



INTERNAL MARKET SCOREBOARD



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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 2018)

- Iceland has shown a significant improvement in its performance, managing to reduce its transposition deficit for directives to 1%. This represents the lowest figure for Iceland since 2010, and reflects a total of eight directives overdue. The number of overdue regulations has also been reduced since the last Scoreboard, with a transposition deficit for regulations of 0.8%, down from 1.2%. Iceland is to be commended for this turn around and is encouraged to maintain its efforts to implement legislation in a timely manner.
- Norway has made strong progress in the timely implementation of directives, with just one directive which had not been fully transposed on time. This translates to a transposition deficit for directives of 0.1%. However, the number of regulations which had not been fully transposed into national law on time has significantly increased from four to 33, resulting in a transposition deficit for regulations of 1.1%.
- Liechtenstein has made a substantial improvement to its deficit, reducing the number of outstanding directives to six, thereby decreasing the deficit from 1.3% to 0.7%. Four of these have been outstanding for two years or more, an increase of one since the last Scoreboard in December 2017.
- The Authority has seen a further decrease in the total number of infringement cases down from 127 to 113. 57 of these cases concern the late transposition of directives or regulations, while 56 concern the incorrect implementation and application of EEA law.
- The EFTA States must increase their efforts to ensure timely compliance with EFTA Court judgments.

The European Commission has taken the decision to publish only one yearly Internal Market Scoreboard taking stock of the situation in November of each year. The EFTA Surveillance Authority will continue to publish two Internal Market Scoreboards per year. One will follow the European Commission's practice and will look at the situation in November of each year and will include a comparison of the EFTA States' performance with that of the EU Member States. The other will look at the situation in May of each year but will only include figures for the EFTA States.

This Internal Market Scoreboard reports on the status of 31 May 2018 and will therefore only report on the performance of the EFTA States.

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. From 2009, ESA used the interim target of 1% set by the European Council in 2007 as a benchmark. Now, the Authority is looking towards a benchmark of 0.5% in line with the European Commission's Single Market Act proposed in April 2011.

1.1 The EFTA States' performance

The average transposition deficit for directives for the EFTA States stood at 0.6%. This figure reflects the significant efforts by each of the EFTA States to improve their performance.

Iceland's transposition deficit for directives significantly decreased from 1.8% in December 2017 to 1%. This corresponds to eight directives not having been fully transposed, seven less than was observed in the last Scoreboard.

Norway reduced its transposition deficit to 0.1%, down from 0.5% at the time of the previous Scoreboard in December 2017. Just one directive had not been fully transposed on time.

Liechtenstein saw a significant decrease in its transposition deficit since December 2017, dropping from 1.3% to 0.7%. This reflects that there were six directives, five less than at the last Scoreboard, that had not been fully transposed on time.

¹ The findings regarding the transposition deficits of the EFTA States take into account the 836 directives that were incorporated into the EEA Agreement and were in force on 31 May 2017.

