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Internal Market Scoreboard n° 16 bis

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EDITORIAL

On 20th November last year, the Commission adopted its Single Market Review, emphasising once more the continued importance of a well-functioning Internal Market for the development and well-being of our businesses and citizens. In the Review enforcement and proper application of the Internal Market rules are highlighted as key to our success.

For the last 10 years, the Internal Market Scoreboard has been keeping track of Member States' efforts to transpose the Internal Market Directives on time. On the occasion of the last Scoreboard, I expressed both concern and optimism. Concern at seeing the efforts of Member States slip back compared to their previous, best ever record of 1.2%. But at the same time I was confident that Member States would rise to the challenge and get back on the right track. Fortunately, my confidence in Member States proved to be justified as illustrated by today's Scoreboard with an average "transposition deficit" of 1.2%, thus matching the previous record.

Following the accession of Bulgaria and Romania on 1.1.2007, the Scoreboard now encompasses 27 Member States. The good performance of Bulgaria and Romania (both 0.8%) is worthy of praise and reflects the important efforts made by these countries to take over the acquis prior to their accession. Remarkable progress has also been made by other Member States such as Italy and Portugal. However, other Member States still have some way to go, but no doubt these will feel encouraged by the overall positive results to do their utmost to move closer to the agreed target of 1.0% by 2009.

What is required now from all Member States is a structural, sustainable pattern of continuous progress towards this 1.0% target.

The Commission will play its part in providing guidance and support to Member States whenever this is required. My own services are sparing no efforts in providing support to Member States in appropriate cases e.g. for the Services Directive, the Professional Qualifications Directive, MiFiD, the Public Procurement Remedies Directive and others. This should help Member States achieve not only timely, but also correct and homogeneous transposition across all 27 Member States.

I hope that our joint efforts will produce even better results next time around and bring us even closer to the new target of 1.0% by the time of the next Scoreboard.

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

MAIN FINDINGS

Transposition

After the best result ever recorded of 1.2% in December 2006, the average transposition deficit increased to 1.6% in July 2007. Fortunately Member States have been back on track over the last six months and the current deficit is again below the interim target of 1.5% as agreed by the Heads of State and Government in 2001. At the end of 2007, the transposition deficit for Internal Market directives was 1.2% for EU-27 Member States.

Transposition figures for both Bulgaria and Romania are included in the current Scoreboard. Both Member States deserve specific mention as they were able to produce the efforts necessary to transpose most of the Internal Market acquis on time.

22 Member States are below the 1.5% target. This leaves only 5 Member States above the 1.5 % target: in ascending order, Greece, Poland and to a greater extent Portugal, Luxembourg and Czech Republic. 12 Member States have obtained their best result ever. Most progress was made by Portugal, followed by Italy.

The progress made by Italy is remarkable. Thanks to a strong commitment at a political level and a reorganisation of its procedures, Italy managed to reduce its deficit to 1.2%, therefore beating the 1.5% target for the first time ever. Portugal also has made very good progress in the last half year even if it failed to reach the target.

It appears that the 1.5% target is now a reality for most Member States. Moreover, 15 Member States have already achieved the future deficit target of 1.0%.

Looking at the directives to be transposed over the next 6 months, Estonia, Slovenia, Latvia and Sweden seem to be best prepared as they have already transposed a large number of those directives.

Infringements

As pointed out above, more and more Member States are doing well when it comes to transposing EU Internal Market directives on time. But they also have to pay attention to the quality of that transposition as well as how the directives are applied on the ground. Incorrect transposition and application of Internal Market rules remains a problem and EU citizens and businesses pay a high price whenever this arises.

Italy has improved its track-record as regards the number of infringements open against it but is still the country with most infringement proceedings, followed by Spain which has seen its number of infringements increase over the last 6 months. Nine other Member States markedly exceed the average, particularly France, Germany and Greece.

Among the new Member States, Poland has most infringement proceedings. Although Poland improved its position over the last 6 months it still has more than twice the average number of infringements of the other new Member States.

When broken down by sector, infringements relating to the environment, taxation and customs union, energy and transport account for half of all infringement cases.

The current trend within the new Member States is that the average speed of infringement resolution continues to slow down. It increased from 9 to 12 months. The situation for EU 15 has remained almost unaltered with a small reduction from 26 to 25 months.

INTRODUCTION

On 20 November 2007, the Commission adopted its Single Market Review[1]. This communication restates the importance of a properly functioning Internal Market for the attainment of the Lisbon objective of growth, competitiveness and jobs and focuses on delivering benefits to citizens and smaller companies in particular. The Single Market Review highlights the importance of enforcement and proper application of Community law and proposes a renewed partnership with Member States to secure a better functioning Internal Market. It also proposes a new approach on how to improve our knowledge of the functioning of the markets. This entails closer cooperation with Member States on the timely and proper transposition of directives, better and targeted information on EU law, and effective problem-solving mechanisms, as already stated in the Commission's earlier communication of 5 September on the application of community law[2].

