

# INTERNAL MARKET SCOREBOARD

*November 2022*

**No. 50**

EEA EFTA STATES

## 50<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 31 May 2022)*

- The average transposition deficit for directives for the EEA EFTA States increased to 1.3%, since the last Scoreboard in December 2021 – the highest since November 2014, with all three Member States increasing the number of overdue directives. Furthermore, all three Member States are now above the 0.5% Scoreboard benchmark<sup>1</sup>. All three of them 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 December 2021 from 1.6% to 2%, with the number of overdue directives by Iceland, increasing from 12 to 15. This is the highest number of outstanding directives by Iceland since November 2017. 80% of these directives fall in the fields of environment and financial services. Five 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 increased from 137 to 191, resulting in a transposition deficit for regulations of 5.2%, up from 3.9% at the time of the Scoreboard in December 2021. 87 of these outstanding regulations fall in the field of food & feed safety, animal health & welfare, with a further 72 cases in the financial services sector.

- **Norway** now has increased its number of overdue directives from six to 10 since the December 2021 Scoreboard, meaning an increase in its transposition deficit from 0.8% to 1.3% - 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 increased from 49 to 69, resulting in a transposition deficit for regulations of 1.9%, up from 1.4% at the time of the December 2021 Scoreboard. This is the highest number of outstanding regulations ever recorded in the Scoreboards for Norway. 55% of these outstanding regulations fall in the field of food & feed safety, animal health & welfare.

<sup>1</sup> 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.

- **Liechtenstein's** deficit at 0.7%, up from 0.4% at the time of the December 2021 Scoreboard shows an increase from three to five directives outstanding. Two of these however, relating to mutual recognition of professionals, and environment respectively, have been outstanding for more than two years.
- The Authority has seen a decrease in the total number of infringement cases at 160 (down from 188 since the December 2021 Scoreboard), with all three EEA EFTA Members States reducing its overall number of infringement cases, 117 cases relate to Iceland, a decrease of 16 cases since the December 2021 Scoreboard, four relate to Liechtenstein, one less than the time of the December 2021 Scoreboard, and Norway decreased from 50 to 39.
- The number of EFTA Court referrals however increased significantly to 40, up from three at the time of the December 2021 Scoreboard. 38 of these relate to Iceland, and two to Norway.

Of the above-mentioned total number of pending infringement cases (160), 108 of these cases, and making up 68% of all infringement cases, concern the late transposition of directives or regulations, while 52 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 this Scoreboard, the average time that had lapsed since the court judgment was 39.5 months, or more than three years.

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 50), reports on the status of the EEA EFTA Member States only, and takes into account all transposition notifications made by 10 June 2022 for directives and regulations with a transposition deadline on or before 31 May 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 records<sup>2</sup>.

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 increased to 1.3%, since the last Scoreboard in December 2021 – the highest since November 2014, with all three Member States increasing the number of overdue directives and all also now above the 0.5% benchmark that the Authority is looking at, in line with the European Commission’s Single Market Act proposed in April 2011<sup>3</sup>. **(Figure 1)**

40% of each of the EEA EFTA Member State’s outstanding directives fall in the environment sector with a further 40% relating to financial services for both Norway and Iceland. All three Member States have at least one directive which has been outstanding for more than two years.

Iceland’s transposition deficit for directives increased since the December 2021 Scoreboard from 1.6% to 2%, with an increase in the number of directives from 12 to 15, five of which, all in the field of financial services, have been outstanding for more than two years.

Norway has increased its transposition deficit from 0.8% to 1.3% since the time of the previous Scoreboard in December 2021, with 10 directives not having been fully

<sup>2</sup> The findings regarding the transposition deficits of the EFTA States take into account the 761 internal market relevant directives that were incorporated into the EEA Agreement and were in force on 31 May 2022.

transposed on time. One of these directives, in the social security sector, has been outstanding for more than two years.

Liechtenstein’s transposition deficit increased from 0.4% to 0.7%, reflecting the fact that five directives still had not been fully transposed on time, two of which have been outstanding for more than two years.

