

49th 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 2021)*

- The average transposition deficit for directives for the EFTA States remains at 0.9%, the same as the last Scoreboard in June 2021. All three Member States have at least one directive which has been outstanding for more than two years.
- **Iceland** increased its deficit for directives since the previous Scoreboard in June 2021 from 1.3% to 1.6%, with the number of overdue directives by Iceland, increasing from 10 to 12. This is the highest number of outstanding directives by Iceland since May 2018. Two of these, in the field of financial services, have been outstanding for more than two years

The number of regulations which had not been fully transposed into national law on time by Iceland decreased from 187 to 137, resulting in a transposition deficit for regulations of 3.4%, down from 5.5% at the time of the Scoreboard in June 2021. 80% of these outstanding regulations also fall in the financial services sector.

- **Norway** now has six directives which have not been fully transposed on time, meaning a decrease in its transposition deficit from 0.9% to 0.8% since the previous Scoreboard in June 2021. 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 increased from 44 to 49, resulting in a transposition deficit for regulations of 1.4%, up from 1.3% at the time of the June 2021 Scoreboard. This is the highest number of outstanding regulations ever recorded in the Scoreboards for Norway. Nearly 60% of these outstanding regulations fall in the field of food & feed safety, animal health & welfare.

- **Liechtenstein's** deficit at 0.4% remained the same as at the time of the last Scoreboard in June 2021, with three directives outstanding. Two of these however, relating to mutual recognition of professionals, and environment respectively, have been outstanding for more than two years.

- Although the Authority has seen a decrease in the total number of infringement cases at 188 (down from 212 since the June 2021 Scoreboard) this is still an increase of 23 cases since the December 2020 Scoreboard⁶ and remains one of the highest numbers of open pending infringement cases over the past five years. Only Liechtenstein reduced its number of outstanding infringement cases. Of these 188 infringement cases, 133 relate to Iceland, an increase of 3 cases since the December 2020 Scoreboard, five relate to Liechtenstein, halved from 10 at the time of the December 2020 Scoreboard, and Norway increased from 35 to 50.

Of the above-mentioned total number of pending infringement cases (188), 140 of these cases, and making up 74% of all infringement cases, concern the late transposition of directives or regulations, while 48 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 2021, the average time that had lapsed since the court judgment was 33.5 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 49) version 1, reports on the status of the EFTA Member States only, and takes into account all transposition notifications made by 10 December 2021 for directives and regulations with a transposition deadline on or before 30 November 2021.

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 records¹.

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 remains at 0.9%, the same as the last Scoreboard in June 2021. All three Member States have at least one directive which has been outstanding for more than two years. As at the end of November 2021, both Iceland, at 1.6%, and Norway, despite a decrease from 0.9% to 0.8%, are still above the 0.5% benchmark proposed by the European Commission’s Single Market Act in April 2011. Only Liechtenstein, at 0.4% falls under this 0.5% benchmark². **(Figure 1)**.

Iceland’s transposition deficit for directives increased since the June 2021 Scoreboard from 1.3% to 1.6%, with an increase in the number of directives to 12. Half of these directives fall within the financial services sector, two of which have been outstanding for more than two years.

Norway has decreased its transposition deficit from 0.9% to 0.8% since the time of the previous Scoreboard in June 2021, with six 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.

¹ The findings regarding the transposition deficits of the EFTA States take into account the 767 internal market relevant directives that were incorporated into the EEA Agreement and were in force on 30 November 2021.

² 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 Commissions Single Market Act proposed in April 2011.

Liechtenstein’s transposition deficit remained at 0.4%, the same as the previous Scoreboard in June 2021, reflecting the fact that three directives still had not been fully transposed on time, two of which have been outstanding for more than two years.

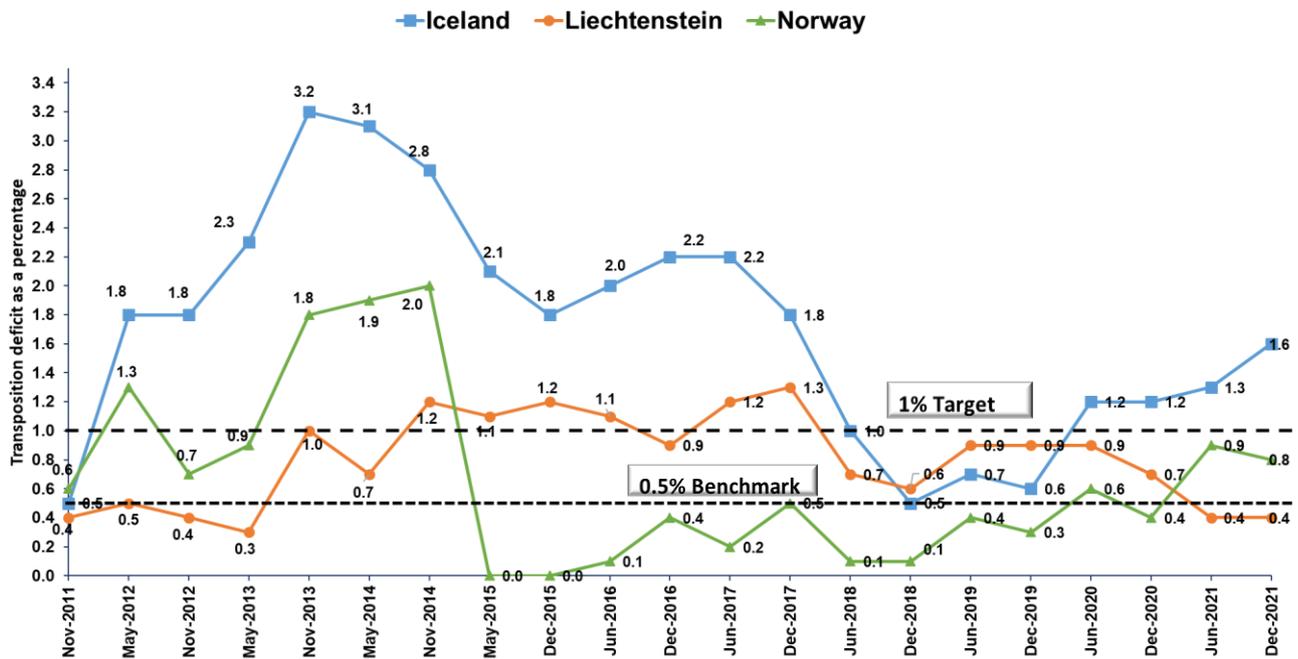


Figure 1: EFTA States’ transposition deficit over the past 10 years

Transposition deficit for directives that should have been transposed on or before 30 November 2021

1.2 Incompleteness rate of the Internal Market in the EFTA States with regard to directives³

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 2021 had not been transposed by at least one of the three EFTA States (**Figure 2**). The incompleteness rate of 2% translates into 17 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 18 directives at the time of the last Scoreboard in June 2021. Four of these directives however are outstanding by both Iceland and Norway, in the fields of environment – waste, company law and financial services.

