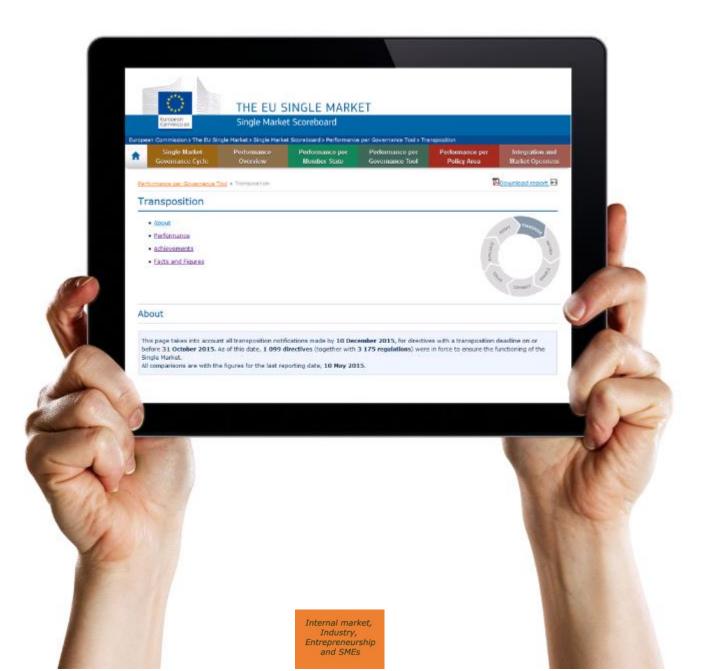


Single Market Scoreboard

Performance per governance tool

Transposition

(Reporting period: 12/2016 - 12/2017)



About

This report takes into account all transposition notifications made by **11 December 2017** for directives with a transposition deadline on or before **30 November 2017**. As of that date, **1038 directives** (together with **4100 regulations**) were in force to ensure the functioning of the Single Market.

All comparisons are with the figures for **11 December 2016**, the previous reporting date.

<u>Single Market directives</u> 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 **conformity deficit** (the percentage of those directives incorrectly transposed).

On the other hand:

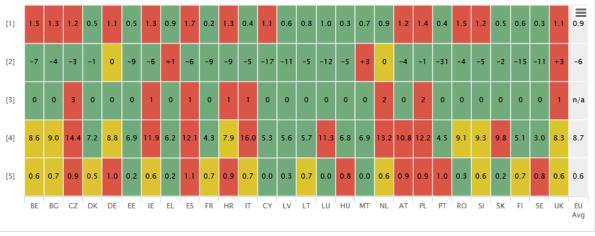
- it **highlights** what Member States are doing to ensure that Single Market law is implemented properly
- it **encourages** them to improve their performance.

In this way transposition monitoring helps to make the Single Market work.

Single Market directives

Single Market directives are legal measures considered to have an impact on the functioning of the internal market, as defined in Articles 26 and 114(1) of the Treaty on the Functioning of the European Union (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.

Performance



1. By indicator

Transposition deficit (% of all directives not transposed)
Change over the last 6 months (change in the number of non-transposed directives)
Long overdue directives (2 years or more)
Total transposition delay (in months) for overdue directives
Conformity deficit (% of all directives transposed incorrectly)

Indicator values

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





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**:

2 or higher = above average	-1, 0 or 1 = average	-2 or lower = below average
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Comments

• 14 Member States have improved their overall performance since December 2016 (in particular **Estonia, Latvia, Lithuania, Portugal, Romania** and **Finland**, which went directly from the red zone to the green) and only 4 Member States worsened it (the Czech Republic, Croatia, Poland and the United Kingdom); the remaining 10 Member States have equalled their previous performance. This is a significant improvement. In one year, the ratio of good to bad performers was reversed.

- Among the Member States that maintained their performance stable from December 2016, 5 are above EU average (**Denmark, Greece, Hungary, Malta** and **Slovakia**) and 2 are below it (Spain and Ireland).
- From 12 red cards in December 2016 to 6 today, the improvement is significant and shows the Member States' commitment in ensuring the proper functioning of the Single Market.
- It should be noted that the Communication <u>EU Law: Better Results through Better</u> <u>Application</u> of December 2016 attaches great importance in the timely completion of the "compliance assessment", i.e. the effective assessment of completeness and conformity of national measures implementing EU law. The result of careful monitoring by the Commission should be more clearly reflected in the upcoming Scoreboards.

