

Internal Market



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Scoreboard

December 2005 n°14 bis

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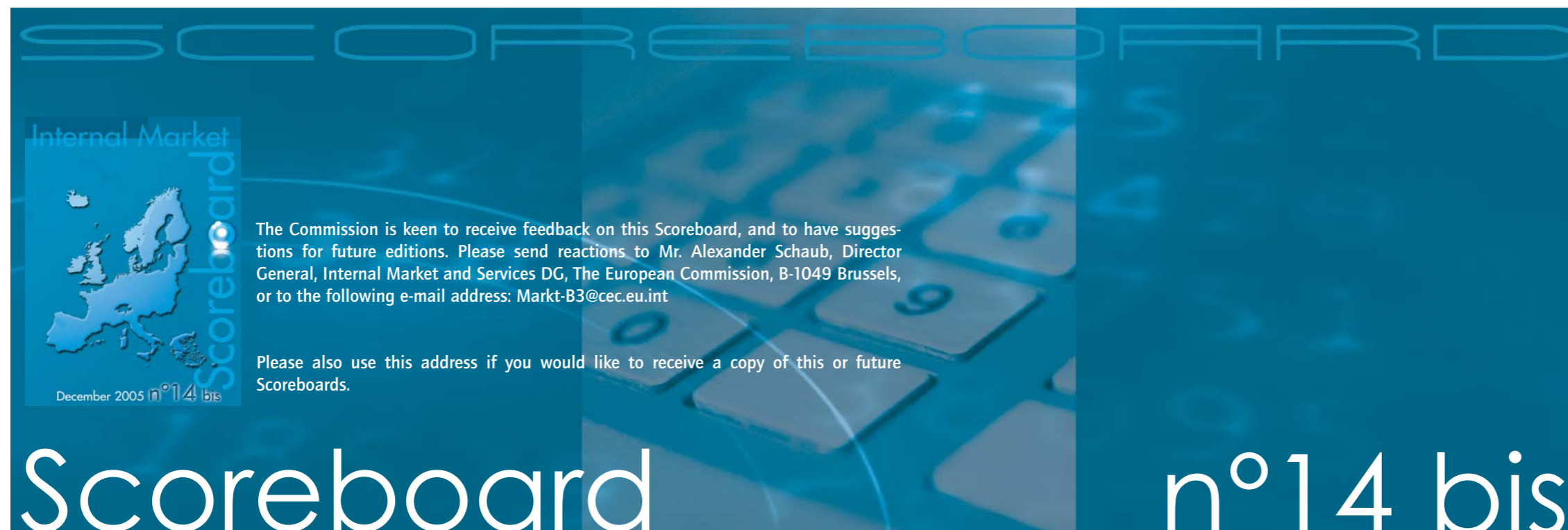
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SCOREBOARD

Internal Market
Scoreboard
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The Commission is keen to receive feedback on this Scoreboard, and to have suggestions for future editions. Please send reactions to Mr. Alexander Schaub, Director General, Internal Market and Services DG, The European Commission, B-1049 Brussels, or to the following e-mail address: Markt-B3@cec.eu.int

Please also use this address if you would like to receive a copy of this or future Scoreboards.

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MAIN FINDINGS

Transposition

At the end of 2005 the transposition deficit for Internal Market directives was **1.6%** for the EU-25 Member States.

This is still 0.1% short of the interim 1.5% transposition deficit target that the Heads of State and Government have agreed on. But the 1.6% transposition deficit is the best result ever achieved and gives reason for optimism.

17 Member States have reached the 1.5% target. Once again, Lithuania is the overall winner followed by Denmark, Hungary, Finland, Poland and Sweden. A further 3 Member States are close to reaching the 1.5% target: France, Belgium and Ireland. The Czech Republic and Italy are still some way off the target but, importantly, these Member States have made impressive progress since the last Scoreboard. Portugal has a long way to go and progress over the last 6 months has been modest. At the other end of the spectrum, Luxembourg and Greece are still far off the target and it is a source of serious concern that the transposition deficit in these two countries has increased even further compared to the last Scoreboard 6 months ago.

As was the case half a year ago, the performance of the new Member States is instrumental in achieving the positive result. The transposition deficit of the new Member States is 1.2%, compared to 1.9% for the old Member States. Out of 8 Member States that have not reached the 1.5% target, 7 are old Member States.

Transposition of Financial Services directives – Taking stock of progress under the Financial Services Action Plan

Now that most actions in the Financial Services Action Plan have been completed, it is time to evaluate how well the Member States have transposed the legislative measures. Therefore, special attention is devoted this year to the state of transposition of the financial services directives under the above Action Plan.

Since July 2005, another three Member States have now transposed all financial services directives whose transposition deadline have expired, bringing the total to 5 Member States: in addition to Denmark and Austria, Estonia, Latvia and Poland have achieved complete transposition.

Next are Germany, Ireland, Lithuania, Hungary, the Slovak Republic and Finland who all have one financial services directive to transpose.

Finally, Luxembourg and Greece are bottom of the league, whilst Portugal has the largest number of overdue financial services directives.