³ Formerly referred to as “fragmentation factor”.

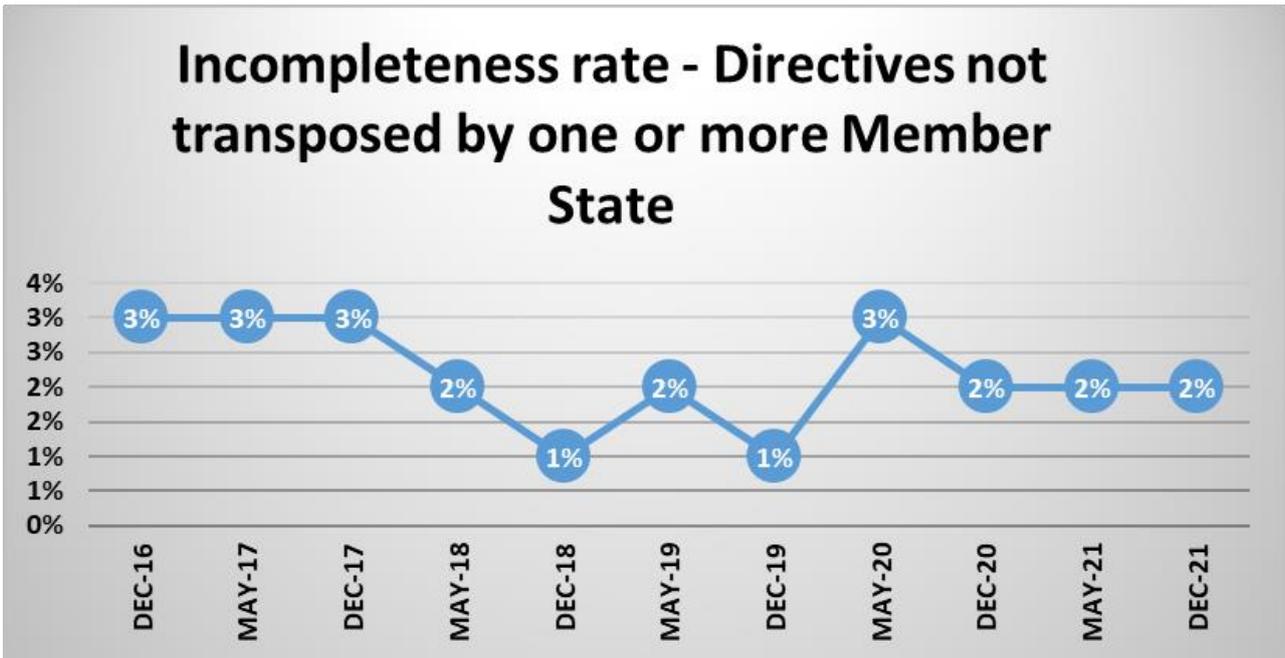


Figure 2: Incompleteness rate in the EFTA States (Directives)

