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Internal Market Scoreboard n°19

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EDITORIAL

The Internal Market is crucial to Europe's response to the financial crisis. It is a key driver of growth and jobs and one of the main engines for economic recovery. In these challenging times, it is more important than ever that the Internal Market functions as effectively as possible, and that Member States ensure that its rules are in force and applied correctly.

Against this background, I am delighted to see that the vast majority of Member States have continued their excellent performance from the previous Scoreboard in implementing agreed Internal Market legislation into national law on time. For the third consecutive time the EU transposition deficit is 1%, matching again the target set by the European Council. It is especially important that Member States now maintain this standard, as a range of new legislation responding to the financial crisis is about to come on stream.

However, timely implementation is only half the picture. The Internal Market must work in daily life, not just on paper. National laws need to be of high quality, and those applying the rules need to do it correctly, so that citizens and businesses can exercise their rights effectively. There are still too many instances of Member States failing to do this. In this Scoreboard we devote particular attention to the effective application of public procurement rules, recognising the importance of this area at the present time.

Overall, though, I have seen real improvements since I began my term as Internal Market Commissioner in 2004. The average transposition deficit for the 25 Member States stood then at 3.6% – far too high. Now we have the lowest deficit ever. If Member States can make the same progress in ensuring that Internal Market rules are applied effectively on the ground, then we really will be on the right track. The Internal Market must be allowed to play its role in returning the European economy to growth as quickly as possible.

Charlie McCreevy
Member of the European Commission
responsible for the Internal Market

MAIN FINDINGS

Transposition

For the third consecutive time the EU average transposition deficit is at 1%. The consistent good result suggests that Member States have put in place structural improvements to ensure timely transposition.

In total, 18 out of 27 Member States are in line with the 1% target: Once again, Denmark and Malta are the overall best performers both with only 3 directives away from a perfect score. A further 2 Member States (United Kingdom and Belgium) are close to reaching the 1% target: At the other end of the spectrum, Greece, Poland, Portugal, the Czech Republic, Italy, Luxembourg and Estonia are far off the target. The transposition deficit in 6 out of these 9 Member States has increased even further compared to half a year ago. This is a serious source of concern. Only Belgium and Luxembourg managed to reduce their deficits.

13 out of 27 Member States have achieved or equalled their best score so far: Belgium, Denmark, Spain, France, Ireland, Luxembourg, Hungary, Malta, Austria, Romania, Slovenia, Slovakia and Finland. Unfortunately, the Czech Republic did not hold on to its significant improvement from half a year ago and slipped back again above the 1% ceiling.

However the well functioning of the Internal Market does not depend on timely transposition only. Adding the number of directives not correctly transposed to the number of directives not fully transposed, results in an EU average deficit almost double the 1% transposition deficit.

Moreover the number of long overdue directives remains stubbornly high. In 22% of directives not transposed the transposition deadline expired already more than 2 years ago.

Finally the fragmentation factor on Internal Market legislation remains at 6% which translates into 100 Internal Market directives not producing their full effect in the whole EU.

Infringements

Once transposed, it appears that Member States pay less attention to applying directives correctly. Even where Member States have managed to reduce the number of infringement procedures, those efforts are marginal and the Member States in question continue to have a significant number of infringement proceedings.

Italy accounts for more than double the average amount of infringement proceedings for incorrect transposition or incorrect application of Internal Market legislation. Spain, Belgium, Greece, France and Germany are also way above the EU average of 47 cases.

Public procurement supplement

EC procurement legislation seeks to prevent favouritism or inertia from leading to procurement markets that are closed to competitive suppliers, including those from other Member States. A recent Eurobarometer survey reveals that a large majority of citizens in almost all EU Member States understand that EU procurement rules are designed to curb favouritism and corruption.

Public procurement accounts for an important proportion of economic activity – over 2'000 billion € or around 17% of EU GDP in 2007. The volume of procurement advertised at EU level has increased over the period 1995-2007. In 2007 it amounted to around €370 billion or almost 3% of EU GDP.

There is competition for tenders published at EU level: on average 5 bidders submit tenders in response to tenders published in the EU Official Journal. Presently, only 1.7% of contracts are awarded to entities which are established in another Member State. There are however some sectors where direct cross-border procurement accounts for around 10%. A more significant part of business is awarded to locally established subsidiaries of partner country or third country firms.

There are widespread differences in the use of particular procurement procedures across Member States. The Commission will continue to analyse the factors that may explain these differences. The Commission has recognised that the years 2009 and 2010 constitute a period of urgency justifying the more extensive use of accelerated procurement procedures. In the first 5 months of this year, the number of accelerated restricted procedures has almost doubled compared to the same period in 2008.

Notwithstanding the limited proportion of cross-border contract awards, local and cross-border competition is delivering savings for contracting authorities. Contracting authorities are spending on average between 5-8% less than they had originally ear-marked. Savings of this order can generate tangible economy-wide benefits. Savings of 5% of the values of public procurement advertised at EU level could translate into increases in employment and GDP of between 0.08-0.12% (equivalent to 160'000-240'000 jobs) after one decade. If these savings were realised for all government procurement, the gains would be correspondingly greater (0.5% increase in GDP and employment).

The benefits at stake warrant stringent application of EU procurement rules. This is reflected in careful monitoring of national implementation and intervention when provisions of legislation are not respected.

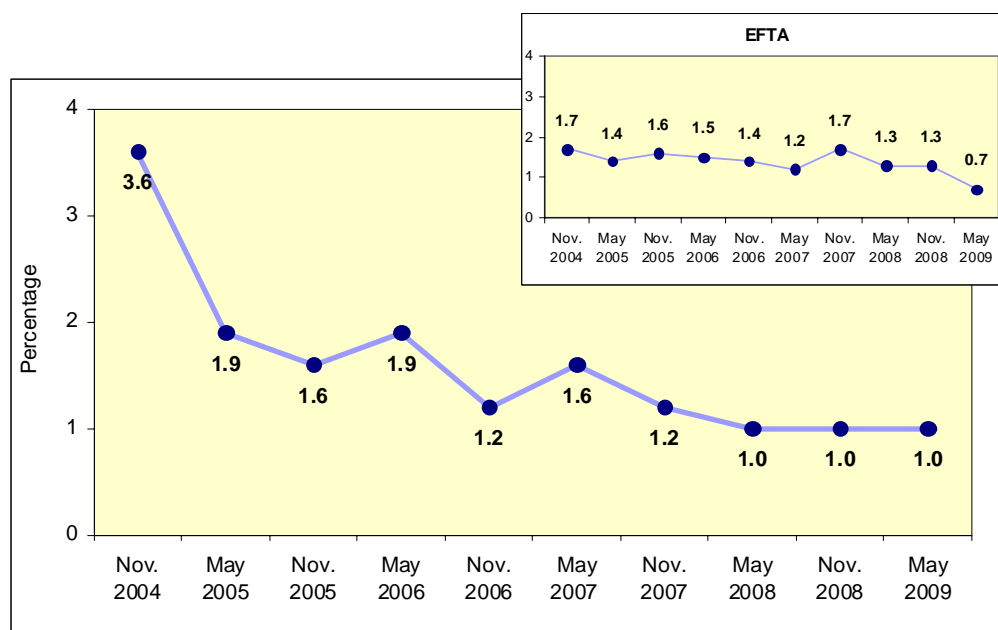
1. TRANSPOSING AND APPLYING INTERNAL MARKET RULES

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

A well functioning Internal Market is more important now than ever. With its well proven ability to create more growth and jobs, offering greater trading opportunities to business, giving EU citizens a wider choice and increase the purchasing power of consumers, it is an engine for recovery. But the Internal Market can only deliver its benefits if Member States transpose Internal Market legislation into their national law within the deadline they have imposed upon themselves. This is why EU Heads of State and Government have repeatedly called on Member States to improve their transposition records¹.

Average transposition deficit in May 2009

Figure 1: EU average transposition deficit stable at 1%



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 notified by the deadline. The current Scoreboard takes into account all notifications of directives with a transposition deadline until 30 April 2009 which have been notified by 11 May 2009. As of 30 April 2009, 1606 directives and 897 regulations relate to the Internal Market as defined in the EC Treaty.

¹ Conclusions of the European Council summits of Stockholm (23-24 March 2001), Barcelona (15-16 March 2002), 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), Brussels 2007 (1%).

Today's EU average transposition deficit is at 1% for the third consecutive time. This is an achievement to be acknowledged and commended. This good result is partly due to the exchange of best practices as set out in the 2004 Commission Recommendation². The constant good performance within the last year suggests that this result is based on real structural improvements in the way many Member States ensure timely transposition. Never has the transposition deficit been better than the last 12 months.

Nevertheless, timely transposition is just a first step. In order to exploit the Internal Market's full potential the legislation agreed at European level needs not only to be timely but also correctly transposed into national law and properly applied by all Member States. In this respect there remain some **important issues that Member States have to address.**

These issues are in particular: eliminate the problem of long overdue directives, all Member States achieving the 1% target and correct transposition of EU legislation.

