

# Internal Market

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scoreboard

December 2008 n°18

The Commission is keen to receive feedback on this Scoreboard, and to have suggestions for future editions. Please send reactions to Mr. Jörgen Holmquist, Director General, Internal Market and Services DG, The European Commission, B-1049 Brussels, or to the following e-mail address: [Markt-B3@ec.europa.eu](mailto:Markt-B3@ec.europa.eu)

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# EDITORIAL

This Internal Market Scoreboard is the last edition measuring the transposition deficit against the 1.5% transposition deficit target. As from 2009, the transposition deficit target will be more challenging as decided by the European Heads of States and Government in March 2007.

It is very encouraging that most Member States have maintained or improved their good efforts, keeping the EU average transposition deficit at 1%. This result confirms that most Member States have put in place mechanisms that ensure timely transposition on a more permanent basis.

Denmark and Malta deserve a special praise. They share first place and managed to further improve on an already enviable transposition record. Overall, the greatest progress has been made by the Czech Republic bringing its transposition deficit below the 1.5% target. This is a remarkable achievement and deserves special mention too.

This being said, some Member States will need to make an all-out effort to bring their deficit in line with the 1% target. This applies in particular to those Member States still above the 1.5% target: Cyprus, Greece, Portugal, Poland and Luxembourg. In addition, the number of directives that are two years or more overdue is still too high, despite the "zero tolerance" target that European Heads of States and Government agreed on in March 2002.

As we all know, the good implementation of EU law does not stop with timely transposition of EU law. The law must be applied effectively on the ground to generate the beneficial impact intended. Unfortunately, the significant improvement in the transposition of Internal Market legislation has not been matched by an improvement in the good application of the rules on the ground. In far too many cases Member States continue to apply Internal Market rules incorrectly with the result that citizens and businesses are deprived of their rights under the law.

Furthermore in order to assess the degree of the economic integration achieved, this current Scoreboard presents indicators of intra-EU trade and for Foreign Direct Investment. They illustrate that the Internal Market still has potential for fostering further trade integration in goods markets. As far as trade in services is concerned, there is considerable scope for further integration if and when the still existing barriers are reduced or eliminated. Foreign Direct Investment flows play a key role in the globalisation process of European firms and in fostering convergence and cohesion between countries inside the Internal Market.

In future editions of the Scoreboard the Commission will devote more attention to the correct application of EU law. By way of example the Commission may look into specific sectors where Member States appear to face particular difficulties in complying with the law, the nature of the problems identified and the efforts by Member States to comply with their legal obligations.

I am confident that the Internal Market Scoreboard will prove useful to highlight these challenges and support efforts in Member States to make the Internal Market a reality for all.



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



# MAIN FINDINGS

*From now on, no reference to SOLVIT report will be made in the Internal Market Scoreboard as both publications will be issued separately at the same time. On the other hand, future editions of the Internal Market Scoreboard will look in more detail into the quality of transposition and the application of EU law in different sectors. Moreover the numbering will change by abandoning 'bis' editions and introducing continuous numbering instead.*

## Transposition

In the context of the current crisis, the Single Market is especially important at this time because a well regulated and competitive Single Market should result in increased opportunities for businesses, and lower prices and better quality for consumers, which is in the spirit of the European Economic Recovery Plan.

The current Internal Market Scoreboard shows that most Member States maintain their serious commitment in recent years to ensure timely transposition of Internal Market legislation. The future 1.0% transposition deficit target was met half a year ago already and is now consolidated.

17 out of 27 Member States are already in line with this new target. Two Member States (Estonia and the United Kingdom) are 1 directive short of reaching it, leaving 8 Member States above: Italy, Belgium and Czech Republic below the 1.5% target and Cyprus, Greece, Portugal, Poland and Luxembourg still above this ceiling.

14 out of 27 Member States have achieved or equalled their best score so far: Denmark, Malta, Slovenia, the Netherlands, Romania, Slovakia, Latvia, Hungary, Finland, France, Austria, Ireland, Czech Republic and Portugal.

The Czech Republic has confirmed its significant improvement over the last year. It is very encouraging to see that significant results can be achieved within a short period of time if the political will is there and the authorities give it sufficient priority. Unfortunately, Luxembourg did not manage to build upon the remarkable efforts from six months ago. Greece is a cause of concern as well, slipping back above the 1.5% ceiling. Both Member States are called to take the necessary measures to reverse this negative trend.

The fragmentation of the Internal Market legislation decreases by 1% to 6%. This represents the best result since the publication of the first Scoreboard in November 1997. However 6% means in absolute terms that no less than 92 Internal Market directives have not been

transposed in all 27 Member States. Among these 92 directives, 22 are two years or more overdue (25%).

For the well functioning of the Internal Market correct transposition is as crucial as transposition on time. Adding the number of directives not correctly transposed to the number of outstanding directives, the overall performance of Member States changes somewhat and leaves in reverse order Poland, Italy, Greece, Portugal and Luxembourg at the bottom of the league.

## Infringements

Whereas the average transposition deficit has improved remarkably in recent years, little has changed for what concerns the correct application of Internal Market legislation. The overall number of cases in EU-15 remains largely unchanged even if the share of infringement cases by Member States varies over period 2003-2008. The EU average number of infringement cases per Member States remains almost unchanged with 49.

Italy and Spain continue to account for most of the open infringement cases. Nevertheless, Italy managed the highest reduction in open infringement procedures, followed by France, Spain and Malta. On the other hand, Belgium and Slovakia have increased further the number of cases. It is worrying that out of the 5 worst performing Member States in terms of timely transposition (Cyprus, Greece, Portugal, Poland and Luxembourg), 3 (Greece, Portugal, Poland) increase their number of infringement proceedings.

The number of Internal Market related infringement procedures remains relatively high. Moreover it takes too long to resolve them: 42% of all infringement proceedings take more than 2 years to be resolved. Even in the area of the most serious category of infringement (Article 228 procedures) Member States take an average of 18.5 months to comply with the judgement of the European Court of Justice

## Economic integration

Since 2004, trade in goods, trade in services and Foreign Direct Investment (FDI) flows inside the EU have been growing faster than EU Gross Domestic Product (GDP). This illustrates that the Internal Market still has potential for fostering further integration.

On average, EU trade in goods inside the Internal Market is more than twice as big as trade with the rest of the world, which reflects the outcome of many years of integration efforts. Moreover, in slowdown periods, such as 2001-2003, both intra- and extra-EU trade decreased, but the decline was less important in intra-EU flows. The Internal Market and the Euro-zone hence appear to provide a more stable environment for firms also in times of reduced economic activity. Economic integration has also benefited from the introduction of the Euro. A recent study by Baldwin et al. (2008)<sup>1</sup> confirms the positive effects of the Euro on trade and FDI.

Overall, enlargement can be seen as the major driver for further integration within the Internal Market. Among the most integrated countries in terms of imports are many of the new Member States, whose intra-EU imports account for 40 to 50% of their GDP, whereas the average EU-27 ratio is around 17% of GDP.

Regarding the "older" Member States, many of the larger economies had shown growing degrees of openness during the nineties (in particular France and Spain), but only Germany has maintained that momentum during the current decade. By contrast, the Nordic countries and Austria, which joined the EU in 1995, are still increasing their imports from other EU countries.

As services account for about 70% of gross value added and employment in the EU-27, the European economy may be considered integrated only if the Internal Market guarantees the freedom of establishment and the freedom to provide services.

During the nineties, intra-EU trade in services had experienced only a slight growth, compared to the much more dynamic performance in the trade of goods. This trend has not markedly changed in the current decade, which suggests considerable scope for further integration if and when the remaining barriers to cross-border services provision are reduced or eliminated.

While intra-EU trade in goods accounted for 16.9% of GDP in 2007, intra-EU trade in services is limited to only 5%. Moreover, trade in goods is much more concentrated inside the Internal Market than trade in services: while intra-EU trade in goods is more than twice as high as extra-EU trade, intra-EU services trade is only 1.5 times higher than imports coming from the rest of the world.

Foreign Direct Investment (FDI) plays a key role in the integration process inside the Internal Market as well as in the globalisation process of European firms. The implementation of the freedom of establishment principle eases FDI among Member States and should normally lead to an increase in intra-EU flows.

Since 2005 intra-EU FDI flows have regained momentum after several years of a clear slowdown. They represent a higher share of EU GDP than extra-EU flows, accounting for 4.2% and 3% of GDP respectively (in 2007). That said, since 2004, the FDI flows of the EU with the rest of the world are not only increasing, they are indeed growing faster than intra-EU shares in GDP. This shows that European integration is progressing in the context of a wider process of globalisation.

Over the current decade, EU investments in non-EU countries largely exceeded the FDI inflows received from the rest of the world. These investments originate from a limited number of countries, the big players being the UK, Luxembourg and Germany, followed by France, Spain and Austria.

1 Baldwin, R., V. DiNino, L. Fontagne, R.A. De Santis & D. Taglioni (2008), "Study on the Impact of the Euro on Trade and Foreign Direct Investment", European Economy Economic Papers, No. 321, European Commission, Brussels.



# 1. TRANSPOSING AND APPLYING INTERNAL MARKET RULES

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

The current Scoreboard is the last one which measures the transposition performance by the interim target of 1.5% set by the European Council in 2001. From 2009 onwards the relevant deficit target to measure transposition performance will be 1% according the European Council decision of March 2007<sup>2</sup>. **17 Member States are in line with the 2009 target already now.**

### Average transposition deficit in November 2008

Figure 1: The new 1% target is well consolidated



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 31 October 2008 which have been notified by 10 November 2008. As of 31 October 2008, 1611 directives and 278 regulations relate to the Internal Market as defined in the EC Treaty.

