



Brussels, 18.2.2013
SWD(2013) 46 final

COMMISSION STAFF WORKING DOCUMENT

Internal Market Scoreboard No 26

February 2013

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15 YEARS OF THE INTERNAL MARKET SCOREBOARD: A LOT HAS BEEN ACHIEVED, BUT TOGETHER FOR NEW GROWTH WE CAN DO EVEN BETTER

When the EU Heads of State and Government met in Amsterdam on 16 and 17 June 1997, they stressed the crucial importance of Member States quickly and effectively transposing Internal Market rules into national law and then enforcing them actively. The Commission took then the initiative of producing a new, fact-based and operational instrument: the Internal Market Scoreboard, first published in November 1997. Its purpose was to encourage Member States to ensure effective implementation of Single Market rules within their borders. It seeks to do so by benchmarking the efforts of Member States in this respect and providing an overview of the state of implementation of Single Market legislation.

The Single Market, as an essential driver of growth and jobs, is key to the achievement of a competitive social market economy. But the call from Amsterdam was needed because its benefits are not automatic: without a concerted effort to adapt national legislation to the new rules in a timely and correct manner, citizens and businesses are deprived of the rights and opportunities created by European directives.

I am proud to say that over the past 15 years, the Internal Market Scoreboard has delivered solid results: it has become a transparent and objective yardstick of Member States' performance; it is an instrument of peer pressure that shows to what extent the national administrations are efficient in transposing directives and enforcing Single Market rules; and finally, it attracts political attention to the need to enforce these rules.

The proper functioning of the Single market deserves nonetheless even greater political ambition, and since the beginning of my mandate I have been determined to meet every team responsible for the transposition of Single Market rules, in each of the 27 Member States and in Norway. I am happy to have had the opportunity to do so and now an active network of more than 700 persons is cooperating in achieving day-to-day improvement in the functioning of our Single Market.

A lot has been achieved since 1997. The average transposition deficit in the EU has fallen from 6.3% (the first result in 1997) to 0.6% in November 2012, its best result ever! Other indicators, such as the rate of incompleteness or the number of open infringement proceedings, have fallen dramatically since the first edition of the Internal Market Scoreboard. But we are still far from the ideal situation and the efforts must be sustained, and even increased.

I am convinced that a lot more can be achieved thanks to ever closer cooperation between national administrations and the European Commission. The Internal Market Scoreboard will continue to support the Member States' efforts to make the Single Market reach its full potential. We cannot forget that the main beneficiaries of the improvements made and still to come are neither the Member States nor the European institutions, but all those EU citizens and businesses that want to stimulate economic growth and create jobs in the European Union by making use of the rights and possibilities of the Single Market.



*Michel Barnier
Member of the European Commission
responsible for the Internal Market and Services*

MAIN FINDINGS

The Internal Market Scoreboard presents information on the implementation of Single Market legislation.¹ It needs to be seen in the framework of the Commission's general efforts to boost growth and employment by improving the application of Single Market rules across the Union.

The results of the Internal Market Scoreboard, in particular as regards the priority areas where the further development of the Single Market has the highest potential for growth (as identified by the Commission's Communication on Better Governance for the Single Market) will be taken into account during the preparation of the subsequent Annual Report on the Integration of the Single Market, published alongside the Annual Growth Survey.²

The Internal Market Scoreboard, which was first published in November 1997, is celebrating its 15th anniversary. For that reason, this edition includes some indicators of how Member States' performance in transposing and applying Single Market legislation has evolved since 1997. These indicators include the transposition deficit, the incompleteness rate and the number of infringements.

Furthermore, it presents measures put in place by Ireland, Italy and Romania to improve the implementation of Single Market rules, which are reflected in the remarkable improvements they have made in this regard.

Transposition

Compared to six months ago, the average transposition deficit³ in the EU has fallen again below the target agreed by the European Heads of State and Government,⁴ to 0.6%, which is the **best result ever** since the Internal Market Scoreboard has been published. Due to the improvement, the number of Member States achieving the 1% target went up from sixteen to twenty-three. In total, twelve Member States achieved

¹ Single Market legislation includes measures considered to have an impact on the functioning of the Internal Market as defined in Articles 26 and 114(1) of the Treaty on the Functioning of the European Union. This includes the four freedoms and supporting policies with a direct impact on the functioning of the Single Market (such as taxation, employment and social policy, education and culture, public health and consumer protection, energy, transport and the environment except nature protection, information society and media).

² Communication from the Commission: 'Better Governance for the Single Market', COM(2012) 259 final, 8.6.2012.

Report from the Commission: 'State of the Single Market Integration 2013', COM(2012) 752 final, 28.11.2012

Communication from the Commission: 'Annual Growth Survey 2013', COM(2012) 750 final, 28.11.2012.

³ The current Scoreboard takes into account all notifications received by 11 November 2012 for directives with a transposition deadline of 31 October 2012.

⁴ The EU Heads of State and Government have repeatedly called on Member States to improve their transposition records: conclusions of the European Council summits of Stockholm (23-24 March 2001), Barcelona (15-16 March 2002), and Brussels (20-21 March 2003, 25-26 March 2004 and 8-9 March 2007). The targets were agreed at the following summits: Stockholm (1.5%), Barcelona (0% for long overdue directives) and Brussels 2007 (1%).

or equalled their best result ever. This illustrates the high priority given by those Member States to timely transposition.

For the second time, a Member State has reached the perfect score (0.0%): Ireland, the best transposition performer in this edition of the Scoreboard, has transposed all due directives on time. Only Bulgaria had previously ever reached this result, in May 2008. Moreover, three Member States are only one or two directives away from this goal (Estonia, Malta and Sweden). Italy, Cyprus and Romania show the biggest improvements in reducing the number of outstanding directives. The Czech Republic continues the positive results seen in May 2012.

Nevertheless, this encouraging result for the first challenge ('achieving the 1% target') goes hand in hand with a worsening result for other challenges highlighted in the Scoreboard, such as reducing the number of directives for which transposition is overdue by two years or more (second challenge, 'meeting the zero tolerance target') and shortening transposition delays (third challenge). Eight directives have not been transposed two years or more after their transposition deadline by one or more Member States. In total, five Member States have not achieved the 'zero tolerance' target. Moreover, Member States take an average of almost ten extra months to transpose EU directives after their transposition deadline. In response to the fourth challenge ('improving the conformity of national legislation'), Member States have succeeded in further reducing the number of incorrectly transposed directives. The average compliance deficit has fallen from 0.7% six months ago to 0.6% today, coming closer to the 0.5% compliance deficit proposed in the Single Market Act.⁵

Incompleteness of the Single Market due to a lack of transposition, i.e. a failure by one or more Member States to transpose directives in full, remains at 5%, which corresponds to seventy-three directives not producing their full effect in the EU. For almost one third of these directives, this is due to the failure of just one Member State to transpose them. The most incomplete areas remain financial services, the environment and transport.

Infringements

The number of infringement proceedings⁶ relating to the Single Market is continuing to decrease slightly. Once again, Italy accounts for the highest number of cases, followed

⁵ *'The Commission will therefore initiate a more determined policy in this field and will call on the Member States to improve the transposition of — and compliance with — their national legislation, using numerical targets limiting the transposition and compliance deficit for national legislation to 0.5% for the transposition deficit, and 0.5% for the compliance deficit'*; Communication from the Commission: 'Single Market Act: Twelve levers to boost growth and strengthen confidence', COM(2011) 206 final, 14.4.2011.

⁶ In the Scoreboard, and in particular in chapter 2, 'Infringement proceedings' are to be understood as covering all cases where transposition is presumed not to comply with the directive it transposes or where Single Market rules (either in the Treaty on the Functioning of the European Union or in Single Market directives) are presumed to have been incorrectly applied and where a letter of formal notice

by Spain. In contrast, Belgium has reduced the number of open infringement cases against it by 50% in the last two years.

Half of the infringement proceedings concern the incorrect application of EU legislation, be it primary or secondary law, by Member States; one third (34%) relate to the late transposition of directives. The remaining 15% of open cases concern the incorrect transposition of directives. Almost half of the total number of infringement proceedings is in taxation and the environment.

The average time needed to resolve infringement proceedings has decreased slightly from 26.9 to 26.1 months.

Internal Market Enforcement Table

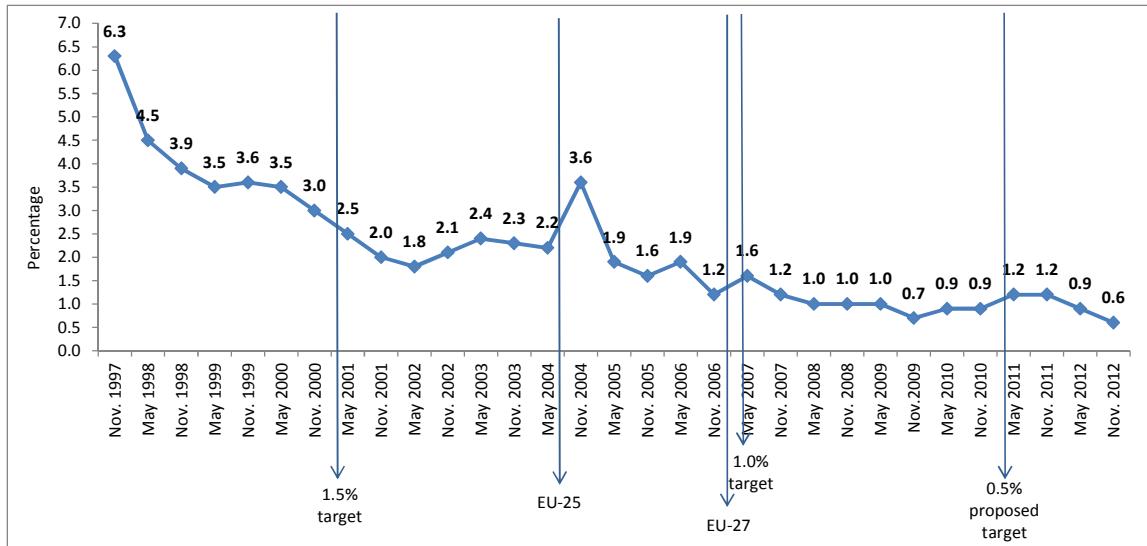
The Internal Market Enforcement Table presented at the end of this report highlights the fact that, with all enforcement indicators taken into account, only a small number of Member States perform better than the EU average. Romania is the best performer overall, achieving better results than the EU average on all indicators. Thanks to their average performance on all criteria, Estonia, Cyprus, the Czech Republic and Lithuania also deliver good results.

has been sent to the Member State in question. In order to avoid double counting, cases of failure to notify transposition are excluded from this chapter except in Figure 14. .