First challenge – Long overdue directives

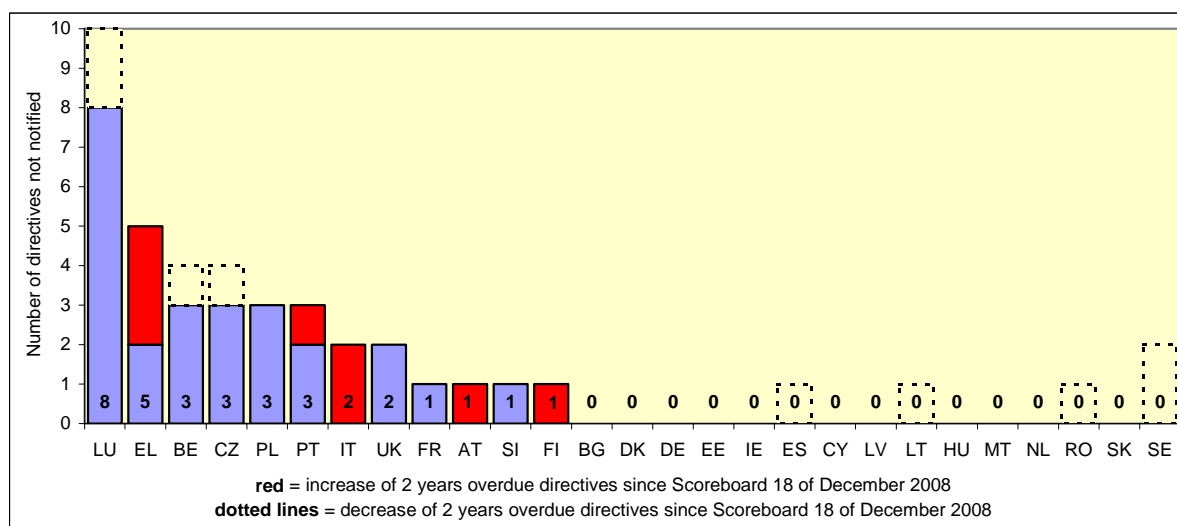
Delays in transposing EU legislation are not just a question of formal compliance with Community law. They leave a void in the regulatory framework which deprives citizens of their rights, disrupts business and undermines confidence in the European Union. Moreover, transposition deadlines are not laid down by the Commission but agreed by Member States themselves. Hence, Member States which do not transpose on time default on their own commitments. To ensure that delays in transposing Internal Market directives are not indefinite European Heads of State and Government set a 'zero tolerance' target for directives overdue by more than 2 years³.

Today, in not less than 22% of directives overdue the transposition deadline expired more than 2 years ago. **12 Member States are not in line with the 'zero tolerance' target.**

² Commission Recommendation of 12 July 2004, OJ L98 of 16.04.2005, p. 47 and following.

³ Conclusions of the European Council summit of Barcelona on 15/16 March 2002.

Figure 2: Still too many directives 2 years or more overdue



Number of directives with a deadline for transposition into national law by 30 April 2007, which have not been transposed by 11 May 2009.

- Rather than of bringing their deficit in line with the 0% target, there are 5 Member States going into reverse: Greece, Portugal, Italy, Austria and Finland. The biggest increase is found in Greece and Italy adding 3 and 2 such directives respectively.
- Luxembourg and Sweden have made most progress by transposing 2 such directives. However, with 8 long overdue directives Luxembourg remains by far the worst offender in this area.

Figure 3: 22 directives are more than 2 years beyond their transposition deadline!

	Directives	Not yet fully transposed by	Transposition date
86/378/EEC 96/97/EEC	Equal treatment for men and women (occupational social security schemes)	CZ	1/05/2004
2002/73/EC	Equal treatment for men and women (access to employment, vocational training and promotion and working conditions)	BE	5/10/2005
2004/80/EC	Compensation to crime victims	EL	1/01/2006
2002/91/EC	Energy performance of buildings	EL, LU	4/01/2006
2005/28/EC	Investigational medicinal products for human use - good clinical practice	PL	29/01/2006
2004/17/EC 2004/18/EC 2005/51/EC	Public procurement	LU	31/01/2006
2004/23/EC	Human tissues and cells - standards of quality and safety	BE	7/04/2006
2004/48/EC	Enforcement of intellectual property rights	LU	30/04/2006
2004/49/EC	Safety on the Community's railways	LU	30/04/2006
2005/33/EC	Reduction in the sulphur content of certain liquid fuels	UK	11/08/2006
2004/82/EC	Obligation of carriers to communicate passenger data	PL	5/09/2006
2003/59/EC	Initial qualification and periodic training of drivers	LU, PT	10/09/2006
2006/17/EC	Donation, procurement and testing of human tissues and cells	BE, IT	1/11/2006
2003/58/EC	Disclosure requirements in respect of certain types of companies	IT	1/12/2006
2006/100/EC	Adaptation of certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania	EL, FR, LU, PT	1/01/2007
2004/109/EC	Harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market	CZ	20/01/2007
2006/73/EC	Organisational requirements and operating conditions for investment firms	PL	31/01/2007
2006/22/EC	Social legislation relating to road transport activities	EL, PT	1/04/2007
2004/35/EC	Environmental liability with regard to the prevention and remedying of environmental damage	EL, AT, SI, FI, UK	30/04/2007

Directives with a transposition deadline by 30 April 2007, which are not (fully) transposed by at least one Member State - Situation as of 11 May 2009.

The Member States with the longest transposition delays are the Czech Republic, Belgium and Greece. **The Czech Republic is 5 years overdue** with 2 directives which should have been transposed with Czech Republic's accession in May 2004⁴.

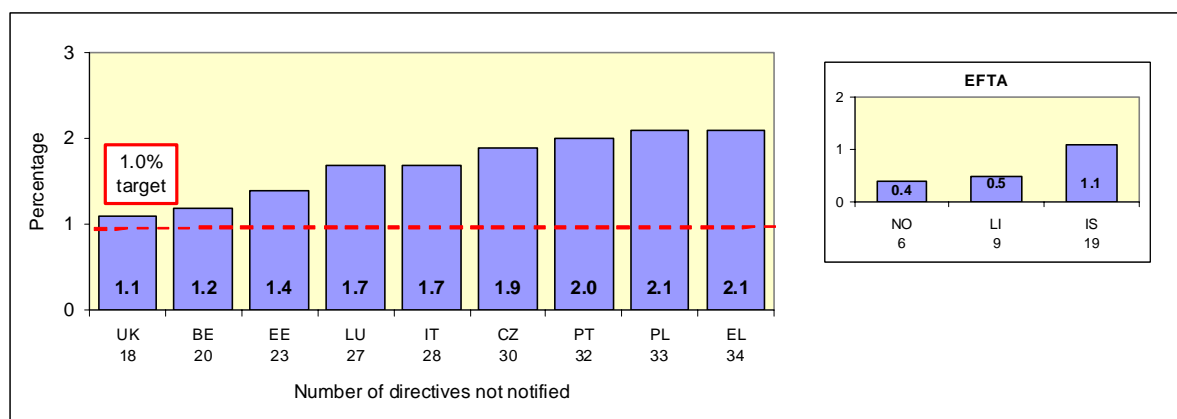
Notably out of the 22 long overdue directives 16 such directives do not achieve their full effect due to one Member State failing to transpose. These long delays cannot be justified by administrative burdens or the complexity of the directives. They simply should not exist at all.

Second challenge – All Member States achieving the 1% target

In total, 9 Member States failed to achieve the 1% target. The transposition deficit of these 9 Member States is in some cases even more than double the EU average. Moreover, it appears that at a time where these Member States would need to reinforce their efforts to catch up with the leading group, 6 out of these 9 Member States are falling further behind.

⁴ In both cases the Czech Republic was condemned by the ECJ in December 2008.

Figure 4: 9 Member States remain above the ceiling of the 1.0 % target

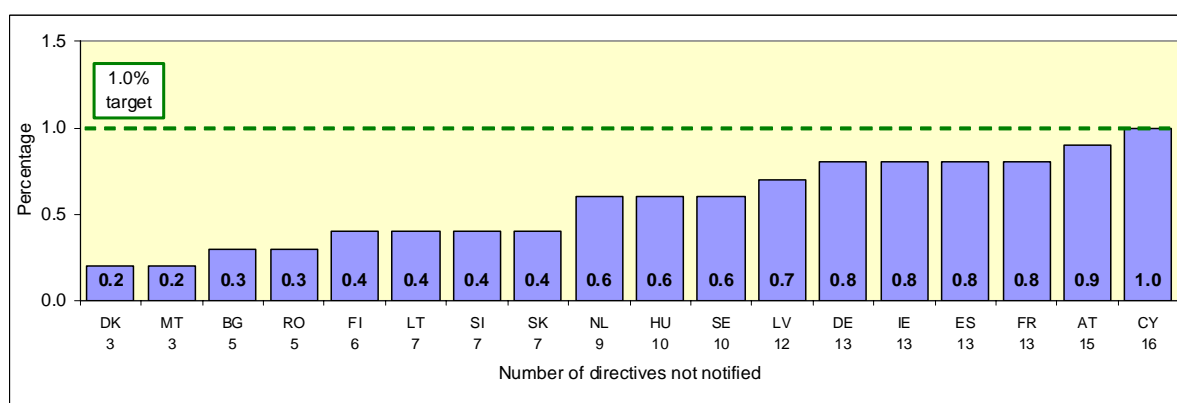


Transposition deficit of the Member States that missed the 1% target as of 11 November 2009.

- Only Belgium and Luxembourg managed to reduce their transposition deficit compared to 6 months ago. Thereby, Luxembourg achieves its best result and Belgium equals its best result ever from December 2007. The United Kingdom equals its latest performance from half a year ago.
- Greece, Poland, Portugal, the Czech Republic, Italy and Estonia have fallen further behind. Greece, Poland and Portugal's performance is particularly worrying, as these Member States' deficit is double the EU average transposition deficit.
- The Czech Republic posts the biggest deficit increase. Having achieved its best ever result ever of 1.4% only 6 months ago, this is particularly disappointing.

In contrast, 18 Member States achieved the European Council's 1% deficit target⁵. In fact, all 17 Member States that accomplished the target of 1% half a year ago managed to respect this target again. Cyprus that achieved this target already 2 years ago is back on track now.