**It is a source of great satisfaction that most Member States maintain their serious commitment shown in recent years to address late transposition of Internal Market directives.**

The Member States and their authorities should be praised for the considerable efforts to achieve this very encouraging result. Once more it illustrates that if the will is there Member States are able to deliver on time to the greater benefit of the citizens.

**However, an EU average transposition deficit of 1% means that the Commission is still awaiting 420 notifications of national transposition measures. These missing notifications lead to 92 Internal Market directives that have not been transposed into national law in all the EU-27 Member States,** despite the deadline for transposition having passed. Among those 92 directives there are 22 directives, or 25%, where the transposition deadline expired more than 2 years ago<sup>3</sup>.

2 Conclusion of the European Council summit of Brussels on 8/9 March 2007.

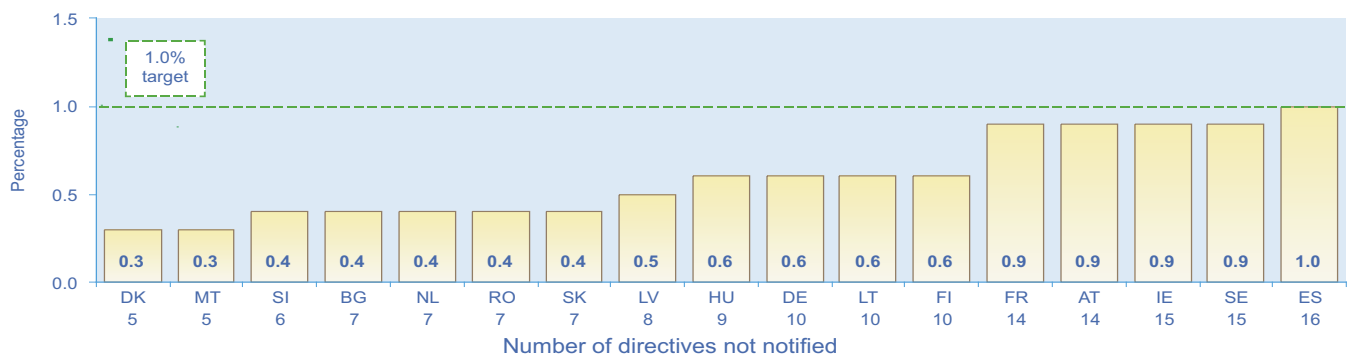
3 cf. figure 8.

**Moreover out of the 27 Member States there are still 5 Member States that have not achieved the 1.5% target.** It is difficult to see how these Member States will achieve this 1% target without urgent and substantial action taken. With the exception of the Czech Republic, those Member States that were above the 1.5% deficit target six months ago did not improve their transposition deficit and some of them even increased it. Especially Poland and Luxembourg are moving in the wrong direction which is a particular cause for concern. They should step up their efforts to reverse this trend and bring down the deficit to the level agreed by their Heads of State and Governments.

The failure of one Member State 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. This penalises all Member States, their businesses and citizens. Therefore more efforts are needed to further reduce the number of failures to transpose directives. The ultimate goal obviously remains that Member States transpose Internal Market legislation within the deadline they have imposed on themselves.

## Performance measured against the 1.5% transposition deficit

**Figure 2: 17 Member States are in line with the future 1% target**



*Transposition deficit of the Member States that hit the 1% target as of 10 November 2008.*

- 17 out of 27 Member States have reached the future target of 1% transposition deficit. Austria has joined this group this time around.
- All but 5 of those Member States have achieved or equalled their best score so far: Denmark, Malta, Slovenia, the Netherlands, Romania, Slovakia, Latvia, Hungary, Finland, France, Austria and Ireland.
- Denmark and Malta share the first place with only 5 directives away from the perfect score. They prove that even with fairly small national administrations it is possible to adjust rapidly the national Internal Market legal framework. Among these Member States Malta posts the greatest improvement by reducing the number of outstanding directives from 15 to 5.

**Figure 3: 5 Member States remain below the ceiling of the 1.5% target and 5 are still above this target**

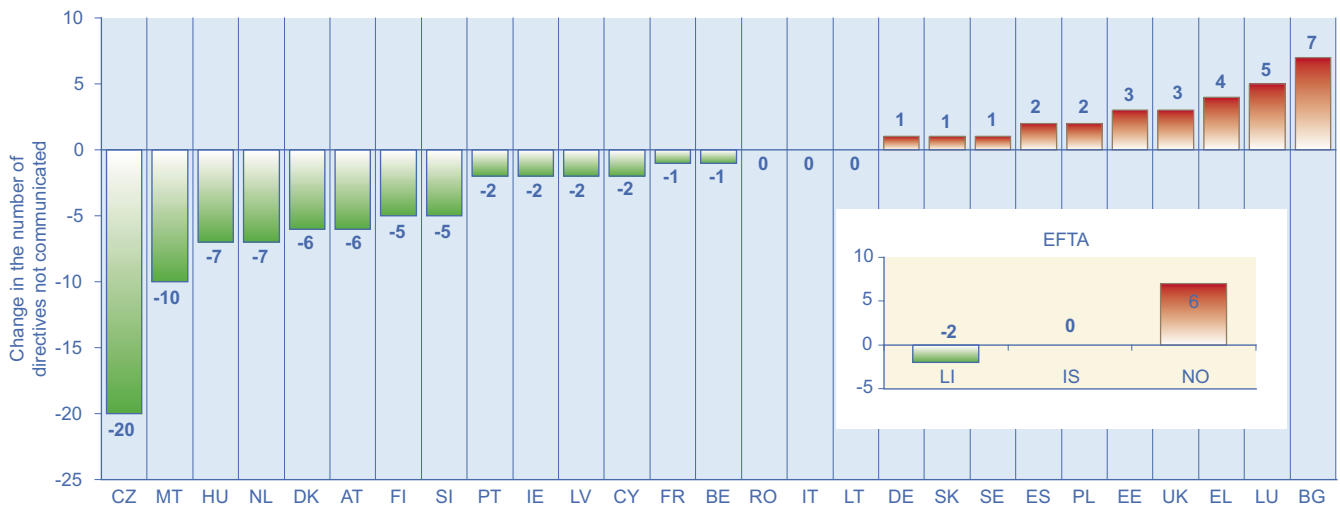


Transposition deficit of the Member States that hit or missed the 1.5% target as of 10 November 2008.

- Estonia and the United Kingdom were in line with the 1% target six months ago but slipped back above this ceiling. Italy's transposition deficit is heading in the wrong direction after its recent remarkable improvement. Belgium has a transposition deficit of 1.4% and thereby equals its latest performance.
- On the other hand, the Czech Republic has made spectacular progress and achieved its best result ever. Within only six months it has managed to reduce the deficit by 1.1% bringing it down to a 1.4% transposition deficit. Compared to July 2008 the Czech Republic moved from last position to the twenty-first (ex-aequo with Belgium) and finds itself below the ceiling of 1.5% deficit. This represents an outstanding improvement and shows that strong political will backed up by well targeted improvements in the national transposition system deliver remarkable results in a short period of time.
- All other Member States (Cyprus, Greece, Portugal, Poland and Luxembourg) have failed to reach the 1.5% target. The challenge for these 5 Member States above the 1.5% target is to catch up with the leading group in particular with regard to the new 1% transposition deficit. To meet this challenge a renewed commitment at the highest political level appears necessary.
- At a time when Member States need to redouble their efforts, some appear to have gone into reverse: Greece and Luxembourg have not managed to hold on to progress made half a year ago. Greece's performance has slipped once again above the 1.5% target to 1.7%. Only six months ago Luxembourg had made the most significant progress in reducing its deficit by 1%. It is disappointing that Luxembourg reversed this positive trend during the second half of the year and is once again bottom of the transposition league with a 2.2% transposition deficit, failing to have transposed as many as 36 directives on time. The "oldest" directive which has not yet been transposed in Luxembourg dates back to 22.12.2003<sup>4</sup>.
- Luxembourg's and Poland's performance is worrying, as these Member States' deficit is double the EU average transposition deficit. Poland's transposition deficit rose for the third consecutive time to a 2.0% transposition deficit. This represents Poland's second highest transposition deficit since its accession in 2004. Finally, Cyprus and Portugal have the same transposition deficit compared to six months ago.

4 Directive 2006/60/EC: Water policy; cf. figure 8.

**Figure 4: Some Member States have made spectacular progress while the backlog of others has gotten worse**



Change in the number of outstanding directives since Scoreboard 17 of July 2008.

- The Czech Republic posts by far the greatest improvement but Malta deserves as well to be mentioned specifically, as it has managed to reduce its deficit by 10 directives in the last 6 month.
- In total, 14 Member States have made progress, while 3 Member States equalled their previous result and 10 Member States increased their backlog. Germany, Slovakia, Sweden, Spain, Poland, Estonia, the United Kingdom, Greece Luxembourg and Bulgaria reversed their positive trend from six months ago.
- Once again and despite an already poor result half a year ago, Poland has actually managed to increase further its backlog by 2 additional directives.

### Breakdown by area and Member States' transposition deficit

When the delays are broken down by sector the pattern of implementation varies between Member States. Shaded figures highlight the sectors where Member States' appear to have more difficulties.