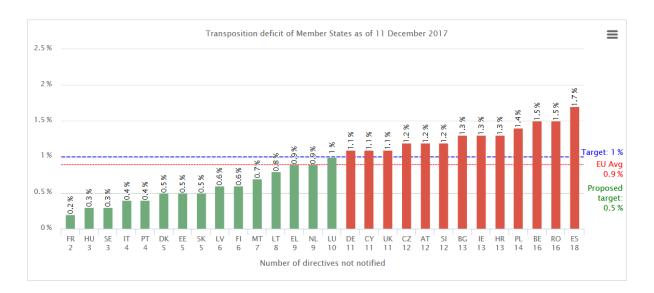
Indicator [1]: Transposition deficit

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
- <u>directives</u> (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 that are 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 back on track! The huge deterioration observed over the past year begins to be brought down (see also the graph "Changes in the average transposition deficit" under "Achievements" below).

13 Member States still exceed the 1 % target (down from 20 one year ago).

- In addition to the group of 7 Member States that managed to stay below the 1 % threshold in December 2016, Estonia, France, Latvia, Lithuania, Luxembourg, Portugal, Finland and Sweden went back below the threshold. Most of them (12 out of 15) have decreased their previous deficit (ranging from 0.1 percentage point for Denmark to 1.6 for Cyprus and even 3.0 for Portugal).
- Despite the general progress, **3 Member States have increased their transposition deficit**: Greece, Malta and the United Kingdom. This increase is moderate: 0.1 percentage point for Greece and 0.3 percentage point for Malta and the United Kingdom.
- The 5 Member States that have the lowest deficit (less than 0.5 %) are usually not in the top of the ranking. This achievement reflects their good monitoring of the significant number of new directives to be transposed in 2016 that made them gain several places in the ranking: Portugal (+23), Sweden (+10), France (+9), Hungary and Italy (+3).
- This time, **4 Member States have achieved their best ever result: France, Italy, Hungary and Portugal**. With the lowest transposition deficit (0.2 %) among all Member States, France is for the first time at the top of the ranking. Portugal is in the fifth position one year after being in last place in the ranking. This significant improvement is due to the involvement of the Portuguese authorities who made it a top priority to address the transposition of EU directives in national law on a regular basis.
- 8 Member States (up from 1 in 2016) now met the 0.5 % target proposed by the Commission in the 2011 <u>Single Market Act</u>. There were 13 Member States in November 2014.

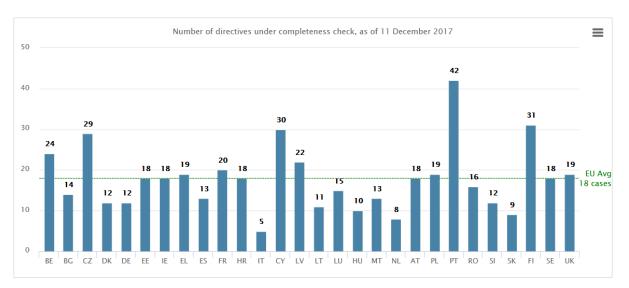
Focus on the short overdue directives

After the European Council set a "zero tolerance" target in 2002 for delays of two years or more in transposing directives, the Scoreboard is namely used to report on the number of long overdue directives in each Member State. Nevertheless, from the successive Scoreboards, it appears that Member States have **difficulties in transposing directives within the agreed deadline**. The average delay is usually between 6 and 10 months.

In 2016 (between 1.11.2015 and 30.11.2016) the Member States had to transpose 66 new directives which represent a large increase in their workload compared with 2015 (47 directives) and 2017 (39 directives). This situation has caused them great difficulties and made it clear that **the number of directives with recent transposition dates can also have a negative impact** on the overall Member States' performance in transposing directives.