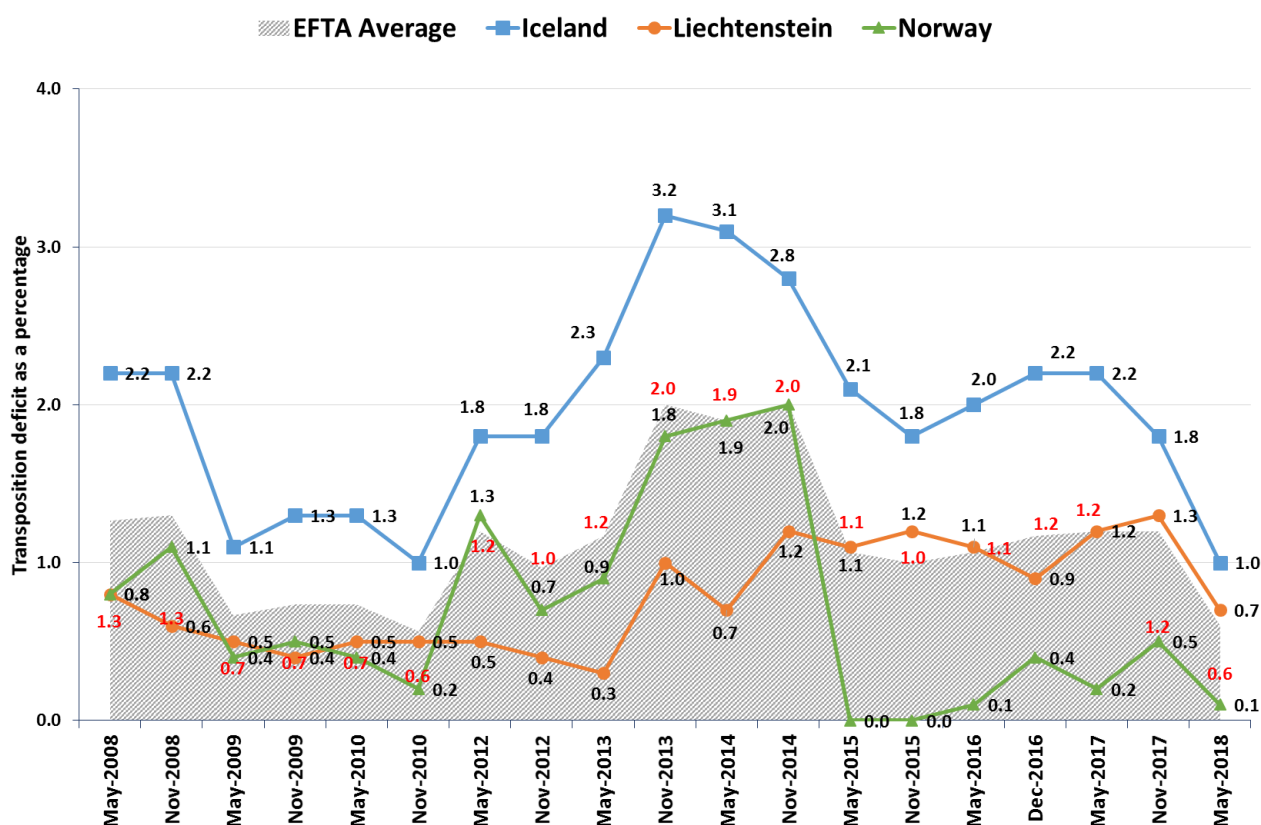


Figure 1: EFTA States' transposition deficit over the past 10 years

Transposition deficit as at 31 May 2018 for directives
that should have been transposed on or before 31 May 2018

1.2 Incompleteness rate of the Internal Market in the EFTA States with regard to directives²

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 31 May 2018 had not been transposed by at least one of the three EFTA States (**Figure 2**). The incompleteness rate of 2% translates into 15 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 reduction from 24 directives at the time of the last Scoreboard in December 2017 and the first time since 2011 that the percentage rate has fallen below 3%.

² Formerly referred to as "fragmentation factor".