Figure 5: 18 Member States achieved the 1% target

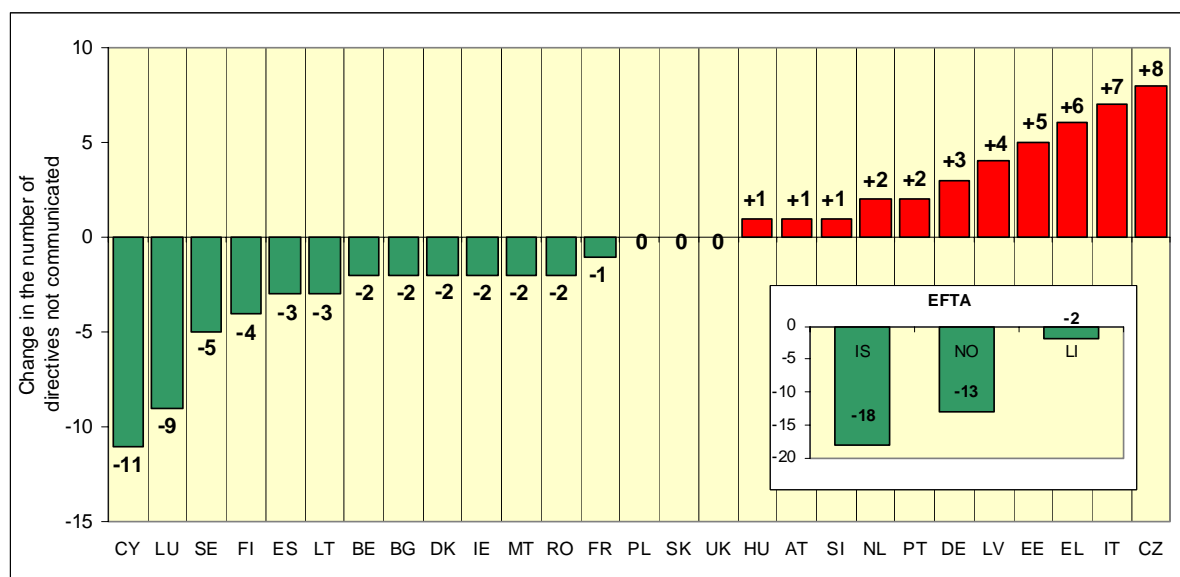


Transposition deficit of the Member States that hit the 1% target as of 11 May 2009.

⁵ Conclusions of the European Council summit of Brussels on 8/9 March 2007.

- It is noteworthy that 10 out of the 17 Member States that were in line with the 1% target already half a year ago, have managed to reduce their deficits even further. These 10 Member States are Denmark, Malta, Bulgaria, Romania, Finland, Lithuania, Sweden, Ireland, Spain and France.
- Like in the latest Internal Market Scoreboard, Denmark and Malta share the first position. Both Member States managed to improve further on their already enviable transposition deficit. Today, Denmark and Malta are only 3 directives away from the perfect score.

Figure 6: Most progress done by Member States already in line with the 1% target



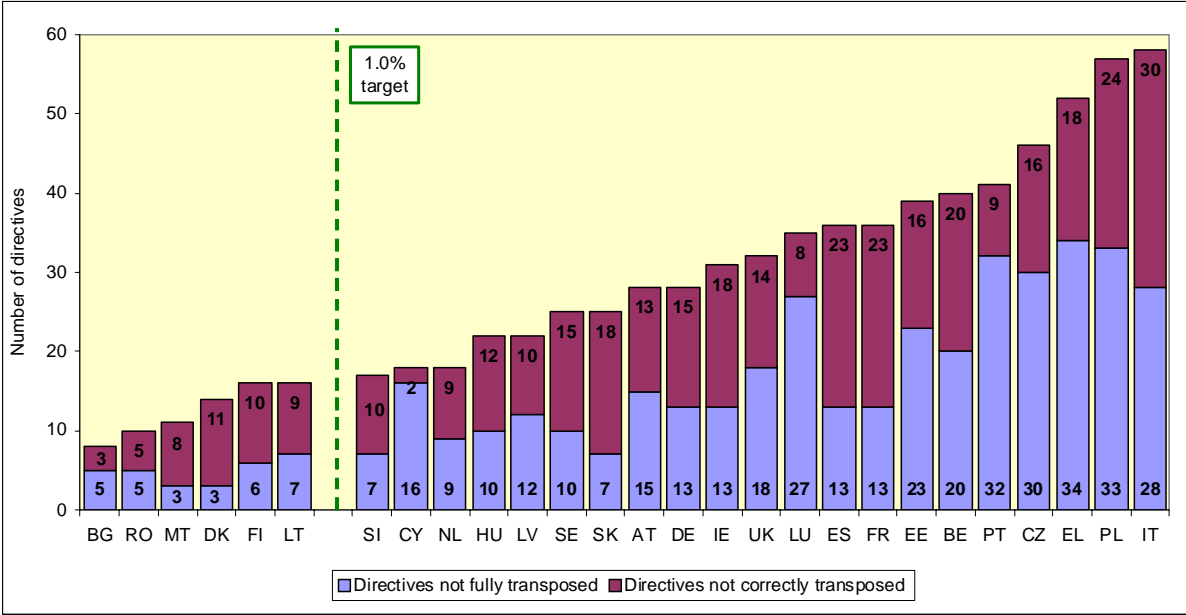
Change in the number of outstanding directives since Scoreboard 18 of December 2008.

- Most progress was made by Cyprus followed by Luxembourg.
- In total, 13 Member States improved on their transposition deficit. Out of these 13 Member States 11 are in line with the 1% target.
- 5 out of the 9 Member States above the 1% ceiling have further increased their backlog: Estonia, Italy, the Czech Republic, Portugal and Greece.
- Unfortunately, the Czech Republic seems to have lost momentum. After its latest performance reducing their deficit by 20 directives, it reversed this positive trend and posts the biggest increase of all 27 Member States now.

Third challenge – Conformity of the legislation

The proper functioning of the Internal Market requires not only timely but also correct transposition of directives. Taking into account the number of directives not yet transposed and adding the number of directives not correctly transposed, Member States' ranking changes considerably, leaving Italy and Poland bottom of the league.

Figure 7: Number of directives not correctly transposed is significant



Number of Internal Market directives not yet communicated to the Commission as having been transposed (transposition deficit) added by the number of directives transposed but for which an infringement proceeding for non-conformity has been initiated by the Commission (as of 1 May 2009).

In concrete terms, **combining timely and correct transposition translates into an EU average deficit of 1.8% of directives that have not achieved their full effect.** The figure above shows that the number of directives not correctly transposed is significant for most Member States: 16 Member States have equal or more cases of non-conformity than outstanding directives. Italy and Poland account for the highest number of directives not correctly transposed, followed by Spain and France.

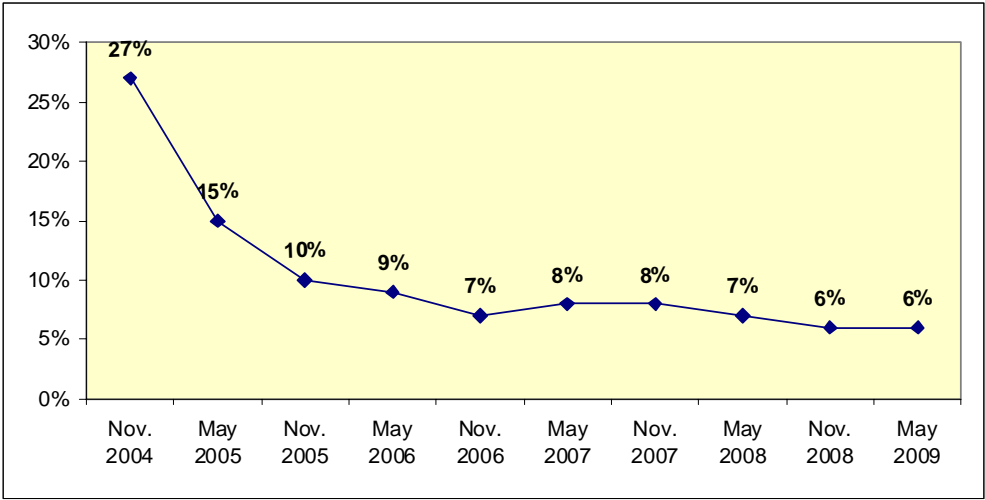
As regards correct transposition more efforts are needed in all 27 Member States, especially in the areas of environment and employment which account for almost 60% of the infringement proceedings for non-conformity initiated by the Commission.

A better performance on all the challenges mentioned above would have positive effects on the fragmentation of the Internal Market legislation as well as on the workflow for the upcoming directives.

Fragmentation of the Internal Market

The fragmentation factor is an overall indicator of these gaps. Whenever one or more Member States fail to transpose directives on time they leave a gap in the Community's legal framework. In total, 6% of directives have not yet been transposed in all Member States. Hence, instead of an Internal Market covering all Member States it remains much smaller, impairing the Union's economic potential. Consequently, the economic interests of all Member States suffer if already one Member State does not deliver. Therefore more efforts are needed to further reduce the number of failures to transpose directives.

Figure 8: Fragmentation factor remains at 6%



The so-called 'fragmentation factor' records the percentage of the outstanding directives which one or more Member States have failed to transpose with the consequence that the Internal Market is not a reality in the areas covered by those directives.

