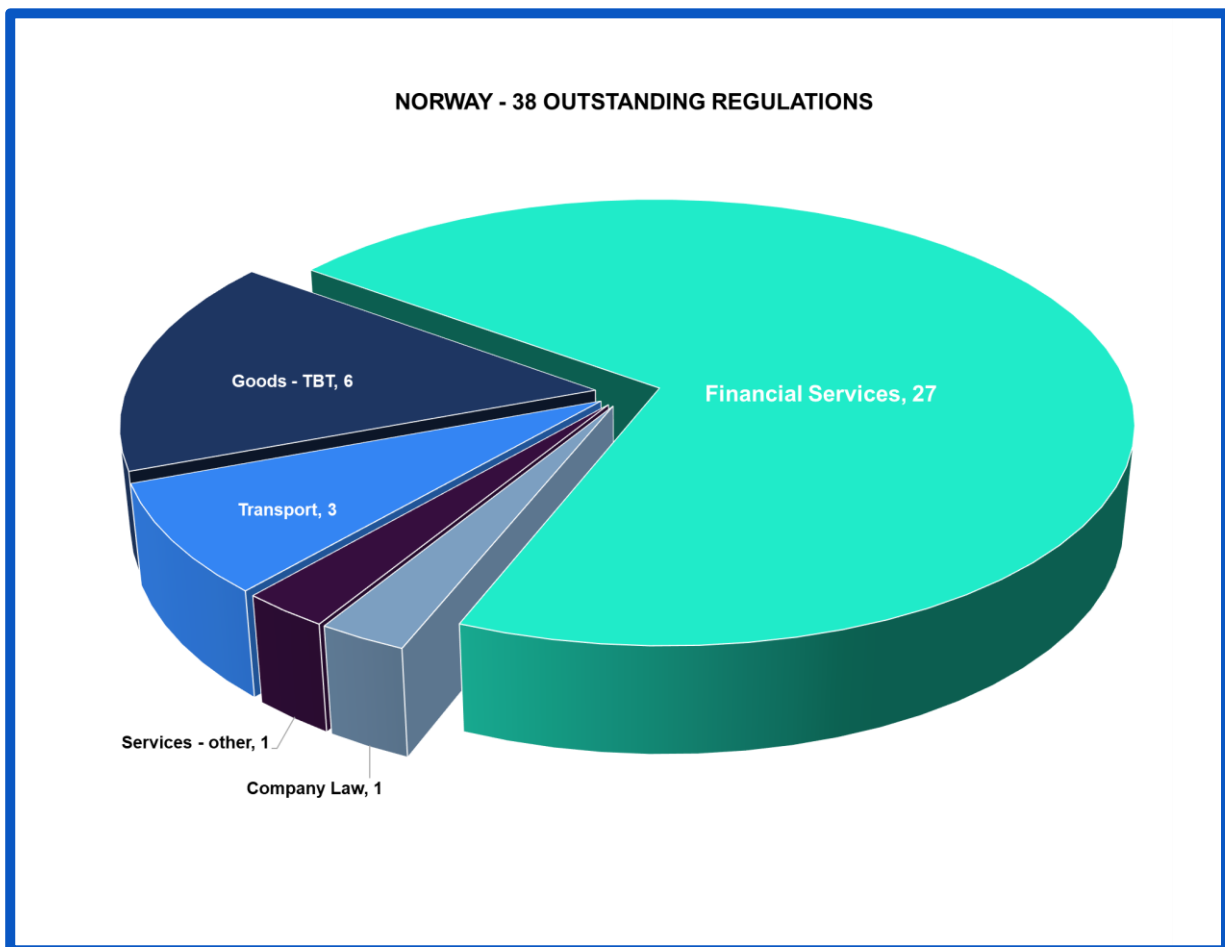
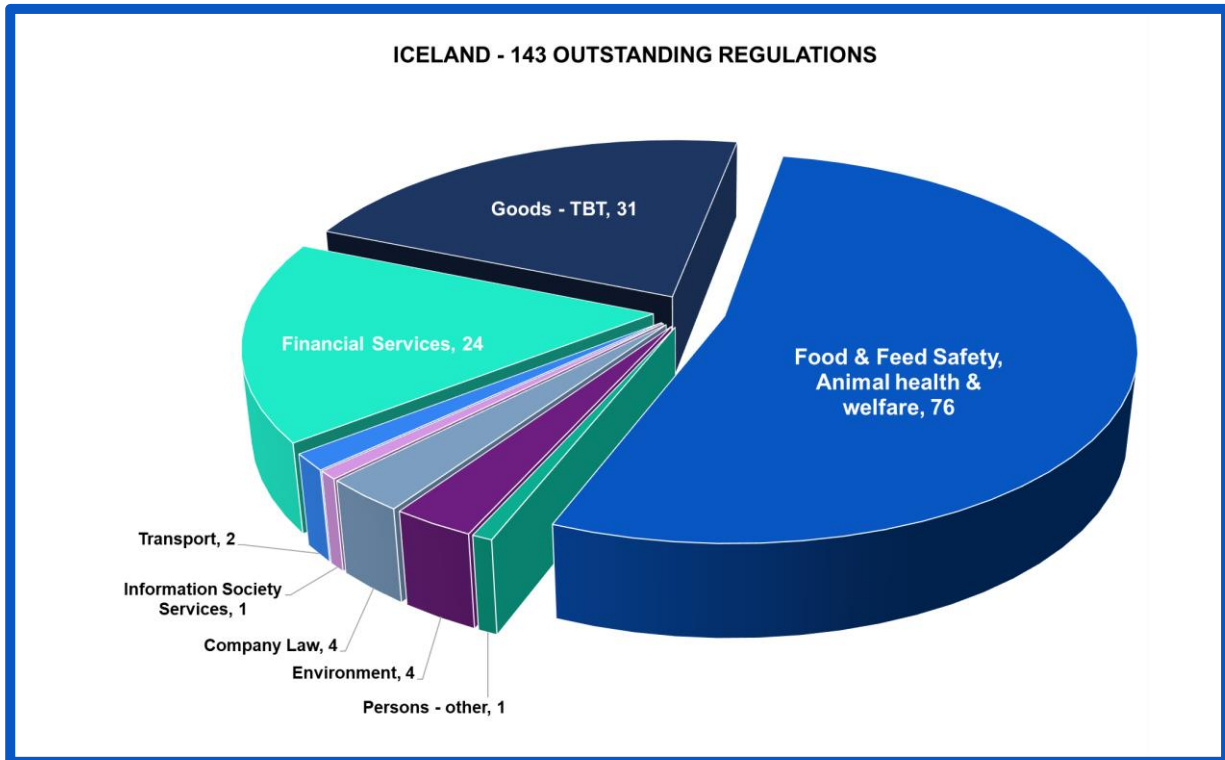