The **primary responsibility for ensuring the correct implementation and application of Internal Market rules lies with the Member States**. It is in their common interest to ensure that the Internal Market functions properly for the benefit of their businesses and citizens. If Internal Market rules are not applied effectively, their contribution to Europe's growth and competitiveness is undermined. The importance of proper application lies in the fact that the economic interests of all Member States will suffer if some Member States do not deliver.

The Scoreboard monitors whether Member States are doing what is needed to ensure that the Internal Market functions properly. It does so by first examining how quickly each of the Member States **transposes Internal Market directives into national law,** within the deadlines that Member states themselves have agreed. The Scoreboard also highlights the **number of infringement proceedings** initiated by the Commission against each Member State. Every infringement case is a problem for an industry, for a business or for citizens. The incentive for Member States to put an end to such an infringement as quickly as possible should therefore not be the sanction that the Court of Justice can impose, but the determination to remove obstacles that make citizens' and businesses' lives more complicated.

As the guardian of the Treaty, the Commission, while increasingly assisting Member States in their task, is looking more critically at non-timely transposition and is starting infringement proceedings for non-transposition more quickly than in the past. Such action is critical to the credibility of the Internal Market and to the effectiveness of EU policies.

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1 Communication of the Commission: "A single market for 21st century Europe", COM (2007) 724 final, 20.11.2007.

2 Communication of the Commission: "A Europe of results – Applying community law", COM (2007) 502 final, 5.9.2007.

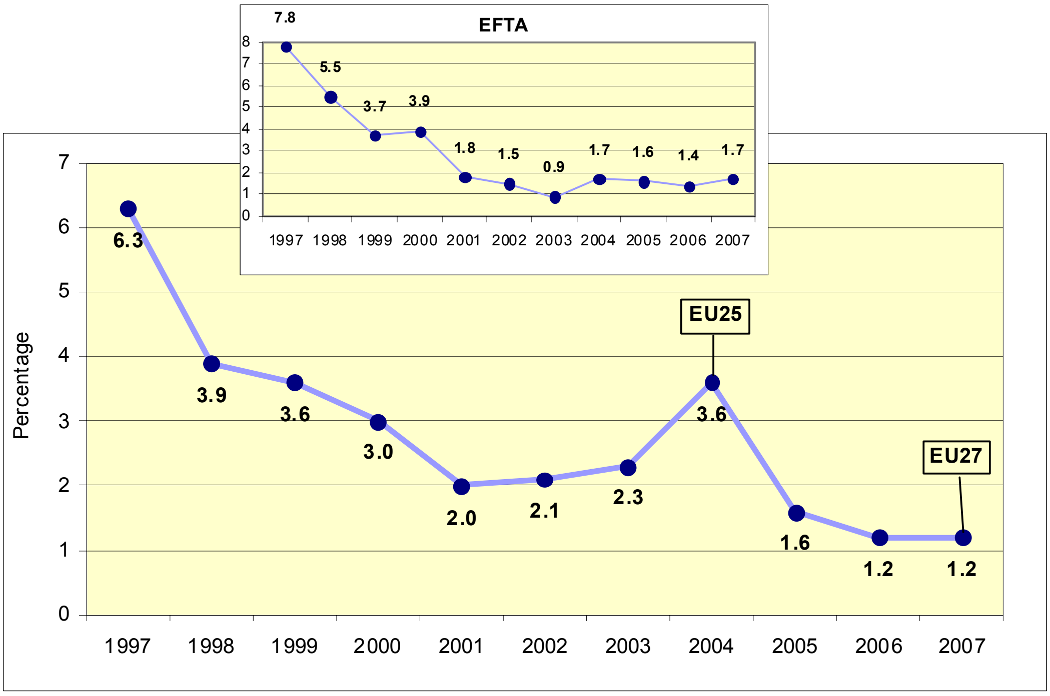
A. STATE OF TRANSPOSITION OF INTERNAL MARKET LEGISLATION INTO NATIONAL LAW

In March 2001, EU Heads of State and Government agreed that Member States should improve their transposition rates, setting a 1.5% transposition deficit as an interim target[3]. This objective was met at the end of 2006 when a transposition deficit of 1.2% was achieved.

In light of this development, the European Heads of State and Government decided in March 2007 that the transposition deficit should be below 1.0% by 2009 at the latest[4].

Average transposition deficit in December 2007 - compared to previous years

Figure 1: The interim target of 1.5% is now consolidated



The transposition deficit shows the percentage of Internal Market directives not yet communicated to the Commission as having been transposed, in relation to the total number of Internal Market directives which should have been transposed by the deadline. As of 31 October 2007, 1630 directives and 607 regulations relate to the Internal Market as defined in the EC Treaty.