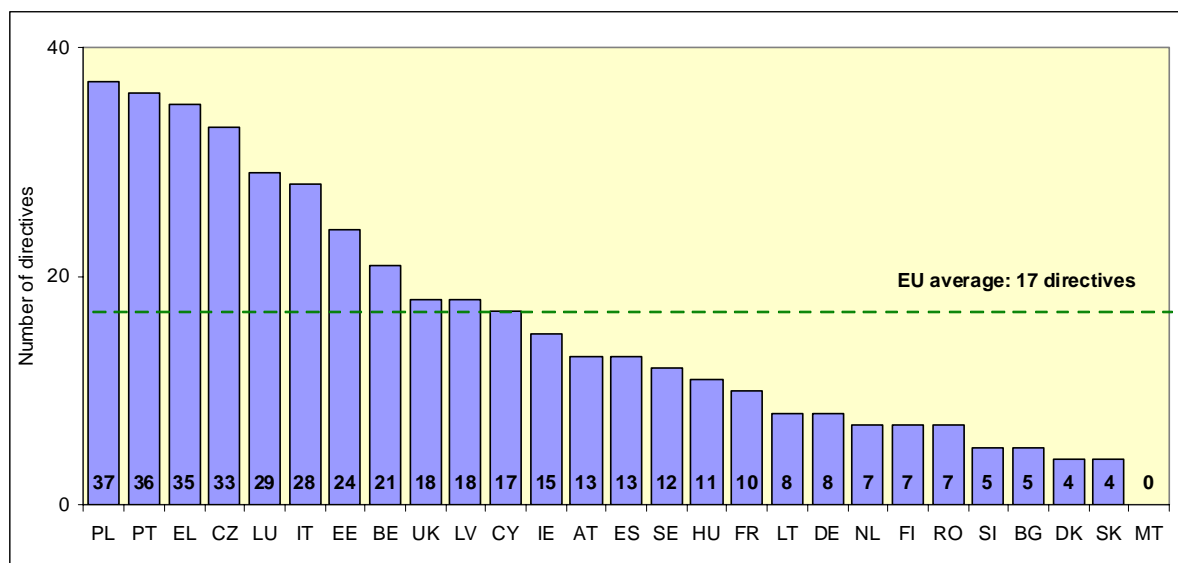
A fragmentation level of **6%** translates into **100 Internal Market directives that have not achieved their full effect in all Member States. In other words, the Internal Market is still operating at only 94% of its potential.** These remaining legal gaps generate legal insecurity and imply missed opportunities for European citizens and businesses.

There now seems to be a leading group of Member States that have met the 1% target on a number of occasions and which are likely to be in compliance in the future. On the other hand, there are some Member States still far above this target.

Looking ahead

There is no fixed number of Internal Market directives as some are repealed while new ones are added. Transposition requires a permanent effort to avoid that the deficit rises anew. To explore the full potential of the Internal Market it will be necessary to lower the deficit still further and to take account of new directives coming on stream. The figure below reflects the total number of directives that each Member State needs to transpose by November 2009 to reach the 1% target.

Figure 9: Substantial work is needed in order to achieve the 1% target next time



This figure sets out the number of directives that each Member State needs to notify by 10 November 2009 to reach the target of 1% transposition deficit by the next Scoreboard. This number is composed by the already existing backlog added by the number of directives still to be transposed for the next Scoreboard (23 such directives as of 1 May 2009).

Given the volume of legislation that will come on stream in the next 6 months and some particular high backlogs, it is difficult to see how some Member States will meet the 1% target without drastic action.

- In May 2008, the average number of directives Member States had to transpose in order to reach the 1% target in the upcoming Scoreboard was 22. Today the number is 17 directives (representing a decrease of almost 25%). Most of the Member States have decreased the number of directives to transpose to be in line with the 1% target. This trend is very positive and Member States are strongly encouraged to maintain their commitment to respect the targets set.
- One can observe that Malta is already in line with the 1% objective. On the other hand, Poland, Portugal, Greece, the Czech Republic, Luxembourg and Italy being far away from the 1% objective have to step up their efforts.

B. INFRINGEMENT PROCEDURES⁶ FOR WRONG APPLICATION OF INTERNAL MARKET RULES

The proper application of EU legislation across the entire Internal Market is crucial to its well functioning and should be a key priority in all Member States. However, even where directives have been transposed into national law, they are often transposed incorrectly or are not applied properly in practice.

As guardian of the Treaty the Commission shall ensure that both Treaty provisions and acts adopted by the Community Institutions 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. The infringement procedure envisages a dialogue between the Commission and the Member State concerned. However, initiating an infringement procedure merely reflects the Commission's view that the Member State is failing to fulfil its obligations under the Treaty. Only the Court of Justice can rule definitively that a breach of Community law has occurred. This should be kept in mind when interpreting statistics on infringement procedures.

Evolution of the number of infringement proceedings per Member State

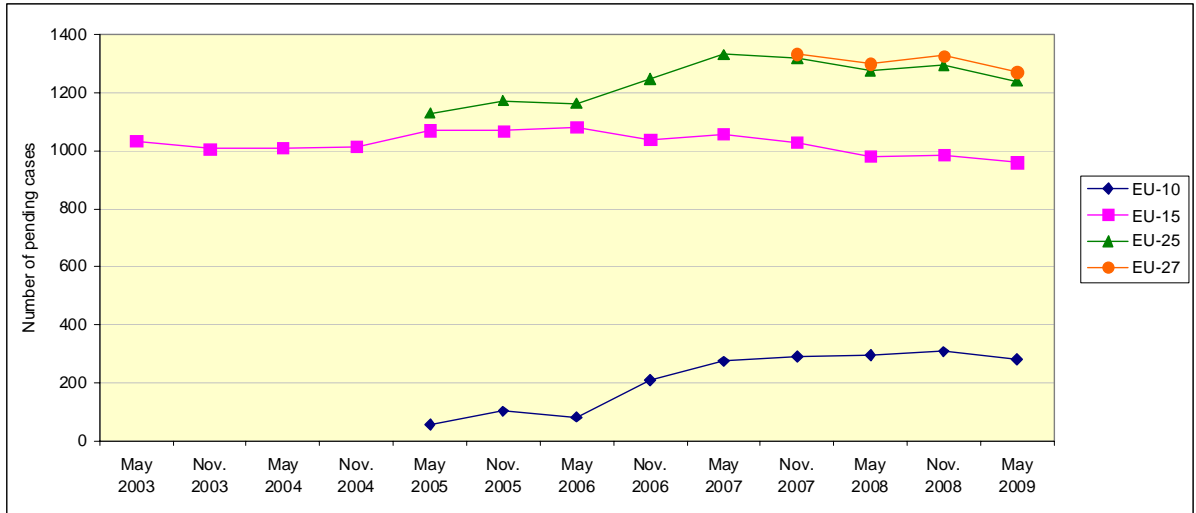
Over the years the number of Internal Market infringement proceedings remains high. To remedy this problem the Internal Market Strategy 2003-2006⁷ called on Member States to reduce the number of infringements against them by at least 50% by 2006. However, today the number of Internal Market infringement proceedings for EU 15 concerning Internal Market law has only decreased by 7% compared to the situation in 2003.

Concerning the EU 10, after an inevitable initial increase the performance became relatively stable and is now decreasing. With 280 cases in May 2009, the EU 10 account for more than 3 times less infringement procedures than EU 15.

⁶ "Infringement procedures" include cases where the transposition is presumed not to be in conformity with the directive it transposes or cases where Internal Market rules (both rules contained in the EC Treaty 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 counted in the transposition deficit are excluded from this chapter in order to avoid double-counting (with the exception of figure 16).

⁷ COM (2003) 238, 7 May 2003.

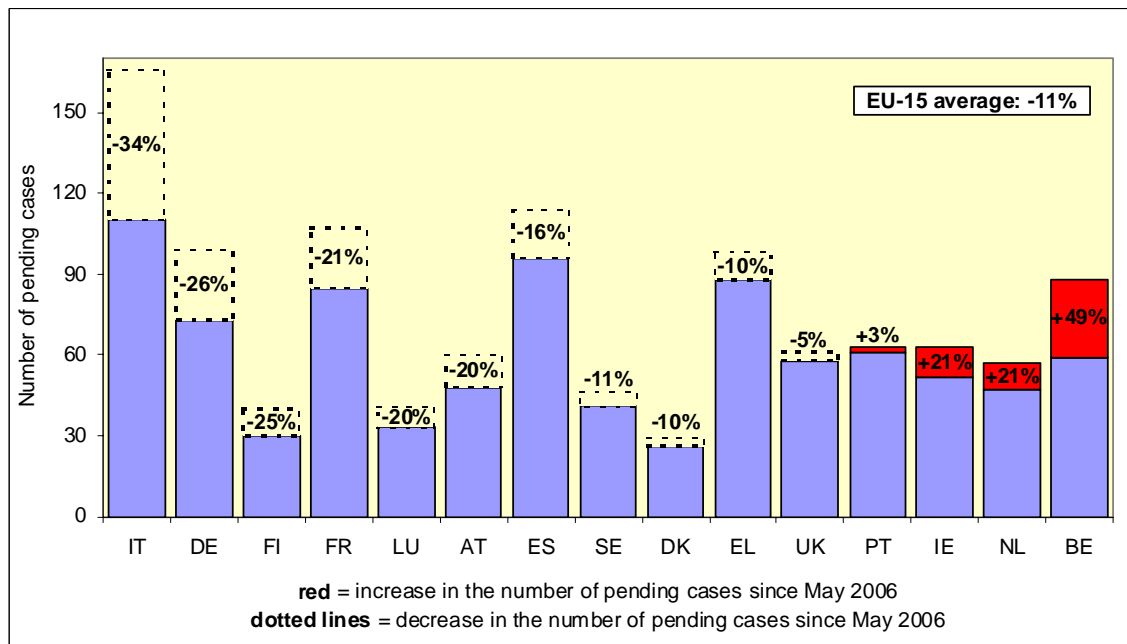
Figure 10: The number of open infringement cases remains high



“Open infringement cases” in the above figure include pending cases other than non-communication for which a letter of formal notice has been sent to the Member State concerned.

