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Internal Market Scoreboard n°21

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MAIN FINDINGS

In addition to the usual chapters on the transposition and application of the Internal Market legislation, a number of Scoreboards also focused on the functioning of the Internal Market in specific areas. This time, it devotes particular attention to the effective application of the Professional Qualifications Directive, recognising the importance of this area at the present time.

Transposition

Today's EU average transposition deficit is up 0.2% and stands at 0.9%. This deficit is still in line with but very close to the interim target of 1% set by Heads of State and Government. Efforts should be deployed to avoid a further increase in the deficit in the coming months. As a result of the increased deficit the number of Member States achieving the 1% target went down to 18 from 20 compared to the last edition of the Scoreboard. In total, 7 Member States achieved or equalled their best result ever: Belgium, Denmark, Italy, Malta, Slovakia, Finland and the United Kingdom. Denmark and Malta are again the best transposition performers with 3 directives away from a perfect score.

Italy and Belgium are the Member States accounting for the biggest improvement in reducing the number of outstanding directives. Moreover, it is to be welcomed that Member States managed to further decrease the number of long overdue directives from 16 to 13 within the last six months.

Adding the number of directives not correctly transposed to the number of directives not transposed in time would almost double the EU average deficit to 1.7%.

The last Internal Market Scoreboard edition called on all Member States to put an increased focus on the need to reduce transposition delays. Many Member States satisfied this request, reducing the number of months to transpose directives after the transposition deadline expires from 9 months to almost 7 within the last six months.

Today's fragmentation factor on Internal Market legislation increased to 6% which translates into 85 Internal Market directives not producing their full effect in the whole EU. Almost 70% of these directives do not achieve their full effect due to one Member State's inability to transpose the directives.

Infringements

The overall number of infringement proceedings relating to the Internal Market has decreased by 2.1% compared to half a year ago and by 8% since November 2007. The areas of 'taxation and custom union' and 'environment' remain the biggest sources of infringements.

Compared to previous years the ranking of open infringement proceedings has changed. Due to the continued reduction of their number of infringement proceedings Italy is not any longer the country with the highest amount of cases. Today, Belgium accounts for most of the infringement proceedings, followed by Greece. The average time used to resolve infringements improved slightly for the EU 15 but went into reverse in the EU 12.

Internal Market Enforcement Table

This edition introduces for the first time a so-called Internal Market Enforcement Table, providing for an overview of Member States' overall implementation and application of Internal Market rules. This Table allows to interlink the different indicators on enforcement of Internal Market rules better and provides a general overview of Member States' efforts to comply with Internal Market legislation. Taking the most significant Internal Market Scoreboard figures into account, Malta, Latvia and Slovenia are the overall best performers.

Recognition of professional qualifications – Directive 2005/36/EC

The 2005 Professional Qualifications Directive facilitates free movement of citizens within the European Union who have to deal with national regulations requiring a particular qualification before citizens can access a profession. A specific section in the Internal Market Scoreboard offers factual information on how the *acquis* in this area works in practice.

The deadline for transposition of Directive 2005/36/EC expired October 2007. The Directive has not yet been transposed in all 27 Member States. Member States actually underestimated the complexity of the transposition.

What do citizens expect from the Directive? According to recent surveys, only 4% of the citizens in Member States believe that they risk having a major problem related to the recognition of their professional qualifications when going abroad. In other terms, the vast majority of our citizens expect a quick or even automatic recognition of their professional qualifications in a host Member State.

However, the reality in Member States is different. The vast majority of professions which are the most mobile in the EU face a case by case analysis by the Member State under the so-called 'general system'. Contrary to citizens expectations of a trouble free process, quick recognition happened in 70% of all cases (reporting period 1997-2008¹) but in 30% of the reported cases, citizens encountered major problems.

In the same vein, the number of SOLVIT cases which concern professional qualifications is constantly high (professional qualifications count for around 15% of all SOLVIT cases). In 75% of the cases, SOLVIT could help. However, a smooth functioning of a Directive should not be based on a frequent involvement of SOLVIT. The objective should be to better meet citizens' expectations. This is an issue not only for citizens. It will become more and more relevant for our markets. Markets in Europe will have an even higher demand for highly qualified professionals in the future.

The Commission is currently undertaking a large evaluation of the Directive. If necessary, the Commission will propose reforms by early 2012.

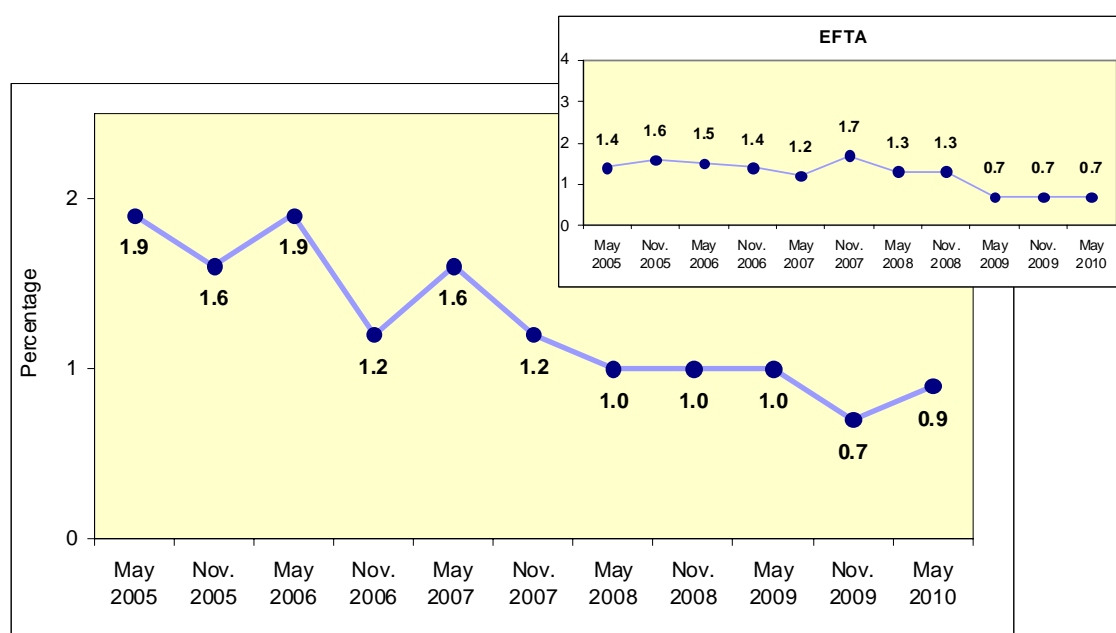
¹ Source: database of regulated professions in the EU Member States, EEA countries and Switzerland.
http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?fuseaction=home.welcome

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

The Internal Market is a key driver of growth and jobs and one of the main engines for economic recovery. But the Internal Market does not deliver benefits automatically. Agreed EU directives have to be written into national law in every Member State to produce their desired legal and economic effects. Timely transposition is a necessary condition for achieving the policy objectives set out in the relevant legislation. Moreover, it is important for the credibility of the Internal Market in the eyes of the public. This is why EU Heads of State and Government have repeatedly called on Member States to improve their transposition records².

Average transposition deficit in May 2010

Figure 1: Attention needed!



The transposition deficit shows the percentage of notifications of Internal Market directives not yet communicated to the Commission, in relation to the total number of notifications which should have been communicated by the deadline³. The current Scoreboard takes into account all notifications of directives with a transposition deadline until 30 April 2010 which have been notified by 10 May 2010. As of 30 April 2010, 1486 directives and 999 regulations relate to the functioning of the Internal Market⁴.

² Conclusions of the European Council summits of Stockholm (23-24 March 2001), Barcelona (15-16 March 2002), Brussels (20-21 March 2003, 25-26 March 2004 and 8-9 March 2007). The targets were agreed at the following summits: Stockholm (1.5%), Barcelona (0% for long overdue directives) and Brussels 2007 (1%).

³ The need to transpose Directives 2008/116/EC, 2008/125/EC, 2008/127/EC, 2009/11/EC, 2009/115/EC, 2009/146/EC, 2009/153/EC and 2009/155/EC is under examination. If it will be concluded that they need to be transposed, possible late transpositions will be taken into account in the next Scoreboard.

⁴ Internal Market directives are directives 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

Today's EU average transposition is at 0.9%. This means that the positive trend of recent years has stalled. However, the EU average transposition deficit for the 27 Member States is still in line with the interim target of 1% agreed by the Heads of State and Government in 2007⁵. In these challenging times a well functioning Internal Market is more important than ever as it provides opportunities for citizens and businesses. Therefore, it is of major importance that Member States continue to work on their transposition deficit and on the proper application of the Internal Market rules.

Any further relaxation will lead to the failure to comply with the interim target of 1% agreed among the Member States. This should be avoided.

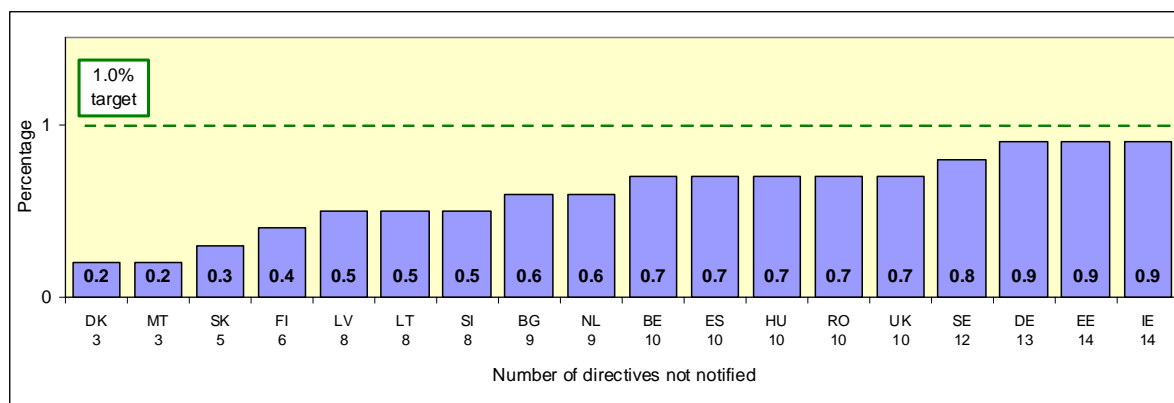
The Internal Market Scoreboard will continue to give particular attention to the challenges identified: 1) all 27 Member States should achieve the 1% target; 2) the long overdue directives should be eliminated; 3) the transposition delays must be reduced and 4) the correct transposition of Internal Market legislation must be improved.