1. STATUS OF THE TRANSPOSITION OF SINGLE MARKET DIRECTIVES INTO NATIONAL LAW

Average transposition deficit in November 2012

Figure 1: 0.6% — Best result ever!



The transposition deficit shows the percentage of Single Market directives not yet notified (as national transposition measures) to the Commission in relation to the total number of directives that should have been notified by the deadline. The current Scoreboard takes into account all notifications by 11 November 2012 for directives with a transposition deadline of 31 October 2012. As of 1 October 2012, 1420 directives and 1769 regulations were in force to ensure the functioning of the Single Market.

Since the publication of the first Internal Market Scoreboard in 1997, the EU average transposition deficit has decreased steadily. The different target benchmarks as established by the European Council⁷ (namely a maximum transposition deficit of 1.5% in Stockholm in 2001, 0% for long overdue directives in Barcelona in 2002 and 1% in Brussels in 2007) have clearly provided an incentive for Member States to improve their performance. The new Article 260(3) TFEU⁸, which sets out the possibility to impose financial sanctions, may also have had an impact on this positive trend.

Today, the EU average transposition deficit stands at 0.6% which is in line with the 1% target and is very close to the 0.5% target proposed by the European Commission in the Single Market Act.⁹ **If adopted by the European Council, this new target could encourage Member States to make even greater improvements.**

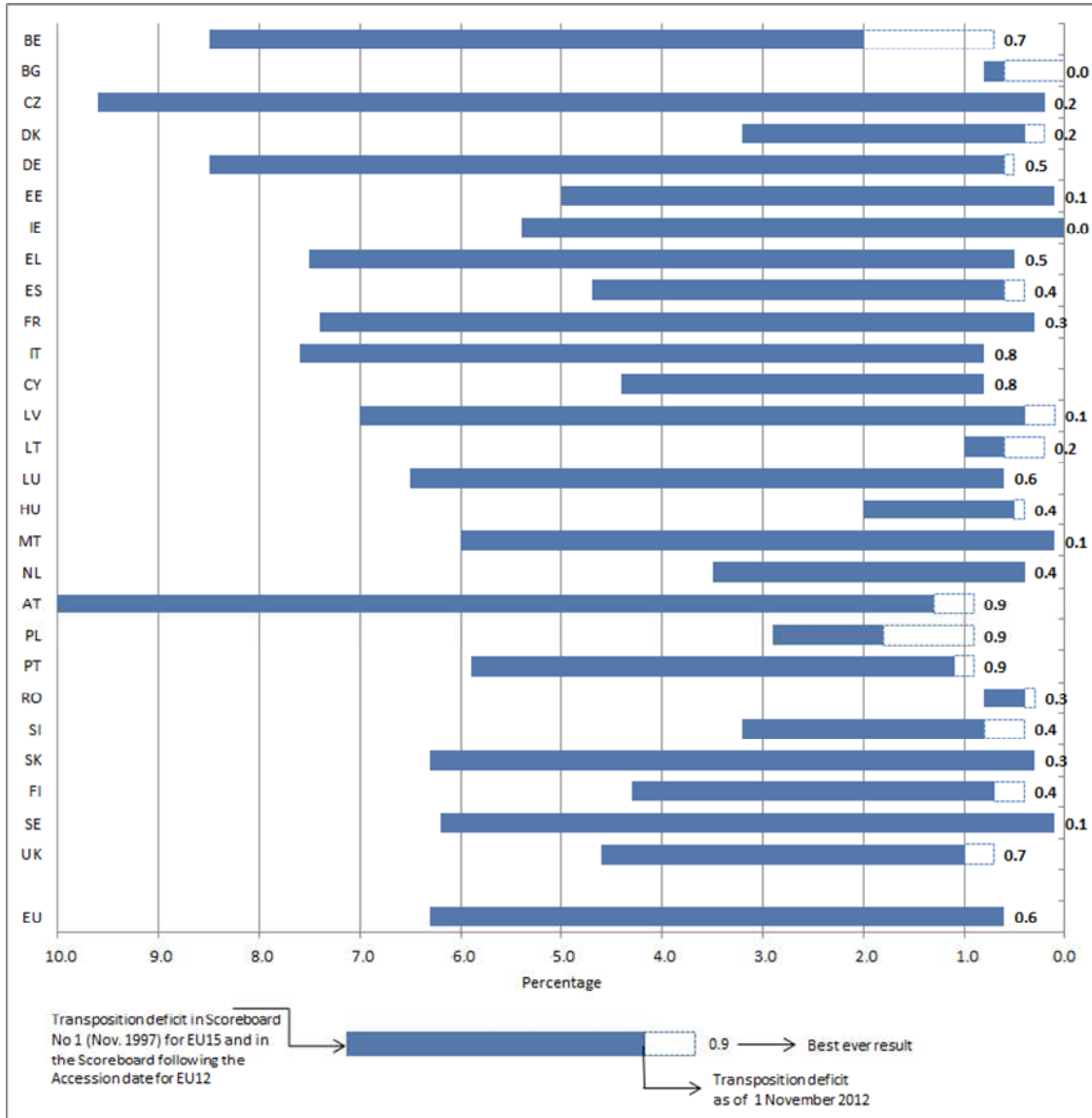
⁷ See footnote 4.

⁸ More information in the Communication of the Commission concerning the implementation of Article 260(3) TFEU, SEC(2010) 1371 final, 11.11.2010, (OJ EU C 12 p. 1, 15.1.2011).

⁹ See footnote 5.

The ultimate goal obviously remains that all Member States transpose Single Market rules within the deadline they have imposed on themselves. **However, Member States and their authorities should be praised for the considerable efforts they have made to achieve this very encouraging result in these challenging times.**

Figure 2: Twelve Member States achieve or equal their best result since 1997



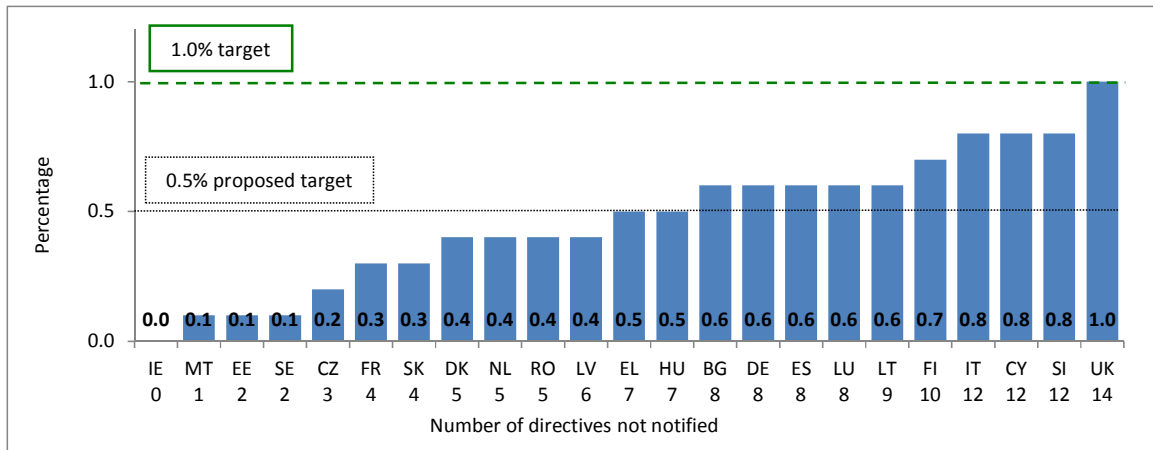
Evolution of the transposition deficit since the first edition of the Internal Market Scoreboard in November 1997 (or in the Scoreboard following the accession) to November 2012; the figures also indicate Member State's best result achieved.

In November 2012 twelve Member States achieved or equalled their best result since 1997: the Czech Republic, Estonia, Ireland, Greece, France, Italy, Cyprus, Luxembourg, Malta, the Netherlands, Slovakia and Sweden, with Italy and Luxembourg falling for the first time under the 1% threshold. Those Member States that have not attained the 1.0% target (Belgium, Austria, Poland and Portugal) have shown in the past that they are capable of doing so.

First challenge — achieving the 1% target

Compared to six months ago, twenty-three Member States have improved or equalled their transposition deficits. Only the results of Belgium, Denmark, Spain and Latvia have worsened to a greater or lesser extent. **This would appear to be indicative of Member States giving high priority to timely transposition even in the context of the current economic crisis.**

Figure 3: Twenty-three Member States have achieved the 1% target

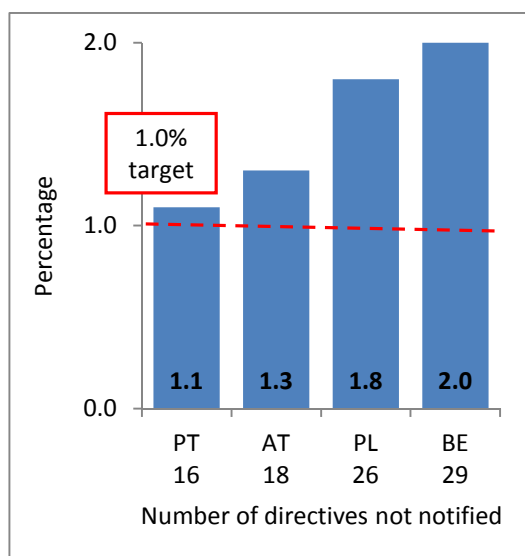


Transposition deficit of the Member States that achieved the 1% target as of 11 November 2012.

- Ireland has reached the zero transposition deficit (0.0%) and deserves to be congratulated and encouraged to share its good practices.
- Cyprus, Luxembourg, Romania, Slovenia, Finland and the United Kingdom are again within the 1.0% target, while Italy has achieved the target for the first time by radically reducing its transposition deficit (from 2.4% to 0.8%). Cyprus has also made an outstanding effort by reducing its transposition deficit from 1.9% to 0.8%. Romania has reduced its transposition deficit remarkably from 1.1% to 0.4%.
- Malta has achieved a 0.1% transposition deficit for the fifth consecutive time, consolidating its position as one of the best performers. Estonia continues to deliver positive results, reducing its transposition deficit from 0.2% to 0.1%. Moreover, following a remarkable trend, Sweden has joined the group of ‘very good performers’ (those having a transposition deficit below 0.5%), reducing its transposition deficit from 0.6% to 0.1%.
- Having outperformed the 1.0% target for the first time six months ago, the Czech Republic stepped up its performance, reducing its transposition deficit further from 0.6% to 0.2%.
- In total, thirteen Member States have a transposition deficit that is at or below 0.5%. This shows clearly that **the 0.5% target as proposed by the European**

Commission in the Single Market Act (2011)¹⁰ is not too onerous and could be reached with small further efforts by the majority of Member States.

