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Internal Market Scoreboard N° 15bis

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MAIN FINDINGS

Transposition

At the end of 2006, and for the first time ever, the average transposition deficit of the 25 Member States **fell below the interim target of 1.5%** that the Heads of State and Government agreed on in 2001. **At 1.2% it is well below that level.**

Another first is that this effort is driven **by all Member States** (even though the new Member States again perform better with an average deficit of 0.9%).

19 Member States are below or have reached the 1.5% target. Two Member States are 1 directive short of reaching it, leaving only 4 Member States well above: in descending order, Portugal, Greece, Luxembourg and Italy. But even those Member States have made very substantial progress. Most progress was made by Italy, closely followed by the Czech Republic which almost reaches the target.

Why do *all* Member States make progress in 2006? There is no fixed number of Internal Market directives: some are repealed while new ones are adopted. It is true that the number of directives to be transposed in 2006 was lower than in recent years, but is comparable to that of 2002 and before. However, the average transposition deficit today is much lower than it was then.

The excellent result across the board can therefore not be explained exclusively by the relatively lower number of directives that had to be transposed in 2006. Most Member States that examined the question agree that their efforts in implementing the 2004 Commission Recommendation have started to bear fruit. Most Member States have also implemented more recommendations than was the case 6 months ago. It is to be seen whether the second Scoreboard of 2007 later this year confirms that the current excellent result is based on structural improvements in the way Member States ensure timely transposition rather than particularly favourable conditions for reducing the deficit this time around.

Looking at the directives to be transposed in the next 6 months, Luxembourg, Belgium and Cyprus seem to be best prepared: they have already transposed a large number of those directives.

It is worrying that despite their still very substantial transposition deficit, Portugal and Italy have as yet undertaken (next to) no action with regard to these directives.

Infringements

The incorrect transposition and application of Internal Market rules remain a problem for which a high price is being paid by the EU citizens and businesses.

Italy has more than 3 times the 'average' amount of infringement proceedings for incorrect transposition or incorrect application of Internal Market rules. Spain, France, Greece, Germany, Portugal and Belgium are also way above the average.

Among the new Member States, the substantial increase in infringement proceedings over the last year against Poland is an alarming development. Poland has now more than twice the average number of infringements of the new Member States (and it is very close to the EU 25 average). Its 'progression' is even accelerating.

If broken down by sector, infringements relating to the environment, transport and energy and taxation and customs union account for almost half of all infringement cases.

Among the old Member States, Luxembourg and Denmark go the furthest in trying to resolve infringement proceedings quickly. Greece and Portugal also resolve infringement proceedings quickly, but both have a much higher number of infringement cases than the two former Member States.

INTRODUCTION

The Internal Market does not deliver benefits automatically. EU rules must be adopted, transposed into national law and enforced. Businesses and citizens need to seize the opportunities they offer. And when problems with the application of Internal Market rules do arise, they need to be solved effectively to ensure that citizens and businesses are able to exercise their rights.

The **primary responsibility for ensuring the correct application of Internal Market rules lies with the Member States**. It is in their common interest to ensure that the Internal Market functions properly for the benefit of their businesses and citizens. If Internal Market rules are not applied effectively, their contribution to Europe's growth and competitiveness is undermined. The importance lies in the fact that the economic interests of all Member States will suffer if some Member States do not deliver.

The Scoreboard monitors whether Member States are doing what is needed to ensure that the Internal Market functions properly. It does so by first examining how quickly each of the Member States **transposes Internal Market directives into national law**. Contrary to popular perception, the deadlines for the transposition of directives are not laid down by the Commission. They are agreed by the Member States themselves. Member States which do not transpose directives properly or on time therefore default on their own commitments.

The Scoreboard also highlights the **number of infringement proceedings** initiated by the Commission against each Member State. Every infringement case is a problem for an industry, for a business or for citizens. The motivation for Member States putting an end to such an infringement as quickly as possible should therefore not be the sanction that the Court of Justice can impose, but the determination to remove obstacles that make citizens' and businesses' lives more complicated.

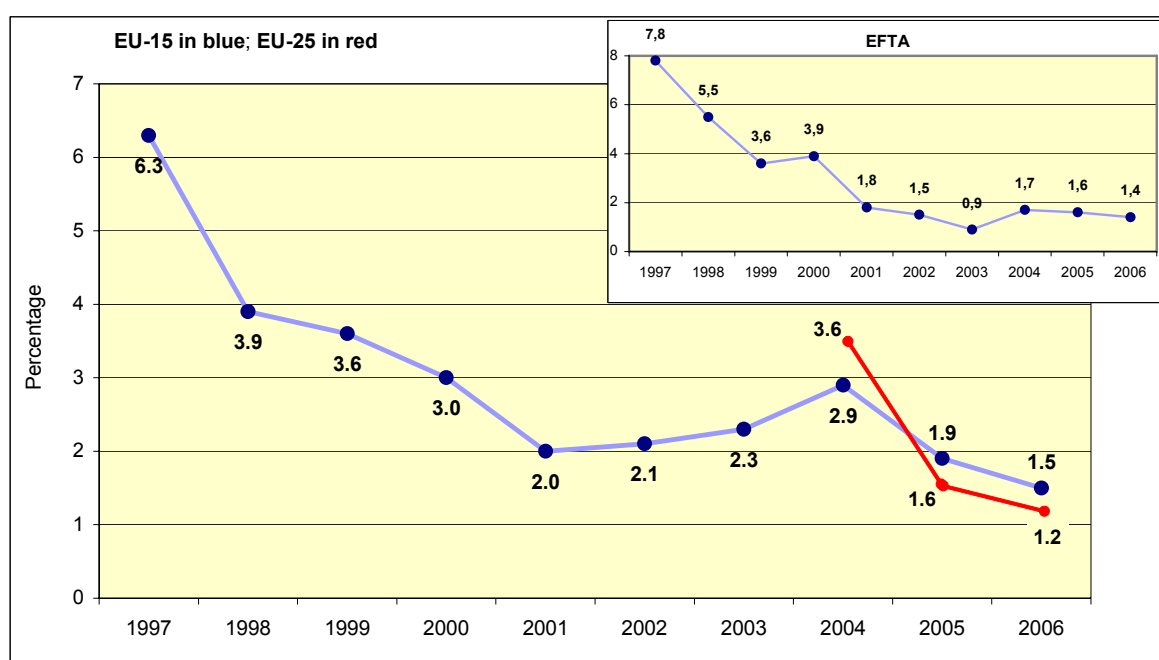
As the guardian of the Treaty, the Commission is looking more critically at non-timely transposition and is starting procedures for non-transposition more quickly than in the past. Such action is critical to the credibility of the Internal Market and to the effectiveness of EU policies.