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

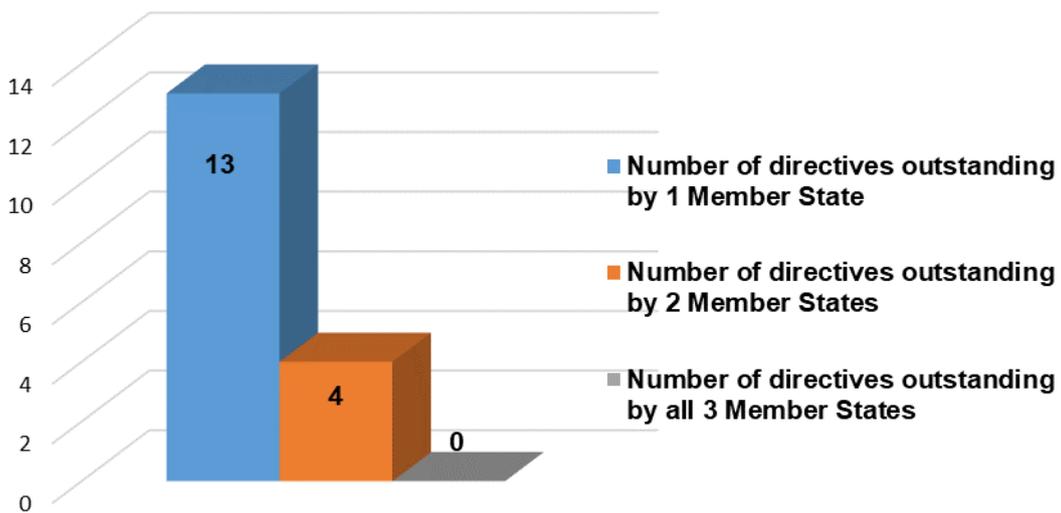


Figure 3: Number of directives outstanding by one or more Member State

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

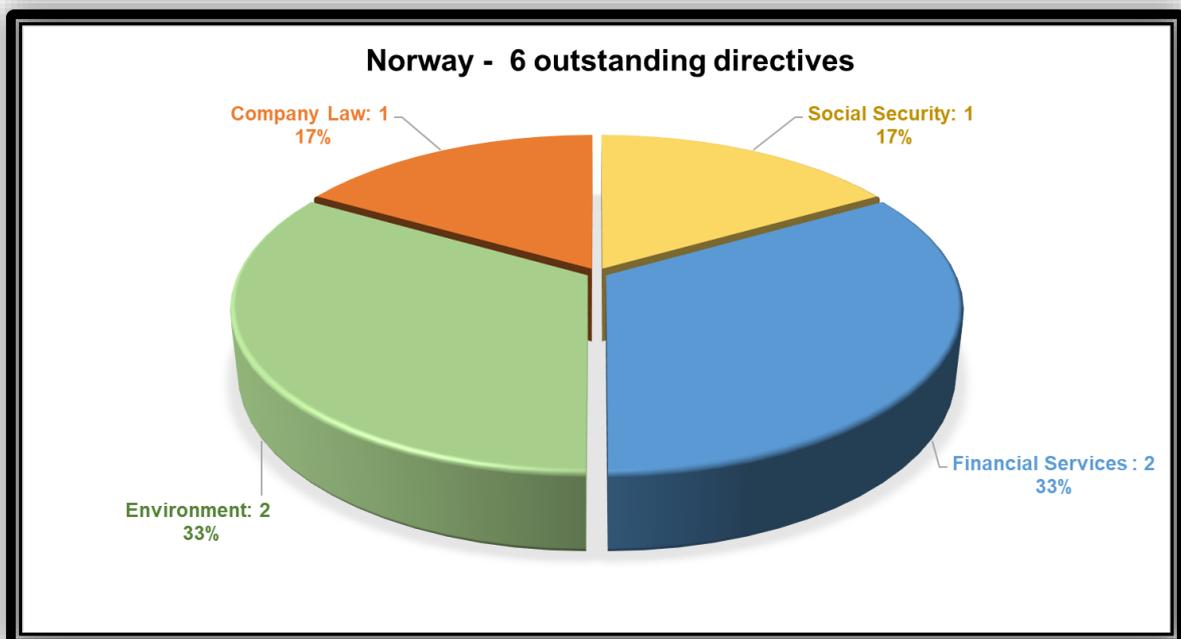
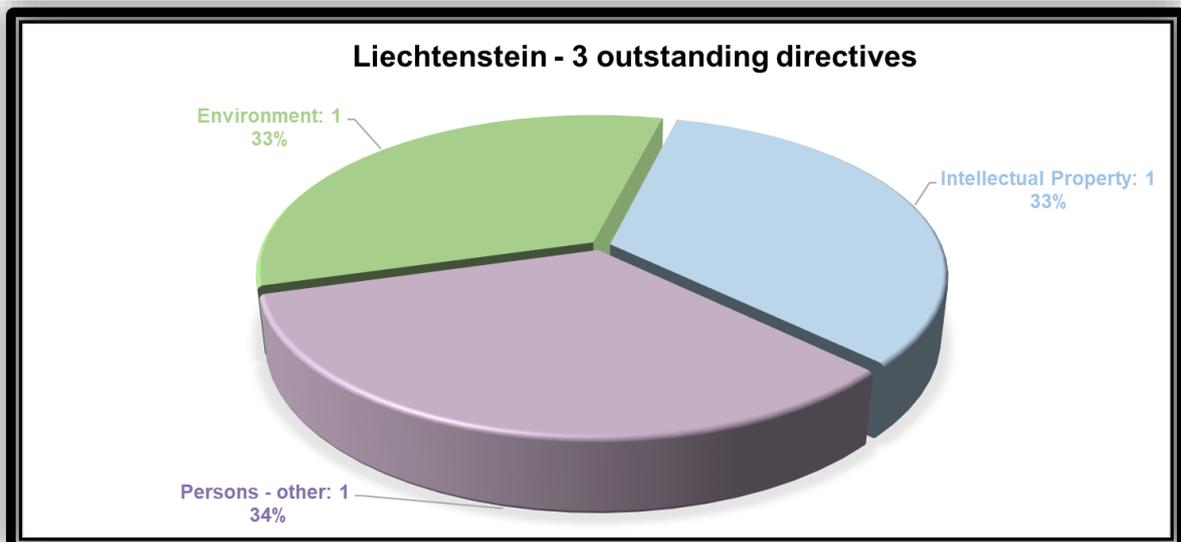
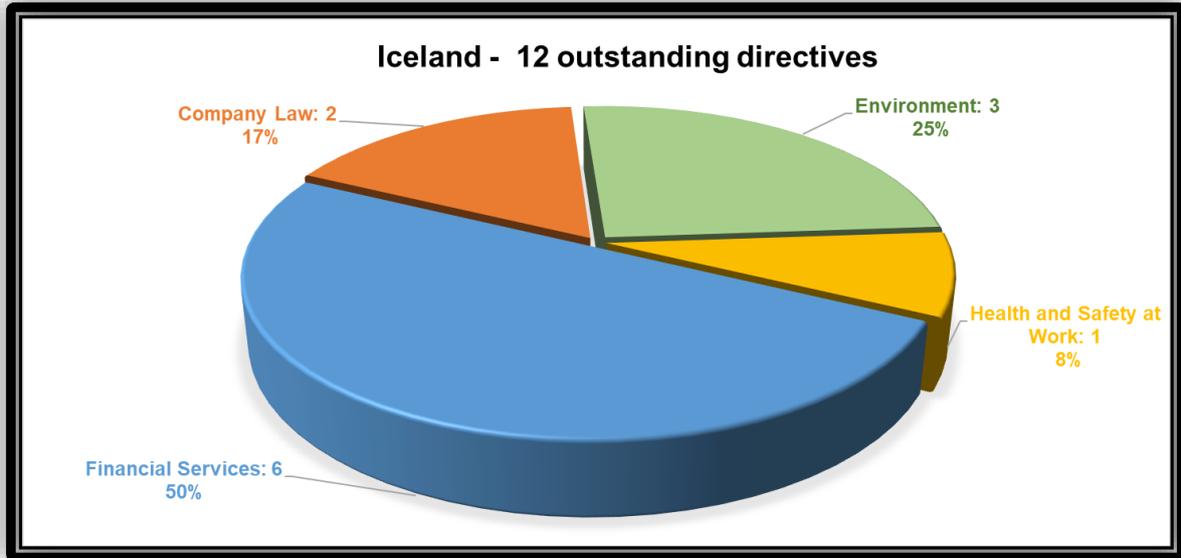


Figure 4: Outstanding directives broken down by sector in each EFTA State

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 2021, 3,548 internal market relevant regulations incorporated into the EEA Agreement were in force. Of these, there were 137 regulations that Iceland had not notified as having been incorporated into its national law. This is a decrease in outstanding regulations, from 187 at the time of the last Scoreboard in June, representing a transposition deficit of 3.4%. 80% of these outstanding regulations fall in the financial services sector.

