

EEA EFTA States

Internal Market Scoreboard

October 2012

EFTA SURVEILLANCE
AUTHORITY

INTERNAL MARKET SCOREBOARD

No. 30

**EEA EFTA STATES
of the
EUROPEAN ECONOMIC AREA**

October 2012

EFTA SURVEILLANCE AUTHORITY

MAIN FINDINGS –

**30th INTERNAL MARKET SCOREBOARD of the
EEA EFTA STATES**

- **The average transposition deficit of the EEA EFTA States increased to 1.2%. Both Iceland and Norway were above the deficit target of 1%.**
- **The EU Member States' average transposition deficit decreased to 0.9%.**
- **Norway's deficit increased from 0.6% to 1.3%. However, the transposition delay in Norway decreased by 8.1 months, from 8.5 to 0.4 months.**
- **The transposition deficit for Liechtenstein increased from 0.4% to 0.5%. Liechtenstein was able to reduce its transposition delay by 3.6 months, from 4.3 to 0.7 months.**
- **Iceland's deficit increased by 1.3% from 0.5% to 1.8%. However, its transposition delay decreased by 4.9 months, from 12.9 to 8 months.**
- **Iceland and Norway had directives overdue by more than two years, Liechtenstein did not.**
- **The *total* number of infringement cases pursued by the Authority increased by 35 cases (from 74 to 109) since the previous Scoreboard.**
- **The overall number of infringement cases due to *incorrect transposition or incorrect application* of Internal Market rules increased to 48, which is 14 cases more than in the previous Scoreboard.**
- **The number of infringement cases concerning the *late transposition of directives* by the EEA EFTA States increased from 18 to 44 since the previous Scoreboard.**
- **Iceland's number of overdue *regulations* increased, from the time of the previous Scoreboard, from 11 to 25. In Norway, the number increased by eleven regulations, to a total of 19.**
- **16% of the pending infringement cases concerned *late transposition of regulations*, 14 cases by Iceland and 3 by Norway.**

1. INTRODUCTION

The Internal Market of the European Union ensures that businesses and citizens of the European Union have the right to trade their goods and services, to work, to invest and to establish themselves wherever they want within the Union. The purpose of the EEA Agreement¹ is to extend the Internal Market to the three EEA EFTA States, namely Iceland, Liechtenstein and Norway.² Thus ensuring, by and large, that the businesses and individuals in those countries have the same rights as those in the EU Member States.

The benefits of the Internal Market include:

- free trade on equal terms within the EEA, which promotes innovation, competition and lower prices for consumers;
- the right to seek work and establish a business in the 27 EU Member States and the three EEA EFTA States;
- competition, e.g. between service providers, which leads to more innovation, better services and lower prices for consumers; and
- more cross-border investment within the EEA.

The Internal Market does not deliver benefits automatically. A prerequisite for the functioning of the Internal Market is that equal conditions exist for competition, based on common, homogeneous rules, across the aforementioned EEA States that are parties to the EEA Agreement. These rules have to be adopted, transposed into national law and properly enforced.

The legal instruments regulating the Internal Market

The common body of law (“*acquis communautaire*”) that regulates the Internal Market consists first and foremost of directives and regulations adopted by the European Union. Each directive provides a time limit by which transposition has to take place. EU directives are incorporated into the EEA Agreement through decisions taken by the EEA Joint Committee. The obligation to transpose a directive into the national law of the EEA EFTA States is triggered by the EEA Joint Committee decisions, but it is left to each State to choose the form and the method of implementation.

The EFTA Surveillance Authority is required to ensure the fulfilment by the EEA EFTA States of their obligations under the EEA Agreement, including the transposition of the directives in a timely and correct manner. The European Commission is entrusted with the parallel task in relation to the EU Member States. In carrying out its tasks, the Authority co-operates closely with the Commission. This co-operation ensures a uniform implementation and application of the Internal Market rules and principles throughout the whole EEA.

Regulations shall, according to the EEA Agreement, “as such” be made part of the internal legal orders of the EEA EFTA States. According to the legal order of Liechtenstein, a regulation is directly applicable once the EEA Joint Committee decision incorporating it into the EEA Agreement enters into force. In Iceland and Norway,

¹ Agreement on the European Economic Area.

² Switzerland is also a member of EFTA, but not a party to the EEA Agreement. Hence, in this Scoreboard, the term “EEA EFTA States” refers to Iceland, Liechtenstein and Norway.

however, regulations are not directly applicable. Rather, the Icelandic and Norwegian constitutions require that regulations be made part of their internal legal orders by way of national implementing measures.

What is the purpose of the Internal Market Scoreboard?

Since 1997, the European Commission and the EFTA Surveillance Authority have published the Internal Market Scoreboard to monitor how well the EU States and the EEA EFTA States comply with their obligations to ensure timely transposition of Internal Market directives.

The purpose of the EEA EFTA Internal Market Scoreboard is to monitor:

- to what extent the EEA EFTA States notify the transposition of new EEA directives on time;
- the number of directives still to be transposed; and
- the average time it takes for the EEA EFTA States to transpose directives.

The findings in this Scoreboard take into account the 1370 directives that were incorporated into the EEA Agreement by 30 April 2012.³ The Scoreboard records the transposition status for these directives on *10 May 2012*.

In addition to the information concerning the transposition of Internal Market directives into national law (chapter 2), the Scoreboard provides information on the number of infringement proceedings initiated against the EEA EFTA States for lack of conformity with or failure to apply EEA legislation correctly (chapter 3).

Finally, chapter 5 of the Scoreboard provides information on the number of infringement proceedings concerning failure to transpose Internal Market directives and regulations on time.

³ The corresponding figure for the EU is 1393 Internal Market directives. The difference is caused by the fact that some directives become applicable in the EU before they are incorporated into the EEA Agreement, and some directives are repealed in the EU before they are repealed under the EEA Agreement.

2. TRANSPOSITION OF INTERNAL MARKET DIRECTIVES INTO NATIONAL LAW

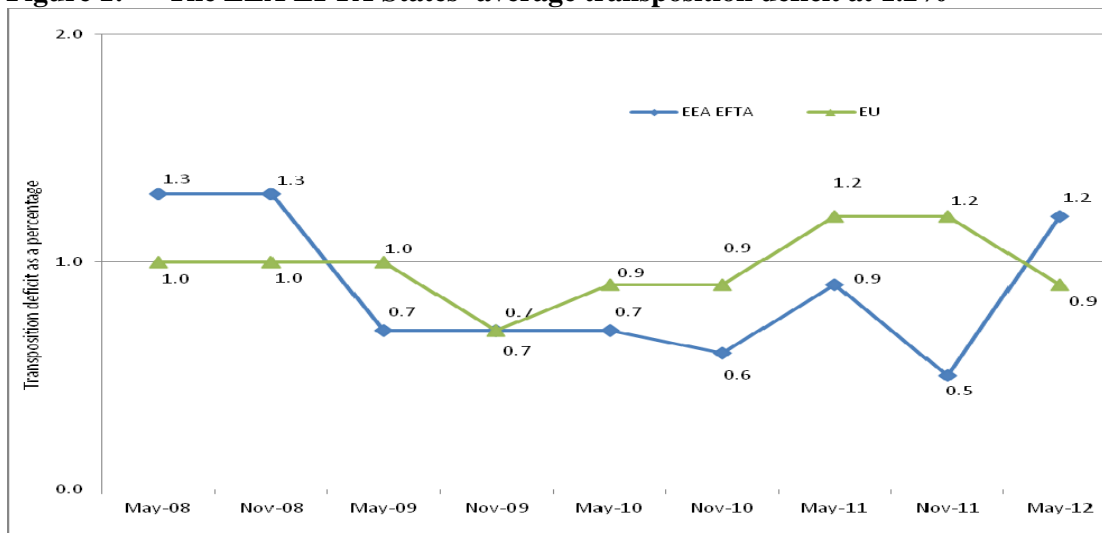
The Internal Market is a key driver of growth and jobs and one of the main engines for economic recovery. In these challenging times, a well-functioning Internal Market is more important than ever as it provides opportunities for businesses and citizens. Yet the Internal Market does not deliver benefits automatically. The EEA States need to transpose Internal Market legislation into their national law within the agreed deadlines. Timely transposition is a necessary condition for achieving the policy objectives set out in the relevant legislation. Moreover, it is important for the credibility of the Internal Market in the eyes of the public. This is why the EEA States are repeatedly called upon to improve their transposition records.