Figure 6: Outstanding regulations broken down by sector in each EFTA State as at 30 November 2022

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 Proceedings⁵

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.

3.1 A reduction in the total number of infringement proceedings

As at 1 December 2022, the Authority was pursuing a total of 130 infringement cases against the EFTA States in the internal market field (**Figure 7**)⁶. This is 58 cases less than at the time of the Scoreboard in December 2021⁷ with all three EEA EFTA Members States continuing to reduce its overall number of infringement cases. 94 cases relate to Iceland, a decrease of 39 cases since the December 2021 Scoreboard, three relate to Liechtenstein, two less than at the time of the December 2021 Scoreboard, and Norway decreased from 50 to 33.

⁵ 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).

⁶ A pending infringement case is defined as a case where at least a letter of formal notice has been sent to the State concerned.

⁷ The comparison here is made with the situation on 1 December 2021 (Scoreboard 49) as these are the figures last officially reported by the European Commission, and version 2 of this Scoreboard (51), will be updated to show comparable figures with the European Commission).

Of the 130 pending infringement cases, 52 cases, concerned the incorrect implementation or application of Internal Market rules (see chapter 3.2). – 26 cases relate to Iceland, 2 concern Liechtenstein and 24 relate to Norway. There was a decrease in the total pending infringements concerning the late transposition of directives and regulations (see chapter 3.3) since the time of the December 2021 Scoreboard, down from 140, to 78 cases.

Of the infringements relating to the late transposition of directives, six relate to Iceland, one to Liechtenstein and four to Norway. Regarding the late transposition of regulations, 62 relate to Iceland, and five to Norway. (**Figure 8**).