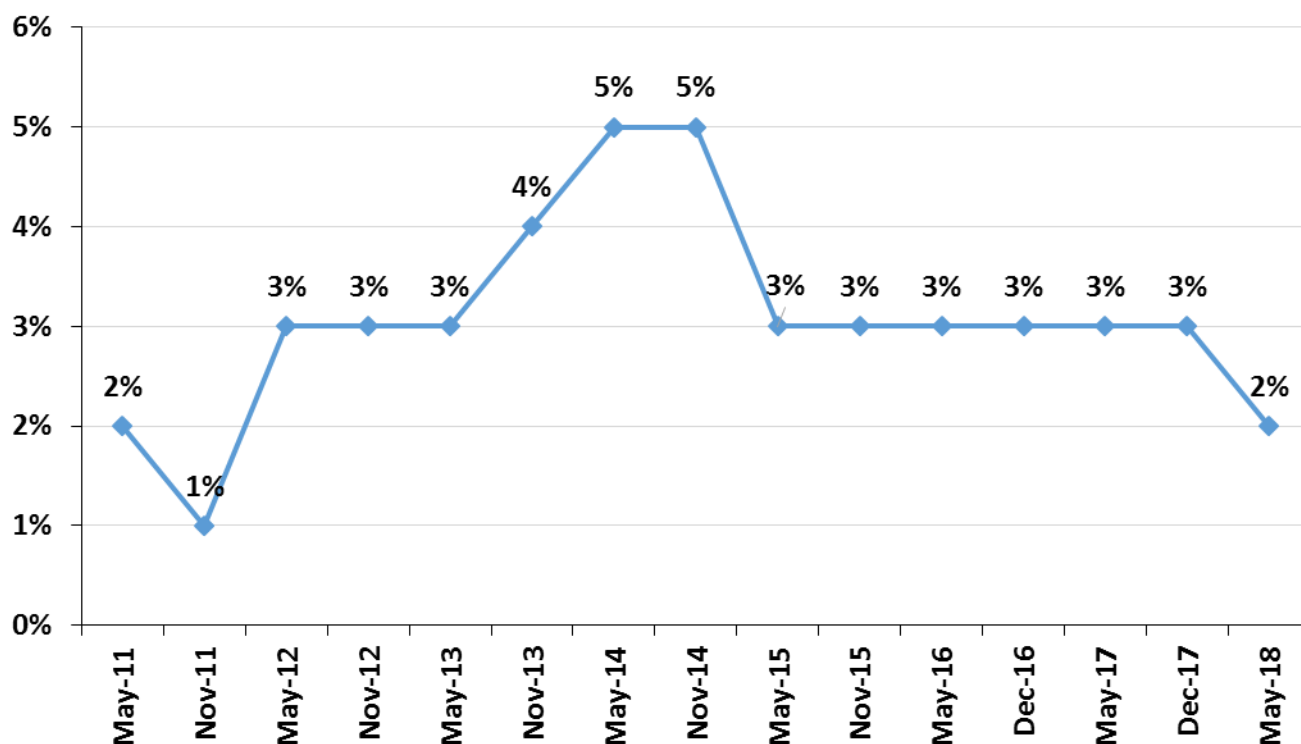


Figure 2: Incompleteness rate in the EFTA States (Directives)

The incompleteness rate records the percentage of the outstanding directives which one or more of the three EFTA States have failed to transpose with the consequence that the Internal Market is not complete in the EFTA States in the areas covered by those directives.

When the transposition delays are broken down by sector, the pattern of implementation varies between the EFTA States. (**Figure 3**).

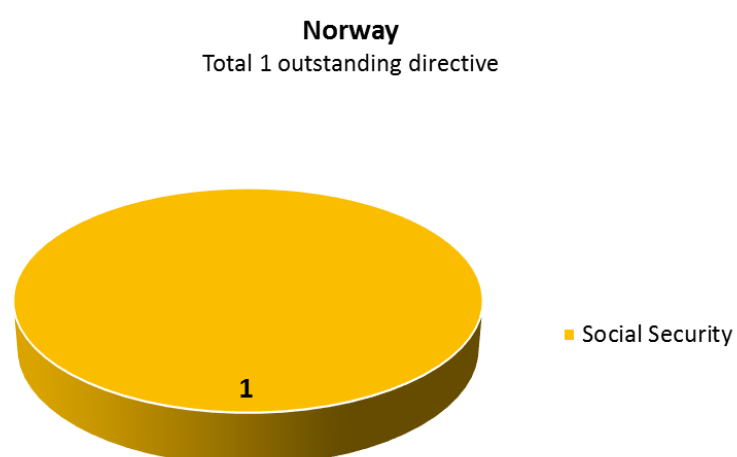
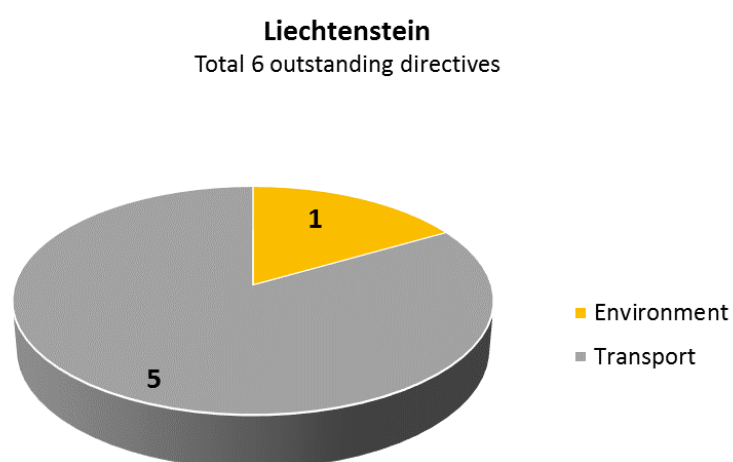
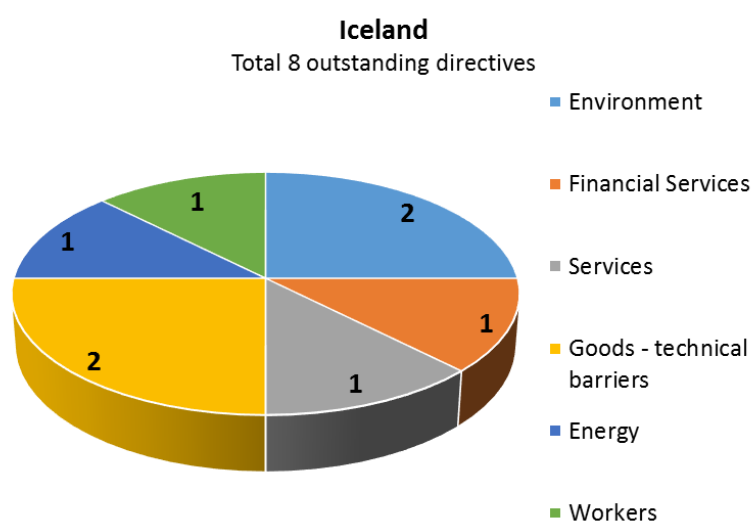


Figure 3: Outstanding directives broken down by sector in each EFTA State

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 31 May 2018, 2996 regulations incorporated into the EEA Agreement were in force. Of these, there were 25 regulations that Iceland had not notified as incorporated into its national law. This improved performance, down from 35 outstanding regulations at the time of the last Scoreboard in December 2017, reflects a further decrease and represents a transposition deficit of 0.8%.