Infringements

Whilst the record has dramatically improved as regards the transposition of internal market directives, only five EU-15 Member States – France, Belgium, Austria, Ireland and the Netherlands – have reduced the number of infringement proceedings against them over the last three years. The number of infringement cases against all other old Member States has increased. Moreover, no Member State will achieve the aim of a 50% reduction of infringement proceedings by the year 2006, compared with 2003.

Luxembourg's figures on infringements are encouraging with only 36 infringement cases. The situation in Greece, however, has further deteriorated since 2003.

In the absence of a historic point of comparison for the new Member States, figures must be treated with care. However, the high number of infringement cases against Poland, Malta and the Czech Republic seems to suggest that there is a problem of incorrect application of internal market legislation in these Member States that needs to be addressed.



INTRODUCTION

The Internal Market does not deliver benefits automatically. EU rules must be adopted, transposed into national law and enforced. Business and citizens need to seize the opportunities they offer. But 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 examines the records of Member States in ensuring that the conditions are satisfied for the Internal Market to function well. It does so by first examining how quickly and how well each of the Member States **transposes Internal Market directives into national law**. These directives and the deadlines for their transposition are agreed by Member States at European level. Member States who do not transpose directives properly or on time, fail on the commitment that they have given to their peers.

The Scoreboard also highlights the **number of infringement proceedings** initiated by the Commission against each Member State. Every infringement case is a problem for a business or a citizen and should be taken seriously by Member States. However, many Member States have not met the calls for a reduction in the number of cases against them.

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

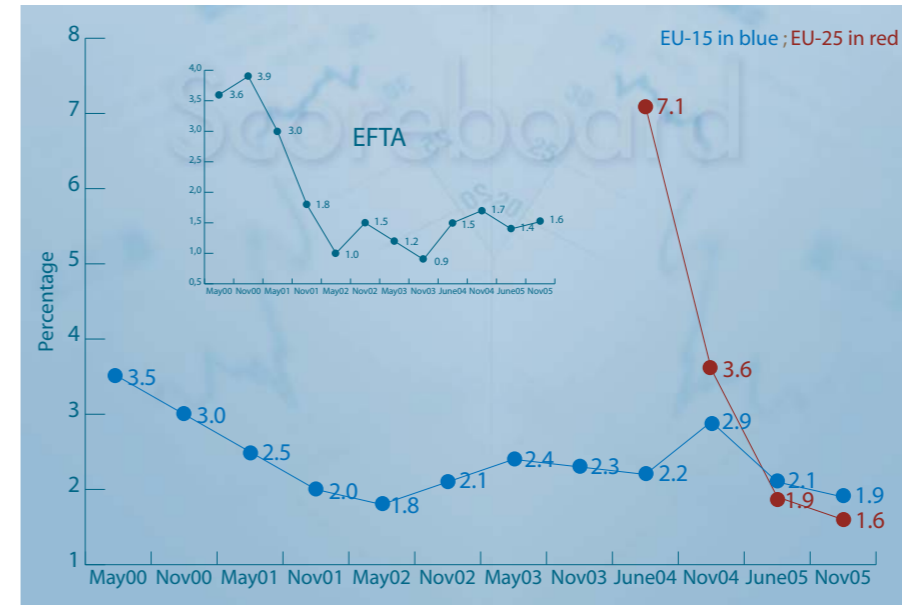
EU Heads of State and Government have repeatedly called for Member States to improve their transposition records¹, setting a 1.5% transposition deficit as an interim target. On 23 March 2005, the European Council called on Member States to spare no effort in honouring the commitments given in Barcelona in March 2002 as regards the transposition of directives. Improvement of the transposition record is a key element for the success of the re-launched partnership for growth and jobs (Lisbon Strategy).

As the guardian of the Treaty, the European Commission has a role to play in ensuring that Member States fulfil their obligations under the Treaty. As such, 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 policies².



Average transposition deficit in December 2005

Figure 1: Best result so far!



The transposition deficit shows the percentage of Internal Market directives not yet communicated 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 2005, 1639 directives and 546 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) and Brussels (20-21 March 2003 and 25-26 March 2004).

2) Communication of the Commission, "Strategic objectives 2005-2009, Europe 2010: a Partnership for European Renewal" COM (2002) 12 final.

Never has the track-record of the Member States been better when it comes to timely transposition of EU directives into national law. That is an achievement to be acknowledged and commended. The good result is partly due to the exchange of best practices as set out in the 2004 Commission Recommendation³. As is clearly shown in the tables which appear below, a large majority of Member States now comply with the interim target of a 1.5% transposition deficit set by the Heads of State and Government. Only a small minority of 5 Member States are still far from meeting this target.

This being said, an average transposition deficit of 1.6% is still too high. Further and sustained efforts must be pursued to ensure that the figures that will be reported in 6 months will show full compliance with the ceiling of 1.5%.

As was the case half a year ago, the performance of the new Member States is instrumental in achieving the positive result. The transposition deficit of the new Member States is 1.2%, compared to 1.9% for the old Member States. Out of 8 Member States that have not reached the 1.5% target, 7 are old Member States.

Performance as against the 1.5% transposition deficit target

Figure 2: 17 Member States reach the 1.5% target compared to 11 half a year ago...