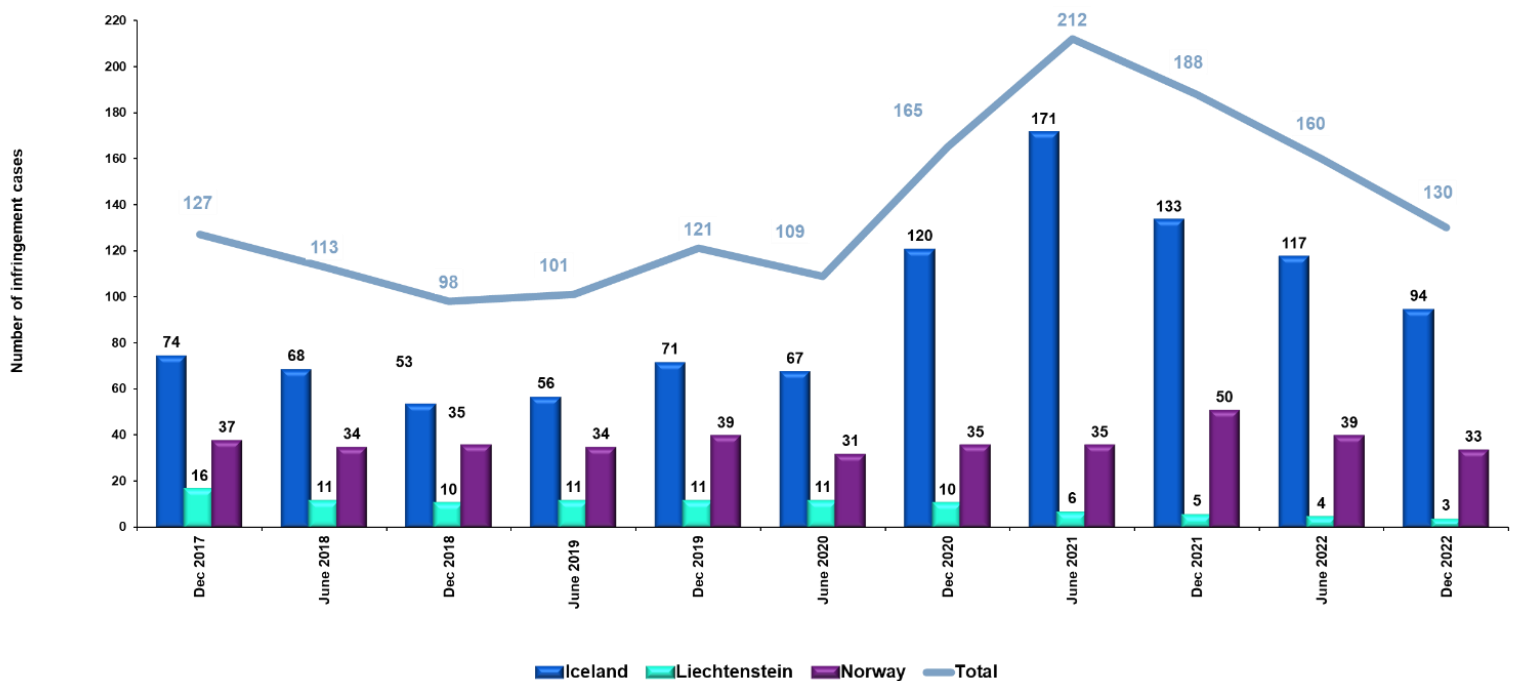


Figure 7: Total number of infringement cases against the three EFTA States on 1 December 2022