**Figure 5: Most outstanding directives in the area of financial services and transport and energy**

	Capital goods (67)	Chemicals (88)	Consumers (18)	Energy + Transport (141)	Environment (98)	Financial services (98)	Food legislation (113)	Free movement of persons (16)	Intellectual property (11)	Motor vehicles (220)	Pharmaceuticals + cosmetics (82)	Public procurement (8)	Social Policy (75)	Taxation (68)	Veterinary + plant health legislation (395)	Others (113)	TOTAL
LU	3	2	1	6	5	4		2	1	1		3	3		2	3	36
PL	2	1		4	4	9	1	2		1	3		1		2	3	33
PT		1		7	1	6	2	2		3			4		2	2	30
EL	1			6	5	5		3					2	2	1	3	28
CY	3	1		4	4	2	2	2		2	4		1		1	1	27
CZ	1			4	3	6							6		1	1	22
BE	1			2	4	6		2					4	1	1	1	22
IT	2			3	1	4	2				2		3	2	2		21
UK	1	1		5	5			1		3					1	1	18
EE	1	1		3	6	3		1					2	1			18
ES			1	4	1	6		2	1						1		16
SE				2		5	1	1	1				3			2	15
IE	1			3	3	4		1					1			2	15
AT	1	1		5	2	1		1					2			1	14
FR		1		1	3	6		2					1				14
FI	1			2	1	3							1			2	10
LT				3	1			1					3			2	10
DE			1	3	1	2		1					1			1	10
HU				2		2		1					1		2	1	9
LV				1		1		1					2		2	1	8
SK	1			2	2										1	1	7
RO	1			2			1									2	7
NL						3		1		1						2	7
BG				2	2					1					1	1	7
SI				4	1											1	6
MT				1	1	1									1	1	5
DK				1	1	2		1								0	5

Breakdown by Member States of the backlog of non-transposed directives and sector concerned – Situation as of 10 November 2008. The highlighted figures show, for each Member State, the sector(s) with the most outstanding directives.

(#) Number of directives in the sector

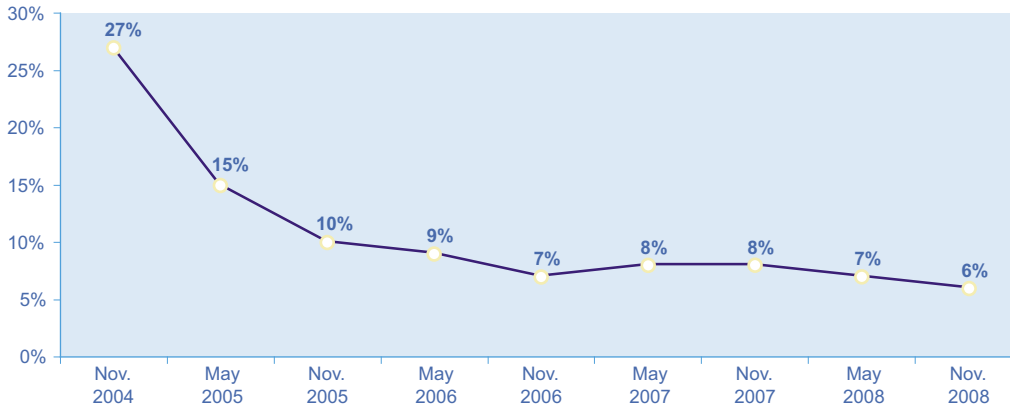
- Most Member States have the highest number of directives still to transpose in the area of financial services and in the area of energy and transport. To a certain extent this can be explained by the high number of directives for which the transposition deadline expired recently and the fact that Member States take an extra 9.5 months on average to transpose directives.
- With the highest transposition deficit Luxembourg faces most difficulties in the area of energy and transport (6 directives overdue) followed by the area of environment (5 directives overdue). In addition, it remains the only Member States having not yet transposed the Public Procurement directives, where the transposition deadline expired almost 3 years ago.
- Latvia has made most progress in the area of financial services, reducing the number of outstanding directives from 8 to 1 directive within the last six months.
- One third of Estonia's (6 out of 18) total number of outstanding directives is in the area of environment; the United Kingdom faces almost the same situation (5 out of 18). For what concerns Czech Republic (6 out of 22) and Lithuania (3 out of 10), they have almost one third of their directives still to transpose in the area of social policy.

In the sectors most concerned, the Internal Market is not yet a reality: Member States need to take action to reduce that gap rapidly.

## Fragmentation of the Internal Market

Whenever one or more Member States fail to transpose directives on time they leave a gap in the Community's legal framework. Instead of an Internal Market covering all Member States it remains a fragmented Internal Market.

**Figure 6: Fragmentation factor decreased slightly**



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.

The fragmentation factor has also been reduced to its lowest level ever. Nevertheless, 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. This goes against the very foundations of the Internal Market.

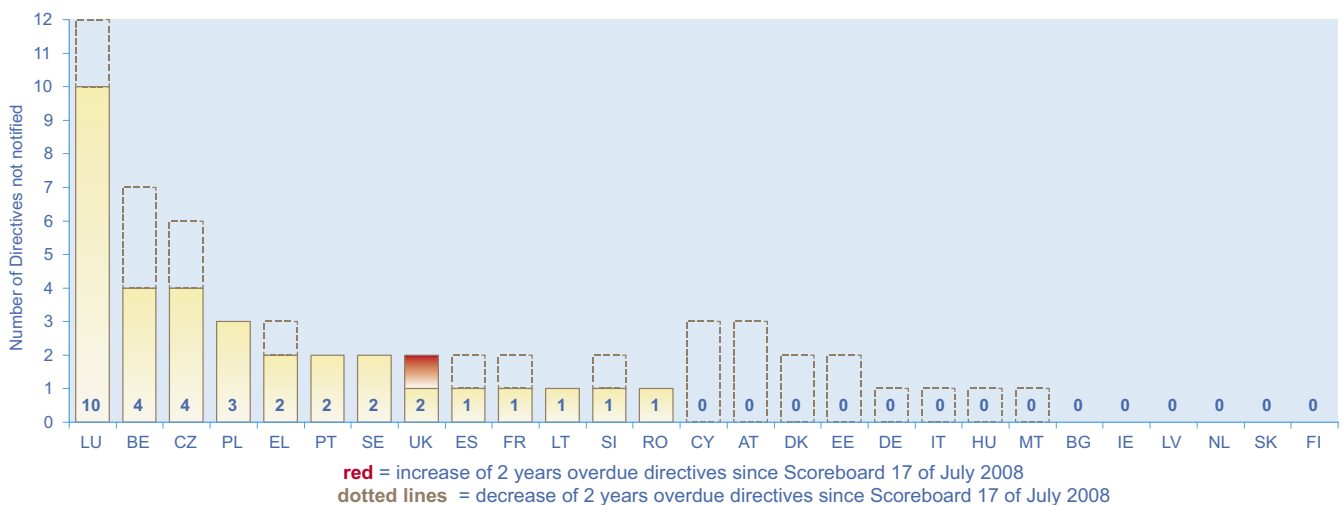
A fragmentation level of 6% means that the same percentage of Internal Market directives has not achieved their full effect in the Internal Market. In absolute terms, not less than 92 Internal Market directives have not been transposed on time, in at least one Member State. This penalises all Member States, their businesses and citizens.

## Long overdue directives

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 whose transposition is 2 years or more overdue<sup>5</sup>.

**14 Member States are in line with this "zero tolerance" target.**

**Figure 7: Substantial decrease in directives 2 years or more overdue**



Number of directives with a deadline for transposition into national law by 31 October 2006, which have not been transposed by 10 November 2008.

5 In Council summit of Barcelona on 15/16 March 2002.

- 15 Member States perform better compared to half a year ago, whereof 8 Member States managed to reduce their number of outstanding 'old' directives to zero.
- Belgium, Cyprus and Austria have made most progress by transposing 3 such directives.
- On the other hand, the United Kingdom is the only Member State having added one such directive within the last 6 month.
- Although Luxembourg managed to reduce the number of outstanding directives it remains by far the worst offender on this criterion.
- Bulgaria, Ireland, Latvia, the Netherlands, Slovakia and Finland match their zero deficit from 6 month ago.