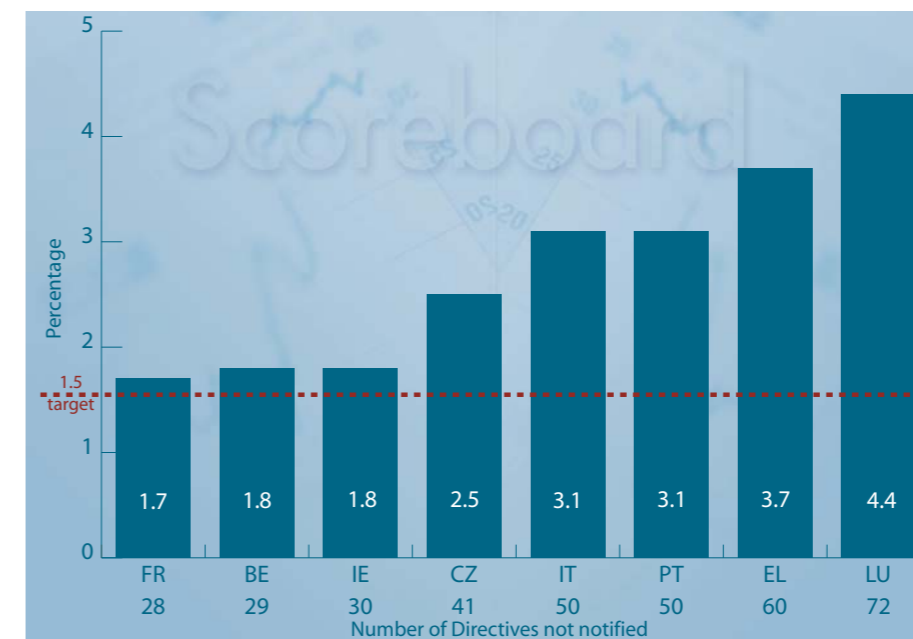


Transposition deficit, by Member State, as of 1 December 2005.

- 17 out of 25 Member States have reached the objective of reducing the transposition deficit to 1.5% or less;
- Lithuania is the overall winner and has improved on its excellent performance of 6 months ago, closely followed by Denmark, Hungary, Finland, Poland and Sweden. Poland and Sweden have made great progress in the past half a year;
- Cyprus, Latvia, Malta, Slovenia, the Netherlands, Germany, Estonia, the Slovak Republic, the United Kingdom, Austria and Spain also have performed well: all now achieve the target of a 1.5% transposition deficit;
- Among these latter Member States, Latvia, Estonia and Cyprus make the most progress with a reduction in deficit of 1.4%, 1.1% and 0.6% respectively;
- Slovenia should take care not to undo its recent good work, as its transposition deficit has increased by 0.5% over the past half year.

3) 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.

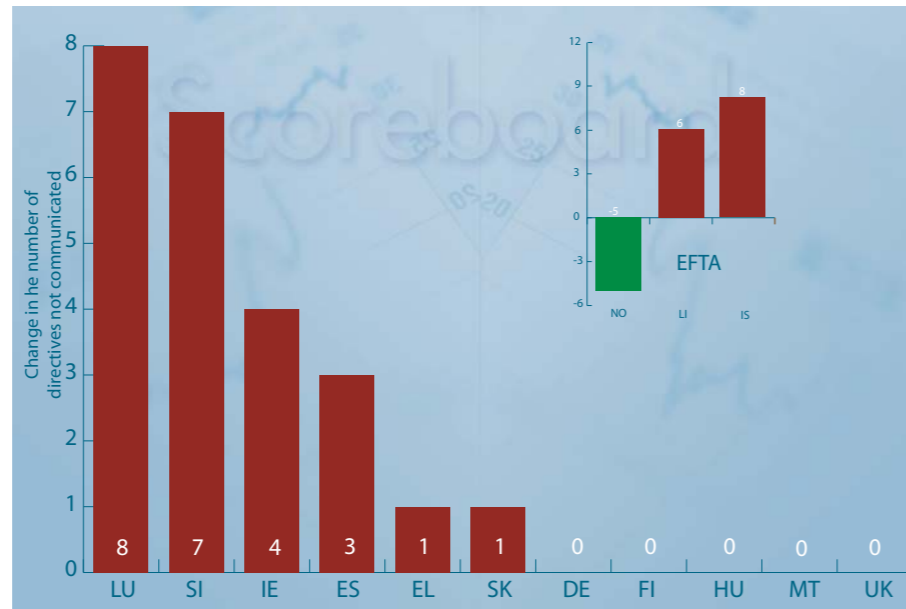
Figure 3: ... meaning that 8 Member States, of which 7 old Member States, don't



- 8 Member States do not reach the 1.5% target;
- 3 Member States are very close: France, Belgium and Ireland;
- France and Belgium have reduced their deficit by respectively 0.7% and 0.6% in 6 months, whereas Ireland's deficit has increased by 0.2% over the same period;
- Despite not being close to reaching the 1.5% target, the Czech Republic and Italy have made great progress, illustrating that the structural measures they have taken in recent times are bearing fruit. Further sustained efforts need to be pursued to bring the deficit below the 1.5% target. Portugal has made some progress but still has a long way to go;
- Most worrying are Greece and Luxembourg, which have performed poorly on a consistent basis over the past years and where the situation has not improved (Greece) or has deteriorated (Luxembourg: +0.4% over the last six months to 4.4%).