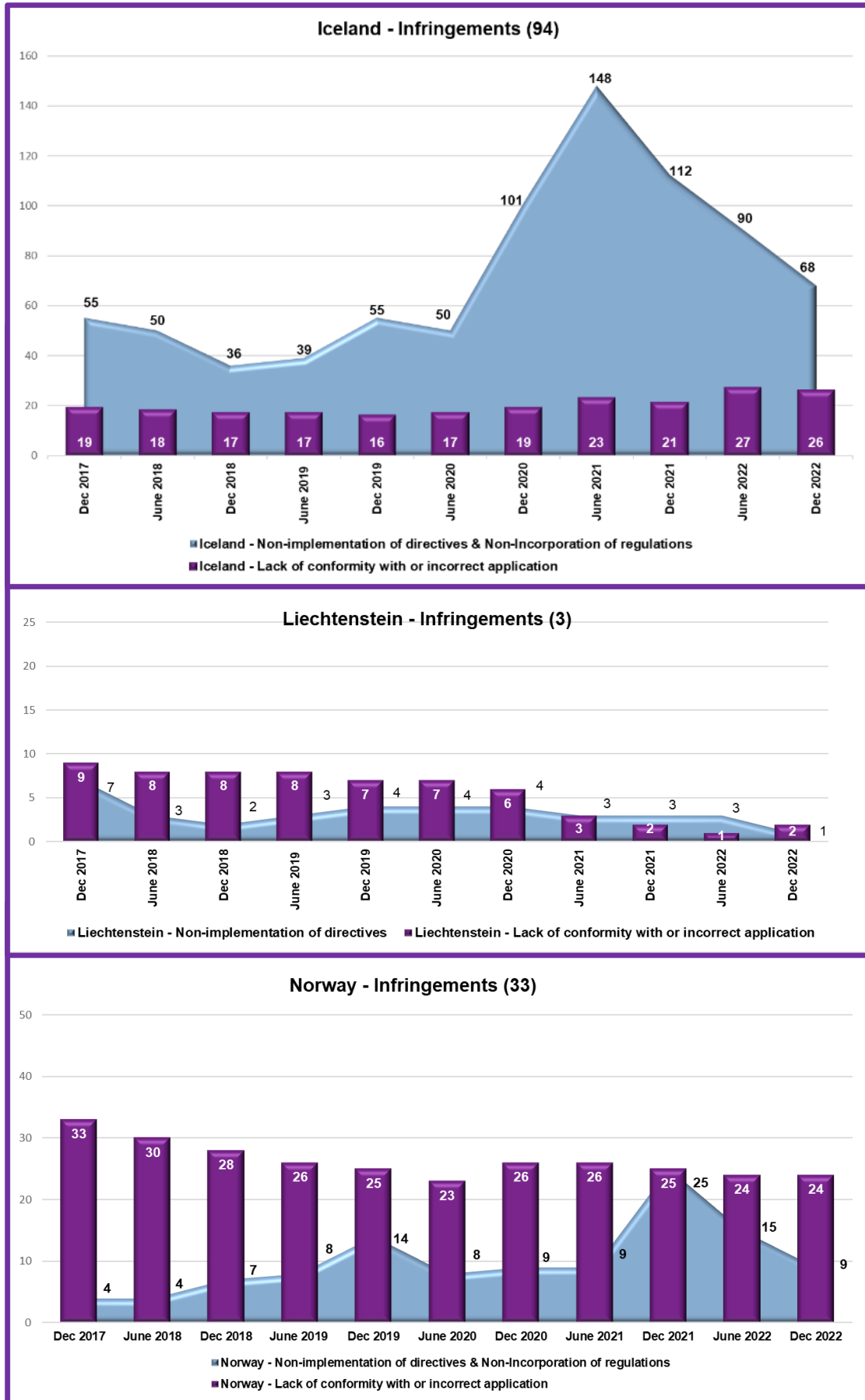


Figure 8: Open Infringement proceedings against the three EEA EFTA States split between lack of conformity with or incorrect application, and non-transposition of directives and regulations as at 1 December 2022

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 is 52 (Figure 9). This reflects an increase of four since the previous Scoreboard in December 2021⁷. Norway decreased by one case to 24, there is no change in the number of cases for Liechtenstein (2 cases) since the December 2021 Scoreboard, however Iceland increased its number of cases to 26.

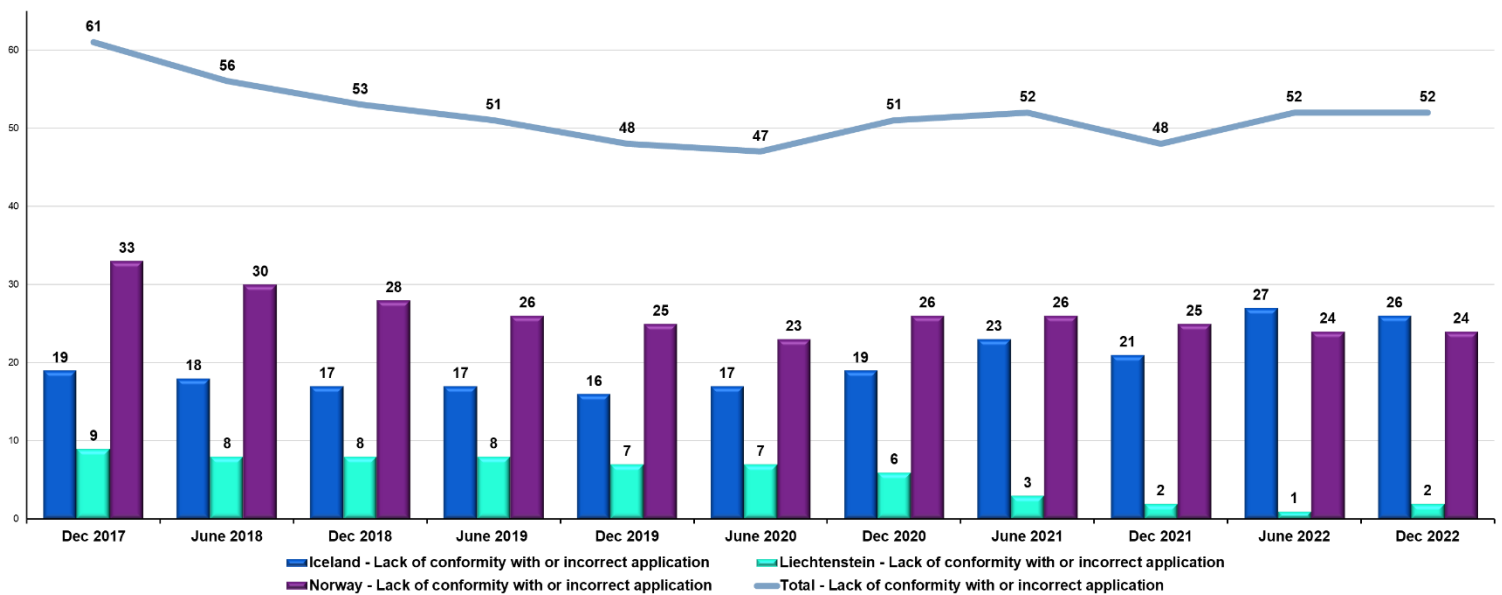


Figure 9: Infringement proceedings against the three EEA EFTA States due to lack of conformity with or incorrect application of Internal Market rules on 1 December 2022