For Norway, the number of regulations not notified as incorporated into national law increased substantially by 29, meaning that there were 33 outstanding regulations. This represents a transposition deficit of 1.1%, a significant increase since the previous Scoreboard in December 2017.

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, 2% of the 2996 regulations incorporated into the EEA Agreement on 31 May 2018 had not been transposed by both Iceland and Norway. The figure translates into 54 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 25 regulations and 33 have not been transposed by Norway.

With regard to regulations, the most incomplete sectors in Iceland are in the areas of goods and financial services. In Norway, the most incomplete sector is food and feed, animal health and welfare. (**Figure 4**).

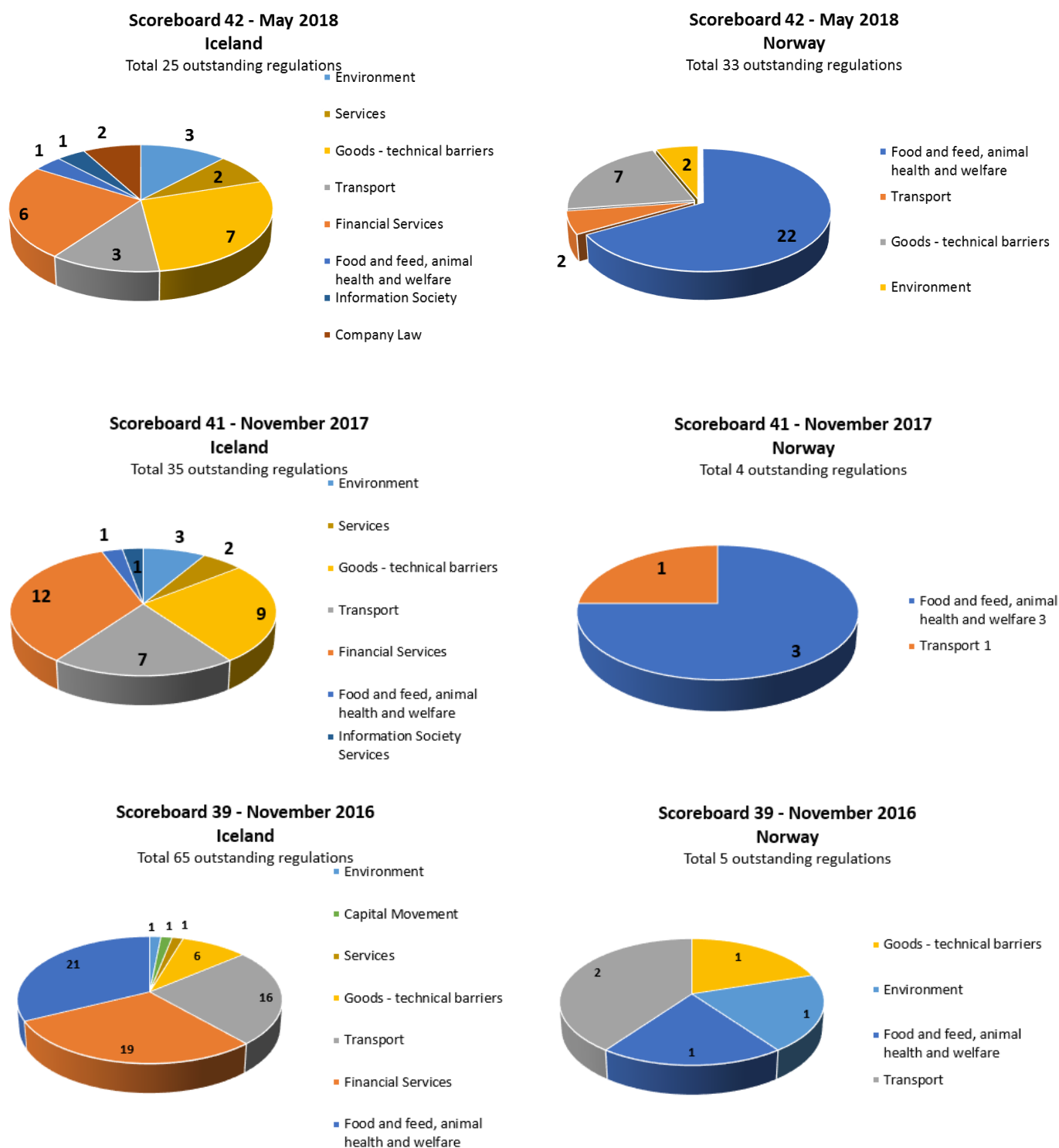


Figure 4: Outstanding regulations as at May 31 2018

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 Proceedings³

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 chapter five.