- The EU average transposition deficit for the 66 directives due in 2016 is now 3 %. This is well above the average deficit for all directives (0.9 %) but still better than the result of December 2016 (21 %). However, the completeness rate is still very low, 64 % (up from 27 % one year ago): 24 out of the 66 directives have not been fully transposed by at least one Member State, which means that none of these 24 directives can achieve their intended effects in the Single Market.
- If we only consider the 14 directives with the most recent transposition dates (i.e. dates falling within the last six months, 1.6.2017–30.11.2017), then the transposition deficit comes to 29 %. The transposition rate depends on the Member State. Only Hungary has transposed the 14 directives (100 %) in time. Ten Member States have transposed at least 75 % of those directives (between 11 and 13); for Belgium, Spain and Croatia, the transposition rate is 50 % (7/14). The completeness rate for this group of directives is 14 %: only 2 directives out of 14 are transposed by all Member States.
- This shows that most of the Member States **should better anticipate the transposition and notification process** of the directives that 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 two months after the transposition date. Too many infringement proceedings are launched with delays because of simple logistical reasons, namely reasons 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 the date agreed for the notification of national transposition measures to the Commission) is often indicated as a reason for delay. Nevertheless, if we have a look at the deadlines of the 14 directives due in the last six months, there is an **average transposition deadline of 19.1 months**: 3 directives had to be transposed in less than one year and 4 directives between one and two years; 5 directives had a deadline of around two years and 2 directives gave the Member States more than three years (37 months) to adapt their national legislation.
- Member States such as Belgium, Bulgaria, Greece, Spain, Croatia, Cyprus, Lithuania, Luxembourg, the Netherlands, Poland, Romania and Finland, which have all transposed fewer than two thirds of the directives with a recent transposition date,

should think about **how they could further shorten the process of directives' implementation** (drafting, adoption, publication and notification of the transposition measures). The <u>2004 Recommendation on the transposition</u> 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. The recent significant improvement of Portugal's performance and the way in which the Portuguese authorities have worked to achieve this result show that these recommendations are still relevant.

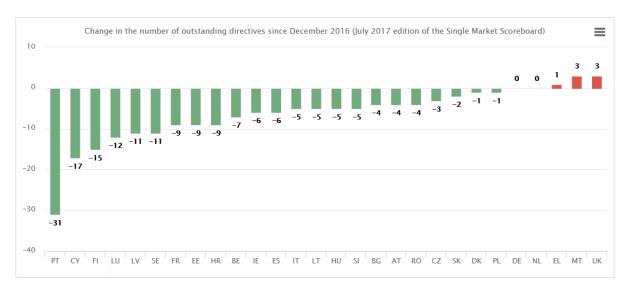


Directives under completeness check

A large number of notifications of national measures transposing EU directives is being examined by the Commission services.

- 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 where the completeness is "under examination" varies between the Member States, i.e. 5 for Italy but 42 for Portugal. In December 2016, the maximum was 22 notifications (for Hungary) and the EU average stood at 13. Also in this context, the large number of directives to be transposed in 2016 has had an impact on 2017 data. Indeed, because many of the awaited notifications were delayed, the Commission is still receiving today a large number of the notifications that were due in 2016, in addition to the notifications for 2017, with lot of them still being examined at the cut-off date of preparation of the current Scoreboard. This is in particular the case for Portugal, Finland and Cyprus that have all three of them strongly reduced their transposition deficit.
- The Commission is therefore examining the completeness of a significant number of notifications or, where the assessment has been done, have asked for closure or continuation of the case. This also explains the difference between the number of

infringement cases pending for non-communication of national transposition measures (698 as at 1 December 2017) and the number of missing complete notifications (258).



Indicator [2]: Change over the last year

After a year of general increase, 80 % of the Member States have decreased their backlog.

Comments

- Compared to one year ago, 23 Member States have decreased their number of outstanding directives (up from 0) while 3 Member States increased the number (down from 24). This shows that the huge deterioration observed over the past year begins to be brought down: the transposition deficit for the 66 directives due in 2016 has decreased from 21 % in December 2016 to 3 % in December 2017.
- The group of 10 Member States with the biggest backlog one year ago all reversed this trend and managed to improve their transposition rate. From this point of view, efforts made by **Portugal, Cyprus** and **Finland** should be particularly underlined. Portugal went from the biggest rise in December 2016 (+32 directives) to the biggest fall today (-31); Cyprus added 20 directives to its backlog one year ago but has removed 17 today. The same efforts are evident from Finland's significant reduction of its backlog within the last year: +16 directives to -15.
- By contrast, **3 Member States further increased their backlog**: Greece, Malta and the United Kingdom. Nevertheless, this increase is moderate (+2 directives on average) while it was significant and unusual in December 2016 with an average increase of 10 directives.