Number of infringement proceedings per Member State - compared to May 2006

Figure 11: Most EU 15 Member States have decreased their number of infringement proceedings

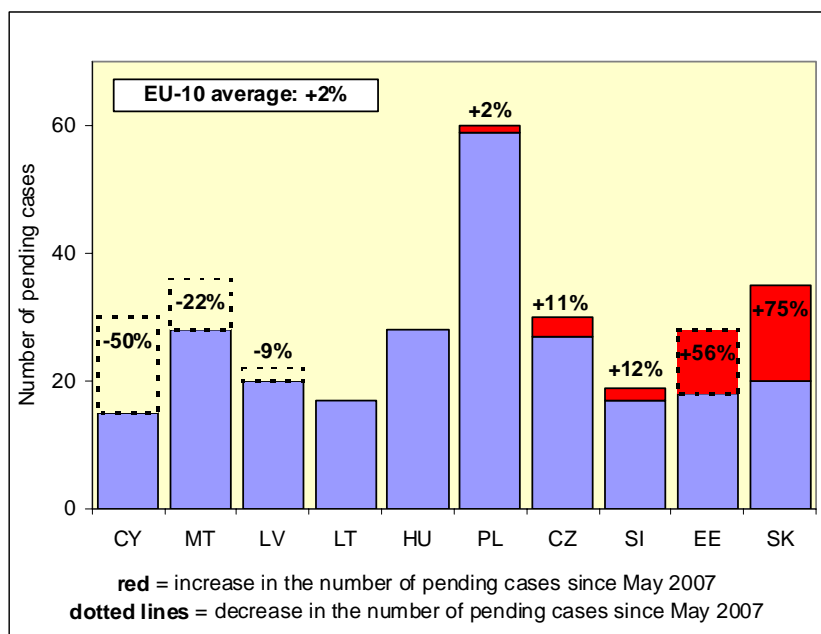


Open infringement cases as of 1 May 2009 compared to corresponding figures as of 1 May 2006 (Scoreboard n°15).

- The majority of EU 15 Member States managed to reduce the number of infringement procedures against them as compared to May 2006.

- Italy performs best in this category, reducing the number of open infringement procedures by 34%, followed by Germany (26%) and Finland (25%)
- On the other hand, Portugal, Ireland, the Netherlands and Belgium account for more infringement cases now than in 2006. With 49% Belgium posts the highest increase, followed by the Netherlands and Ireland (both 21%).

Figure 12: EU 10 infringement procedures reduction

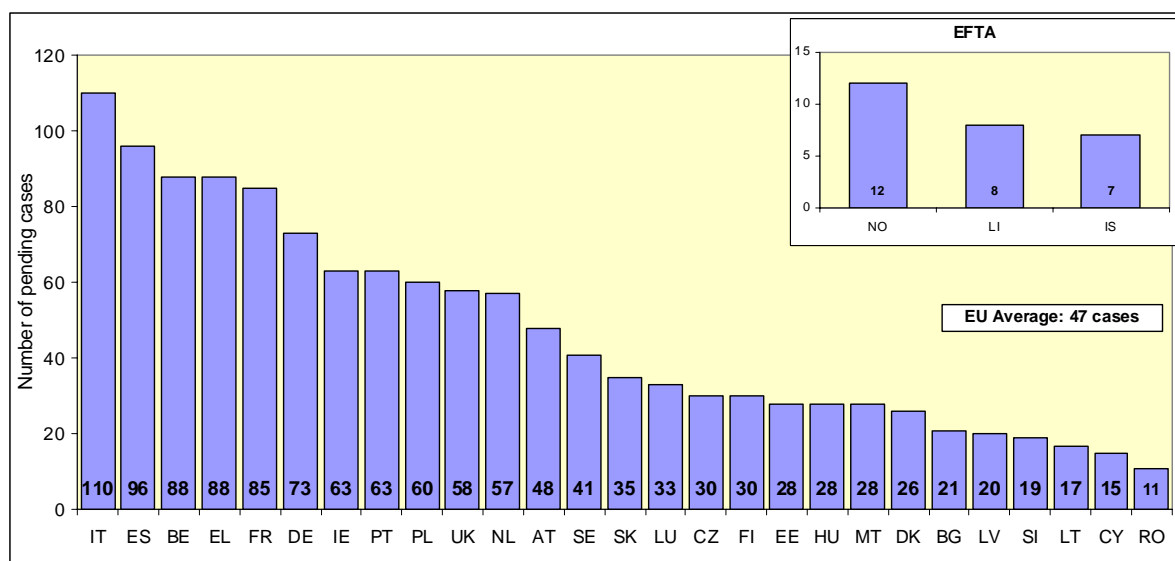


Open infringement cases as of 1 May 2009 compared to corresponding figures as at 1 May 2007 (Scoreboard n°16).

For the EU 10, first figures on infringement procedures were produced in May 2005. Taking into account the inevitable increase in infringement procedures after accession the point of reference is not 2006, but May 2007.

- Substantial reduction in infringement procedures have been recorded for Cyprus (50%), and to a lesser extent for Malta (22%) and Latvia (9%).
- For 5 out of the EU 10, more infringement procedures are open against them now than in May 2007. This is the case for Poland (2%), the Czech Republic (11%), Slovenia (12%), Estonia (56%) and Slovakia (75%). The development in respect of Estonia and Slovakia is a cause for concern as the number of infringement cases increased significantly within 2 years.

Figure 13: Today's number of infringement proceedings for EU 27

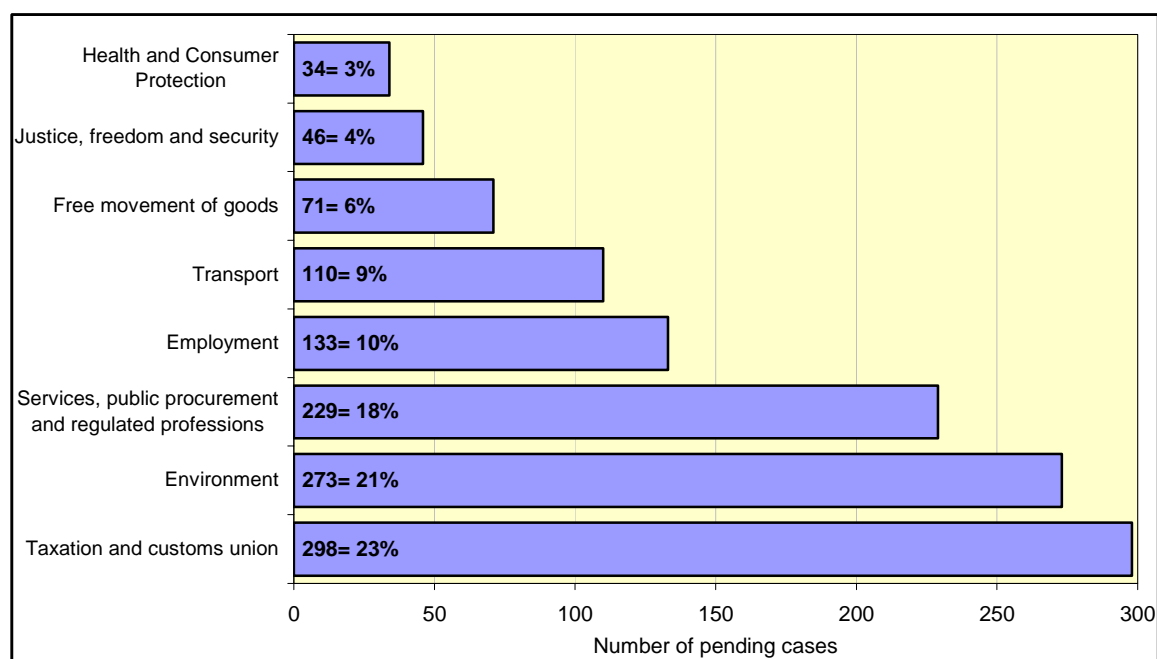


Open infringement cases as of 1 May 2009.

- Italy, Spain, Belgium, Greece and France are responsible for 38% of all infringement proceedings.
- Already since July 2004, Italy remains the Member State with most infringement procedures irrespective of its reduction of infringement procedures (by 34%). Hence, Italy has to make further efforts to remedy this problem.

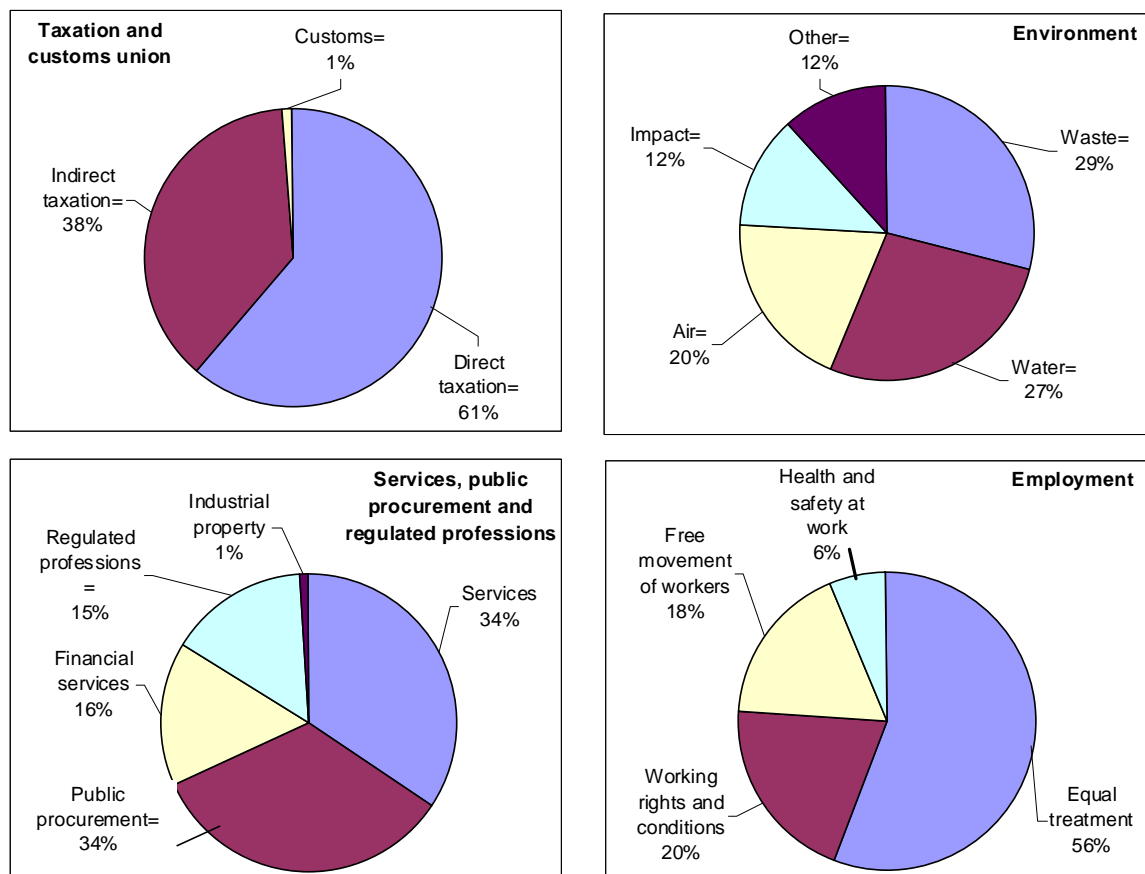
Breakdown of infringement proceedings per sector

