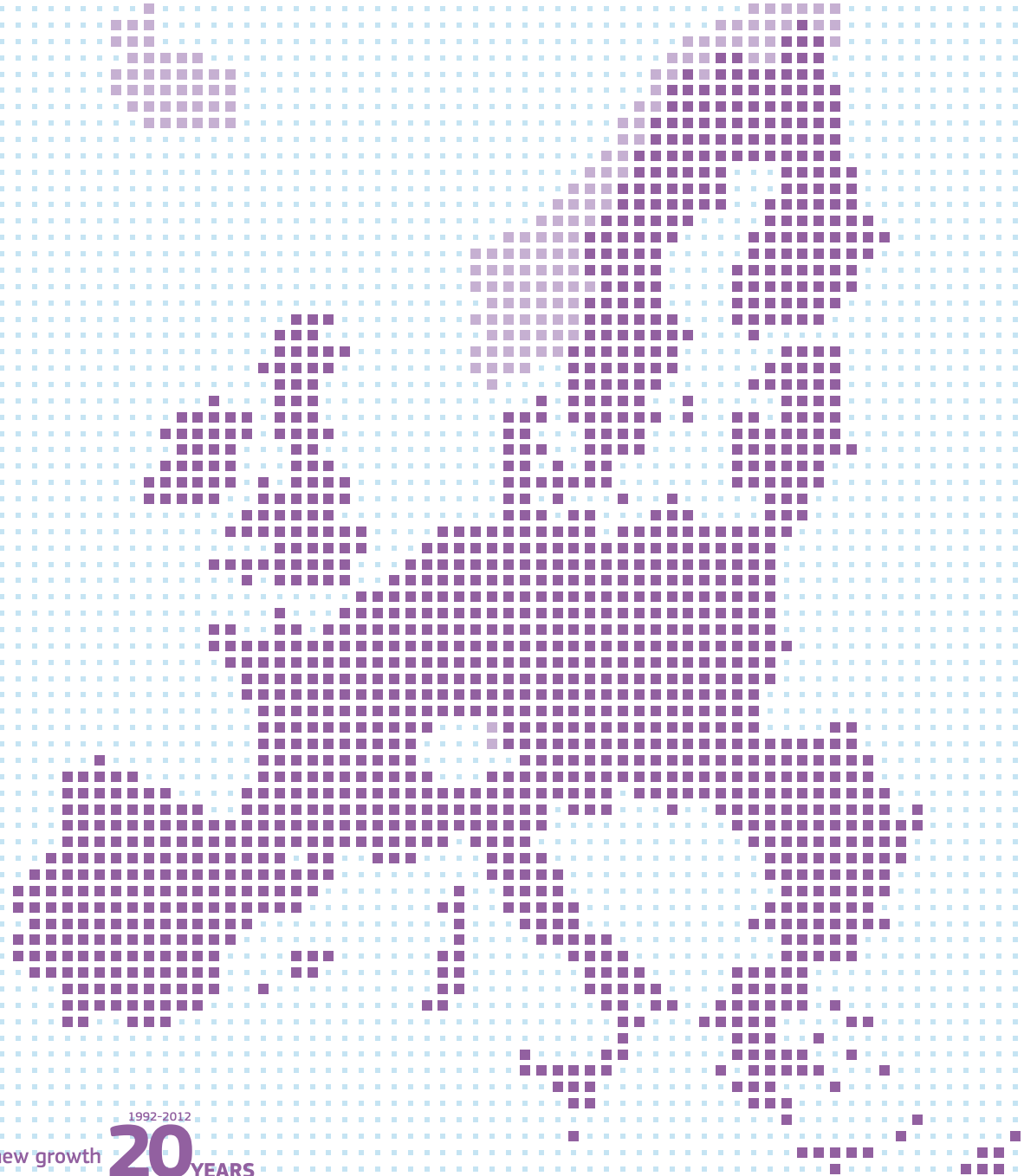
European Commission

Internal Market Scoreboard 25

SEPTEMBER 2012



Together for new growth

1992-2012 20 YEARS of the single market

Internal Market and Services

The Commission is keen to receive feedback on this Scoreboard, and to have suggestions for future editions. Please send reactions to:

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ISSN 1830-5881

Internal Market

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MAIN FINDINGS

As in previous editions of the Internal Market Scoreboard, the focus is on specific aspects of the functioning of the Internal Market in addition to the usual chapters on the transposition and application of Internal Market legislation.[1] This edition devotes particular attention to the developments in Single Market governance and presents measures put in place by some Member States to improve the implementation of Single Market rules.

Single Market governance

In its Communication on Better Governance for the Single Market,[2] the Commission proposes a series of measures to strengthen governance in the Single Market, identifying key areas deserving particular attention. In the future, the Internal Market Scoreboard will contain a specific chapter monitoring how Member States perform in those key areas. On the other hand, the Commission is now preparing a second chapter of the Single Market Act[3] with new policy proposals to boost growth, employment and confidence in the Single Market.

Moreover, the Single Market Forum held on 2-4 October 2011 in Krakow was a great success in terms of participation and results. The 20th anniversary of the European Single Market will provide the occasion for a range of activities in all Member States, culminating in the Single Market Week for New Growth from 15 to 20 October 2012.

Transposition

The average transposition deficit[4] in the EU has fallen below the target agreed by the European Heads of State and Government,[5] to 0.9 %. Efforts should be made to avoid an increase in the coming months. Due to the improvement, the number of Member States achieving the 1 % target went up from eleven to sixteen. In total, eight Member States achieved or equalled their best result ever: the Czech Republic, Estonia, Ireland, Greece, Spain, France, Latvia and Malta. This illustrates the high priority given by those Member States to timely transposition.

Malta and Latvia are the best transposition performers, being only two directives away from a perfect score. The Czech Republic, Hungary, Estonia and Greece show the biggest improvements in reducing the number of outstanding directives.

(1) Internal 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 the supporting policies with a direct impact on the functioning of the Internal 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 of the Single Market'', COM(2012) 259 final, 8.6.2012.

(3) Communication from the Commission: ''Single Market Act: Twelve levers to boost growth and strengthen confidence'', COM(2011) 206 final, 14.4.2011.

(4) The current Scoreboard takes into account all notifications received by 10 May 2012 for directives with a transposition deadline of 30 April 2012.

(5) 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 %).

Nevertheless, this encouraging result goes hand in hand with a worsening performance for other challenges highlighted in the Scoreboard, such as reducing the number of directives for which transposition is overdue by two years or more and shortening transposition delays. Today, five directives are more than two years past their transposition deadline and five Member States have not achieved the 'zero tolerance' target. Moreover, Member States on average take an extra nine months to transpose an EU directive after the transposition deadline. In response to the fourth challenge, Member States have succeeded in reducing the number of incorrectly transposed directives. The average compliance deficit has fallen from 0.8 % six months ago to 0.7 % today, coming closer to the 0.5 % deficit proposed in the Single Market Act.[6]

Fragmentation in Internal Market legislation has decreased from 6 % to 5 %, which corresponds to seventy-three directives not producing their full effect in the EU. For almost 30 % of these directives, this is due to the inability of just one Member State to transpose them. The most fragmented areas remain financial services, environment and transport.

Finally, it is difficult to see how some Member States will meet the 1 % target by the next deadline (November 2012) without drastic action given their already high backlog and the number of new directives to be transposed in the next six months. This is particularly the case for Italy, Belgium, Portugal and Poland.

Infringements[7]

The number of infringement proceedings relating to the Internal Market is continuing to decrease. This might be partly due to the introduction of mechanisms to solve problems of non-compliance with EU law earlier in the process.[8] Today, the average number of open infringement proceedings in the EU is thirty-one cases per Member State, compared to thirty-four cases half a year ago. Italy accounts for the highest number of cases followed by Greece and Belgium.

The vast majority of infringement proceedings (76 %) concern the incorrect application of EU legislation by Member States and almost half the total infringement proceedings are in the areas of taxation and environment.

In general, the average duration of infringement proceedings ranges from one year (Luxembourg) to three years (Sweden). Only 18 % of cases have been closed within eighteen months after sending of the letter of formal notice. In addition, cases from thirteen Member States are still open twelve months after the Court ruling.

Internal Market Enforcement Table

The Internal Market Enforcement Table highlights the fact that, with all enforcement indicators taken into account, only a small number of Member States perform better than the EU average. Latvia, Estonia, Luxembourg and Lithuania are the best performers overall, with performances above the EU average on almost all indicators.

Member States' good practices

In this edition, Cyprus, Greece, France and the Czech Republic share their initiatives for improving the implementation of Single Market law.

(6) *'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'* (Single Market Act, see footnote 2).

(7) In the Scoreboard, namely in chapter 2, 'Infringement proceedings' are to be understood as covering all cases where transposition is presumed not to be in conformity with the directive it transposes or where Internal Market rules (both rules contained in the Treaty on the Functioning of the European Union and in Internal Market directives) are presumed to be incorrectly applied and where a letter of formal notice has been sent to the Member State concerned. Cases of non-communication, i.e. concerning directives included in the transposition deficit, are excluded from this chapter in order to avoid double-counting.