Moreover, this edition introduces an **Internal Market Enforcement Table** illustrating the overall performance of the 27 Member States taking into account all enforcement indicators shown in this Scoreboard edition. This Table will allow for a better overview on Member States' compliance with the implementation and application of Internal Market legislation.

First challenge – All Member States in line with the 1% target

The number of Member States in line with the European Council's 1% deficit target decreased from 20 to 18 Member States. Two Member States that were in line with the target half a year ago missed the target this time (France and Cyprus).

Figure 2: 18 Member States achieved the 1% target



Transposition deficit of the Member States that achieved the 1% target as of 10 May 2010.

(ex-Articles 14 and 95 EC Treaty). This includes the four freedoms and the supporting policies having a direct impact on the functioning of the Internal Market (a.o. taxation, employment and social policy, education and culture, public health and consumer protection, energy, transport and environment except nature protection).

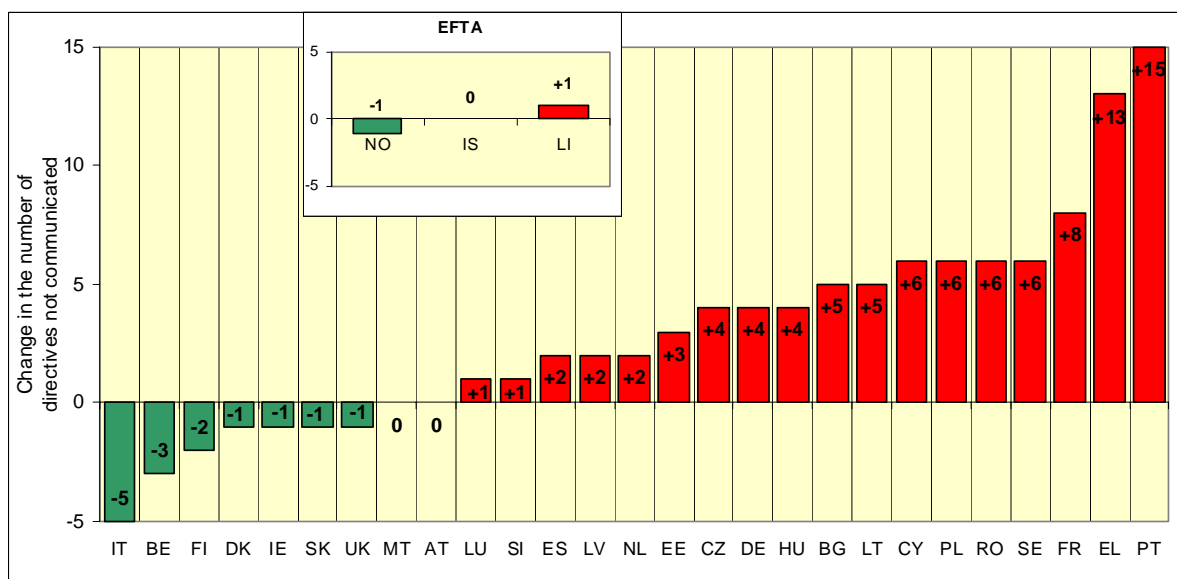
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Conclusions of the European Council summit of Brussels on 8-9 March 2007.

- In total, 8 out of these 18 Member States improved or equalled their transposition deficit compared to six months ago: Denmark, Malta, Slovakia, Finland, Slovenia, Belgium, the United Kingdom and Ireland. These Member States prove that in these challenging times it is possible to maintain or further improve on the transposition performance. Most of them (Belgium, Denmark, Malta, Slovakia, Finland and the United Kingdom) even achieved or equalled their best result ever.
- Among these Member States Belgium posts the greatest improvement, reducing its transposition deficit by 0.2%.
- Like in recent years, Denmark and Malta share the first place with 3 directives awaiting transposition. They illustrate that a consistently good transposition performance is possible and does not ostensibly depend on external circumstances.

Six months ago, 21 Member States managed to improve on their transposition performance. This time the transposition performance of many Member States has gone into reverse. In total, 18 Member States have increased the number of outstanding directives. The only Member States that managed to further build up on their improvements from half a year ago are: Italy, Belgium, Slovakia and the United Kingdom. This turnaround illustrates that transposition requires a permanent effort and any relaxation quickly means that deficit rises again.

Figure 3: Member State's transposition performance has gone into reverse



Change in the number of outstanding directives since Scoreboard n°20 of December 2009.

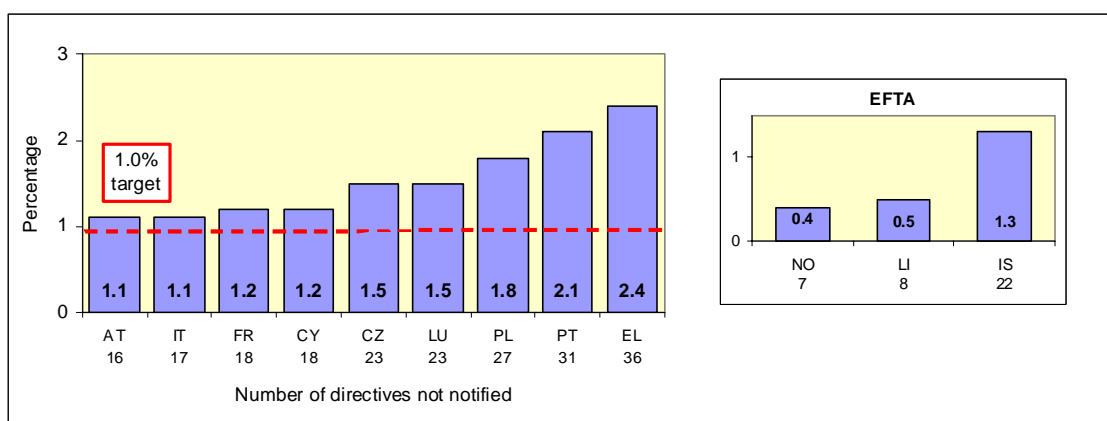
By comparing Member States' current transposition performance with that recorded on December 2009, the following conclusions can be drawn:

- The Member States that posted the greatest improvement half a year ago account for the highest increase this time around. This is in particular the case for the following Member States: Portugal, Poland, Greece, Estonia and the Czech Republic.

- Out of the 21 Member States that have made progress half a year ago, there are only 4 Member States that have maintained this positive trend (Belgium, the United Kingdom, Italy and Slovakia).
- In total, there are only 7 Member States that managed to reduce their number of overdue directives and 2 Member States that maintained their performance compared to six months ago.

This increased backlog of directives still to transpose result in an increase of Member States that miss the 1% target. Today there are 9 Member States that missed the interim target of 1%, compared to 7 Member States half a year ago.

Figure 4: 9 Member States above the ceiling of the 1 % target



Transposition deficit of the Member States that missed the 1% target as of 10 May 2010.

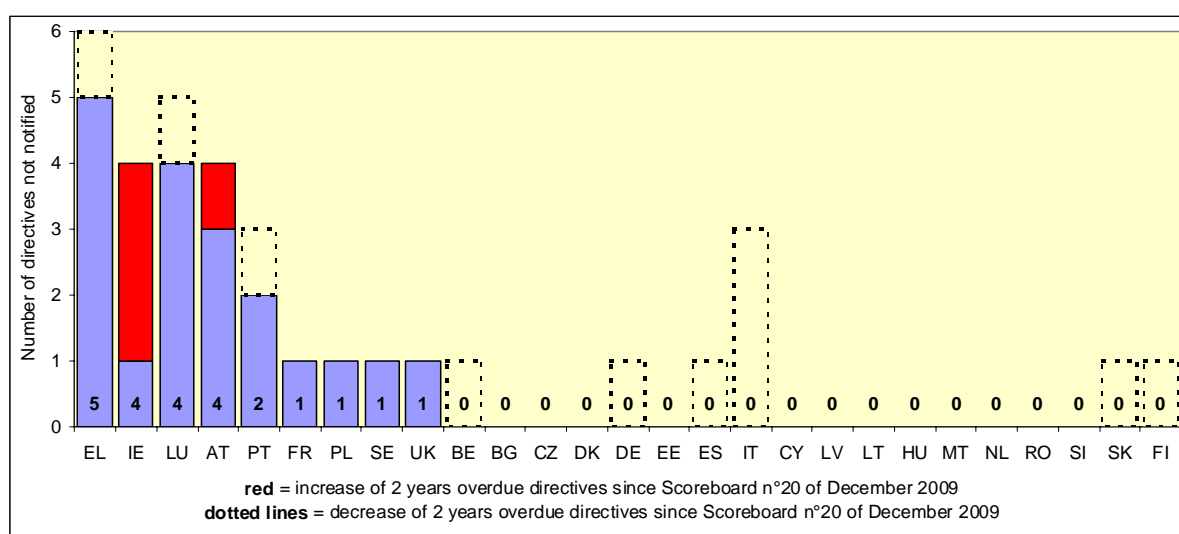
- Cyprus and France that reached the 1% target six month ago are above this ceiling now.
- With the exception of Austria and Italy all these Member States increased on their already existing transposition backlogs.
- Greece and Portugal account for the highest increase. They moved up from a transposition deficit of 1.1% to 2.1% (Portugal) and from 1.5% to 2.4% (Greece) within the last six months.
- Italy managed to reduce its deficit by 0.3% within the last half a year and thereby achieved its best score ever. Austria maintained its deficit recorded in the previous edition.

Second challenge – All Member States in line with the 'zero tolerance' target

If Member States do not transpose Internal Market directives on time, they deprive citizens and businesses of their rights and of the full benefits of a properly functioning Internal Market. In fact, the longer the delay is, the more serious are the consequences. To ensure that delays in transposing Internal Market directives are not indefinite is therefore a priority and the reason why the European Heads of State and Government set a 'zero tolerance' target for directives whose transposition is two years or more overdue⁶.

The number of long overdue directives decreased from 16 such directives to 13 within the last six months.

Figure 5: Fewer directives two years or more overdue



Number of directives with a deadline for transposition into national law by 30 April 2008, for which all national transposition measures have not been notified by 10 May 2010 (compared to corresponding figures as at 10 November 2009).