**Figure 8: 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	30/07/1989 01/07/1997
2000/60/EC	Water policy	LU	22/12/2003
2003/35/EC	Plans and programmes relating to the environment (public participation)	LU, UK	25/06/2005
2004/12/EC	Packaging and packaging waste	BE	18/08/2005
2002/73/EC	Equal treatment for men and women (access to employment, vocational training and promotion and working conditions)	BE	5/10/2005
2001/84/EC	Resale right for the benefit of the author of an original work of art	ES	1/01/2006
2004/80/EC	Compensation to crime victims	EL	1/01/2006
2005/19/EC	Common system of taxation	BE	1/01/2006
2002/91/EC	Energy performance of buildings	EL, FR, LU, SI	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, CZ, LT, PT, SE	7/04/2006
2004/36/EC	Safety of third-country aircraft using Community airports	PL	30/04/2006
2004/48/EC	Enforcement of intellectual property rights	LU, SE	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	CZ, UK	11/08/2006
2003/72/EC	Statute for a European Cooperative Society (involvement of employees)	LU	18/08/2006
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

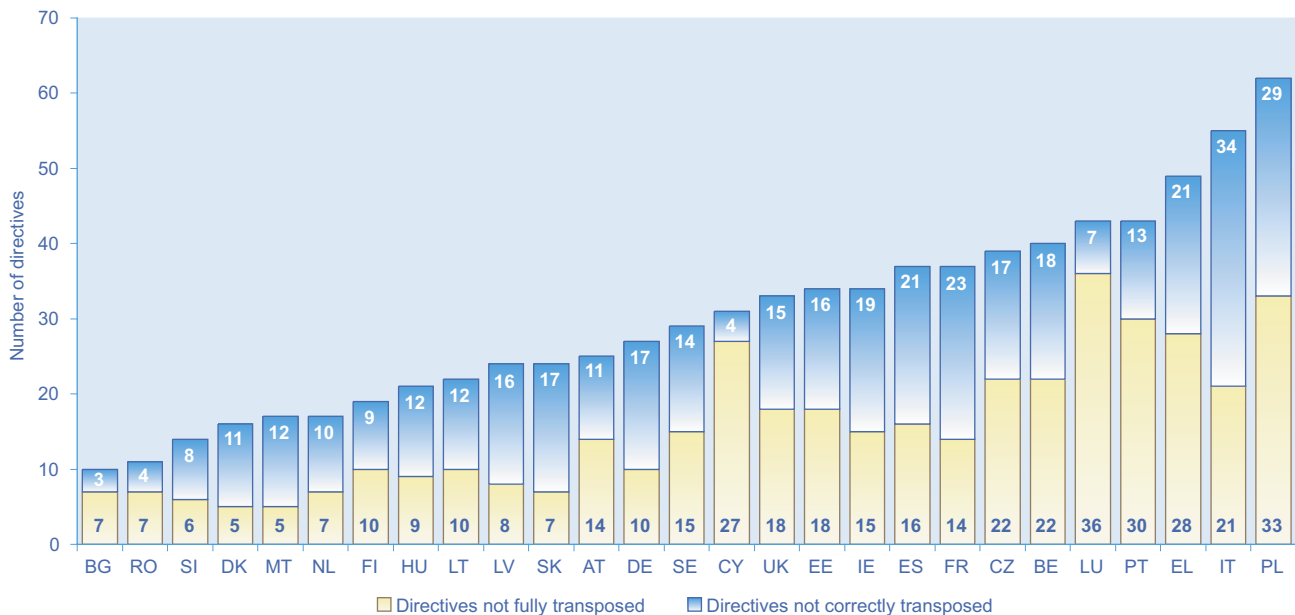
Directives with a transposition deadline by 31 October 2006, which are not (fully) transposed by at least one Member States - Situation as of 10 November 2008.

The Member States with the longest transposition delays are Luxembourg and the Czech Republic. Almost 5 years after the transposition deadline expired Luxembourg has still not transposed Directive 2000/60 EC. The Czech Republic is more than 4 years overdue with Directives 86/378/EEC and 96/97/EEC which should have been transposed with Czech Republic's accession in May 2004.

## Directives not correctly transposed in addition to directives not (fully) transposed

One should not forget that beyond the remarkable reduction of the transposition deficit **Member States still need to ensure that Internal Market Directives are correctly transposed.** Taking into account the number of directives not correctly transposed and adding the number of outstanding directives, Member States' ranking changes noticeably. As a result, in reverse order, Poland, Italy, Greece, Luxembourg and Portugal are bottom of the league.

**Figure 9: Number of not correctly transposed directives 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 10 November 2008).

It appears from this table that the number of non-conformity cases is significant for each Member State: 13 out of 27 Member States have more cases of non-conformity than outstanding directives. Even the two Member States with the lowest transposition deficit (Denmark and Malta) have more than double the number of non-conformity cases compared to outstanding directives. The Member State with the highest number of directives not correctly transposed is Italy with 34, followed by Poland with 29 and France with 23.

Poland has not only the second highest transposition deficit but at the same time the second highest number of non-conformity cases. By contrast Luxembourg with the highest number of outstanding directives has much less non-conformity cases.

**For the well functioning of the Internal Market correct transposition is as important as transposition on time.** As figure 9 illustrates Member States need to intensify their efforts in this respect.



## B. INFRINGEMENT PROCEDURES FOR WRONG APPLICATION OF INTERNAL MARKET RULES

If citizens and businesses are to benefit fully from their Internal Market rights, **Internal Market legislation has to be both efficiently transposed and effectively applied.** It is crucial for the credibility of the Internal Market that Member States ensure correct transposition and application of EU law. **Infringement proceedings** are a critical instrument available to the Commission to ensure compliance with Community law.

*As guardian of the Treaty the Commission shall ensure that both Treaty provisions and decisions taken by Community Institutions are correctly implemented by 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. After careful consideration of the facts and the applicable law, the Commission may decide to open the infringement procedure. 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

Whereas the average transposition deficit has improved enormously within the last years and is now down to 1%, little has changed over the last years as regards the correct application of Internal Market legislation.

**Figure 10: The number of open infringement cases shows remains stubbornly high in recent years**

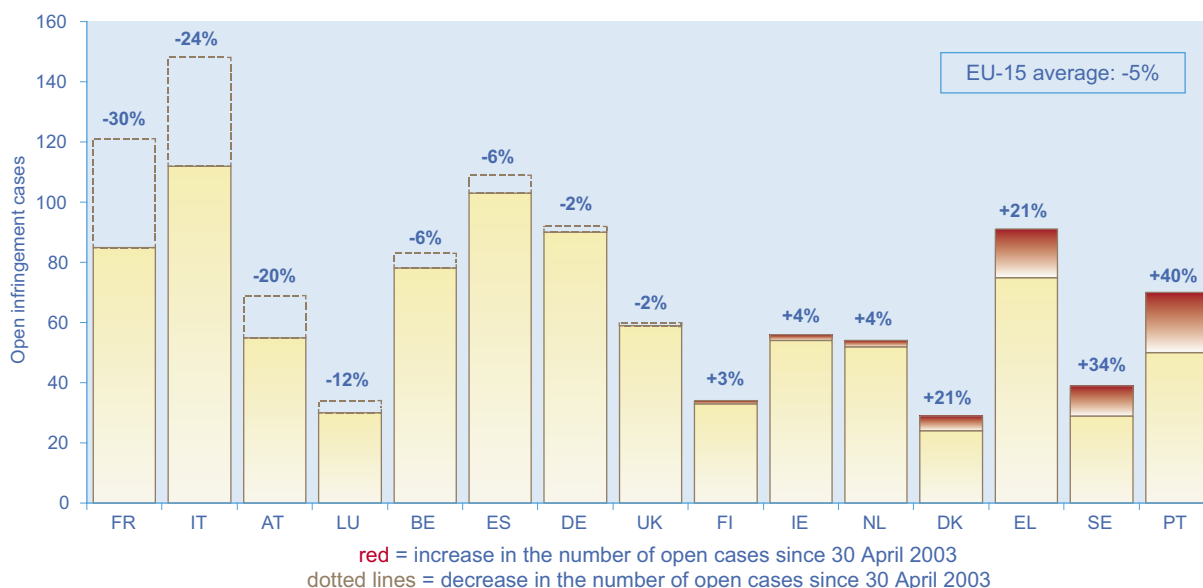


"Open infringement cases" in the above figure include: cases where the transposition is presumed not to be in conformity with the directive it transposes or cases where Internal Market rules (both rules contained in the EC Treaty and in Internal Market directives) are presumed to be incorrectly applied and where a letter of formal notice has been sent to the Member State concerned. Cases of non-communication, i.e. concerning

It should be recalled that in May 2003 the Internal Market Strategy 2003-2006<sup>6</sup> called on Member States to reduce the number of infringements against them by at least 50% by 2006. However, figure 10 shows that the number of open infringement cases remains stubbornly high with marginal changes for the EU-15. With 980 open infringement cases in November 2008 compared to 1033 recorded in 2003, one can observe a decrease of only 5%. "Taxation and customs union" and "Environment" remain the biggest sources of infringements.

For obvious reasons the number of infringement proceedings has increased for all EU-10 Member States after accession. First figures on infringements against them were produced in May 2005. The point of reference therefore is not April 2003 but May 2005. Following an initial increase, the number of infringement procedures against EU-10 has remained relatively stable in recent years. The average number of infringements procedures is around 300 and thereby markedly lower than EU-15.

**Figure 11: As many Member States have decreased as have increased their number of infringement proceedings**



Open infringement cases as of 1 November 2008 compared to corresponding figures as at 30 April 2003 when the Internal Market Strategy was adopted.