Figure 4: Only four Member States still not achieving the 1% target



Transposition deficit of the Member States that missed the 1% target as of 11 November 2012.

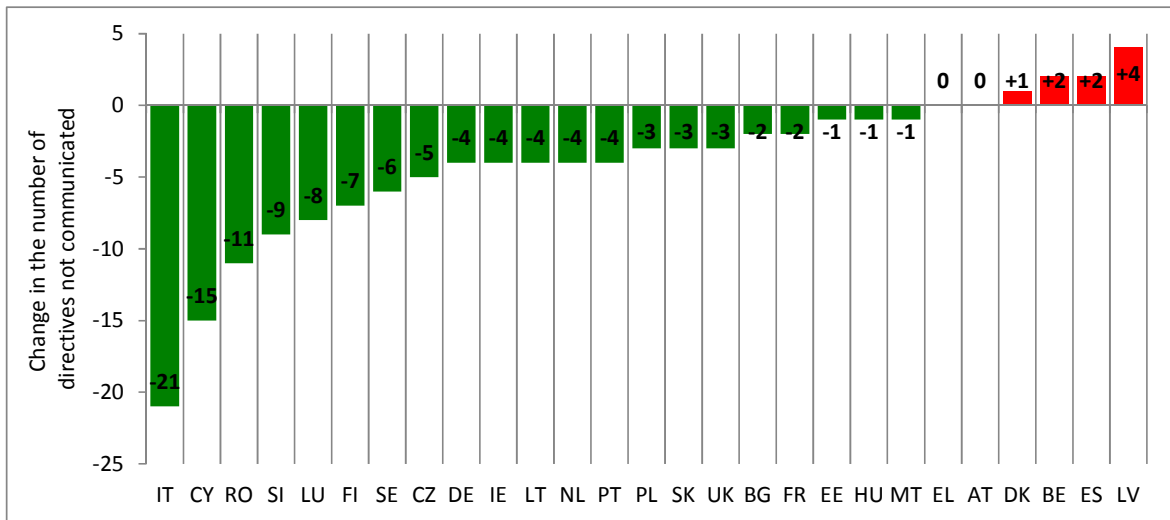
- While six months ago eleven Member States were not in line with the 1% target, by November 2012 only four Member States had not achieved it: Portugal, Austria, Poland and Belgium. Environmental, financial services and transport legislation account for most of the outstanding directives in those Member States.
- Portugal and Poland have performed better than six months ago (1.4% and 2.1% respectively), while Austria has equalled its previous score.
- Two and a half years after its best ever result (0.7%), Belgium has further increased its transposition deficit from 1.9% to 2.0%, the worst score of all Member States.

Existing backlog

Compared to six months ago, the majority of Member States have further reduced their number of outstanding directives. Although there has been an increase in the backlog in Belgium, Denmark, Spain and Latvia, the general positive trend seen six months ago seems to be continuing.

¹⁰ See footnote 5.

Figure 5: The majority of Member States have reduced their backlogs



Change in the number of outstanding directives since May 2012 (in Scoreboard No 25).

- After having reached its worst result since May 2007, Italy has made the biggest improvement, reducing its backlog by twenty-one directives in six months. The remarkable reduction in Italy’s transposition deficit is a consequence of this. The same efforts are evident from the significant reductions in Cyprus’ and Romania’s backlogs.
- Slovenia, which together with Italy had an increasing backlog six months ago, has reversed this trend and managed to improve its transposition rate.
- It is regrettable that Belgium, Denmark, Latvia and Spain have added more directives to their existing backlog, after their positive results six months ago. These Member States are encouraged to redouble their efforts to reduce their backlog.

Transposition requires a permanent effort and any relaxation results in a quick rise in the deficit. In the fourth chapter on ‘Member States’ good practices’, Romania, Italy and Ireland share the initiatives they have undertaken to improve the implementation of Single Market law.

Second challenge — meeting the ‘zero tolerance’ target

Long transposition delays seriously impair the proper functioning of the Single Market. The longer the delay, the more serious the consequences are for citizens and businesses. This is why Heads of State and Government set a target of ‘zero tolerance’ for delays of two years or more in transposing directives.¹¹

¹¹ See footnote 4.

In the recent past, Member States had made considerable progress in reducing the number of long overdue directives, from twenty-two in May 2009 to two in November 2011 (-90%). Currently, five Member States do not meet the ‘zero tolerance’ target for at least one of a total of eight directives that are more than two years beyond their transposition deadline: Belgium, Germany, Italy, Poland and the United Kingdom.

Figure 6: Eight directives are more than two years beyond their transposition deadline

Number	Title	Not transposed by	Transposition deadline
2006/24/EEC	Retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks	BE	15/09/2007
2007/65/EC	Pursuit of television broadcasting activities	BE, PL	19/12/2009
2009/29/EC	Improvement of the greenhouse gas emission allowance trading scheme of the Community	BE, IT	31/12/2009
2008/101/EC	Inclusion of aviation activities in the scheme for greenhouse gas emission allowance trading within the Community	BE	02/02/2010
2008/90/EC	Marketing of fruit plant propagating material and fruit plants intended for fruit production (Recast version)	PL	31/03/2010
2009/149/EC	Common Safety Indicators and common methods to calculate accident costs	UK	18/06/2010
2008/57/EC	Interoperability of the rail system within the Community	DE, UK	19/07/2010
2009/131/EC	interoperability of the rail system within the Community	DE	19/07/2010

Directives with a transposition deadline by 31 October 2010, which are not (fully) transposed by at least one Member State — Situation as of 11 November 2012.

- As a consequence of this, twenty-two Member States meet the ‘zero tolerance’ target. There are no longer any outstanding long overdue directives in Bulgaria or the Netherlands, but two Member States (Germany and the United Kingdom) have moved in the opposite direction, with two such directives. Belgium, which already had two outstanding long-overdue directives six months ago, has added two more to this backlog.

These long delays cannot be justified by administrative burdens or the complexity of the directives, so **the Commission has launched infringement proceedings in all these cases**. Moreover, by May 2013, fourteen new directives will be two or more years past their transposition deadline. For the time being, fifteen Member States have not yet transposed all of them.

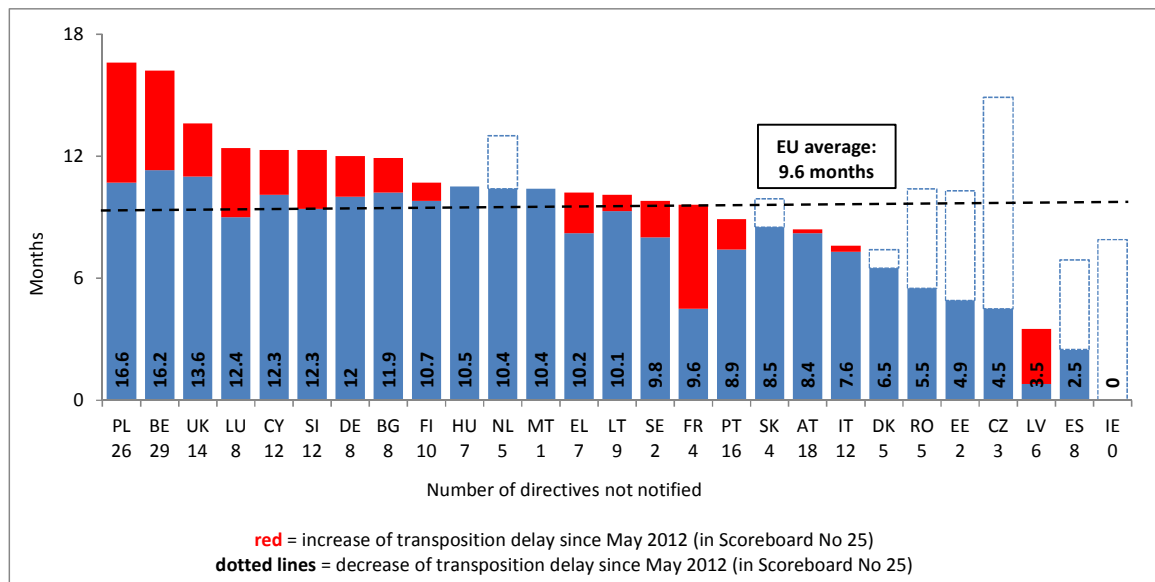
Third challenge — reducing transposition delays

After having reduced the average transposition delay to an extra 5.5 months in May 2011, Member States have progressively increased their delays and now take an average of 9.6 extra months to transpose EU directives after the deadline. This corresponds to an overall increase of almost 75% in two years.

This is despite Member States managing to achieve the 1% transposition deficit target and get their best result ever, an apparent contradiction. However, it is the result of the increase in the number of long-overdue directives and the significant number of outstanding directives (thirty-eight out of seventy-three) that should have been transposed more than one year ago. What is needed now is for Member States to give particular attention to the directives that date back more than one year in order to reduce the transposition delay.

Cyprus is a good illustration of this correlation: it is one of the Member States where transposition delays are the longest, despite having strongly reduced its transposition backlog and scoring well in terms of transposition deficit (0.8%). This result is particularly influenced by the fact that half of the outstanding directives in Cyprus (6 out of 12) should have been transposed in 2010 and 2011.

Figure 7: Transposition delays increase further



Average transposition delay in months for overdue directives — Situation as of 11 November 2012 compared to corresponding figures for 10 May 2012.

- Only eight Member States have managed to reduce their average delay compared to May 2012: Ireland (which transposed all directives on time), Spain, the Czech Republic, Estonia, Romania, Denmark, Slovakia and the Netherlands.
- Delays have lengthened most in Poland and Belgium, stretching from 10.7 to 16.6 months and 11.3 to 16.2 months respectively. For both Member States, this is a consequence of the number of ‘old’ directives (whose transposition has been overdue for more than one year) being added to their backlog.
- Despite further decreasing its transposition deficit, France has doubled its transposition delay (from 4.5 to 9.6 months). This can be explained by the fact that two out of its only four outstanding directives should have been transposed in 2011.