The transposition deficit indicates how many directives containing Internal Market rules and principles the EEA States have failed to communicate as having been transposed on time.⁴ As from January 2009, the relevant deficit target to measure transposition performance has been 1% according to the European Council conclusions of March 2007.⁵ This interim target, set by the European Council, is used also as a benchmark by the Authority.

2.1 Average transposition deficit in May 2012

In May 2012, the average transposition deficit for the EEA EFTA States was at 1.2%, above the 1% transposition deficit target (**Figure 1**). In absolute terms, the 1.2% deficit indicates that the EEA EFTA States were late with 49 notifications of national transposing measures, which is an increase of 26 since the last Scoreboard.

Figure 1: The EEA EFTA States' average transposition deficit at 1.2%



Transposition deficit on 10 May 2012 for the EEA EFTA States and the EU 27 for directives which should have been transposed on or before 30 April 2012. Source for EU figures: The European Commission's Internal Market Scoreboard N° 25.

⁴ The EEA EFTA States' transposition deficit shows the proportion of Internal Market directives not notified to the EFTA Surveillance Authority as fully transposed by the deadline, in relation to the total number of Internal Market directives.

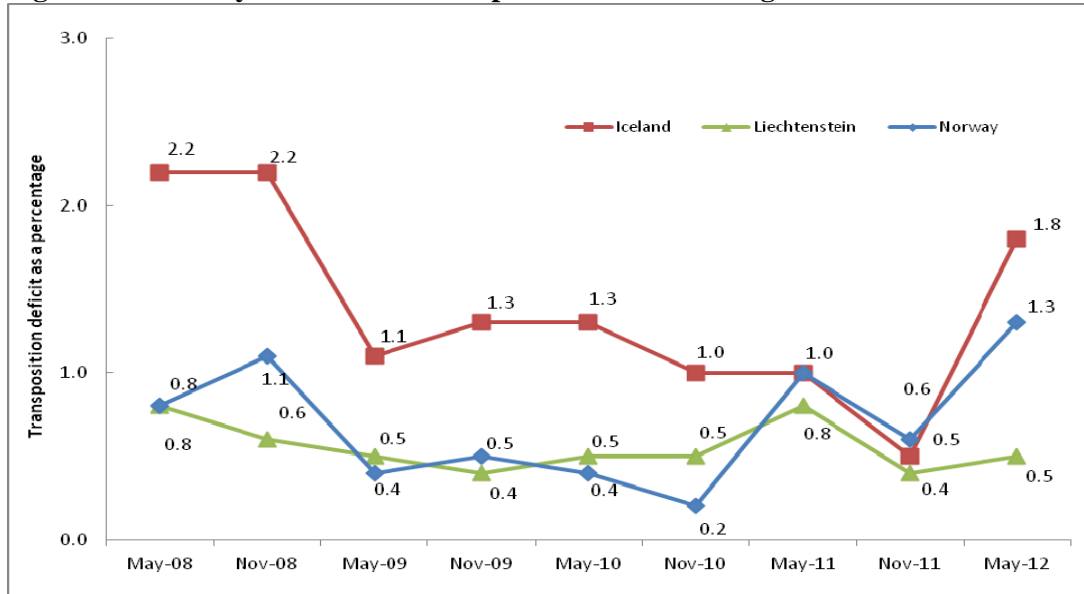
⁵ Conclusion of the European Council summit in Brussels (8-9 March 2007).

The EU average transposition deficit, at 0.9%, is below the interim target of 1% again.

2.2 Performance measured against the 1.0% interim target

Iceland’s transposition deficit, at 1.8%, increased dramatically by 1.3% from 0.5% to 1.8% from the time of the previous Scoreboard. The deficit corresponds to 24 directives not fully transposed on time.

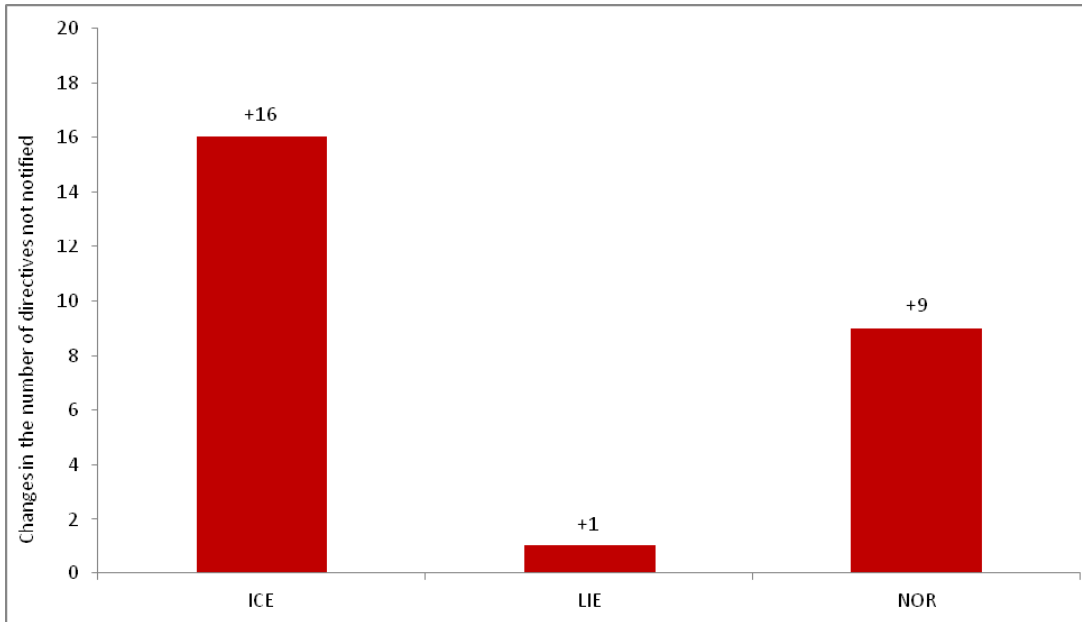
Figure 2: Only Liechtenstein complies with the 1% target



Transposition deficit on 10 May 2012 for directives which should have been transposed on or before 30 April 2012.

Norway also increased its deficit significantly by 0.7%, from 0.6% to 1.3%. This deficit corresponds to 18 directives not having been fully transposed, which is nine more than at the time of the previous Scoreboard. Only Liechtenstein remains below the interim target of 1% and increased its deficit only slightly by 0.1%, from 0.4% to 0.5%. This corresponds to seven directives not having been fully transposed.