For the first time ever in December 2006, the average transposition deficit of the 25 Member States fell below the interim target of 1.5%. However, in the first half year of 2007, the average transposition deficit rose to a disappointing 1.6%. Fortunately,

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[3] In: Conclusions of the European Council summits of Stockholm (23-24 March 2001). Afterwards, EU Heads of State and Government have repeatedly reminded the Member States to spare no efforts to reach the 1.5% target, namely in Barcelona (15-16 March 2002) and Brussels (20-21 March 2003 and 25-26 March 2004).

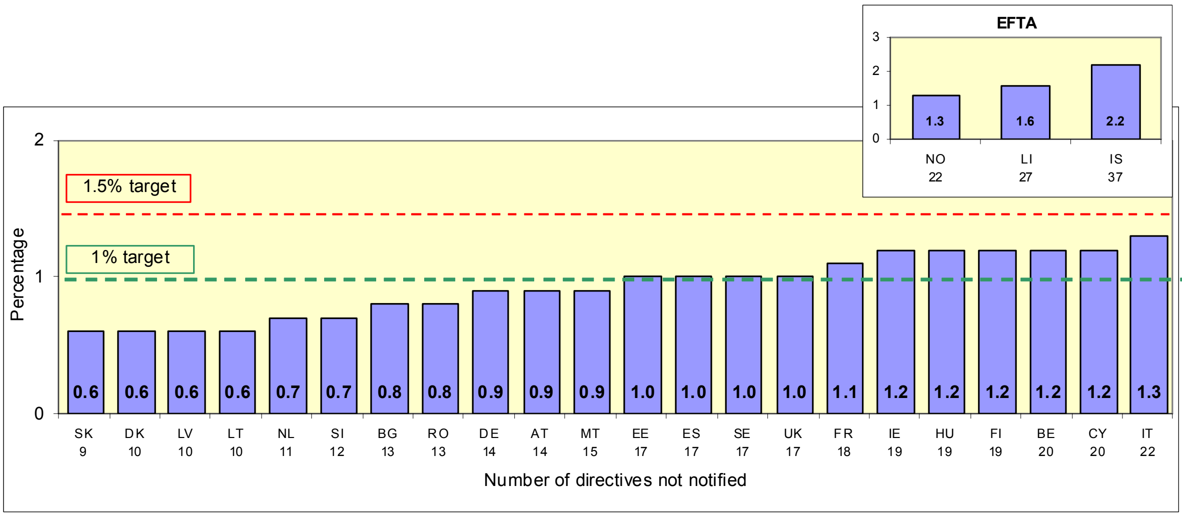
[4] Conclusion of the European Council summit of Brussels on 8/9 March 2007.

this negative trend was reversed during the second half of the year. **At 1.2%, the average transposition deficit of the 27 Member States is well below the interim target and matches the December 2006 result achieved by 25 Member States.** While the ultimate goal obviously remains that all Member States transpose Internal Market rules before the deadline they have agreed among themselves, this is an encouraging trend.

The current Scoreboard is the first one which measures the performance of a Europe with 27 Member States. Bulgaria and Romania deserve special mention, as they were able to transpose quickly most of the Internal Market acquis. Both Member States have already reached the 2009 target.

Performance measured against the 1.5% transposition deficit target

Figure 2: 22 Member States are (well) below the 1.5% target



Transposition deficit of the Member States that are below the 1.5% target as of 10 November 2007.

- 22 Member States are below the target of a 1.5% transposition deficit. This is an even better result than that achieved in December 2006 with 19 Member States reaching the 1.5% target.

- Slovakia is in first position and is only 9 directives away from a 0% deficit. Denmark, Latvia and Lithuania closely follow, with 10 directives overdue.

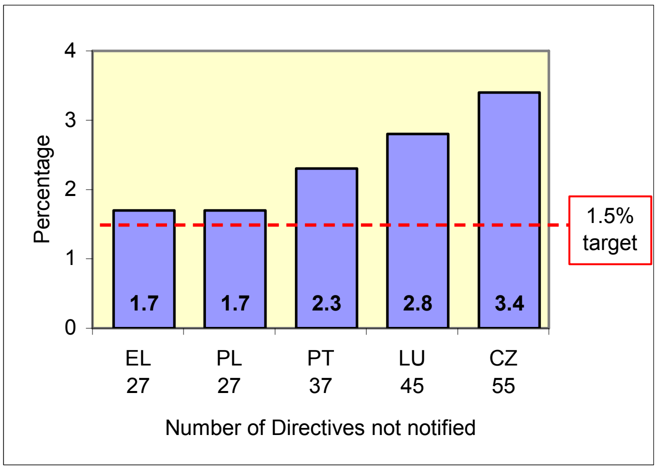
- 4 Member States that missed the 1.5% target 6 months ago have now reached it: the Netherlands, Ireland, Spain and Italy. Italy managed to achieve the target for the first time.