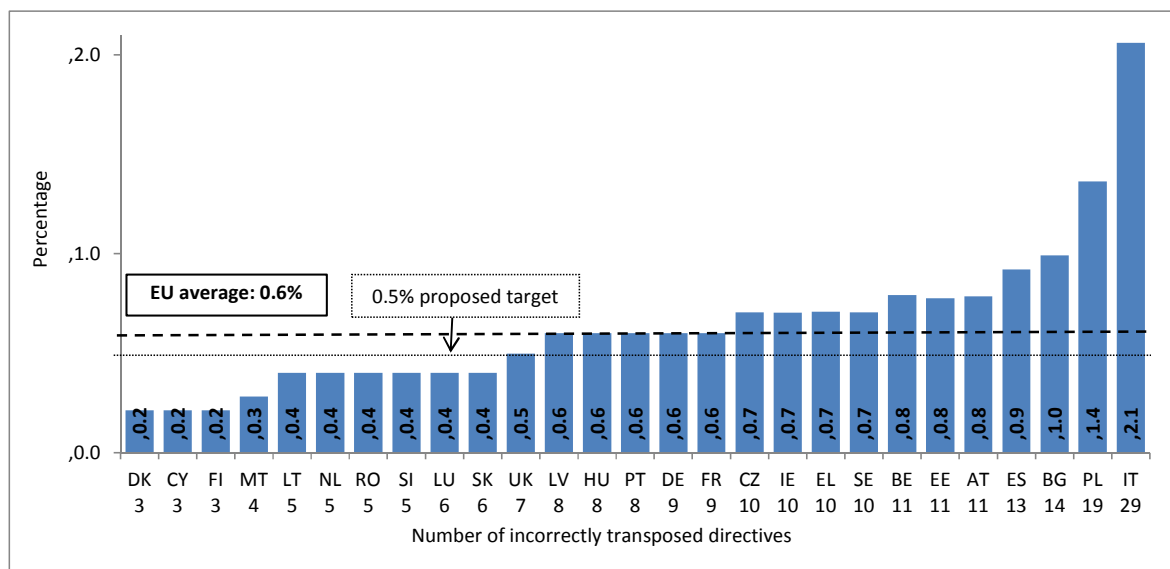
Delays in transposing measures are not just a legal problem. They also leave a void in the regulatory framework, which deprives citizens and businesses of their rights and

undermines confidence in the European Union. For this reason, the Lisbon Treaty created an additional instrument to give a stronger incentive to Member States to transpose directives within the deadlines laid down by the legislator and hence to ensure that Union legislation is genuinely effective. The Commission may specify to the Court that it impose a lump sum or penalty payment at an early stage, i.e. in the same judgment which finds that a Member State has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure.¹²

Fourth challenge — improving the conformity of national legislation

Member States not only have to transpose EU legislation in due time, they also need to transpose EU directives correctly into national law. This is to ensure that citizens and businesses can benefit from the Single Market’s full potential. For that reason, the Single Market Act called on Member States to make additional efforts to bring their compliance deficit,¹³ which measures the percentage of incorrectly transposed directives based on infringement proceedings opened by the Commission, to 0.5%.¹⁴

Figure 8: Slight fall in the number of incorrectly transposed directives



Number of directives transposed where infringement proceedings for non-conformity have been initiated by the Commission, as a percentage of the number of Single Market directives notified as transposed to the Commission or for which transposition is not considered necessary (as of 1 November 2012).

- The average compliance deficit has dropped further from 0.8% one year ago (0.7% six months ago) to 0.6% today, coming close to the proposed benchmark of 0.5%. Eleven Member States already meet this target and five more are very close it. **This shows that, as for the transposition deficit, 0.5% is an achievable target.**

¹² See footnote 8.

¹³ See footnote 5.

¹⁴ See disclaimer at the beginning of chapter 2.

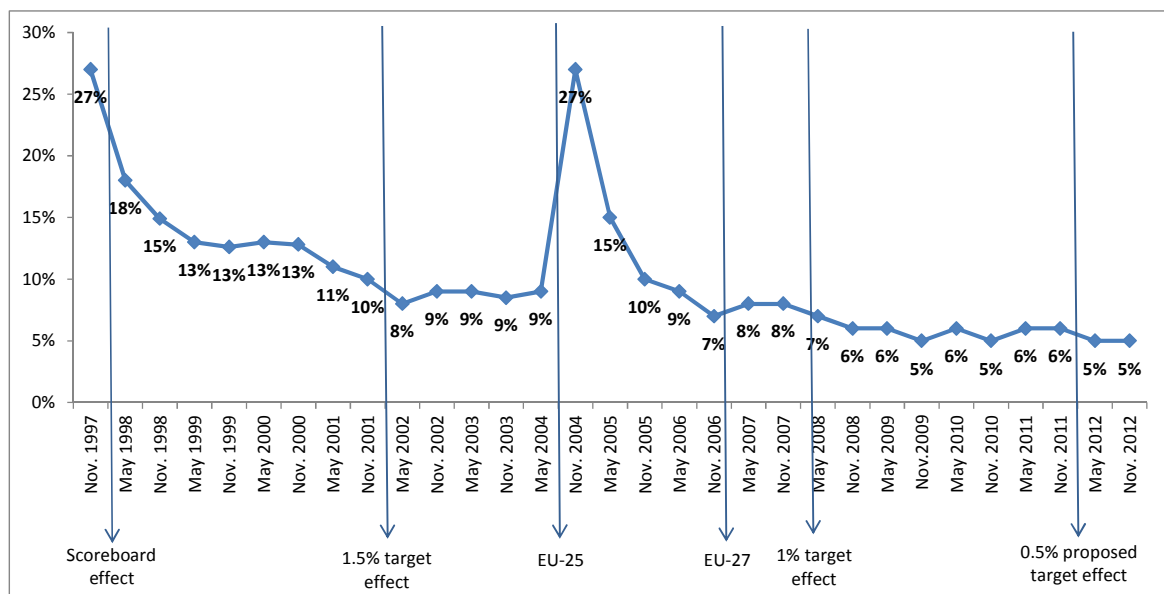
- Italy, which has had remarkable success in reducing its transposition deficit (from 2.4% to 0.8% today) still has too many directives considered to be incorrectly transposed (twenty-nine). In contrast, Cyprus has the same transposition deficit but only three directives that are subject to infringement proceedings for non-conformity.
- More problematically, Poland combines a high transposition deficit with a high proportion of incorrectly transposed directives. The same goes, to a lesser extent, for Belgium.

Incompleteness of the Single Market due to lack of transposition

The Single Market is incomplete when its rules are not applied or the rights derived from them cannot be exercised uniformly. There are several causes of incompleteness, including making different use of exemptions and derogations and applying existing rules in different ways. However, one of the main problems continues to be the failure by one or more Member States to transpose a given directive.

Whenever one or more Member States fail to transpose directives on time, they leave a void in the European legal framework. Instead of the Single Market covering all Member States, it remains much smaller and fragmented. Consequently, if one Member State does not deliver, the economic interests of all Member States are affected.

Figure 9: Incompleteness rate remains at 5%



The so-called ‘incompleteness rate’ records the percentage of outstanding directives which one or more Member States have failed to transpose in relation to the total number of Single Market directives, with the consequence that the Single Market is not a reality in the areas covered by those directives — Situation as from November 1997 to November 2012.

Thanks to the improved transposition performance by Member States, the rate of incompleteness of the Single Market due to failures to transpose remains at its lowest level of 5%. In absolute terms, seventy-three directives have not been transposed on time in at least one Member State. Twenty-eight of these seventy-three directives (38%) do not achieve their full effect because just one Member State has not transposed them.

The biggest problems remain again in the areas of transport (twenty outstanding directives out of 117 directives in force), the environment (fourteen outstanding directives out of 151 in force) and financial services (seven outstanding directives out of 108 in force).

Looking ahead

In addition to today's transposition deficit, it is also important to look at new directives coming on stream. Figure 10 illustrates the number of directives that each Member State needs to transpose in order to achieve the 1% interim target by May 2013.

Figure 10: Estonia and Latvia are best prepared for the next Scoreboard

	BE	PL	PT	CY	SI	UK	ES	LT	AT	IT	FI	EL	LU	HU	RO	BG	MT	NL	SK	DE	DK	IE	SE	CZ	FR	LV	EE
For a 0% deficit	45	45	39	35	35	33	31	31	31	30	30	29	29	29	27	26	25	25	24	23	22	22	22	21	21	20	15
For a 1% deficit	31	31	25	21	21	19	17	17	17	16	16	15	15	15	13	12	11	11	10	9	8	8	8	7	7	6	1

Provisional number of directives that each Member State should notify by May 2013. This number is the result of adding the existing backlog (as of 15 December 2012) to the directives still to be transposed for the May 2013 Scoreboard (25 directives).

Given the new directives to be transposed in the next six months, together with some particularly high backlogs, it is difficult to see how several Member States will meet the 1% target without drastic action. **Nevertheless, the recent achievements of Italy, Cyprus and Romania show that considerable progress is possible in a short period of time.**

2. INFRINGEMENT PROCEEDINGS¹⁵ FOR INCORRECT TRANSPOSITION OR APPLICATION OF SINGLE MARKET RULES

Agreed EU rules must not only be correctly transposed into national law by the deadlines in every Member State, but must also be applied effectively by all Member States. Misapplication of Single Market legislation causes harm to the European economy and undermines the confidence citizens and businesses have in the Single Market and the European Union in general.