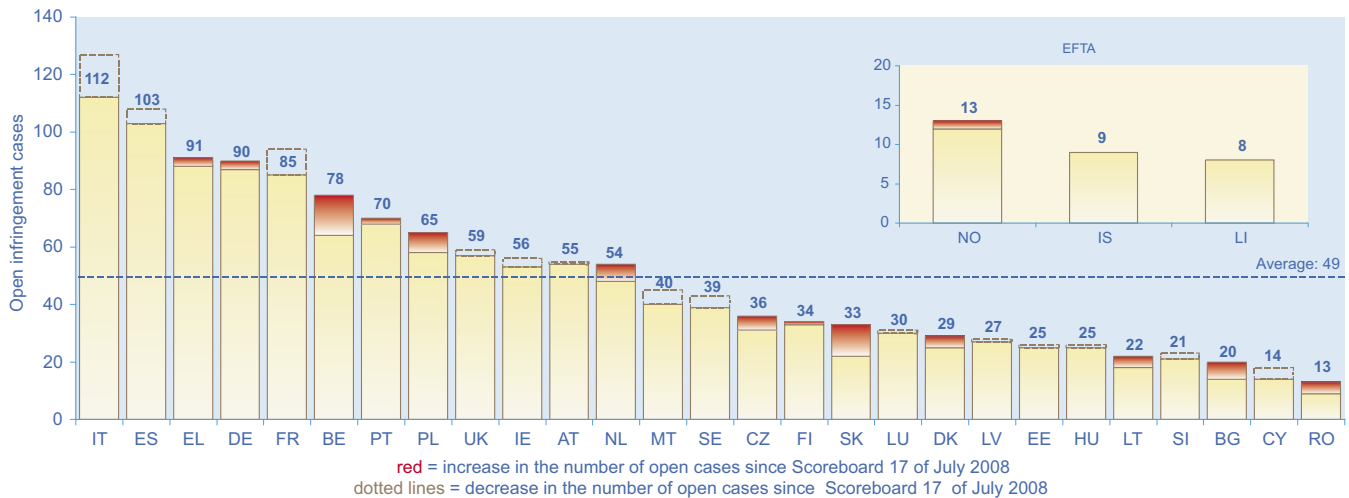
Although little has changed in the overall EU-15 numbers, the share of infringement cases by Member States varies from one year to the next. Compared to the numbers in April 2003, only 8 out of the EU-15 Member States have managed to reduce the number of infringement cases against them (namely France, Italy, Austria, Luxembourg, Belgium, Spain, Germany and United Kingdom).

France has made good progress in reducing the number of open infringement procedures by 30%, followed by Italy (24%) and Austria (20%). Unfortunately, the 7 other EU-15 Member States are heading in the wrong direction by increasing the number of open infringements procedures even further. With a 40% increase Portugal has the highest increase, followed by Sweden (34%), Greece and Denmark (both 21%).

6 COM (2003) 238, 7 May 2003.

## Number of infringement proceedings per Member State - compared to the last Scoreboard

**Figure 12: Number of infringement proceedings rose again**

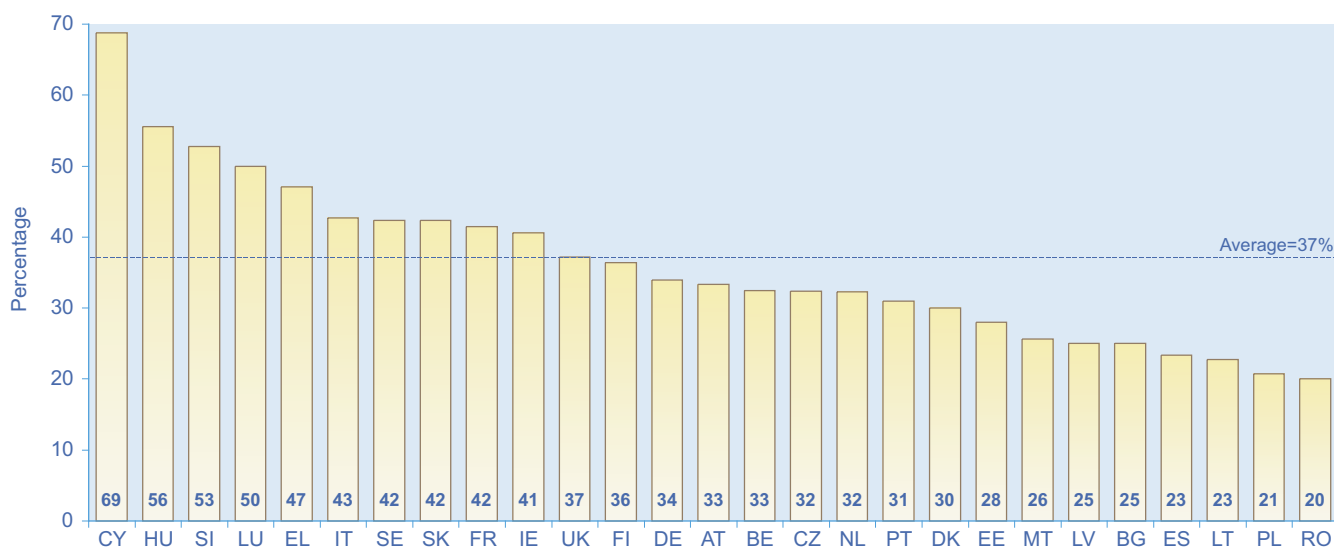


Open infringement cases as of 1 November 2008 compared to the situation as of 1 May 2008.

- The EU average of open infringement procedures rose again to 49 cases and equals the result from December 2007. The ranking of Member States according to the number of infringement cases remains almost unaltered compared to six months ago.
- Italy and Spain continue to account for most of the open infringement cases. Nevertheless, Italy managed the highest reduction in open infringement procedures (15), followed by France (9), Spain and Malta (5). On the other hand, Belgium and Slovakia have increased further their stock of cases with respectively 14 and 11 new proceedings opened.
- It is worrying that out of the 5 worst performing Member States in terms of timely transposition (Cyprus, Greece, Portugal, Poland and Luxembourg), 3 (Greece, Portugal, Poland) increase their number of infringement proceedings.
- Another 7 infringement cases have been opened against Poland. Adding them to the 58 cases already opened half a year ago, makes Poland to the worst offender among EU-10 Member States. Thereby, Poland combines a high transposition deficit with an equally poor record as regards the application of Internal Market legislation.

## Early resolution rate per Member State

**Figure 13: Only a third of infringement cases are solved early**



Number of cases closed by 1 November 2008 as a percentage of the number of cases opened between 1 May 2006 and 30 April 2008.

Compared to the situation of 2003, not only has the number of infringements remained stubbornly high, but there has also been little progress in Member States' ability to solve them quickly.

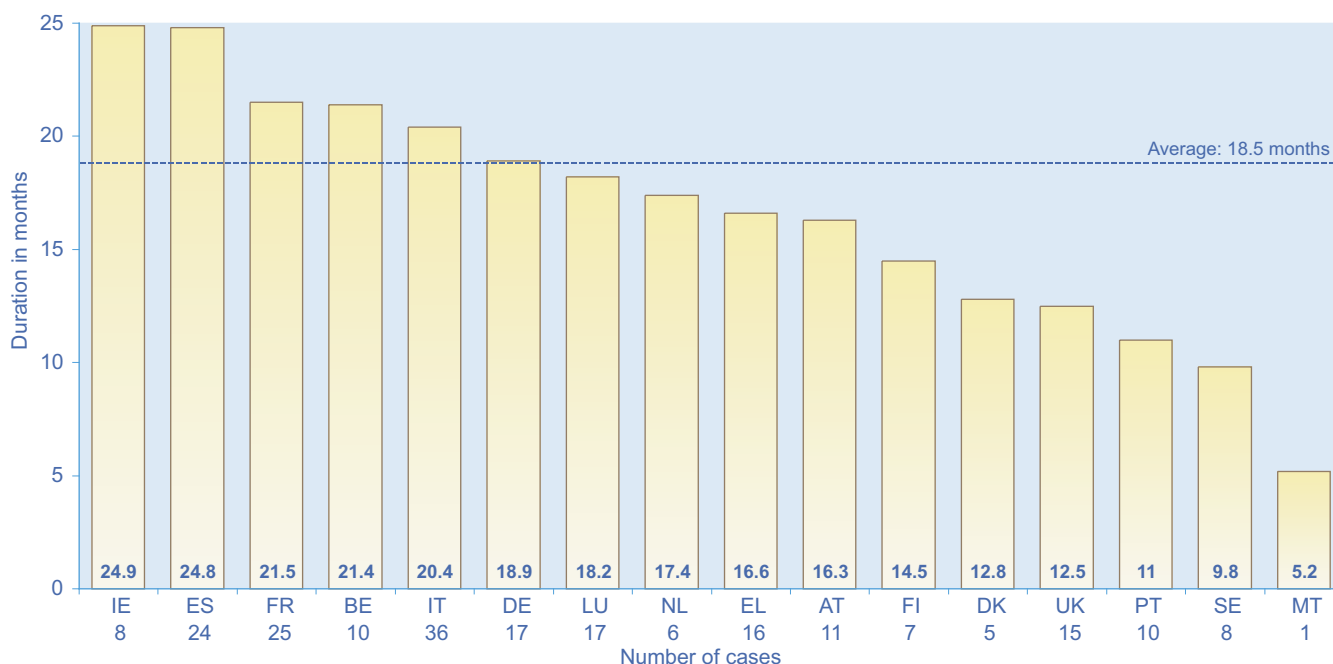
Figure 13 shows that the time taken to close an infringement case varies significantly between Member States. In this regard, Cyprus has the best early resolution performance with 69% of its cases resolved within 2 years. On the other hand, Romania, Poland, Latvia and Spain show the lowest rate of early resolution.

With the second highest number of open infringement cases, Spain needs in particular to redouble efforts to settle cases early.

## Member States' compliance with ECJ judgements

When a Member State has been found to have failed to fulfil its obligations under Community law by the European Court of Justice, Article 228 of the EC Treaty requires the Member State to take urgent steps to comply with the judgement of the Court.