(8) SOLVIT: http://ec.europa.eu/solvit/
EU-Pilot: http://ec.europa.eu/community_law/infringements/application_monitoring_en.htm.

SINGLE MARKET GOVERNANCE

Strengthened governance of the Single Market

Better governance of the Single Market has been widely recognised as a key element for growth and competitiveness in Europe. Both the European Council[9] and the European Parliament[10] have recognised the need to strengthen the governance of the Single Market and to improve its implementation and enforcement.

In its recent Communication on Better Governance for the Single Market,[11] the Commission proposes a series of measures for strengthening Single Market Governance. It identifies key areas likely *'to bring about the most significant gains in growth and jobs'*. In these areas,[12]

- the Commission will focus its efforts to improve governance on key services sectors and industries;
- the Commission requested the Member States to commit to 'zero tolerance' when it comes to transposition of directives;
- the Commission announced that it will use its enforcement powers more vigorously and requested the cooperation of the Member States to ensure that breaches of EU law are swiftly brought to an end within eighteen months, or twelve months in case of second referral. In future editions, the Internal Market Scoreboard will monitor the compliance of these new benchmarks;
- Moreover, to facilitate an even closer cooperation between Member States and Commission, a European network of Single Market Centres will be created.

The Commission will prepare an annual report on the integration of the Single Market, which will focus on the way the Single Market works in practice, particularly in these key areas. This report will provide input for country-specific recommendations in the context of the European semester process.

The Single Market Act

Presented by the Commission on 13 April 2011, the Communication 'Single Market Act - Twelve levers to boost growth and strengthen confidence in the Single Market'[13] aimed to instil new life into the Single Market and provide practical solutions for businesses, citizens, consumers and workers who want to reap the benefits of the Single Market.

The Single Market Act includes twelve key actions built on twelve levers for growth, jobs and confidence. The Commission has presented legislative proposals for these key actions and called upon the European Parliament and Council to adopt proposals by the end of 2012. Agreement by the co-legislators on these proposals is an

(9) Conclusions of the European Council 1-2 March 2012: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/128520.pdf

(10) European Parliament Resolution of 22 May 2012 on the Internal Market Scoreboard (2011/2155 (INI)) - Rapporteur: Simon Busuttil.

(11) See footnote 2.

(12) Services (including retail and wholesale trade, business services, construction, and financial intermediation services), transport, digital economy and energy.

(13) See footnote 3.

immediate priority. Each lever also contains other important initiatives/ proposals, which should benefit from the momentum created by the Single Market Act. The Commission has tabled proposals or adopted non-legislative acts for thirty-three of the fifty other actions announced.

The Commission is now preparing a second wave of policy proposals to boost growth, employment and confidence in the Single Market. The objective is to present this second chapter of the Single Market Act ahead of the Single Market Week for New Growth starting on 15 October 2012.

The Single Market Forum 2011 (SIMFO)

As proposed by the European Parliament In its resolution of 9 March 2010 on the Internal Market Scoreboard,[14] the Single Market Forum was held on 2-4 October 2011 in Krakow and was a great success in terms of both participation and results.[15] The Forum opened a new communication channel between decision-makers and all stakeholders involved, including citizens, consumers and SMEs.

The activities organised around the Forum (the competition 'Tell us your story', the declaration by Polish Youth and in particular the Single Market Fair) were well received and demonstrated a high level of involvement on the part of citizens and stakeholders.

Furthermore, the Forum agreed on a final declaration (the 'Krakow declaration'[16]) with operational conclusions from the workshops held during the course of the Forum.

On 1 December 2011, the European Parliament adopted a resolution on the outcome of the Single Market Forum.[17] The resolution stresses the need for continuation of the process launched in Krakow for the participation of citizens and businesses in the development of the Single Market. For 2012, it endorses the idea of events at national level to mark the 20th anniversary of the Single Market, linked to a central, main EU event.

In 2012, all interested parties have been invited to participate actively in a 'Single Market Week' (from 15 to 20 October) designed to take stock of the progress achieved and to focus on the priorities ahead at national and European level.

Single Market Week – Together for new growth – Single Market Forum 2012

The end of 2012 will mark the 20th anniversary of the European Single Market. This is a moment for recalling the achievements of the past twenty years and to look forward, to identify and discuss new initiatives to stimulate growth in Europe. Following the good experience with the Single Market Forum 2011 in Krakow, this year's anniversary will be an opportunity to further spread information about the opportunities and benefits of the Single Market for European citizens and businesses.

The 20th anniversary will be the occasion for a range of activities in all Member States,[18] culminating in the Single Market Week for New Growth from 15 to 20 October 2012. A launch event will take place that week on 15 October in Brussels.

(14) European Parliament Resolution of 9 March 2010 on the Internal Market Scoreboard (2009/2141 (INI)) - Rapporteur: Róza Thun und Hohenstein.

(15) Results at http://ec.europa.eu/simfo.

(16) Krakow declaration at http://ec.europa.eu/internal_market/top_layer/docs/simfo-declaration-op-conclusions_en.pdf.

(17) European Parliament resolution of 1 December 2011 on the outcome of the Single Market Forum: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0543+0+DOC+XML+V0//EN.

(18) More information on http://ec.europa.eu/internal_market/20years/index_en.htm.

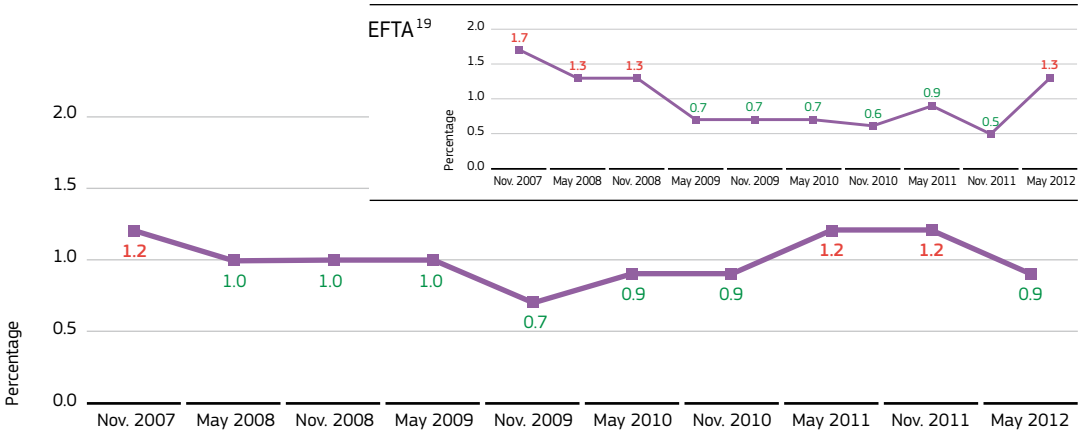
1. STATUS OF THE TRANSPOSITION OF INTERNAL MARKET LEGISLATION INTO NATIONAL LAW

The Internal Market is a key driver of growth and jobs. But it does not deliver benefits automatically: **timely transposition is a necessary condition for achieving the policy objectives of the directives.** This section in particular will help the Member States to measure their achievements in this respect.

Average transposition deficit in May 2012

Figure 1: Member States again meet the 1 % transposition deficit target!

The transposition deficit shows the percentage of Internal 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 10 May 2012 for directives with a transposition deadline of 30 April 2012. As of 1 April 2012, 1393 directives and 1613 regulations were in force to ensure the functioning of the Internal Market.



After the increase recorded in May and November 2011, **the European average transposition deficit is now back to 0.9 %,** i.e. below the target agreed by the European Heads of State and Government.[20] This is a welcome improvement and shows that the difficulties encountered last year have been overcome. It marks a return to the positive trend starting in 2008 and provides encouragement for the on-going discussions on a new benchmark transposition deficit of 0.5 %.[21]

First challenge – Achieving the 1 % target

Six months ago, sixteen Member States failed to achieve the 1 % target: in some cases the transposition deficit was more than double the EU average. These Member States were urged to step up their efforts to bring their transposition deficit down to the 1 % target. Today, thirteen have made considerable progress: the Czech

(19) It has to be noted that Internal Market acquis applicable in EEA EFTA States does not coincide exactly with the Internal Market acquis applicable in EU Member States. This situation is due to the time gap between the adoption/abrogation of legal acts by the EU and their incorporation into/deletion from the EEA Agreement. Any comparison of the results of both Internal Market Scoreboards has to take this difference into account.

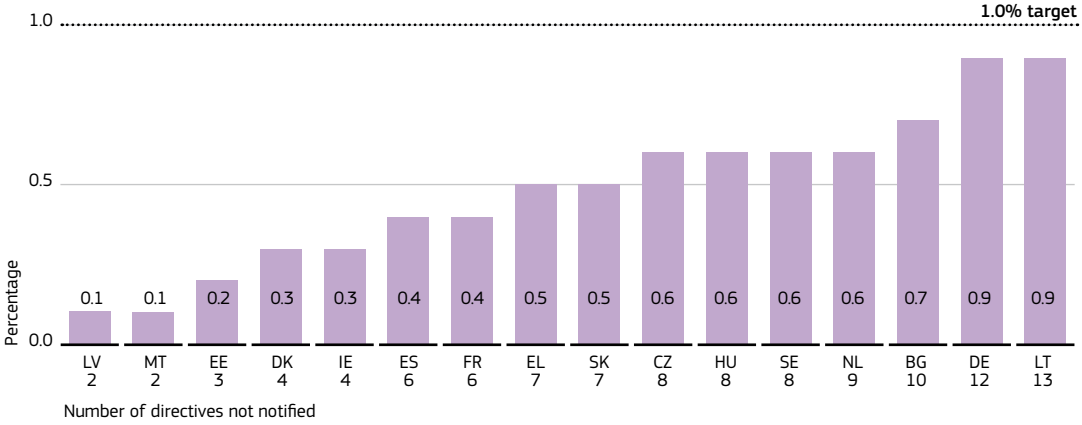
(20) See footnote 5.