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 dates before December 2015

Number	Title	Not fully transposed by	Transposition date		
2012/39/EU	Technical requirements for the testing of human tissues and cells	Π	17/06/2014		
2009/138/EC	Taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)	CZ, HR, NL, PL	31/03/2015		
2014/51/EUR	Amendment of Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)	CZ, NL, PL	31/03/2015		
2012/34/EU	Single European railway area	CZ	16/06/2015		
2013/30/EU	Safety of offshore oil and gas operations	ES	19/07/2015		
2013/51/EUR	Requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption	UK	28/11/2015		
2011/17/EU	Repeal of Council Directives 71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC, 75/33/EEC, 76/765/EEC, 76/766/EEC and 86/217/EEC regarding metrology	IE	30/11/2015		

More directives and Member States are concerned. 8 Member States have long overdue directives up from 7 one year ago) and 7 long overdue directives are not fully notified (up from 5).

- Although these long overdue directives represent less than 5 % of the overall transposition backlog (12 missing notifications out of 258), their number remains too high in view of the "zero tolerance" target set by the European Council in 2002 for delays of two years or more in transposing directives. Particular attention should be paid to such directives. As an example, the non-transposition by Italy of Directive 2012/39/EU on the testing of human tissues and cells makes that the Single Market is still not a reality in the area covered by the directive 3.5 years after the agreed date.
- Compared to one year ago, **Belgium, Estonia, Luxembourg** and **Romania** each managed to transpose their long overdue directive. Five Member States (the Czech Republic, Ireland, Croatia, Poland and the United Kingdom) moved in the opposite direction: each now has at least one long overdue directive. Italy's and Spain's situation remained unchanged while the Netherlands added a second directive to its list.
- By December 2018, <u>24 new long overdue directives</u> → <u>(184 kB)</u> → risk being added to the backlog of some Member States.



Indicator [4]: Total transposition delays

The red part of the chart represents increased transposition delays since December 2016, while the blank parts represent decreased delays (the latter not counting for the final result).

Transposition delays have increased in most Member States. Overdue directives are now late by 8.7 months on average (up from 6.7 one year ago).

- Last time, the average transposition delay decreased for most Member States (26 out of 28) because of the large number of directives with recent transposition dates not timely transposed that counted heavily in the calculation. The fact that the backlog of recent directives has significantly decreased within the last year explains the current overall deterioration.
- 8 Member States reduced their average delay (down from 26 last year) while 19 increased it (up from 1). **Germany** achieved the most impressive reduction (from 13.9 to 8.8 months), followed by **Finland** (from 8.4 to 5.1 months). On the other hand, Italy (+9.9 months) and the Czech Republic (+8.9 months) were the Member States that increased the most their average delay in transposition. Two of the 4 overdue directives of Italy are very late (3.5 years and 15 months) while the Czech Republic added 3 long overdue directives (due in 2015) to its backlog.
- **Belgium, Estonia, Latvia** and **Romania** have now transposed all their long overdue directives, a fact which is also reflected in their average transposition delay. In all of them, we note either a decrease or a slight increase in their transposition delays. However, in the Czech Republic, Ireland, Croatia, Poland and the United Kingdom, delays are getting longer because all these Member States added 1 to 3 long overdue directive(s) to their backlog.



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

The level of average conformity deficit decreased for the first time since November 2013.

Comments

- Timely transposition is only a part of the full implementation of directives. They also need to be **correctly transposed and applied on the ground**.
- 14 Member States improved their previous score. Of the 14, 7 reached or equaled their best ever result: Belgium (0.8 % to 0.6 %), Greece (0.3 % to 0.2 %), Cyprus (0.2 % to 0 %), Luxembourg (0.4 % to 0 %), Malta (again 0 %), Poland (1.8 % to 0.9 %) and Slovakia (0.4 % to 0.2 %).