- 9 Member States perform better compared to half a year ago, and 6 of them managed to reduce their number of outstanding long overdue directive to zero.
- Italy has made most progress by transposing 3 such directives.
- Rather than bringing their deficit in line with the 0% target, Ireland and Austria are going into reverse. The biggest increase is found in Ireland adding 3 such directives.
- Greece remains the Member State with most long overdue directives, closely followed by Ireland. Luxembourg managed to reduce the number of long overdue directives by 50% within the last year and accounts for four such directives today.

⁶ Conclusions of the European Council summit of Barcelona on 15/16 March 2002.

- A large number of Member States has taken the necessary action to transpose long overdue directives. However, one also has to take account of new directives coming on stream. **In total, there will be 40 additional long overdue directives by November 2010. Today, 13 out of these 40 directives in the pipeline have not been transposed by all Member States. Consequently, if there is no action, the number of long overdue directives could increase by up to 26 such directives in the next Internal Market edition.** Therefore, consistent working methods are needed to ensure that the deficit on long overdue directives will not rise anew.

Figure 6: 13 directives are more than two years beyond their transposition deadline

	Directives	Not transposed by	Transposition deadline
2003/35/EC	Public participation in respect of the drawing up of certain plans and programmes relating to the environment	IE	25/06/2005
2002/91/EC	Energy performance of buildings	EL, LU	4/01/2006
2006/100/EC	Adaptation of certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania	EL, LU, PT	1/01/2007
2006/22/EC	Social legislation relating to road transport activities	PT	1/04/2007
2004/35/EC	Environmental liability with regard to the prevention and remedying of environmental damage	AT	30/04/2007
2005/32/EC	Setting of ecodesign requirements for energy-using products	EL	11/08/2007
2006/24/EC	Publicly available electronic communications services and public communications networks / Retention of data	IE, EL, LU, AT, SE	15/09/2007
2005/36/EC	Recognition of professional qualifications	EL, LU, AT	20/10/2007
2007/32/EC	Interoperability of the trans-European rail system	AT	2/12/2007
2005/60/EC	Prevention of the use of the financial system for the purpose of money laundering and terrorist financing	IE, FR	15/12/2007
2006/70/EC	Implementing measures for Directive 2005/60/EC	IE	15/12/2007
2004/113/EC	Equal treatment between men and women in the access to and supply of goods and services	PL	21/12/2007
2006/40/EC	Emissions from air conditioning systems in motor vehicles	UK	4/01/2008

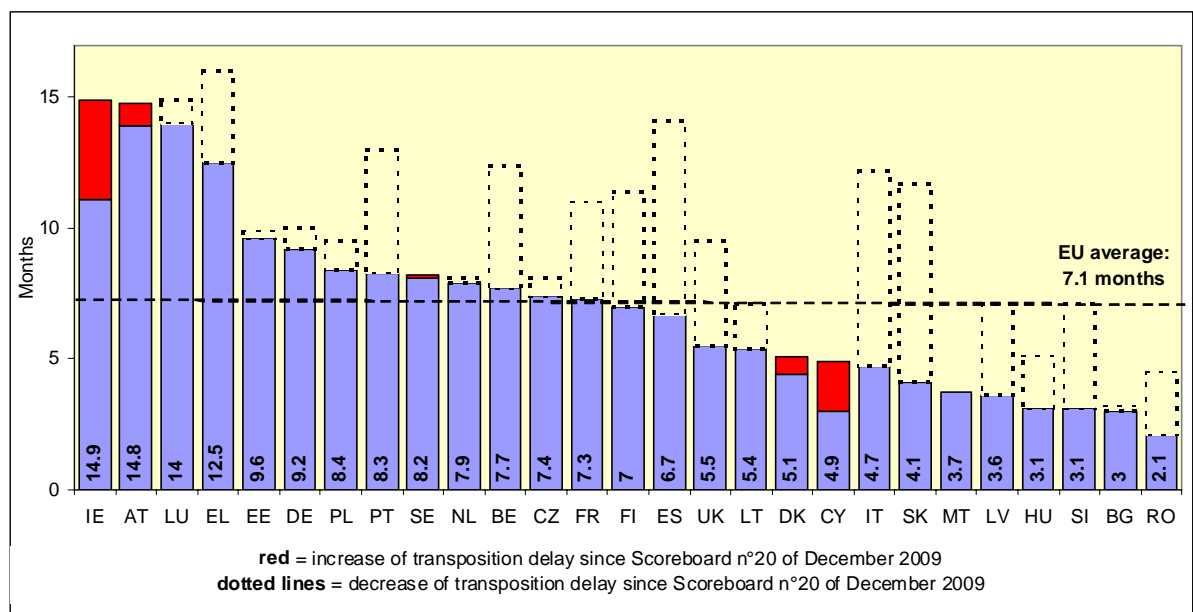
Directives with a transposition deadline by 30 April 2008, which are not (fully) transposed by at least one Member State - Situation as of 10 May 2010.

- The Member State with the longest transposition delay is Ireland. **Almost 5 years after the transposition deadline expired Ireland has still not transposed directive 2003/35/EC.**
- Greece and Luxembourg are more than four years overdue with 1 directive which should have been transposed in January 2006.
- Notably, **out of the 13 long overdue directives 8 such directives do not achieve their full effect due to one Member State failing to transpose.** These long delays cannot be justified by administrative burdens or the complexity of the directives. The Commission has launched infringement proceedings against Member States in all these cases and in a significant number of cases the Court of Justice of the European Union has already given its ruling.

Third challenge – Reducing the transposition delays

When there are delays in transposing measures, this is not just a legal problem. It leaves a void in the regulatory framework, which deprives citizens and businesses of their rights and undermines confidence in the European Union. This is also one reason why article 260(3) of the new Treaty on the Functioning of the European Union (TFEU) provides the possibility for the Court of Justice to impose financial penalties already in the context of the first referral to the Court under Article 258 TFEU for cases of failure to notify transposition of a directive. Therefore, the previous Internal Market Scoreboard edition called on all Member States to put an increased focus on the need to reduce transposition delays.

Figure 7: Average transposition delays improved slightly



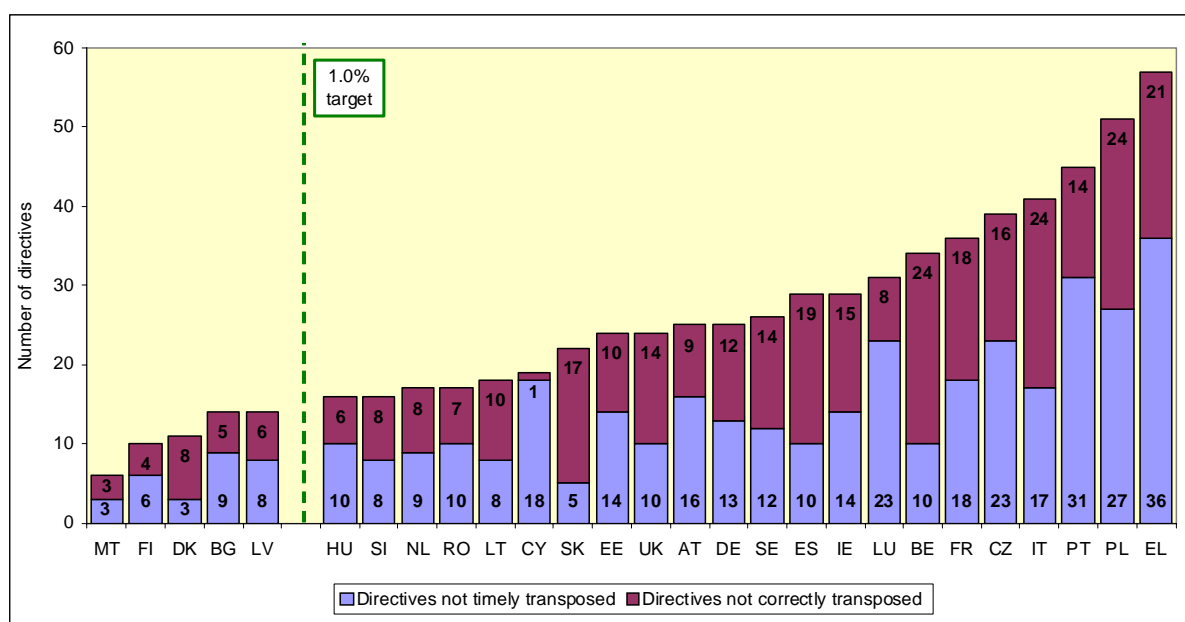
Average transposition delay in months for overdue directives – Situation as of 10 May 2010 compared to corresponding figures as at 10 November 2009.

- Compared to half a year ago, the EU average improved by 2 months. Today, it takes on average an extra 7 months to transpose EU directives after the transposition deadline expires. The length of time is significantly influenced by the substantial delays of long overdue directives. This explains why the Member States with the longest transposition delays (Ireland, Austria, Luxembourg and Greece) are at the same time those with the highest number of long overdue directives.
- It is a source of satisfaction that 21 Member States managed to reduce their average transposition delays. The biggest improvement was done by Spain, Italy and Slovakia, reducing their delays by 7 months

Fourth challenge – Improving the conformity of the legislation

The well functioning of the Internal Market does not only depend on timely transposition of EU legislation but also on its correct transposition. Adding the number of directives not correctly transposed to the number of directives not yet transposed Member States' ranking changes.