**Figure 14: Serious delays recorded for compliance with ECJ judgements**



Article 228 cases closed between 1 November 2005 and 1 November 2008 (216 case) – Average duration between the judgement of the Court and the resolution of the case (in months)

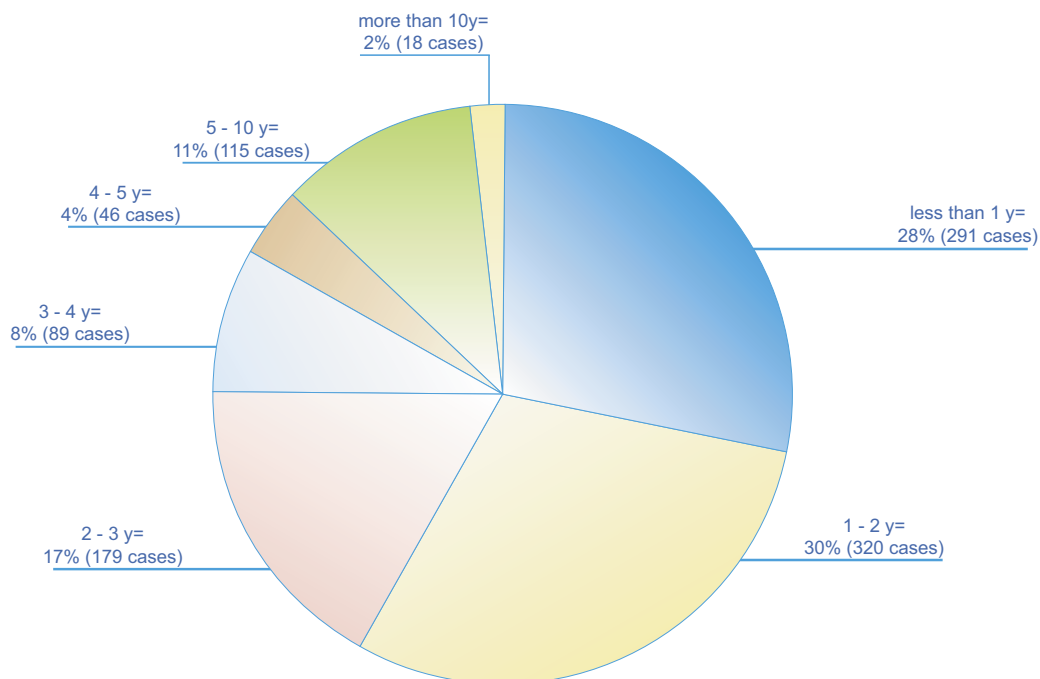
Following a ruling of the European Court of Justice that a breach of Community law has taken place, Member States should take immediate action to comply with the ruling. However, figure 14 shows that delays occur. Seen over a 3-year period, Member States took an average of 18.5 months to bring national law and practices into conformity with Community law as stipulated in the ruling of the Court.

## Pattern of infringement proceedings' duration

Early resolution of legal disputes between the Commission and the Member States remains critical to the efficient functioning of the Internal Market. However, as figure 15 shows the time elapsed between the opening of a case by the Commission and finding a solution varies between less than 1 year and more than 10 years.

It should be noted that various sectors are concerned and consequently no specific sector leads to particular delays.

**Figure 15: 42% of all infringement proceedings take more than 2 years to resolve the problem**



Number of years between the launching of official proceedings and resolution (cases closed or sent to the Court) of the Internal Market infringement cases that were closed between 1 November 2006 and 1 November 2008.

## 2. MONITORING THE STATE OF THE ECONOMIC INTEGRATION

The correct transposition and implementation of Internal Market rules is essential for achieving the long-term policy objectives, but Internal Market policies do not end with implementation. The European economy will only become more competitive if the measures produce the intended effects. And, in fact, **most of these final economic impacts are driven by intensifying the integration of markets previously fragmented.**

Markets are integrated when “economic frontiers” between them are eliminated. An economic frontier is any demarcation over which goods, services, capital, technology, labour and communication flows are low or absent. The removal of barriers to intra-EU products, services and factor flows inter alia, increases intra-EU trade and facilitates firm entry in the various national markets. Therefore, in order to assess the degree of integration achieved, this Chapter presents indicators for intra-EU trade and for Foreign Direct Investment (FDI)<sup>7</sup>.

### A. HOW IS INTRA-EU TRADE PERFORMING ?

#### A.1. Trade in goods

The 1992 Single Market Programme focused on eliminating all kinds of intra-EU barriers to the free exchange of goods. In the vast majority of Member States, this had led to steady and significant increases in intra- and extra-EU trade during the nineties, reaching a peak in 2000.

This chapter analyses trade developments between 2000 and 2007. Further increases in intra-EU trade mean that EU countries are increasingly open to one another, therefore indicating that the Internal Market continues to foster the integration of the goods markets. The Internal Market is of course aided by the Euro in this regard. It is estimated that trade has increased by approximately 5% since the introduction of the Euro<sup>8</sup>.

<sup>7</sup> A more in-depth analysis of trade and FDI developments inside the Internal Market is provided in the Working Document available in the DG Internal Market website.

<sup>8</sup> In “Study on the Impact of the Euro on Trade and Foreign Direct Investment”, op. cit.

## How is EU trade in goods performing?

**Figure 16: The Internal market is fostering trade integration without creating a “European Fortress”**



Trade in goods, 2000-2007. Intra-EU and extra-EU trade (manufacturing imports as percentage of GDP) – Source: “EUROSTAT and DG Internal Market calculations”.

This chart shows the importance of trade in goods inside the Internal Market related to EU GDP, and compares it with the trade coming from third countries. While increases in intra-EU trade indicate further integration of EU goods markets, developments in extra-EU imports indicate the degree of openness to the rest of the world.

In contrast to the steady growth period of the nineties, trade in goods followed an irregular path between 2000 and 2007, with a downfall during 2001-2003 and a firm recovery of both intra- and extra-EU flows since 2004 – resulting in an all-time high in intra-EU trade in 2007 (16.9% of EU GDP). **This illustrates that the Internal Market still has potential for fostering further trade integration in goods markets.**

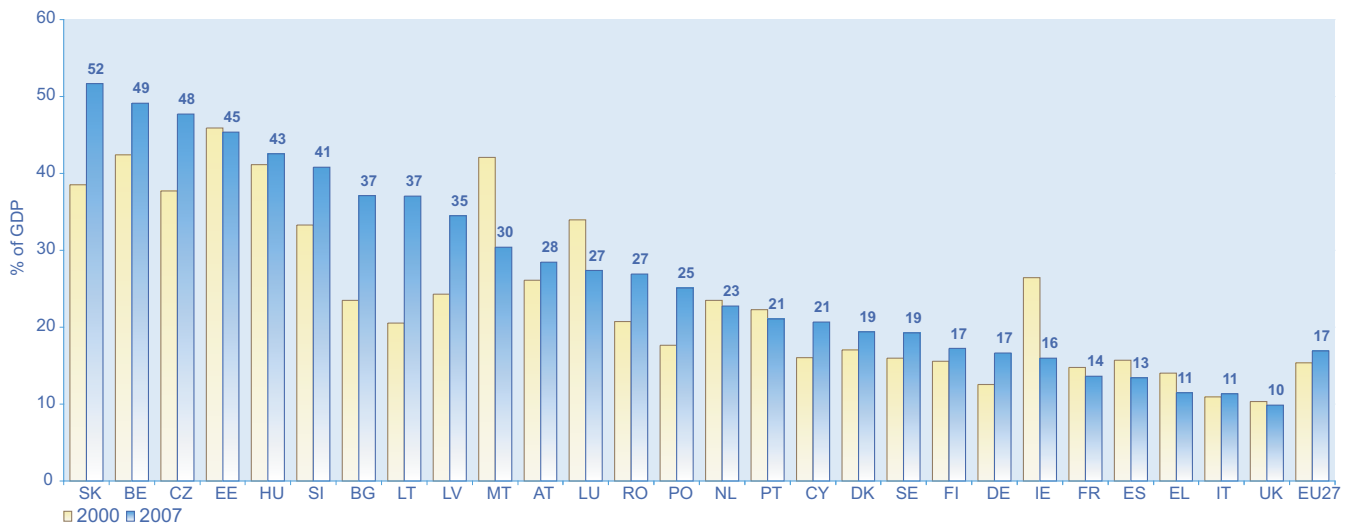
This development also illustrates that, **in slowdown periods, both intra- and extra-EU trade decreases, but the decline is less important in intra-EU flows.** The Internal Market hence appears to provide a more stable environment for firms also in times of reduced economic activity.

On average, EU trade inside the Internal Market is more than twice as big as trade with the rest of the world, which reflects the outcome of many years of integration efforts. That said, trade with the rest of the world has been increasing at a similar rate as intra-EU trade. This implies that the deepening of trade integration inside the Internal Market does not take place at the expense of extra-EU trade (e.g. by creating a “European fortress”). **In particular, rising imports from extra-EU suppliers mean that the level playing field created by the Internal Market creates opportunities for EU firms and third country firms alike.**



## Intra-EU trade in goods; cross-country comparison

**Figure 17: Enlargement is the major driver for further integration within the Internal Market**



*Intra-EU openness to imports, 2000 and 2007 (Intra-EU manufactured imports as a percentage of GDP) – Source: “EUROSTAT and DG Internal Market calculations”.*

This chart shows the openness of EU countries to imports coming from other Member States, in 2000 as compared to 2007. The degree of a country’s openness is heavily determined by its size. Smaller countries such as Belgium are usually more open than big countries like France, as they are more dependent on the outside world for getting what they need (imports) and for selling their domestically produced goods and services (exports). Therefore, to assess the degree of trade integration inside the Internal Market, one should focus not only on the degree of openness in any given year, but also on changes over time. A significant increase indicates that a country is becoming more open and integrated inside the Internal Market.