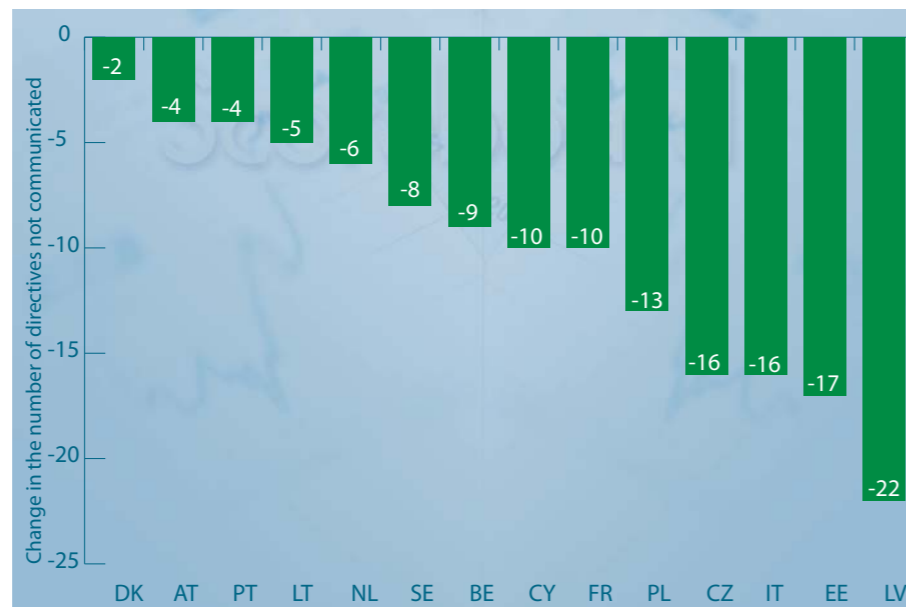
Figure 4: Luxembourg and Greece need to undertake action urgently



Change in the number of outstanding directives since Scoreboard 14 (July 2005). Luxembourg has increased its backlog by 8 directives...

- Whilst still within the 1.5% limit, the performance of the Slovak Republic, Slovenia and Spain has slipped. This would need to be watched carefully;
- Things are slightly different for Ireland whose deteriorating performance now brings it above the 1.5% deficit. Ireland needs to take steps to address this situation.

Figure 5: progress is impressive and evenly divided between new and old Member States



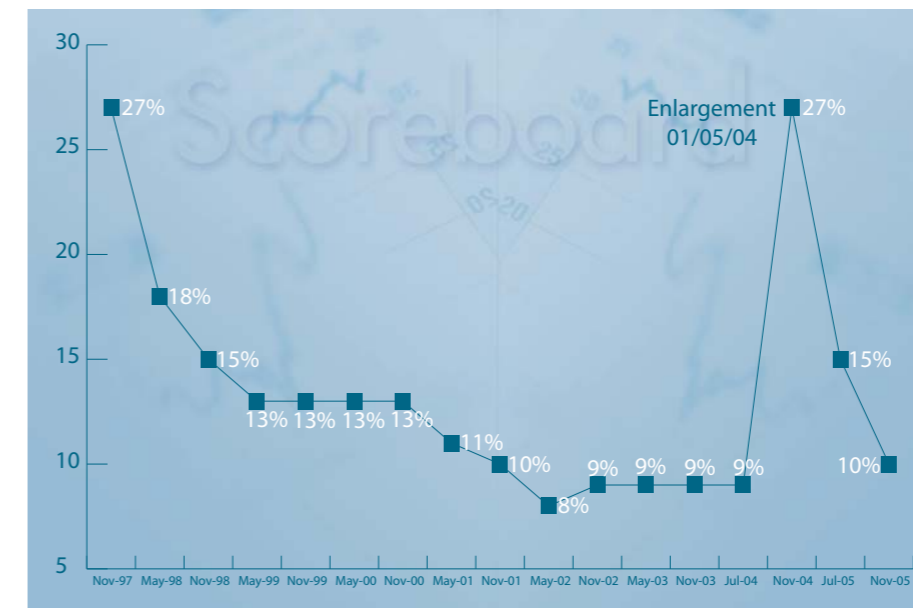
...while Latvia has decreased its backlog by 22 directives



- Contrary to the situation half a year ago, many old Member States have also made serious progress in reducing their transposition deficit;
- Latvia, Estonia, Italy, the Czech Republic and Poland made a huge leap forward in only 6 months, illustrating again that with political resolve, the necessary structural changes can be made to ensure a timely transposition of internal market directives even within a short period.

Fragmentation factor

Figure 6: Fragmentation factor back to average



The so-called 'fragmentation factor' records the percentage of the overall outstanding directives that have not been implemented in at least one Member State. For these directives the internal market is not yet a reality.

