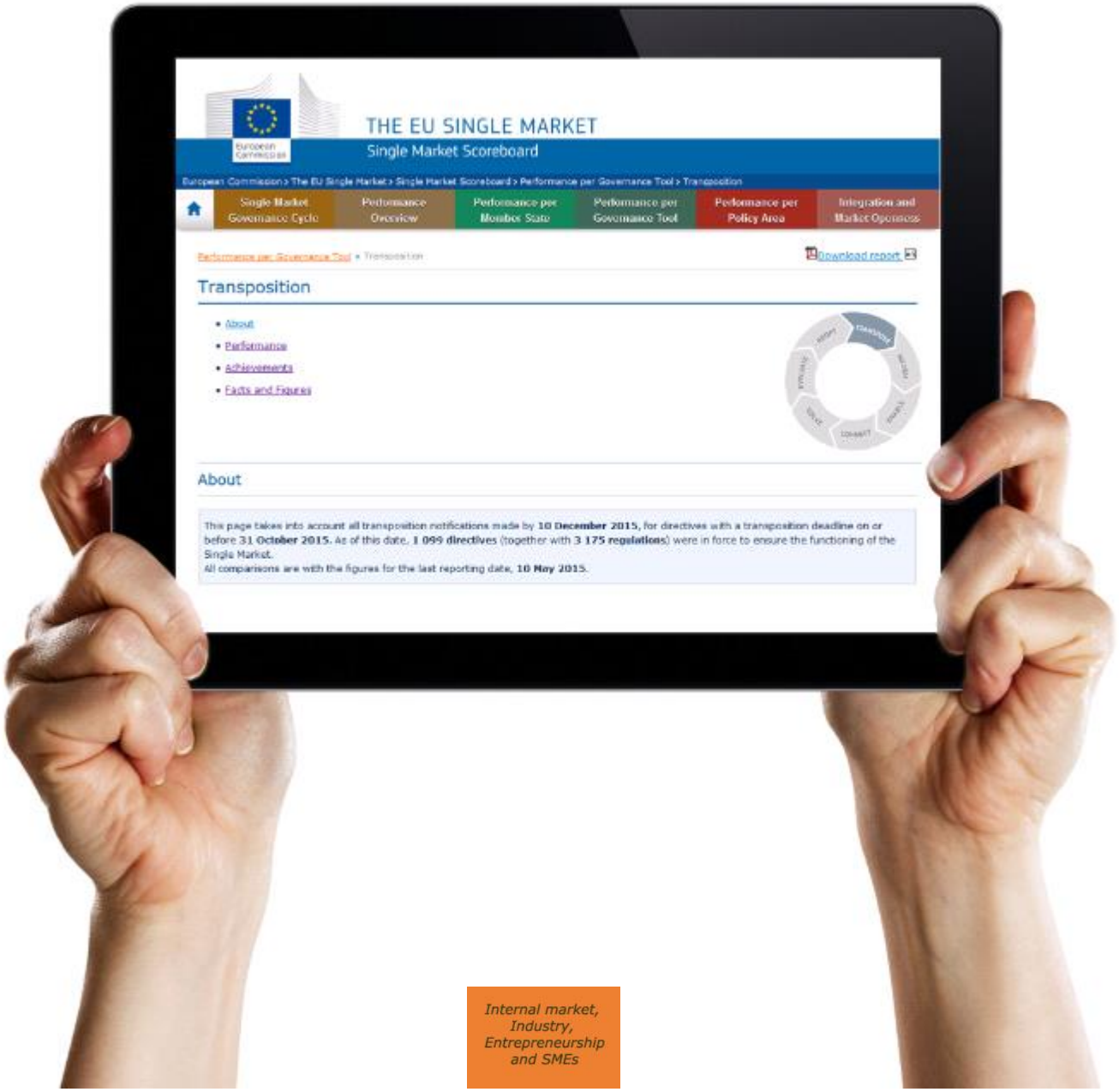
European Commission

Single Market Scoreboard

Performance per governance tool

Transposition

(Reporting period: 12/2015 - 12/2016)



Internal market, Industry, Entrepreneurship and SMEs

About

This report takes into account all transposition notifications made by **11 December 2016** for directives with a transposition deadline on or before **30 November 2016**. As of that date, **1 019 directives** (together with **3 619 regulations**) were in force to ensure the functioning of the single market.

All comparisons are with the figures for **10 December 2015**, the previous reporting date.

Single market directives can only achieve their intended effects if they are **completely and correctly transposed** into Member States' national law by the **deadline set out in these directives**.

Transposition monitoring helps to provide an overview of Member States' enforcement performance.

On the one hand, it shows:

- the **transposition deficit** (the gap between the number of single market directives adopted by the EU and those transposed in Member States)
- the **compliance deficit** (the percentage of those directives incorrectly transposed).

On the other hand:

- it **highlights** what Member States are doing to ensure that single market law is implemented properly
- it **encourages** them to improve their performance.

Single Market directives

Single Market directives include measures considered to have an impact on the functioning of the Single Market, as defined in Articles 26 and 114(1) TFEU. This includes the four freedoms (freedom of movement of persons, goods, services and capital across borders within the EU), and supporting policies that have a direct impact on the Single Market (such as taxation, employment, social policy, education, culture, public health, consumer protection, energy, transport, environment except nature protection, information society and media).

In this way **transposition monitoring** helps to make the **single market** work.