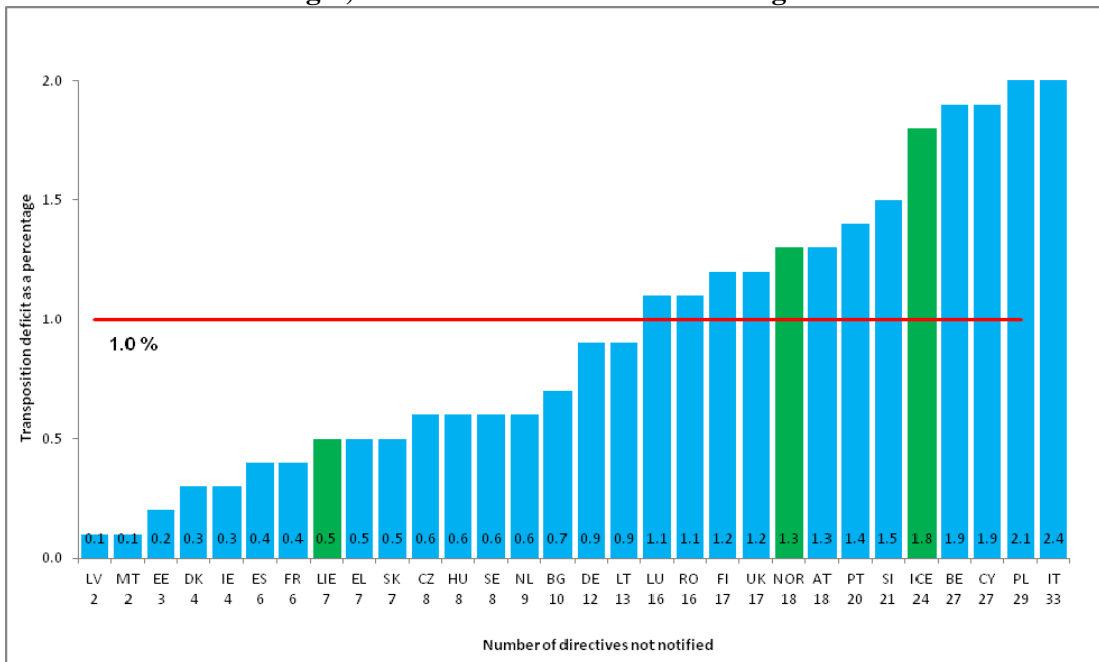
Figure 3: Change in the number of outstanding directives since the previous Scoreboard



The change in the number of outstanding directives by each EEA EFTA State since the previous Scoreboard.

Out of the 30 EEA States, 17 succeeded in bringing their transposition deficits into line with the 1% interim target, whereas 13 EEA States were above the target (Figure 4). This means that within the past 6 months, the number of EU Member States in line with the 1% transposition deficit target increased slightly, from 14 to 17.

Figure 4: Out of the 3 EEA EFTA States only Liechtenstein complies with the 1% interim target; 13 EEA States are above the target



Comparison of transposition deficits within the EEA.

Source for EU figures: The European Commission’s Internal Market Scoreboard N° 25.

2.3 How late are the EEA EFTA States in transposing directives?

Ensuring timely and correct transposition of directives is a continuous challenge. It requires a constant effort by the EEA EFTA States’ national administrations in order to keep pace with the incorporation of new directives into the EEA Agreement. Failure to do so may undermine the functioning of the Internal Market.

Delays in transposition may occur due to time-consuming legislative processes in the EEA EFTA States. However, directives are usually transposed relatively soon after the expiry of the time limits.

In March 2002, the European Council announced a “zero tolerance” for directives for which the transposition is overdue by two years or more.⁶ Similarly, such delays in the transposition of directives are of particular concern to the Authority.

2.3.1 Length of transposition delays

It is important that the EEA States ensure that implementation takes place in a timely manner. The EEA EFTA States have reduced their average time taken to transpose directives by 5.6 months since the previous Scoreboard, from 8.6 to 3 months. This decrease seems to indicate that the focus on reducing transposition delays by the EEA EFTA States is having an effect.

Figure 5: Norway has the lowest transposition delay among the three EEA EFTA States

Length of delay	Number of directives delayed					
	ICE		LIE		NOR	
	May 12	Nov 11	May 12	Nov 11	May 12	Nov 11
Less than 6 months	22	6	6	5	14	6
6 to 12 months	0	0	0	1	1	2
12 to 24 months	0	1	1	0	2	1
Over 24 months	2	1	0	0	1	0
Average delay (in months) at 30 April 2012	8.0	12.9	0.7	4.3	0.4	8.5

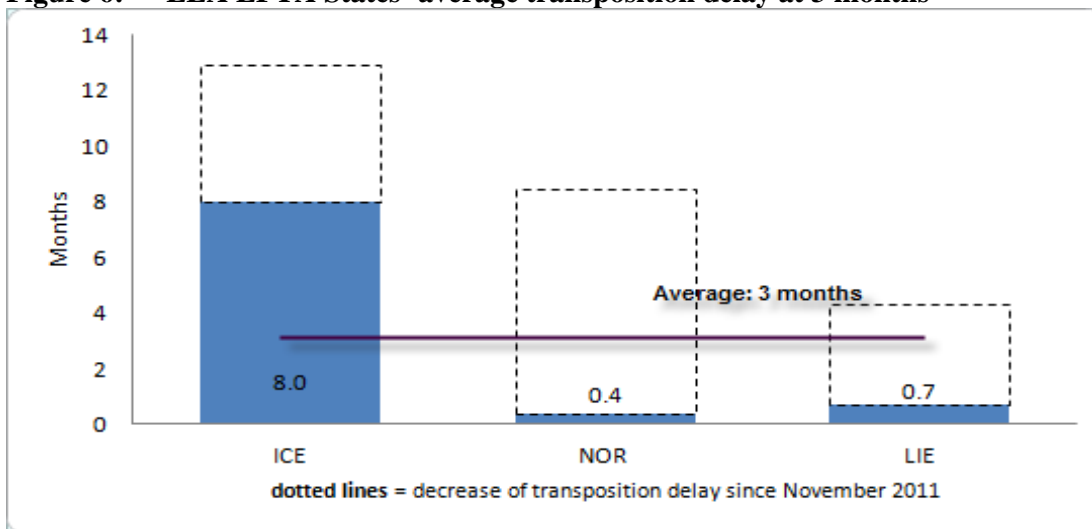
Number of overdue Internal Market directives with a transposition deadline of 30 April 2012 for which no notification was received by 10 May 2012, broken down by the length of delay.

Whilst Iceland’s transposition deficit increased significantly, its transposition delay decreased by 4.9 months. This means that, on average, an extra 8 months is still taken by Iceland to transpose directives after the transposition deadlines expire. Despite some improvement, further progress is required, as called for in the previous Scoreboards (Figure 5).

Norway’s transposition delay decreased from 8.5 months to 0.4 months. Liechtenstein’s transposition delay decreased by 3.9 months, bringing the delay to 0.7 months. Norway thus has the lowest transposition delay among the three EEA EFTA States (Figure 6).

⁶ Conclusion of the European Council summit in Barcelona (15-16 March 2002).

Figure 6: EEA EFTA States’ average transposition delay at 3 months



Average transposition delay of overdue Internal Market directives with a transposition deadline of 30 April 2012 for which no notification was received by 10 May 2012, broken down by the length of delay.

The EU States’ average transposition delay, at 9.1 months, is more than six months longer than the average EEA EFTA States’ delay.

2.3.2 “Zero tolerance” for delays in the transposition of directives of more than two years

If EEA States do not transpose Internal Market directives on time, they deprive citizens and businesses of their rights and of the full benefits of a properly functioning Internal Market. The longer the delay, the more serious the consequences. Therefore, a “zero tolerance” target has been set for directives whose transposition is two years or more overdue.⁷

42 of the directives which have not yet been transposed by the EEA EFTA States are overdue by less than 6 months, and one directive is overdue by 6 to 12 months. Two directives are overdue between 12 and 24 months. Both Iceland and Norway have directives overdue by more than two years (**Figure 7**).

Figure 7: Iceland and Norway had directives overdue by more than two years, Liechtenstein had none

Number	Title	Not transposed by	Transposition deadline
2003/55/EC	Common rules for the internal market in natural gas (Second Directive)	ICE	01/06/2007
2008/58/EC	Dangerous substances	ICE, NOR	05/12/2009

Number of directives with a deadline for transposition into national law on or before 30 April 2010, which were not transposed by at least one Member State – Situation as at 10 May 2012.

⁷ Conclusions of the European Council summit in Barcelona (15-16 March 2002).