- Bulgaria and Romania are well placed, with an average transposition deficit of 0.8%.

- 12 Member States have achieved or equalled their best result ever: Belgium, Germany, Estonia, Greece, France, Ireland, Italy, Malta, the Netherlands, Austria, Slovenia and Slovakia.

- 15 Member States are already in line with the future deficit target of 1.0%.

Figure 3: Only 5 Member States lag (well) behind



Transposition deficit of the Member States that are below the 1.5% target as of 10 November 2007.

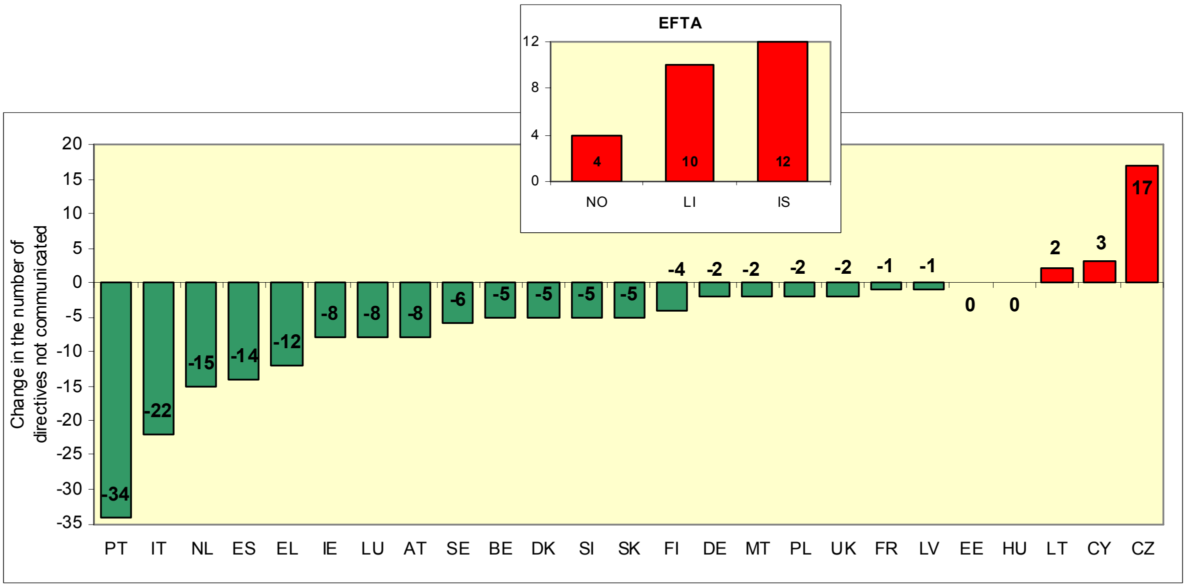
- The Czech Republic, Luxembourg, Portugal, Poland and Greece failed to reach the 1.5% target.

- In reverse order, the Czech Republic, Luxembourg and Portugal lag well behind. Poland and Greece are very close to reaching the 1.5% transposition deficit target with 27 directives out of 1630 directives that still need to be transposed.

- The Czech Republic's performance is very worrying, as its deficit is about three times the average EU deficit.

- The performance of Portugal and to a lesser extent that of Greece and Poland is, in absolute terms, not yet satisfactory. But Portugal and Greece have made very good progress in the last half year.

Figure 4: Portugal and Italy's efforts bear fruit; the Czech Republic needs to undertake urgent action



Change in the number of outstanding directives since Scoreboard 16 (July 2007).

- Most Member States have made progress. Only 3 Member States have added to their existing backlogs: Lithuania, Cyprus and the Czech Republic. This is a good result considering this reverses the trend of 6 months ago when the backlog of all but 6 Member Sates had increased.

- Portugal and Italy deserve special mention. Both have undertaken a sustained effort and have reduced their deficit by 34 and 22 directives respectively in the last 6 months.