3.1 Decrease in the total number of infringement proceedings

As at 1 June 2018, the Authority was pursuing a total of 113 infringement cases against the EFTA States in the internal market field (**Figure 5**)⁴. This is 14 cases less than at the time of the last Scoreboard in December 2017.

³ 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).

⁴ A pending infringement case is defined as a case where at least a letter of formal notice has been sent to the State concerned.

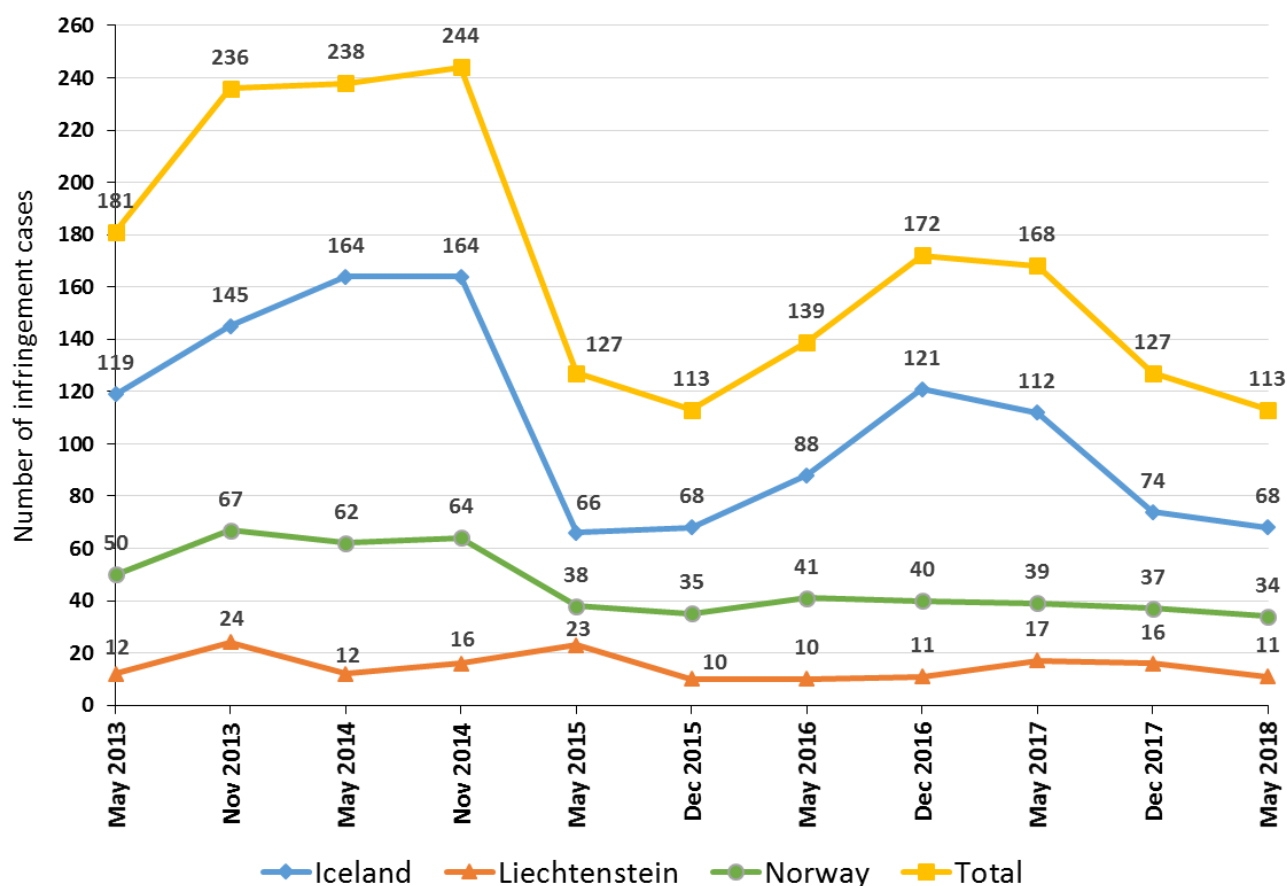


Figure 5: Total number of infringement cases

Total number of all open infringement proceedings against the three EFTA States on 1 June 2018.

Of the 113 pending infringement cases, 56 concerned the incorrect implementation or application of Internal Market rules (see chapter 3.2), whereas 16 cases concerned the late transposition of directives (see chapter 3.3) and the remaining 41 cases concerned the late transposition of regulations (see chapter 3.4).