2.4 Conformity of legislation: Directives not correctly transposed

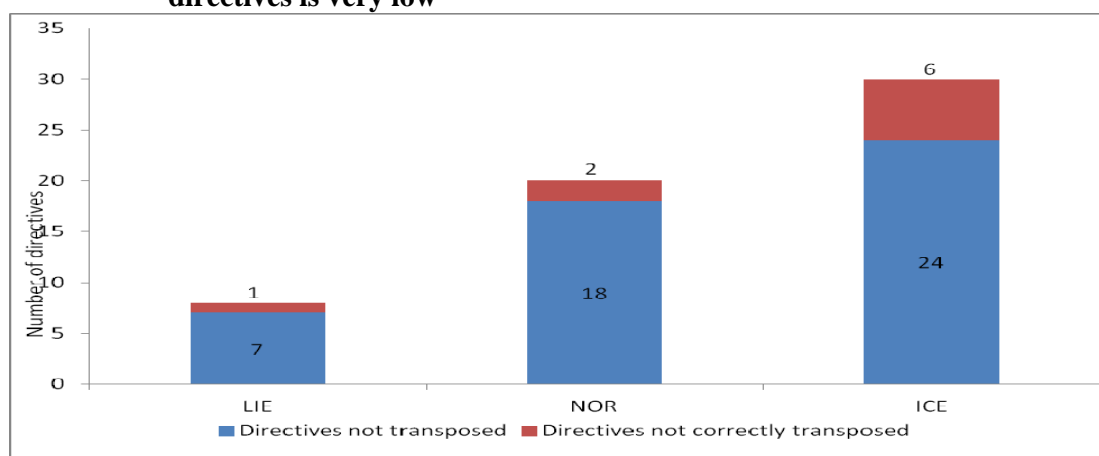
For the well functioning of the Internal Market, timely transposition of EEA legislation represents only a first step. It is also important that the legislation is transposed correctly.

The transposition deficit figures do not indicate the quality of the national legislation. It is important to bear in mind that the transposition deficit figures presented above only indicate the failure by the EEA EFTA States to notify the implementation of directives at a given point in time. The quality of the national implementing legislation is only assessed at a later stage. Such conformity assessments may prompt the Authority to take further action if it finds that the notified measures do not ensure full and correct implementation.

Furthermore, failure to comply with the basic principles of the EEA Agreement itself, such as the free movement of goods, persons, services and capital, impairs the functioning of the Internal Market and might, therefore, also prompt action by the Authority.

The overall number of directives that were *not communicated* to the Authority as having been fully transposed by 10 May 2012 was 49. This number had increased by 26 since the time of the previous Scoreboard. The number of infringement proceedings against the EEA EFTA States concerning *incorrect transposition* of directives, at nine, was significantly lower than the number of outstanding directives.⁸ The majority of such conformity assessments are, however, concluded without the need to resort to formal infringement proceedings.

Figure 8: Number of infringement cases concerning incorrectly transposed directives is very low



The number of Internal Market directives not yet communicated as having been fully transposed (transposition deficit) added by the number of directives transposed but for which an infringement proceeding for non-conformity has been initiated by the Authority (May 2012).

⁸ This figure only includes problems with the correct transposition of directives as established on the basis of systematic *conformity assessments*.

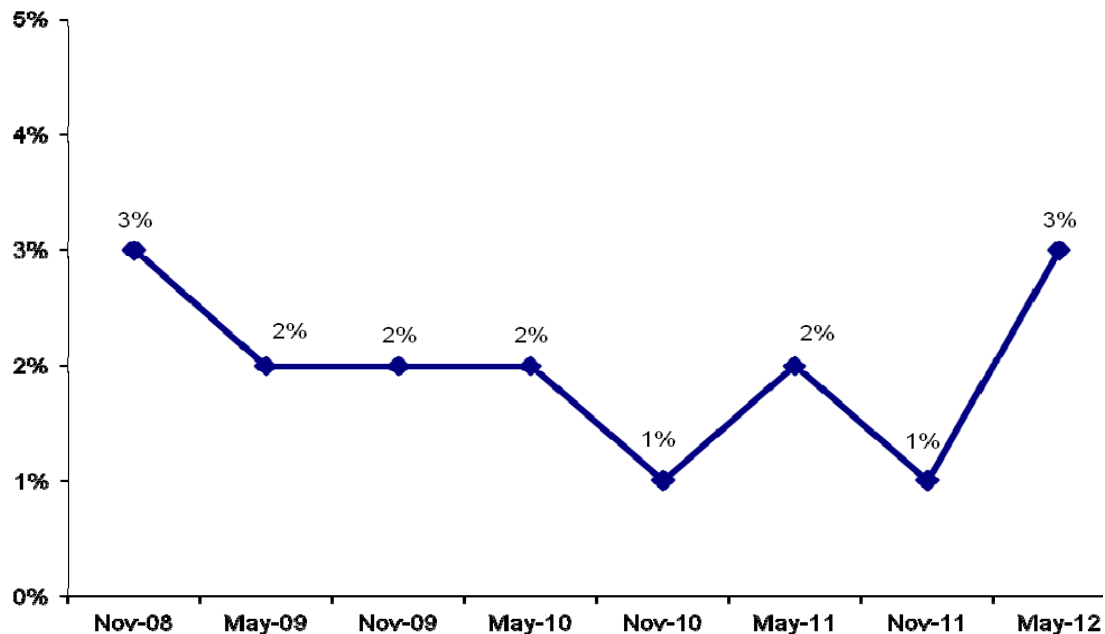
Adding the number of not correctly transposed directives to the number of directives that are not yet transposed, the EEA EFTA States’ ranking was Liechtenstein with the lowest number of cases (8), followed by Norway (20) and Iceland (30) (**Figure 8**).

2.5 Fragmentation of the Internal Market in the EEA EFTA States

The fragmentation factor is an overall indicator of legal gaps. Whenever one or more EEA States fail to transpose directives on time, they leave a gap in the legal framework of the EEA. Hence, instead of the Internal Market covering all EEA States, it remains smaller and fragmented. Consequently, the economic interests of all EEA States are hampered even if only one EEA State does not deliver on time.

In total, 3% of the directives in force in the EEA EFTA States on 30 April 2012 had not been transposed by at least one of the three EEA EFTA States (**Figure 9**). The fragmentation factor of 3% translates into 37 directives not transposed by all three EEA EFTA States and that have, therefore, not achieved their full effect in the EEA EFTA States. The fragmentation factor in the 27 EU Member States was 5%.

Figure 9: Fragmentation factor in the EEA EFTA States increased to 3%



The so-called fragmentation factor records the percentage of the outstanding directives which one or more of the three EEA EFTA States have failed to transpose with the consequence that the Internal Market is not a reality in the EEA 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 EEA EFTA States. The most fragmented sector in the EEA EFTA States is in the area of technical barriers to the free movement of goods. More efforts are needed to reduce the fragmentation in this sector (**Figure 10**).

Figure 10: Most outstanding directives were in the area of goods – technical barriers

	Services - general (6)	Financial services (2)	Food Safety (7)	Transport (7)	Environment (2)	Goods - technical barriers (21)	Health and safety (2)	Energy (2)	Total for all EEA EFTA States (49)
ICE	2008/122 2008/48 2009/22	2009/111 2009/44	2002/99 2008/71 2008/73 89/384 90/167 96/90	2010/36 2010/40 2010/47 2010/48	2001/81	2007/46 2008/58 2009/1 2010/19 2010/35	2009/161	2003/55 2009/28	24
LIE	2008/122			2006/126		2007/46 2010/19 2012/22 2012/52 2011/59			7
NOR	2008/122 2009/22		2006/52	2010/47 2010/48	2006/21	2006/66 2007/46 2008/103 2008/58 2009/105 2010/19 2010/35 2011/10 2011/11 2011/12 2011/13	2009/161		18
Fragmentation factor	3	2	7	5	2	15	1	2	27

Breakdown by EEA EFTA State of the backlog of non-transposed directives and sector concerned – situation as at 10 May 2012.

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

If the Authority considers that an EEA EFTA State has failed to fulfil an obligation under the EEA Agreement, it may initiate formal infringement proceedings pursuant to Article 31 of the Surveillance and Court Agreement.⁹ Such infringement proceedings correspond to those initiated by the European Commission under Article 258 of the Treaty on the Functioning of the EU (TFEU).