(21) See footnote 6.

Republic, Hungary, Greece, the Netherlands and to a lesser extent Luxembourg, Belgium, Germany, Austria, Portugal, Cyprus, Romania, Finland and the United Kingdom. **This illustrates the high priority given by those Member States to timely transposition.**

Figure 2: Sixteen Member States have achieved the 1 % target

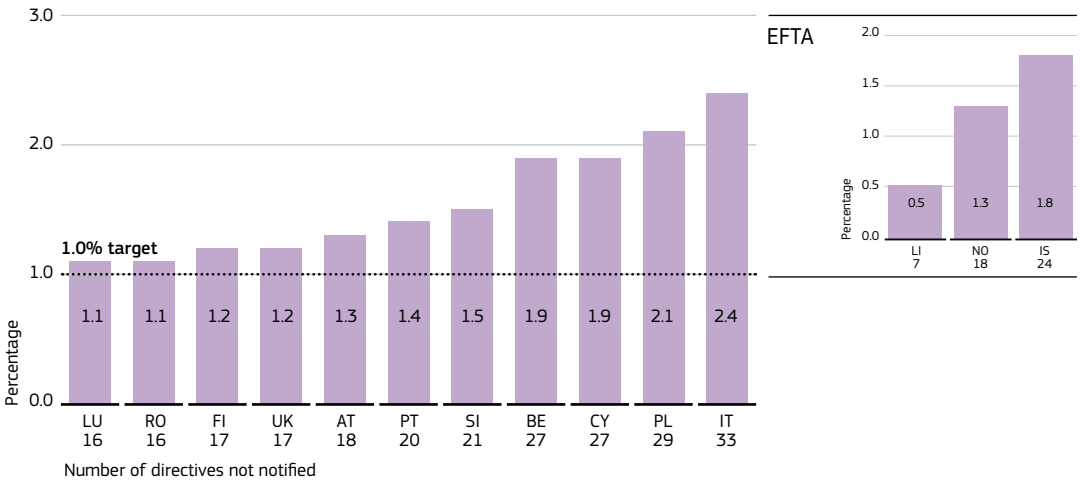
Transposition deficit of the Member States that achieved the 1 % target as of 10 May 2012.



- Greece, Hungary, the Netherlands and Germany are again within the target while the Czech Republic has reached it for the first time. The Czech Republic has shown a remarkable improvement by reducing its transposition deficit by more than two thirds, while Greece, Hungary and the Netherlands have reduced theirs by more than half. Germany has cut its deficit by 0.2 points to return to the level achieved in previous years.
- Malta has confirmed its leading position for the eighth consecutive time, joined by Latvia, which scored its best result ever. Today, both Member States are merely two directives away from a 0 % deficit.
- Estonia has radically reduced its deficit from 0.9 % six months ago to 0.2 % today, registering the second lowest transposition deficit with only three outstanding directives.
- Ireland continues the positive trend of November 2011 with a 0.3 % transposition deficit. Denmark has further improved by 0.2 points to achieve the same score.
- France and Spain, very close to missing the 1 % target six months ago, have now improved by more than a half (from 1 % to 0.4 %), while Sweden and Lithuania remain at the same level.

Figure 3: Eleven Member States still not in line with the 1% target

Transposition deficit of the Member States that missed the 1% target as of 10 May 2012.

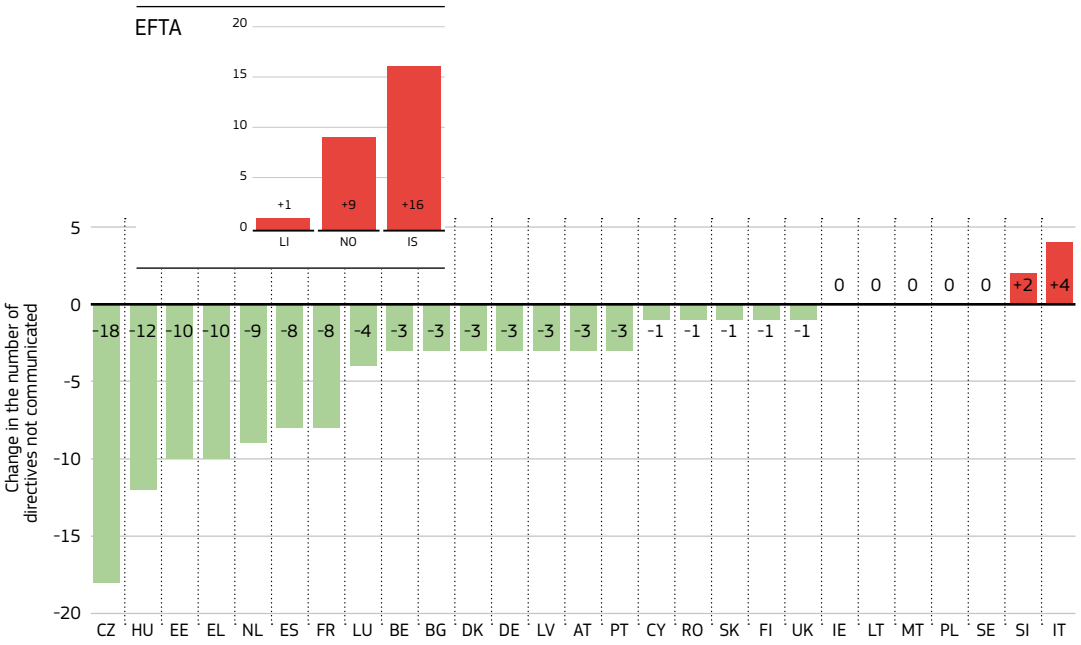


- The majority of Member States above the 1 % ceiling are performing better than half a year ago. Only Slovenia and Italy show an increase in their transposition backlog, while Poland equals its previous score.
- Italy has seen the highest increase in the transposition deficit, from 2.1 % to 2.4 % within the last six months. This increase in an already high transposition backlog puts Italy at the bottom of the transposition league.

Compared to six months ago, a majority of Member States have reduced their number of outstanding directives; only Italy and Slovenia show an increase in their backlog. This situation is the opposite of that in May 2011, when only two countries (Italy and Estonia) were able to reduce the number of outstanding directives whereas twenty-two Member States added to their existing backlog.

Figure 4: The majority of Member States have reduced their backlog

Change in the number of outstanding directives since November 2011 (in Scoreboard No 24).



- The Czech Republic has made the biggest improvement compared to six months ago. It is followed by Greece, Hungary and Estonia, all showing significant reductions in their backlogs.
- Belgium, Cyprus, Portugal, Luxembourg and Greece, which all had an increasing backlog half a year ago, have reversed this trend and managed to improve their transposition rate.
- Italy has continued the downward trend of six months ago, by adding to its existing backlog, thus showing its worst result ever.
- Slovenia has added two more directives to its existing backlog increasing its deficit from 1.4 % to 1.5 %. This is particularly regrettable as Slovenia always managed to reach the 1 % target between November 2006 and November 2010.

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', Cyprus, Greece, France and the Czech Republic share their initiatives 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 Internal 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 'zero tolerance' target for those directives whose transposition is two years or more overdue.[22]

(22) See footnote 5.

In the recent past, Member States had made considerable progress in reducing the number of long overdue directives, from twenty-two directives in May 2009 to two directives in November 2011 (-90 %). Today, five directives are more than two years beyond their transposition deadline and five Member States do not meet the 'zero tolerance' target: Belgium, Bulgaria, Italy, the Netherlands and Poland.

Figure 5: Five directives are more than two years beyond their transposition deadline

Directives with a transposition deadline by 30 April 2010, which are not (fully) transposed by at least one Member State - Situation as of 10 May 2012.

Number	Title	Not transposed by	Transposition deadline
2007/58/EC	Development of the Community's railways + allocation of railway infrastructure capacity and levying of charges for the use of railway infrastructure	NL	04/06/2009
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	IT	31/12/2009
2008/101/EC	Inclusion of aviation activities in the scheme for greenhouse gas emission allowance trading within the Community	BE, BG	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

- Currently, twenty-two Member States meet the 'zero tolerance' target compared with twenty-five in November 2011. Sweden has succeeded in reducing its number of outstanding long-overdue directives to zero, but four Member States moved in the opposite direction, with one (Bulgaria and Italy) or two (Belgium and Poland) such directives. The Netherlands still has to transpose a directive on the development of the railways, which was due by June 2009.