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

3.2.1 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 56. This reflects a decrease of five since the previous Scoreboard in December 2017.

Since this last Scoreboard in December 2017, there has been a slight decrease in the number of infringement cases against all the EFTA States. In Iceland the figure dropped by one from 19 to 18, in Norway from 33 to 30 and in Liechtenstein, from nine to eight.

The number of infringement proceedings stemming from complaint cases dropped by five to 20 since the previous Scoreboard in December 2017.⁵ This figure represents 36% of all pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Broken down by State, 15 of these cases related to Norway, three to Iceland and two to Liechtenstein.

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

The fields of food and feed, animal health and welfare and goods 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 25% of the infringement proceedings (**Figure 6**).

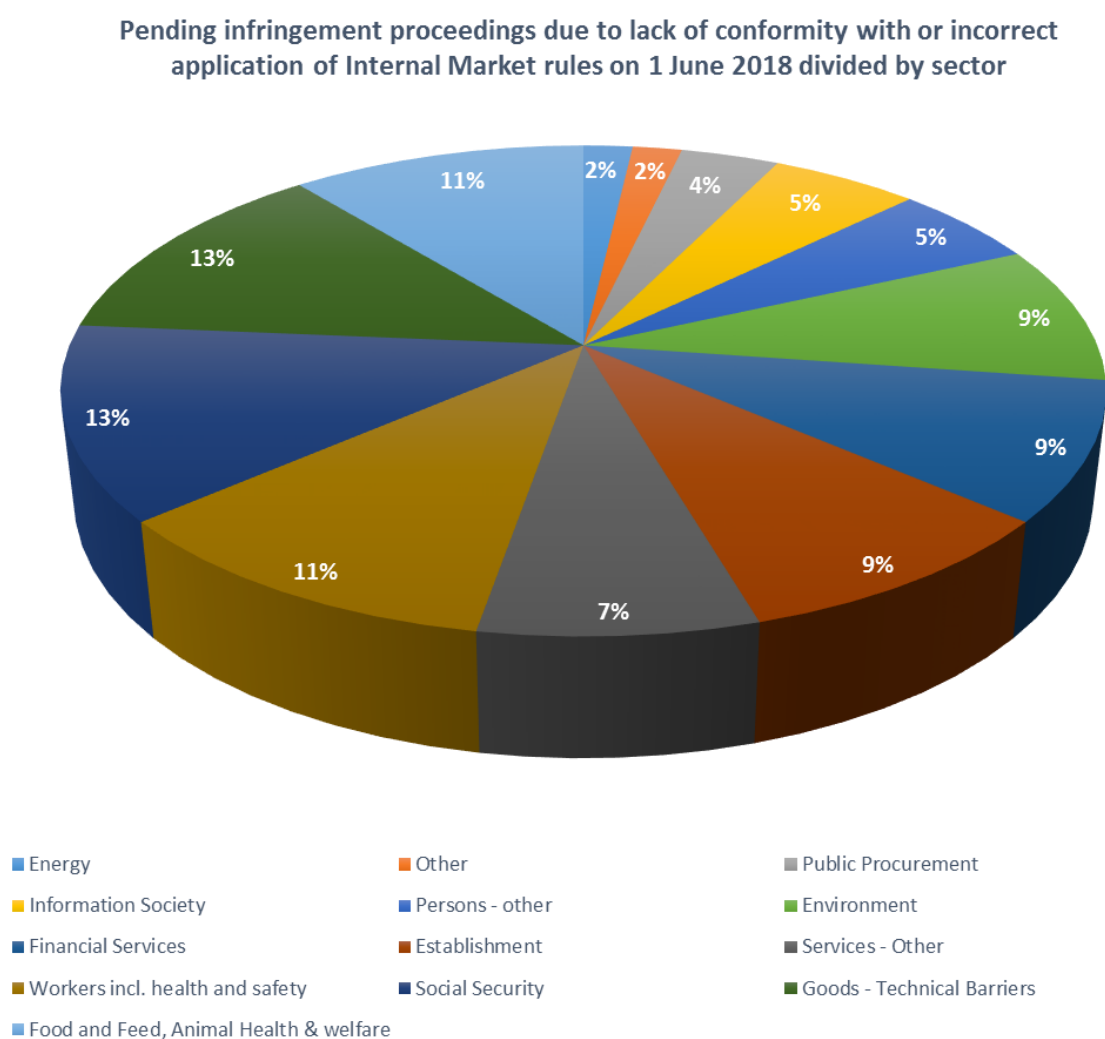


Figure 6: Pending infringement proceedings as at 1 June 2018

⁵ The comparison here is made with the situation on 1 December 2017 (Scoreboard 41) since these are the figures last officially reported by the European Commission.