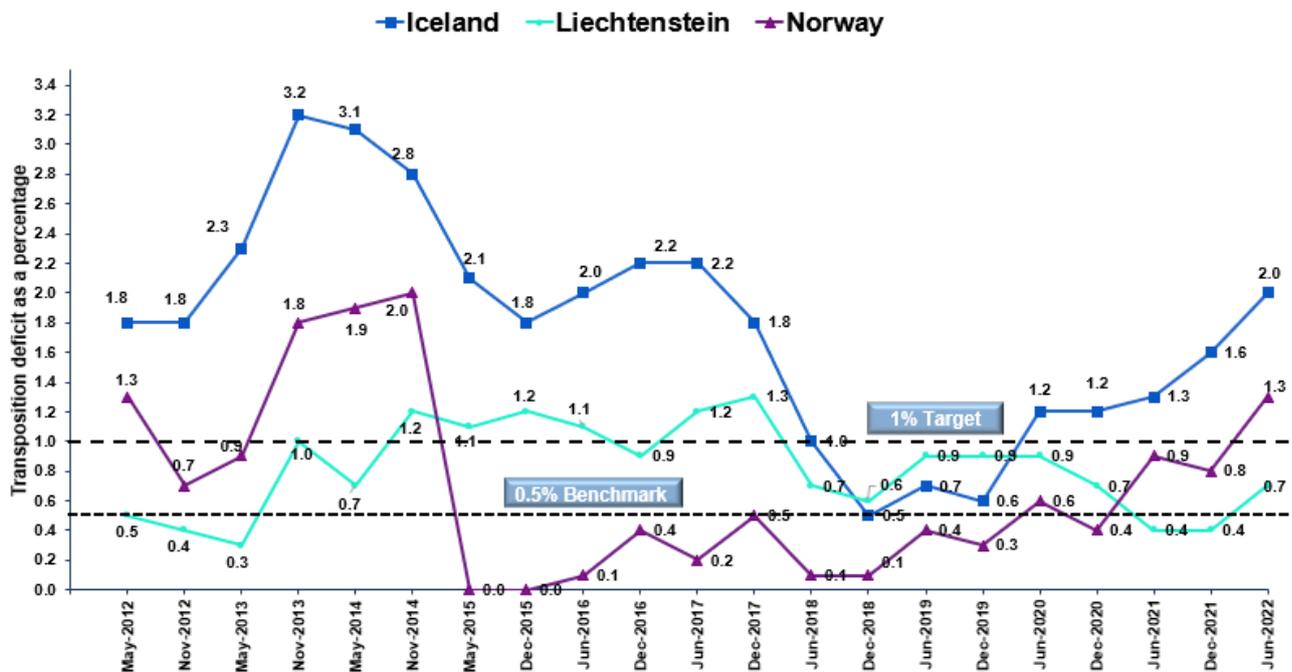


Figure 1: EFTA States’ transposition deficit over the past 10 years

Transposition deficit for directives that should have been transposed on or before 31 May 2022

## 1.2 Incompleteness rate of the Internal Market in the EFTA States with regard to directives<sup>4</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, 3% of the directives applicable in the EFTA States on 31 May 2022 had not been transposed by at least one of the three EFTA States (**Figure 2**). The incompleteness rate of 3% translates into 23 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 an increase of six, from 17 directives at the time of the last Scoreboard in December 2021. Three of these directives are outstanding by both Iceland and Norway, in the

<sup>4</sup> Formerly referred to as “fragmentation factor”.

fields of environment and company law, and two, in the environment and financial services sectors are outstanding by all three EEA EFTA Member States.



**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)

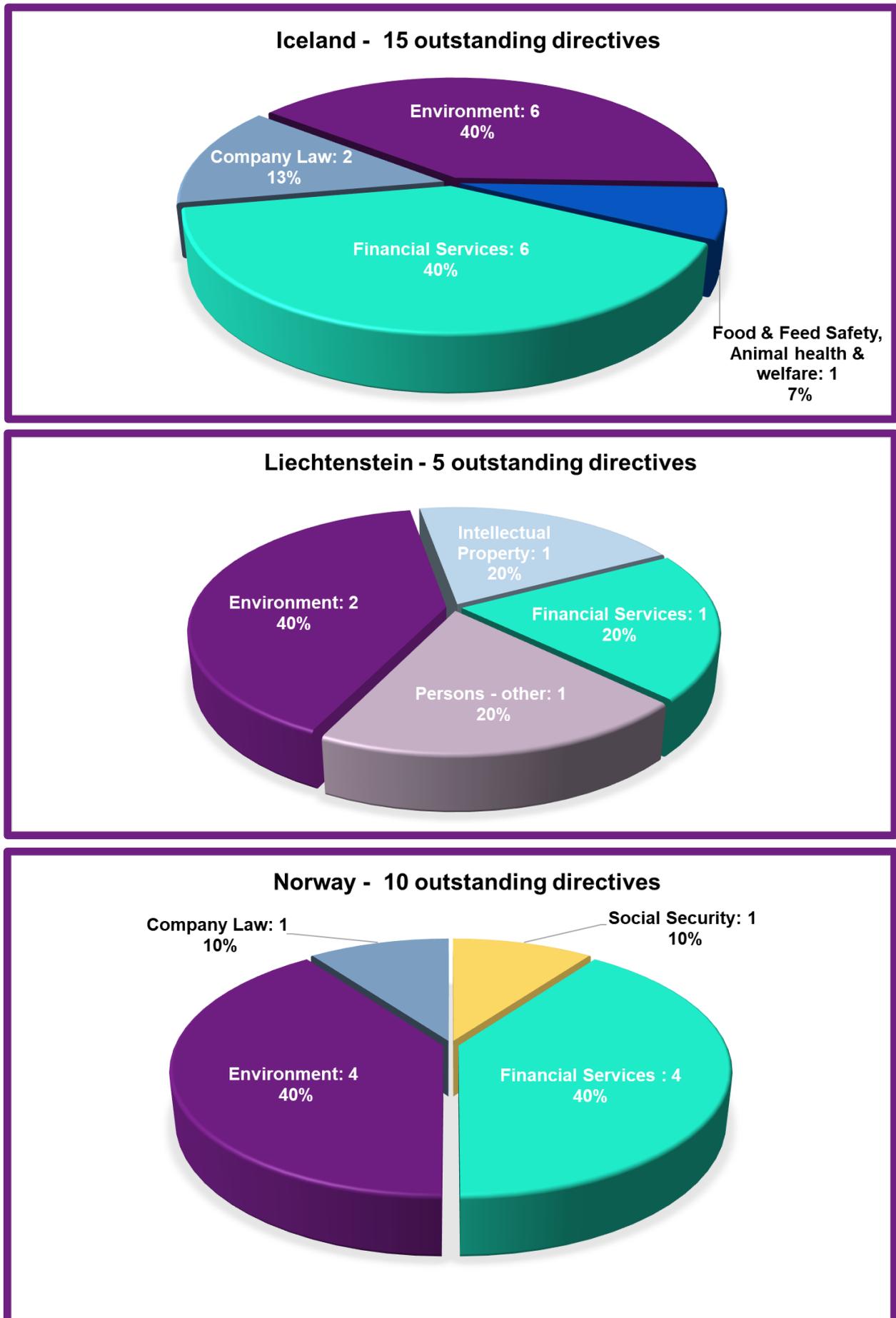


Figure 4: Outstanding directives broken down by sector in each EFTA State as at 31 May 2022

## 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 31 May 2022, 3.712 internal market relevant regulations incorporated into the EEA Agreement were in force. Of these, there were 191 regulations that Iceland had not notified as having been incorporated into its national law. This is a 40% increase in outstanding regulations, from 137 at the time of the last Scoreboard in December 2021, representing a transposition deficit of 5.2%. Over 80% of these outstanding regulations fall in the food & feed safety, animal health & welfare, and financial services sectors.