Performance

1. By indicator

[1] Transposition deficit (% of all directives not transposed)
[2] Progress over the last 6 months (change in the number of non-transposed directives)
[3] Long overdue directives (2 years or more)
[4] Total transposition delay (in months) for overdue directives
[5] Compliance deficit (% of all directives transposed incorrectly)

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	EU
[1]	2.3	1.7	1.5	0.6	1.1	1.4	1.9	0.8	2.4	1.1	2.2	0.9	2.7	1.7	1.3	2.2	0.8	0.4	0.9	1.6	1.5	3.4	2.0	1.7	0.7	2.1	1.4	0.8	1.5
[2]	+11	+10	+6	+3	+1	+6	+16	0	+20	0	+19	0	+20	+13	+8	+5	+4	+2	+2	+8	0	+32	+8	+4	+3	+16	+10	+2	+8
[3]	1	0	0	0	0	1	0	0	1	0	0	1	0	1	0	0	0	0	1	0	0	0	1	0	0	0	0	0	N/A
[4]	8.6	5.7	5.5	2.7	13.9	6.8	11.3	6.0	8.1	5.6	6.3	6.1	7.3	7.0	7.7	6.3	3.5	3.2	10.4	7.9	6.1	6.7	7.1	5.5	3.7	8.4	4.8	5.4	6.7
[5]	0.8	0.9	0.9	0.7	1.3	0.0	0.7	0.3	0.8	1.3	0.6	0.6	0.2	0.1	0.7	0.4	0.6	0.0	0.6	0.8	1.8	0.9	0.4	0.5	0.4	0.8	0.6	0.9	0.7

Indicator values

[1]	≤1 %	/	>1 %	→ Target established by the European Council, Brussels 8-9 March 2007
[2]	decrease	no change	increase	
[3]	0	/	>0	→ Target established by the European Council, Barcelona 15-16 March 2002
[4] & [5]	<average	average ±10%	>average	

2. Overall
(all 5 indicators combined)

Comments

- Regarding Member States' overall performance since December 2015: only 4 improved (**France, Poland, Slovenia** and **the UK**); 15 have worsened their

performance; the remaining 9 equalled their performance. This quite disappointing situation is explained below under "Focus on the short overdue directives (less than 1 year)".

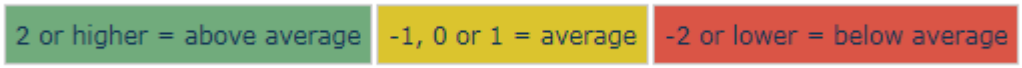
- Among the Member States that maintained their performance from December 2015, 5 are above EU average: **Denmark, Greece, Hungary, Malta** and **Slovakia**. On the other hand, in addition to Germany and Austria, 9 other Member States are below EU average: Belgium, Estonia, Ireland, Spain, Latvia, the Netherlands, Portugal, Romania and Finland.

Legend

A Member State's **performance across all 5 indicators** is calculated by scoring each indicator in chart 1 as follows:

RED = -1, YELLOW = 0 and GREEN = +1.

The colours on the map represent the **sum of these scores**:



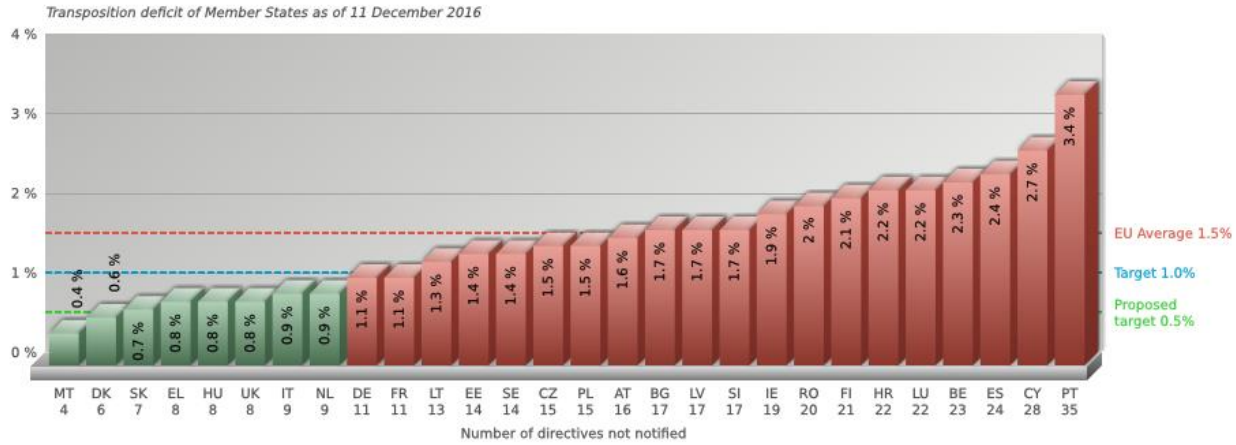
Indicator [1]: Transposition deficit

How is the deficit calculated?

To calculate the transposition deficit of each Member State, the Commission **includes**:

- Directives for which no transposition measures have been communicated;
- Directives considered as partially transposed by Member States after they notified some transposition measures;
- Directives (190 kB) considered as completely transposed by Member States, but for which the Commission has opened an infringement proceeding for non-communication and the Member State has not notified new transposition measures after the latest procedural step taken by the Commission.

The transposition deficit **does not include** directives considered as completely transposed by a Member State, but for which transposition measures are still under examination by the Commission services (i.e. no procedural step since the latest notification) - See below "*Directives under completeness check*".



Deficit doubling! Over the last year, most Member States have seen a clear deterioration in their results due to significant delays in transposing recent directives (see also the graph "Changes in the average transposition deficit" under "Achievements" below).