The opening of infringement proceedings provides an opportunity for a more formal dialogue between the Authority and the EEA EFTA State concerned. The Authority opens infringement proceedings when it is of the view that an EEA EFTA State is failing to fulfil its obligations under the EEA Agreement. It should be noted that only the EFTA Court can declare that a breach of EEA law has occurred. Until the Court renders such a judgment, the fact that infringement proceedings have been opened shows only that it is the Authority's opinion that the State concerned has failed to fulfil its obligations under the EEA Agreement. This should be kept in mind when interpreting the statistics on infringement procedures below.

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 EEA 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 EEA 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 are often 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 EEA 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 EEA EFTA State concerned. Information on the infringement cases concerning late transposition of directives and regulations is included in chapter five.

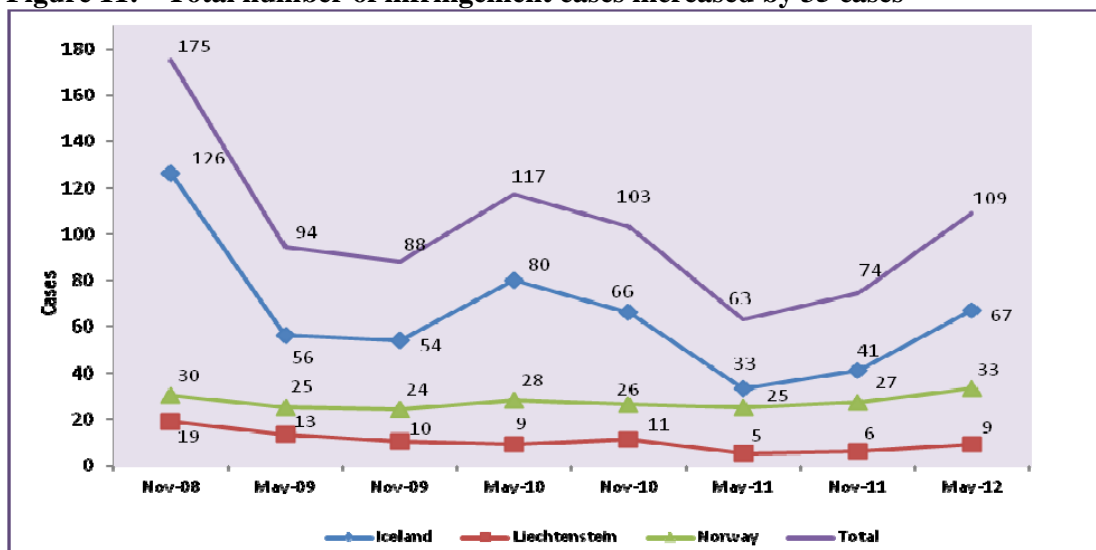
3.1. Increase in the *total* number of infringement proceedings

On 1 May 2012, a total of 109 infringement cases were being pursued by the Authority (**Figure 11**).¹⁰ This represents 35 more cases than at the time of the previous Scoreboard. The increase in the number of infringement cases is mainly due to the increase in the infringement cases concerning timely implementation of directives (up to 44 from 18) .

⁹ Agreement on the Establishment of a Surveillance Authority and a Court of Justice.

¹⁰ A pending infringement case is defined as a case where at least a letter of formal notice has been sent to the State, but the case has not yet been referred to the EFTA Court.

Figure 11: Total number of infringement cases increased by 35 cases



Total number of all open infringement proceedings against the three EEA EFTA States on 1 May 2012.

Of the 109 infringement cases pending on 1 May 2012, 48 cases concerned incorrect implementation or application of Internal Market rules (see chapter 3.2), whereas 44 cases concerned the late transposition of directives (see chapter 5.1). The remaining 17 cases concerned the late transposition of regulations (see chapter 5.2).

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

3.2.1. Increase in the number of infringement proceedings concerning the lack of conformity with or incorrect application of rules

The overall number of infringement cases due to lack of conformity with or incorrect application of Internal Market rules (48 cases) increased by 14 since the previous Scoreboard (Figure 12).

Figure 12: The number of infringement cases against the EEA EFTA States due to lack of conformity with or incorrect application of Internal Market rules increased by 14 since the previous Scoreboard

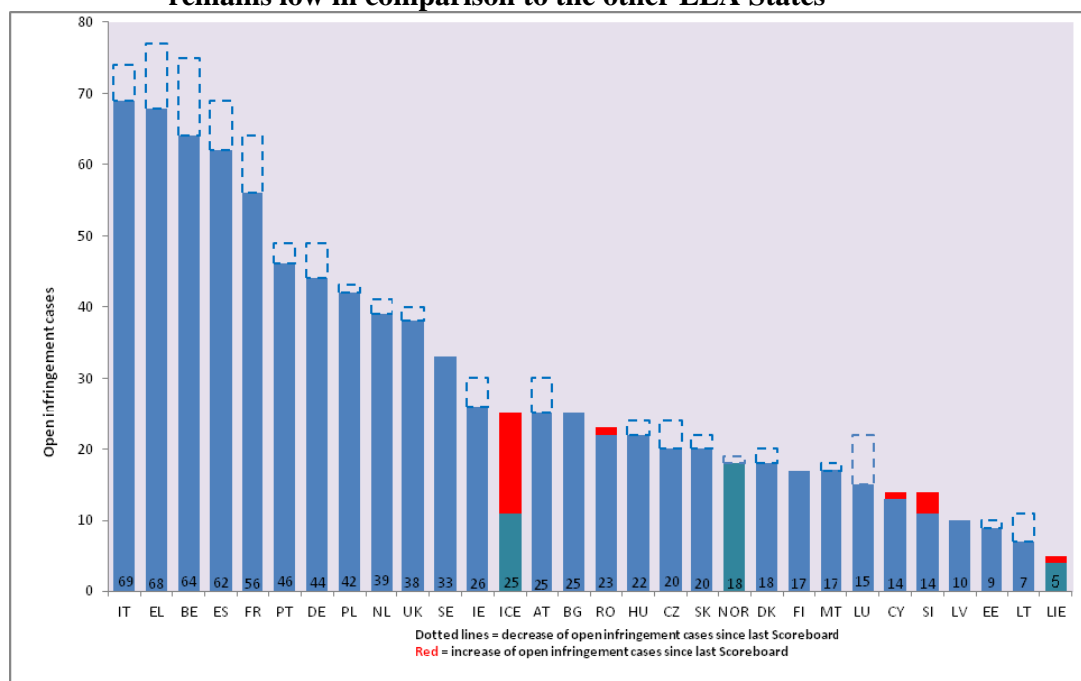
	ICE		LIE		NOR		EEA EFTA	
	May 12	Nov 11	May 12	Nov 11	May 12	Nov 11	May 12	Nov 11
Letter of formal notice	22	6	3	4	12	10	37	20
Reasoned opinion	1	4	2	0	3	7	6	11
Referral to EFTA Court	2	1	0	0	3	2	5	3
Total	25	11	5	4	18	19	48	34

Pending infringement cases due to lack of conformity with or incorrect application, broken down according to the stage reached in the infringement proceedings as at 1 May 2012.

Both Iceland and Liechtenstein saw an increase in the number of infringement cases brought against them since the previous Scoreboard. Iceland by 14 cases and Liechtenstein by 1 case. Norway saw a decrease in the number of cases brought against it by 1.

In comparison to the EU27, the number of infringement proceedings against the EEA EFTA States remained low. Liechtenstein, with five cases, had the lowest number of infringement proceedings of the 30 EEA States (**Figure 13**).