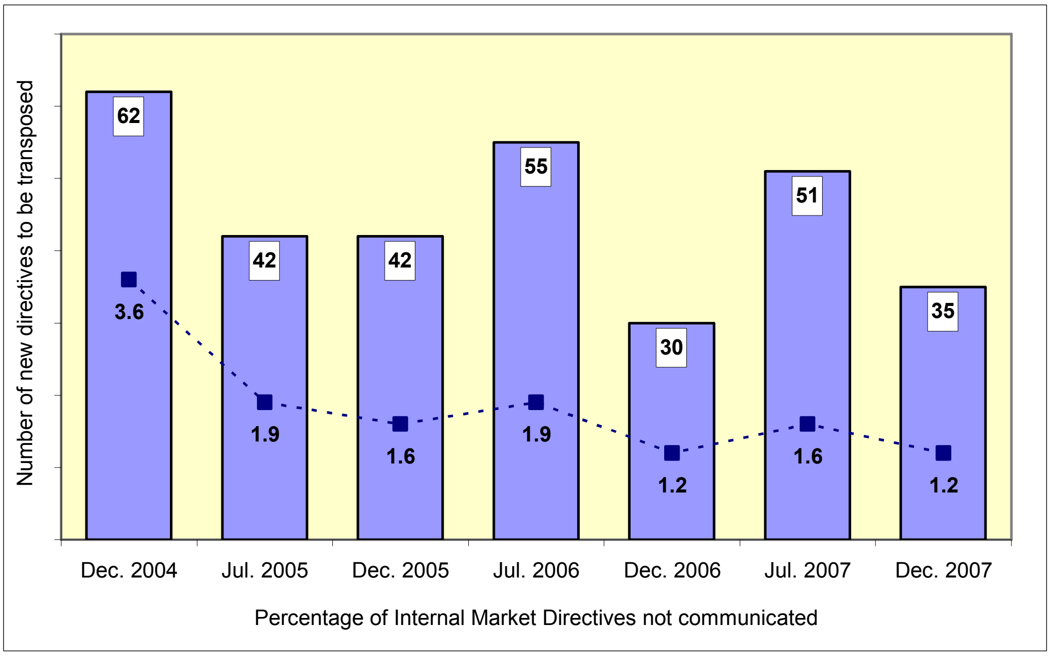
- Given the poor transposition record of the Czech Republic, the very significant increase in its backlog over the past 6 months is striking.

Why *most* Member States are better able to reach the 1.5% target

As highlighted above, many Member States have made substantial progress in the last 6 months.

It is true that the number of directives to be transposed by December 2007 was lower than in July 2007. However, the average transposition deficit today is at the same level as in December 2006 although the number of directives is slightly higher than one year ago.

Figure 5: The number of directives to transpose is strongly linked to the transposition deficit



Number of new directives to be transposed between two Scoreboards compared to the final transposition deficit. For example, 35 new directives needed to be transpose between July 2007 (Scoreboard 16) and December 2007 (Scoreboard 16bis). The final score for Scoreboard 16 bis is 1.2% transposition deficit.

Whilst the reduced number of directives to be transposed is certainly a factor that helps to explain why many Member States have made progress, the reasons for the overall improvement appears to lie elsewhere. Most of the Member States have implemented the best practices set out in the 2004 Commission Recommendation on transposition[5]. This is now producing positive effects. A decisive element in ensuring effective and efficient transposition of directives is the degree of political priority given by the government to this task, in particular if supported by mechanisms to ensure correct and timely transposition.

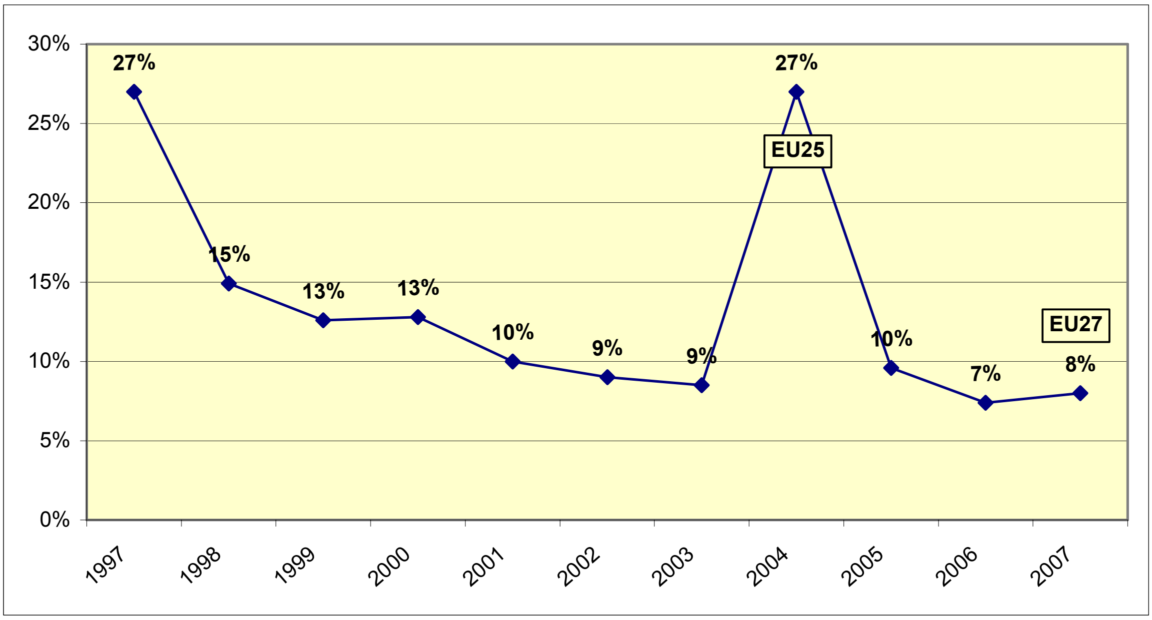
Italy illustrates this point very well. Currently, Italy is making a serious effort to improve the process of transposing directives and to improve the application of Community law. Italy has put in place new internal procedures and mechanisms to ensure smooth and fast transposition, including the creation of a "Scoreboard Working Group". The result achieved by these initiatives is nothing less than remarkable as Italy has managed to half its December 2006 deficit: 1.3% (22 pending directives) as against 2.7% (44 pending directives). Italy has shown that with the necessary political commitment, it is possible to achieve outstanding results within a rather short period of time.