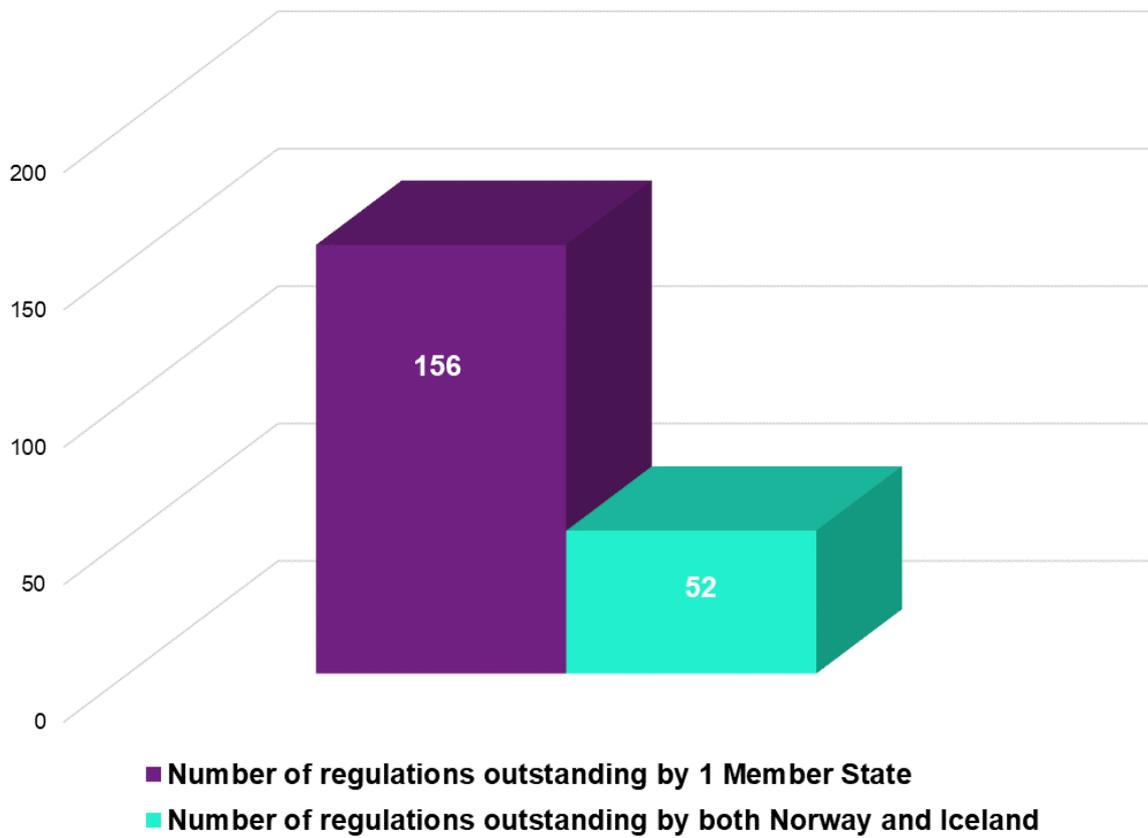
For Norway, the number of regulations not notified as incorporated into national law increased from 49 to 69. This represents a transposition deficit for regulations of 1.9% and is the highest number of outstanding regulations ever recorded in the Scoreboards for Norway. Nearly 55% of these outstanding regulations fall in the field of food & feed safety, animal health & welfare and nearly 20% in the financial services sector.

### 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 3.712 regulations incorporated into the EEA Agreement had not been transposed by both Iceland and Norway. The figure translates into 208 regulations (**Figure 5**) which had not achieved their full effect in the EFTA States. Iceland has not transposed 191 regulations and 69 have not been transposed by Norway. 52 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.

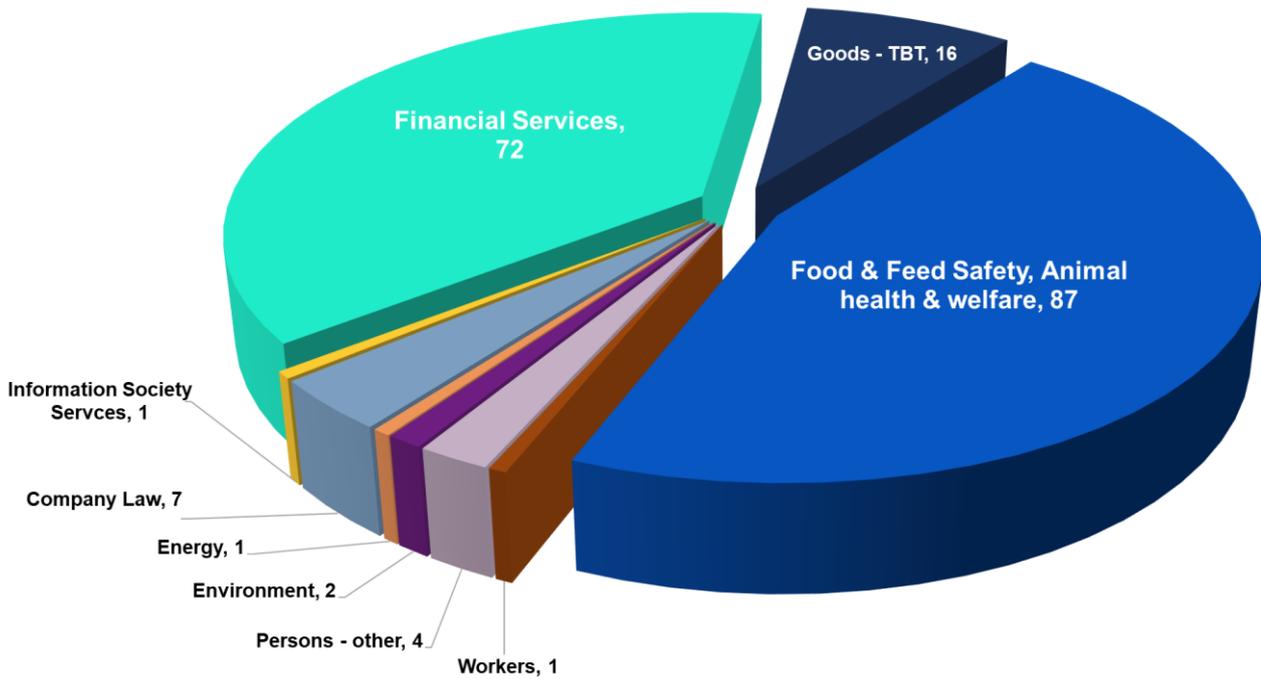
The most incomplete sectors in Iceland are in the areas of food & feed safety, animal health & welfare (87 cases) and financial services (72 cases). In Norway, 55% of its outstanding regulations also fall in the food & feed safety, animal health & welfare sector. (**Figure 6**).