Figure 8: The number of incorrectly transposed directives remains high



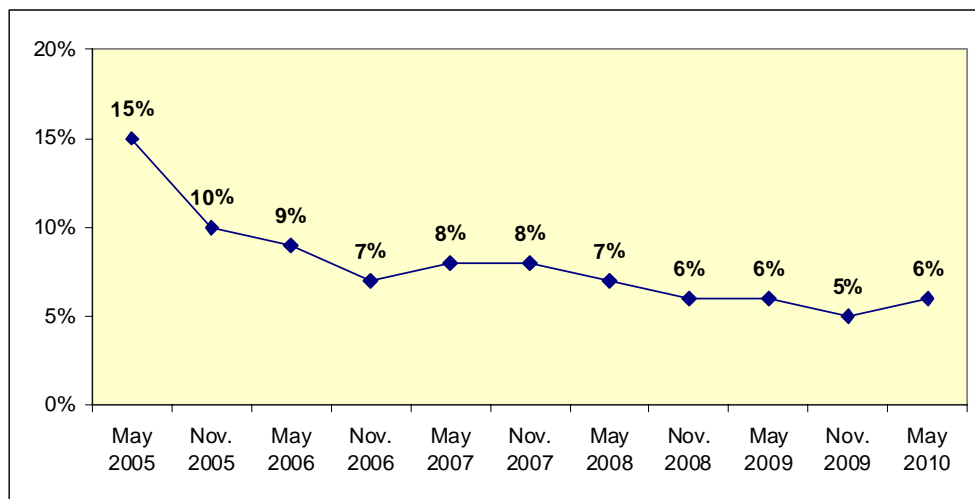
Number of Internal Market directives not yet communicated to the Commission as having been transposed (transposition deficit) added by the number of directives transposed but for which an infringement proceeding for non-conformity has been initiated by the Commission (as of 1 May 2010).

- Combining outstanding and incorrect transposition translates into an EU average deficit of 1.7%. This deficit is almost twice as high as the EU average transposition deficit of 0.9%.
- With the exception of Cyprus, all Member States account for a significant number of directives not correctly transposed compared to their number of outstanding directives.
- In total, 10 Member States have equal or more cases of non-conformity than outstanding directives. Poland, Italy and Belgium account for the highest number of directives not correctly transposed. Adding the directives not transposed in time to the directives not correctly transposed increases Greece's deficit to 3.8% of directives that do not achieve their full effect. This represents around two times the EU average.
- The areas of environment and employment are in particular affected by non-conformity cases. Member States have to invest more efforts in order to reduce the number of incorrectly transposed directives.

Fragmentation of the Internal Market

The fragmentation factor is an overall indicator of legal gaps. Whenever one or more Member States fail to transpose directives on time they leave a void in the EU legal framework. Hence, instead of an Internal Market covering all Member States it remains much smaller and fragmented. Consequently, **the economic interests of all Member States suffer if already one Member State does not deliver.**

Figure 9: Fragmentation factor on the rise!



The so-called 'fragmentation factor' records the percentage of the outstanding directives which one or more Member States have failed to transpose in relation to the total number of Internal Market directives, with the consequence that the Internal Market is not a reality in the areas covered by those directives.

The fragmentation factor of **6%** means that **this percentage of Internal Market directives does not achieve the full effect in all Member States. In other words, the Internal Market is operating at only 94% of its potential.** These remaining legal gaps generate legal uncertainty and imply missed opportunities for European citizens and businesses. In absolute terms, **85 directives have not been transposed on time in at least one Member State.** More than half of these directives (57 out of the 85 directives or **67%**) **do not achieve their full effect due to only one Member State failing to transpose.**

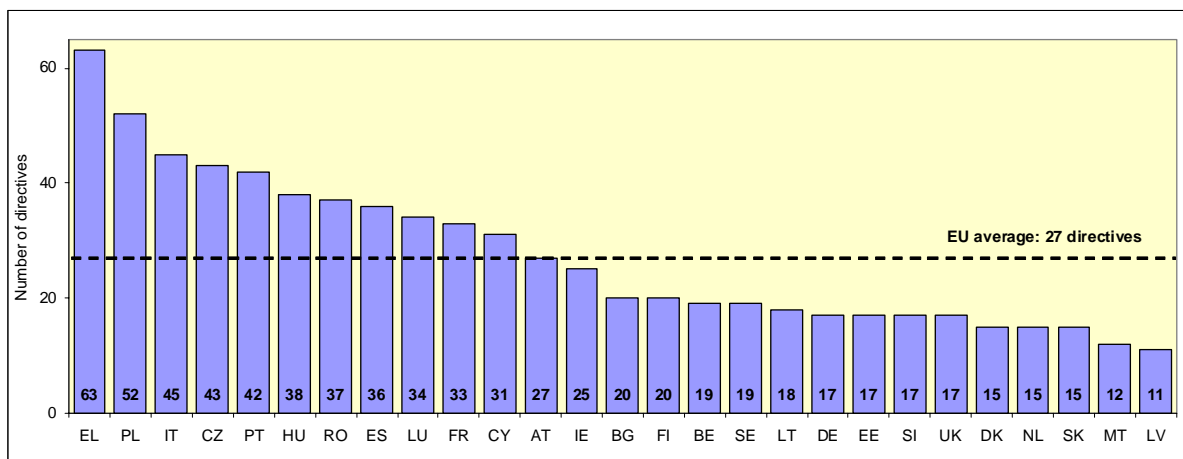
The failure to transpose a directive that has been transposed in all the other Member States holds the Internal Market hostage to one Member State's inability to transpose directives. **This penalises all Member States, their citizens and businesses.**

Among the sectors **most fragmented are the areas of transport and environment.** In these sectors, the Internal Market is not yet a reality. More efforts are needed to reduce this fragmentation further.

Looking ahead

Apart from looking at today's transposition deficit, it is also important to look at new directives coming on stream. Figure 10 illustrates the number of directives that each Member State needs to transpose in order to achieve the 1% interim target by November 2010.

Figure 10: Latvia and Malta are best prepared for the next Scoreboard



This figure sets out the number of directives that each Member State needs to notify by 10 November 2010 to reach the target of 1% transposition deficit by the next Scoreboard. This number is composed by the already existing backlog added by the number of directives still to be transposed for the next Scoreboard (45 such directives as of 1 May 2010). Less 17 directives in order to be in line with the 1% target.

In December 2009, the average number of directives Member States had to transpose in order to reach the 1% target in the upcoming Scoreboard was 20. This average increased to 27 directives now. This increase is due to the rise in the transposition deficit and that there are more directives on stream (45 directives instead of 29) than six months ago. Hence, Member States will have to put in more efforts in the next six months.

2. INFRINGEMENT PROCEDURES⁷ FOR INCORRECT TRANSPOSITION OR APPLICATION OF INTERNAL MARKET RULES

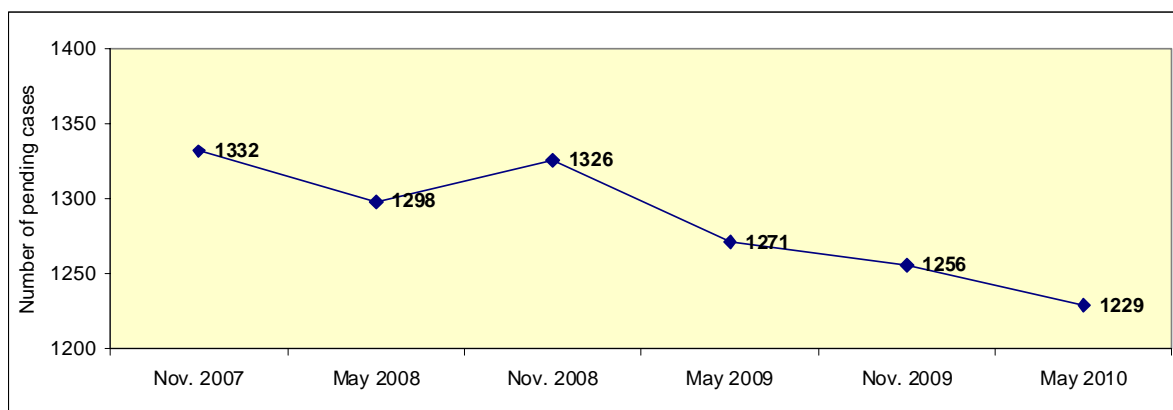
If citizens and businesses are to exploit the Internal Market's full potential, internal market legislation must not only be timely and correctly transposed into national law but also properly applied by all Member States. Misapplication of internal market legislation causes harm to the European economy and undermines the confidence citizens and businesses have in the Internal Market and the European Union in general.

As guardian of the Treaties the Commission shall ensure that both Treaty provisions and acts adopted by the Institutions of the European Union are correctly implemented and applied by the 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. 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 the EU law has occurred. This should be kept in mind when interpreting statistics on infringement procedures.

Number of infringement proceedings

Over the last years the number of infringement proceedings is slightly decreasing. Today, the EU 27 account for 1229 pending Internal Market infringement proceedings, which represents a decrease of 8% compared to the 1332 pending cases recorded in November 2007 and a decrease of 2.1% compared to six months ago.

Figure 11: The number of infringement proceedings decreases slowly



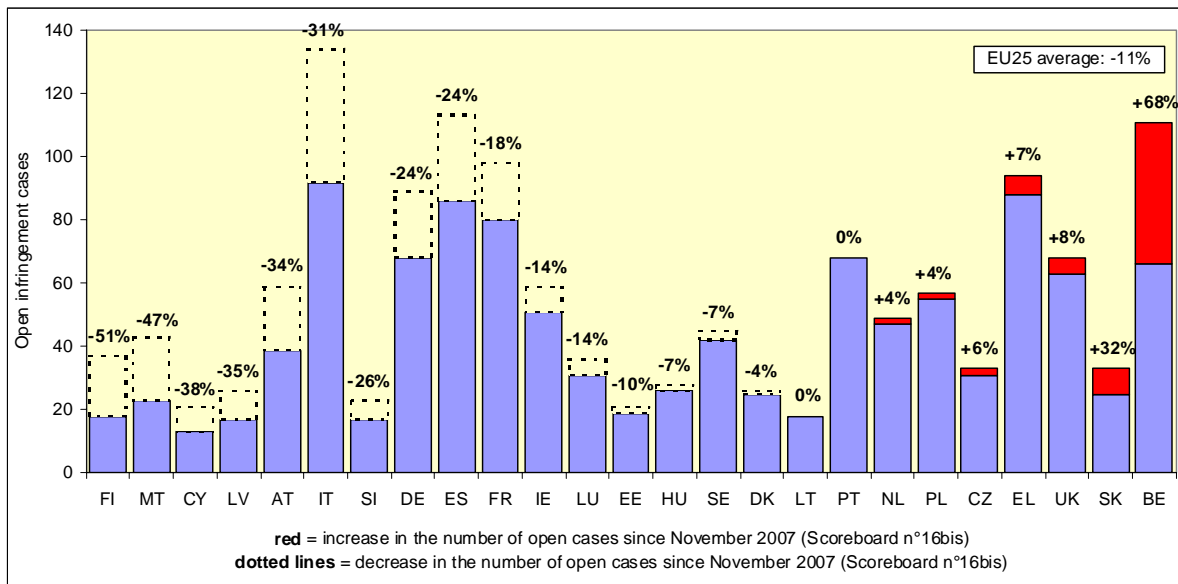
Development of pending infringement cases since 1 November 2007.