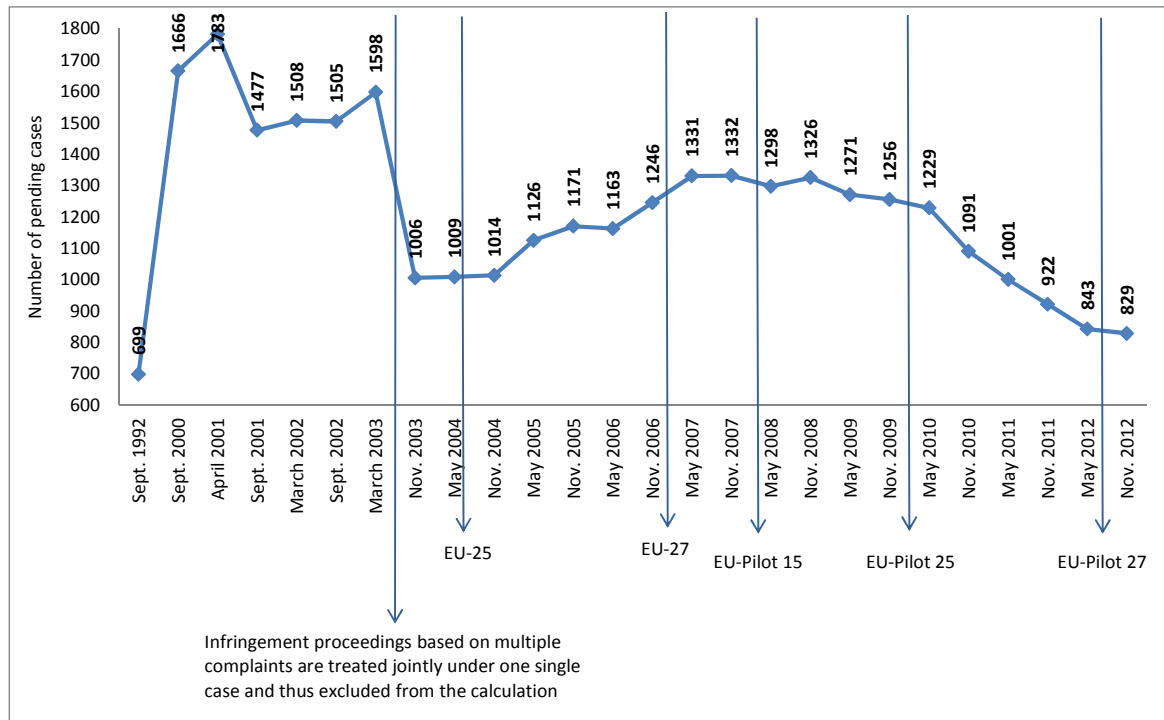
As guardian of the Treaties, the Commission must ensure that both Treaty provisions and acts adopted by the Institutions of the European Union are correctly implemented and applied by the Member States. Where the Commission considers that Single Market rules are not properly applied, it may open infringement proceedings against the Member State in question. Infringement proceedings entail an exchange of their respective positions between the Commission and the Member State concerned. Initiating such proceedings reflect the Commission's view that the Member State is failing to fulfil its obligations under the Treaty. However, only the Court of Justice can rule definitively that a breach of the EU law has occurred. This should be kept in mind when interpreting statistics on infringement proceedings.

Number of infringement proceedings

It is interesting to see how the number of infringement proceedings has evolved over time. After September 1992, the number of infringement proceedings rose steadily, due to successive accessions to the EU. In 2003 the numbers went down dramatically as a consequence of the joint treatment of similar cases. More recently, since November 2007, **the number of infringement proceedings has been falling steadily**. The number of pending infringement proceedings concerning the Single Market has fallen by only 1.7% in the past six months. But if we compare with November 2007, the number is down by 38%.

¹⁵ Definition: see footnote 6.

Figure 11: 38% reduction in infringement proceedings since November 2007



Pending infringement cases since September 1992.

Most of this decrease has occurred since May 2010. This might be due to the **introduction of improved working methods concerning complaints handling and early problem-solving mechanisms.**¹⁶ These figures show that many infringement proceedings and potential violations of EU law can be solved at an earlier stage and that formal procedures can be avoided using these systems.

In April 2008, the Commission put in place the ‘EU Pilot’ project with fifteen volunteer Member States to enhance cooperation and early problem-solving between national authorities and the Commission concerning the application of EU law before formal infringement proceedings are launched. As from 1 June 2012, with the incorporation of Luxembourg and Malta, all twenty-seven Member States are now participating in ‘EU Pilot’.

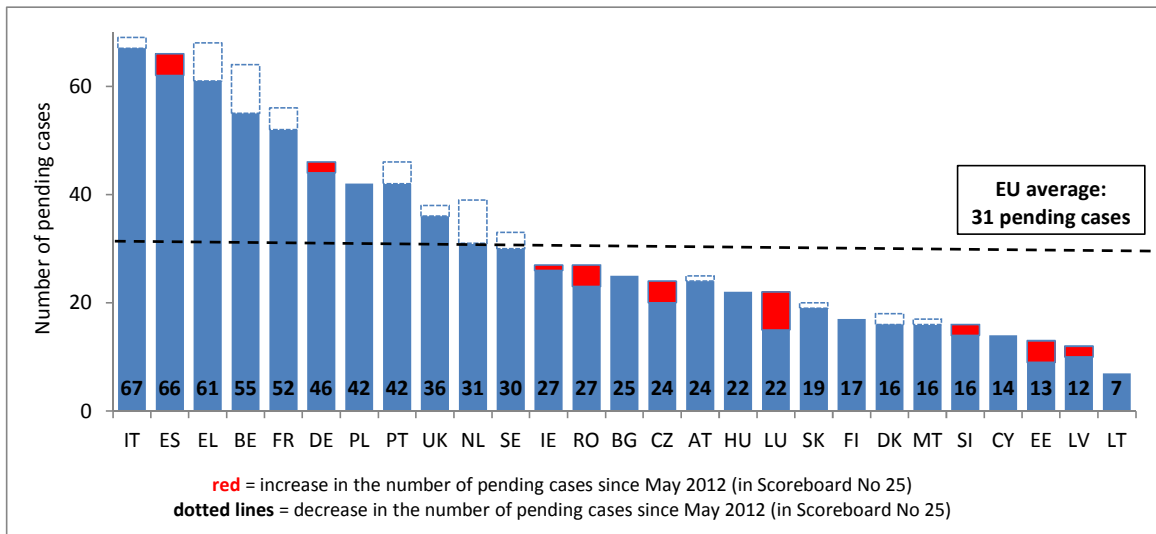
According to the second Evaluation Report on EU Pilot of December 2011, ‘EU Pilot [...] helps to clarify and solve satisfactorily some issues regarding application of EU law raised by the Commission, thus putting an end to problems without the need for recourse to infringement proceedings and, in the case of complaints, providing more rapid results for citizens and businesses. Around 80% of the responses provided by the Member States had been assessed as acceptable (in line with EU law) allowing the file to be closed without the need to launch an infringement procedure under Article 258 TFEU’.

¹⁶

SOLVIT: <http://ec.europa.eu/solvit/>

EU-Pilot: http://ec.europa.eu/community_law/infringements/application_monitoring_en.htm

Figure 12: EU average number of infringement proceedings remains unchanged



Open infringement cases as of 1 November 2012.

- The total number of infringement proceedings per Member State varies widely. Despite some improvements, Italy has still the highest number of pending infringement cases, almost ten times more than Lithuania, the Member State with the lowest number of cases. During the last six months, Belgium has improved the most (-9 cases), followed by the Netherlands (-8) and Greece (-7).
- Due to the addition of four more open infringement proceedings, Spain has replaced Belgium in the top three; Italy, Spain and Greece now have the highest number of pending infringement proceedings. Their combined share represents a quarter of the total number of cases; all three Member States are at double the EU average of 31 cases. Over a longer-term perspective, however, these Member States have improved significantly: when compared to the date on which they joined the EU-Pilot system, there has been a decrease of -47% for Italy, -39% for Spain (both since April 2008) and -25% for Greece since September 2011. Most impressive is the performance of Belgium: -49.5% since January 2011.
- Nine Member States have increased the number of open infringement proceedings from six months ago. The case of Luxembourg is particularly worrying, adding seven cases to its record, although it remains below the EU average.

Breakdown by sector

The figure below shows that the largest number of cases continue to be mainly in the areas of taxation (direct and indirect) and the environment (water protection and management, waste management, environmental impact and atmospheric pollution), these two sectors accounting for 45% of all cases.

Figure 13: Taxation and environment account for 45% of infringement proceedings

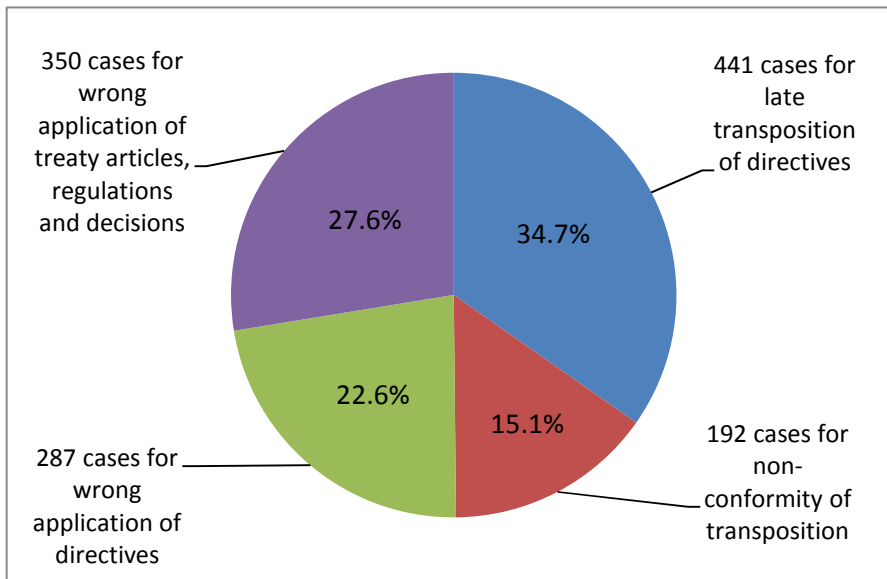
MS	Agriculture (26)	Air transport (60)	Atmospheric pollution (27)	Direct taxation (93)	Environmental impact (30)	Free movement of goods and market surveillance (26)	Health & Consumers (44)	Indirect taxation (91)	Inland transport (34)	Justice incl. non discrimination and data protection (31)	Public procurement (23)	Services (32)	Social security schemes and free movement of workers (32)	Waste management (56)	Water protection (66)	Other fields (158)	TOTAL
IT	1	3	2	1	3	2	1	6	1	5	6	2	4	8	4	18	67
ES	1	3	2	11		3	4	8	2			3	4	4	7	14	66
EL	3	2	2	1		5	5	7	2	2	4	5		5	7	11	61
BE	1	2	1	24	2	1	1		2	5		1	2	1	4	8	55
FR	3	3	1	8	1	4	5	9	2	1		2	2		5	6	52
DE	1	2	1	7	1	3		6	1	4	2	7	2	1	4	4	46
PL		4	1	1		2	7	5	2	1	2			4	3	10	42
PT	1	4	1	4	3		2	6	3	1		1		5	5	6	42
UK		2	1	7	2		1	4	1	2			3	2	5	6	36
NL	1	2		5			2	4	1	2	2	1	3		1	7	31
SE	1	2	1	1	1	1	2	4		1		2		3	4	7	30
RO	1	1	2	3	2		2	6	1	1	2		1	2		3	27
IE		2	1	2	3		1	6	1			2		1	3	5	27
BG	1	2	3				1	1	1			1		2	2	11	25
AT	1	2	2	1	2	1		1	2	2	2		1		1	6	24
CZ	2	2	1	1	2	1	1	4	2	1				2		5	24
LU	1	2		6				3	1				2		3	4	22
HU	1	3	1	2	1		1	1	1	2		3		1	1	4	22
SK	1	2	1		2	2	2			1	1		2	3		2	19
FI	1	2		3				3	2			1	1	1	2	1	17
SI	1	1	1		3			1	2			1	1	3		2	16
DK		3		3			3	2						1	1	3	16
MT	1	4	1					1			1		2	1	1	4	16
CY	1	2			1		1	3					2	2		2	14
EE		2		2	1				1					2	1	4	13
LV	1		1				2		1		1			1	2	3	12
LT		1				1			2					1		2	7

Open infringement cases as of 1 November 2012, broken down by sector. Sectors representing less than 20 infringement proceedings are included in 'other fields' (such as energy markets and networks, free movement of capital, free movement of professionals, working rights and conditions).