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 November 2012, there will be four new long-overdue directives for which the transposition deadline will have expired two or more years before. As of 1 July 2012, Germany, Portugal and the United Kingdom will have to pay the utmost attention to ensuring that no other directives are added to the list.

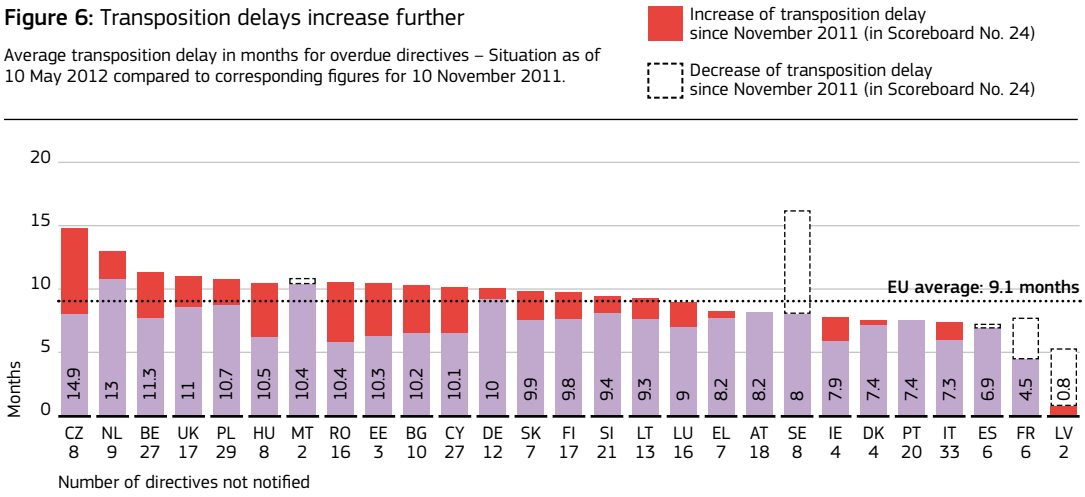
Third challenge – Reducing the transposition delays

In May 2011, Member States took on average an extra 5.5 months to transpose EU directives after the transposition deadline had expired, which corresponded to an overall reduction of almost 40 % in eighteen months (down from nine months in November 2009). However this positive result came with a deteriorating performance in respect of the number of outstanding directives. Today, Member States take again on average nine months extra but have managed to achieve the 1 % transposition deficit target.

This increase appears to contradict the improved performance of Member States in reducing their transposition backlogs. However, it is the result of the increase in the number of long-overdue directives and the significant number of outstanding directives (twenty-two) that should have been transposed more than one year ago.

Figure 6: Transposition delays increase further

Average transposition delay in months for overdue directives – Situation as of 10 May 2012 compared to corresponding figures for 10 November 2011.



- Today, only five Member States have a shorter average delay than in November 2011: Malta, Sweden, Spain, France and Latvia. Sweden, after notifying a directive for which transposition was due in September 2007, shows the biggest improvement in reducing its delay from 16.1 months to eight. France has continued to perform well, with a 58 % reduction compared to eighteen months ago.

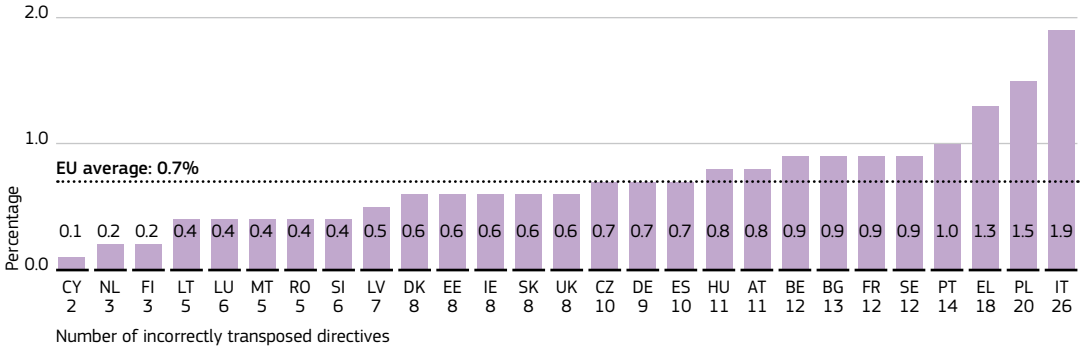
Delays in transposing measures are not just a legal problem. They also leave a void in the regulatory framework, which deprives citizens and businesses of their rights and undermines confidence in the European Union. For this reason, the Lisbon Treaty created an additional instrument to give a stronger 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.[23]

Fourth challenge – Improving the conformity of national legislation

Timely transposition of EU legislation represents only the first step towards the proper functioning of the Internal Market. Member States also need to transpose EU Directives correctly into national law to ensure that citizens and businesses can benefit from the Internal Market's full potential. For this reason, a more determined policy on the compliance deficit[24] was proposed by the Single Market Act. The figure below shows the percentage of incorrectly transposed directives based on the infringement proceedings opened by the Commission.[25]

Figure 7: The number of incorrectly transposed directives decreases slightly

Number of directives transposed where an infringement proceeding for non-conformity has been initiated by the Commission, as a percentage of the number of Internal Market directives notified as transposed to the Commission (as of 1 May 2012).



(23) More information in the Communication of the Commission concerning the implementation of Article 260 (3) TFEU adopted in November 2010 (in OJ EU C 12 p. 1, 15.1.2011).

(24) See footnote 6.

(25) See disclaimer at the beginning of chapter 2.

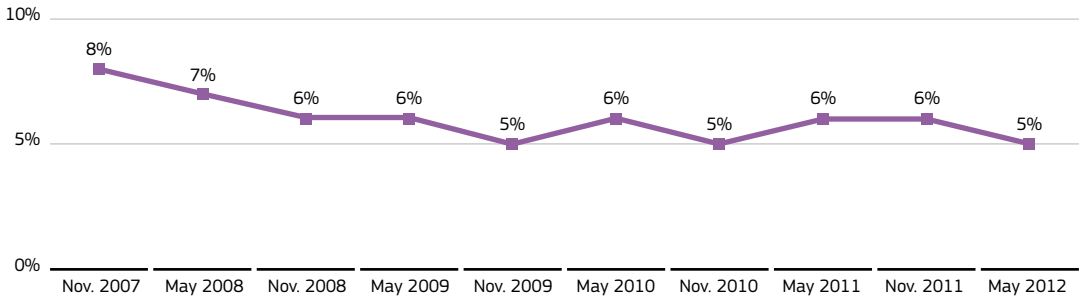
- The average compliance deficit has dropped from 0.8 % six months ago to 0.7 % today, closer to the proposed benchmark of 0.5 %. More than half the Member States are very close to this target or already meet it. **This shows that 0.5 % is an achievable target.**
- Greece has managed to reduce its transposition deficit substantially (0.5 % today) but has a significant number of directives considered to be incorrectly transposed (eighteen); by contrast, Cyprus has a high transposition deficit (1.9 %), but only two directives are subject to infringement proceedings for non-conformity.
- More problematically, some Member States combine a high transposition deficit with a high percentage of incorrectly transposed directives (namely Italy, Poland and to a lesser extent Belgium and Portugal).

Fragmentation of the Internal Market

The fragmentation factor is an overall indicator of legal gaps. Whenever one or more Member States fail to transpose directives on time, they leave a void in the European legal framework. Instead of the Internal 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 8: Fragmentation factor back down to 5 %

The so-called 'fragmentation factor' records the percentage of outstanding directives which one or more Member States have failed to transpose in relation to the total number of Internal Market directives, with the consequence that the Internal Market is not a reality in the areas covered by those directives - Situation as from November 2007 to May 2012.



Given the improved transposition performance by Member States, the fragmentation factor is back down to its lowest level of 5 %. However, that still means **the Internal Market is operating at only 95 % of its potential.** In concrete terms, seventy-three directives have not been transposed on time in at least one Member State, in particular in the areas of transport, environment and financial services (see Figure 9 below). Twenty-one of these seventy-three directives (29 %) do not achieve their full effect because just one Member State has not transposed them.

Breakdown by sector

Broken down by sector, the pattern of implementation varies between Member States. Shaded figures highlight the sectors where Member States have the highest number of non-transposed directives.

The high number of directives still to be transposed in the areas of transport, environment and financial services could be explained, to a certain extent, by the number of recent directives in these sectors.

- With seven directives overdue, Germany, Austria, Portugal and the United Kingdom account for most of the outstanding directives in the area of transport, followed by Belgium (six directives overdue), Italy, Poland and Cyprus (four directives overdue).
- The area of the environment has numerous outstanding directives in Italy (nine), Belgium (seven), Poland and Romania (five), Slovenia and Bulgaria (four).
- Two thirds of the directives still to be transposed by Greece and Spain are in the area of financial services (five out of seven and four out of six, respectively). Cyprus has most problems in this area with seven directives not transposed on time.

Figure 9: Most outstanding directives in the area of transport, environment and financial services

Breakdown by Member States of the backlog of non-transposed directives and sector concerned – Situation as of 10 May 2012. The highlighted figures show, for each Member State, the sector(s) with the most outstanding directives. (#) Number of directives in the sector.