A. STATE OF TRANSPOSITION OF INTERNAL MARKET LEGISLATION INTO NATIONAL LAW

EU Heads of State and Government have repeatedly called for Member States to improve their transposition records, setting a 1.5% transposition deficit as an interim target¹. On 23 March 2005, the European Council again called on Member States to spare no effort in honouring the commitments made in Barcelona in March 2002 as regards the transposition of directives. Improvement of the transposition record is key to the success of the re-launched partnership for growth and jobs (The Lisbon Strategy).

Average transposition deficit in December 2006 as compared to previous years

Figure 1: Best result ever!



The transposition deficit shows the percentage of Internal Market directives not yet communicated to the Commission as having been transposed, in relation to the total number of Internal Market directives which should have been transposed by the deadline. As of 31 October 2006, 1634 directives and 602 regulations relate to the Internal Market as defined in the EC Treaty.

Member States needed five years to put into effect what Heads of State and Government agreed to do in 2001: to reduce their transposition deficit to below 1.5%. It is a source of great satisfaction that they have now achieved this.

In December 2005, the Member States had already performed better than ever before in terms of transposing Internal Market legislation in a timely manner. Their average transposition deficit was at 1.6%. The interim target was clearly within reach.

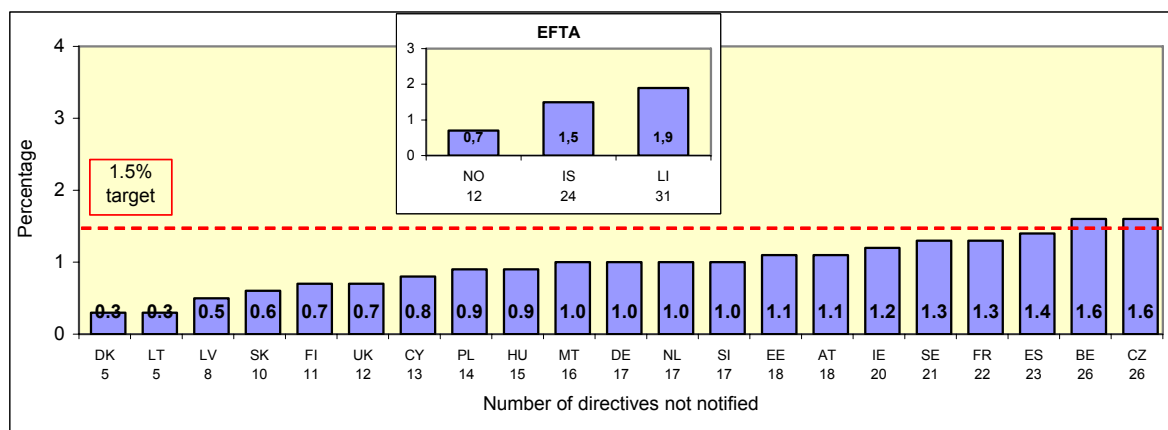
¹ Conclusions of the European Council summits of Stockholm (23-24 March 2001), Barcelona (15-16 March 2002) and Brussels (20-21 March 2003 and 25-26 March 2004).

However, rather than going the extra mile in the first half year of 2006, the average transposition deficit rose to 1.9%. The target was again further away.

Fortunately, this negative trend was reversed during the second semester of 2006. **At 1.2%, the average transposition deficit for the 25 Member States is well below the interim target and lower than it has ever been before.** The ultimate goal obviously remains that all Member States transpose Internal Market rules before the deadline they have imposed on themselves. In the meantime, the Member States and their authorities should be praised for the considerate efforts to achieve this very encouraging result. It illustrates that if the will is there, the Member States are able to deliver on time, to the greater benefit of the citizen.

Performance as against the 1.5% transposition deficit target

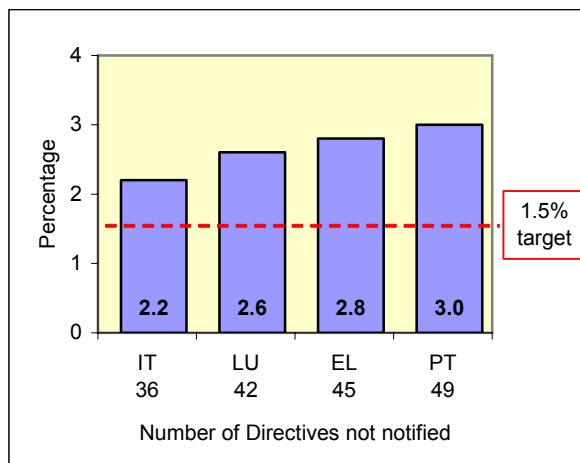
Figure 2: 21 Member States are below or very close to the 1.5% target



Transposition deficit of the Member States that are below or close to the 1.5% target as of 11 November 2006.

- 19 Member States are (well) below the target of a 1.5% transposition deficit;
- 2 Member States are very close, with only 1 directive out of 1634 directives that still needs to be (partially) transposed to reach the 1.5% transposition deficit target;
- Denmark and Latvia share the first place: they are 5 directives away from a 0% deficit.

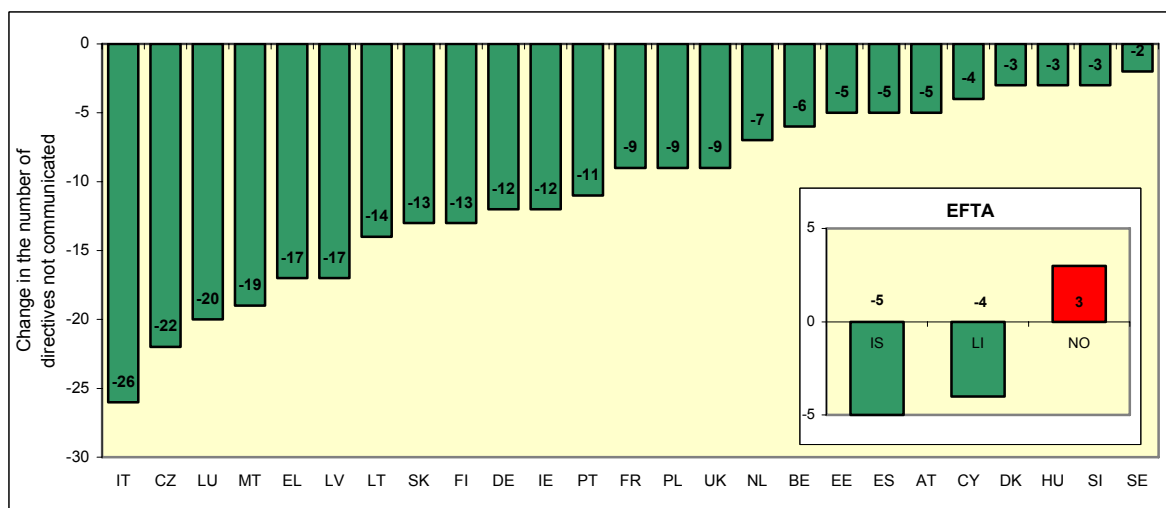
Figure 3: Only 4 Member States lag (far) behind



Transposition deficit of the Member States that do not reach the 1.5% target as of 11 November 2006.