20 Member States now exceed the 1% target.

Comments

- **Only 8 Member States managed to stay under the 1% threshold**: Malta, Denmark, Slovakia, Greece, Hungary, the UK, Italy and the Netherlands. However, all of them increased their previous deficit (ranging from 0.1 percentage point for Greece and Italy to 0.4 for Hungary).
- **All the Member States increased their transposition deficit**. For some of them, the increase is considerable: Portugal (+3.1 percentage points), Spain and Cyprus (+2.0), Croatia (+1.9), Ireland and Finland (+1.6), Latvia (+1.3), Belgium (+1.2), Bulgaria (+1.1) and Sweden (+1.0).
- 18 months after being in last place, **Italy** managed to stay under the 1% threshold by, among other things, successfully monitoring the significant number of new directives to be transposed.
- **All Member States have achieved scores below their best ever result**. 3 of them have even recorded their worst score: Bulgaria (1.7% - best: 0.0%), Croatia (2.2% - best: 0.1%) and Romania (2.0% - best: 0.3%).
- **Only 1 Member State** (down from 13), Malta, **still met the 0.5% target** proposed by the Commission in the 2011 Single Market Act.

Focus on the short overdue directives (less than 1 year)

After the European Council set a 'zero tolerance' target in 2002 for delays of 2 years or more in transposing directives, the Scoreboard used to report on the number of long overdue directives in each Member State. It appears now that **the number of directives with recent transposition dates can also have a negative impact** on the overall Member States' performance in transposing directives.

From the successive Scoreboards, we know that Member States have difficulties in transposing directives within the agreed deadline. The average delay is between 6 and 10

months. This last year the Member States had to transpose 66 new directives which represents a large increase in the workload they had compared with the preparation of Scoreboard 2016 (47 directives). This situation has caused them great difficulties, which are reflected in the results:

- The EU average transposition deficit for the 66 new directives is **21%**. 9 Member States have now transposed 85% or more of those directives: Malta (62/66), Denmark (60/66), the Netherlands, Slovakia and the UK (59/66), Germany, Greece, Italy and Hungary (58/66). The other end of the ranking includes Portugal (33/66 – 50%) and Cyprus (40/66 – 61%). In addition, for those 66 directives due between 1.12.2015 and 30.11.2016, **the completeness rate is 27%**: 48 out of 66 directives have not been fully transposed by at least 1 Member State which means that none of them can achieve their intended effects in the single market.

- If we only include the 9 directives with the most recent transposition dates (i.e. dates falling within the 3 months before the cut-off date for the calculation of the Member States' performance), then the transposition deficit comes to **53%**, as shown in the table below. The transposition rate depends on the Member State, and equals between 100% (Germany) and 11% (Cyprus). The completeness rate for this group of directives is **0%!**

Directive No.	Transposition date	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Total
2014/89/EU	18/09/2016																													6
2014/90/EU	18/09/2016																													12
2014/92/EU	18/09/2016																													16
2016/970/EU	21/09/2016																													3
2015/565/EU	29/10/2016																													23
2015/566/EU	29/10/2016																													21
2014/94/EU	18/11/2016																													22
2016/774/EU	19/11/2016																													13
2015/720/EU	27/11/2016																													18
Total of missing notifications:		4	6	6	5	0	5	4	3	6	5	7	6	8	7	2	6	4	3	2	4	5	7	6	6	4	4	5	4	134

Notified

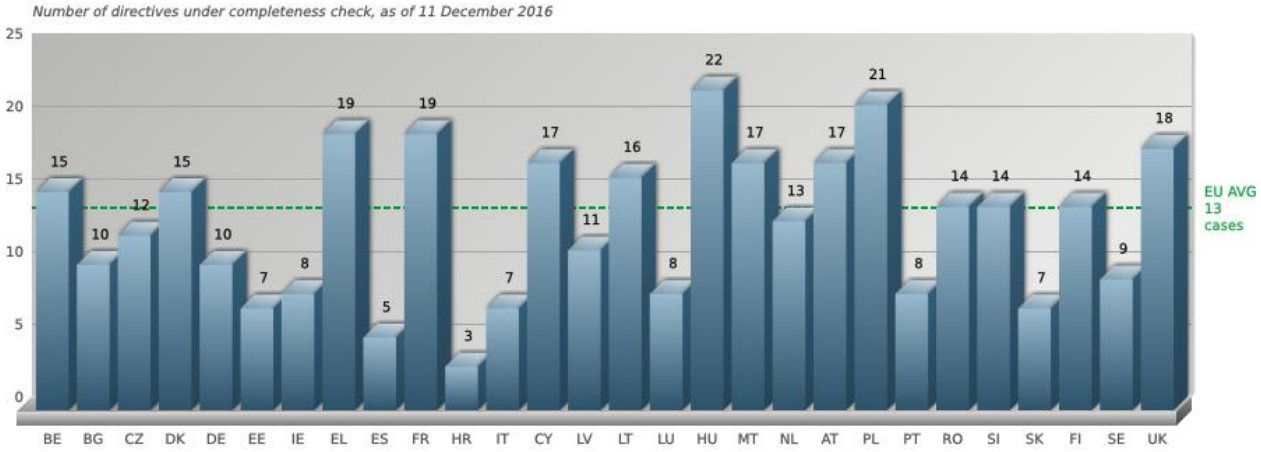
Not fully notified

- This shows that most of the Member States should **better anticipate the transposition and notification process** of the directives they have to incorporate into national law. They should take full advantage of the supporting actions (such as for example transposition workshops) carried out by the Commission to facilitate transposition before the expiry of the transposition deadline. As guardian of the Treaties, the Commission launches infringement proceedings for non-communication within the 2 months exceeding the transposition date. Too many infringement proceedings are launched for delays due to simple logistical reasons, namely other than the complexity and/or sensitivity of the directives and the consequent length of the adoption process by the EU institutions.

- Short transposition deadlines (time between the adoption of the directive and its transposition date) is often indicated as a reason for delay. Nevertheless, if we have a look at the deadlines of the 66 directives due for the current Scoreboard, there is an **average duration of 19 months**: 17% must be transposed in less than a year and 41% between 1 and 2 years; 41% have a deadline of around 2 years (25/26 months) and 1 directive gives the Member States 3 years to adapt their national legislation. Quite

logically, the directives with the longest deadlines are those from the European Parliament and the Council while those with the shortest deadlines are Commission implementation and amending directives.