MS	Capital goods (57)	Energy (8)	Environment (142)	Financial services (108)	Free movement of persons and Union citizenship (18)	Motor vehicles (216)	Public procurement (10)	Plant health legislation (138)	Social Policy (65)	Special free-movement arrangements (11)	Taxation (55)	Telecommunications (15)	Transport (114)	Others (78)	TOTAL
IT	2		9	4				1	3	3	2	2	5	2	33
PL		1	5	5		1	1	3		2	1	2	5	3	29
CY	1	2	3	7	1	1			2	1	1	2	5	1	27
BE			7	5					2	3		2	6	2	27
SI		2	4	4			1	1			2	2	2	3	21
PT			2	5		1				1	2	1	7	1	20
AT		1	3			1	1		2	1	1		7	1	18
UK		2	2	1		1			1	3			7		17
FI	1	2	2	3		1				3	1		3	1	17
RO		2	5	4						2	1	1	1		16
LU	1	2	2	1		1	1		1	2	1		4		16
LT		2	2	4		1				2			2		13
DE			1			1	1			1			7	1	12
BG		2	4							1	1		1	1	10
NL		2			1		1			1		2	2		9
SE		2	1						1		1		3		8
HU			2	1				1					3	1	8
CZ			2		1			1		1		1	1	1	8
SK		2	2							1			2		7
EL				5							1		1		7
FR				2					1	1			2		6
ES			1	4						1					6
IE			1	1					1					1	4
DK			1						1		1		1		4
EE		2											1		3
MT			1	1											2
LV			1							1					2

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 November 2012.

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

Provisional number of directives that each Member State should notify by 10 November 2012. This number is the result of adding the existing backlog (as of 1 July 2012) to the directives still to be transposed for the November 2012 Scoreboard (25 directives).

	IT	BE	PT	PL	SI	RO	UK	CY	HU	AT	MT	FI	BG	ES	LT	LU	SK	FR	DE	CZ	DK	SE	EL	IE	NL	LV	EE
For a 0% deficit	52	42	42	41	33	32	32	31	31	28	25	25	23	23	23	23	23	22	21	20	20	20	16	15	13	12	9
For a 1% deficit	38	28	28	27	19	18	18	17	17	14	11	11	9	9	9	9	9	8	7	6	6	6	2	1	0	0	0

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 the Czech Republic and Greece show that considerable progress is possible in a short period of time.**

2. INFRINGEMENT PROCEEDINGS[26] FOR INCORRECT TRANSPOSITION OR APPLICATION OF INTERNAL 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 Internal Market legislation causes harm to the European economy and undermines the confidence citizens and businesses have in the Internal Market and the European Union in general.

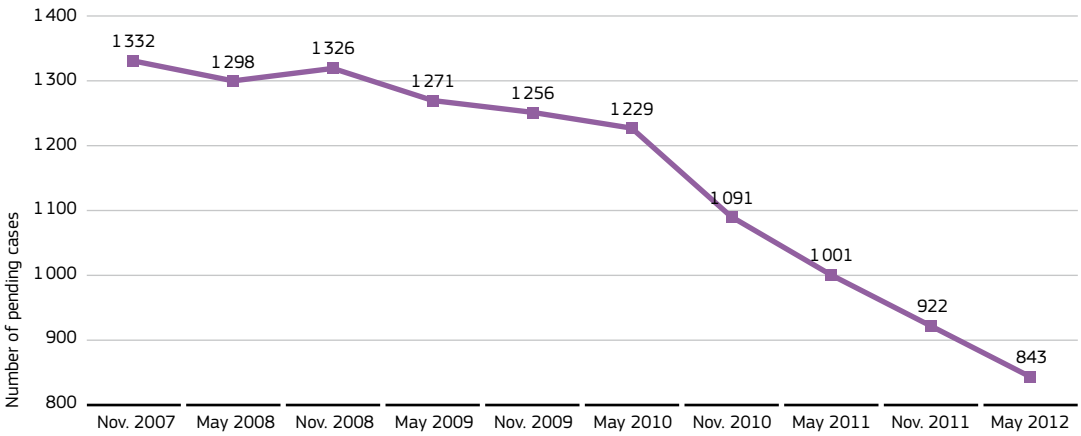
As guardian of the Treaties, the Commission must ensure that both Treaty provisions and acts adopted by the Institutions of the European Union are correctly implemented and applied by the Member States. Where the Commission considers that Internal Market rules are not properly applied, it may open infringement proceedings against the Member States in question. An infringement procedure entails a dialogue between the Commission and the Member State concerned. Initiating such a procedure reflects 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

The number of infringement proceedings continues to fall. Following a marked decrease of 31 % in the last two years, the number of pending infringement proceedings concerning the Internal Market has fallen by another 9 % in the past six months. Since November 2007, the number is down by more than one third.

Figure 11: 37 % reduction since November 2007

Pending infringement cases since 1 November 2007.



(26) Definition: see footnote 7.

Almost 80 % of this decrease has occurred in the last two years. This might be due to the recent **introduction of improved working methods concerning complaints handling and early problem-solving mechanisms.**[27] Time will tell how many infringement proceedings can be avoided using these systems.

For example, in April 2008, the Commission has 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 [27] Member States are now participating in 'EU Pilot'.

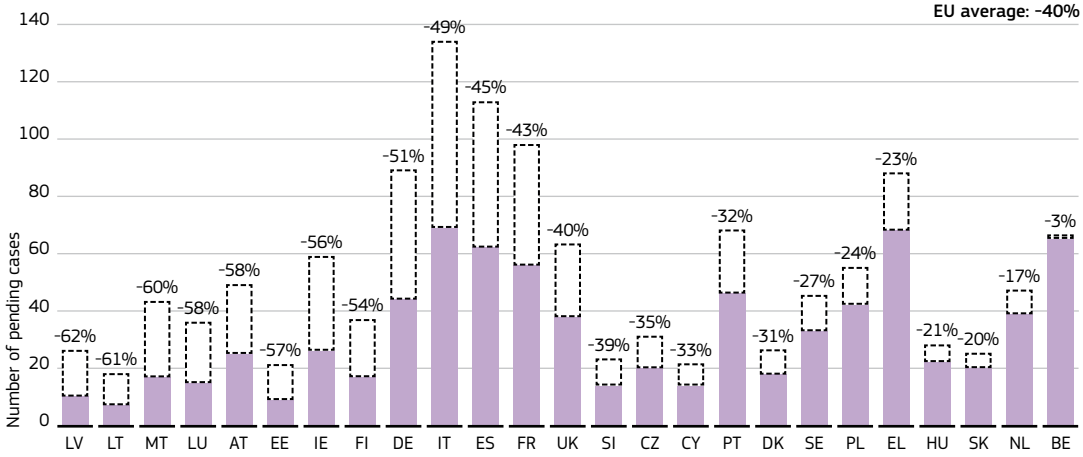
According to the second Evaluation Report on EU Pilot of December 2011, *'The project has made and continues to make a positive contribution to cooperation between the Commission and participating Member States in answering enquiries and resolving the problems of citizens, business and civil society interests more speedily. 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'*.

For this reason, the Commission considers EU Pilot to be no longer a project but an official working method that delivers results for the Commission, the Member States, citizens and businesses.

Figure 12: All Member States have now succeeded in reducing their number of infringement proceedings

Decrease in the number of open cases since November 2007 (in Scoreboard No. 16bis)

Open infringement cases as of 1 May 2012 compared to the corresponding figures as at 1 November 2007.

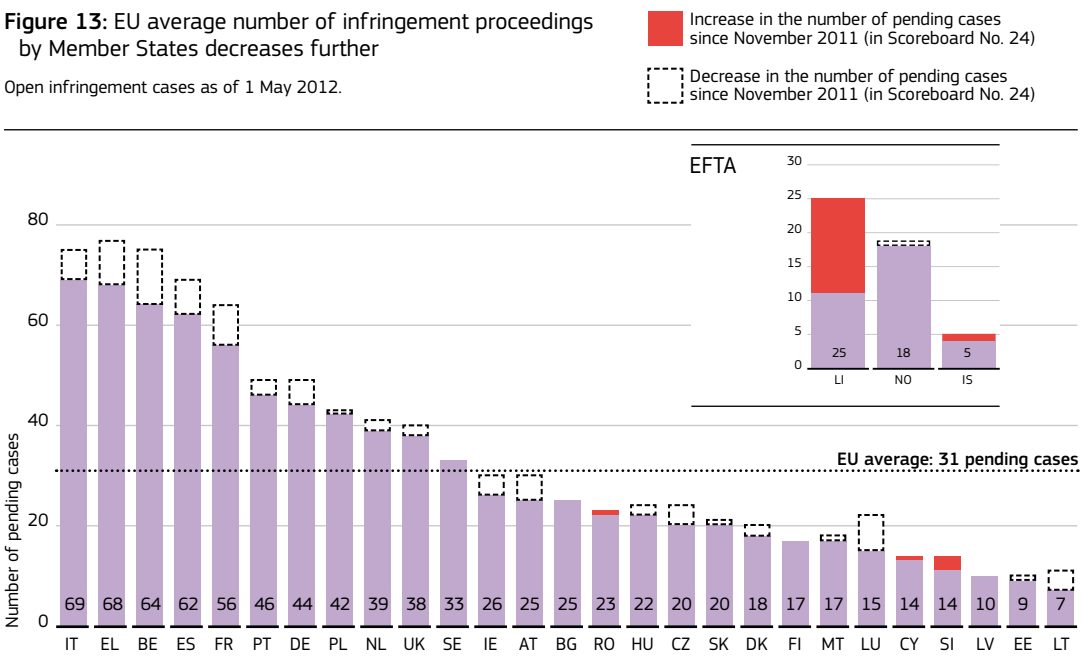


- Compared to November 2007, all Member States have managed to reduce the number of their infringement proceedings, with Latvia and Lithuania showing the biggest reduction with -62 % and -61 %, respectively.
- Previously the only Member State with an increased number of infringement cases compared to November 2007, Belgium is now following the general downward trend. This shows that the measures presented by Belgium to settle infringement cases in Scoreboard No 23 (September 2011) are bearing fruit.