Conformity deficit

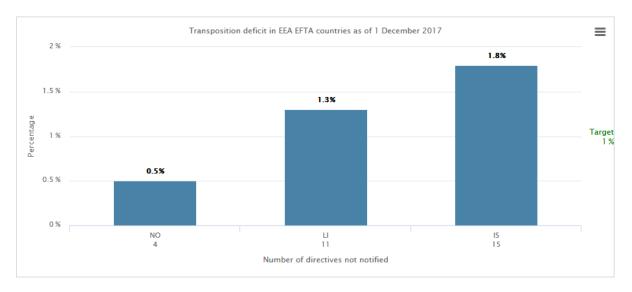
The conformity deficit measures the number of directives transposed where infringement proceedings for **incorrect transposition** have been launched by the Commission, as a percentage of the number of Single Market directives notified to the Commission as either "transposed" or "not requiring any further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

- After being several times in last position of the ranking, **Poland** managed to halve its number of directives presumably incorrectly transposed (18 to 9). Also **France** and **Germany** are no longer in this group of Member States whose conformity deficit is over 1 %. **Spain** is now the only Member State in this situation.
- Beside **Poland** and its impressive score (-0.9 percentage point), **France** (-0.6) and **Luxembourg** (-0.4) also significantly decreased their conformity deficit. At the other side of the ranking, Spain and Croatia increased their score by 0.3 percentage point.
- As in December 2016, 9 Member States have a **conformity deficit of 0.5 % or less**. Belgium, Ireland, the Netherlands, Slovenia and the United Kingdom are also very close to this target, which was proposed in the 2011 <u>Single Market Act</u>.
- Reaching a perfect score for the fifth time, **Malta** deserves a special mention. This is also the case for **Cyprus** and **Luxembourg** that have no more directives presumably wrongly transposed.

Iceland, Liechtenstein and Norway

These countries are also subject to Single Market rules under the <u>EEA Agreement</u>. They are monitored by the <u>EFTA Surveillance Authority</u>.

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 2017, 840 directives** (together with **2859 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 <u>EEA Scoreboard</u>.



Transposition deficit

Average deficit (all 3 countries): 1.2 % (the same as in the last period)

- Norway: 0.5 % (up from 0.4 %) an increase of 0.1 percentage point
- Liechtenstein: **1.3 %** (up from 0.9 %) an increase of 0.4 percentage point
- Iceland: **1.8 %** (down from 2.2 %) a decrease of 0.4 percentage point

Total late directives: 30 (up from 28 in the previous period)

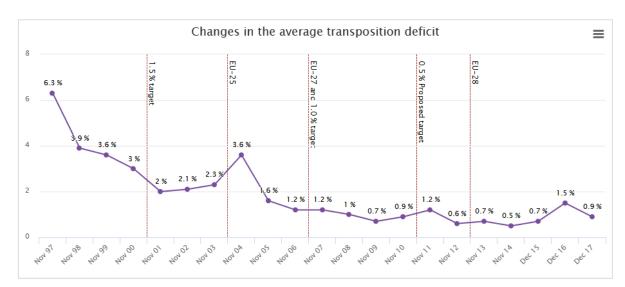
- Norway: **4** (up from 3)
- Liechtenstein: **11** (up from 7)
- Iceland: **15** (down from 18)

Average delay: 16.6 months (down from 16.9 months in the last period)

- Norway: **3.8** months (down from 4.5)
- Liechtenstein: **26** months (down from 29.5)
- Iceland: **20.1** months (up from 16.8)

Comments

- Norway succeeded in meeting the 1 % target.
- "Zero tolerance target": in total the EEA EFTA countries have 6 directives that are outstanding for 2 years or more (different directives for Iceland: 3 and Liechtenstein: 3).
- Directives outstanding from previous period: Iceland: 8, Liechtenstein: 9; Norway: 0.
- Average delay increased by 0.3 months, reflecting the fact that although the number of directives that have been outstanding for 2 years or more has decreased by 1, outstanding directives for up to 6 months have increased by 4.



Achievements

- The EU average transposition deficit has been **decreasing steadily for 19 years** (since 1997) and was more or less stable between November 2012 and June 2016 (between 0.5 % and 0.7 %). The December 2015 deficit doubled (from 0.7 % to 1.5 %) in December 2016 due to the large number of directives to be transposed in the months preceding the cut-off date for calculating the Member States' performance. As shown above, Member States have difficulties in transposing directives within the agreed deadline and the average delay is usually between 6 and 10 months. Quite logically, one and half year after the hitch, we see that the transposition rate is on the **way back to normal**.
- The box below highlights possible reasons explaining why the transposition deficit has constantly decreased since 1997. Despite the recent hitch, this list is still relevant. Nevertheless, it is advisable that the Member States use the commitment, procedures and coordination quoted in point 1 below to ensure that the transposition occurs within the agreed deadlines.