⁷ 'Infringement procedures' in chapter 2 are to be understood as representing all 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 Treaty on the Functioning of the European Union 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 directives counted in the transposition deficit, are excluded from this chapter in order to avoid double-counting, with the exception of figure 14.

The alternative problem solving and complaints handling mechanisms⁸ introduced by the Commission within the last years appears to have an influence on the general trend of the decreasing number of infringement proceedings.

The increase recorded in November 2008 was mainly due to the higher number of infringement proceeding in Belgium and Slovakia. This negative trend has also been confirmed by the latest results shown in the figure below.

Figure 12: Belgium and Slovakia post the highest increase of infringement cases



Open infringement cases as of 1 May 2010 compared to corresponding figures as at 1 November 2007.

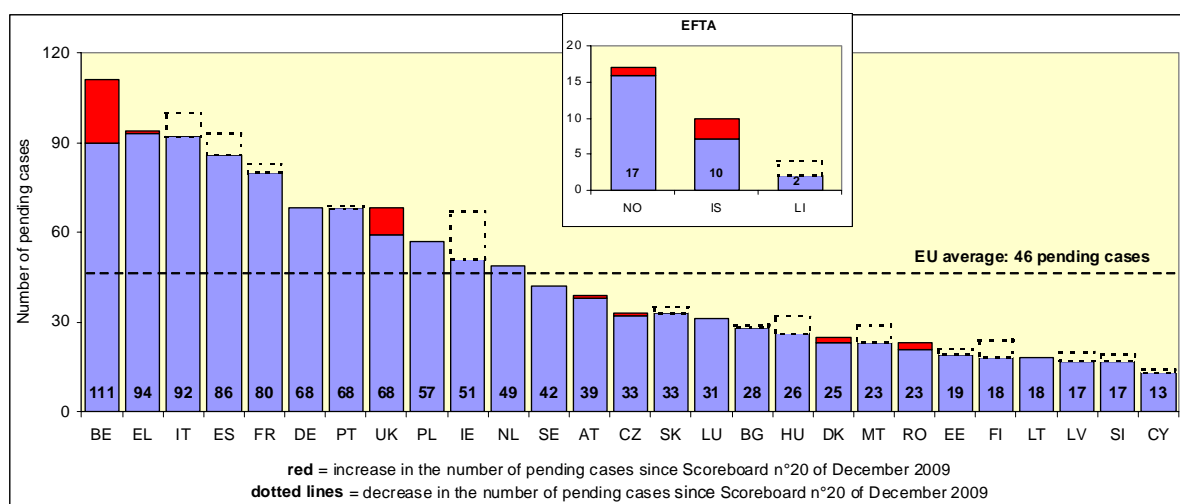
Most progress was made by Finland, followed by Malta. In total, 16 Member States managed to reduce their infringement proceedings since November 2007. In contrast, 7 Member States have recorded an increase of their cases, while 2 Member States equal their results. This development represents an EU 25⁹ average decrease of 11% compared to November 2007.

It is striking that the four Member States with the highest transposition deficit (Greece, Portugal, Poland and the Czech Republic) are also among those Member States increasing or matching their number of infringement proceedings compared to November 2007.

⁸ SOLVIT: <http://ec.europa.eu/solvit/>
EU-Pilot: http://ec.europa.eu/community_law/infringements/application_monitoring_en.htm.
CHAP is a database designed by the Commission in 2009 to register and manage complaints and information requests regarding the application of Community law by Member States.

⁹ Bulgaria and Romania are not included as their first figures were too recent in November 2007.

Figure 13: Today's EU average number of infringement proceedings for EU 27



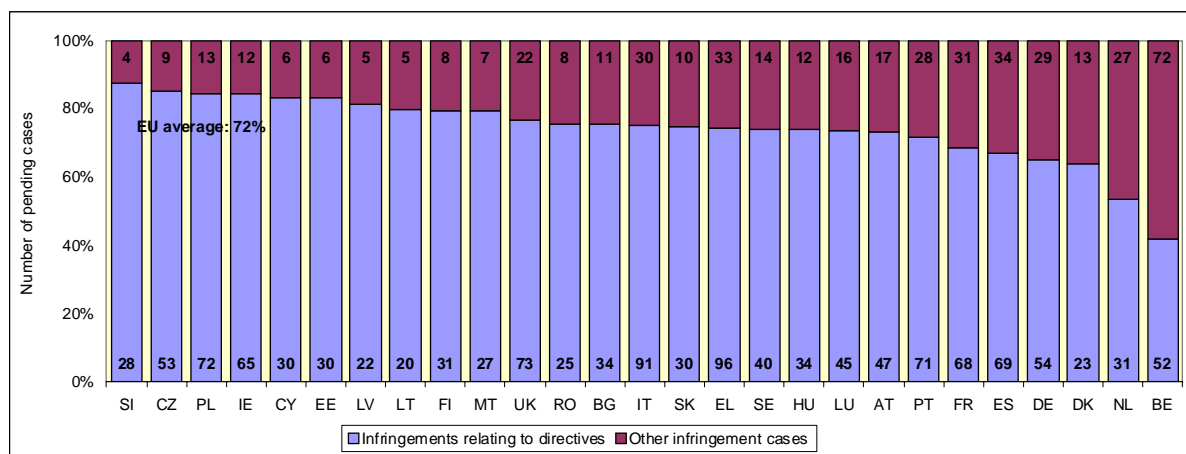
Open infringement cases as of 1 May 2010.

- Italy's continued progress means that it moves up from bottom to third position. Overall, Ireland accounts for the biggest decrease of infringement proceedings within the last six months, followed by Italy and Spain.
- On the other hand, Belgium recorded the highest increase in the number of infringement cases, adding 21 new proceedings within the last six months. In addition, 6 other Member States account for increasing numbers on infringement proceedings: Greece, the United Kingdom, Austria, the Czech Republic, Denmark and Romania.
- Today's ranking on the number of infringement proceedings has changed compared to previous years. Improving in particular Italy's and Spain's ranking and leaving Belgium and Greece as countries with the highest amount of infringement proceedings.

A breakdown of infringement proceedings by sectors illustrates that 'taxation and customs union' and 'environment' remain the source of the biggest amount of cases. These two sectors cover 44% of all infringement cases. If Member States were to focus their attention on correctly applying the rules in these two sectors, they could reduce the number of infringement proceedings by a very significant amount.

Nature of infringement proceedings

Figure 14: Most infringements relate to directives



Total number of pending infringement cases relating to Internal Market as of 1 May 2010. Only for the purpose of this figure infringement cases for non-communication of national transposition measures are included.

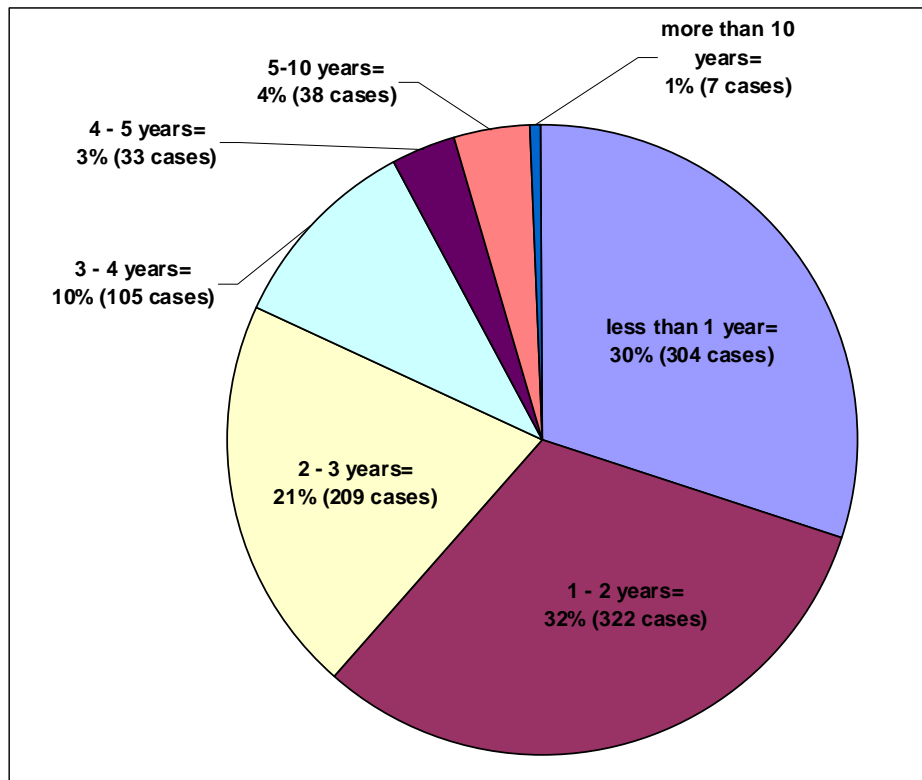
Infringement proceedings are opened against a Member State either because it violates a directive or because it violates another rule of EU law, such as (a) provision(s) of the Treaty, a Regulation or a Decision. The figure above illustrates the proportion of these two categories for each Member State. It appears from this table that **the vast majority of infringement proceedings (72%) are related to directives not transposed in time, incorrectly transposed or not properly applied**. The number is significant for each Member State and represents a large proportion of the total of infringement cases (with the exception of Belgium).

One should therefore not forget that, beyond the reduction of the transposition deficit in recent years, Member States still need to ensure that Internal Market Directives are correctly transposed and applied on the ground. Member States need to intensify their efforts in this respect.

Duration of infringement proceedings

When Internal Market rules are not applied correctly by Member States, EU citizens and businesses are deprived of their rights. Therefore, special attention is given to the time required to resolve infringement proceedings by Member States.