(27) See footnote 7.

Figure 13: EU average number of infringement proceedings by Member States decreases further

Open infringement cases as of 1 May 2012.

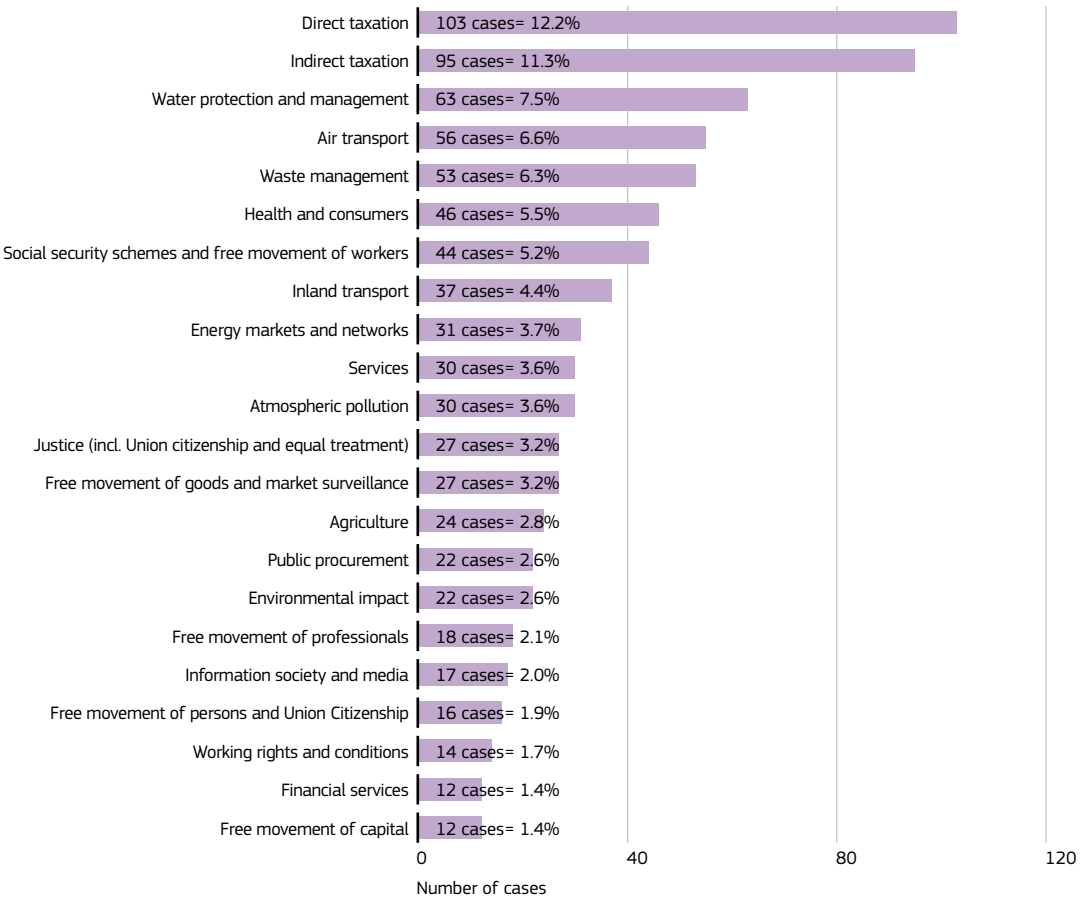


- The total number of infringement proceedings per Member State varies widely. Italy has the most pending infringements cases, ten times more than Lithuania, the Member State with the lowest number of cases. Belgium has improved the most (-11 cases), followed by Greece (-9) and France (-8).
- The average number of open infringement proceedings in the EU has further decreased to thirty-one cases compared to thirty-four cases six months ago. Since November 2011, twenty-four Member States have equalled or improved their record, with only Romania, Cyprus and Slovenia having more cases. However, they still perform better than the EU average.
- Italy, Greece and Belgium have the largest number of pending infringement proceedings. Their combined share still represents 24 % of the total number of cases but they have managed to further reduce their numbers by 11 % on average within the six last months. Compared to May 2010, the performance of these three is even more impressive: -42 % for Belgium, -31 % for Greece and -25 % for Italy.

The figure below shows that the largest number of cases continue to be in the areas of taxation (direct and indirect) and the environment (water protection and management, waste management, atmospheric pollution and environmental impact), these two sectors accounting for 43 % of the total number of cases.

Figure 14: Environment and taxation account for more than 40 % of infringement proceedings

Open infringement cases as of 1 May 2012, broken down by sectors representing at least 1 % of all infringement proceedings. Forty-four of the 843 infringement proceedings concern sectors representing less than 1 % of the total (such as health and safety at work, maritime transport, custom law, climate change, education, energy efficiency) and are therefore not shown in this figure.

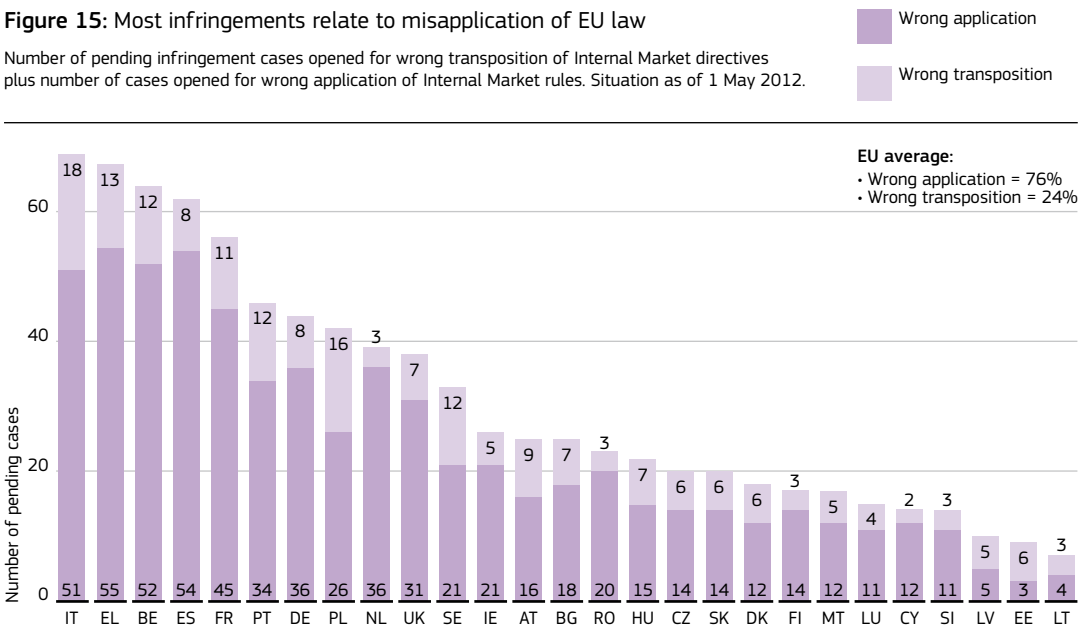


- Taxation is a source of numerous cases for most Member States, in particular Belgium, Spain, France and the Netherlands. The environment is especially problematic for Greece, Italy and Portugal.

Nature of infringement proceedings

Figure 15: Most infringements relate to misapplication of EU law

Number of pending infringement cases opened for wrong transposition of Internal Market directives plus number of cases opened for wrong application of Internal Market rules. Situation as of 1 May 2012.



The vast majority of infringement proceedings (76 %) relate to the incorrect application of EU legislation by Member States. The only exceptions are Estonia, which has more infringement proceedings for incorrect transposition, and Latvia, which has the same number for both types.

Duration of infringement proceedings

When problems arise with conformity with Internal 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 resolved, special attention should be given to the time required to settle infringement proceedings as well as the time taken by Member States to comply with Court judgments.