- In reverse order, Portugal, Greece, Luxembourg and Italy lag far behind;
- The Portuguese and Greek performance is very worrying, as these Member States' deficit is about double the average EU deficit;
- The performance of Luxembourg and Italy in absolute terms is a poor one, but one should not forget that both Member States, and especially Italy, have made very good progress in the last half year.

Figure 4: All Member States reduce their backlog, with Italy, the Czech Republic and to a lesser extent Luxembourg as frontrunners



Change in the number of outstanding directives since Scoreboard 15 (July 2006).

- All Member States, without exception, have made progress;
- Italy, Luxembourg and the Czech Republic deserve to be mentioned specifically, as these Member States have undertaken a sustained effort, reducing their deficit by 26, 22 and 20 directives respectively in the last 6 months.

Reasons why *all* Member States perform better

As highlighted above, all the Member States, without exception, have made substantial progress in the last 6 months. This is unprecedented.

It is true that the number of directives to be transposed in the last 6 months was lower than in previous years: it is now back to the level of 2002 and preceding years. However, the average transposition deficit today is much lower than it was in those years.

Whilst the reduced number of directives to be transposed is certainly a factor that helps to explain why all Member States have made progress, the reason for the overall substantial progress made lies elsewhere. Asked about this, the Member States that gave their view indicated that the good overall result is due to having implemented the best practices set out in the 2004 Commission Recommendation on the transposition into national law of directives affecting the Internal Market². This work is now starting to fully produce its effects.

The figures below show that this effort is still ongoing: several Member States have implemented further best practices in the past half year.

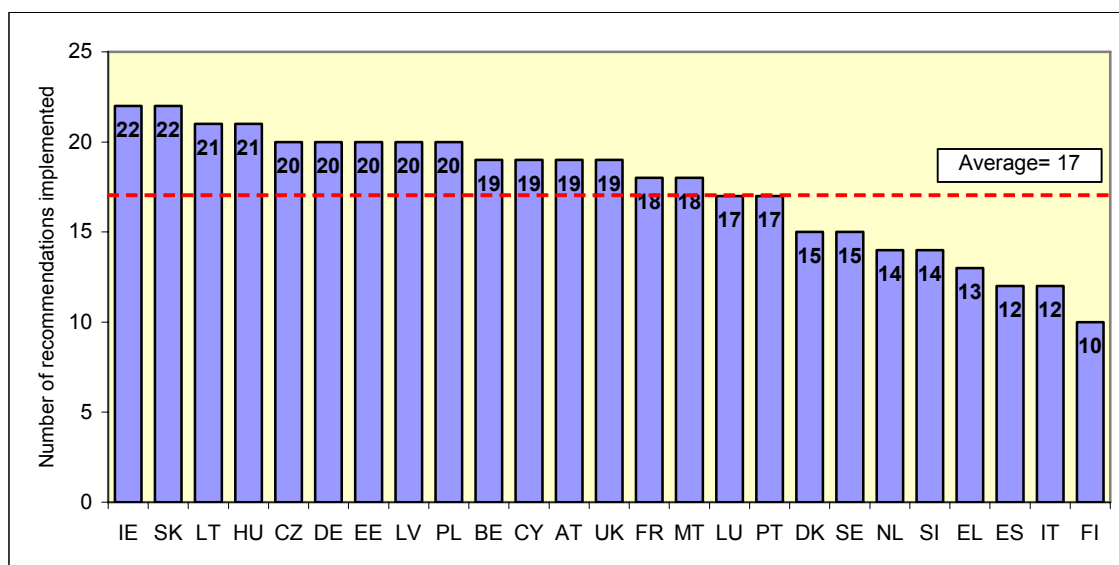
Figure 5: Member States' continued efforts to implement best practices pay off!

² Recommendation of the Commission on the “transposition into national law of directives affecting the Internal Market” of 12 July 2004 , OJEU L 98 of 16 April 2005, page 47.

Practices referred to in the Recommendation		BE	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	SI	SK	FI	SE	UK
Transposition as priority	1.1. One senior member of government responsible for coordination of EU affairs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	1.2. Regular report on the transposition records on the Cabinet or government level	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	1.3. Allocation of sufficient resources	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Permanent monitoring	2.1. One ministry responsible for monitoring and coordinating transposition	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	2.2. Designated officials in each ministry or government body	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	2.3 Guidelines on transposition	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	2.4. A central national database	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	2.5. Reminders before the deadline	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	2.6. Reminders after deadline	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	2.7. Proactive in seeking Commission assistance	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Preparations for transposition	3.1. A planning schedule for transposition prepared	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	3.2. Drafting of national implementing measures starts at latest when Directive is published in OJ	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	3.3. Correlation table	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	3.4. Goldplating is avoided	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	3.5. National officials responsible for negotiating a Directive are involved in its transposition	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	3.6. Representatives of federal/regional levels are kept informed during negotiations	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	3.7 Electronic notification of implementing measures to the Commission	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Involvement of Parliament	4.1. Parliament involved since proposal stage and kept informed during negotiations	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	4.2. Parliament informed on progress in transposition	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	4.3. Together with draft national implementing measures, the Parliament receives timetable for transposition	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	4.4. Parliament receives early warning	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	4.5. Government encourages Parliament to provide necessary time to transpose directives	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Actions taken in case of late transposition	5.1. Measures are taken that 'late' transpositions are speeded up	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	5.2. Parliament encouraged to give priority treatment to late transpositions	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	5.3. Publication of late transpositions	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	5.4. Fast track procedure	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	5.5. Use of alternative legal instruments	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
TOTAL		19	20	15	20	20	13	12	18	22	12	19	20	21	17	21	18	14	19	20	17	14	22	10	15	19

Answers under points 1.3, 2.7, 3.6 and 5.5 have not been counted towards the total either because the answer is not objectively verifiable or because the question is not applicable in a large number of Member States.