### Total number of regulations not transposed

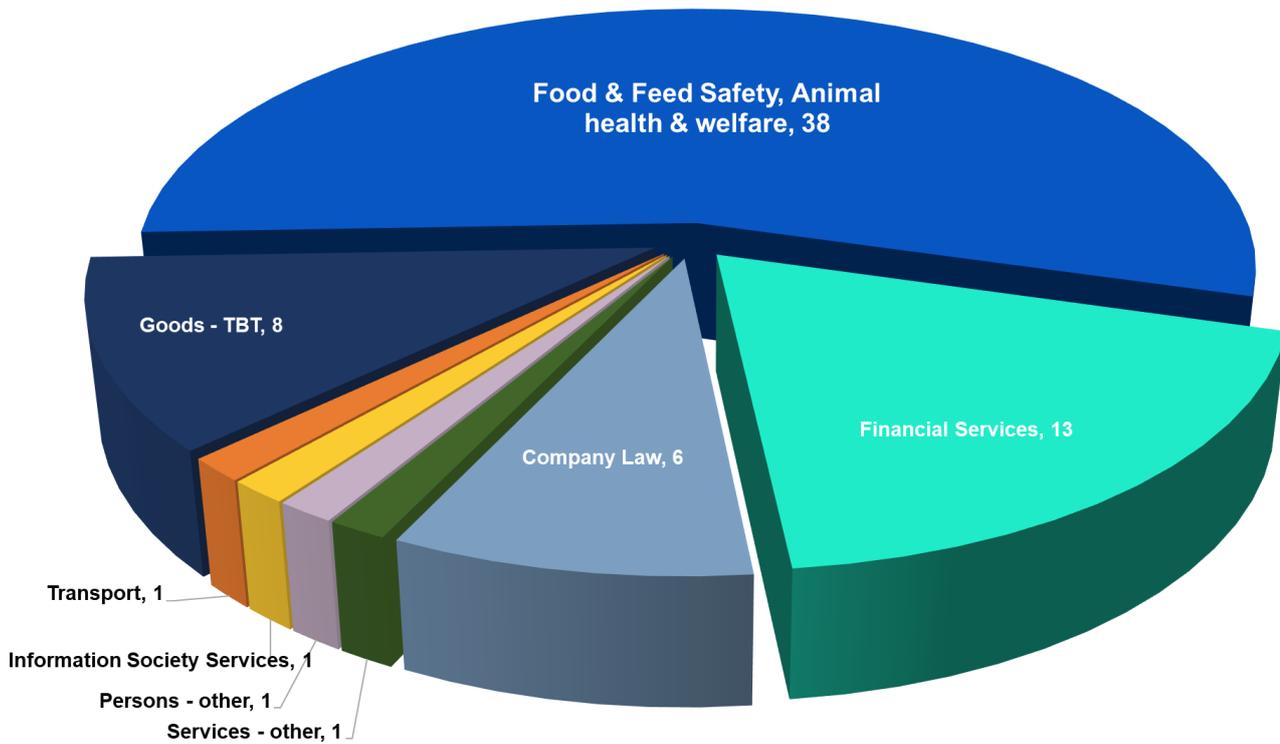


**Figure 5: Number of regulations outstanding by one or more Member State**

**ICELAND - 191 OUTSTANDING REGULATIONS**



**NORWAY - 69 OUTSTANDING REGULATIONS**



**Figure 6: Outstanding regulations broken down by sector in each EFTA State as at 31 May 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 Proceedings<sup>5</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 A reduction in the total number of infringement proceedings

As at 1 June 2022, the Authority was pursuing a total of 160 infringement cases against the EFTA States in the internal market field (**Figure 7**)<sup>6</sup>. This is 28 cases less than at the time of the Scoreboard in December 2021 with all three EEA EFTA Members States reducing its overall number of infringement cases. 117 cases relate to Iceland, a decrease of 16 cases since the December 2021 Scoreboard, four relate to Liechtenstein, one less than the time of the December 2021 Scoreboard, and Norway decreased from 50 to 39.

- The number of EFTA Court referrals however increased significantly from three to 40. 38 of these relate to Iceland, and two to Norway.

<sup>5</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>6</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.

Of the 160 pending infringement cases, an increase to 52 cases, concerned the incorrect implementation or application of Internal Market rules - see chapter 3.2. There was also an increase to 16 pending infringements concerning the late transposition of directives (see chapter 3.3), however, cases concerning the late transposition of regulations (see chapter 3.4) saw a decrease from 130, down to 92 since the Scoreboard in December 2021.

