Single Market Scoreboard

Infringements

Reporting period: 12/2017 – 12/2018

About

This page displays statistics on Single Market infringement proceedings that were open on 1 December 2018. All comparisons are with the figures of the last reporting date, 1 December 2017.

The Commission always initiates infringement proceedings if a Member State has not transposed an EU directive correctly or on time. It may also initiate proceedings if it considers that a Member State is applying Single Market rules incorrectly. Infringement proceedings start when the Commission sends a letter of formal notice to the Member State in question. However, only the Court of Justice can rule definitively that a breach of EU law has occurred.

This document does not include cases of late transposition (known as “non-communication cases”) – except in the pie chart “Types of cases”. This is to avoid such cases being counted twice, as they are already covered in the “Transposition” governance tool.

Single Market legislation includes 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 with a direct impact on the Single Market, such as taxation, employment, culture, social policy, education, public health, energy, consumer protection, transport, environment (except nature protection), information society and media.
### Performance

#### 1. By indicator

|       | BE | BG | CZ | DK | DE | EE | EL | ES | FR | HR | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK | EU |
|-------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| [1]   | 3  | 21 | 18 | 44 | 6  | 33 | 22 | 52 | 32 | 16 | 18 | 13 | 10 | 11 | 23 | 16 | 23 | 27 | 24 | 27 | 8  | 4  | 13 | 18 | 24 | 32 | 32 | 25 |
| [2]   | 4  | 6  | 1  | 4  | 5  | 2  | 1  | 2  | 1  | 1  | 7  | 3  | 3  | 3  | 3  | 3  | 5  | 1  | 2  | 3  | 1  | 0  | 1  | 2  | 1  | 6  | 6  | 1  | 1  |
| [3]   | 4  | 3  | 4  | 22 | 63 | 4  | 6  | 4  | 1  | 3  | 8  | 5  | 9  | 7  | 11 | 6  | 12 | 9  | 4  | 14 | 11 | 15 | 17 | 19 | 23 | 35 | 31 | 28 | 31 |
| [4]   | 9  | 7  | 7  | 18 | 12 | 18 | 8  | 28 | 32 | 30 | 31 | 18 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 |

[1] Number of pending infringement proceedings

[2] Change over the last 6 months (change in the number of infringement cases)

[3] Duration of infringement proceedings (in months)

[4] Duration since Court’s ruling (in months)

#### Indicator values

<table>
<thead>
<tr>
<th>[1] &amp; [3]</th>
<th>&lt; average</th>
<th>average ± 10%</th>
<th>&gt; average</th>
<th>n/a</th>
</tr>
</thead>
<tbody>
<tr>
<td>[2]</td>
<td>decrease</td>
<td>no change</td>
<td>increase</td>
<td>n/a</td>
</tr>
<tr>
<td>[3]</td>
<td>&lt; 8 months</td>
<td>8–18 months</td>
<td>&gt; 18 months</td>
<td>n/a</td>
</tr>
</tbody>
</table>
2. Overall
(all 4 indicators combined)

Key

A Member State’s performance across all 4 indicators is calculated by scoring each indicator in chart 1 as follows:

- RED = -1
- YELLOW = 0
- 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

Comments

- Six Member States have improved their December 2017 performance (Belgium, Ireland, Malta, Portugal, Slovakia and Sweden) while 8 worsened it (Denmark, Germany, Italy, Latvia, Luxembourg, Hungary, the Netherlands and the UK). The remaining 14 have matched their previous performance.
Among the Member States that maintained their performance at the same level as in December 2017, only Finland remains above the EU average. Denmark, Latvia and Luxembourg left the green zone but remained around the EU average. Czechia, Greece, Spain and Poland stayed in the red zone.

Germany, Italy, Hungary, the Netherlands and the UK and are now below the EU average, in addition to Czechia, Greece, Spain and Poland. In December 2017, “red cards” were distributed to 10 Member States, which was a worrying number. Six Member States managed to tackle the issue, and are now around the EU average: Belgium, Ireland, Malta, Portugal, Slovakia and Sweden.

From 10 red cards in December 2017 to 9 today, progress is very small. Handling of infringements should be vigorously tackled by the Member States concerned.

**Indicator [1]: Number of pending infringement proceedings**

Pending infringement proceedings as of 1 December 2018. The difference since the previous Scoreboard (the July 2018 Single Market Scoreboard, with figures from December 2017) is shown at the top of each bar in the chart: the blank parts show a decrease in the number of pending cases (not counting for the final result), while the red parts show an increase in the number of pending cases.