Figure 6: Average number of implemented recommendations per Member State is up from below 15 to 17

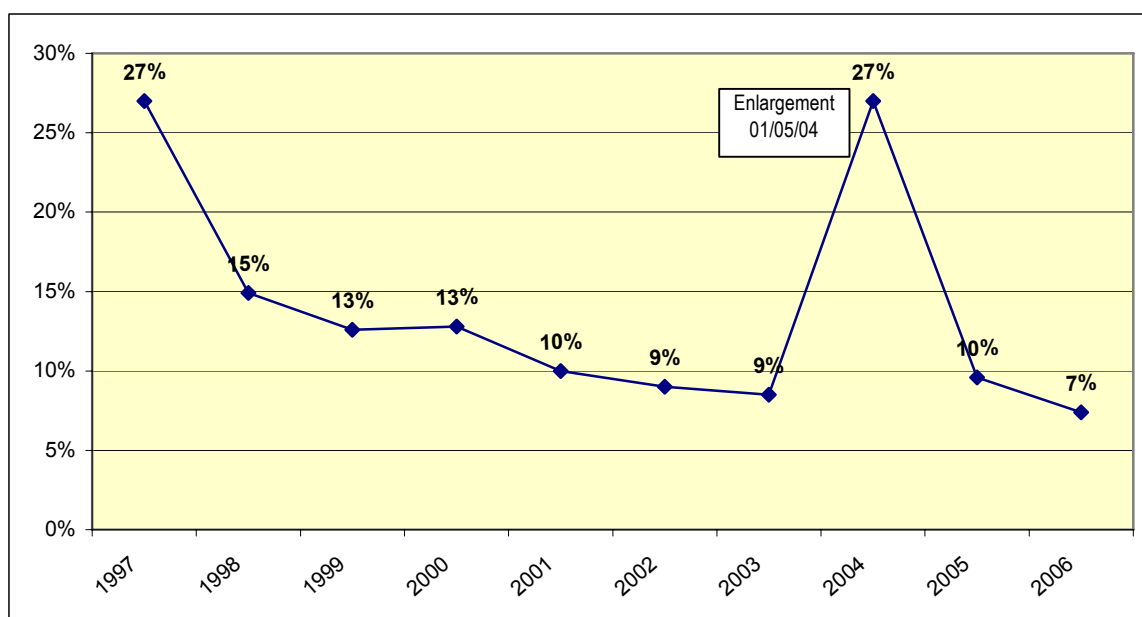


Total number of implemented recommendations out of a total of 23.

The average number of recommendations implemented by Member States has increased from below 15 to 17 out of a total of 23 recommendations in half a year. These figures confirm that Member States have taken the Recommendation on board and used it as a "toolbox" of best practices for improving their national transposition mechanisms.

Fragmentation factor

Figure 7: Fragmentation factor lower than ever



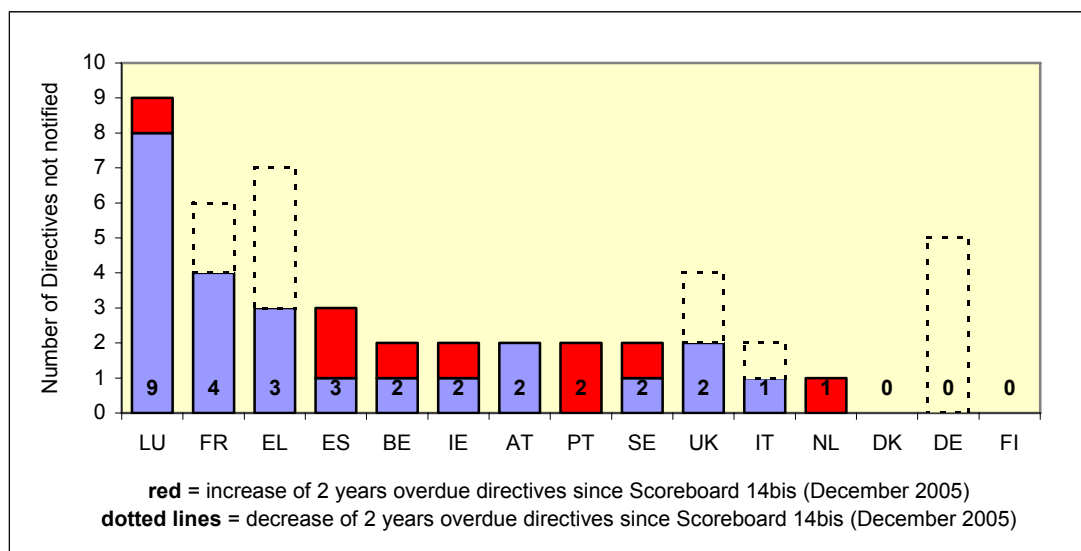
The so-called 'fragmentation factor' records the percentage of the outstanding directives that have not been transposed in at least one Member State with as a consequence that the Internal Market is not a reality for the fields covered by those directives.

Given the excellent performance of the Member States, the fragmentation factor has also been reduced to its lowest ever level. But more efforts are needed to reduce it further: failure to transpose a directive that has been transposed in all the other Member States holds the Internal Market hostage to one Member State's inability to transpose directives. No matter what the reasons for this, it goes against the very foundations of the Internal Market.

Long overdue directives

The Heads of State and Government decided that a policy of "zero tolerance" is to be adopted as regards directives overdue by 2 years or more. A transposition delay of 2 years is indeed unacceptable for the reasons explained in the previous paragraph.

Figure 8: Far too little progress on long overdue directives in old Member States – Luxembourg to urgently address the situation

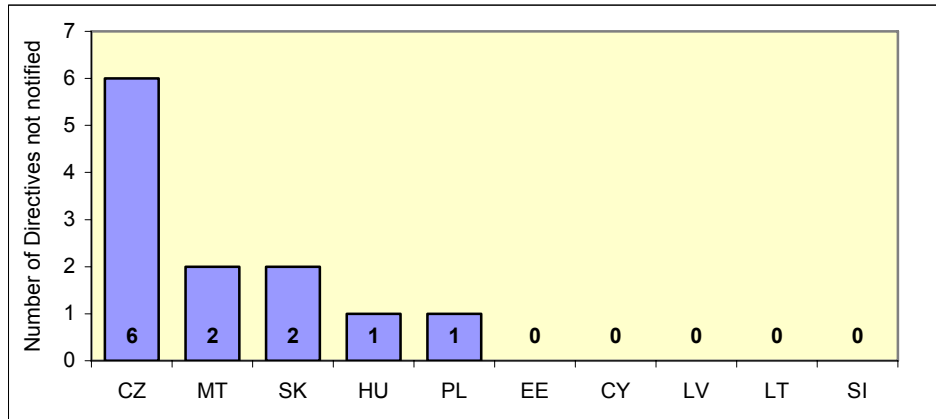


Number of directives with a deadline for transposition into national law before 31 October 2004, which have not been transposed by 11 November 2006.