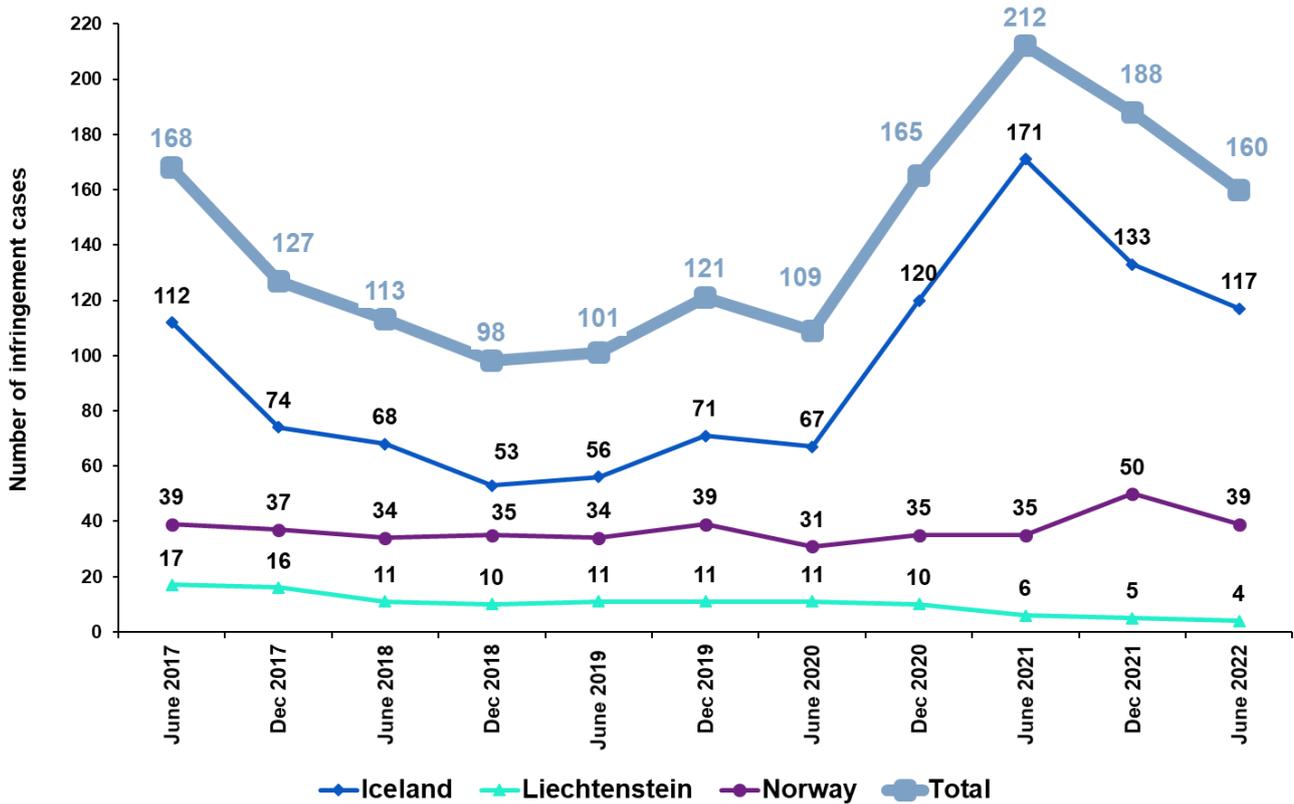


Figure 7: Total number of infringement cases

Total number of all open infringement proceedings against the three EFTA States on 1 June 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 8). This reflects an increase of four since the previous Scoreboard in December 2021.

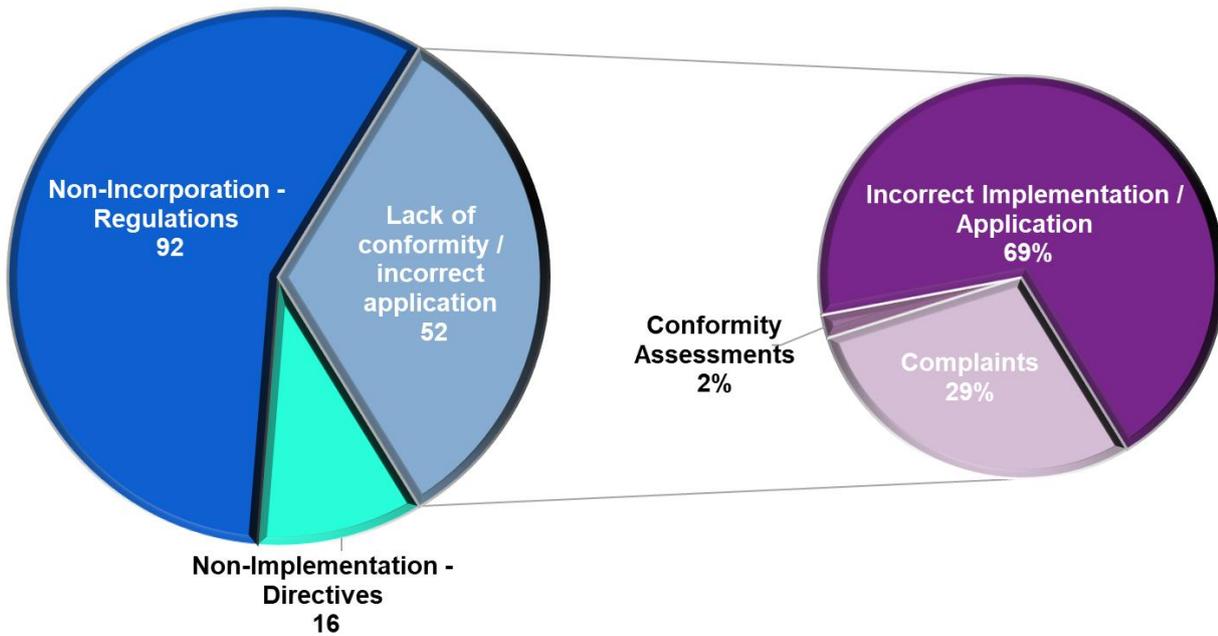


Figure 8: Infringement proceedings against the three EEA EFTA States due to lack of conformity with or incorrect application of Internal Market rules on 1 June 2022

Concerning 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 2021, both Norway and Liechtenstein decreased by one case each, Norway from 25 to 24 cases, and Liechtenstein from two to one case. Iceland increased its number of cases from 21 to 27 (Figure 9).