Figure 13: The number of EEA EFTA States' infringement cases concerning lack of conformity with or incorrect application of Internal Market rules remains low in comparison to the other EEA States

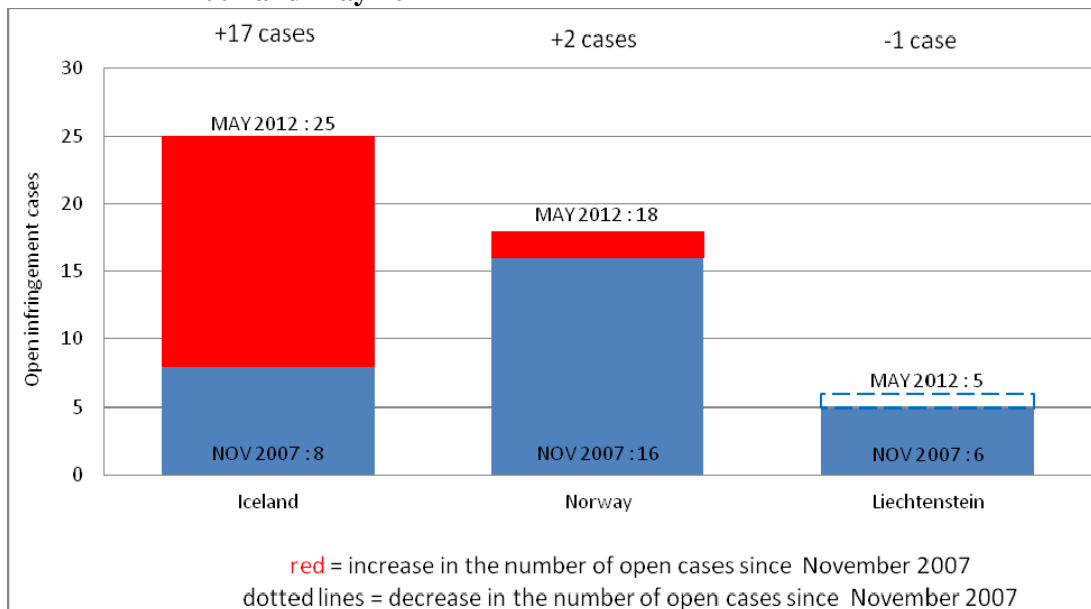


Pending infringement cases due to lack of conformity with or incorrect application of Internal Market rules on 1 May 2012 compared to the situation in November 2011.

Source for EU figures: The European Commission's Internal Market Scoreboard N° 25.

A comparison between the number of infringement proceedings pursued against the EEA EFTA States in November 2007 and May 2012 shows that infringement proceedings against Liechtenstein were reduced by one case, from six to five. The number of infringement proceedings against Norway increased by two from 16 to 18 cases. During the same period, infringement proceedings against Iceland increased by 17, from eight to 25 cases (**Figure 14**).

Figure 14: Comparison of open infringement cases concerning lack of conformity with or incorrect application of Internal Market rules in November 2007 and May 2012



Open infringement cases concerning lack of conformity with or incorrect application of Internal Market rules as at 1 May 2012 compared to corresponding figures as at 1 November 2007.

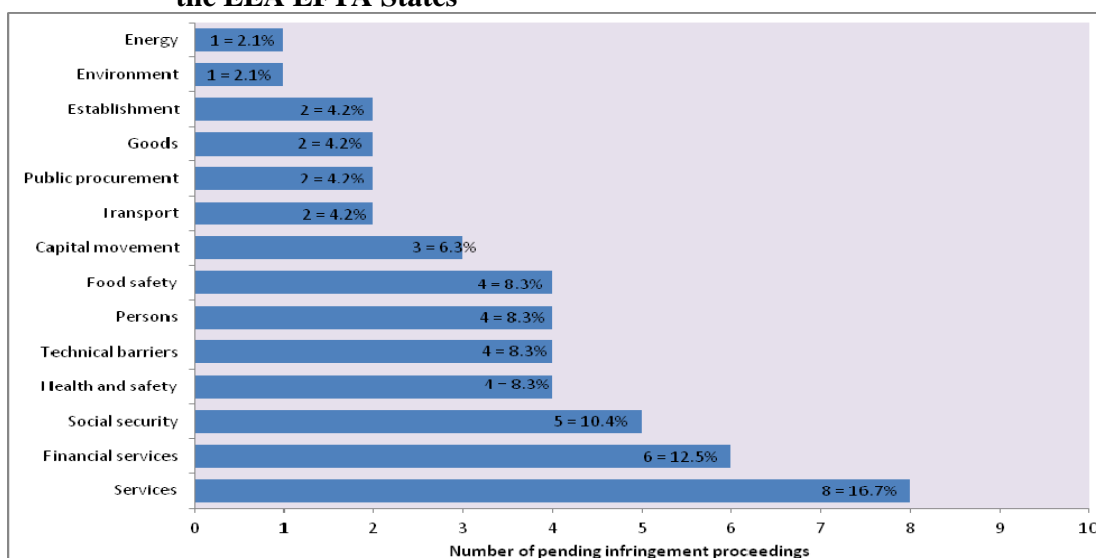
Undertakings and citizens may lodge a complaint with the Authority if they believe that they have not been able to exercise their rights under the EEA Agreement due to the failure of an EEA EFTA State to apply the EEA Agreement correctly.

The number of pending infringement proceedings initiated as a result of complaints increased by four since the time of the previous Scoreboard (from 11 to 15). The 15 pending infringement proceedings initiated on the basis of complaints represent 31% of the 48 pending infringement proceedings concerning lack of conformity with or incorrect application of Internal Market rules. Seven of these cases related to Norway, five to Iceland and three to Liechtenstein.

3.2.2. Breakdown of infringement proceedings per sector

The biggest number of infringement proceedings concerning the lack of conformity with or incorrect application of Internal Market rules relate to the field of services. This sector accounted for 13% of all infringement proceedings (**Figure 15**).

Figure 15: Services sector accounts for most of the infringement proceedings in the EEA EFTA States



Pending infringement proceedings due to lack of conformity with or incorrect application of Internal Market rules on 1 May 2012 divided by sector.

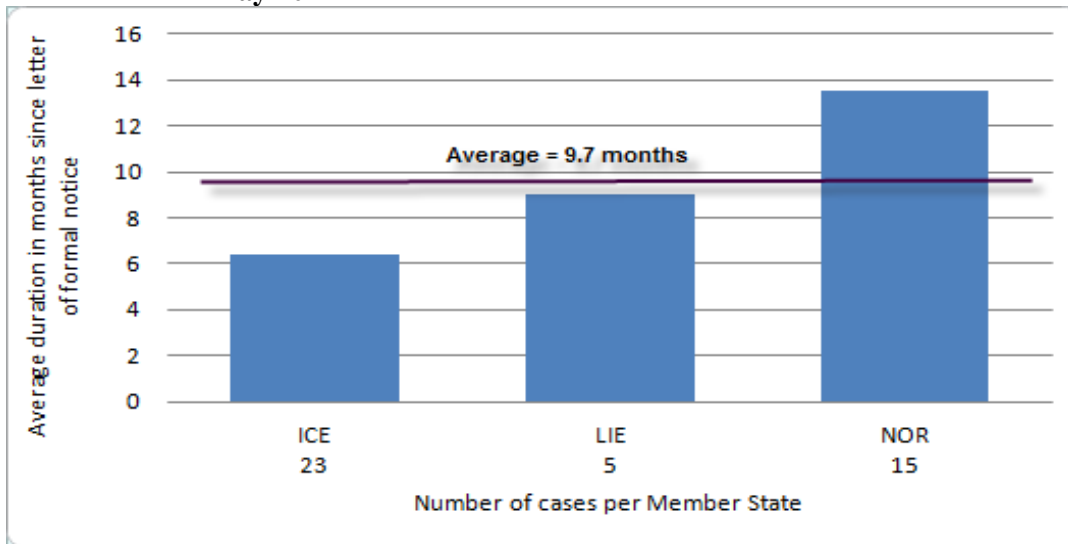
3.2.3. Duration of infringement proceedings

When problems with the application of Internal Market rules do arise, they need to be solved quickly to ensure that citizens and businesses are able to exercise their rights. Therefore, special focus should be placed on the time required to solve infringement proceedings and/or the time taken by the EEA EFTA States to comply with Court judgments.