The number of infringement proceedings stemming from complaint cases rose to 17 cases representing 33% of all pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Broken down by Member State, 11 of these cases relate to Norway, and six to Iceland. (Figure 10)

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.

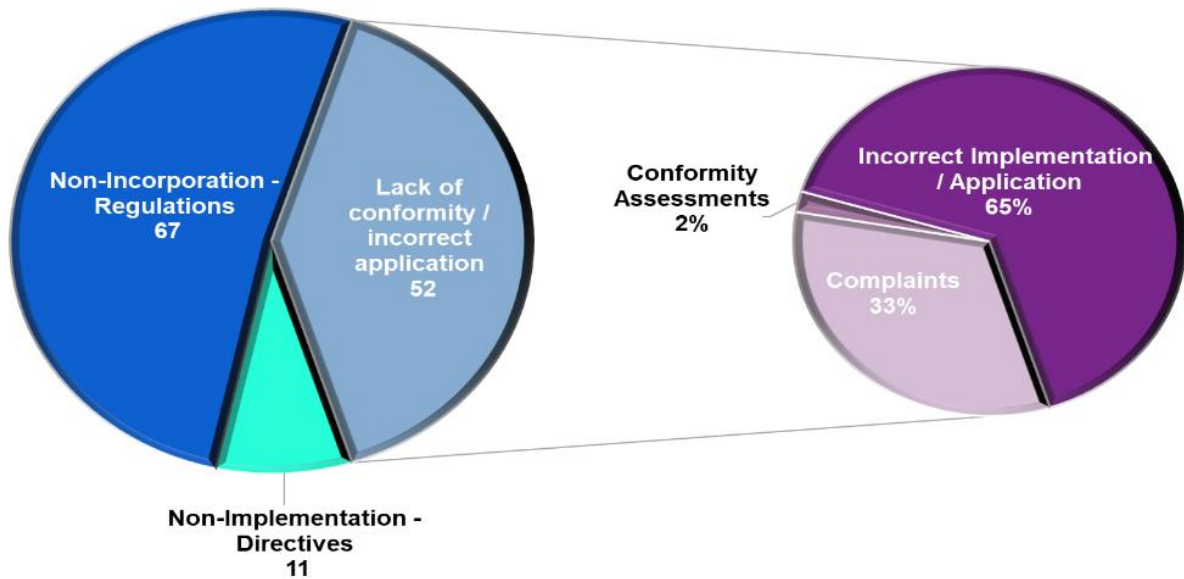


Figure 10: Infringement proceedings – Lack of conformity / incorrect application

3.2.2 Breakdown per sector

The fields of Transport, Social Security, Establishment, 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 62% of the infringement proceedings (**Figure 11**).