The number of infringement proceedings stemming from complaint cases also rose by one case to 15 since the Scoreboard in December 2021. 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 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.

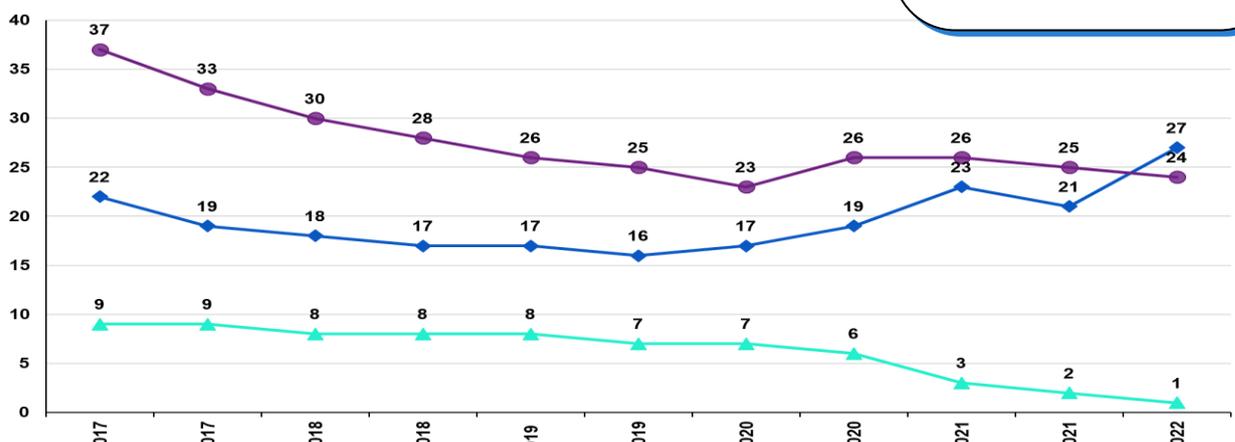


Figure 9: Infringement proceedings due to lack of conformity with or incorrect application of Internal Market rules

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 60% of the infringement proceedings (**Figure 10**).

### 3.2.2 Breakdown per sector

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

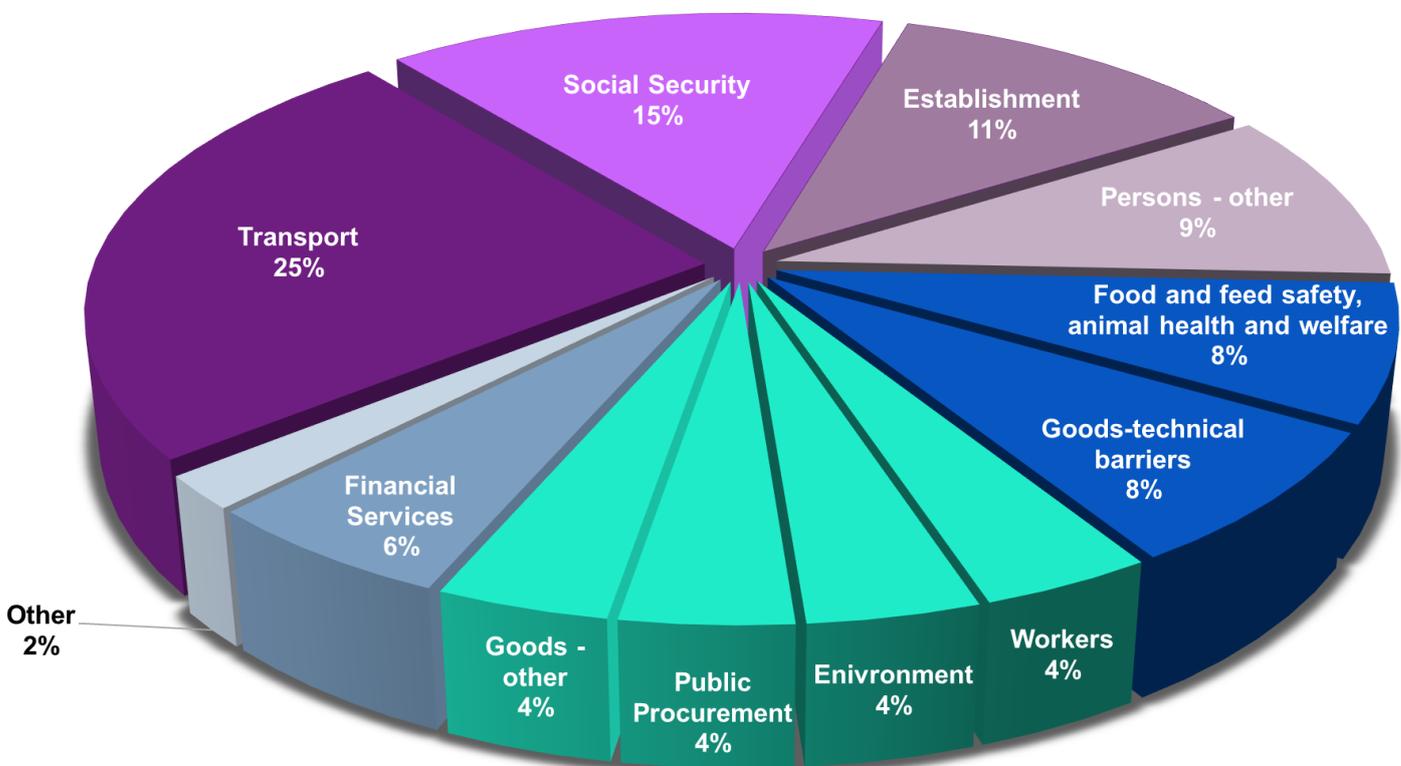


Figure 10: Pending infringement proceedings as at 1 June 2022

### 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 11**), 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 remained at 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 11: 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 39.5 months (**Figure 12**).