On 1 May 2004, the date of accession of the new Member States, their transposition figures were included in the Scoreboard. Given that these Member States needed to transpose all the existing Internal Market acquis by that date, naturally, the figures on fragmentation peak on that date. Since then, the fragmentation figures have gradually come down to a level that is only slightly above the more or less stable pre-accession level.

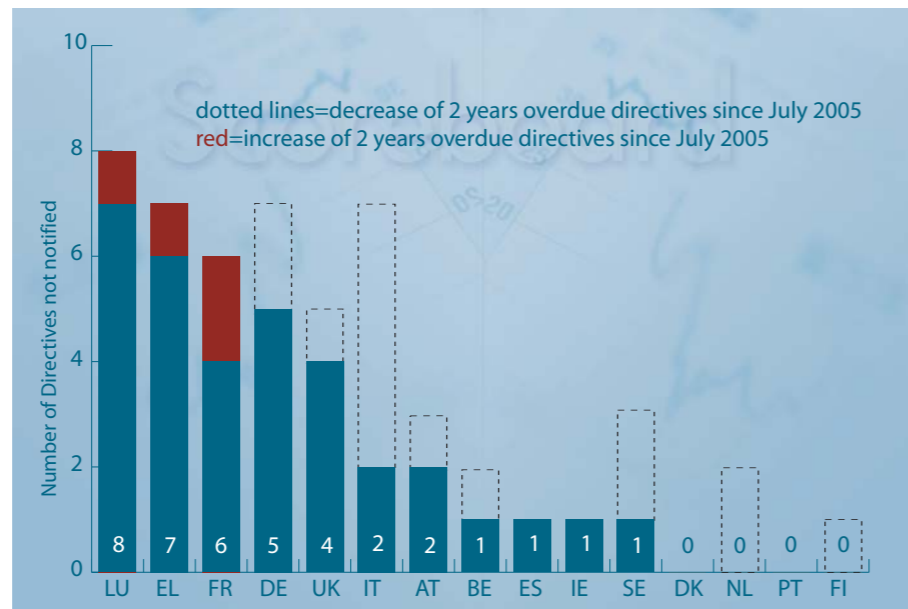
It is clear, however, that this level is not satisfactory: a fragmentation level of 10%, 9% or 8% means that the same percentage of internal market directives do not achieve their full effect in the Internal Market. This penalises all Member States, their businesses and citizens. The timely implementation of internal market directives therefore is a concern for all Member States.

Long overdue directives

The Heads of State and Government have decided that a policy of "zero tolerance" is to be adopted as regards directives overdue by 2 years or more. The figures below set out the situation on 1 December 2005.



Figure 7: Substantial decrease in long overdue directives



Number of directives with a deadline for transposition into national law before 31 October 2003, which have not been transposed by 1 December 2005.

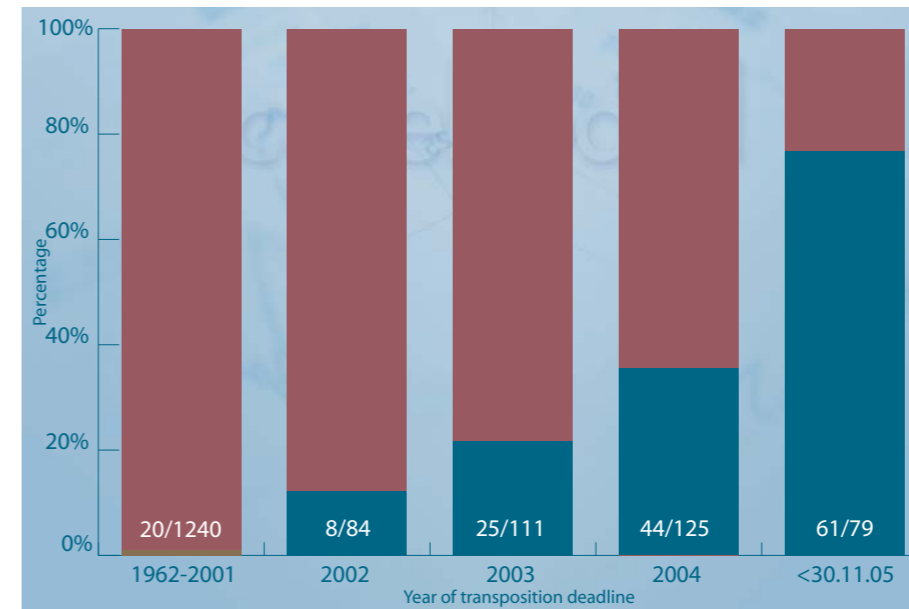
- Luxembourg and Greece are again the worst performers, even increasing the number of 2-year overdue directives compared to half a year ago;
- Despite some serious catching up on timely transposition in the past 6 months, France does not perform well here;
- All other Member States perform better, reducing the number of outstanding directives that are overdue by 2 years or more. Italy, in particular, but also the Netherlands, Sweden and Germany, have made moderate to good progress on this point.

As the 'zero tolerance' level indicates, a transposition delay of 2 years is in all cases unacceptable because it undermines the working of the internal market for all over a long period of time. Ideally, the record should thus show that no Member State has such deficit. With a little further effort Sweden, Ireland, Spain, Belgium, Austria and Italy could eliminate the remaining deficit within the next 6 months.