Directives under completeness check



A large number of notifications are being examined by the Commission services.

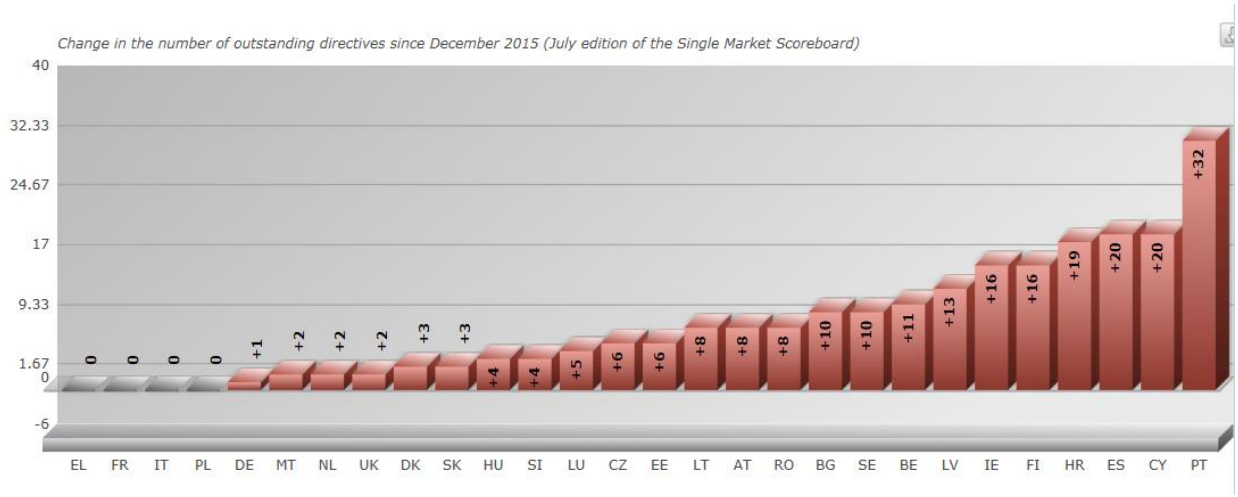
Comments

- This graph shows the number of directives not included in each Member State's transposition deficit (see 'How is the deficit calculated?' above). For these directives, the Commission is examining whether the notification process is complete, leading either to a formal step in the infringement proceedings or its closure. If the Commission decides to continue with an infringement case or launch infringement proceedings, the directives concerned will be included in the transposition deficit in the next report.

- The number of notifications whose completeness is 'under examination' varies between the Member States, i.e. 3 for Croatia but 22 for Hungary. In December 2015 the maximum was 14 notifications (for Cyprus) and the EU average stood at 8. Also in this context, the large number of recent directives played a role. They resulted in a significant number of notifications reaching the Commission in a short time, with most of them being examined when the cut-off date occurred.

- This also explains the difference between the number of infringement cases pending for non-communication of national transposition measures (736 as at 1 December 2016) and the number of missing complete notifications (433). For 41% of the cases (+ a number of notifications made before the launching of an infringement procedure) Commission services are examining the notifications, or where the assessment has been done, have asked for closure or continuation of the case.

Indicator [2]: Change over the last year



All Member States - except Greece, France, Italy and Poland - **increased their backlog since December 2015.**

Comments

- These results show that most Member States have **difficulties in meeting the agreed transposition deadlines**. The 48 directives that have been problematic to transpose had reasonable deadlines. The Member States had on average 21 months between the adoption date and the day fixed for notifying the Commission: less than 1 year for 6 of them, between 1 and 2 years for 16, around 2 years (25/26 months) for 25 and 3 years for the last one on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (Directive 2013/35/EU).

- From this perspective only 4 Member States improved their situation: **Greece, France, Italy** and **Poland** (see the figure above). Even if these Member States did not decrease their backlog, this stable situation should be particularly emphasised considering the large number of directives they had to transpose.

- Member States such as Belgium, Latvia, Ireland, Finland, Croatia, Spain, Cyprus and Portugal should think about how they could shorten the process of directives' implementation (drafting, adoption, publication and notification of the transposition measures). The *Commission Recommendation of 12 July 2004 on the transposition into national law of Directives affecting the internal market* (2005/309/EC, OJ L 98, 16.4.2005) already pointed out the need to ensure that preparations for transposition take place at an early stage and gave some indications on how to achieve this, which are still relevant

Transposition is a permanent process and any let-up would result in a quick rise in the deficit.

Indicator [3]: Long overdue directives (2 years or more)