Figure 15: Still too many cases take more than two years

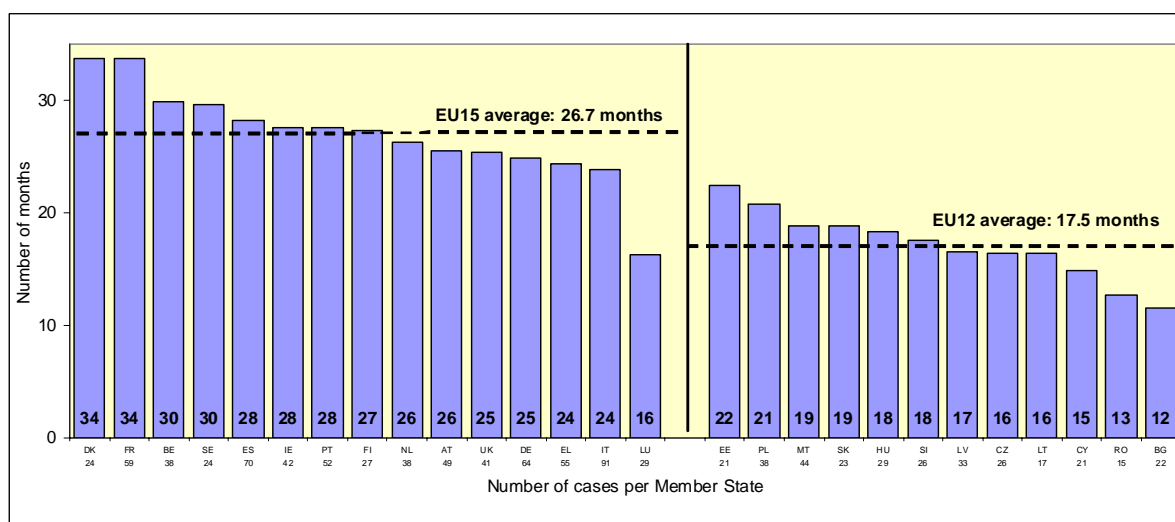


Infringement cases closed or brought before the Court of Justice between 1/05/2008 and 30/04/2010: average time in years needed to either close an infringement case or to bring it before the Court of Justice counted from the moment of the sending of the letter of formal notice (1018 such cases)

- **Around 40 % of cases take two years or more before they are resolved or brought before the Court.** This is by far too long given that infringement proceedings create legal uncertainty and undermine the well functioning of the Internal Market. Therefore, Member States should invest more efforts to resolve ongoing infringements proceedings faster.

Figure 16 shows that the average speed of Member States varies considerably. If one compares, for instance, the Member States with the shortest infringement proceeding duration to the Member States with the longest, one can observe that it is almost double (Luxembourg with 16 months compared to Denmark 34 months and Bulgaria 12 months compared to Estonia 22 months).

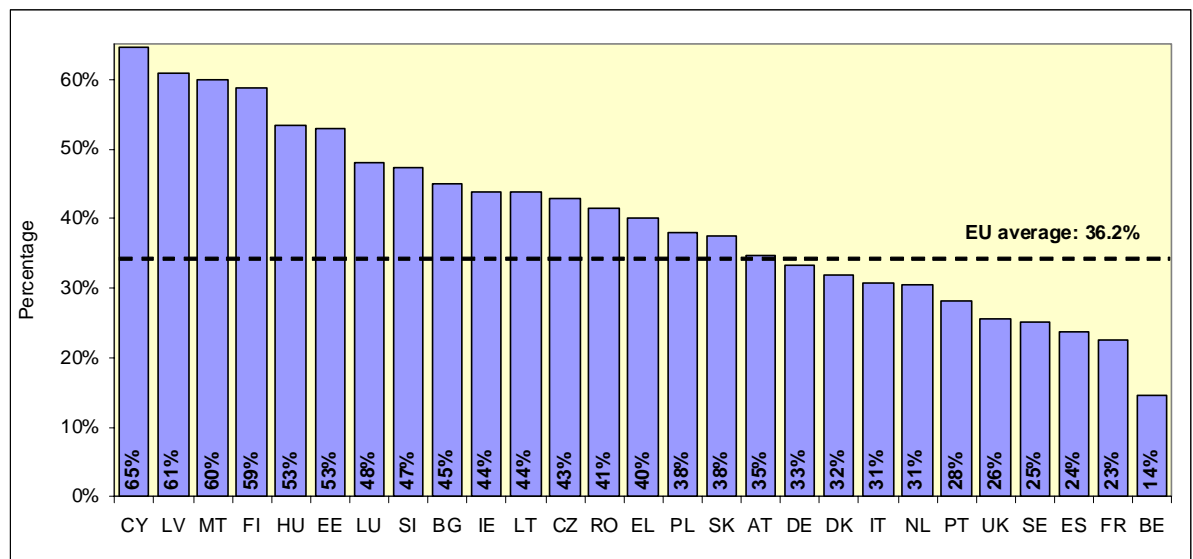
Figure 16: Member States' average speed of infringement proceedings almost unaltered compared to six months ago



Infringement cases closed or brought before the Court of Justice between 1/05/2008 and 30/04/2010: average time in months needed to either close an infringement case or to bring it before the Court of Justice counted from the moment of the sending the letter of formal notice (1018 such cases).

- The time necessary to either resolve an infringement or to bring it before the Court of Justice remains almost unaltered. Compared to half a year ago, the time needed has slightly decreased from 28 months to around 27 for EU 15 and increased from 16 months to 17 for EU 12.
- 10 out of the EU 15 managed to improve their resolution speed within the last six months. Spain, Ireland and the Netherlands account for the biggest improvement reducing their average time by four months. With the only exception of the Czech Republic, the average time to resolve an infringement procedure increase in all the EU 12 Member States.

Figure 17: Cyprus has the highest early resolution rate



Number of cases closed by 30 April 2010 as a percentage of the number of cases where a letter of formal notice has been sent between 1 September 2007 and 31 August 2009 (912 such cases).

To measure Member States' ability to resolve the problems raised in infringement procedures quickly, figure 17 shows the percentage of cases closed within 2.5 years after the sending of the letter of formal notice.

- The EU average early resolution rate went down from 38.6% to 36.2% within the last half year.
- Cyprus, Latvia and Malta continue to be the Member States with the highest early resolution rate. At the other end of the spectrum Belgium continues to have the lowest early resolution rate and decreased its rate even further from 22 % to only 14% within the last six months. Hence, **Member States with high early resolution rates solve 3 up to 4 times more cases than Member States with a low resolution rate in the same period of time.**

Member States need to take more effective action where proper implementation goes wrong.

3. INTERNAL MARKET ENFORCEMENT TABLE

As illustrated on several occasions **the well functioning of the Internal Market does not depend on timely transposition of directives only but also on their correct transposition and on the proper application of EU rules.** This is the reason why, the Internal Market Scoreboard uses a set of different indicators measuring Member States' enforcement performance. This edition of the Scoreboard is the first to provide an overview of the Member States overall performance taking the most significant of these indicators into account

This so-called **Internal Market Enforcement Table** allows to link the different criteria better and to give a more elaborated overview on Member States' compliance with the implementation and application of Internal Market legislation.

The Table shows, that, overall, Malta, Latvia and Slovenia are the best performing Member States. These three Member States are the only Member States to perform better than the EU average (green) in respect of all the indicators taken into account. The other 24 Member States have at least one or more areas where more attention is needed (yellow or red). Notably this applies also to Member States posting good transposition deficits. This is in particular the case for Sweden, the United Kingdom and Belgium. On the other hand, Cyprus is the only Member State not in line with the interim transposition deficit but performing well in all the other areas.

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	EU average
Fig. 2-4: Transposition deficit	0.7%	0.6%	1.5%	0.2%	0.9%	0.9%	0.9%	2.4%	0.7%	1.2%	1.1%	1.2%	0.5%	0.5%	1.5%	0.7%	0.2%	0.6%	1.1%	1.8%	2.1%	0.7%	0.5%	0.3%	0.4%	0.8%	0.7%	0.9%
Fig. 3: Progress over the last 6 months (change in the number of outstanding directives)	-3	+5	+4	-1	+4	+3	-1	+13	+2	+8	-5	+6	+2	+5	+1	+4	0	+2	0	+6	+15	+6	+1	-1	-2	+6	-1	+3
Fig. 5: Number of directives two years or more overdue	0	0	0	0	0	0	4	5	0	1	0	0	0	0	4	0	0	0	4	1	2	0	0	0	0	1	1	1
Fig. 7: Transposition delay on overdue directives (in months)	7.7	3.0	7.4	5.1	9.2	9.6	14.9	12.5	6.7	7.3	4.7	4.9	3.6	5.4	14.0	3.1	3.7	7.9	14.8	8.4	8.3	2.1	3.1	4.1	7.0	8.2	5.5	7.1
Fig. 8: Number of directives not timely or correctly transposed	34	14	39	11	25	24	29	57	29	36	41	19	14	18	31	16	6	17	25	51	45	17	16	22	10	26	24	26
Fig.12: Development of infringement cases since Nov. 2007	+68%	NA	+6%	-4%	-24%	-10%	-14%	+7%	-24%	-18%	-31%	-38%	-35%	0%	-14%	-7%	-47%	+4%	-34%	+4%	0%	NA	-26%	+32%	-51%	-7%	+8%	-11%
Fig. 13: Number of pending infringement cases	111	28	33	25	68	19	51	94	86	80	92	13	17	18	31	26	23	49	39	57	68	23	17	33	18	42	68	46
Fig. 16: Average speed of infringement resolution (in months)	30	12	16	34	25	22	28	24	28	34	24	15	17	16	16	18	19	26	26	21	28	13	18	19	27	30	25	23
Fig. 17: Early resolution rate	14%	45%	43%	32%	33%	53%	44%	40%	24%	23%	31%	65%	61%	44%	48%	53%	60%	31%	35%	38%	28%	41%	47%	38%	59%	25%	26%	36%

Legend	< average	average ±10%	> average
Transposition deficit	< 1%	1%	> 1%
NA= not applicable			

4. RECOGNITION OF PROFESSIONAL QUALIFICATIONS - DIRECTIVE 2005/36/EC

Citizens of EU Member States have a right to work in other Member States irrespective of the Member State where they acquired their professional qualification. However, a Member State may make access to a profession conditional upon the possession of a professional qualification under its domestic regulations. Recognition of professional qualifications between Member States is therefore a key to make it attractive for citizens to work in other Member States and to allow markets to get the qualified professionals they need. The objective of the Professional Qualifications Directive¹⁰ is to facilitate recognition. The Directive consolidated 15 previous Directives¹¹ whilst leaving major parts of the *acquis* untouched.