**Note:** This indicator is used to give an overview of the number of open infringements in the Member States compared with the EU average. It is not per se decisive evidence of higher or lower actual compliance with the Single Market rules. This is because the number of infringements depends on a number of factors, such as the size of the Member State’s market.

- **Total number of cases:** 692 (up from 664 in December 2017)
- **Average cases** per Member State: 25 (up from 24)
- **Total number of Member States with an increase in the number of cases:** 17 (up from 12)
- **Total number of Member States with a decrease in the number of cases:** 10 (down from 11)
- **Number of Member States with no change:** 1 (down from 3)
The number of pending infringements increased, returning to its June 2016 level. The total number of cases reached 692, which is 28 more than in the previous Scoreboard (+4.2%). 174 cases out of the 664 pending a year ago have been resolved since then, Particular progress has been made on the environment (46 cases closed, including 22 in the waste management sector and 11 in the water protection and management sector), transport (33) and services (20).

On the other hand, the last year has seen the launch of 202 new cases (not including those for late transposition). 52 of these 202 cases concerned the environment including 31 in the nuclear safety and radioactive waste sector (26%), 47 on transport (23%), 29 on free movement of professionals (14%), and 19 on taxation (9%). By the type of infringement, 86 were launched for incorrect transposition of the directives (42%) and 60 for their bad application (30%). The remaining 56 cases (28%) were opened for wrong application of regulations, decisions and the Treaties.

With 52 cases (more than twice the EU average), Spain has the highest number of pending cases, followed by Italy (with 47 cases) and Germany (44 cases). After having achieved the best performance in December 2017, Germany has managed to reduce its number of infringements further and has gained a place in the ranking. The 6 Member States with the highest number of infringement cases account for 35% of the total number of cases.

With a 35% reduction in its cases (40 to 26), Portugal achieved the best performance and is no longer in the group of 5 Member States with the highest number of cases. After tackling the problem of late transposition, Portugal has concentrated on reducing other types of infringements.

On the other hand, Malta (+8), Italy (+7), Bulgaria, Latvia and the UK (+6 each) are the Member States with the largest increase in the number of infringements. Of these 5 Member States, only Italy and the UK have a fewer cases than the EU average.
Indicator [2]: Change over the last year

Change in the number of pending infringement proceedings since December 2017 (July 2018 edition of the Single Market Scoreboard).

The number of infringements is increasing in most Member States (17 out of 28).

Comments

- The Member States that have made the biggest reduction in their number of cases – in absolute numbers – since the December 2017 Scoreboard are Portugal (-14 cases), followed by Belgium and Sweden (-4). The biggest increases were in, Italy (+7) and Malta (+8).
- The top 3 performing Member States – by percentage reduction only – are Portugal (-35%), Lithuania (-23%) and Finland (-20%). The highest percentage increases were in Estonia (+125%), Malta (+100%), and Latvia (+86%). Of course, these figures must be weighed against the number of infringement cases in each Member State.
- Six Member States deserve a special mention: despite the increasing number of infringements cases at EU level, their number of pending cases has never been lower: Belgium, Germany, Greece, France, Portugal and Finland. In contrast, considering only the last 5 years, for Czechia, Cyprus, Latvia, Hungary and Malta the number of cases has never been higher. This is also the case for Croatia, but this is because it only quite recently became a Member State.
Indicator [3]: Duration of infringement proceedings

Pending infringement cases not yet sent to the Court (i.e. at the pre-litigation stage) as at 1 December 2018 (584 cases). The average duration is calculated in months from when the letter of formal notice is sent.

Slight decrease in average case duration: now 38.1 months, down from 39.8 in December 2017.

Comments

- **Average case duration has decreased for 17 Member States**, compared with only 6 Member States in December 2017. The most impressive reductions are in Estonia (-13.6 months), Malta (-12 months), the UK (-11.6) and the Netherlands (-11.4). Estonia and Malta have 5 and 10 new recent cases respectively, alongside a moderate number of already pending cases. For the Netherlands and the UK, the explanation is the same: the closure of one very old case (the UK case lasted more than 11 years and the Dutch case 8 years) was partially offset by the recent launch of new cases with a significant impact on the average duration of cases.