Non-transposed directives date back to ...

Figure 8: 20 directives that should have been transposed 4 or more years ago have still not been transposed into national law in all Member States



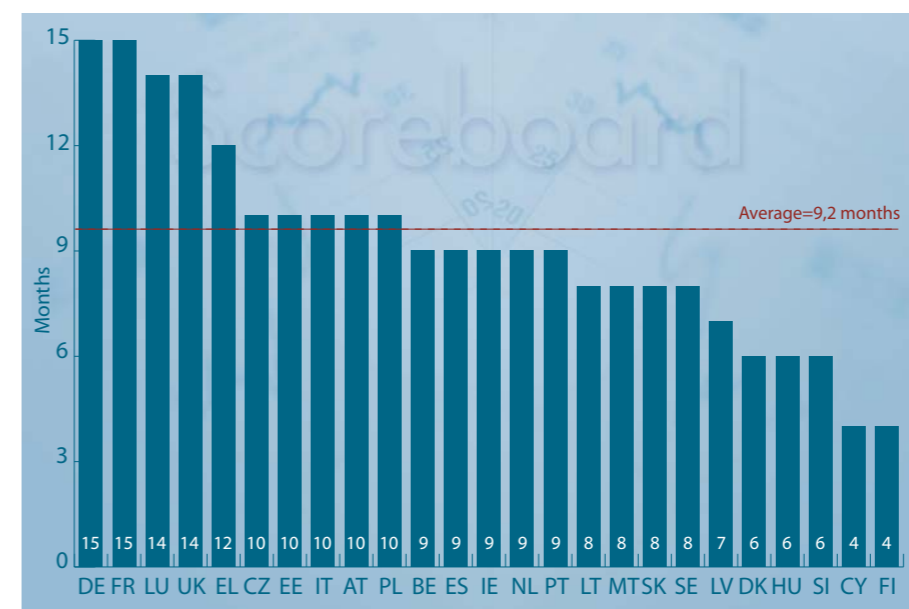
Number of directives that have still not been transposed in at least one Member State in relation to the total number of directives that should have been transposed in the period under consideration.

One striking conclusion from the above figure is that 20 directives that should have been transposed into national law 4 or more years ago have still not been translated into national law by at least 1 Member State.

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 61 out of 79 directives that should have been transposed in the first 11 months of 2005 have not yet been transposed in all Member States.

Average transposition delay in months per Member State

Figure 9: Average transposition delay still too long



Average transposition delay in months for overdue directives.



Directives that should have been transposed are now on average overdue by 9.2 months, compared to 10.7 months half a year ago.

Given that the transposition deficits in Germany and the UK are low, the above figures indicate that a few directives in these Member States are now long overdue. The same goes for France, except that its transposition deficit figures are slightly weaker.

For Luxembourg and Greece, this indicator is in line with the overall poor performance by these Member States.

What is in the pipeline?

Apart from looking at today's transposition record, it is also interesting to look at what is in the pipeline. However, before analysing the figures, it is necessary 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 strict 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 approximately two months to comply with Community law.

In the case 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 won't comply after having been condemned 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.

A final remark before looking at the figures is that many cases get solved before the Commission brings the case to the ECJ, as is illustrated by the fact that there are disproportionately more cases in the earlier stages of the proceedings (letter of formal notice, reasoned opinion) than cases before the Court. It does not necessarily follow that a certain number of reasoned opinions (or of letters of formal notice) will lead to a corresponding number of Court proceedings.

Figure 10: State of non-communication cases

	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	UE
Referral to the ECJ under Art.228														1												1
Infringement proceedings initiated under Art.228	1			1		1	1	3		1				5									1	1	5	20
Court ruling	1			1		1			1	3								1								8
Referral to the ECJ under Art.226	6			4	1	14	2	13	2	10				15			4	3		1			3		3	81
Reasoned opinions	17	24	2	4	12	32	9	18	13	41	8	12		29	7	10	14	9	10	41	6	16	12	10	15	371
Letters of formal notice	14	40	19	17	38	25	18	18	20	38	41	26	15	28	22	23	8	25	15	30	30	12	43	19	31	615
Total	39	64	21	27	51	73	30	52	36	93	49	38	15	78	29	33	26	38	25	72	36	28	59	30	54	1096

Procedural state of cases where a Member State has not communicated to the Commission the national legislation transposing a Directive due before 31/10/2005.

Currently, only Luxembourg is before the ECJ under Article 228 EC Treaty for non-compliance with a Court ruling condemning it for non-transposition of a piece of internal market legislation.

For several other Member States, the procedure is under way, but has not yet culminated in Court proceedings. Luxembourg has 5 procedures underway. The United Kingdom also has 5 such procedures under way, closely followed by France with 3 such procedures underway.

8 infringement proceedings under Article 226 EC Treaty have culminated in a Court ruling, of which 3 concerned Italy.

Many more Article 226 EC Treaty cases are pending before the Court awaiting a ruling. Again, Luxembourg and Greece top the list followed by France and Italy.