EFTA State	Case	Duration in months
Norway	Incorrect implementation of Directive 2000/59 on port reception facilities	69
Norway	Own initiative case concerning EEA nationality and residence requirements in Norway	10

**Figure 12: Ongoing cases concerning lack of conformity with or incorrect application of Internal Market rules referred to the EFTA Court which on 1 June 2022 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 six cases since the December 2021 Scoreboard, from 10 to 16. **(Figure 13).**

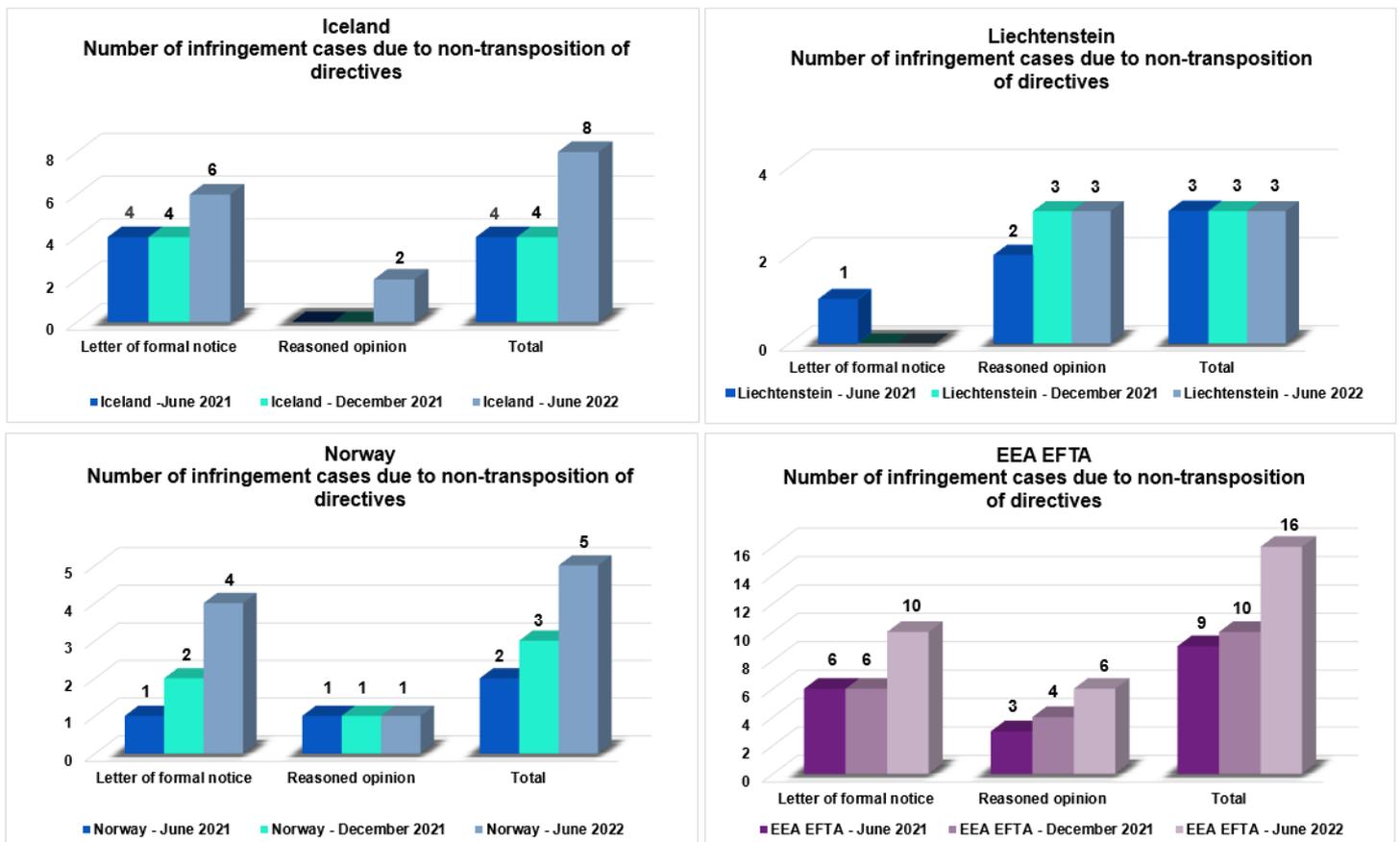


Figure 13: The number of infringement cases against the EFTA States due to non-transposition of directives

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

Of the 160 infringement cases pending on 1 June 2022, 58% concerned the late transposition of regulations. For Iceland, this means 82 cases, a decrease of 26 cases since the time of the December 2021 Scoreboard, however of these 82 infringements regarding regulations, a total of 37 cases were referred to the EFTA Court.<sup>7</sup> For Norway, the figure concerning the late transposition of regulations has significantly decreased from 22 cases to 10 **(Figure 14).**

Overall, the total number of infringement cases concerning the non-transposition of directives and regulations decreased by 32 cases since the December 2021

<sup>7</sup> These 37 cases relate to acts in the field of financial services which were referred to the EFTA Court bundled in three separate cases.