- Luxembourg is by far the worst offender on this criterion. In fact, 1 further directive is more than 2 years overdue compared to a year ago, bringing the total to 9;
- 2 more directives that should have been transposed at least 2 years ago must still be transposed by Portugal and Spain, while Belgium, Ireland, Sweden and the Netherlands are more than 2 years late with 1 additional directive;
- Germany and Greece, on the other hand, made a leap forward by transposing respectively all 6 directives and 4 directives that were overdue by 2 years or more;

- France and the UK transposed 2 of those and Italy one, but France still has 4 long overdue directives to go.

Figure 9: Among the new Member States, the Czech Republic needs to focus on reducing its backlog of long overdue directives

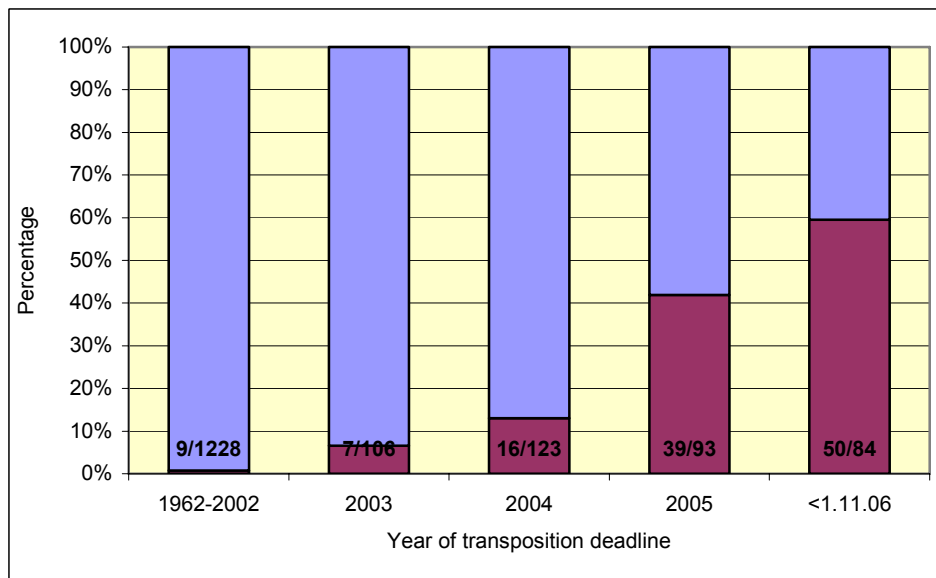


Number of directives with a deadline for transposition into national law before 31 October 2004, which have not been transposed by 11 November 2006.

Despite the Czech Republic's leap forward in terms of timely transposition, it must still transpose 6 long overdue directives, making it the Member State with the second poorest performance on this criterion among the EU 25 and by far the poorest among the EU 10.

Non-transposed directives date back to ...

Figure 10: 9 directives that should have been transposed 4 or more years ago still have not been



Number of directives that have still not been transposed in at least one Member State in relation to the total number of directives that should have been transposed in the period under consideration.

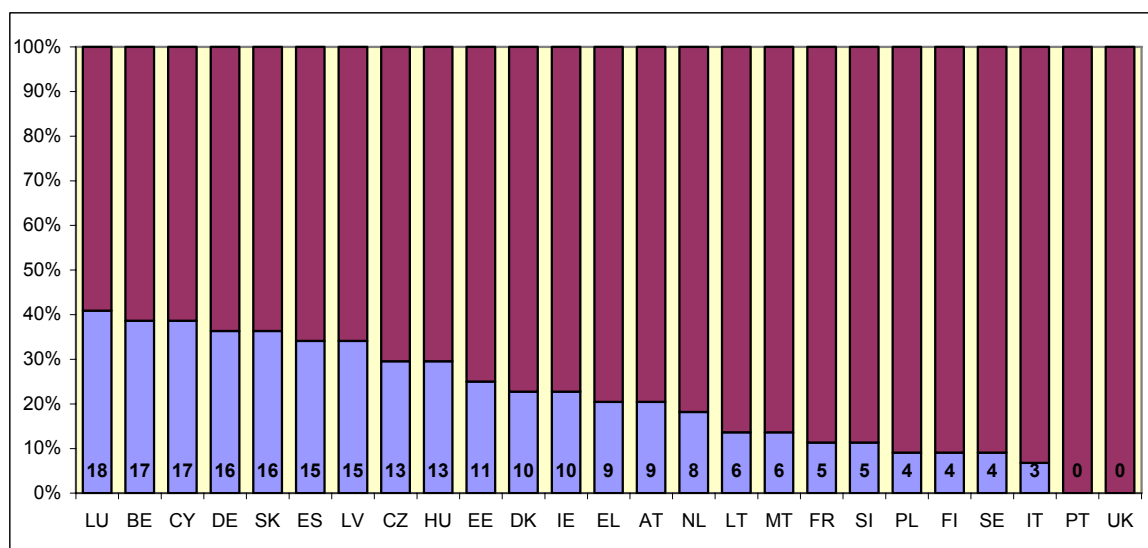
A year ago, there were 20 directives that were four or more years late. There are 9 today, so progress is being made. However, the counter should have been returned to zero a long time ago. The Czech Republic, France, Hungary, Poland, the Slovak Republic and Sweden all still have such directives to transpose.

As can be expected, the more recent the deadline for transposition is, the more directives are overdue. However, it is a cause of concern that 50 out of 84 directives that should have been transposed in the first 11 months of 2006 have not yet been transposed in all Member States, even though the situation is improving compared to a year ago (when 61 out of 79 directives remained to be transposed).

Looking ahead

It is useful to look briefly at what the future may bring in terms of transposition. Figure 11 below looks at the 44 directives that must be transposed between 1 November 2006 and 30 April 2007. For each Member State, it shows the number of these directives that have already been transposed, which gives an indication of how well a Member State is prepared for the near future.