Among the most integrated countries in terms of imports are many of the new Member States, whose intra-EU imports account for 40 to 50% of their GDP (whereas the average EU-27 ratio is around 17% of GDP). Most of these countries were already highly integrated in 2000, well before their official accession date, due to the intense increase in trade flows driven by the “Europe agreements” during the nineties. Therefore, no major increases in trade were commonly expected after accession.

However, in many new Member States, integration has not lost momentum after accession, although significant cross-country differences can be observed: while Poland, Lithuania or Latvia have seen further increases in imports during the current decade, countries like Estonia or Hungary stayed at their (high) 2000 levels. **Overall, enlargement can be seen as the major driver for further integration within the Internal Market.**

Among the “older” Member States, only some small countries exhibit high import penetration rates: Belgium (whose imports from other EU countries account for more than 49% of GDP), followed by Austria, Luxembourg, the Netherlands and Portugal. As expected, the big economies are the least open ones, with shares of intra-EU imports of GDP ranking between 9.9 % in the United Kingdom and 16.6 % in Germany. **While many of these larger economies had shown growing degrees of openness during the nineties (in particular France and Spain), only Germany maintained that momentum during the current decade.**

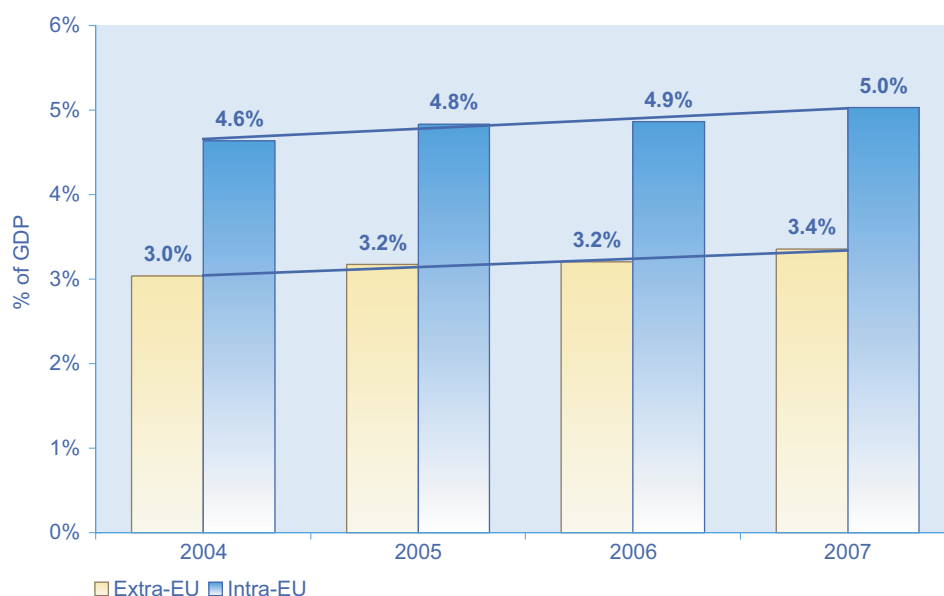
By contrast, **the Nordic countries and Austria, which joined the EU in 1995, are still increasing their imports from other EU countries.** Nevertheless, the highly dynamic trade performance of Belgium or Germany shows that the **Internal Market still offers the potential also for more trade integration for long-time members** – both with regard to small and already highly integrated economies (Belgium) and for big economies such as Germany.

## A.2. Trade in services

As services account for about 70% of gross value added and employment in the EU-27, the European economy may be considered integrated only if the Internal Market guarantees the freedom of establishment and the freedom to provide services. The Directive 2006/123/EC on Services, adopted in 2006, will have to be transposed by the Member States by the end of 2009. The main aim of the Services Directive is to remove barriers to the development of service activities between Member States, which will make it easier for businesses and consumers to provide and use cross-border services in the EU.

### How is trade in services performing?

**Figure 18: The scope for integration in services is far from exhausted**



*Intra-EU and extra-EU trade on services, 2004-2007 (imports as a percentage of GDP) – Source: “EUROSTAT and DG Internal Market calculations”.*

The graph shows the current state of trade integration in services inside the EU, comparing it with the developments in extra-EU services trade. This provides a baseline for future assessments of any impacts on intra-EU services trade of the implementation of the Directive on services.

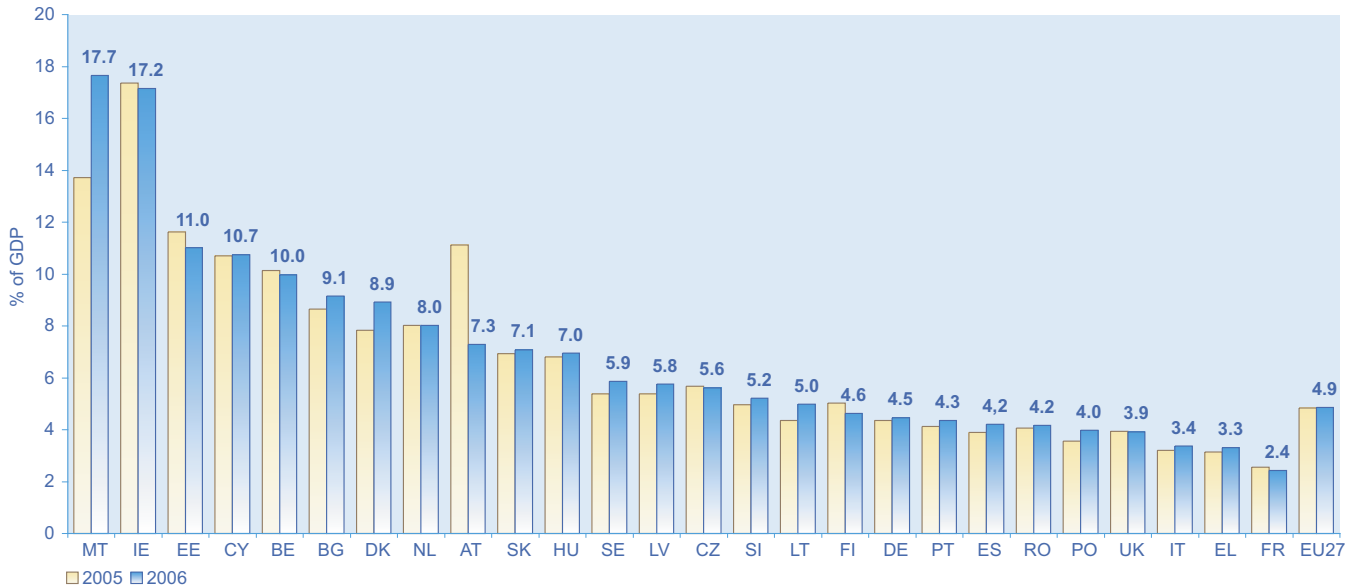
During the nineties, intra-EU trade in services had experienced only a slight growth – compared to the much more dynamic performance in the trade of goods – rising from 3.4% of GDP in 1995 to 4.2% in 2000. This trend has not markedly changed in the current decade, which suggests **considerable scope for further integration if and when the still existing barriers to cross-border services provision are reduced or eliminated.**

While intra-EU trade in goods accounted for 16.9% of GDP in 2007, intra-EU trade in services is limited to only 5%. Of course, this can be partially explained by the fact that, by nature, many services are difficult to provide far away from the customer (they are “non-tradable”). Therefore, even in a perfectly integrated market for services, the degree of cross-border trade would never be as high as in goods.

It is also interesting to note that trade in goods is much more concentrated inside the Internal Market than trade in services: while intra-EU trade in goods is more than twice as high as extra-EU trade, **intra-EU services trade is only 1.5 times higher than imports coming from the rest of the world.**

## Intra-EU trade in services: cross-country comparison

**Figure 19: The remaining barriers are preventing integration from deepening in spite of the significant enlargement effects**



Trade in services, intra-EU imports (imports as a percentage of GDP) – Source: “EUROSTAT and DG Internal Market calculations”.

This chart indicates, for each EU country, how open it is to the imports coming from other Member States. As usual, size is an important determinant of openness.

The countries where intra-EU trade in services has most increased over the 2004-2006 period are Denmark, Luxembourg<sup>9</sup> and the New Member Countries (NMC), most of them exhibiting high rates of increase in their import penetration indicator (with the exceptions of Bulgaria and Estonia, two countries already relatively quite open to imports of services). On the other side, Austria, Ireland and Belgium have experienced decreases over the period.

A more detailed analysis of **trade data between 2004 and 2007 reveals a significant enlargement effect**: while trade in services at the EU level as a whole increased by 15% during this period, the corresponding figure for the EU-12 (New Member States) alone is an increase of 50%. This implies that some of the new Member States seem to have exploited the potential delivered by the freedom to provide services.