- **For 11 Member States, the average duration of cases is longer than a year ago.** The average increase in duration since December 2017 is 4.2 months, but higher in Portugal (+11.6 months), Spain (+6.3) and France (+5.6). Explanations differ from one Member State to another. For example, for Portugal, few cases were recently initiated, and only quite recent cases were closed. Therefore, some very old pending cases (7 cases lasting between 5 and 14 years) weighed more heavily in the calculation of case duration.

- Although it is always hoped that infringement proceedings will be as short as possible, an increase in duration is not necessarily negative. This happens generally when Member States resolve a number of quite recent cases. At the same time, as the remaining cases get older, they weigh more heavily in the calculation of the average duration.

- Nevertheless, infringements must be dealt with promptly, as recalled in the Communication EU Law: Better Results through Better Application. As shown in the table above, average case duration for Single Market law is **above 3 years**. Depending on the situation, the delays can be attributed to the
national authorities or to the Commission. The Commission and the Member States need to proceed quickly in investigating breaches of EU law.

**Indicator [4]: Time taken to comply with Court ruling**

Cases closed between 1 December 2013 and 30 November 2018 where the Court has ruled against a Member State (143 cases). This graph shows the average time (in months) between the delivery of the Court’s judgment and the closure of the case confirming that the Member State has complied with the judgment.

The average time lag has increased by 55% in 5 years.

**Comments**

- The average time taken by Member States to comply with a Court of Justice ruling continues to increase (up to 28.2 months from 23.6 months in December 2017 and from 18.2 months 5 years ago).

- 3 Member States reduced their average time lag: Spain, France, and Cyprus, compared with 5 in December 2017. The most impressive reduction was in France, which added a further reduction of 4.1 months to the reduction of 0.9 months already achieved in December 2017.

- 16 Member States had longer average time lags (up from 11 a year ago). The Member States with the biggest increase are Austria (+24.2 months), followed by Finland (+17.2), Portugal (+14.4) and Ireland (+12.8). This statistic is based on cases closed in the last 5 years. Taking a case closed more than 5 years ago out of the statistics, or adding a recently closed one, can have a major impact on the results, in particular for Member States with only a few cases. This is illustrated by the significant increase in the Austrian time lag: 3 cases that were quite quickly resolved are no longer counted in the statistics, while 1 of the 3 remaining cases took more than 7 years to be closed.

- For 13 Member States (9 in the last report), the average time lag is over 2 years: Lithuania, Poland, Finland and Sweden have joined the group of Member States above this threshold. Austria is now the Member State with the highest time lag (it was in third position in December 2017) while Slovenia went from first to fourth place.
The time taken to comply with the Court’s rulings is not linked to their number. France and Denmark have the same time lag (about 14.5 months), but France has 13 rulings and Denmark only 4. Lithuania, Finland and Latvia all have only 1 ruling but very different compliance times (50.6, 27.6 and 8.5 months respectively).

**Iceland, Liechtenstein & 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. This should be borne in mind when comparing this scoreboard and the **EEA Scoreboard**.

**Number of pending cases**

Infringement cases pending on 1 December 2018 arising from the incorrect transposition or application of Single Market rules. The transparent area of the chart shows the decrease in the number of cases since December 2017.

**Total cases open:** 98 (down from 127 in December 2017), of which:

- **incorrect transposition/application:** 53 (see figure above) = 54% of all open infringement cases (Iceland 17, Liechtenstein 8 and Norway 28)
- **late transposition** (directives): 12 (Iceland 9, Liechtenstein 2 and Norway 1) = 12%
- **late implementation** (regulations): 33 (Iceland 27 and Norway 6) = 34%

* Under Article 7 of the EEA Agreement regulations incorporated into the Agreement “shall as such be made part of the internal legal order” of the EEA EFTA countries. In Liechtenstein, however, regulations are directly applicable and do not have to be implemented.

**Comments**

- The figure of 53 infringement cases concerning incorrect transposition or application represents a decrease of 8 cases since the last report (-13%), while the total number of infringement cases has reduced from 127 to 98 (-23%).
- There is a marked decrease in the number of cases concerning the late transposition of directives: 12 pending infringement cases in this Scoreboard, compared to 26 in December 2017 (-54%).
- The number of cases dealing with the incorporation of regulations fell by 7, going from 40, to 33 (-18%).
- Problematic sectors: food and feed safety, animal health and welfare, transport, social security and services-other.
The current report shows a marked increase in the number of infringement proceedings (+4.2% within the last year). This is the first time this has happened since November 2014.