Scoreboard, standing at a total of 108 cases, however, never have so many cases been reported as having been referred to the EFTA Court.

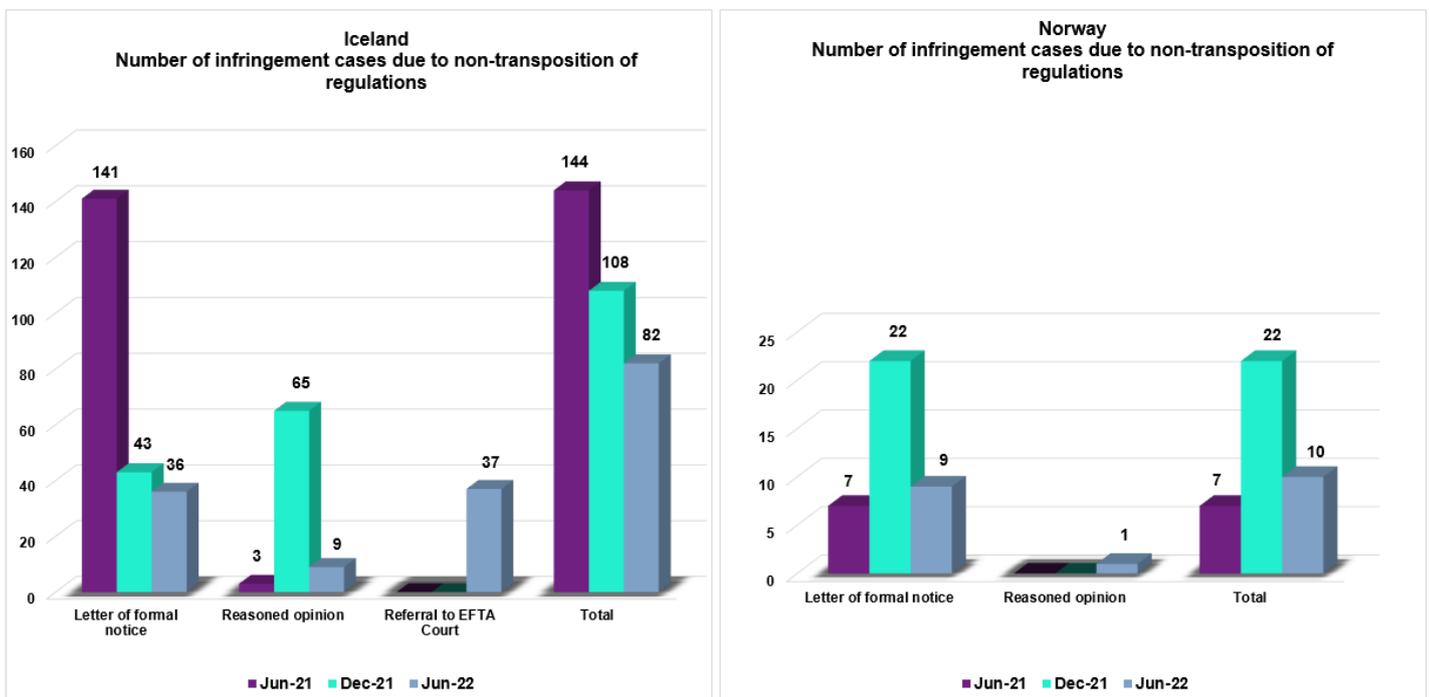


Figure 14: The number of infringement cases against the EFTA States due to non-transposition of regulations.

#### 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 2022 (as at June), a total of nine draft technical regulations were received from the EEA States (Iceland: 2, Liechtenstein: 1. Norway: 7) (Figure 15). A number of final texts are still awaited from both Norway and Iceland.

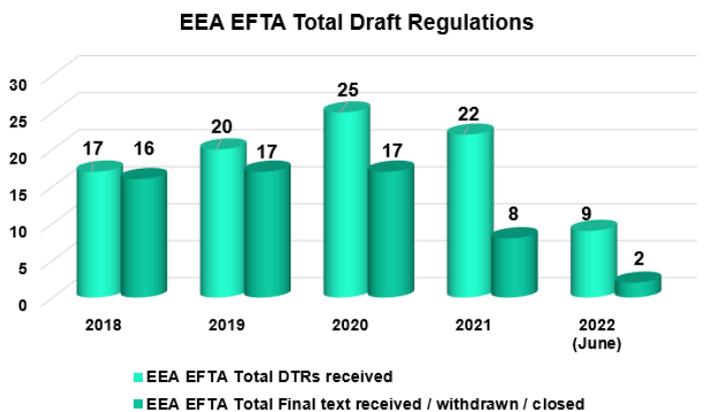
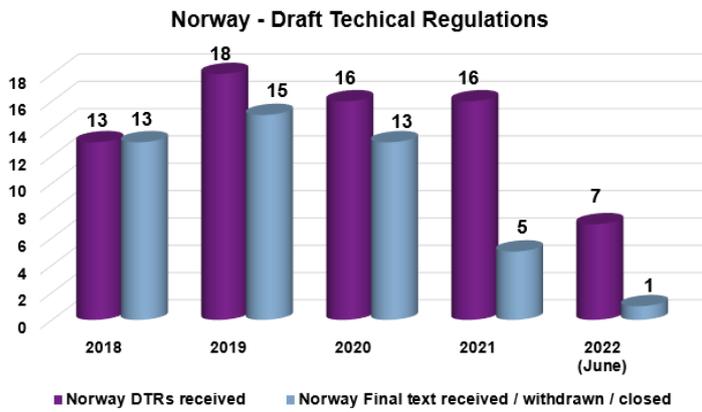


Figure 15: Draft Technical Regulations and final texts received from EFTA States



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