Figure 14: Taxation and customs union and environment account almost half of infringement proceedings



As in previous Internal Market Scoreboards one can observe that "taxation and customs union" and "environment" remain the sectors with the highest amount of cases. They alone account for almost 50% of infringement procedures.

Figure 15: Pattern varies on detailed sectors



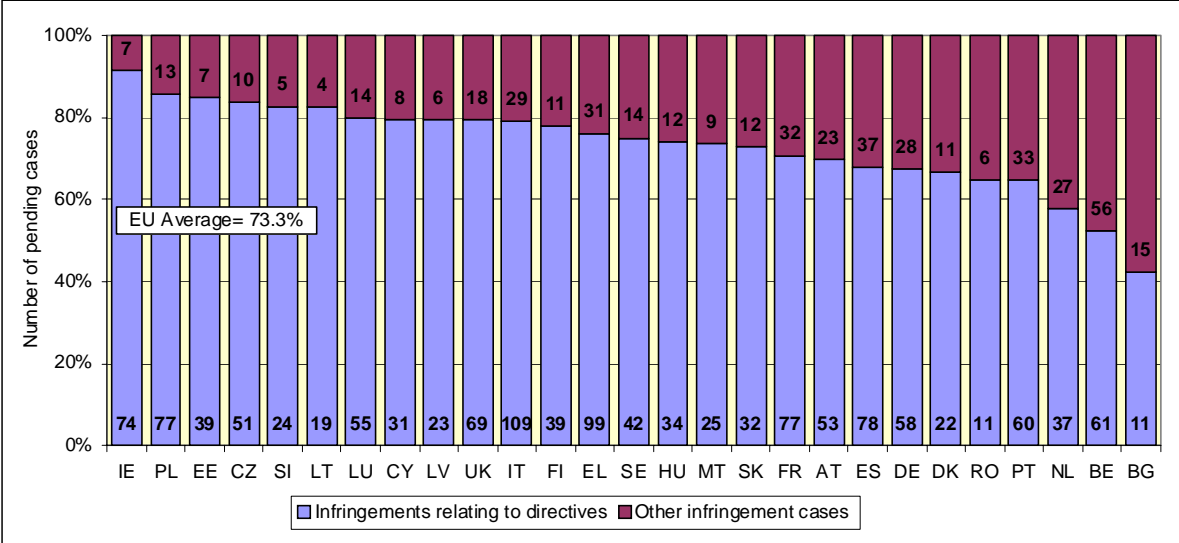
Detailed breakdown per sectors most concerned – Situation as of 1 May 2009.

The detailed breakdown of the 4 sectors with most infringement procedures shows considerable differences.

- Only 1% of infringement procedures in the sector of taxation and customs union relate to the latter.
- In the area of environment more than 50% of infringement procedures are related to waste and water.
- Misapplication and/or incorrect transposition of public procurement and services rules together account for 68% of infringement procedures of the services, public procurement and regulated professions.
- With 56% equal treatment accounts for the highest amount of infringement cases in the area of employment.

Breakdown of infringement proceedings by type

Figure 16: Most infringements due to incorrectly transposed or applied legislation



Number of infringement cases as at 1 May 2009. Only for the purpose of this figure infringement cases for non-communication of national transposition measures are included.

Figure 16 shows that the vast majority of infringement cases (73.3%) relate to directives incorrectly transposed or not properly applied. Hence, the quality of transposition and the correct application of Internal Market legislation remains an important issue to be addressed.

2. PUBLIC PROCUREMENT SUPPLEMENT

EC procurement legislation seeks to ensure that competitive suppliers from across the EU can effectively compete for contracts for public works, supplies and services. It seeks to prevent favouritism or inertia from leading to closed procurement markets. It achieves these aims by requiring contracting authorities to focus on value for money and/or the technical merits of bids when awarding contracts. Central and local governments and some utilities must disclose their intention to award contracts above certain values on an EU-wide basis. And follow procedures aimed to ensure that contracts are awarded on the basis of fair and pre-announced criteria.

A recent Eurobarometer survey reveals that a large majority of citizens in almost all EU Member States understand that EU wide rules are designed to curb favouritism and corruption⁸. Respondents considered that value for taxpayer money should be the single most important criterion when awarding public contracts.

Public procurement accounts for an important proportion of economic activity – over 2'000 billion € or around 17% of EU GDP in 2007⁹. Tenders for one-fifth of this government procurement are published on an EU-wide basis.

EU requirements do not apply to contracts below certain value thresholds, and to certain exempted sectors. Public procurement that is not directly covered by EU legislation is covered by national rules, as well as general EU Treaty provisions on non-discrimination. Thus even if not covered by EC procurement legislation, sub-threshold procurement is subject to disciplines designed to promote fairness in the award of public contracts.

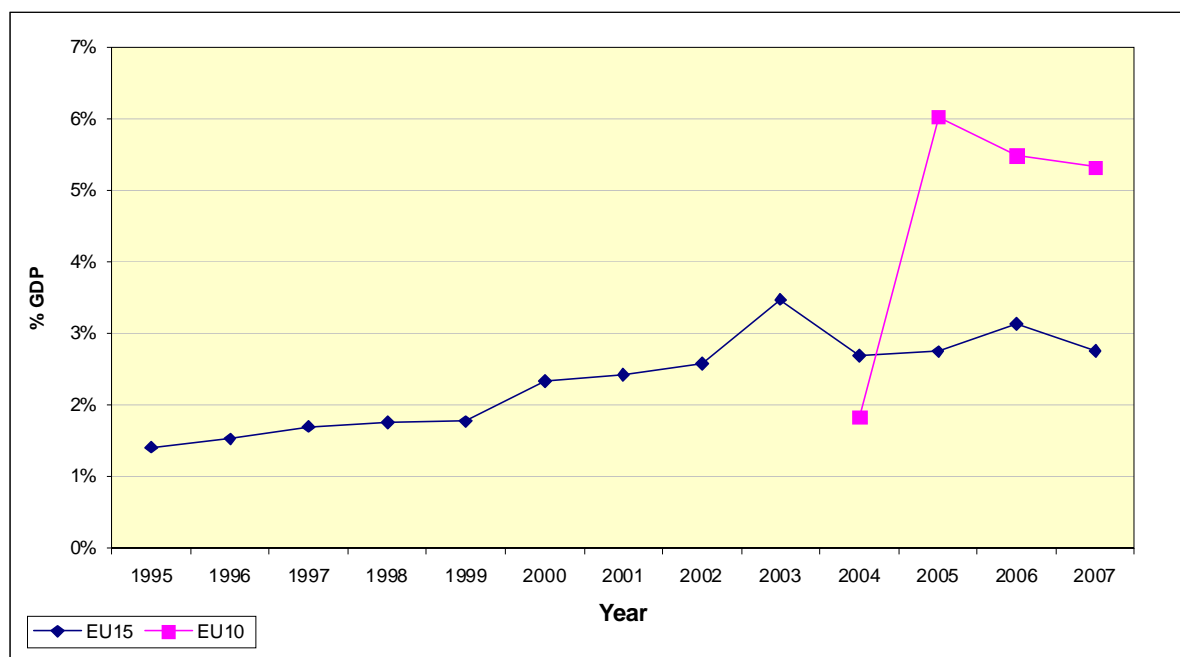
Greater EU level transparency of public tenders

A growing part of procurement activity is advertised on an EU wide basis – creating the possibility for contracting entities to deal with more competitive bidders from other parts of the EU.

⁸ Flash Eurobarometer n° 263: the Internal Market: awareness – perceptions – impacts.

⁹ Estimates derived from Eurostat national accounts data.