Directives with transposition deadlines before December 2014

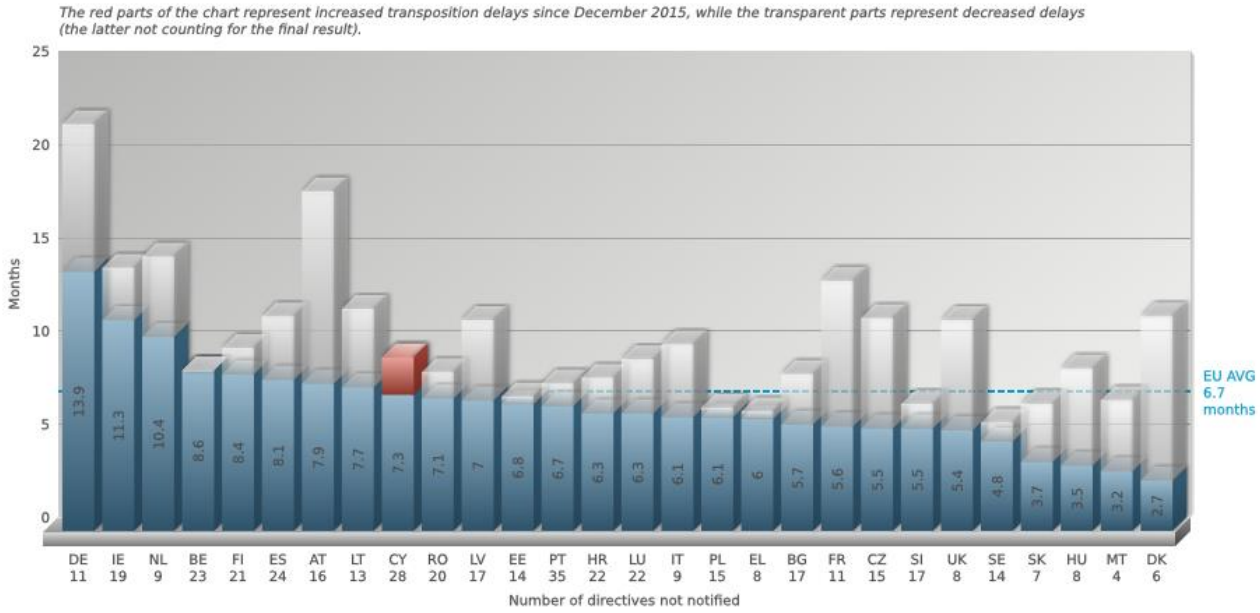
Number	Title	Not fully transposed by	Transposition date
2012/52/EU	Measures to facilitate the recognition of medical prescriptions issued in another Member State	NL	25/10/2013
2012/19/EU	Waste electrical and electronic equipment (WEEE)	BE	14/02/2014
2012/27/EU	Energy efficiency	EE, LV	05/06/2014
2012/39/EU	Technical requirements for the testing of human tissues and cells	IT	17/06/2014
98/26/EC	Settlement finality in payment and securities settlement systems as amended by regulation No 648/2012	ES, RO	17/08/2014

Fewer directives and Member States are concerned 7 Member States have long overdue directives (down from 10 six months ago) and 5 long overdue directives are not fully notified (down from 10).

Comments

- Although there has been good progress, the number of these long overdue directives remains too high in view of the **zero tolerance' target** set by the European Council in 2002 for delays of 2 years or more in transposing directives. Particular attention should be paid to such directives.
- Compared to 1 year ago, **Germany, Ireland, France, Austria, Poland, Slovenia, Finland** and **the UK** each managed to transpose their long overdue directive(s). By contrast, 5 Member States (**Belgium, Estonia, Spain, Italy** and **Latvia**) moved in the opposite direction: each now has 1 long overdue directive. **Romania** remained unchanged while **the Netherlands** removed 1 directive from its list.
- By December 2016, **10 new long overdue directives** (184 kB) risk being added to the backlog of some Member States.

Indicator [4]: Total transposition delays



The average transposition delay significantly decreased. Outstanding directives are now late on average by 6.7 months on average (down from 10.1 one year ago).

Comments

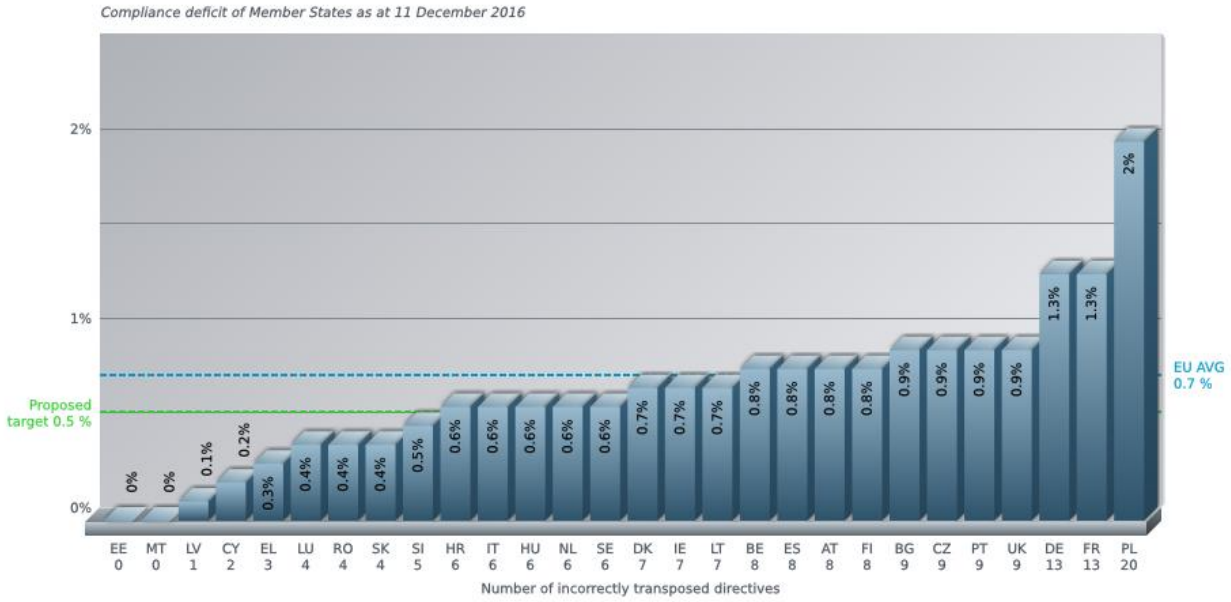
- 26 Member States decreased their average delay (up from 5 last year) while only 1 increased it (down from 22). **Austria** achieved the most impressive reduction (from 18.2 to 7.9 months), followed by **Denmark** (from 11.5 to 2.7 months).