The Commission encourages Italy to maintain its efforts to reach the future deficit target of 1.0% by 2009.

5 Recommendation of the Commission on the “transposition into national law of directives affecting the Internal Market” of 12 July 2004, OJEU L 98 of 16 April 2005, page 47.

Fragmentation factor

Figure 6: Fragmentation factor has increased somewhat



The so-called 'fragmentation factor' records the percentage of the outstanding directives that have not been transposed in at least one Member State with the consequence that the Internal Market is not a reality in the areas covered by those directives.

The fragmentation factor is rising slightly. Despite an improved transposition rate, this upward trend can be explained by the accession of Bulgaria and Romania on 1 January 2007. Given that both Member States had to transpose all the existing Internal Market acquis by that date, the figures on fragmentation naturally also peaked. But it is quite remarkable that the increase is so small, compared to the previous accession when the fragmentation factor needed more time to fall to the pre-accession level.

Nevertheless, efforts are needed to reduce the fragmentation factor further: failure to transpose a directive that has been implemented in all the other Member States holds the Internal Market hostage to one Member State's inability to transpose directives. Whatever the reasons for this, it goes against the very foundations of the Internal Market.

A fragmentation factor of 8% means that nearly one in thirteen directives is not transposed in all Member States. This means that the same percentage of Internal Market directives do not achieve their full effect. In absolute term, 124 Internal Market directives have not been transposed on time in at least one Member State.

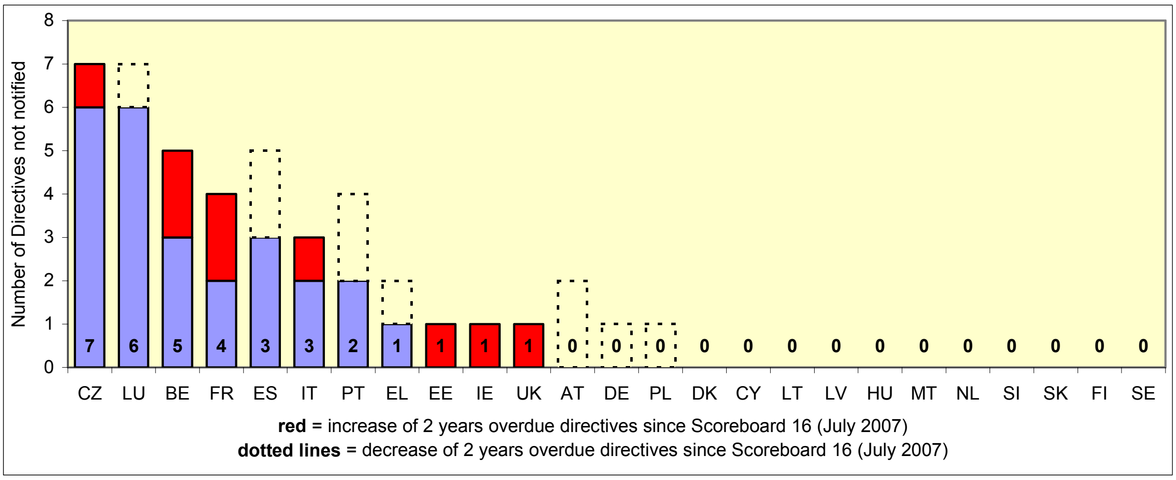
Long overdue directives

A policy of "zero tolerance" has been decided by the Heads of State and Government[6] as regards directives overdue by 2 years or more. For the reasons

[6] In Council summit of Barcelona (15-16 March 2002).

explained above a transposition delay of 2 years undermines the working of the Internal Market for all over a long period. Ideally, no Member State should have such a deficit.

Figure 7: As many Member States have decreased their deficit as have increased their deficit - Czech Republic needs to urgently address the situation



Number of directives with a deadline for transposition into national law before 1st November 2005, which have not been transposed by 10 November 2007.