## B. FOREIGN DIRECT INVESTMENT FLOWS

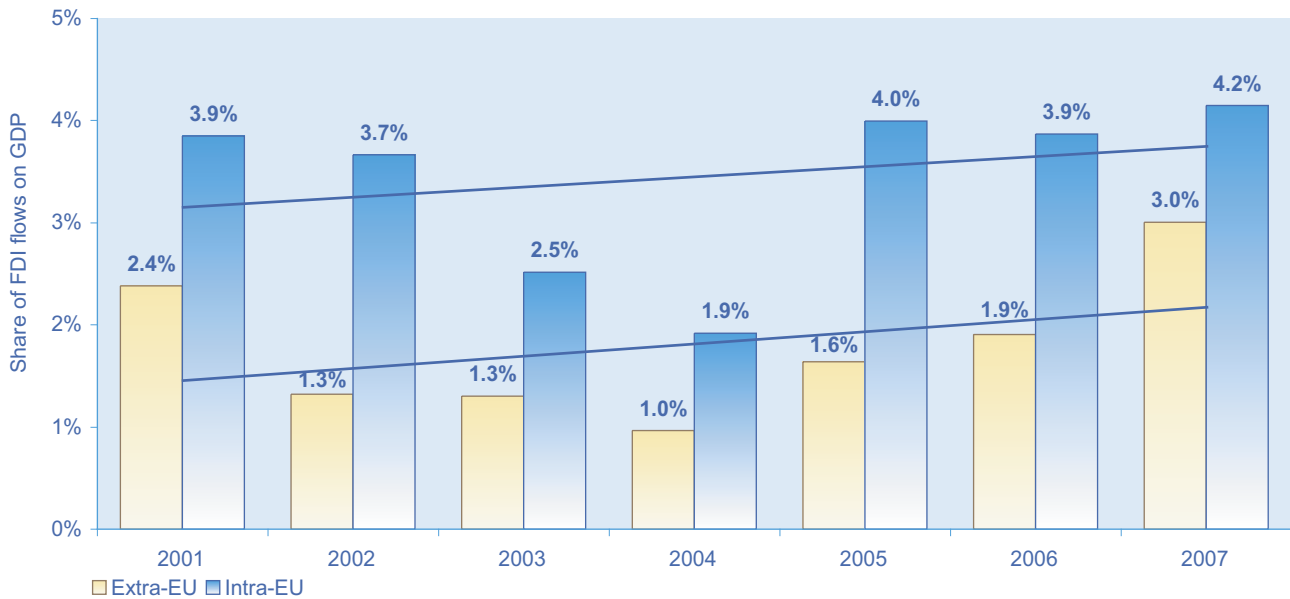
A foreign direct investment (FDI) is an international investment with the purpose of acquiring a lasting interest in an enterprise operating in another country. The freedom of establishment eases FDI among Member States and should normally lead to an increase in intra-EU flows. Therefore, developments in FDI are used as an indicator of the degree of achievement of market integration.

FDI plays a key role in the integration process inside the Internal Market as well as in the globalisation process of European firms. Supplementing trade, FDI creates more direct and deeper links between economies. FDI is a source of extra capital, encourages efficient production, stimulates technology transfer and fosters the exchange of managerial know-how. It is thus believed to improve the productivity of business and to make economies more competitive.

<sup>9</sup> Luxembourg is a special case regarding services trade: due to its small size and the huge relevance of its financial sector, its share of services flows in GDP is very high. Its inflows from other EU countries accounted for 48.3% of GDP in 2005, and 53.6 % in 2006.

## Foreign direct investment intensity

Figure 20: Since 2005 intra-EU Foreign Direct Investment flows have regained momentum



Intra-EU and extra-EU FDI intensity (share of FDI flows on GDP – Source: “EUROSTAT and DG Internal Market calculations”).

The share of foreign direct investment flows related to GDP shows the importance of FDI inflows and outflows in the economic activity of EU Member States<sup>10</sup>. When calculated in intra-EU terms, they are an indicator of the intensity of Internal Market integration.

**Since 2005 intra-EU FDI flows have regained momentum after several years of a clear slowdown**, not only in total values but also in their share of GDPs. As a result of this recent recovery, the FDI intensity shows an overall upward trend over the current decade.

**Intra-EU FDI flows represent a higher share of EU GDP than extra-EU flows**, accounting for 4.2% and 3% of GDP respectively (in 2007). This strength of intra-EU FDI flows reflects the intensity of Internal Market integration achieved during the past two decades.

That said, since 2004, the FDI flows of the EU with the rest of the world are not only increasing as well, they are indeed growing faster: their share in GDP has tripled – from 1 to 3% – whereas intra-EU shares in GDP have “only” doubled (from 1.9% in 2004 to 4.2% in 2007). This shows that **European integration is progressing in the context of a wider process of globalisation**.

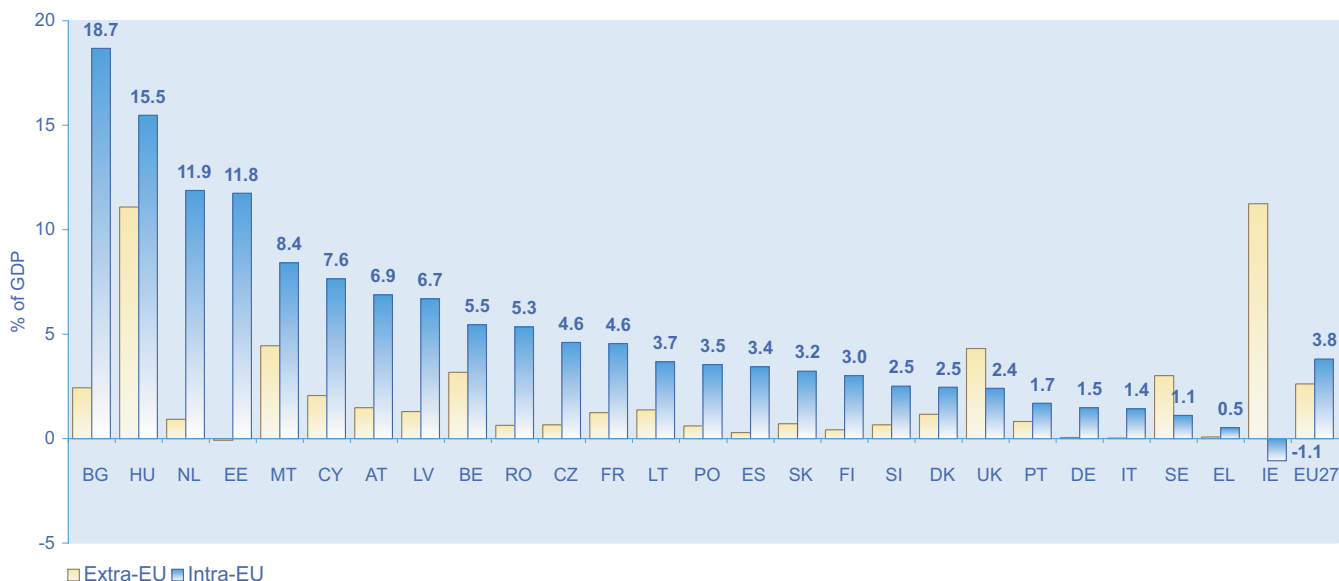
It is also worth highlighting that, over the current decade, **EU investments in non-EU countries largely exceed the FDI inflows received from the rest of the world**, with total outflows to non-EU countries accounting for almost 4% of EU GDP in 2007. These investments, however, originate from a limited number of countries, the big players being the UK, Luxembourg and Germany, followed by France, Spain and Austria.

Nevertheless, inflows to the EU are growing faster since 2005 than the outflows to the rest of the world, demonstrating that **the ability of the Internal Market to attract extra-EU FDI inflows seems to be improving in the most recent years**.

<sup>10</sup> The FDI intensity indicator is calculated by expressing the average of inward and outward FDI flows as a percentage of GDP.

## Foreign direct investment in flows: cross-country comparison (2007)

Figure 21: Most of the Internal Market FDI flows are drivers for cohesion and growth



Intra-EU and extra-EU FDI inflows (percentage of GDP) – Source: “EUROSTAT and DG Internal Market calculations”.

The share of inward flows in GDP indicates the degree of openness of a country to direct investments from abroad (both from EU Member States and third countries) as well as its attractiveness for the establishment of foreign firms. As investment is an important driver for the economic growth of a country, a high inward FDI/GDP ratio shows the contribution of foreign resources to the growth potential of a country.

The **inflows of FDI are especially important for the economies of most new Member States**, such as Bulgaria, Hungary or Estonia, **as well as for some small and open economies of older Member States** like the Benelux<sup>11</sup> and Austria. By contrast, in countries like Sweden or Greece these inflows are negligible.

As regards the **inflows coming from extra-EU countries, these are concentrated on very few countries**: in 2007, for Hungary and Ireland, the external FDI inflows have accounted for more than 11% of their GDP. For Malta, the UK, Belgium and Sweden, the FDI inflows from the extra-EU countries amounted to 3-4% of their respective GDPs. In the rest of the EU, the share of FDI inflows from the rest of the world has been negligible. Hence, **for the vast majority of EU Member States, the Internal Market is the main source of FDI inflows.**

This is especially true for the **new Member States**, where intense FDI inflows from other EU countries have contributed to restructuring and specialisation. These countries have been net recipients of intra-EU FDI flows, which shows that **intra-EU FDI flows play a role in terms of convergence**, where capital flows from the richer and more capital-abundant countries to those countries that are still catching up in economic terms (e.g. in per-capita income).

11 Luxembourg is a special case regarding FDI: due to its small size and the huge relevance of its financial sector, its share of FDI flows in GDP is always extremely high. Its inflows from other EU countries accounted for 101.3% of GDP, and the extra-EU inflows for 138.9%.



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