- In general, Member States showing an increasing average delay have transposed directives with quite recent transposition dates and failed to transpose several older directives. On the other hand, the backlog of Member States showing a decreasing average delay includes several directives with recent transposition date. This is particularly true this time: the significant number of recent directives counts heavily in the calculation and explains this overall improvement.

- **Germany, Ireland, France, Austria, Poland, Slovenia, Finland** and **the UK** have now transposed all their long overdue directives, which is also reflected in the reduction of their average delay. However, in **Belgium, Estonia, Spain, Italy** and **Latvia**, delays are getting longer because all these Member States added 1 long overdue directive to their backlog. With the exception of Latvia which counts 16 recent directives out of its 17 overdue directives, all these Member States either increased their delay or only decreased it slightly.

- Without adding a new long overdue directive to their backlog, **Cyprus** sees its delay increase due to the significant increase of its transposition deficit (from 0.7% to 2.7%).

Indicator [5]: Compliance deficit (incorrectly transposed directives)



The level of average compliance deficit stands at 0.7% since November 2013.

Comments

- 13 Member States improved their previous score. Of the 13, 6 reached or equaled their best ever result: **Estonia** (0.2% to 0.0%), **Greece** (0.5% to 0.3%), **Italy** (0.8% to 0.6%), **Latvia** (0.2% to 0.1%), **Malta** (0.1% to 0.0%) and **Slovakia** (0.7% to 0.4%).

- There are no impressive changes this time, from -0.3 percentage point for **Slovakia** (the best performer) to +0.5 point for **France**. For the 5th consecutive time, **Poland** shows the **highest deficit** (more than 1%) but is no longer alone in this group of Member States whose deficit is over 1%, having been joined by France and Germany.

- 9 Member States (down from 11) **now have a compliance deficit of 0.5% or less**. Croatia, Italy, Hungary, the Netherlands and Sweden are also very close to this target, which was proposed in the 2011 Single Market Act.

- Reaching a perfect score for the 4th time, **Malta** deserves special mention. This is also the case for **Estonia** that has no more directives presumably wrongly transposed.

Compliance deficit

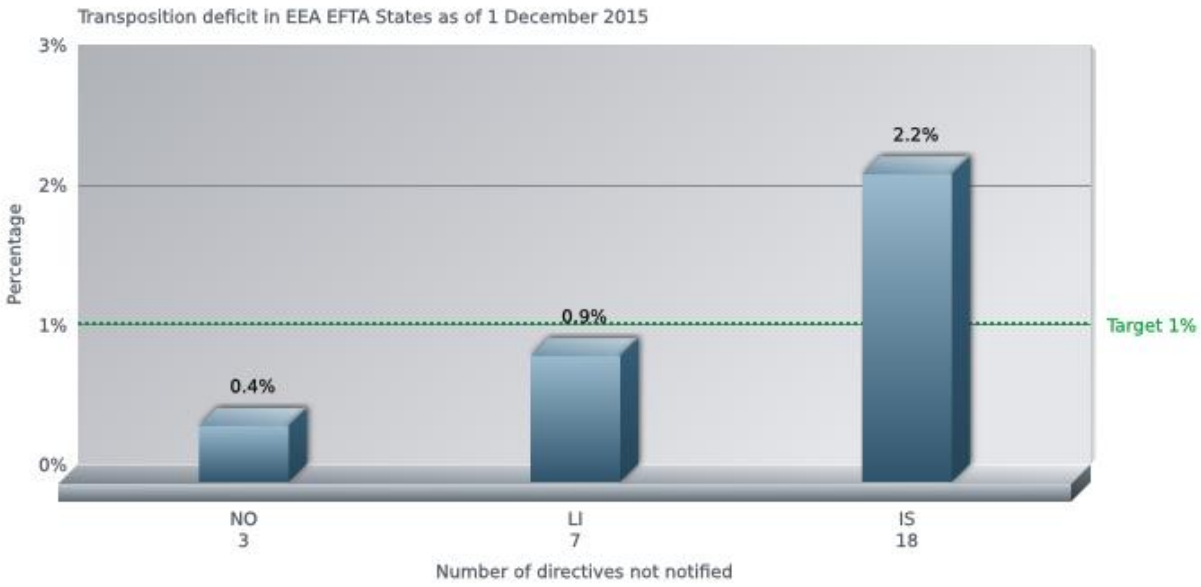
This measures the number of directives transposed where infringement proceedings **for non-conformity** have been launched by the Commission, as a percentage of the number of single market directives notified to the Commission as either 'transposed' or 'not requiring any further implementation measures'.
However, only the Court of Justice can rule definitively that a directive has not been transposed correctly. On the other side, the compliance assessment of a number of notifications is still on-going by the Commission. Both facts should be kept in mind when interpreting the statistics on compliance deficit.

Iceland, Liechtenstein and Norway

These countries are also subject to single market rules under the EEA Agreement. They are monitored by the EFTA Surveillance Authority.

However, there is a time lag between when a legal act is adopted or repealed in the EU and when it is added to or removed from the EEA Agreement. This means that the body of EU law that applies in Iceland, Liechtenstein and Norway may differ from what applies in the EU. As of **1 December 2016**, **823 directives** (together with **2 526 regulations)** were in force to ensure the functioning of the Single Market in the EEA. This should be borne in mind when comparing this Scoreboard and the EEA Scoreboard.

Transposition deficit



Average deficit (all 3 countries): 1.2% (down from 1.0% in the last period)

- Norway: **0.4%** (up from 0%) - an increase of 0.4 percentage point since the perfect score achieved in the previous two periods.
- Liechtenstein: **0.9%** (down from 1.2%) – a decrease since the last Scoreboard, putting Liechtenstein just below the 1% transposition deficit target.
- Iceland: **2.2%** (up from 1.8%) – an increase of 0.4 percentage point and still a very high deficit.