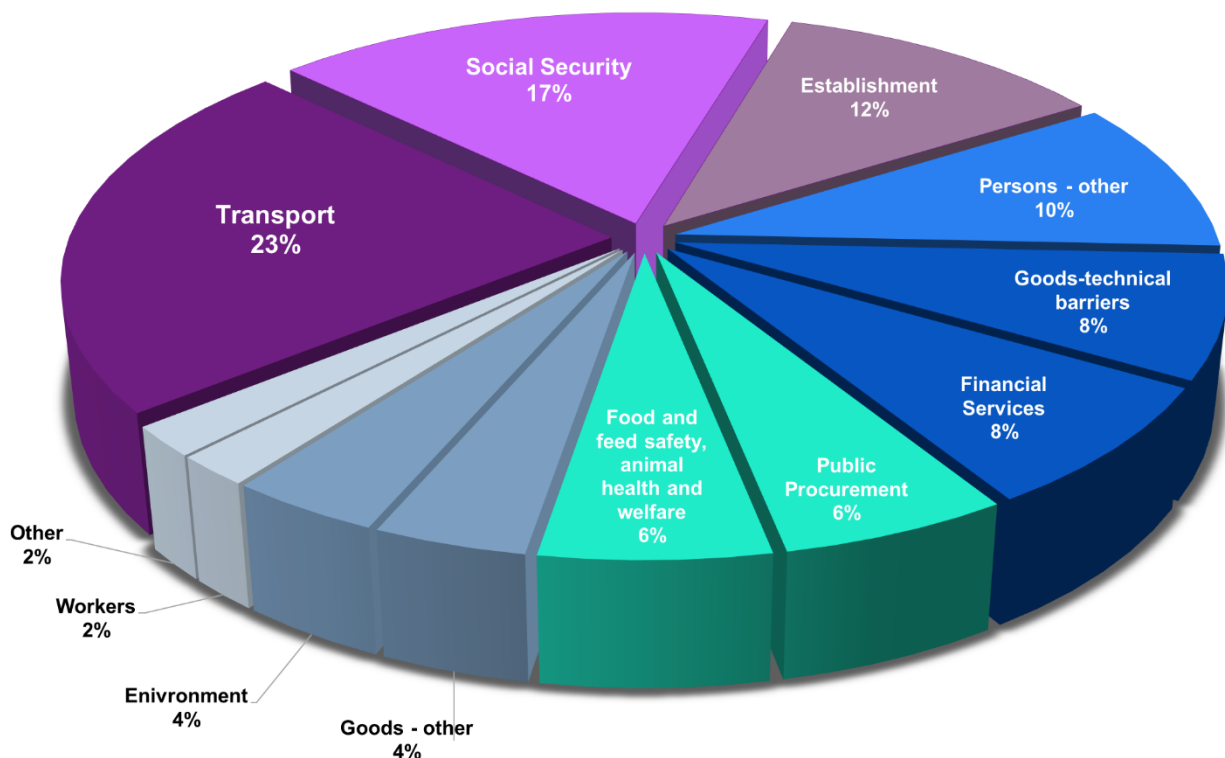


Figure 11: Pending infringement proceedings due to lack of conformity with or incorrect application of Internal Market rules on 1 December 2022 divided by sector

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. For those infringement cases relating to lack of conformity with, or incorrect application of Internal Market rules 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, the average time that had lapsed since the court judgment was 10 months.

| EFTA State | Case | Duration in months |
|------------|---|--------------------|
| Norway | Own initiative case concerning EEA nationality and residence requirements in Norway | 16 |
| Iceland | Animal by-product legislation | 4 |

Figure 12: Duration in months since the judgment of the EFTA Court

3.3 Infringement proceedings concerning failure to transpose directives and regulations into national law

Overall, the total number of infringement cases concerning the non-transposition of directives and regulations decreased by 62 cases since the December 2021 Scoreboard, standing at a total of 78 cases.

3.3.1 Directives

The number of infringement cases initiated against the EFTA States non-transposition of directives increased by one case since the Scoreboard in December 2021⁷, from 10 to 11. (Figure 13).