3.2.3.1. Time required for infringement proceedings

The average time of pending infringement cases not yet sent to the Court for the EEA EFTA States is 9.7 months at the cut-off date of 1 May 2012 (**Figure 16**). This is a decrease of 1.3 months compared to the last Scoreboard. The average duration of the EU Member States' infringement proceedings still exceeds the two years mark (26.9 months).

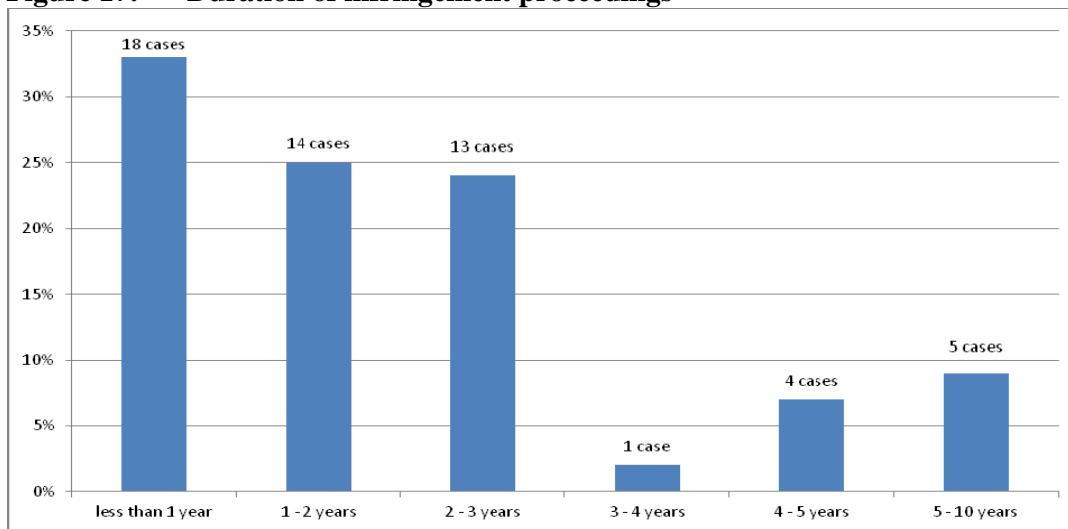
Figure 16: Pending infringement cases not yet sent to the EFTA Court as of 1 May 2012



Pending infringement cases not yet sent to the EFTA Court as at 1 May 2012 (43 cases): average time in months from the moment the letter of formal notice was issued.

Observed over a period of three years, the statistics show that the vast majority of cases (45 out of 55) are closed or referred to the EFTA Court within three years of issuing a letter of formal notice. Nearly two thirds of the cases (32 out of 55) are dealt with within the first 2 years. For the EU27, half of all infringement procedures take more than two years (Figure 17).

Figure 17: Duration of infringement proceedings



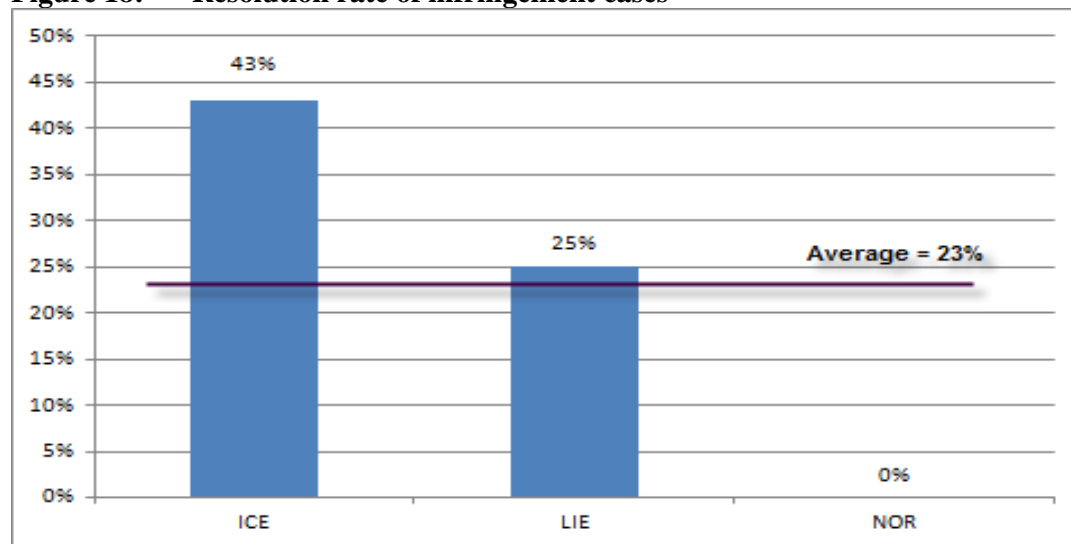
Infringement cases closed or brought before the Court between 1 May 2009 and 30 May 2012: average time in years needed either to close an infringement case or to bring it before the Court from the moment the letter of formal notice is sent (55 such cases)

Figure 18 shows the percentage of cases closed within eighteen months of the sending of the letter of formal notice.¹¹ These cases were thus solved before a case had been referred

¹¹ Until the 27th Scoreboard of March 2011, 30 months were considered as “early resolution”. For the present Scoreboard, the European Commission has set this target at 18 months.

to the EFTA Court. An early resolution rate of 23% can be considered to be rather low. On the EU side the early resolution rate is at 18%.

Figure 18: Resolution rate of infringement cases



Number of cases closed by 1 May 2012 as a percentage of the number of cases where a letter of formal notice had been sent between 1 November 2010 and 31 October 2011 (19 such cases).

3.2.3.2. Compliance with Court judgements

Court rulings establishing a breach of EEA legislation require that the State concerned takes immediate action to ensure EEA law compliance as soon as possible¹². Internal circumstances or practical difficulties cannot justify non-compliance with obligations and time-limits arising from EEA law.¹³

The average time taken by the EEA EFTA States to comply with an EFTA Court ruling is 22.7 months (**Figure 19**). This is a slight decrease since the assessment a year ago, when the average was 25 months, but it is still too long. In comparison, the EU average has remained the same since the assessment one year ago, with an average duration of 17.5 months. The EEA EFTA States are called upon to make compliance with EFTA Court rulings a higher priority.

The long delay of 22.7 months is primarily due to the non-implementation of one judgment by the EFTA Court in Case E-2/07, which was delivered on 30 October 2007.¹⁴ This resulted in yet another judgment by the Court on 28 June 2011 (Case E-18/10),

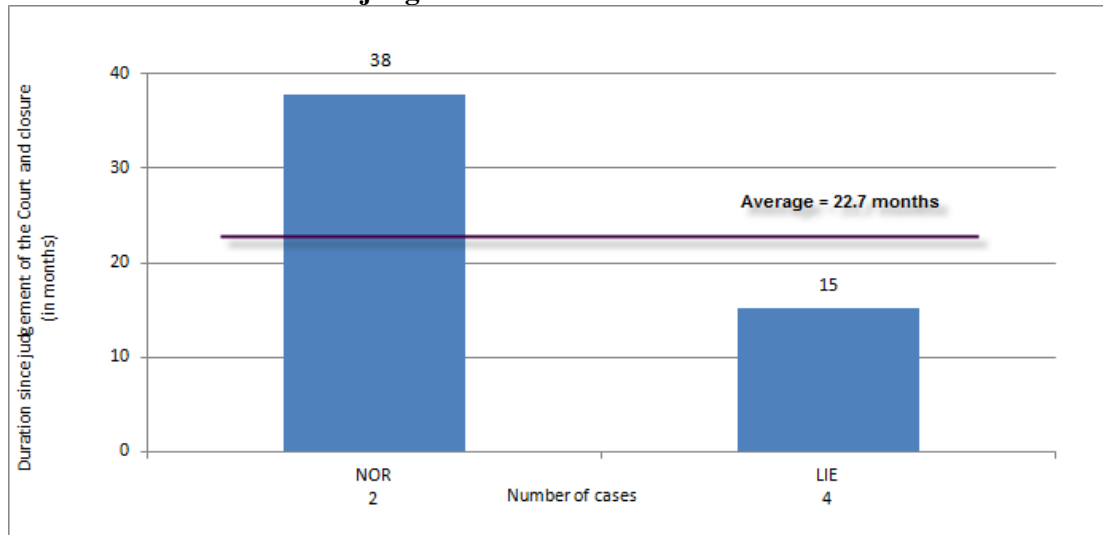
¹² See, in particular, Case E-18/10 *EFTA Surveillance Authority v Norway*, 2011 EFTA Court Report, 204, paragraph 29; Case C-291/93 *Commission v Italian Republic* [1994] ECR I-859, paragraph 6; Case C-101/91 *Commission v Italian Republic* [1993] ECR I-191, paragraph 20; and Case C-328/90 *Commission v Hellenic Republic* [1992] ECR I-425, paragraph 6.