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 7**), 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 14.7 months. This is two months longer than the comparable figure (12.7 months) from the previous Scoreboard in December 2017.

EFTA State	Case	Duration in months
Iceland	Conformity assessment of national measures implementing Directive 2002/92/EC (insurance mediation)	50
Norway	Ownership restrictions in Financial Services Infrastructure Institutions	35
Iceland	Compliance of the Posting Act with Article 36 EEA and the Posting of Workers Directive 96/71	26
Norway	Access to family benefits in Norway for unmarried/divorced parents where one partner is living outside of Norway	12
Liechtenstein	Complaint concerning deposits for staffing agencies	12
Iceland	Conformity assessment of the national measures implementing the Equal Treatment Directive 2006/54/EC	9
Iceland	Complaint and incorrect implementation/application case concerning exit taxation of cross-border mergers	4
Iceland	Conformity assessment of Directive 2000/30/EC on the technical roadside inspection of the roadworthiness of commercial vehicles	3
Iceland	Incorrect Implementation of Directive 95/50/EC on checks on transport of dangerous goods by road	3
Norway	Complaint concerning licensing under the Building and Planning Act - provision of services and recognition of qualifications	2

Figure 7: 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 at the cut-off date of the Scoreboard of 31 May 2018, the average time that had lapsed since the court judgment was 22.5 months (see **Figure 8** for the details of these cases). This is two months shorter than the comparable figure (24.5 months) from the last scoreboard in December 2017.

EFTA State	Case	Duration in months
Norway	Conformity assessment of national measures implementing Directive 2005/60/EC (Third Anti-Money Laundering Directive)	53
Norway	Complaint concerning the temporary import of foreign-registered rental cars	44
Liechtenstein	Establishment of Austrian trained 'Dentist'	38
Norway	Implementation of the Directive on ambient air quality & Complaint regarding ambient air quality	32
Liechtenstein	Liechtenstein Trade Act and the Services Directive	24
Norway	Incorrect implementation of Directive 2000/59 on port reception facilities	22
Iceland	Complaint against Iceland concerning imports of raw meat & Own initiative case concerning requirements imposed by Iceland on imports of egg and dairy products	6
Norway	Complaint against Norway concerning the construction of an underground parking and the aware of a concession for its operation	2

Figure 8: Ongoing cases concerning lack of conformity with or incorrect application of Internal Market rules referred to the EFTA Court which on 1 June 2018 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 10 cases from 26 to 16 from the time of the previous Scoreboard in December 2017. (Figure 9).