Figure 11: Despite their important backlog, Portugal and Italy are not proactive



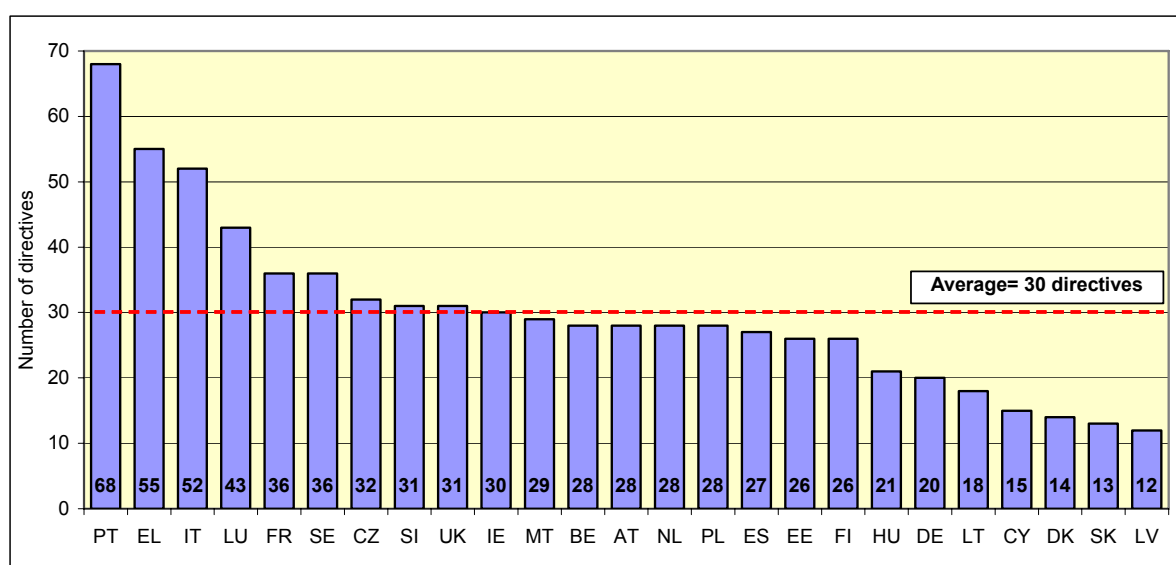
Percentage and number of Directives that need to be transposed between 1 November 2006 and 30 April 2007 (totalling 44) and that have already been notified on 10 November 2006

- Luxembourg, Belgium and Cyprus are undertaking a sustained effort to improve on their transposition record: of the 44 directives that need to be transposed between 1st November 2006 and 30 April 2007, Luxembourg has already transposed no less than 18 and Belgium and Cyprus no less than 17 directives;
- It would seem that for Belgium to reach the 1.5% target next time around is only a matter of sustaining the present effort;

- It is striking that although the number of directives to transpose in the next 6 months is higher than in the past 6 months (44 compared to 35), the number of directives that Member States have already transposed is, on average, lower than as reported half a year ago;
- In view of their weak performance on timely transposition, the fact that Portugal and Italy have transposed very few directives gives rise to serious concern.

The figure below sets out the total number of directives that each Member State needs to transpose by 1 May 2007 to reach the 1.5% interim target.

Figure 12: A lot of work ahead for Portugal, Greece, Italy and Luxembourg to reach the 1.5% target in half a year's time!



This figure sets out the number of directives that each Member State needs to transpose by 1 May 2007 to reach the target of a 1.5% transposition deficit by the next Scoreboard

- Not surprisingly, Portugal, Greece, Italy and Luxembourg have the most work to do to reach the 1.5% target in half a year's time;
- More noteworthy given that both have managed the 1.5% target this time around is the fact that Sweden and France will have to shift up a gear to replicate that result in 6 months.

How many infringements for non-communication are underway?

Turning from forthcoming deadlines to those which have already passed, it is of interest to look at the stage of the infringement proceedings for non-communication to the Commission of the national measures implementing Internal Market directives.

Before analysing the figures, it is useful to give some background on the procedure that the Commission follows in the case of late transposition by a Member State.

Such cases follow the procedure prescribed in Article 226 of the EC Treaty.

In the first instance, the Commission sends a letter of formal notice to the Member State concerned, drawing its attention to the fact that the deadline for transposition of a directive has elapsed. The Member State then has two months to reply.

If the Member State's reply is not satisfactory or if the Member State does not react at all, the Commission will send a reasoned opinion. The Member State then has two months to comply with Community law.

If the Member State persists in its non-compliance the Commission may bring the case before the European Court of Justice ('ECJ') in Luxembourg.

If a Member State still fails to comply after having been found in breach by the ECJ, the Commission may bring that Member State before the ECJ under Article 228 of the EC Treaty, which essentially provides for the same steps to be taken (letter of formal notice followed by reasoned opinion) and which ultimately may lead the ECJ to impose fines (periodic fines and/or penalty payments) on the Member State concerned.

Many cases are solved before the Commission brings the case to the ECJ as is illustrated by the fact that there are more cases in the earlier stages of the proceedings (letter of formal notice, reasoned opinion) than cases before the Court. It does not therefore follow that a certain number of reasoned opinions (or of letters of formal notice) will lead to a corresponding number of Court proceedings.

Figure 13: State of non-communication cases

	EL	PT	LU	IT	FR	MT	UK	BE	FI	CZ	AT	SE	ES	IE	LV	SI	PL	HU	DE	EE	NL	SK	CY	DK	LT	UE
Referral to the ECJ under Art. 228																										0
Infringement proceedings initiated under Art. 228	1		4		3			2			1															11
Court ruling			4	2					3		1			1												11
Referral to the ECJ under Art. 226	6	5	8	6	2	2	4	4	2	3	4	1	8	2			2		4	1	2	1				67
Reasoned opinions	24	22	20	17	10	6	11	15	11	11	6	14	12	11	4	11	5	5	11	4	8	7	4	4	3	256
Formal notices	31	32	21	28	30	33	26	15	18	17	18	15	9	12	22	15	18	19	8	16	10	10	13	9	6	451
Total	62	59	57	53	45	41	41	36	34	31	30	30	29	26	26	26	25	24	23	21	20	18	17	13	9	796

Procedural state of cases where a Member State has not communicated to the Commission the national legislation transposing a Directive due before 31/10/2006.

Currently, an Article 228 procedure is underway against Luxembourg (in 4 instances), France (3), Belgium (2), Greece and Austria (both 1). All cases on the basis of Article 228 that existed a year ago have been resolved, except one against France.

From 1 January 2007, the Commission will no longer withdraw Article 228 cases that have been brought before the ECJ on the basis that the relevant measures have been adopted in the meantime. Even following compliance by the Member State, the Commission will pursue those cases in order to obtain a judgement of the Court of Justice and the imposition of a lump sum penalty for the past infringement.

Except for Spain with 8 cases, the four Member States who perform worst on transposition overall (Luxembourg, Greece, Italy and Portugal) have by far the

highest number of Article 226 cases before the European Court of Justice. This is likely to remain unchanged for some time to come, as these Member States also have by far the most infringement proceedings under way.

Considering that the Commission has only started opening infringement proceedings against the new Member States after May 2004, it is a matter for concern that Malta still needs to communicate a large number of national transposing measures to the Commission.

B. INFRINGEMENTS FOR INCORRECT APPLICATION OF INTERNAL MARKET RULES

As highlighted by the Internal Market Strategy 2003-2006³, when directives are not applied correctly by Member States EU citizens and businesses are deprived of their rights. This self-inflicted damage causes harm to the European economy and undermines the confidence that citizens and businesses have in the Internal Market and in the EU in general.