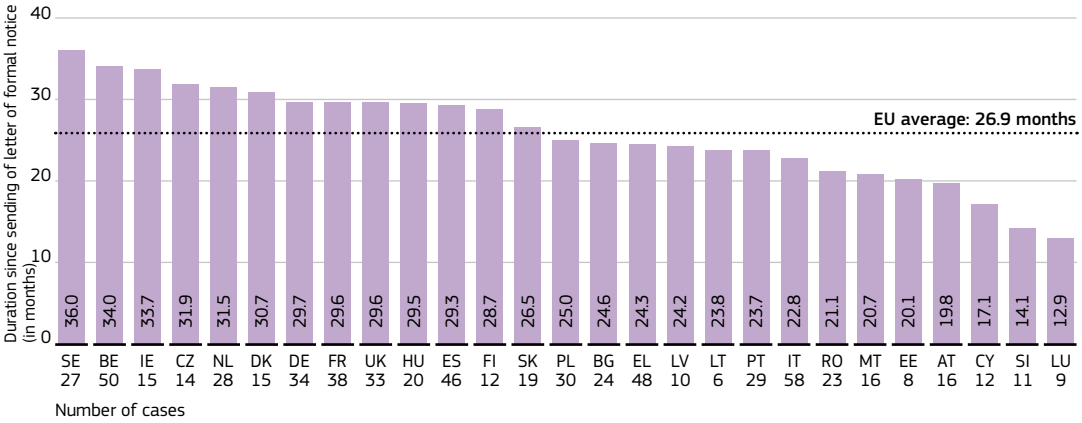
Figure 16: Half of infringement proceedings take more than two years

Infringement cases closed or brought before the Court of Justice 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 of Justice, starting from the sending of the letter of formal notice (1525 cases).

The average duration of pending infringement cases in the EU has further increased from 25.5 months to 26.9 months within the last six months. This can be explained partly by an increasing number of uncomplicated cases being solved at the pre-infringement stage. **Formal proceedings under Article 258 TFEU are now opened essentially for contentious issues.**

Figure 17: The average duration of infringement proceedings ranges from one to three years

Pending infringement cases not yet sent to the Court as of 1 May 2012 (651 cases): average duration in months from the sending of the letter of formal notice.



- In May 2012, the average duration of pending infringement cases was over thirty months in six Member States (Sweden, Belgium, Ireland, the Czech Republic, the Netherlands and Denmark), but less than eighteen months in three Member States (Cyprus, Slovenia and Luxembourg). Six months ago, only three Member States exceeded the thirty-month duration.
- In total, seven Member States managed to improve their resolution speed: Estonia, Italy, Austria, Portugal, Slovenia, Slovakia and Finland. Most progress was made by Slovenia (-5.5 months) and Portugal (-4.2 months). Finland, in last position six months ago with an average duration of 31.7 months, managed to reduce this to 28.7 months, not far of the EU average. In Belgium and Sweden, durations were, respectively, 5.4 and 5 months longer than the averages registered in November 2011.

Figure 18: Latvia has the highest early resolution rate

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 (607 cases).

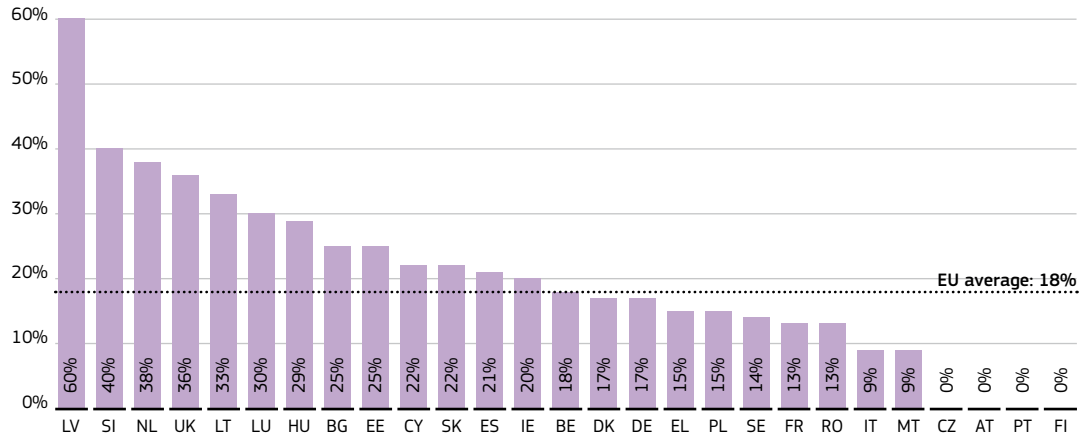


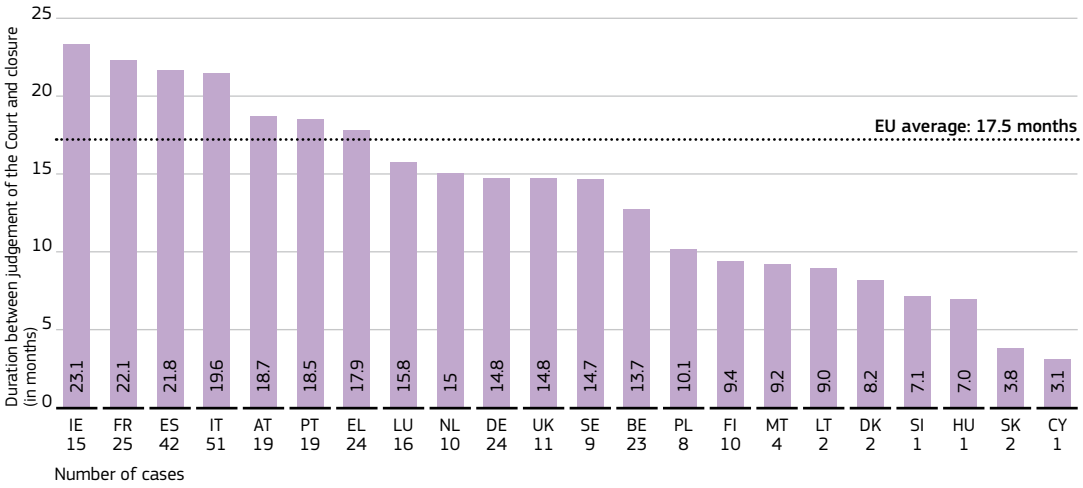
Figure 18 shows the percentage of cases closed within **eighteen months** after sending of the letter of formal notice.

- Latvia, Slovenia and the Netherlands have the highest early resolution rate, whilst the Czech Republic, Austria, Portugal and Finland have the lowest.

As an early resolution rate of 18 % is rather low, it is clear that Member States and the Commission need to reinforce their cooperation and take more effective action in cases where the rules are not being properly implemented or applied. **Once infringement proceedings have been launched by the Commission, they should be treated with the highest priority in order to find prompt solutions.**

Figure 19: Cases against most Member States are still open more than twelve months after the Court ruling

Cases closed between 1 May 2007 and 30 April 2012 after the Court ruling (319 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.[28] Despite this obligation, cases against thirteen Member States are on average still open more than twelve months after the first Court ruling; for six Member States (Ireland, France, Spain, Italy, Austria and Portugal) this period is even longer than eighteen months.

The EU average period has not changed since the assessment one year ago, but an average duration of 17.5 months is still too long. **Member States must make compliance with Court rulings a priority since citizens and businesses have been deprived from exercising their rights for several years and the Court has confirmed the infringement to Union law.**

(28) 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. INTERNAL MARKET ENFORCEMENT TABLE

It is in the common interest of Member States to ensure that the Internal 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 Internal Market Enforcement Table combines the most relevant indicators in order to provide a better overview of Member States' compliance in implementing and applying Internal 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. This is the case for Latvia, Estonia, Luxembourg and Lithuania on almost all indicators.

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
Fig. 2-3: Transposition deficit	1.9%	0.7%	0.6%	0.3%	0.9%	0.2%	0.3%	0.5%	0.4%	0.4%	2.4%	1.9%	0.1%	0.9%	1.1%	0.6%	0.1%	0.6%	1.3%	2.1%	1.4%	1.1%	1.5%	0.5%	1.2%	0.6%	1.2%	0.9%
Fig. 4: Progress over the last 6 months (change in the number of outstanding directives)	-3	-3	-18	-3	-3	-10	0	-10	-8	-8	+4	-1	-3	0	-4	-12	0	-9	-3	0	-3	-1	+2	-1	-1	0	-1	-4
Fig. 5: Number of directives two years or more overdue	2	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	0	2	0	0	0	0	0	0	0	0
Fig. 6: Transposition delay on overdue directives (in months)	11.3	10.2	14.9	7.4	10.0	10.3	7.9	8.2	6.9	4.5	7.3	10.1	0.8	9.3	9.0	10.5	10.4	13.0	8.2	10.7	7.4	10.4	9.4	9.9	9.8	8.0	11.0	9.1
Fig. 7: Compliance deficit	0.9%	0.9%	0.7%	0.6%	0.7%	0.6%	0.6%	1.3%	0.7%	0.9%	1.9%	0.1%	0.5%	0.4%	0.4%	0.8%	0.4%	0.2%	0.8%	1.5%	1.0%	0.4%	0.4%	0.6%	0.2%	0.9%	0.6%	0.7%
Fig. 12: Trend in the number of infringement cases since Nov. 2007	-3%	NA	-35%	-31%	-51%	-57%	-56%	-23%	-45%	-43%	-49%	-33%	-62%	-61%	-58%	-21%	-60%	-17%	-58%	-24%	-32%	NA	-39%	-20%	-54%	-27%	-40%	-40%
Fig. 13: Number of pending infringement cases	64	25	20	18	44	9	26	68	62	56	69	14	10	7	15	22	17	39	25	42	46	23	14	20	17	33	38	31
Fig. 17: Average speed of infringement resolution - pending cases (in months)	34.0	24.6	31.9	30.7	29.7	20.1	33.7	24.3	29.3	29.6	22.8	17.1	24.2	23.8	12.9	29.5	20.7	31.5	19.8	25.0	23.7	21.1	14.1	26.5	28.7	36.0	29.6	26.9
Fig. 18: Early resolution - closed cases	18%	25%	0%	17%	17%	25%	20%	15%	21%	13%	9%	22%	60%	33%	30%	29%	9%	38%	0%	15%	0%	13%	40%	22%	0%	14%	36%	18%
Fig. 19: Duration since Court's judgments - closed cases (in months)	13.7	NA	NA	8.2	14.8	NA	23.1	17.9	21.8	22.1	19.6	3.1	NA	9.0	15.8	7.0	9.2	15.0	18.7	10.1	18.5	NA	7.1	3.8	9.4	14.7	14.8	17.5

Legend	<average	average ±10%	>average
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			

4. MEMBER STATES' GOOD PRACTICES

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

This edition presents contributions received from Cyprus, Greece, France and the Czech Republic.