For Norway, the number of regulations not notified as incorporated into national law increased from 44 to 49. This represents a transposition deficit for regulations of 1.4%, and for the second Scoreboard in a row, is the highest number of outstanding regulations ever recorded in the Scoreboards for Norway. Nearly 60% of these outstanding regulations fall in the field of food & feed safety, animal health & welfare.

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, 5% of the 3,548 regulations incorporated into the EEA Agreement had not been transposed by both Iceland and Norway. The figure translates into 173 regulations (**Figure 5**) which had not achieved their full effect in the EFTA States. Iceland has not transposed 137 regulations and 49 have not been transposed by Norway. 13 regulations have not been transposed by both Norway and Iceland, with more than half of these, falling in the food & feed safety, animal health & welfare sector.

The most incomplete sector in Iceland, with 80% of cases, is in the area of financial services. In Norway, nearly 60% of these regulations fall in the food & feed safety, animal health & welfare sector. (**Figure 6**).

Total number of regulations not transposed

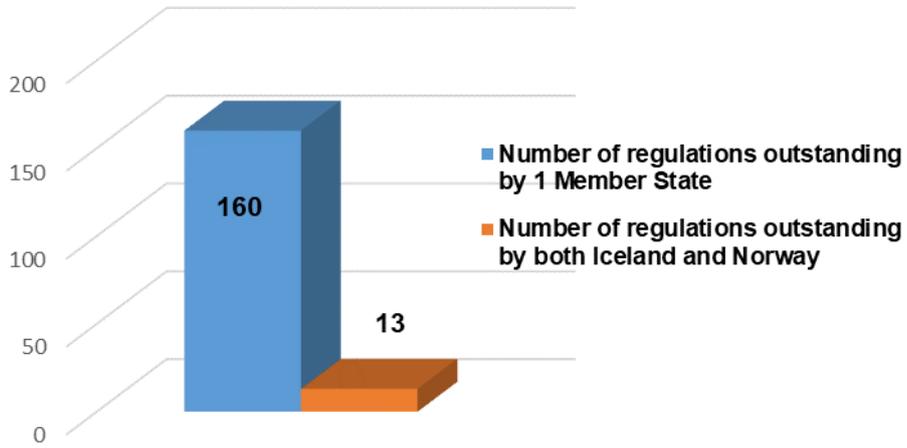
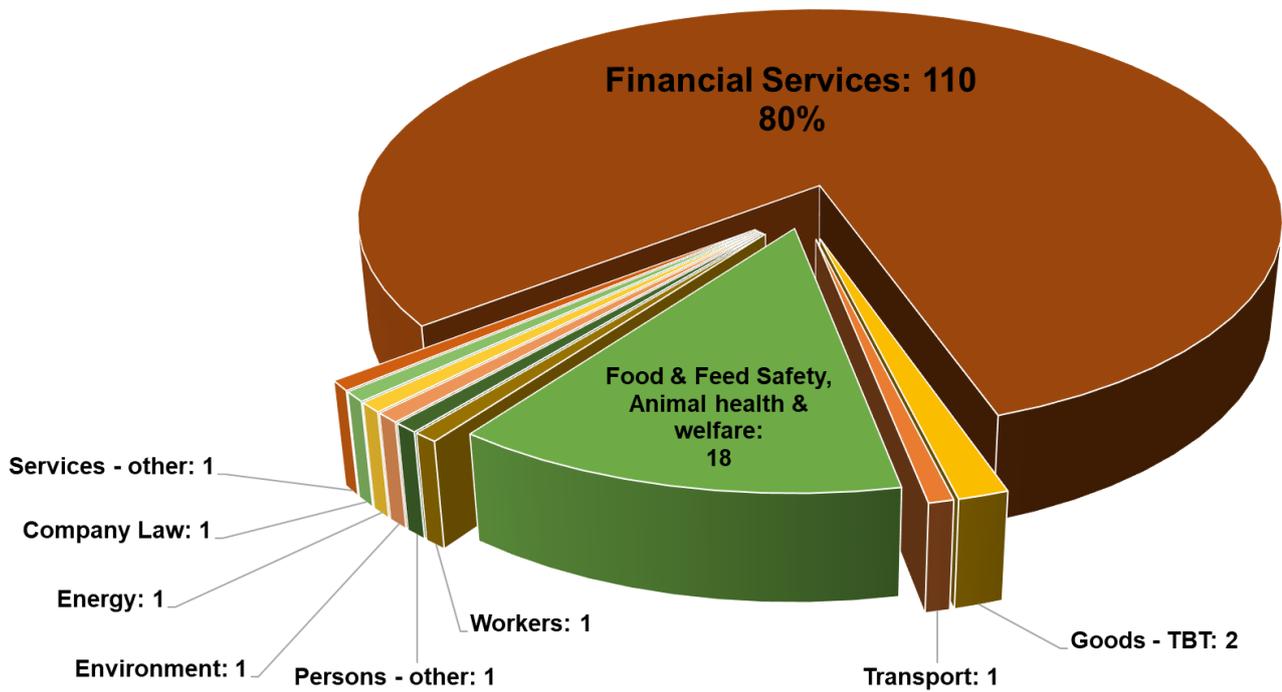