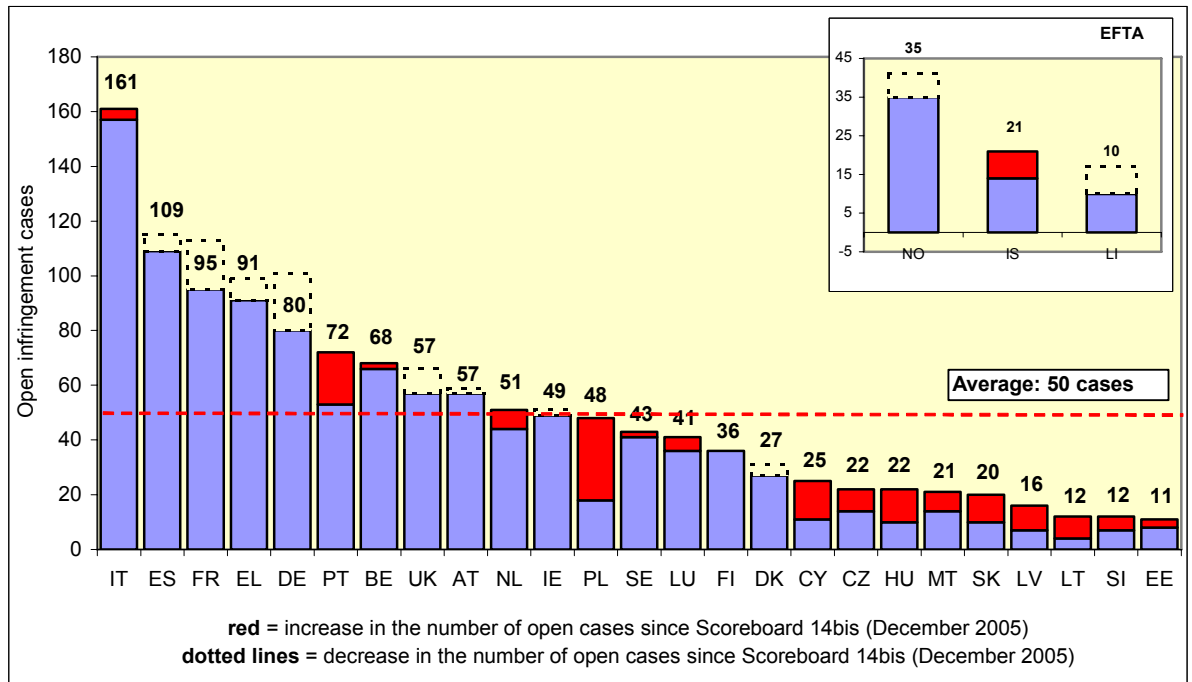
Where the Commission considers that Internal Market rules are not properly applied, it may take infringement action against the Member State in question as set out above.

In order to avoid "double-counting" cases where a Member State has not communicated to the Commission the national implementing measures transposing a directive, the term 'infringement' in chapter B is to be understood as representing all those cases, and only those cases, where, in the Commission's opinion, the transposition is not in conformity with the directive it transposes or cases where Internal Market legislation is not correctly applied and where a letter of formal notice has been sent to the Member State. Cases of non-communication, i.e. concerning directives counted in the transposition deficit, are the subject of chapter A and are excluded from this chapter.

Number of infringement proceedings per Member State as compared to November 2005

Figure 14: Number of infringement cases

³ COM (2003) 238, 7 May 2003.



Number of infringement cases as at November 2006 compared to the situation in November 2005.

- Compared to a year ago, only 8 Member States managed a reduction of infringement proceedings, all of which are "old" Member States;
- Germany managed a reduction of 21 cases over the last year, followed by France with a reduction of 18 cases;
- It is also striking that out of the 4 worst performing Member States in terms of timely transposition (Portugal, Greece, Luxembourg and Italy), only Greece managed a reduction of infringement proceedings;
- On the other hand, the number of infringement proceedings against Portugal, the worst performer on transposition, has increased by 19 in a year;
- Italy counts more infringement proceedings today than a year ago when it already violated Internal Market rules three times more often than the EU average;
- Spain also stands out with the second highest number of infringement proceedings;
- The number of infringement proceedings has increased for all new Member States. To a certain extent that could be expected: due to the enormous volume of legislation to be examined and the limited translation capacity after the accession, the Commission was only able to start to examine the quality of the legislation and implementation gradually, leading to a surge in infringement cases in 2005 and 2006. What is worrying, however, is that in Poland the quality of transposition and implementation seems to be substantially lower than in any of the other new Member States. Today Poland has more than twice the number of

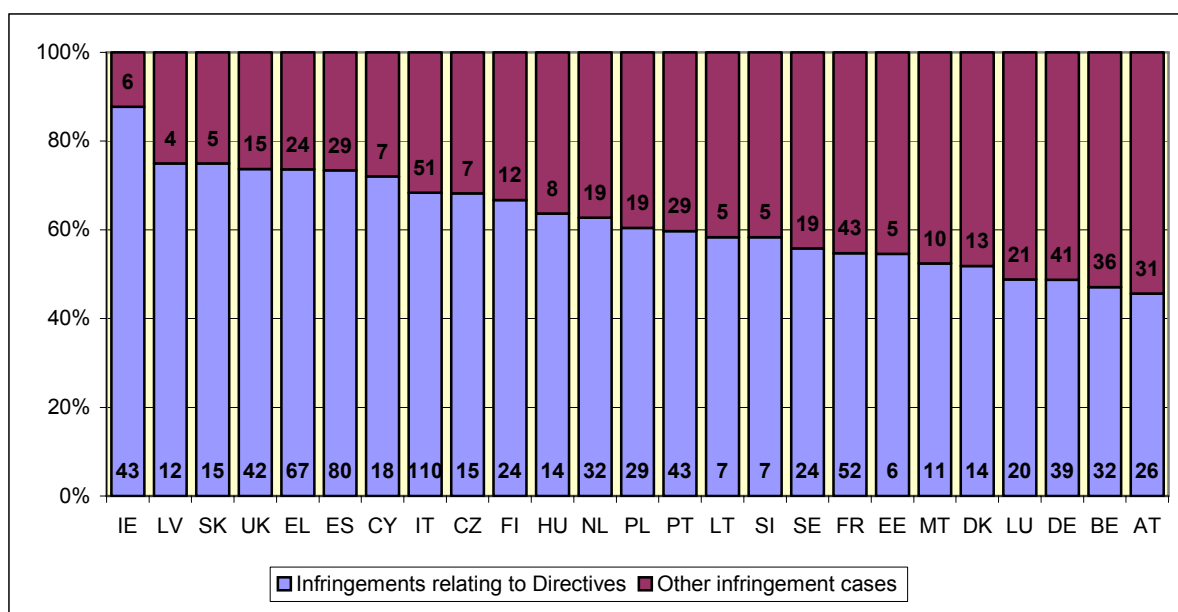
infringement proceedings than the average among the new Member States (21 infringement cases) and the situation is becoming rapidly worse.