Figure 17: Increased publication of public tenders at EU level



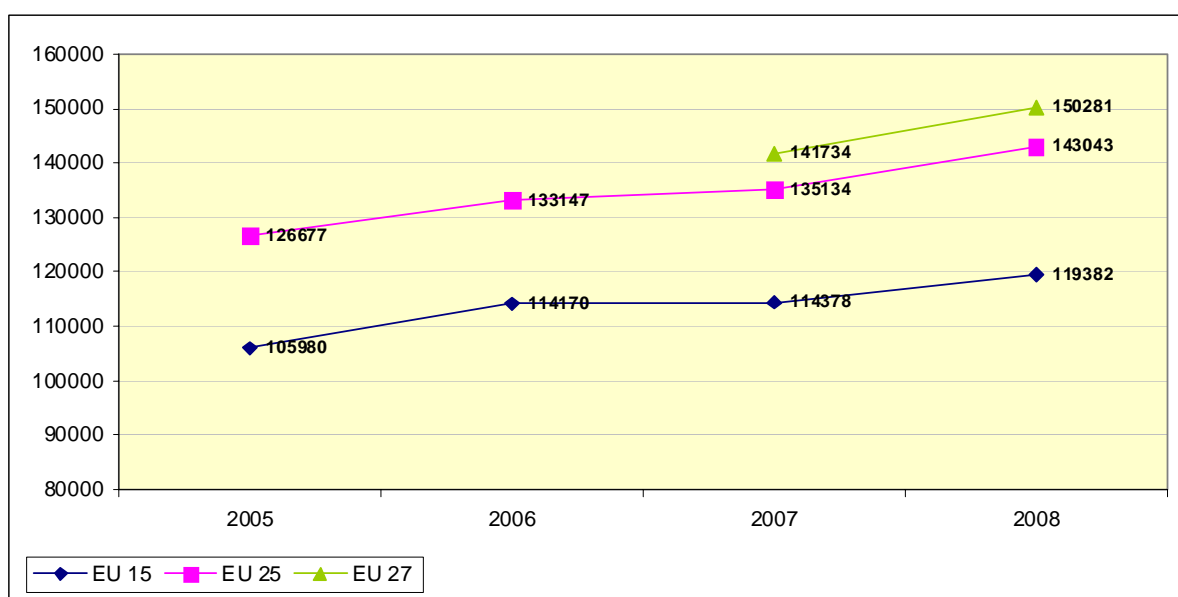
Value of Public procurement published in TED (Tenders Electronic Daily database operated by the EU Commission) as % of GDP. Estimates by DG Internal Market and Services.

The volume of procurement advertised at EU level has been steadily increasing over the period 1995-2007 (apart from 2004 & 2005). In 2007 it amounted to around €70 billion or almost 3% of EU GDP (see above). Measured as a proportion of GDP, this is almost double the amount of procurement business advertised at EU level in 1995.

There are significant variations between Member States in the value of national procurement which are published at EU level. The EU-10 Member States advertise a significantly higher proportion of procurement procedures at EU level.

Increased EU-wide transparency is also reflected in the growing number of notices that contracting authorities publish to announce the launch of a tender.

Figure 18: Steady growth in number of contract notices published at EU level

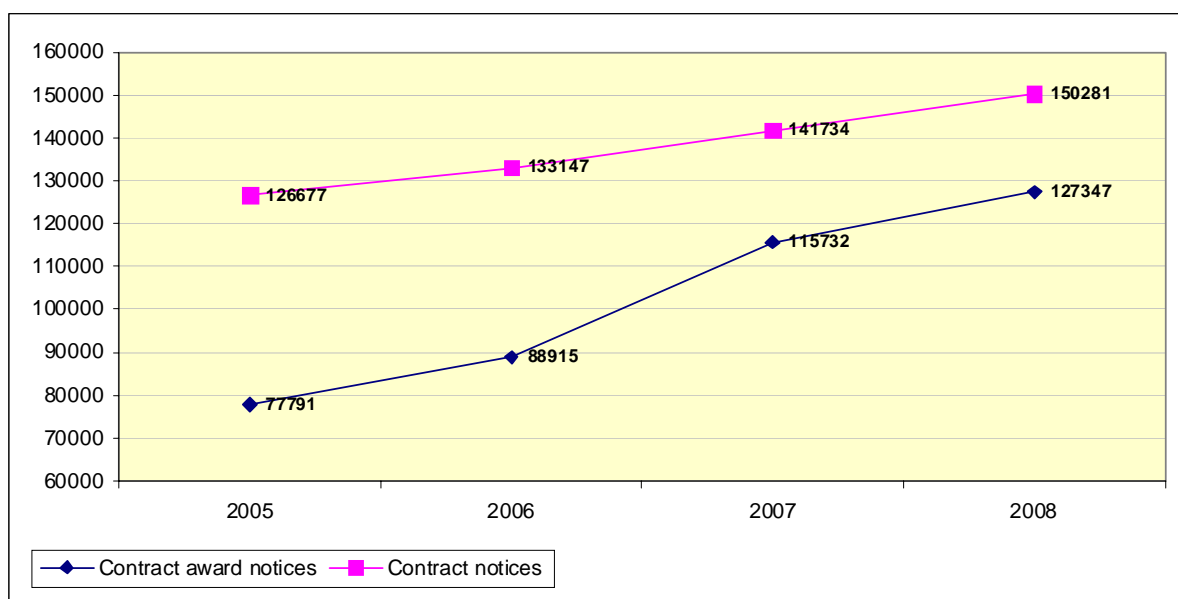


Number of contract notices published in TED 2005-2008. Estimates by DG Internal Market and Services.

There has been a 15% increase in the number of individual tender notices published by authorities over the period 2005-2008.

Improvements in transparency do not stop with the publication of tender notices. There is also a significant increase in the extent to which authorities comply with the requirement to publish contract award notices.

Figure 19: Shrinking gap between the number of tenders and post-contract award notices



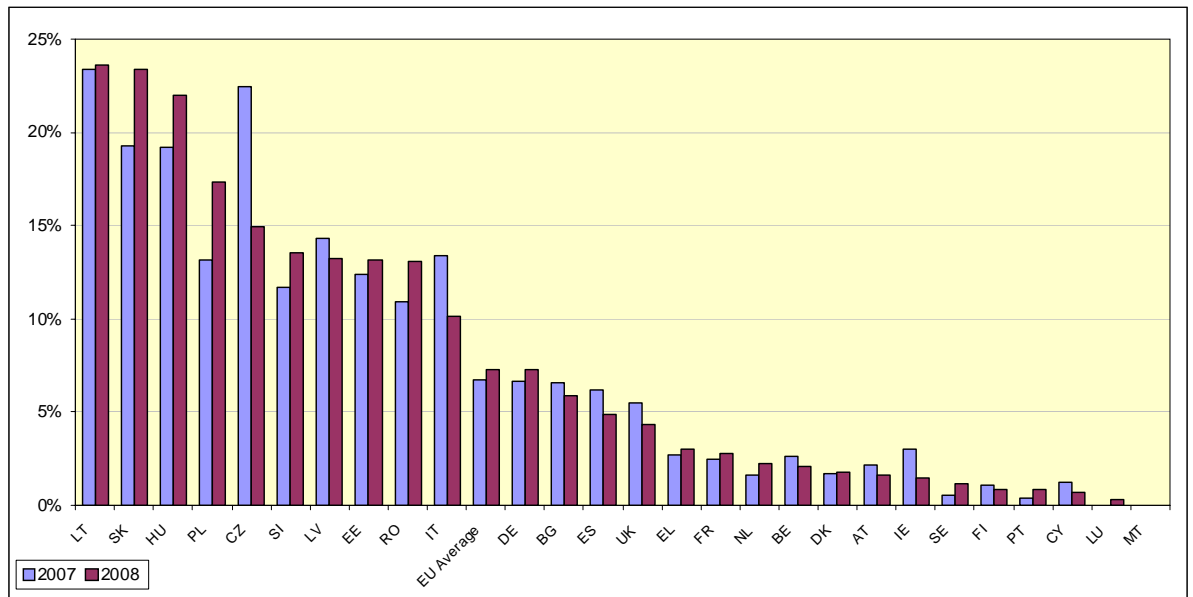
Number of contract award notices and contract notices published in TED 2005-2008. Estimates by DG Internal Market and Services. The ratio of post-award notices published relative to the number of advertised tenders has increased from 60% to 85% over the period 2005-2008. This reflects intensification of efforts to remind authorities of their obligations. Post-award transparency is crucial in allowing unsuccessful bidders and other entities to satisfy themselves that contracts have been awarded on an impartial and fair basis.

The choice of procurement procedures determines the degree of transparency and affects the scope for competition

EC procurement legislation establishes common requirements for disclosure of tender opportunities and the use of procedures which give the widest range of potential bidders the opportunity to tender. This is why the Commission places such great emphasis on the wide deployment of e-procurement which can facilitate easier interaction between contracting authorities and bidders, and reduce barriers to competing for tenders.

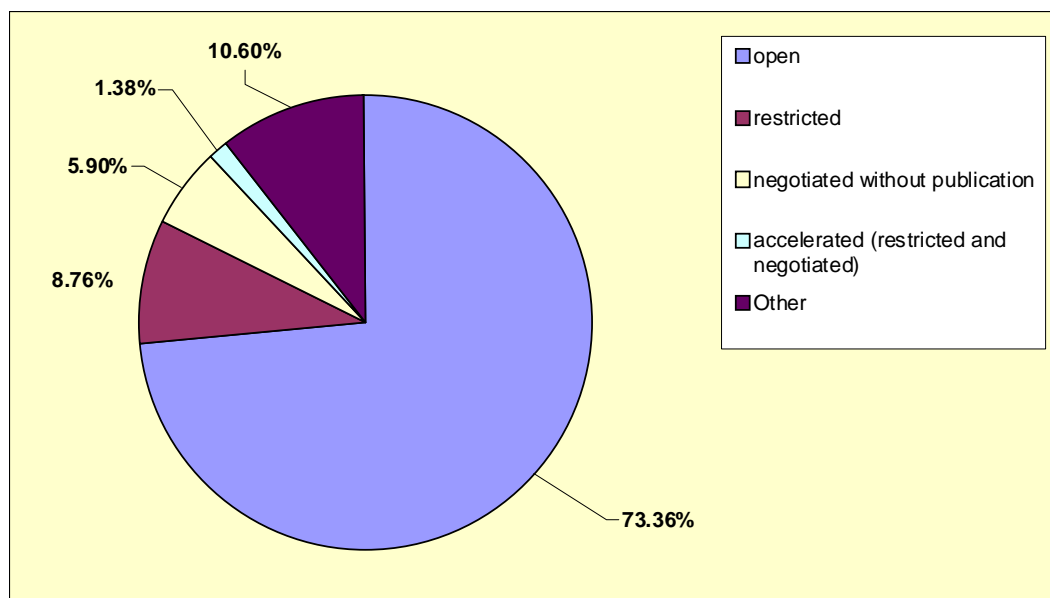
In 2008, the lion's share of EU advertised procedures were open procedures – which give all interested bidders an opportunity to tender. The Commission also monitors the use of accelerated and negotiated procedures which, in certain circumstances, permit shorter time-frames for tendering or limit the number of entities which are able to bid. These procedures may be justified in certain sectors or market conditions. There is widespread use of accelerated and negotiated procedures – with large variations between Member States. In the context of the European Economic Recovery Plan, it has been decided that greater use can be made of accelerated procedures during 2009 and 2010 to accelerate public expenditures in response to the current crisis. The Commission will carefully monitor the use of these procedures during this period. In the first 5 months of this year, the number of accelerated restricted procedures has almost doubled compared to the same period in 2008 (from 755 to 1321 procedures). These procedures are still relatively infrequently used compared to open or (non-accelerated) restricted procedures.