Figure 5: Number of regulations outstanding by one or more Member State

ICELAND - 137 OUTSTANDING REGULATIONS



NORWAY - 49 OUTSTANDING REGULATIONS

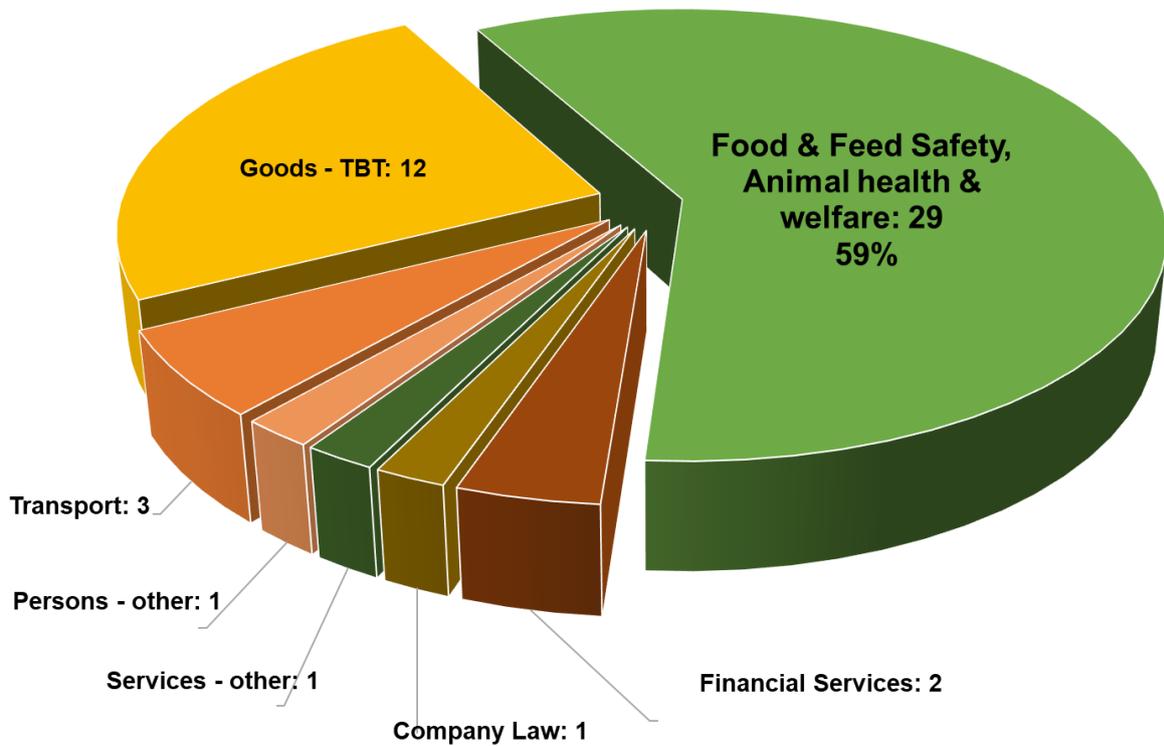


Figure 6: Outstanding regulations broken down by sector in each EFTA State as at 30 November 2021

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 Proceedings⁴

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 2021, the Authority was pursuing a total of 188 infringement cases against the EFTA States in the internal market field (**Figure 7**)⁵. This is 23 cases more than at the time of the Scoreboard in December 2020⁶. Only Liechtenstein reduced its overall number of pending infringement cases from six to five, whilst Norway shows a steep rise from 35 to 50 cases, and Iceland, has decreased from 171 to 133 cases.

Of the 188 pending infringement cases, 48 concerned the incorrect implementation or application of Internal Market rules - see chapter 3.2. There was an increase of one case to 10 pending infringements concerning the late transposition of directives, - see chapter 3.3, however, despite the number of cases concerning the late transposition

⁴ 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).

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

of regulations - see chapter 3.4, decreasing to 130 since the December 2020 Scoreboard, this figure still remains one of the highest ever recorded.

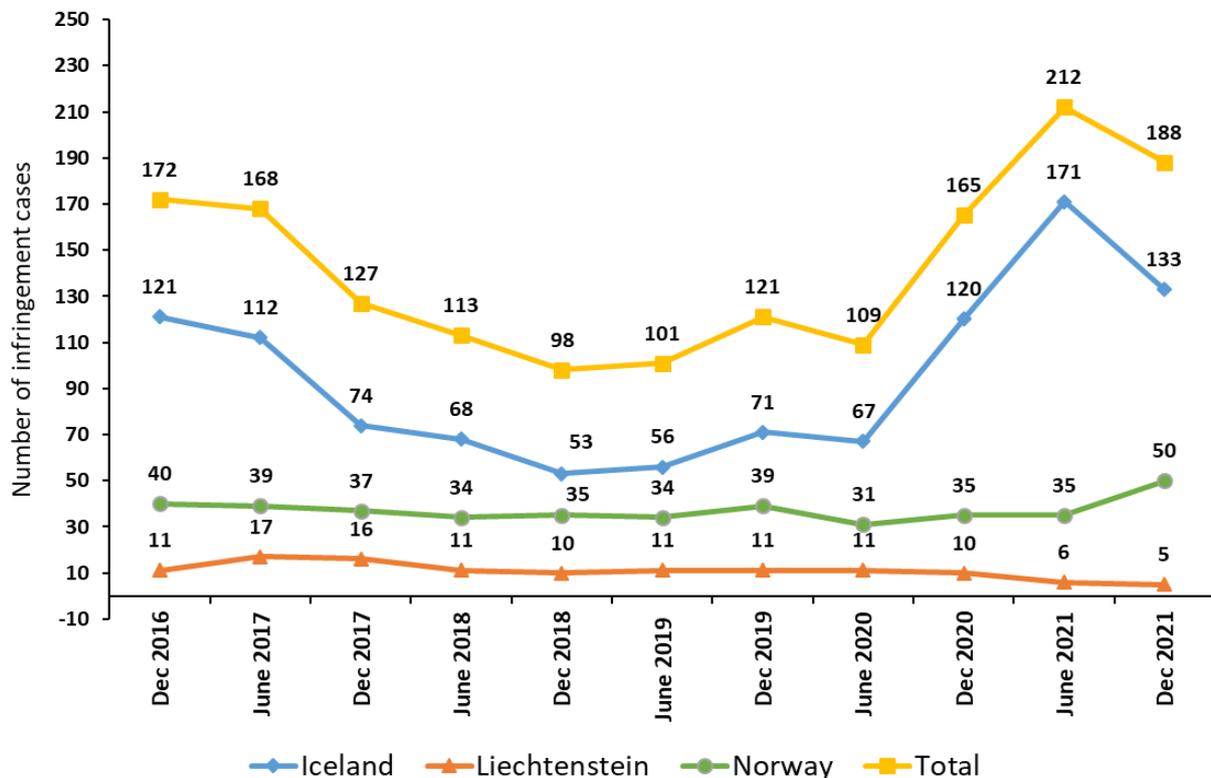


Figure 7: Total number of infringement cases

Total number of all open infringement proceedings against the three EFTA States on 1 December 2021

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 48 (**Figure 8**). This reflects a decrease of three since the previous Scoreboard in December 2020⁶.

All three Member States 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 since the last Scoreboard in December 2020. Iceland decreased from 23 to 21, Liechtenstein from three to two, and Norway from 26 to 25.

⁶ The comparison here is made with the situation on 1 December 2020 (Scoreboard 47) as these are the figures last officially reported by the European Commission.