Total late directives: 28 (down from 27 in the previous period)

- Norway: **3** (up from 0)
- Liechtenstein: **7** (down from 11)
- Iceland: **18** (up from 16)

Average delay: 16.9 months (down from 13.3 months in the last period)

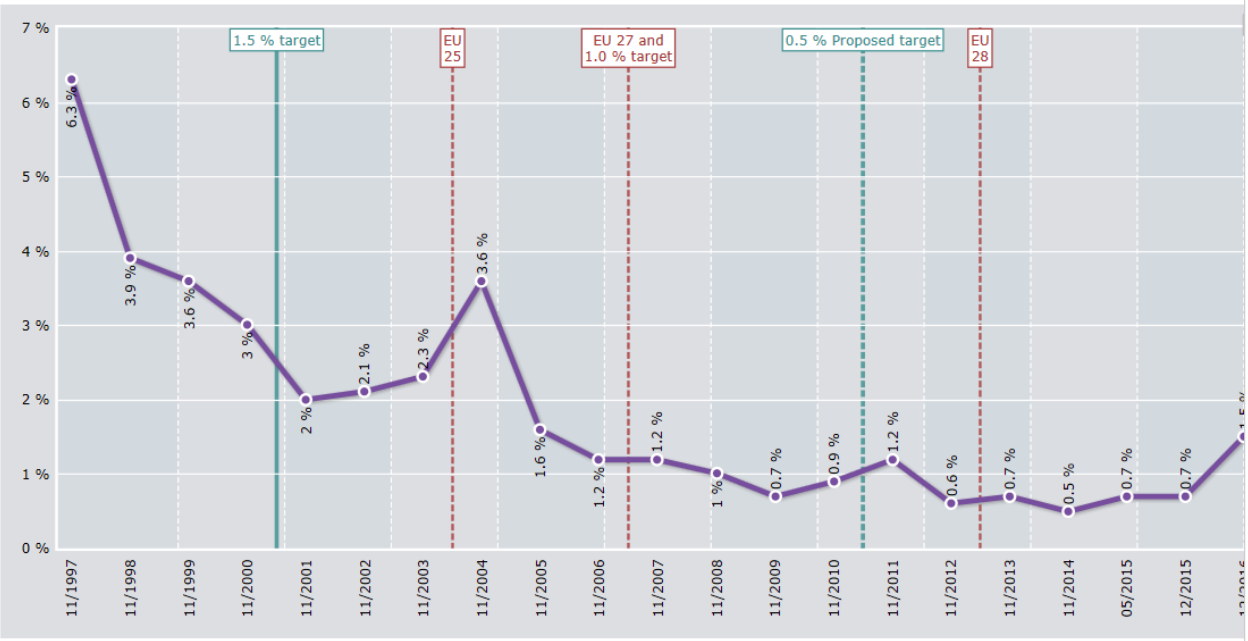
- Norway: **4.5** months (up from 0)
- Liechtenstein: **16.8** months (down from 18)
- Iceland: **29.5** months (up from 22)

Comments

- Both Norway and Liechtenstein succeeded in meeting the 1% target.
- "Zero tolerance target": in total the EEA EFTA countries have 7 directives that are outstanding for 2 years or more (different directives for Iceland: 4 and Liechtenstein: 3).
- Directives outstanding from previous period: Iceland: 6, Liechtenstein: 5; Norway: 0.
- Average delay decreased by 3.6 months, due to the number of directives outstanding for 2 years or more being increased by 2.

Achievements

Changes in the average transposition deficit



- The EU average deficit has been **decreasing steadily for the last 19 years** (since 1997) and was more or less stable since November 2012 (between 0.5% and 0.7%). This time the situation has changed, with a doubled deficit (from 0.7% to 1.5%) that stands at the May 2007 level. This increase is exceptional due to the large number of directives to be transposed in the months preceding the cut-off date for calculating the Member States' performance. We can reasonably expect that the transposition rate will return to normal shortly.

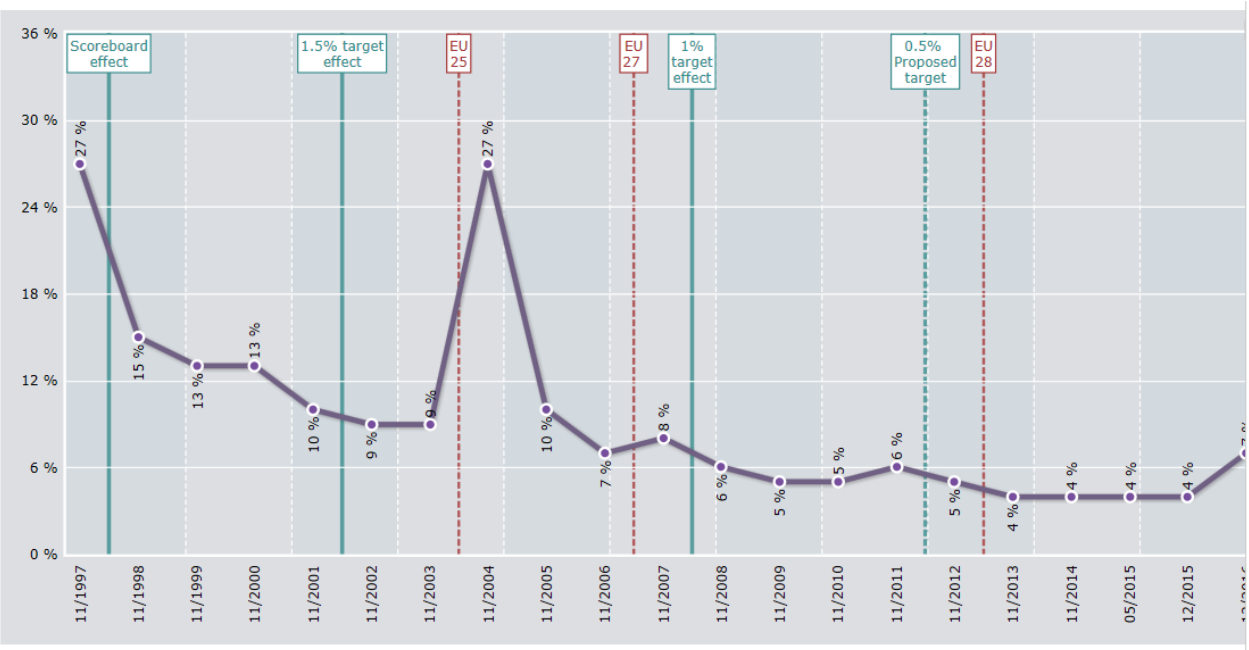
- The box below highlights possible reasons for why the transposition deficit has constantly decreased since 1997. Despite the current hitch, this list is still relevant. Nevertheless, it is advisable that Member States use the commitment, procedures and coordination quoted in point 1 to **ensure that the transposition occurs within the agreed deadlines**.