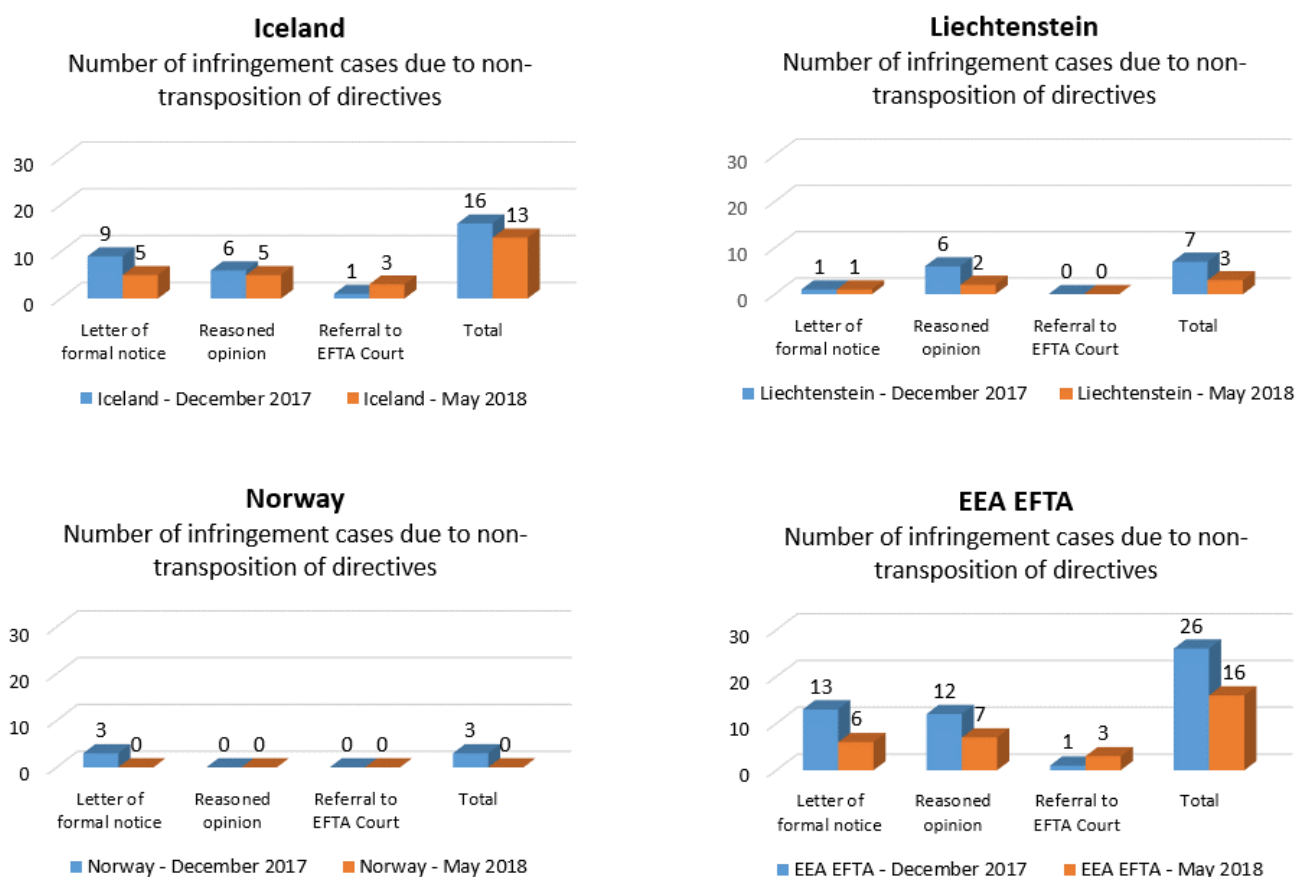
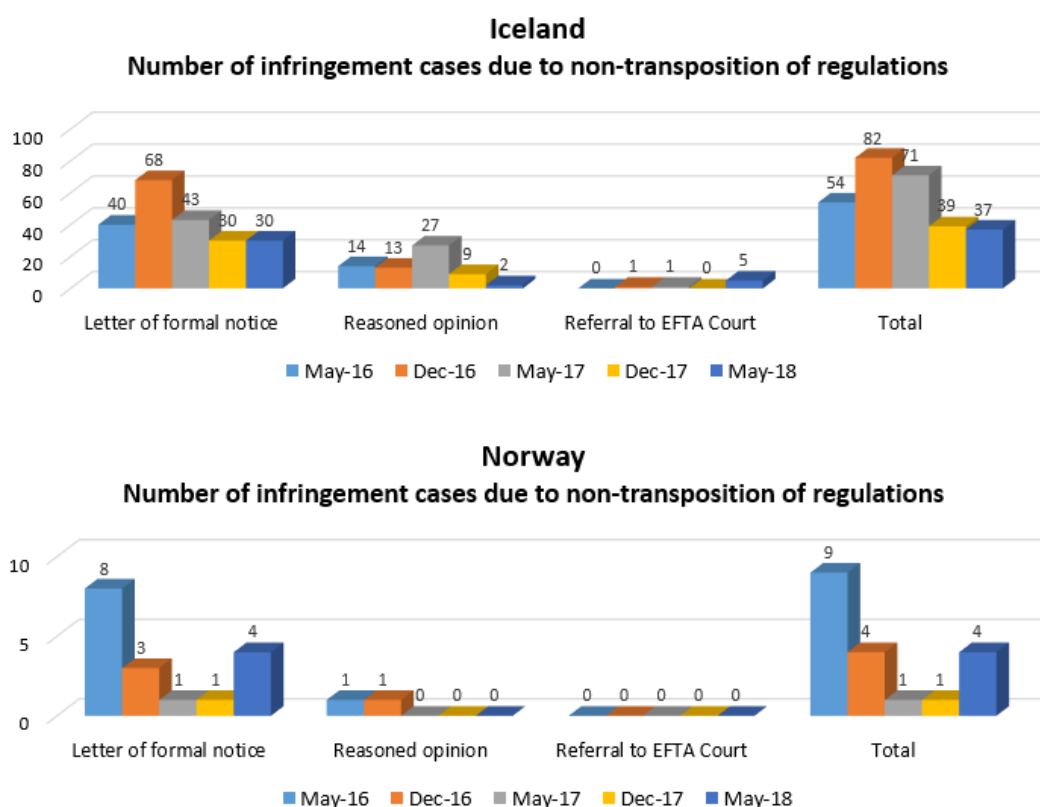


Figure 9: The number of infringement cases against the EFTA States due to non-transposition of directives.

3.4 Infringement proceedings concerning failure to transpose regulations into national law

Of the 113 infringement cases pending on 1 June 2018, 36% concerned the late transposition of regulations. For Iceland, this means 37 cases, and for Norway, four cases. (**Figure 10**).



The total number of infringement cases concerning the non-transposition of directives and regulations decreased by nine cases from 66 to 57 since the Scoreboard in December 2017.

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