- Taxation is a source of numerous cases for most Member States, but particularly for Belgium, Spain and France. Environmental issues are especially controversial for Spain, Italy and Greece.

Nature of infringement proceedings

Figure 14: Most infringements relate to misapplication of EU law



Number of pending infringement cases opened for late or wrong transposition of Single Market directives plus number of cases opened for wrong application of Single Market rules. Situation as of 1 November 2012.

Chapter 1 of the Internal Market Scoreboard dealt with the timely and correct transposition of directives. Indeed, more than one third of the infringement proceedings open against Member States deal with the late transposition of directives¹⁷ and 15% of the open cases concern incorrect transposition. This shows again the importance to be attached to timely and correct transposition.

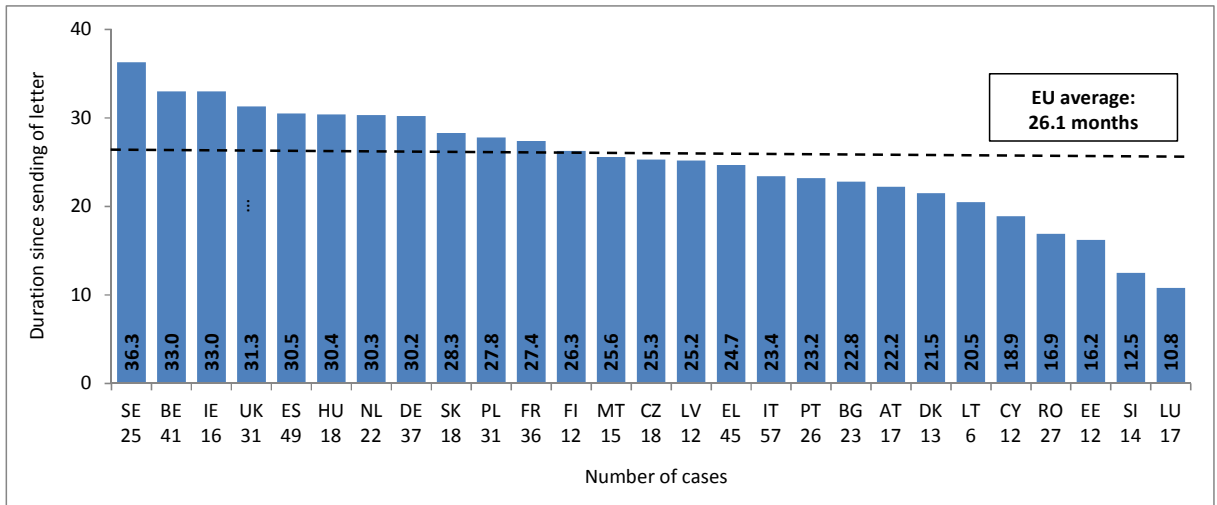
The remaining half of all infringement proceedings concern incorrect application by Member States of EU legislation, be it primary or secondary law.

Duration of infringement proceedings

When problems arise with conformity with Single Market rules or their application, addressing them quickly ensures that citizens and businesses are able to exercise their rights in the Single Market. As half of the cases take over two years to be settled, special attention should be given to the time required to settle infringement proceedings.

¹⁷ The number of infringements open for late transposition (441 cases) is higher than the number of national transposition measures not notified in time by the Member States (241). This is due to time lapse between the actual notification and the closure of the infringement proceedings.

Figure 15: The average duration of infringement proceedings ranges from ten months to three years



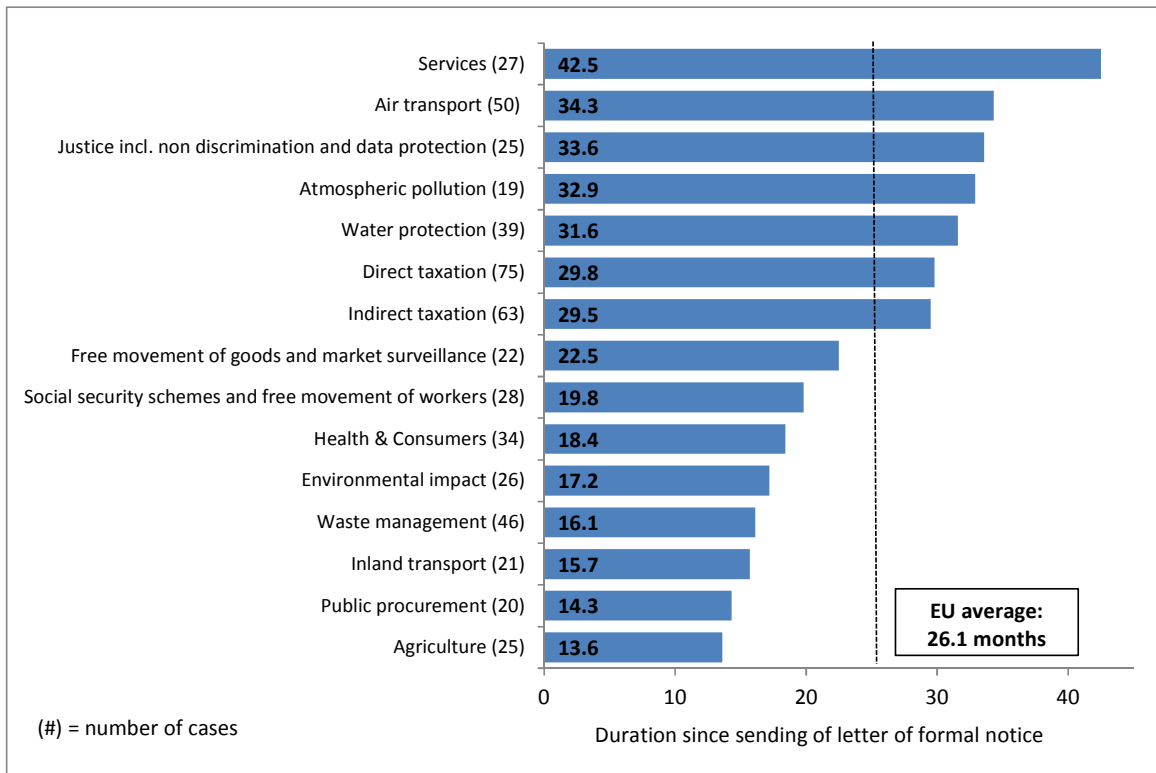
Pending infringement cases not yet sent to the Court as of 1 November 2012 (650 cases): average duration in months from the sending of the letter of formal notice.

- After a steady increase in the average duration of pending infringement cases over the last two years, the average duration fell slightly in the last six months, from 26.9 months to 26.1 months. Nevertheless, while six months ago the duration of proceedings against only six Member States exceeded thirty months, now eight fall into this category: Sweden, Belgium, Ireland, the United Kingdom, Spain, Hungary, the Netherlands and Germany.
- In total, fourteen Member States managed to improve the speed at which their cases were resolved. The speed of resolution has seen a particularly strong improvement in the Czech Republic (- 6.6 months) and also in those Member States that had already a short average: Romania, Estonia, Slovenia and Luxembourg. The top three remains unchanged with proceedings against Sweden, Belgium and Ireland having the longest average duration.
- It has to be recalled that, in those key areas likely ‘to bring about the most significant gains in growth and jobs’ as identified by its Communication on Better Governance for the Single Market,¹⁸ the Commission calls on Member States to ensure quick compliance to allow the duration of infringement procedures to be reduced to 18 months on average.

¹⁸

See footnote 2.

Figure 16: Services sector legislation averages the longest infringement proceedings



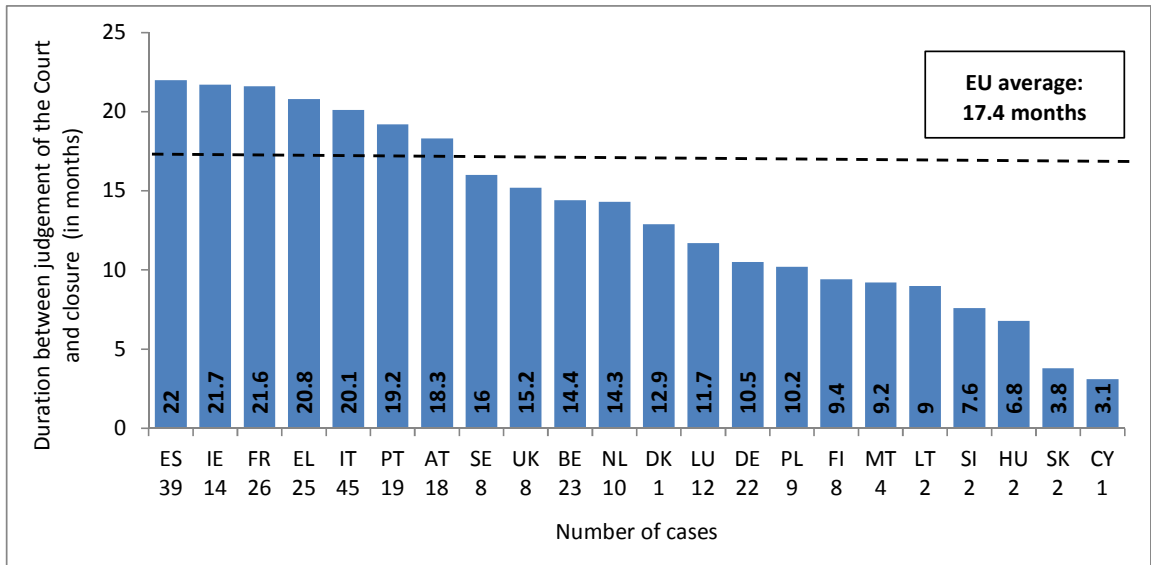
Average duration of pending infringement cases not yet sent to the Court as of 1 November 2012, broken down by sectors including at least 20 cases (520 cases): average duration in months from the sending of the letter of formal notice.