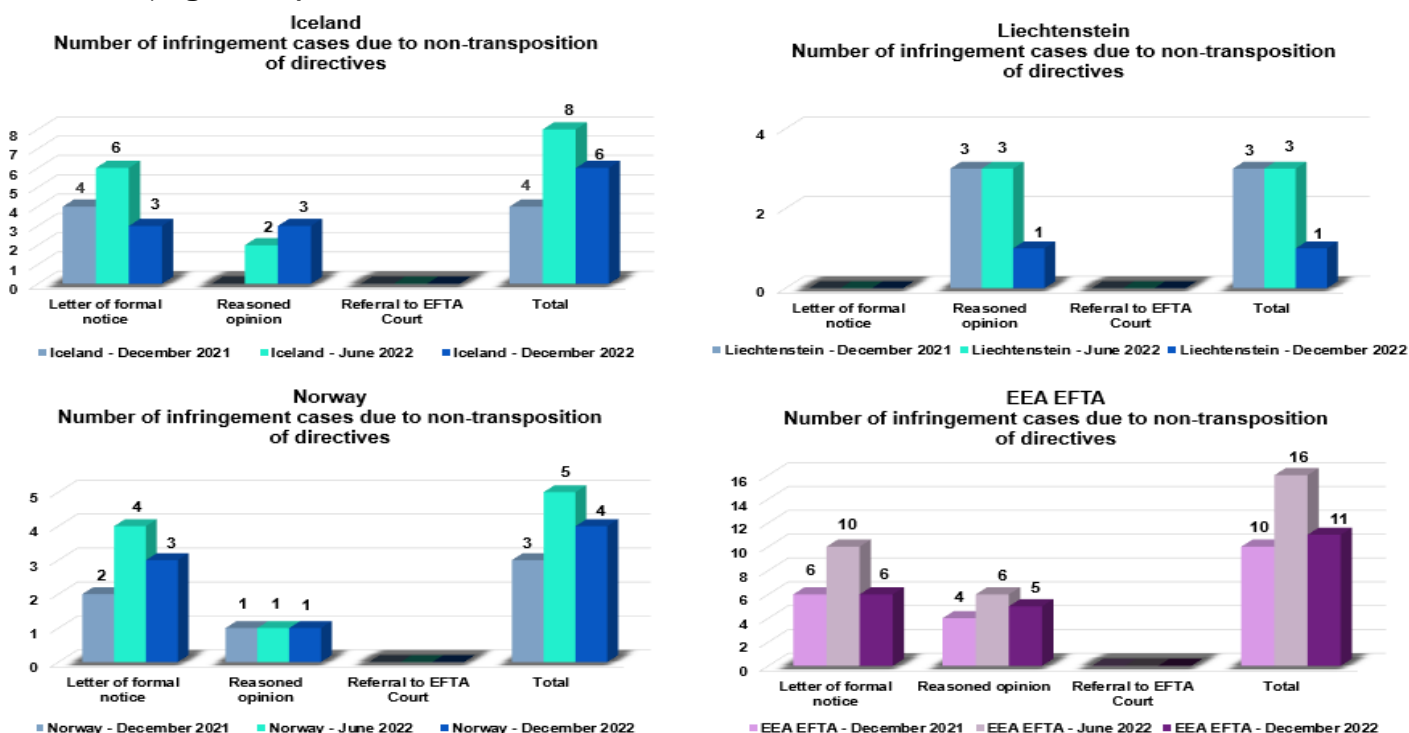


Figure 13: The number of infringement cases against the EFTA States due to non-transposition of directives

3.3.2 Regulations

Of the 130 infringement cases pending on 1 December 2022, 51% concerned the late transposition of regulations. For Iceland, this means 62 cases, a decrease of 46 cases since the December 2021 Scoreboard, and for Norway, the figure concerning the late transposition of regulations reduced significantly from 22 to 5 cases (**Figure 14**).

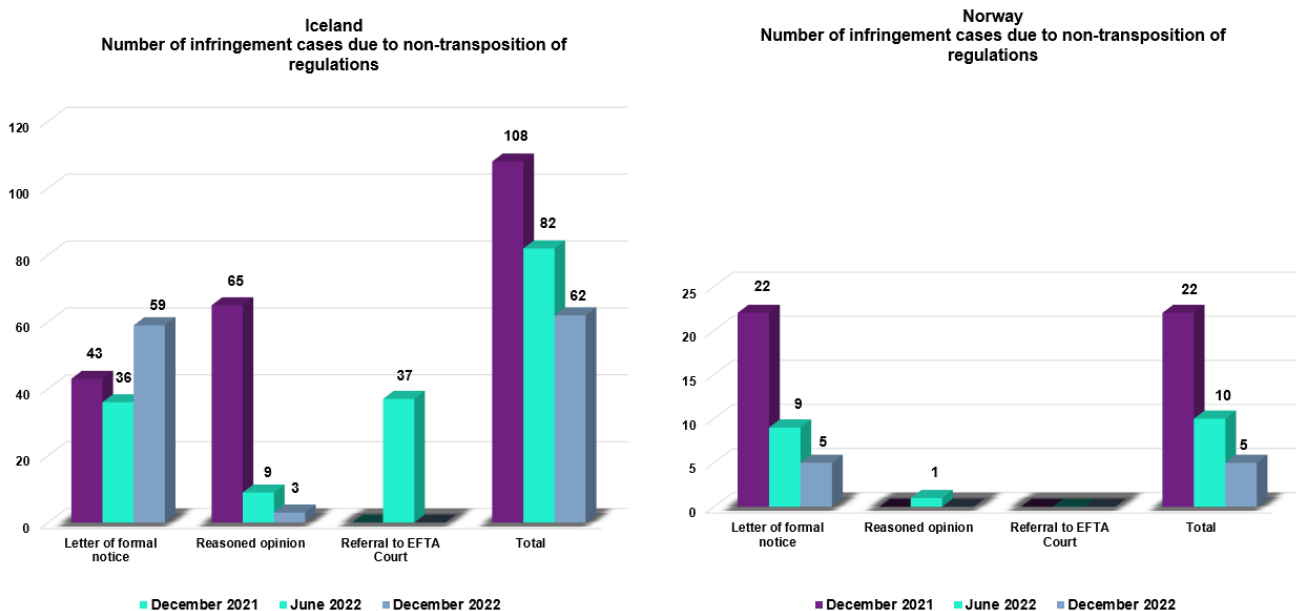


Figure 14: The number of infringement cases against the EFTA States due to non-transposition of regulations.

4 Draft Technical Regulations

The final chapter of the Scoreboard shows the number of draft technical regulation notifications and final texts received by the Member States.

The Directive on Draft Technical Regulations establishes a system for information sharing when EEA States intend to adopt national legislation containing technical rules. This is to avoid restrictions on the free movement of goods and information society services within the EEA. Under the Directive, EEA EFTA States are obliged to notify ESA of any technical regulations they plan to adopt.