Possible reasons for this improved performance

1. Over the years, the Commission has observed a **strong political commitment** to transposition in most Member States as well as the introduction of **effective administrative procedures** and **improved coordination**.
2. **Targets set by the European Council:** 1.5% and 1% (*the green lines in the graph above*) – half of the Member States have now reached the 0.5% average transposition deficit proposed in the 2011 Single Market Act. This shows that the Commission's proposal was realistic.
3. **Financial sanctions** – Under the Lisbon treaty, financial sanctions are **already possible** at the point when a Member State is first referred to the Court of Justice for failing to notify transposition of a directive adopted under a legislative procedure.

Facts and Figures

Incompleteness rate

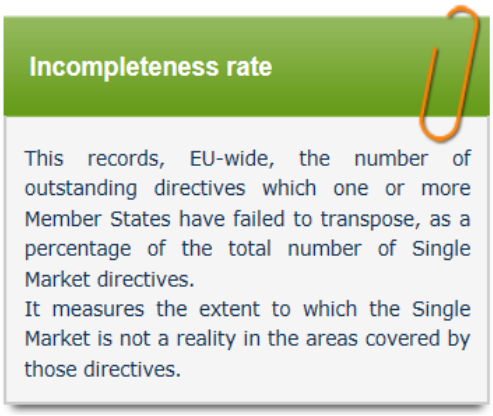


- Thanks to a constantly good transposition performance by the Member States, the incompleteness rate remained at its **lowest level (4%)** for 3 years. Because of the delay in transposing the package of 66 directives due in the year before the cut-off date for the current screening, the rate jumped to 7%

- In absolute terms, 67 directives were not transposed on time in at least 1 Member State (up from 43 directives last time). This means that for those sectors, the single market is not a reality.

Main problem areas (and corresponding incompleteness rate)

- **Public procurement:** 3 non-transposed directives out of 10 in force (30%)
- **Capital goods:** 11 non-transposed directives out of 48 in force (23%)
- **Employment and social policy**: 11 out of 81 (14%)
- **Financial services:** 6 out of 59 (10%)
- **Environment:** 11 out of 119 (9%)



Cases by sector

This table shows, for each Member State, the total number of directives not fully notified, broken down by sector as at 11 December 2016. Sectors fully transposed are included in 'other fields'. The highlighted figures show the sector(s) with the highest number of overdue directives in each Member State.

	Capital goods	Consumers	Pharmaceuticals and chemicals	Energy	Environment	Financial information and company law	Financial services	Free movement of persons	Information society services	Intellectual property and copyright	Public procurement	Special freedom of movement arrangements	Social Policy	Taxation	Telecommunication services	Transport	Veterinary and plant-health legislation	Others	TOTAL
PT	10			1	2		5	2		1	3	1	5		1	2	2		35
CY	6			1	4	1	2	2		1	2	1	6			1		1	28
ES		1			3		6	2		1	3	2	5			1			24
BE					5	1	3	2	1	1	3		3	1	1	1		1	23
HR		1		1	5	1	2	1		1	3	1	5		1				22
LU					2		3	1		1	3	1	7		1	2		1	22
FI	9			1	1		3			1	3	1	2						21
RO				1	3	1	5	2		1		1	4			1		1	20
IE	9			1		1	1	1			1		2			1	1	1	19
BG				1	5		1	2		1	1		4		1	1			17
LV				1	1	1	3	1		1	3	1	2		1	1		1	17
SI				1	2	1	2	1			1		5		1	3			17
AT	2			1	4			1			3		3			2			16
CZ	1			1	2		1	1		1		1	5		1	1			15
PL				1	4	1	2	1		1		1	2	1		1			15
EE				1	1	1	2				3		4		1			1	14
SE				1	1		3	1			3		4			1			14
LT				1		1	2			1	3	1	2		1	1			13
DE	2		1		3			1				2				2			11
FR	1			1	1		2	1		1			2	1	1				11
IT	1			1	2		1			1			2			1			9
NL	2			1	1	1	2						1		1				9
EL	1				2	1	1	1		1					1				8
HU	3		0	1	1							1	2						8
UK	2			1								1	3					1	8
SK					2			1					2		1	1			7
DK				1	2								2			1			6
MT				1	2			1											4
Σ	49	2	1	22	61	12	52	26	1	16	38	16	84	3	14	25	3	8	433

Directives subject to notification by next Scoreboard

New directives will soon be added to today's transposition deficit – new directives (86 kB) to be transposed by **30 November 2017**.