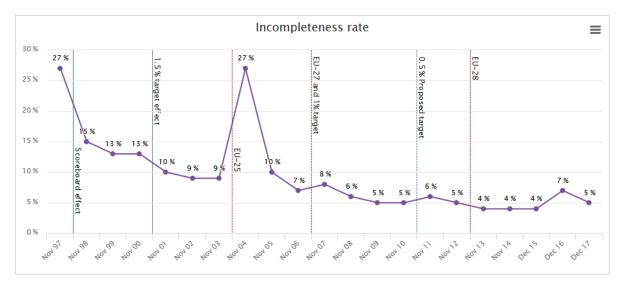
Possible reasons for this improved performance

1. Over the years, the Commission has observed that most Member States have shown a strong political commitment to transposition as well as to introducing effective administrative procedures and improved co-ordination. As an example, good co-

operation between Member States and the Commission helps to decrease the time needed to assess national legislation implementing a directive, which can bring down the number of cases open for late transposition. In particular, the information the Member States provide when notifying national transposition measures must be as clear and specific as possible: for example, they should indicate precisely which laws, regulations and administrative provisions will, in their view, satisfy the various requirements of the directive, and provide explanatory documents when so envisaged in the directive.

- 2. **Targets set by the European Council:** 1.5 % and 1 % (the red lines in the graph above) In November 2014, half of the Member States reached the 0.5 % average transposition deficit proposed in the 2011 <u>Single Market Act</u>. 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. The Communication <u>EU Law: Better Results through Better Application</u> has set high priority on handling cases concerning the timely transposition of directives and has reinforced the financial sanctions in cases brought to the Court of Justice under Article 260(3) TFEU. In fact the Commission will align its approach to these cases with the one it applies already to other infringement cases and by systematically asking the Court to impose a lump sum as well as a periodic penalty payment.

Facts and Figures



- 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 2016, the rate jumped from 4% in December 2015 to 7% in December 2016. The strong efforts made by the Member States to transpose the package bore fruits and the incompleteness rate is now back at 5%.
- In absolute terms, 57 directives are not transposed in at least 1 Member State

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Incompleteness rate

The incompleteness rate records, EU-wide, the number of outstanding directives, which one or more Member States have failed to transpose, as a percentage of the total number of Single Market directives. It measures the extent to which the Single Market is not yet a reality in the areas covered by those directives.

(down from 67 directives last time). This means that for the concerned sectors, the Single Market is not yet a reality.

Main problem areas (and corresponding incompleteness rate)

- **Public procurement:** 3 not fully transposed directives out of 10 (30 %)
- Financial services: 9 out of 61 (15 %)
- **Financial information and company law:** 2 out of 16 (13 %)

	Capital goods (48)	Energy incl. Energy consumption (19)	Environment (128)	Financial information and company law (16)	Financial services (61)	Free movement of persons (2D)	Intellectual property and copyright (14)	Public procurement (10)	Social Policy (82)	Taxation (54)	Telecommunication services (15)	Transport (125)	Veterinary and plant- health legislation (260)	Others (186)	TOTAL
ES		1	6	1	7		1	2							18
BE		1	4	1	3	1				1	1	4			16
RO		2	4	1	4		1		1			з			16
PL		1	з	1	5		1					3			14
BG		2	2	1	з		1				1	3			13
IE	4	2	1	1					3			2			13
HR		1	3	1	4				1			3			13
cz		1	2		2							5	2		12
AT		1	4	1				з				3			12
SI			1	1	з			1	2			4			12
DE		1	3			1						3	3		11
CY		1	3	1					1	1		4			11
UK		1	3						4			3			11
LU			1	1	3		1	3					1		10
EL		1	3	1	3				1						9
NL		1		1	5						1	1			9
ιτ			2	1	3							2			8
МТ		1	2	1	3										7
LV		1	2		3										6
FI		1	2		3										6
DK		1	1									3			5
EE					3					1		1			5
SK				1							1	3			5
π									2			2			4
PT					3				1						4
HU												3			3
SE		1			1									1	3
FR		1		1											2
This table shows, for each Member State, the total number of directives not fully notified, broken down Sectors fully transposed are included under "Others". The highlighted figures show the sector(s) with directives in each Member State.															

Cases by sector and Member States

Directives subject to notification by next Scoreboard

New directives will soon be added to today's transposition deficit – <u>new directives</u> (86 kB) to be transposed and notified by **30 November 2018**.