“EU Pilot”, the structured problem-solving dialogue between the Commission and Member States, resulted in an overall reduction in cases (about 50%) between its launch in April 2008 and December 2016. In its Communication EU Law: Better Results through Better Application, the Commission recognised the effectiveness of EU Pilot, but noted that the dialogue with the national authorities could continue well beyond a reasonable duration. As EU Pilot was not intended to add a lengthy step to the infringement process, which in itself is a means of entering into a problem-solving dialogue with a Member State, the Commission decided to launch infringement procedures without systematically relying on the EU Pilot problem-solving mechanism. While this new policy seems to result in more formal infringement proceedings, it is still early to draw concrete conclusions as to whether it has led to a general and confirmed trend in the number of infringement procedures launched and pursued.

In any case, the Commission and the Member States need to act quickly when investigating breaches of EU law in order to achieve quicker and better results.
This table shows the total number of infringement cases for each Member State as of 1 December 2018, broken down by sector. Sectors with only a few infringement proceedings are included in “Other sectors”. The highlighted figures show the sector(s) with the highest number of infringement cases in each Member State.

(#) Total number of infringement cases by sector.
Sectors with the biggest number of infringement cases

- **Environment**: 25% of all cases (especially atmospheric pollution, waste management and water protection & management)
- **Transport**: 22% (in particular air transport)
- **Taxation**: 13% (mainly indirect taxation)

Problematic sectors by Member State

- **Environment**: Romania (42% of all cases), Slovakia (41%), Spain (38%), Czechia (35%) and Italy (26%)
- **Transport**: Luxembourg (64% of all cases), Malta (44%) and Germany (25% of all cases)
- **Taxation**: France (31% of all cases), the UK (28%) and Belgium & Germany (23%)

**Average duration by sector**

Pending infringement cases not yet sent to the Court (i.e. still in the pre-litigation phase) as of 1 December 2018, broken down by sectors that have at least 13 cases (466 cases). The average duration is calculated in months from when the letter of formal notice is sent.

(# = number of cases in the sector)

**Longest average duration** (in months):

- environmental impact (up from 51.3 to 66.4)
- employment, social affairs and inclusion (up from 41.2 to 49.7)
- atmospheric pollution (up from 43.6 to 48.2)
- direct taxation (down from 45.3 to 40.8)
- water protection and management (up from 32 to 40.3)

Comments

The top 3 longest durations have changed since last year, with “employment, social affairs & inclusion” and “atmospheric pollution” having replaced “free movement of persons and Union citizenship” and “services”. For air transport, the case duration is inflated by factors outside the control of either the national authorities or the Commission. Since most of the cases in this sector could not evolve in one direction or another, it was decided to no longer include the sector in the above figure.

The comment above on the increase in case duration by Member State is also relevant for case duration by sector. When a substantial number of quite recent cases are resolved (or if no new cases are launched), the remaining cases, which are getting older, weigh more heavily in the calculation of the average duration.

Types of cases

Number of pending infringement cases open for late or incorrect transposition of Single Market directives, plus the number of cases open for incorrect application of rules – situation as at 1 December 2018 (1 234 cases)

- 59% of cases are for late or incorrect transposition of directives (down from 62% in December 2017)
- 81% of cases relate to directives (down from 83%), while 19% concern regulations, decisions and Treaty articles (up from 17%).

Comments

- The significant number of Single Market directives with a transposition date in 2016 resulted in a huge increase in the number of absent notifications, with a knock-on effect on the number of infringement procedures for late transposition. In 2018, the situation was back to normal.
- The number of pending infringement cases for late transposition (542) is much higher than the 207
cases where no complete transposition measures were notified to the Commission. This is because the Commission needs time to assess the completeness of the measures notified, and possibly close the non-communication proceedings. For more on this see the “Transposition deficit” indicator in the “Transposition” governance tool.

- **Good cooperation between Member States and the Commission, and the use of compliance promotion tools such as explanatory documents, implementation plans, organisation of workshops and sectoral dialogues, can help to decrease the time needed to assess national legislation implementing a directive.** This in turn can bring down the number of pending cases. 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 views, satisfy the various requirements of the directive, and provide explanatory documents when the directive in question envisages this.