¹³ Joined Cases E-5/05, E-6/05, E-7/05, E-8/05 and E-9/05 *EFTA Surveillance Authority v Liechtenstein*, 2006 EFTA Court Report, 142, paragraph 21 and see also e.g. Case C-316/06 *Commission v Ireland* [2008] ECR I-124, paragraph 31; Case C-89/03 *Commission v Luxembourg* [2003] ECR I-11659, paragraph 5; Case C-140/00 *Commission v United Kingdom* [2002] ECR I-10379, paragraph 60 and Case C-52/91 *Commission v Netherlands* [1993] ECR I-3069, paragraph 3.

¹⁴ Case E-2/07 *EFTA Surveillance Authority v The Kingdom of Norway*, 2007 EFTA Court Report, 280.

which declared that Norway has failed to take the measures necessary to comply with the previous judgment.¹⁵

Figure 19: EEA EFTA States take an average of nearly 2 years to comply with EFTA Court judgments



Cases closed between 1 May 2007 and 30 April 2012 (6 cases): Average duration between the judgment of the EFTA Court and the resolution of the case.

¹⁵ Case E-18/10 *EFTA Surveillance Authority v The Kingdom of Norway*, 2011 EFTA Court Report, 204.

4. INTERNAL MARKET ENFORCEMENT TABLE – EEA EFTA STATES

As illustrated on several occasions above, the good functioning of the Internal Market does not only depend on timely implementation, but also on the proper application of Internal Market rules. This is the reason why the Internal Market Scoreboard uses a range of different indicators to measure the performance of the EEA States.

The so-called Internal Market Enforcement Index links the relevant indicators together in order to provide a better overview of EEA EFTA States' compliance with the implementation and application of Internal Market rules.

	ICE	NOR	LIE	EEA EFTA average
Transposition deficit	1.8%	1.3%	0.5%	1.2%
Progress over the last 6 months (change in the number of outstanding directives)	+16	+9	+1	+9
Number of directives two years or more overdue	2	1	0	1
Transposition delay on overdue directives (in months)	8	0.4	0.7	3
Compliance deficit	0.4%	0.1%	0.1%	0.2%
Trend in the number of infringement cases since Nov. 2007	+17	+2	-1	+6
Number of pending infringement cases	25	18	5	16
Average speed of infringement resolution - pending cases (in months)	6	14	9	9.7
Early resolution rate - closed cases	43%	0%	25%	23%
Duration since Court's judgments - closed cases (in months)	NA	38	15	27

Legend

< average	average ± 10%	> average
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except

Transposition deficit	≤1%	/	≥1%
Change in the number of outstanding directives	decrease	no change	increase
Duration since Court's Judgment	<8 months	8-18 months	>18 months

NA = not applicable

The Index shows that, overall, Liechtenstein is the best performing EEA EFTA State. However, each of the EEA EFTA States has several areas where more attention is needed.

5. INFRINGEMENT PROCEEDINGS CONCERNING FAILURE TO TRANSPOSE DIRECTIVES AND REGULATIONS INTO NATIONAL LAW

5.1 Infringement proceedings concerning non-transposition of directives

The number of infringement cases initiated against the EEA EFTA States for non-transposition of directives increased by 59% (corresponding to 26 cases) from the time of the previous Scoreboard (**Figure 20**). Liechtenstein had an increase of two cases in comparison with the previous Scoreboard. Norway had an increase of 9 cases and Iceland had an increase of 15 cases.

Figure 20: The number of infringement cases against the EEA EFTA States due to non-transposition of directives increased

	ICE		LIE		NOR		EEA EFTA	
	May 12	Nov 11	May 12	Nov 11	May 12	Nov 11	May 12	Nov 11
Letter of formal notice	24	10	4	2	9	2	37	14
Reasoned opinion	4	3	0	0	3	1	7	4
Referral to EFTA Court	0	0	0	0	0	0	0	0
Total	28	13	4	2	12	3	44	18

Pending EEA EFTA States infringement cases due to non-transposition of directives, broken down according to the stage of infringement proceedings reached, on 1 May 2012.

Since the previous Scoreboard, no cases concerning non-transposition of directives have been referred to the EFTA Court.

5.2. Non-transposition of regulations

5.2.1 Transposition of regulations “as such” by the EEA EFTA States

A particular situation arises with regard to the incorporation of Internal Market regulations into the EEA Agreement. 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 EEA EFTA States.

Pursuant to the constitutional law of the three EEA EFTA States, regulations become part of Liechtenstein’s internal legal order, due to its monistic legal tradition, once they have been incorporated into the EEA Agreement through an EEA Joint Committee decision, whereas Iceland and Norway are obliged to adopt legal measures in order to make regulations “as such” part of their internal legal orders.

Due to the fact that regulations do not contain a provision setting out an obligation to notify implementing measures (as directives do), the Authority systematically requests that, pursuant to Article 6 of the Surveillance and Court Agreement, Iceland and Norway notify the national measures taken to transpose regulations.

5.2.2 Delays in the transposition of regulations

As explained above, regulations only become part of the internal legal order of Iceland and Norway following an act of incorporation by the national legislative body. This usually requires the prior translation of regulations into the national language, followed by the publication of the translated regulations in the EEA Supplement to the Official Journal. In recent years, the delays in the translation and publication of regulations in Icelandic have created a backlog of overdue regulations in Iceland.

On 10 May 2012, Iceland had 25 overdue regulations which had not been notified as fully incorporated into its national law. This is 14 more than at the time of the previous Scoreboard. For Norway, the number of regulations not notified as fully incorporated into national law increased by eleven regulations, bringing the number of outstanding regulations to 19.

5.2.3 Infringement proceedings concerning failure to transpose regulations in a timely manner

The Authority considers the timely transposition of regulations in Iceland and Norway to be necessary for the smooth functioning of the Internal Market. Consequently, enforcement of the non-transposed regulations is handled swiftly and systematically by the Authority. Of the 109 infringement cases pending in May 2012, 16% concerned the late transposition of regulations by Iceland (14 cases) and Norway (3 cases). This is a decrease of 3 infringement proceedings against Iceland and of 2 against Norway since the time of the previous Scoreboard (**Figure 21**).

Figure 21: The number of infringement cases initiated against Iceland and Norway due to non-transposition of regulations slightly decreased since the previous Scoreboard

	ICE		NOR		EEA EFTA	
	May 12	Nov 11	May 12	Nov 11	May 12	Nov 11
Letter of formal notice	14	15	3	3	17	18
Reasoned opinion	0	2	0	0	0	2
Referral to EFTA Court	0	0	0	2	0	2
Total	14	17	3	5	17	22

Pending infringement cases against Iceland and Norway due to non-transposition of regulations, according to stage of infringement proceedings, on 1 May 2012.

Due to the continuously high number of letters of formal notice issued to Iceland for non-transposition of regulations, the overall number of infringement actions against Iceland and Norway remained more or less at the same level since the previous Scoreboard. A slight decrease could be seen at the reasoned opinion and Court referral stages.

The Authority is determined to enhance the transparency and level of public information about the performance of the EEA EFTA States in transposing regulations and will therefore continue to monitor the transposition situation carefully and report on the situation publicly.



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