Figure 20: Significant variation in national use of negotiated and accelerated procedures



Use of negotiated procedures without competition and accelerated procedures as % of all awards, 2007 and 2008. Estimates by DG Internal Market and Services.

Figure 21: Breakdown between types of procedure used – open procedures predominate



Use of procedures as % of all awards, 2008. Estimates by DG Internal Market and Services¹⁰.

¹⁰ The category 'other' includes the following types of procedures: negotiated with publication; negotiated without publication (utilities); competitive dialogue, and not specified.

There is competition for published tenders

The publication of tenders seeks to stimulate competition between a wider range of suppliers for contracts for works, supplies or services. At present, on average 5 bidders submit tenders in response to tenders published in the Official Journal. The average number of bids has diminished slightly over the last few years, from 6.9 in 2006, 6.3 in 2007 to 5.3 in 2008.

In terms of the outcome of procedures, only 1.7% of contracts are awarded to entities which are established in another Member State. There are however some sectors where direct cross-border procurement accounts for around 10% - these are for example services related to the oil and gas industry or laboratory, optical and precision equipment. A more significant part of business is awarded to locally established subsidiaries of partner country or third country firms.

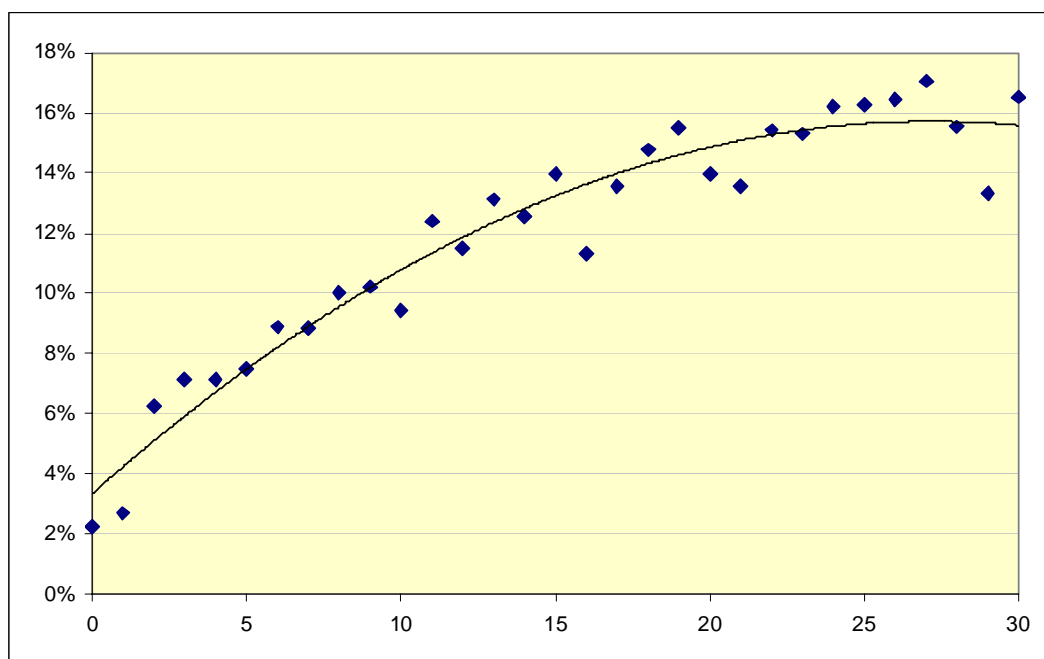
Notwithstanding the limited extent of direct cross-border success in procurement contracts, tangible savings are being realised associated with the local and cross-border competition that is observed. These can translate into measurable benefits for overall government savings and the wider economy.

Contracting authorities spend on average between 5-8% less than they had originally ear-marked. This range of savings is in line with estimates generated by surveys of contracting entities¹¹. Based on aggregate data presented below, there seems to be a relationship between the number of tenders received and extent of savings. The higher the number of bids, the greater the savings realised.

These savings can be realised for a given quality of service or supply performance. Following the changes to EC procurement legislation in 2004, contracting authorities are able to clearly specify clear and objective performance criteria as a basis for selecting tenderers. They are able to take qualitative aspects into consideration when selecting the most economically advantageous tender. This means that competition on price and 'better value for money' does not come at the expense of technically or e.g. environmentally sound procurement.

¹¹ European Economics (Sept 2006): Evaluation of public procurement Directives.
http://ec.europa.eu/internal_market/publicprocurement/docs/summary_en.pdf

Figure 22: Relationship between number of tenders received and savings (over expected expenditure)



2007 Average saving (as % estimated price) compared with number of bids received. Estimates by DG Internal Market and Services¹².

Procurement related savings can generate significant benefits

Savings in government procurement expenditures of this order can have tangible macroeconomic impact. If savings of 5 - 8% were realised for the part (20%) of total procurement which is published in the Official Journal this would translate into savings of €15-30 billion.

Savings of the order of 5% could translate into increases in employment and GDP of between 0.08 and 0.12% after one decade (160-240'000 jobs). If these savings were realised for all public procurement, the gains would be correspondingly greater (0.5% GDP and employment)¹³.

Realisation of these benefits depends crucially on the effective use of new procurement tools and systems by the large number of active contracting entities. Over 34'000 different contracting entities published tenders at EU level in 2007¹⁴. Ensuring the active take-up and implementation of these tools across such a large and diffuse population of contracting entities is a significant challenge.

¹² Based on analysis of differences between initially expected expenditure contained in tender notices and details of actual contract value as published in contract award notices.

¹³ L. Vogel (2009) Macroeconomic effects of cost savings in public procurement, ECFIN Economic paper (forthcoming).

¹⁴ The total number of contracting entities may considerably exceed this number. Over the past 5 years, 70'000 contracting entities have published at least one notice.

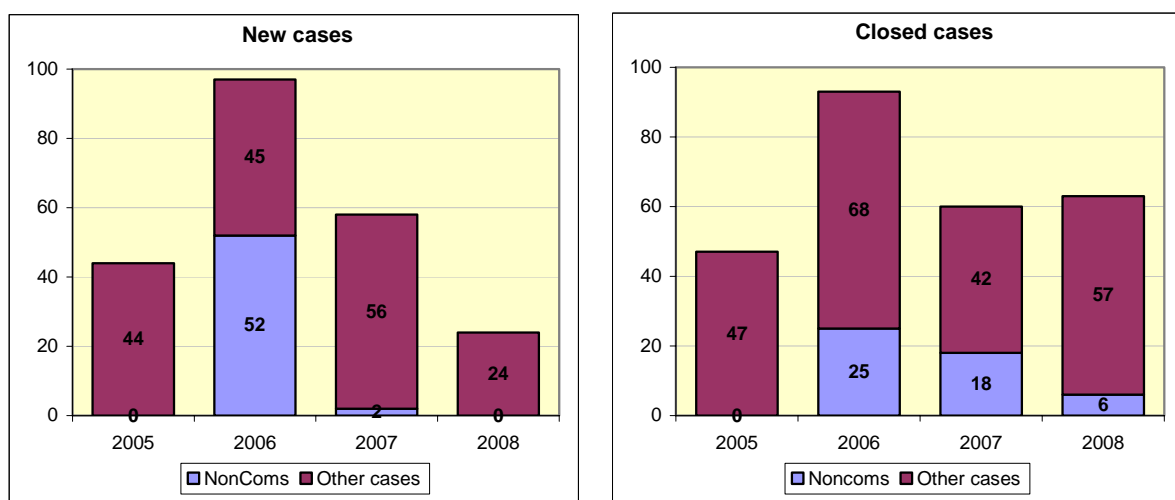
The Commission is undertaking various efforts to promote better awareness and understanding of a range of procurement related issues. Examples include ongoing work to explain how procurement rules apply to services of general economic interest and forthcoming initiatives relating to public private partnerships.

The benefits at stake warrant stringent application of EU procurement rules

The potential savings on offer explain the high priority given by the Commission to proper implementation of EC procurement legislation. All Member States, except Luxembourg, have by now implemented the 2004 public procurement legislative package. The emphasis now is on ensuring proper application of these provisions so as to realise the hoped for benefits. This is reflected in careful monitoring of national implementation and intervention when provisions of legislation are not respected.

Figure 23 charts the steady volume of infringement cases relating to application of EC procurement legislation. The Commission services pursue these cases, and following discussions with the relevant authorities including any necessary corrective actions, a large number of cases are closed every year.

Figure 23: Infringement cases workflow



Number of cases relating to public procurement opened and closed during 2005-2008. The 2004 public procurement legislative package should have been transposed by 31 January 2006, which explains the high increase of cases for non communication of national implementing measures.