Cyprus

The practice pursued by the Government of Cyprus for the correct transposition of EU directives, together with the efforts to meet the transposition deadlines, rationalises a **number of steps from the negotiation phase for directives up to the notification of transposition measures to the European Commission.** The person involved in the negotiation of a given directive is also involved in drafting the piece of national legislation transposing it. This ensures the continuity and quality of the work done. When drafting is complete, the Cypriot legal services proceed with the legal vetting of the national execution measures, thus ensuring their correct transposition while also taking into consideration the transposition deadlines for the directives.

The Planning Bureau is the office responsible for following up the transposition process from the publication of a directive in the Official Journal to the notification of the national execution measures via the MNE electronic system. Every EU coordinator in each ministry informs the Planning Bureau directly and regularly sends all relevant information regarding the status of each national law. The Office cooperates very well and has regular direct contacts with the relevant persons in the ministerial departments responsible for transposition.

The feedback received by the *Planning Bureau* is then used to prepare two reports every four months to inform the Council of Ministers, the Permanent Secretaries of the Ministries, other independent authorities and the House of Representatives of the progress achieved to date. The first report includes directives with an already expired transposition deadline and the second includes directives with a transposition deadline within four months.

Greece

The 0.5 % EU Internal Market implementation deficit was the excellent result of a **concerted national effort** headed by the *Office for International and European Affairs of the General Secretariat of the Greek Government* (the Office).

On the basis of the answers provided to a detailed questionnaire sent to all national agents involved in the EU transposition process, the Office was able to **address many of the hindrances to timely, full and correct transposition as well as the individual concerns and needs of the line ministries.** For practical purposes, the Office chose its work partners: in most cases, in each line ministry **the Office worked together with a group composed of career civil servants and ministerial counsellors,** which proved to be an ideal combination, since it provided solid in-house knowledge and experience as well as political support.

At the same time, the Office set up an internal (i.e. not accessible to the public) database for each EU directive where every development was immediately recorded on an hourly basis. Prompt feedback from all national implementation agents was ensured through the working partners of the Office in each line ministry. Thus, **the Office had a timely diagnosis of obstacles and could provide legal and practical assistance through electronic communication, meetings, workshops and conferences.** All these combined endeavours speeded up the EU law implementation process and led to the closure of many infringement cases due to non-transposition or late transposition. The highlight was the Services Directive and the completion of its overdue transposition into Greek law. Another result achieved by the Office was **improvement of the quality of Greek legislation transposing EU law.**

Equally important was the creation of a tightly knit intergovernmental network to handle all arising problems. This unofficial and thus flexible network in addition to the Office and the working groups of the line ministries, consists of the *Council of State Fifth Chamber and its President, the Legal Service of the Permanent Representation of Greece in Brussels, all other units of the General Secretariat of the Greek Government, especially the legal personnel, the President of the Republic Office and the cabinet of the Special Secretary of the National Printing Office.*

France

As an illustration of the **Government's commitment to improving France's transposition outcome,** the *'Conseil des Ministres'* issued a declaration on the subject in July 2011. In order to reduce the transposition deficit, a wide consultation was conducted of both members of Parliament and members of the Government. A guide to best practices was approved and transmitted to all departments.

The main ideas and proposals, which are currently being implemented, are as follows:

- **Anticipation of transposition**, from the start of negotiations, in order to identify and solve potential difficulties.
  - An impact study is launched at the beginning of negotiations and refined throughout the process in order to assess the impact of the draft measure at national and local level, including the accompanying changes to French law. This impact study is communicated to the national Parliament.
  - A concordance table is drafted and modified as negotiations progress.
- **Continuity**. The consistency of French positions and the preparation for transposition will be enhanced by setting up a single team to handle the process from the start of negotiations until the end of the transposition process.
  - Within a department, a project team will be dedicated to each draft directive. In case of difficulty, a task force can be set up in order to involve the different departments in charge along with representatives of the Parliament.
  - Two correspondents are designated in every department. One is part of the Minister's office; the other is in charge of European affairs or European law. Both can bring their knowledge of transposition to the expert team.
  - The correspondent network is regularly consulted to share their experiences.
- **Coordination between departments** guarantees the consistency of French positions.
  - A lead department is designated for each draft directive.
  - The SGAE ('Secrétariat Général des Affaires Européennes'), reporting to the Prime Minister, leads the co-ordination work.
  - There is regular inter-ministerial monitoring, and members of the Government and parliamentary committees meet quarterly to discuss transposition issues.
- **Consultation of Parliament** in an effort to make the transposition process easier.
  - An annual bill will be devoted to the transposition of technical subjects.
  - The Parliament is kept informed of the negotiations and is aware of potential difficulties.
- **Accountability**
  - An agreement is concluded between the SGAE and the department in charge of transposition. It takes the form of a transposition plan with deadlines, which is discussed and approved at a meeting and monitored throughout the transposition process.
- **Transparency**
  - Indicators have been defined to measure the main objectives at the various stages of the process. They are classified by department and will be measured on a regular basis and available on the Government's intranet.

Czech Republic

The driving force behind the substantial reduction achieved by the Czech Republic in the transposition deficit since November 2011 has unquestionably been the **determination of all institutions involved in the legislative process** and their increased effort in ensuring transposition.

The first step was a thorough analysis of the current methodology in order to determine whether there was a systemic failure or whether there were other reasons. The analysis showed that the system set out in the Methodical Instructions for the Organisation of Work when Meeting the Legislative Obligations Ensuing from the Membership of the Czech Republic in the EU appeared sufficient to ensure timely transposition, thus there was no need to add new rules or new obligations.

The problem seemed rather to be the large number of exemptions granted to various bodies of the national administration, allowing for departure from the basic rules for various legitimate and pressing reasons (for example to submit draft transposition legislation later than required). **In order to improve performance, the exemptions were eliminated** so that all institutions involved in the legislative process at government level were henceforth obliged to conform to the basic rules.

Additionally, the system to monitor the progress made was improved so as to detect any delays as quickly as possible and to address them before they became a major problem. To that end, **the Government is informed** of the state of transposition for all current directives and the progress in adopting related draft legislation **through a monthly comprehensive report,** with delays clearly pointed out together with suggested solutions and deadlines for complying with them.

Experience shows that one of the most important tools for ensuring timely transposition is timely analysis of the extent and method for implementing EU legislation. **Those administrative bodies responsible for coordinating the implementation of EU legislation are obliged to assess as early as possible the impact of the EU legislation on national law** – if possible before the publication in the Official Journal, otherwise within twenty days of its publication at the latest, and to submit the assessment to the Office of the Government (Department for compatibility with EU law) for review. The official analysis must contain a provision-by-provision assessment stating exactly which acts or draft acts implement or transpose what provision. Draft acts must be identified by an ID number and given a binding time schedule for their adoption.

The suggested time schedule must comply with the rules for ensuring timely implementation in the *Methodical Instructions*, under which **national draft acts implementing EU acts must be submitted to the 'inter-ministerial commentary procedure' eleven months before the deadline of the EU act expires, and must be subsequently submitted for government approval nine months in advance.** In the case of government regulations and by-laws, the deadlines are four and two months, respectively. These rules correspond to the approximate length of the legislative process in the Czech Republic.

Generally speaking, we believe that it is important not only to start on the draft legislation as early as possible, but also to **determine in advance the deadlines by which the individual legislative phases/sub-processes must be completed,** since delays can occur even when work on the respective legislation starts on time. Therefore, the other recommended step is to set deadlines for at least some of the phases of the legislative procedure and thoroughly monitor whether or not they are met. It is important to employ an **information system enabling early detection of any problems.** When regular outputs are subsequently submitted to the government for information and supervision, it can address any arising problem as soon as possible.

In our experience the combination of the tools described above provides an effective method of coordinating implementation work to achieve timely transposition.

European Commission

Internal Market Scoreboard

Luxembourg: Publications Office of the European Union

2012 — 30 pp. — 21 x 29.7 cm

ISSN 1830-5881

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KM-AD-12-001-EN-C

Printed by OIB

ISSN 1830-5881