Citizens and markets

Citizens' expectations - Citizens from EU Member States are increasingly mobile in the European Union. The number of national decisions on the recognition of professional qualifications quadrupled between 1997 and 2008¹² (without counting temporary mobility for which no data is available). According to a Eurobarometer survey published in March 2010¹³, only 4%¹⁴ of the population feel however concerned that if going abroad their qualification would not be recognised by other Member States. It seems that citizens expect automatic recognition of professional qualifications obtained in their Member State of origin. The outcome of the survey is confirmed by the latest Citizens Signpost Service (CSS) report¹⁵: *'It is a widespread belief that automatic recognition is the one single rule, and in any case 'automatic' is understood literally as meaning that there is no procedure strictly speaking'*.

Markets' expectations - It is also important to consider what markets in general think and not only the individual citizen: There will be a higher demand for highly qualified workers in the future. The European Centre for the Development of Vocational Training forecast for changing demand and supply of skills up to 2020¹⁶ (for regulated as well as non-regulated professions) shows that demand for people

¹⁰ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005).

¹¹ Council Directives: 89/48/EEC, 92/51/EEC, 1999/42/EC, 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC.

¹² Source: database of regulated professions in the EU Member States, EEA countries and Switzerland. http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?fuseaction=home.welcome
¹³ http://ec.europa.eu/public_opinion/flash/fl_263_en.pdf

¹⁴ On 13 July 2010 Directorate General Employment, Social Affairs and Equal Opportunities released a Eurobarometer survey on geographical and labour market mobility (http://ec.europa.eu/public_opinion/archives/ebs/ebs_337_en.pdf).

According to this survey 10% of the respondents encountered or expect to encounter when going to work abroad problems getting their educational and professional qualifications recognised. However in this survey the question refers to working in or outside the EU whilst the 4% stem from questions relating to working only in the EU.

¹⁵ Citizens signpost service report of 26 February 2010:
http://ec.europa.eu/citizensrights/front_end/docs/css_report_on_prq_220310.pdf

¹⁶ http://www.cedefop.europa.eu/EN/Files/9021_en.pdf

with medium or high qualifications is expected to grow, while the demand for those with low (or no) formal academic qualifications continues to fall. Demand for highly-qualified people is projected to rise by over 16 million jobs in the European Union, while demand for low-skilled workers is expected to decline by around 12 million jobs between 2010 and 2020.

Market expectations will also be influenced by demographic developments. By 2050, the EU labour force will decline by 68 million workers (in the absence of immigration and at constant labour force participation)¹⁷. Markets across Europe will increasingly compete for qualified professionals and this trend will already start in the coming years.

Policy on professions regulated by Member States plays an important role in this context: On a European wide basis, more than 800 types of professions are regulated. If the number of regulated professions is calculated at national level, it amounts to more than 4000 regulated professions in the 27 Member States of the EU.

Automatic recognition at EU level - Automatic recognition is the easiest route under the Directive: There is no check of the training of the professional by a host Member State where a citizen intends starting work. To make this happen, the home Member State introduced a minimum set of training requirements agreed under the Directive at European level. Such automatic recognition exists however only for seven professions (doctor, nurse, midwife, dentist, veterinary surgeon, pharmacist and architect).

In total, it can be estimated that in 2008 around 6.4 million citizens benefit from such automatic recognition throughout the European Union. This figure can be broken down as follows: 5.77 million healthcare professionals¹⁸, around 160.000 active veterinarians¹⁹, and more than 435.000 architects²⁰.

In the areas of craftsmanship, trade and industry, automatic recognition is possible on the basis of years of professional experience already acquired in the home Member State. However, no data about the numbers of citizens who may benefit from automatic recognition on the basis of their professional experience are available (the above figure of 6.4 million does not cover these areas).

In any event, the vast majority of regulated professions²¹ do not benefit from automatic recognition guaranteed under European Law. Citizens exercising other professions than the seven professions for which automatic recognition is introduced face a case-by-case analysis by Member States under the so-called 'general system'.

¹⁷ See the Report to the European Council by the Reflection Group on the Future of the EU 2030, 'Project Europe 2030, Challenges and Opportunities', in particular p. 24
http://www.reflectiongroup.eu/wp-content/uploads/2010/05/reflection_en_web.pdf

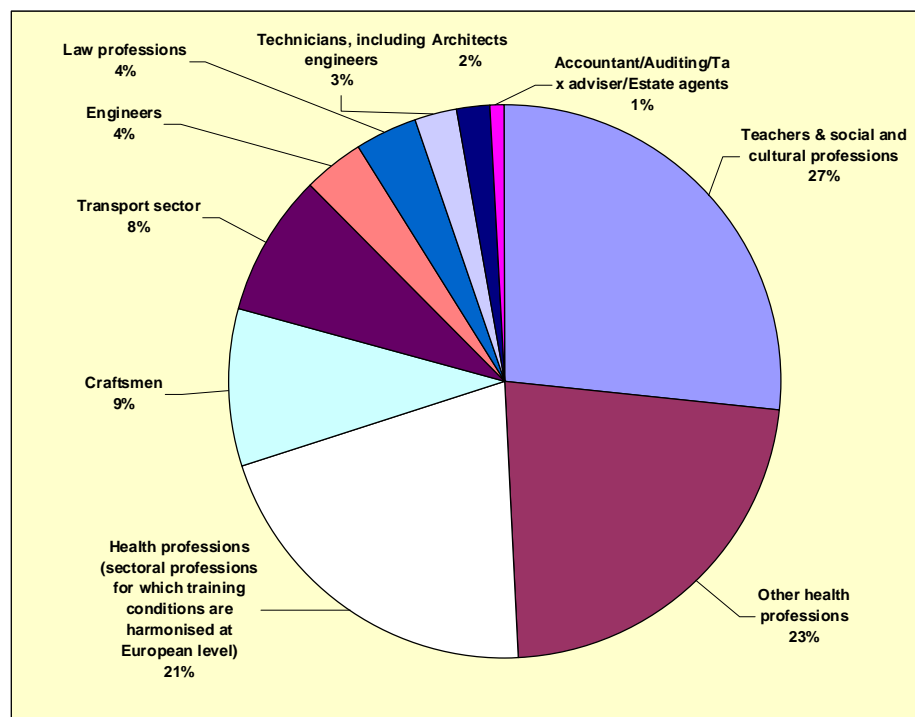
¹⁸ Data from the World Health Organisation from January 2008, website WHO:
<http://data.euro.who.int/hfadb/>

¹⁹ Federation of Veterinarians of Europe; <http://www.fve.org/index.php>
²⁰ http://www.ace-cae.eu/public/contents/getdocument/content_id/851

²¹ A profession is regulated when a Member State makes access to that profession conditional upon the possession of a specific professional qualification under its domestic regulations.

Professions with the highest mobility - Figure 18 below shows that with 27%, teachers, social and cultural professions have been the most mobile professionals throughout Europe between 1997 and 2008. These professions do not profit from automatic recognition, likewise health professions (23%) outside those for which training requirements have been harmonised at European level. The latter category counts for 21%. Hence the majority of mobile workers (around 66%) fall under the so-called general system and do not benefit from automatic recognition. Therefore, quick and simplified procedures are important to meet with these high mobility rates.

Figure 18: High mobility for health, teacher and cultural professions²²



Percentage of decisions (positive or negative) for different sectors, based on information from Member States and EEA countries and entered into the database (see footnote 1) up to 26.2.2010. CY, CZ, EE, ES, PT and RO did not provide figures for 2008 yet on recognition of qualifications.

22

Teachers & social and cultural professions: primary/secondary school teacher, university teacher/ professor/lecturer, social worker, child care worker, kindergarten teacher/ nursery school teacher/ preparatory school teacher

Health professionals: doctor of medicine, nurse, dental practitioner, veterinary surgeon, pharmacist, midwife (sectoral professions for which training conditions are harmonised at European level)

Other health professions: physiotherapist, second level nurse, radiographer/ radiotherapist, occupational therapist, speech and language therapist, medical/biomedical laboratory technician, optician, masseur/massage therapist/spa therapist, dietician, psychotherapist, chiropodist, psychomotor therapist and psychologist

Craftsmen: joiner/carpenter, mason/bricklayer, master builder, painter-decorator, tiler, plasterer, surveyor, glazier/glass-blowing and manufacture of glass apparatus, hairdresser/barber/ wig-maker, building demolition contractor, restaurant owner/manager

Transport sector (maritime): ship's deck officers, marine engineering officer, ship's engineer, boat master, officer in charge of navigational watch (it should be noticed that after 20 October 2007 Directive 2005/45/EC has become applicable to certain categories of seafarers, to which, therefore, the Directive 2005/36/EC no longer applies)

Technicians: building insulator/ building insulation, electrical equipment/appliances contractor/ repairer/installer, fork lift truck operator, optometrist.

Implementation of Directive 2005/36/EC in Member States

Member States have been late - Member States were supposed to have transposed the Directive by 20 October 2007. Four years and half after its adoption, three Member States (Luxembourg, Greece and Austria) have still not fully implemented the Directive²³. The Court of Justice condemned seven Member States in 2009 for not having implemented the entire Directive on time (in October 2007).

Figure 19: Three Member States have still not transposed

Member States	Transposition completed ?	Table of concordance provided?	Number of communications to Commission to date	Judgement by the Court of Justice
BE	YES	NO	36	C-469/08 of 9.9.2009
BG	YES	YES	6	
CZ	YES	YES	27	
DK	YES	YES	130	
DE	YES	NO	203	C-505/08 of 17.12.2009
EE	YES	NO	9	
IE	YES	YES	32	
EL	NO	NO	0	C-465/08 of 2.7.2009
ES	YES	NO	24	
FR	YES	YES	119	C-468/08 of 1.10.2009
IT	YES	YES	7	
CY	YES	NO	16	
LV	YES	NO	23	
LT	YES	YES	33	
LU	NO	NO	5	C-567/08 of 2.7.2009
HU	YES	YES	38	
MT	YES	NO	8	
NL	YES	YES	72	
AT	NO	NO	116	C-477/08 of 24.9.2009
PL	YES	YES	60	
PO	YES	NO	2	
RO	YES	YES	23	
SI	YES	YES	17	
SK	YES	NO	36	
FI	YES	NO	17	
SE	YES	YES	60	
UK	YES	YES	77	C-556/08 of 9.7.2009
EU	Transposition completed in 24 MS	Concordance tables received for 14 MS	Total number of communications: 1196	

State of transposition in Member States as of 10 May 2010.