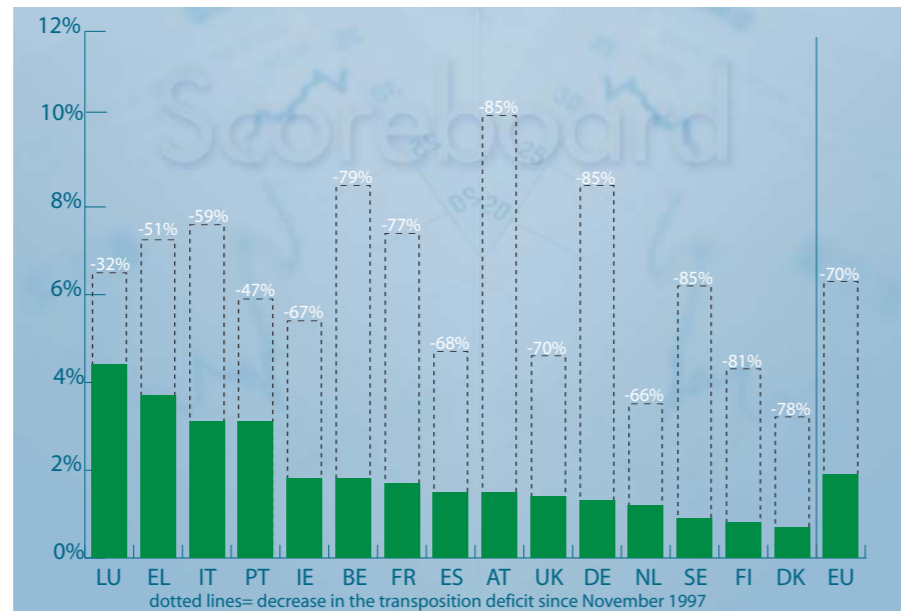
The Commission has issued reasoned opinions in an important number of cases and letters of formal notice in even more cases. Here again, Luxembourg and Greece have a very high number of cases in the pipeline. Portugal and Italy, with 41 cases at the stage of a reasoned opinion, will have a lot of work defending themselves over the coming months.

But considering that the Commission has only started opening infringement proceedings against the new Member States after May 2004, the Czech Republic should become increasingly concerned, as infringement proceedings are mounting at a disconcerting rate. Estonia and Cyprus also are close to the danger zone.



Long-term comparison of the average transposition record per Member State (December 2005 compared to November 1997)

Figure 11: Spectacular long-term progress across the EU, except in Luxembourg and Greece



Of all Member States, Luxembourg has made the least long-term progress, with a reduction of only 32% in transposition deficit, closely followed by Portugal and Greece, who have respectively posted 47% and 51% reductions.

B. STATE OF TRANSPOSITION OF THE FINANCIAL SERVICES ACTION PLAN DIRECTIVES

In 1999, the Commission presented its Financial Services Action Plan⁴ ("FSAP"), in which it set out over 40 measures - legislative and non-legislative - that needed to be accomplished by 2005 in order to reap the full benefits of the euro and to ensure the continued stability and competitiveness of the EU financial markets.

As stated in the recently adopted White Paper on Financial Services Policy (2005-2010)⁵, almost all measures have now been adopted. Of these measures, 23 are directives of which 20 should already have been transposed.

4) COM (1999)232, 11 May 1999.

5) COM (2005)629, 5 December 2005.

Figure 12: For financial services directives, the situation is very similar to the overall picture



Percentage of the 20 FSAP directives for which national transposing measures have not been notified to the Commission or which have been incompletely transposed, as at 1 December 2005.

- Compared to 6 months ago, Denmark and Austria have been joined at the top by 3 further Member States who have transposed all financial services directives: Estonia, Latvia and Poland;
- Germany, Ireland, Lithuania, Hungary, the Slovak Republic and Finland score very well, with only 1 financial services directive awaiting transposition;
- Cyprus, Malta and Slovenia follow with 2 financial services directives that need to be transposed;
- At the very bottom, we find Luxembourg and Greece again. The modest progress Portugal made during the last half year does not seem to translate into the financial services area: of all Member States, Portugal has the largest number of FSAP directives that have not yet been transposed.

C. INFRINGEMENTS FOR INCORRECT APPLICATION OF INTERNAL MARKET RULES

As highlighted by the Internal Market Strategy 2003-2006⁶, 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 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.