The number of infringement proceedings stemming from complaint cases also decreased slightly from 16 to 14 since the Scoreboard in December 2020. This figure represents 29% of all pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Broken down by Member State, 10 of these cases relate 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.

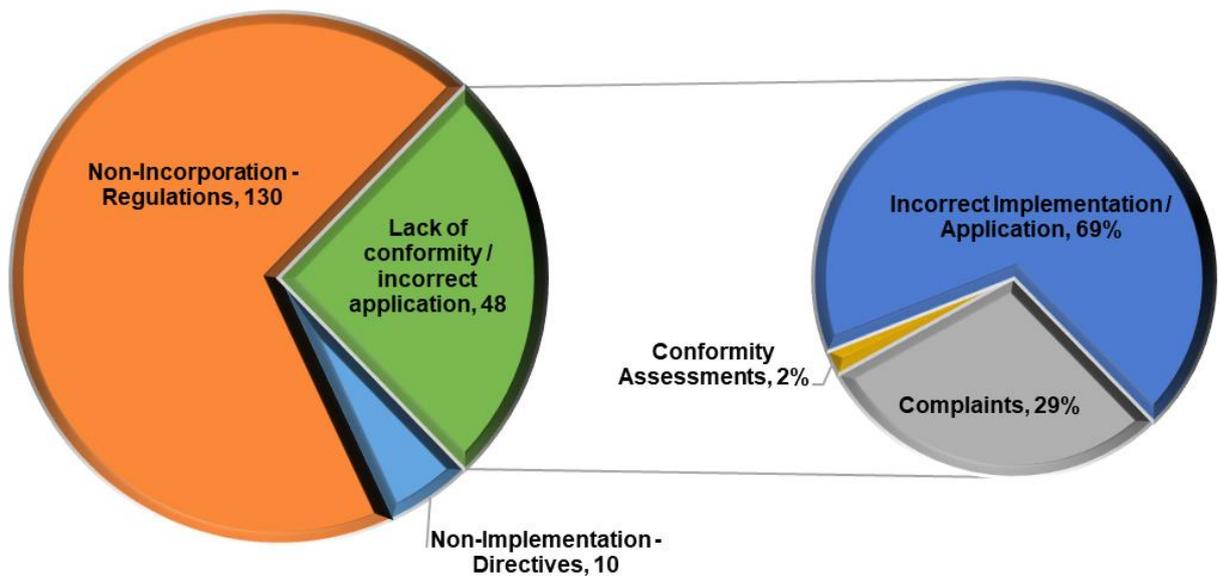


Figure 8: Infringement proceedings due to lack of conformity with or incorrect application of Internal Market rules

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 2021 divided by sector

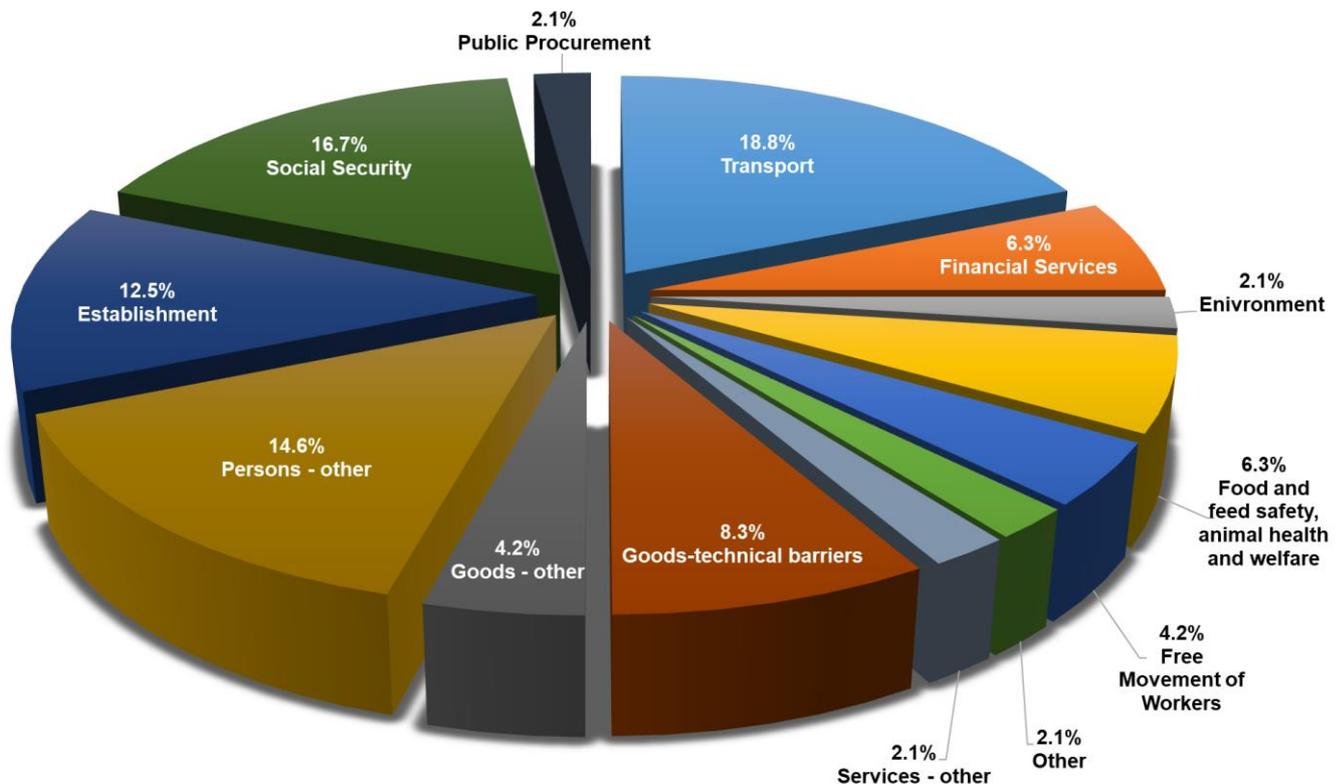


Figure 9: Pending infringement proceedings as at 1 December 2021

The fields of Transport, Social Security, Persons-other, Establishment, and Goods - TBT, 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 71% of the infringement proceedings (**Figure 9**).

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 10**), 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 44.8 months.