- 2 more directives that should have been transposed at least 2 years ago must still be transposed by Belgium and France, while the Czech Republic, Italy, Estonia, Ireland, and the UK are more than 2 years late with 1 additional directive.

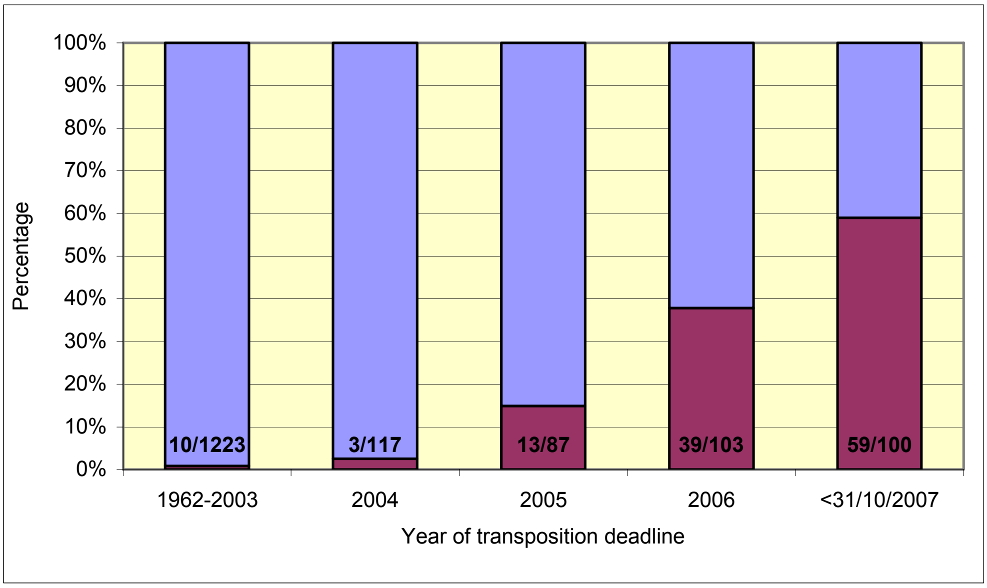
- The Czech Republic gives cause for concern as it is increasing its already high number of directives which are overdue by more than 2 years.

- On the other hand, Spain and Portugal transposed 2 of those directives and Luxembourg and Greece one. Austria, Germany and Poland have reduced their number of outstanding "old" directives to zero.

- As Bulgaria and Romania have joined the Union less than one year ago, they do not have directives overdue by 2 years or more.

Non-transposed directives date back to …

Figure 8: 10 directives that should have been transposed 4 or more years ago still need to be transposed



Number of directives that have still not been transposed in at least one Member State in relation to the total number of directives that should have been transposed in the period under consideration.

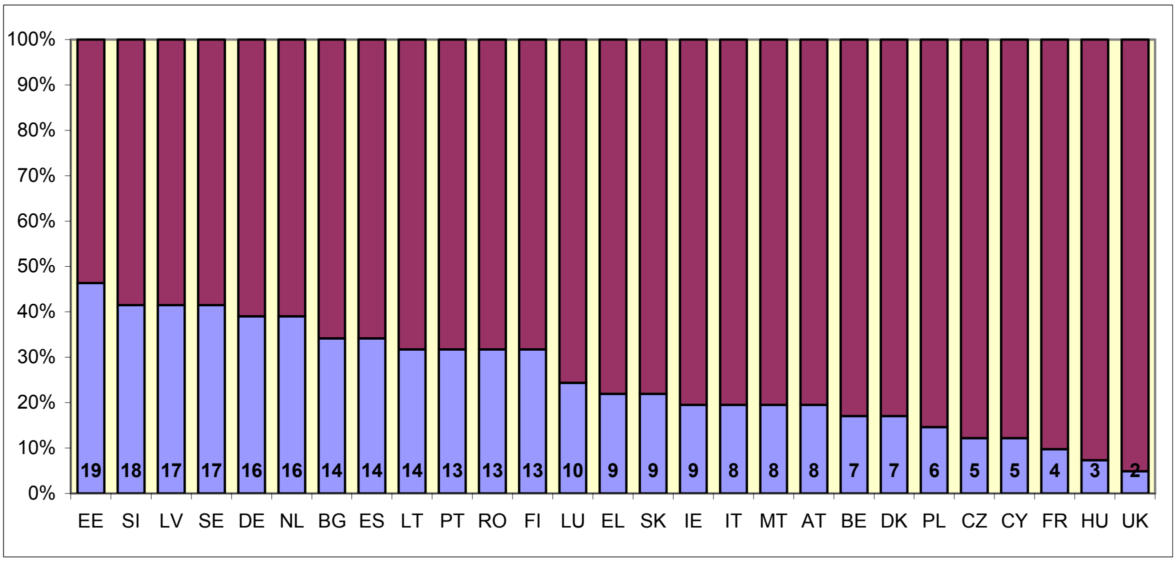
A year ago, there were 9 directives that were 4 or more years late; today, there are 10. Overall, the situation has remained stable whereas an improvement was expected. Some Member States (Czech Republic, Bulgaria and Romania) should ensure that such directives are transposed as quickly as possible.