Breakdown of infringement proceedings according to their nature per Member State

Infringement proceedings are opened against a Member State either because it violates a directive or because it violates another source of EU law, such as (a) provision(s) of the EC Treaty, a Regulation or a Decision. In the figure below, we present the proportion of these two categories for each Member State. It appears from this table that the number of infringements related to incorrect transposition or wrong implementation of Directives is significant for each Member State and represents a large proportion of the total of infringement cases.

One should therefore not forget that, beyond the remarkable reduction of the transposition deficit, Member States still need to ensure that Internal Market Directives are correctly transposed and applied on the ground. Member States need to intensify their efforts in this respect.

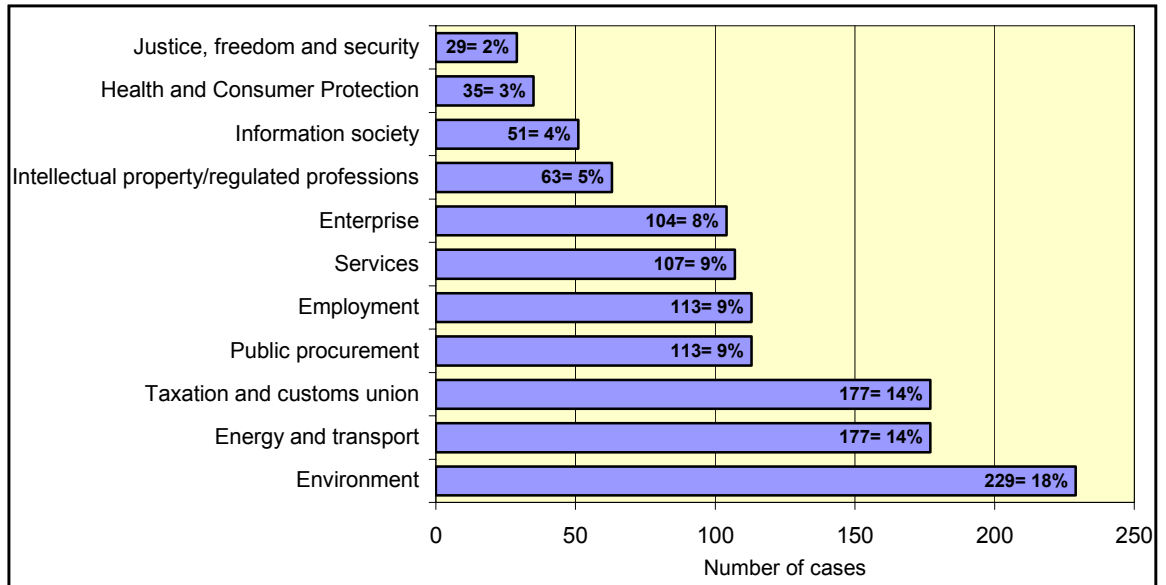
Figure 15: Correctly transposed directives are not always correctly applied on the ground!



Number of infringement cases as at 31 October 2006.

Breakdown of infringement proceedings per sector

Figure 16: 'Environment', 'energy and transport' and 'taxation and customs union' account for half of the infringement proceedings



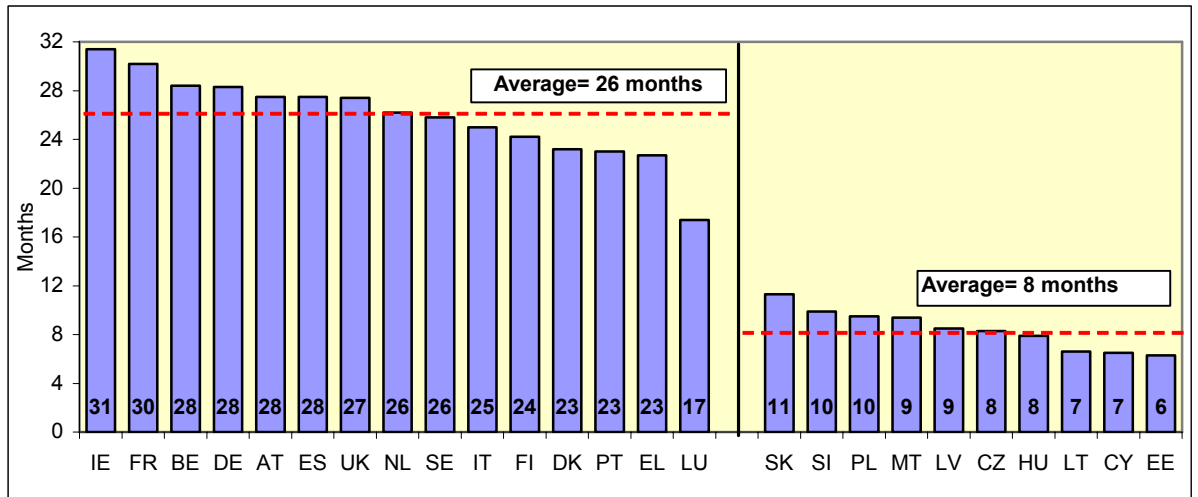
Number of infringement cases as at 31 October 2006.

A breakdown of infringement proceedings according to sector shows that the environmental rules are the source of the biggest amount of cases: 18% of all infringement cases conducted by the Commission relate to environmental rules. The EU energy and transport rules and, surprisingly given the limited amount of EU directives in this field, taxation and customs union rules come second with 14%. These three sectors alone account for almost 50% of infringement cases, suggesting that if Member States were to focus their attention on correctly applying the rules in these three sectors they could reduce the number of infringement proceedings by the same amount.

Misapplication and/or incorrect transposition of public procurement rules in itself accounts for 9% of infringements, together with employment rules and, to a slightly lesser extent, rules relating to the free provision of services.

Infringement resolution speed per Member State

Figure 17: Luxembourg most proactive in trying to solve infringement proceedings, followed by Greece, Portugal and Denmark



Infringement cases closed or brought before the ECJ between 31/10/2004 and 31/10/2006: average time in months needed to either close an infringement case or to bring it before the ECJ counted from the moment of the sending of the letter of formal notice.

Full Member State cooperation in trying to resolve infringement proceedings quickly and out of court is in the best interest of those Member States: it reduces the average time required to solve the infringement proceeding, with the result that their track record on infringements improves accordingly.

- Luxembourg, Greece, Portugal and Denmark have fully understood that message, as have Estonia, Cyprus and Lithuania;
- Given their high number of infringement proceedings, France, Germany, Belgium and Spain would benefit from a more cooperative approach, as would Poland.