Draft technical notifications are uploaded on the European Commission’s TRIS database to allow EU Member States to access them. ESA, as well as the European Commission and all the EEA States, may comment on the notifications. Other interested parties can access the draft texts on the TRIS database, but may not submit comments under the procedure foreseen in the Directive.

The technical regulations should be notified before they are adopted nationally, to allow the EEA States to take into account comments they may have received during the procedure. Once a notification is received by ESA, a three-month standstill period is triggered, during which the notifying EEA EFTA State may not adopt the regulation. Once the standstill period has expired, the EEA EFTA State may adopt the notified draft regulation.

In 2022 a total of 19 draft technical regulations were received from the EEA States (Iceland: 6, Liechtenstein: 2, Norway: 11) (**Figure 15**). A number of final texts are still awaited from all EEA EFTA Member States.

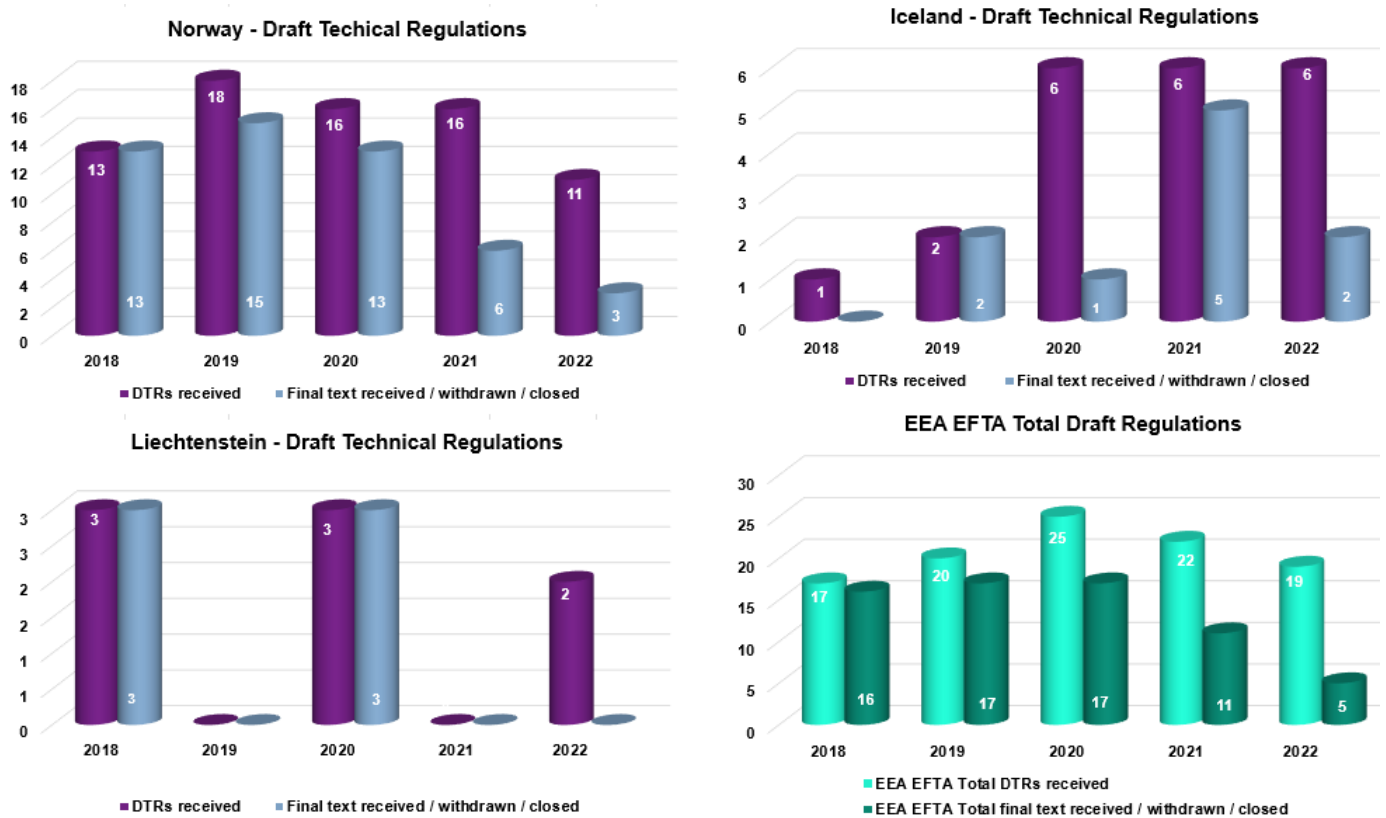


Figure 15: Draft Technical Regulations and final texts received from EFTA States



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