EFTA State	Case	Duration in months
Liechtenstein	Complaint regarding establishment of Austrian trained 'Dentist' in Liechtenstein	68
Norway	Complaint against Norway concerning the temporary import of foreign-registered rental cars	61
Liechtenstein	Liechtenstein Trade Act and the Services Directive	57
Norway	Conformity assessment of national measures implementing Directive 2005/60/EC (Third Anti-Money Laundering Directive) in Norway	55
Norway	Implementation of Directive on ambient air quality / Complaint regarding ambient air quality	54
Iceland	Conformity assessment of national measures implementing Directive 2002/92/EC (insurance mediation) in Iceland	50
Norway	Construction of an underground parking and the award of a concession for its operation	31
Iceland	Complaint against Iceland concerning imports of raw meat & Own initiative case concerning requirements imposed by Iceland on imports of egg and dairy products	31
Iceland	CoA Directive 2000/30/EC on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community	3
Iceland	Checks on transport of dangerous goods by road under Directive 95/50/EC	3

Figure 10: 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, the average time that had lapsed since the court judgment was 33.5 months (see **Figure 11** for details).

EFTA State	Case	Duration in months
Norway	Incorrect implementation of Directive 2000/59 on port reception facilities	57
Norway	Own initiative case concerning EEA nationality and residence requirements in Norway	4

Figure 11: Ongoing cases concerning lack of conformity with or incorrect application of Internal Market rules referred to the EFTA Court which on 1 December 2021 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 three cases since the December 2020 Scoreboard⁶, however, since the time of the previous Scoreboard in June 2021, this increased again, from 9 to 10. (Figure 12).

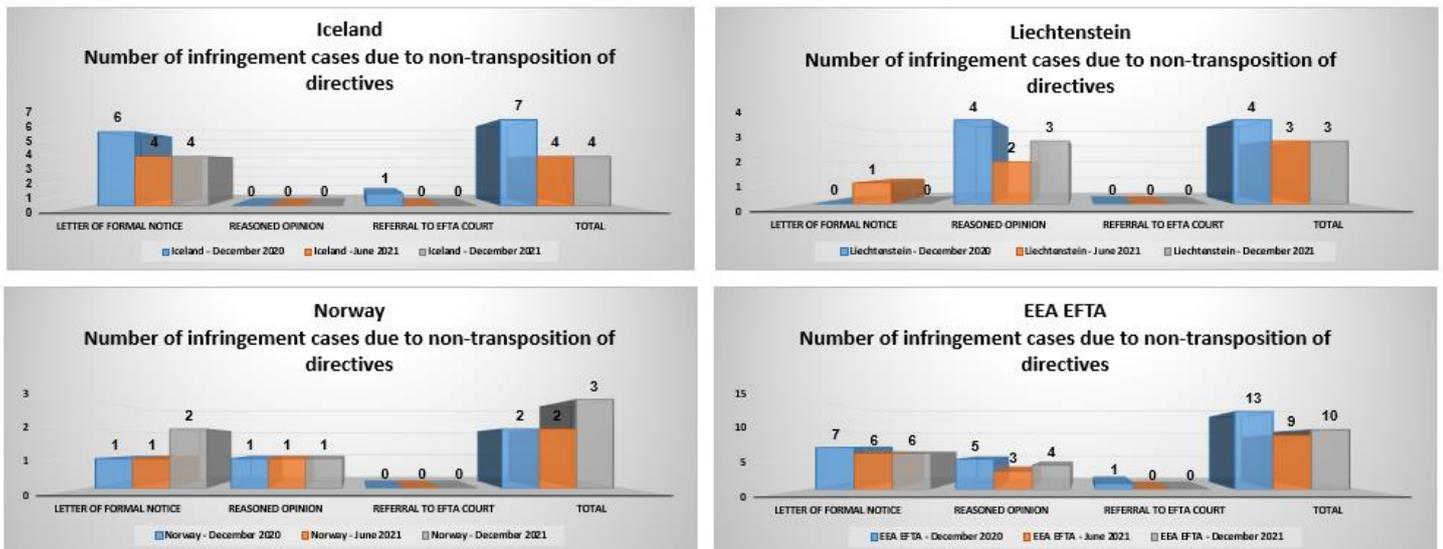


Figure 12: The number of infringement cases against the EFTA States due to non-transposition of directives

3.4 Infringement proceedings concerning failure to transpose regulations into national law

Of the 188 infringement cases pending on 1 December 2021, 69% concerned the late transposition of regulations. For Iceland, this means 108 cases, an increase of 14 cases since the time of the December 2020 Scoreboard⁶, however, a decrease of 36 cases since the June 2021 Scoreboard when Iceland’s infringement cases concerning the late transposition of regulations stood at an all-time high. For Norway, the figure has significantly increased from seven to 22 cases (Figure 13).

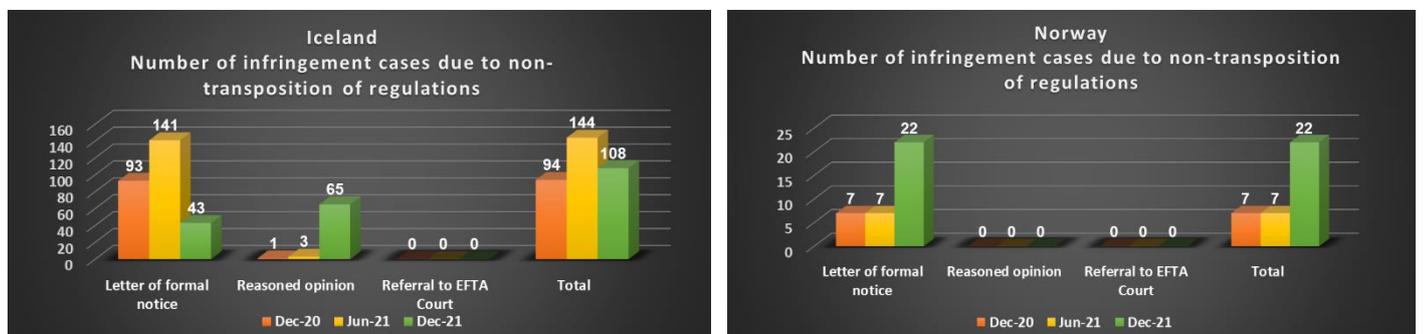


Figure 13: The number of infringement cases against the EFTA States due to non-transposition of regulations.