- When pending infringement cases are broken down by sector, proceedings concerning services sector legislation have the longest average duration: 42.5 months on average. This can be worrying given that services constitute one of the key sectors identified by the Governance Communication.¹⁹
- The average length of a pending case concerning legislation in the air transport, justice (including non-discrimination and data protection), atmospheric pollution and water protection sectors is longer than 30 months. The average length of cases regarding taxation (direct and indirect) is also almost 30 months.

¹⁹

See footnote 17.

Figure 17: Cases against most Member States are still open more than twelve months after the Court ruling



Cases closed between 1 November 2007 and 31 October 2012 after the Court ruling (300 cases) — Average duration between judgment of the Court and resolution of the case.

Article 260(1) TFEU, as interpreted by the Court of Justice, requires that after a Court ruling establishing a breach of EU legislation, the Member State concerned must take immediate action to ensure compliance as soon as possible.²⁰ Despite this obligation, cases against twelve Member States are on average still open more than twelve months after the first Court ruling; for seven Member States (Spain, Ireland, France, Greece, Italy, Portugal and Austria) this period is even longer than eighteen months.

The EU average of close to 18 months has remained unchanged for more than two years. This is simply too long. **Member States must make compliance with Court rulings a priority since citizens and businesses have been prevented from exercising their rights for several years and the Court has confirmed the infringement of Union law.**

Again, it has to be emphasised that the Communication on Better Governance for the Single Market calls on Member States to speed up the process for complying with judgments of the Court of Justice in the identified key sectors, i.e. achieving full compliance within 12 months on average.

²⁰ See in particular the judgments in case C-291/93 Commission v Italian Republic (1994), paragraph 6, case C-101/91 Commission v Italian Republic (1993), paragraph 20 and case C-328/90 Commission v Hellenic Republic (1992), paragraph 6.

3. SINGLE MARKET ENFORCEMENT TABLE

It is in the common interest of Member States to ensure that the Single Market functions properly for the benefit of their citizens and businesses. However, proper functioning requires the correct implementation of EU legislation in various respects. Therefore, the Internal Market Scoreboard uses a set of different indicators in order to measure Member States' overall enforcement performance.

The Single Market Enforcement Table combines the most relevant indicators in order to provide a better overview of Member States' compliance in implementing and applying Single Market legislation.

The Table shows that only a small number of Member States perform better than the EU average when all indicators are taken into account. Only Romania scores better than average on all indicators. Given their average performance on all criteria, Estonia, Cyprus, the Czech Republic and Lithuania also perform well.

In the Table, yellow and green indicate that Member State performance is average or better. Pink (worse than average) means there is a need to make more efforts to improve performance.

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	EU average
Fig. 3-4: Transposition deficit	2.0%	0.6%	0.2%	0.4%	0.6%	0.1%	0.0%	0.5%	0.6%	0.3%	0.8%	0.8%	0.4%	0.6%	0.6%	0.5%	0.1%	0.4%	1.3%	1.8%	1.1%	0.4%	0.8%	0.3%	0.7%	0.1%	1.0%	0.6%
Fig. 5: Progress over the last 6 months (change in the number of outstanding directives)	+2	-2	-5	+1	-4	-1	-4	0	+2	-2	-21	-15	+4	-4	-8	-1	-1	-4	0	-3	-4	-11	-9	-3	-7	-6	-3	-4
Fig. 6: Number of directives two years or more overdue	4	0	0	0	2	0	0	0	0	0	1	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2	0.4
Fig. 7: Transposition delay on overdue directives (in months)	16.2	11.9	4.5	6.5	12.0	4.9	0.0	10.2	2.5	9.6	7.6	12.3	3.5	10.1	12.4	10.5	10.4	10.4	8.4	16.6	8.9	5.5	12.3	8.5	10.7	9.8	13.6	9.6
Fig. 8: Compliance deficit	0.8%	1.0%	0.7%	0.2%	0.6%	0.8%	0.7%	0.7%	0.9%	0.6%	2.1%	0.2%	0.6%	0.4%	0.4%	0.6%	0.3%	0.4%	0.8%	1.4%	0.6%	0.4%	0.4%	0.4%	0.2%	0.7%	0.5%	0.6%
Fig. 12: Number of pending infringement cases	55	25	24	16	46	13	27	61	66	52	67	14	12	7	22	22	16	31	24	42	42	27	16	19	17	30	36	31
Fig. 15: Average speed of infringement resolution - pending cases (in months)	33.0	22.8	25.3	21.5	30.2	16.2	33.0	24.7	30.5	27.4	23.4	18.9	25.2	20.5	10.8	30.4	25.6	30.3	22.2	27.8	23.2	16.9	12.5	28.3	26.3	36.3	31.3	26.1
Fig. 17: Duration since Court's judgments - closed cases (in months)	14.4	NA	NA	12.9	10.5	NA	21.7	20.8	22.0	21.6	20.1	3.1	NA	9.0	11.7	6.8	9.2	14.3	18.3	10.2	19.2	NA	7.6	3.8	9.4	16.0	15.2	17.4

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
Number of long overdue directives	0	/	> 0
Duration since Court's judgment	< 8 months	8-18 months	> 18 months
NA= not applicable			

4. MEMBER STATES' GOOD PRACTICES

Recent editions of the Internal Market Scoreboard have devoted particular attention to the success stories of those Member States that have managed to reduce their transposition deficit or improve the settlement of infringement proceedings. All Member States were invited to share their initiatives for improving the implementation of Single Market law with a view to promoting good practices.

This edition presents contributions received from Ireland, Italy and Romania.

Ireland

An Interdepartmental Committee on EU Engagement was established in autumn 2011. This is chaired by the Minister of State for European Affairs in the Department of the Taoiseach (Prime Minister) and its membership includes senior representatives of all Government Departments and the Offices of the Attorney General and Parliamentary Counsel. This Committee meets every two to three months.

This Committee has a wide brief including monitoring/addressing the Government's commitments concerning the EU. It has a specific mandate to continually examine Ireland's participation in the shaping of EU legislation, including transposition of EU legislation and handling of infringements. Its goal is to improve Ireland's record in order to avoid/minimise the risk of penalties and fines.

A Sub-group of this Committee comprising officials from those government departments with the largest number of transposition and infringements issues meets regularly and reports to the Committee on any issues of concern. The Sub-group monitors the state of play with regard to transposition and infringements and exerts official and 'moral' pressure on government departments to transpose directives within the deadline set and to reduce the number of infringements. This has worked well as indicated by the fact that, for the first time, all directives due to be transposed by February 2013 had been transposed on time. Similarly, Ireland had approximately ninety outstanding infringements three to four years ago and this number is now closer to thirty. The Sub-group is also reviewing the current procedures for dealing with transposition and infringements across the Government.

The EU Affairs Division of the Department of the Taoiseach is also the national authority for the EU Pilot programme. Ireland sees the value of this programme and the relevant officials stress to colleagues in other departments the benefits of early resolution of cases without these having to result in infringement proceedings.

The manner in which transposition is dealt with by a typical Irish government department is shown in the following example concerning the Department of Agriculture, Food and the Marine (DAFM).

Following the publication of the directive, the EU Affairs Division, Department of the Taoiseach and the relevant division with the DAFM are notified. The lead official to deal with the transposition is identified within the DAFM.

A dedicated officer in the EU Affairs Division, DAFM, is assigned to monitor transposition dates and to liaise directly with colleagues. This officer also updates the electronic notification database (NEMS) and the EU returns database. Transposition is highlighted in the relevant division's business plan.

The DAFM has its own Legal Services Division whose small team of trained officers works with policy colleagues in relation to transposition. A member of the team is assigned to deal with each directive and works closely with the lead official/line Division to give effect to the directive in a timely manner.

Staff are advised of the importance of early warning where legislation is likely to be difficult to transpose, for example where transposition necessitates more extensive changes than the impact assessment originally envisaged. The EU Affairs Division and Legal Services Division highlight the importance of close working relations with the Commission, particularly in difficult cases where there is a risk of infringement proceedings.

Staff report regularly to a Management Advisory Committee and to the Inter-departmental Committee on EU Engagement. This reporting helps to ensure that directives are handled in a timely manner.

Italy

A transposition deficit of 0.8% is the best result achieved by Italy in recent years. Such a substantial reduction in the transposition deficit since November 2011 was possible thanks to three main factors:

1. The national system of transposition of Directives:

Italy's transposition system was previously based on the Law 11/2005, which gave a delegation to the Government to draft the Legge Comunitaria (Community Law). This Law, which had to be approved by the Parliament on an annual basis, contained the list of EU directives to be transposed in the following months together with the legislative measures necessary to settle infringement procedures. At the time this system was considered preferable to the previous one, whereby each directive was implemented through a single bill. In general terms, the mechanism has been shown to be effective. However, delays in the approval of each Community Law, mainly related to political problems concerning infringement cases, and the dynamics of the Parliament (the law had to be approved by both Chambers, a process that could be interrupted by their dissolution due to early vote, as happened recently) brought systematic delays to the transposition process. These were exacerbated by the fact

that each Community Law contained two different parts: one for the transposition of EU directives and the other dedicated to pending infringement procedures.

In order to avoid such risks and speed up the transposition process, a new Law was recently adopted (Law 234 of 24 December 2012) that revises the Law 11/2005. The new text enhances the coordinating role of the Dipartimento per le Politiche Europee (Department for European Policy) and splits the Community Law in two separate bills: one dedicated to the transposition of directives and the other focused on infringement procedures. This will allow Italy to approve the law concerning the transposition of directives on a regular basis, thus steadily reducing its transposition deficit.