One of the reasons why many Member States were late with transposition might be that they underestimated the challenge of complexity. 12 Member States are not willing to provide, on a voluntary basis, transposition tables in which they explain

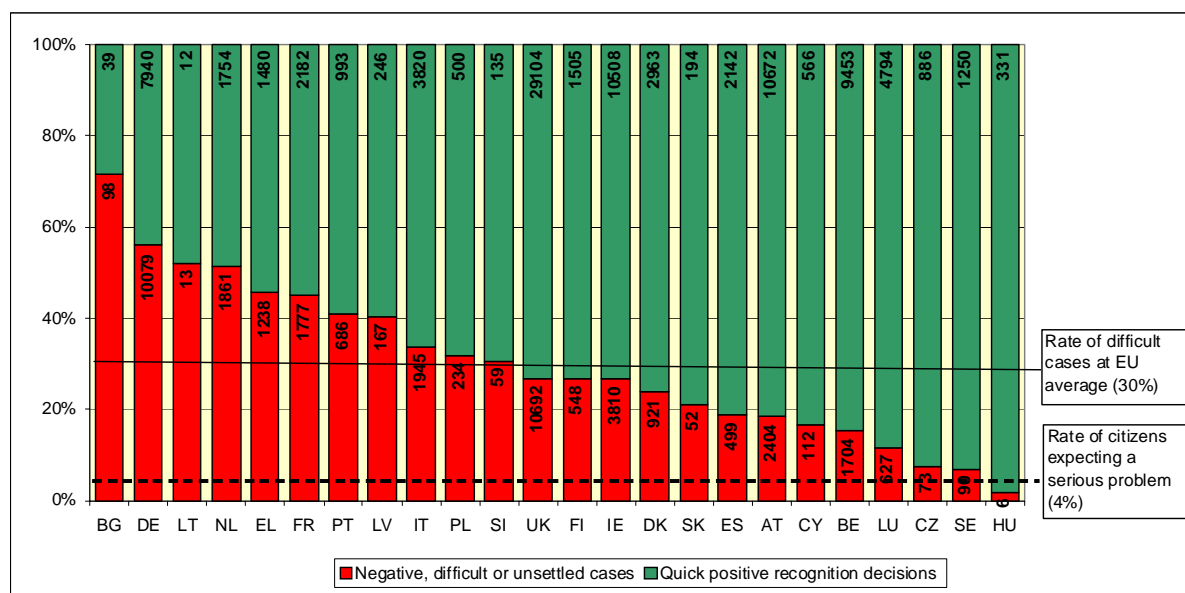
²³

The current Scoreboard takes into account all notifications of national measures transposing directives with a transposition deadline until 30 April 2010 which have been notified by 10 May 2010. Greece has notified the national transposition of Directive 2005/36 by 27 May 2010.

how they actually translated the different provisions of the Directive into national laws and regulations. These tables are useful to understand the transposition in that Member State and to verify that the national transposition measures are in compliance with the Directive. They are also useful for the Member States themselves as they give an overview of the transposition. Enhanced cooperation is important in order to remove possible legal uncertainty as quickly as possible. A positive signal is certainly that each Member State has designated and set up its national contact point (which is a legal obligation under the Directive) which should provide professionals with information and guidance on the detailed and practical application of the Directive²⁴.

Member States compliance with citizens' expectations - It is recalled that only 4% of the population anticipates a major problem with the recognition of qualifications before going abroad. However the success rate in Member States is much lower and the rate of difficult cases differs considerably amongst Member States:

Figure 20: Quick recognition is not a reality yet²⁵



Recognition in Member states between 1997-2008.

As illustrated in Figure 20, on a European-wide average, only 70% of recognition requests have reached a quick successful outcome whereas the remaining 30% relate to cases which turned out to be difficult or in which recognition was even denied. In 9% of cases, citizens only got access to the profession after having followed so-called compensatory measures (an adaptation period of up to 3 years or an aptitude test offered at best twice a year), in a further 8% of the cases recognition was even refused and finally 13% of all cases are reported as not settled because citizens currently follow an adaptation period or lodged an appeal before national courts.

²⁴

http://ec.europa.eu/internal_market/qualifications/contactpoints/index.htm

²⁵

Based on information from Member States, numbers from database (see footnote 1) 1997-2008, taken on 4.5.2010. EE was not considered because EE only presented 3 cases for that period in the database.

Overall, Hungary is the Member State with the highest percentage of quick and positive recognition decisions. It is closely followed by Sweden and the Czech Republic. Bulgaria has the lowest percentage of quick and positive recognition decisions. Differences cannot be explained by the idea that the higher the number of requests from the citizens, the more difficulties exist in the relevant Member State (see for example the situation in Germany in contrast to the United Kingdom).

The use of SOLVIT shows the complexity of the issues at stake. SOLVIT is a network in which Member States work together to solve without formal legal proceedings problems caused by the possible misapplication of Internal Market law by public authorities. Between 1.11.2008 and 31.10.2009, 15.2% (220 cases) of all SOLVIT cases related to professional qualifications. Spain and Italy had a particularly large number of problems. For 2009, a quarter of the cases reported could not be solved by SOLVIT²⁶.

Member States cooperation rate - Given the complexity of the issues, cooperation between Member States is a further avenue for optimising the recognition procedures for the benefit for citizens but also for the benefit of public confidence into European law. The Directive effectively obliges competent authorities in the host Member State and in the home Member State to assist each other by providing information about migrating professionals²⁷.

To support such cooperation in practical terms, the Commission launched the Internal Market Information System (IMI) and used the implementation of the Professional Qualifications Directive as a pilot project. IMI is a multilingual electronic tool that makes it easier and faster for the authorities to exchange information. It has proven to be successful in many cases. However, the use of IMI is not mandatory for all competent authorities with regard to all regulated professions coming under the Professional Qualifications Directive (in contrast to the Services Directive) The main reason that it is not mandatory is of historical nature: the Directive was adopted in 2005, while the IMI was developed in 2007. From the beginning of the pilot phase (February 2008) until the end of April 2010, 2338²⁸ information exchanges on professional qualifications took place in IMI²⁹. Following a slow start, information exchanges quadrupled in 2009 (1404) compared to 2008 (379).

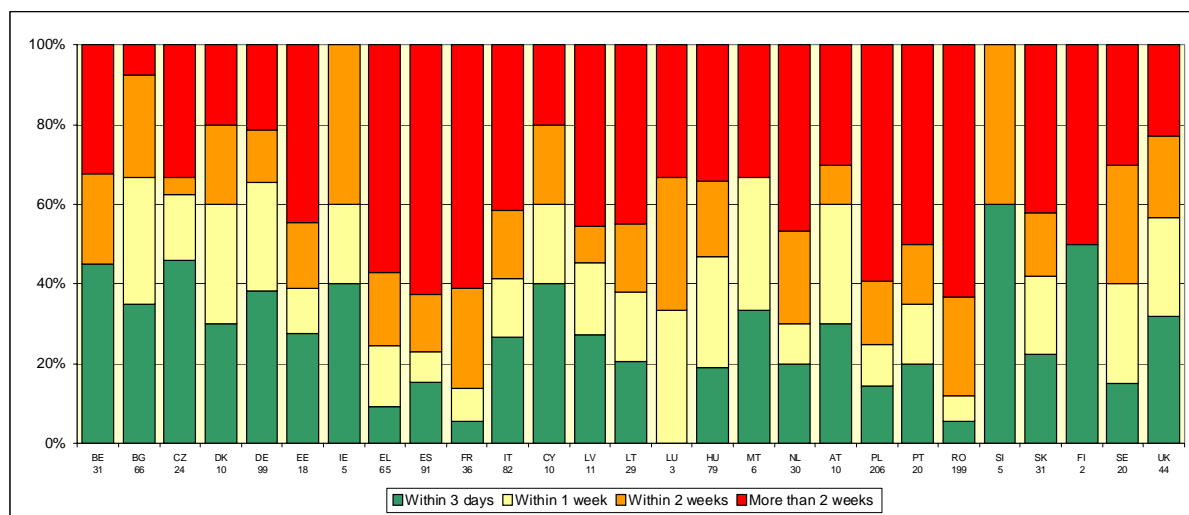
²⁶ In 2009, SOLVIT centres handled and closed 220 cases in the area of professional recognition, having solved 75% of them. Amongst the problems identified, beyond the delays in the transposition of the Directive and the lack of specific guidelines for the application of the directive, are delays in processing applications for recognition, decisions or the proposal of compensatory measures without justification.

²⁷ See article 8 and 56 of Directive 2005/36/EC.

²⁸ Information from IMI from May 2010.

²⁹ The first information requests were sent in February 2008.

Figure 21: Responding time to IMI requests could be optimised



IMI requests concerning PQD received and answers sent within 14 days in 2009 - Time needed to answer a request (from status 'request sent' to 'information provided')

Figure 21 illustrates, that on average, 71 % of information requests are replied by the receiving Member State within two weeks. There are however remarkable differences between Member States. For example Bulgaria, the Czech Republic and Germany replied quickly to a high number of requests (often within only three days), whereas the percentage of replies sent within two weeks is fairly low in Spain, France and Romania. Clearly, there is scope for improvement in those countries.

Conclusions: A gap between citizens' expectations and deliveries in Member States

European citizens are increasingly mobile and they expect automatic recognition of professional qualifications obtained in their Member State of origin. However, the professional recognition directive can only explore its full benefits if all Member States transposed this legislation into their national law and apply it properly. The few Member States that have still not transposed this directive are urged to transpose this important legislation without further delay. In order to ensure a proper application Member States have to invest more efforts to ensure quick and satisfactory decisions and close cooperation for the benefit of the citizens and markets. The citizens' expectation regarding recognition of professional qualifications stands in contrast to reality. One might call it an expectation gap. This issue is not going away given that the markets will have in future an even higher demand for highly qualified professionals. In addition, recent educational reforms and observed improvements in the academic recognition of diplomas should have paved the way not only for more convergence in education across the Member States but also much smoother recognition of professional qualifications.