Overall, whilst the total number of infringement cases concerning the non-transposition of directives and regulations increased by 26 cases since the December 2020 Scoreboard, standing at a total of 140 cases, this is a decrease of 20 cases, down from 160, since the June 2021 Scoreboard.

4 Draft Technical Regulations

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

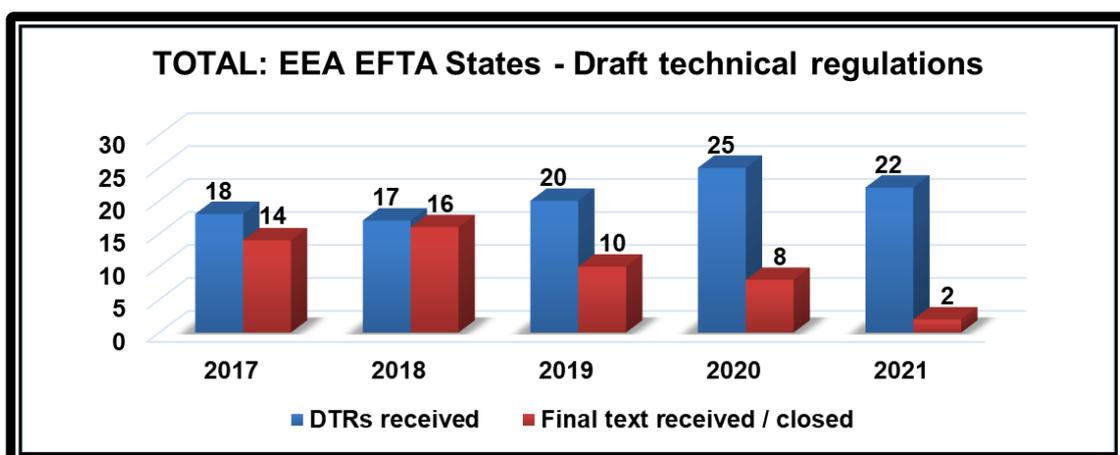
The Directive on Draft Technical Regulations establishes a system for information sharing when EEA States intend to adopt national legislation containing technical rules. This is to avoid restrictions on the free movement of goods and information society services within the EEA. Under the Directive, 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 2021 a total of 22 draft technical regulations were received from the EEA States (**Figure 14**)

- Iceland – 6 notifications
- Liechtenstein – 0 notifications
- Norway – 16 notifications



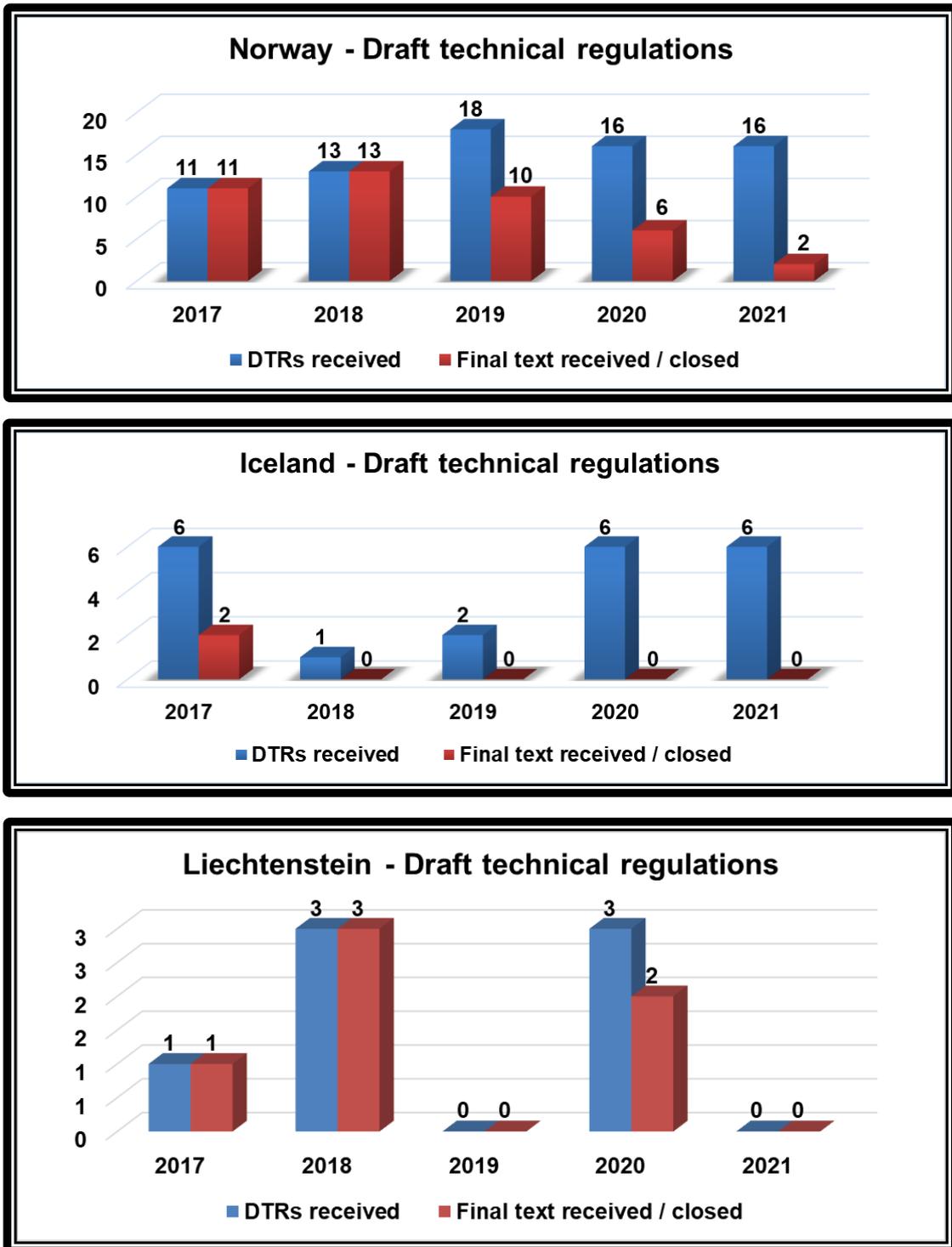


Figure 14: Draft Technical Regulations and final texts received from EFTA States