2. Better internal coordination of infringement proceedings:

Within the Presidency of the Council, the internal process of transposing EU directives is coordinated by the Legislative Office of the Minister for EU Affairs, in agreement with the Ministry of Foreign Affairs. The Legislative Office works closely with the Struttura di missione per le procedure di infrazione (Unit for infringement procedures), created in 2006 within the Department for EU Policy of the Presidency of the Council in order to reduce the high number of pending infringement procedures. At the same time a specific unit for this purpose was created within the Permanent Representation of Italy to the European Union. The Struttura coordinates between the central Government and the different national and local administrations involved in infringement proceedings, and proposes solutions for infringements resulting from violations of EU law or failure to notify transposition measures. It is helped by the unit in Brussels, which provides coordination and dialogue between the EU institutions (primarily the Commission) and the Italian authorities. The Struttura and the Legislative Office follow each directive from its publication in the EU Official Journal to the publication of the corresponding transposition measure in the Italian Official Journal (*Gazzetta Ufficiale della Repubblica Italiana*).

Once the transposition measure or the necessary act to close an infringement case is ready, the Struttura sends it to the unit at the Permanent Representation which provides the notification through the MNE or INF electronic system, depending on the case.

3. Determination of all institutions involved in the legislative process:

The great improvement seen since November 2011, with Italy's transposition deficit being cut from 2.4% to 0.8%, was possible thanks to the determination of all institutions involved in the legislative process, including the policy ministries with the responsibility for preparing the draft texts of transpositions, and to their increased efforts in ensuring timely transposition, once the Community Law 2010 entered into force.

Romania

In 2011²¹ Romania missed the 1% target, which gave a signal that the process of transposition of EU directives needed to be improved at national level. In this context, the Ministry of European Affairs (MEA)²² re-established the network of contact points in all ministries and other authorities which have the right of legislative initiative. They also took preventive action by enforcing a new working methodology that establishes strict procedures and terms for the adoption of different categories of legal acts, in order to avoid missing transposition deadlines. Legal acts transposing EU directives must be submitted to the Government for adoption prior to the transposition deadlines according the following schedule: laws must be submitted four months before the transposition deadline; Government decisions and secondary legislation two months before the transposition deadline; and legislative packages six months before the transposition deadline. An annual programme for the transposition and notification of directives was also established. All these measures were endorsed by the Government, by means of a memorandum (public policy document).

An information note regarding the status of the legislative measures contained in the annual programme is presented to the Government each month and covers the proceedings launched by the Commission for non-transposition, all directives for which the transposition deadlines have already expired, directives with a transposition deadline in the following six months and, if applicable, directives that have not yet been attributed to any institution. Following the Government meeting, the competent institutions must provide the MEA with additional information concerning the status of the transposition of each directive, the reasons for any delays and new deadlines for notification.

Strengthening the permanent monitoring of the transposition process and increasing awareness among the institutions responsible has led to positive results — the transposition deficit has been reduced to under 0.5%.

²¹ According to the figures published in Internal Market Scoreboard No 23.

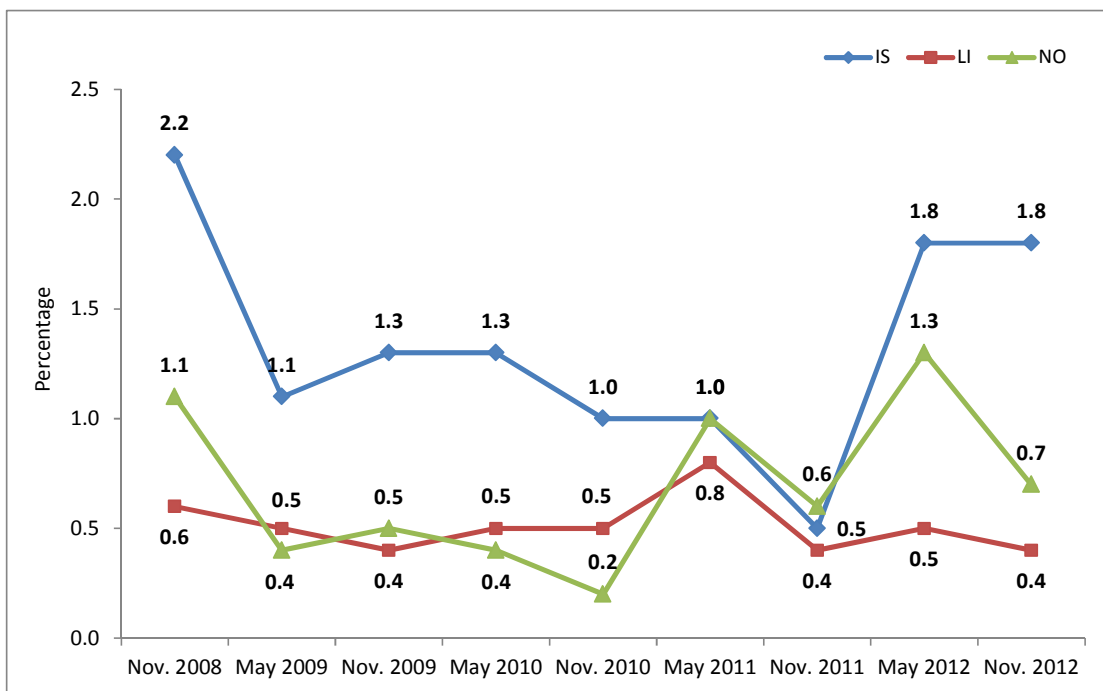
²² The Ministry of European Affairs (MEA) is the competent authority for the coordination of the transposition of EU directives and for the notification of national transposing measures.

5. FUNCTIONING OF THE SINGLE MARKET IN THE EEA EFTA STATES²³

The purpose of the Agreement on the European Economic Area is to extend the Single Market of the European Union to the three EEA EFTA States, namely Iceland, Liechtenstein and Norway, ensuring that businesses and individuals in those countries have the same rights as those in the EU Member States.

The Single Market *acquis* applicable in EEA EFTA States does not coincide exactly with that applicable in EU Member States. This situation is due to the time lag between the adoption or abrogation of legal acts by the EU and their incorporation into or deletion from the EEA Agreement. Any comparison of the results from the two Internal Market Scoreboards (this one and the EEA EFTA Scoreboard) has to take this difference into account.

Figure 1: Transposition deficits as compared to previous Scoreboards (November 2012 EEA-EFTA average: 1 %)

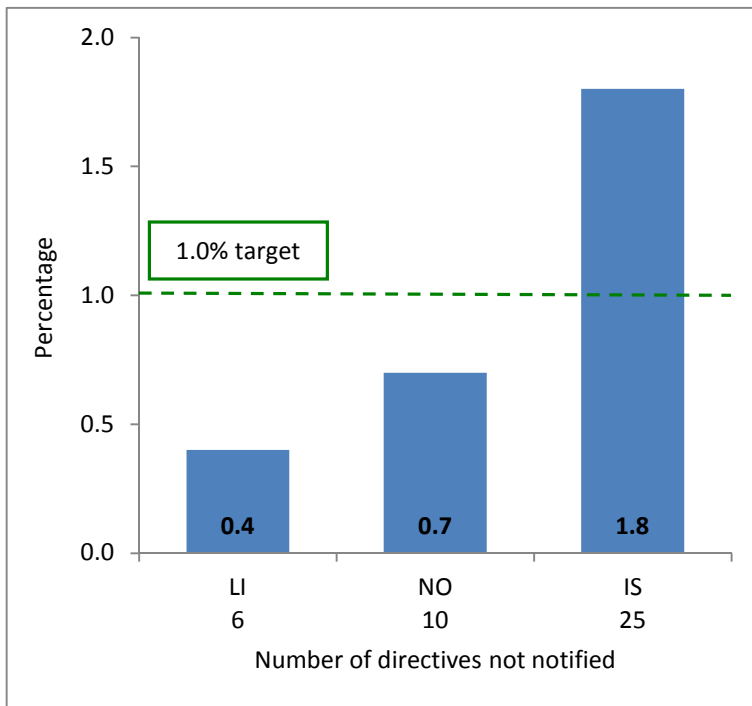


The transposition deficit shows the percentage of Single Market directives not yet communicated to the EFTA Surveillance Authority as having been transposed, in relation to the total number of Single Market directives which should have been notified by the deadline. The current Scoreboard takes into account all notifications of directives with a transposition deadline up to 31 October 2012 which were notified by 10 November 2012.

²³

Twice a year the EFTA Surveillance Authority publishes an Internal Market Scoreboard that keeps track of implementation of Single Market directives by Iceland, Liechtenstein and Norway. Switzerland is also a member of EFTA, but not a party to the EEA Agreement. Hence, the term 'EEA EFTA States' refers only to Iceland, Liechtenstein and Norway. For more information, see <http://www.eftasurv.int/press-publications/scoreboards/internal-market-scoreboards/nr/127>.

Figure 2: Performance of EEA EFTA States against the 1% transposition deficit target

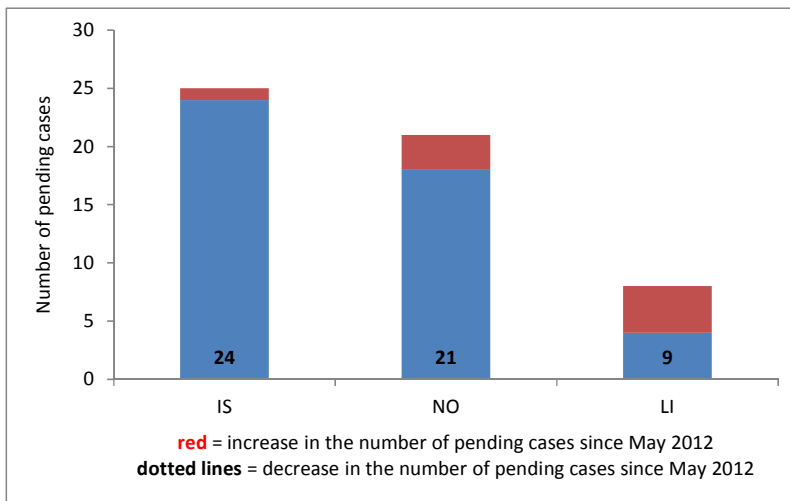


Over the last six months, the average transposition deficit of the EEA EFTA States fell from 1.2% to 1.0%.

Both Liechtenstein and Norway were within the deficit target of 1%. Iceland remained above the target.

Transposition deficit of the EEA EFTA States as of 10 November 2012.

Figure 3: Open infringement cases as of 1 November 2012



On 1 November 2012, a total of 198 infringement cases were being pursued by the EEA EFTA Surveillance Authority.

54 cases concerned incorrect transposition or application of Single Market rules (Figure 3).

49 cases concerned the late transposition of directives (IS 49, LI 7 and NO 13). The remaining 95 cases concerned the late transposition of regulations (IS 82, NO 13).

Pending infringement cases due to incorrect transposition or application of Single Market rules on 1 November 2012 compared to the situation in May 2012.