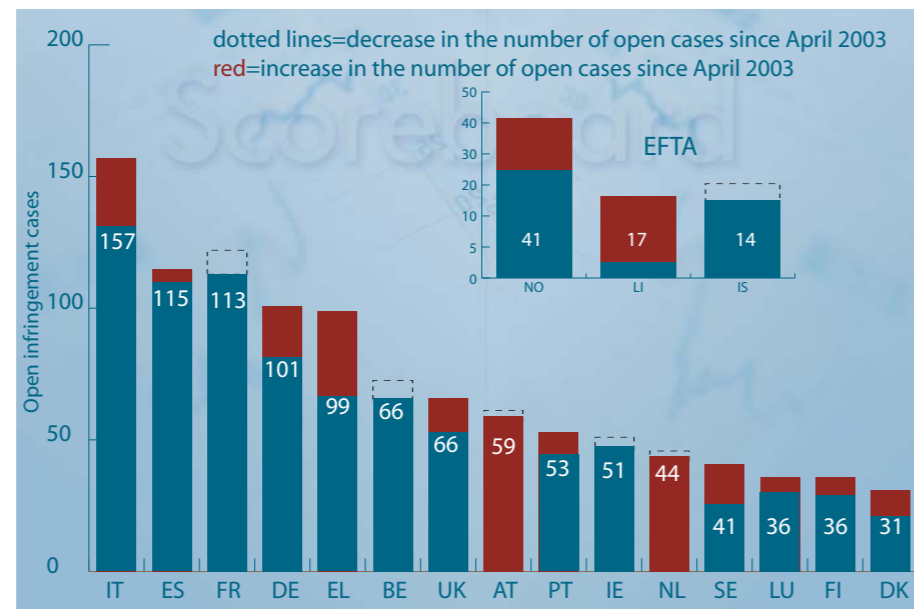
Clearly, every infringement case is one too many. Infringement cases are costly and can take a long time to resolve. The Internal Market Strategy therefore called on Member States to reduce the number of infringements against them by at least 50% by 2006.

Whereas the record as regards the transposition of internal market directives has improved dramatically overall, the situation is not so good insofar as the correct application of EU law is concerned.



6) COM (2003) 238, 7 May 2003.

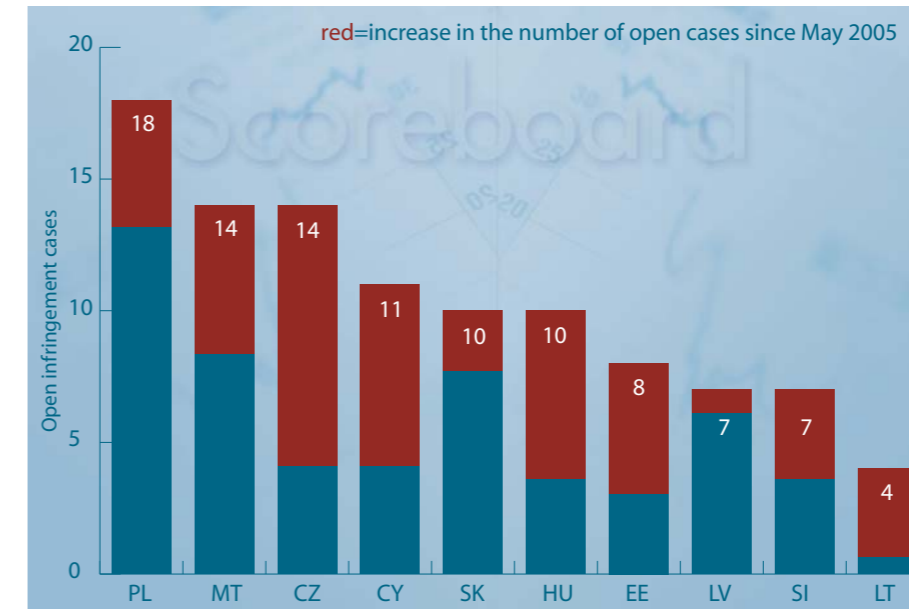
Figure 13: Open infringement cases for EU 15



Open infringement cases as at 1 November 2005. Counted as "infringement cases" in the sense of the above figure are: cases where the transposition is presumed not to be in conformity with the directive it is supposed to transpose or cases where Internal Market legislation is presumed not to be 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 excluded to avoid double-counting.

- Three years after the Internal Market Strategy was adopted, only 5 of the EU-15 Member States, namely France, Belgium, Austria, Ireland and the Netherlands, have managed to reduce the number of infringement cases against them, as compared to the number at the end of April 2003.
- Even Belgium, which performed best in this category, is still far from achieving the objective of a 50% reduction;
- For the 11 other EU-15 Member States, more infringement cases are open against them now than in 2003;
- Even though Luxembourg has a poor track record when it comes to the timely transposition of internal market directives, the figures suggest that, on average, the Luxembourg authorities correctly apply the internal market legislation that they have transposed;
- This cannot be said for Greece, which combines a poor transposition record with an equally poor record as regards the application of internal market legislation.

Figure 14: Open infringement cases for EU-10



For obvious reasons, the Commission started looking into issues of incorrect application of internal market legislation by the new Member States in May 2004. The first figures on infringements against them were produced in May 2005. The point of reference for the new Member States therefore is not April 2003 but May 2005.

- Compared with just over half a year ago, the number of infringement cases against new Member States for incorrect application of internal market law has increased by 81%;
- The increase in infringement cases occurs in all new Member States, but the situation in the Czech Republic -whose transposition record, while showing serious progress, is still not satisfactory- needs attention, as not less than 9 additional cases were opened against it in half a year;
- Another 5 infringement cases have been opened against Poland, on top of the 13 cases that were already open half a year ago, making Poland the worst offender among the new Member States;
- The situation in Cyprus, Malta, the Slovak Republic and Hungary also requires attention.



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