As one would expect, the more recent the deadline for transposition, the greater the number of directives overdue. However, it is a cause of concern that 59 out of 100 directives that should have been transposed in the first 11 months of 2007 have not yet been transposed in all Member States. Here again the situation has not improved compared to 2006 (when 50 out of 84 directives remained to be transposed). In both cases, 59% of the recent directives have not been transposed on time.

Looking ahead

Figure 9 below looks at the 41 directives that must be transposed between 1 November 2007 and 30 April 2008. For each Member State, it shows the number of these directives that have already been transposed and provides a picture of the work that remains to be done.

***Figure 9:* Despite its significant backlog, the Czech Republic is still not yet proactive**



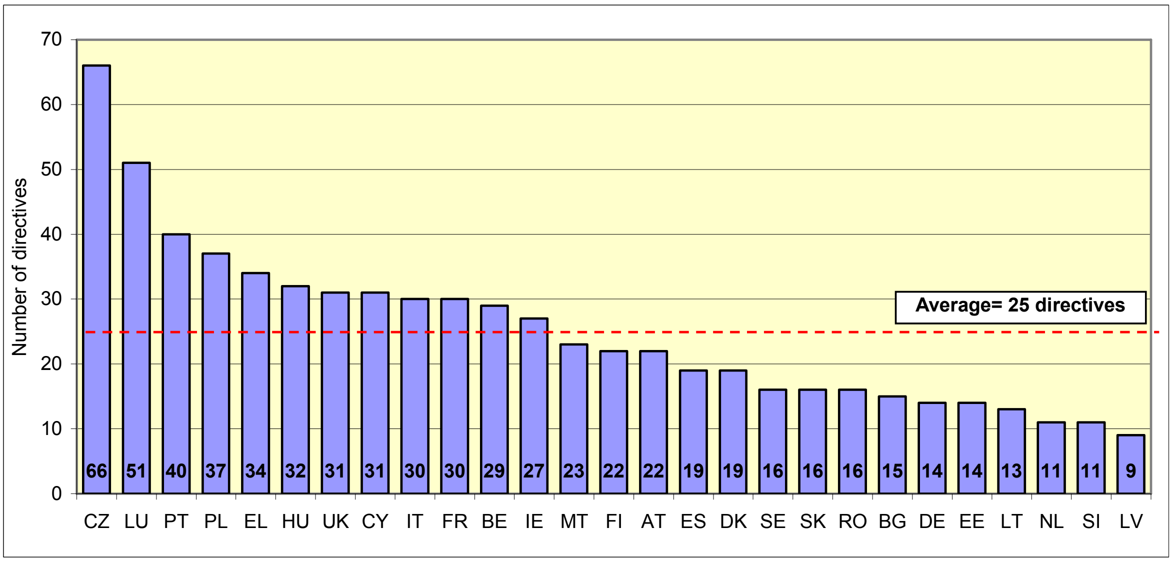
Percentage and number of Directives that need to be transposed between 1 November 2007 and 30 April 2008 (total 41) and that have already been notified by 10 November 2007.

- Estonia, Slovenia, Latvia and Sweden are undertaking a sustained effort to improve their already excellent transposition record. These 4 Member States have already transposed more than 40% of the 41 directives due before 30 April 2008;

- Portugal has already transposed 30% of those directives, what shows that it is continuing its efforts to achieve the 1.5% target for 2008.

- Given the weak performance of the Czech Republic on timely transposition, the fact that it has only transposed 5 out of 41 directives is cause for serious concern.

Figure 10: A lot of work ahead for the Czech Republic and Luxembourg to reach the 1.5% target in 6 months



This figure sets out the number of directives that each Member State needs to notify by 10 May 2008 to reach the target of a 1.5% transposition deficit by <u>the next Scoreboard.</u>

- The average number of directives Member States have to transpose in order to reach the 1.5% target remains 25 directives, compared to 6 months ago when the average was 24.

- Most of the Member States will have to work harder than 6 months ago. Only 8 Member States will have less to do: Portugal, Italy, the Netherlands, Sweden, Spain, Greece, Finland and Slovenia.

- Within a 6 months period, the Czech Republic increased its backlog from 40 to 66 directives. Hungary and the UK have added 11 directives to their backlog, Poland 10, France 8, Belgium and Luxembourg 6. Among these Member States, the Czech Republic and Luxembourg are unlikely to reach the 1.5% deficit target next time round.

- On the other hand, Portugal and Italy have reduced their backlogs significantly. They now have respectively 32 and 13 less directives still to transpose.

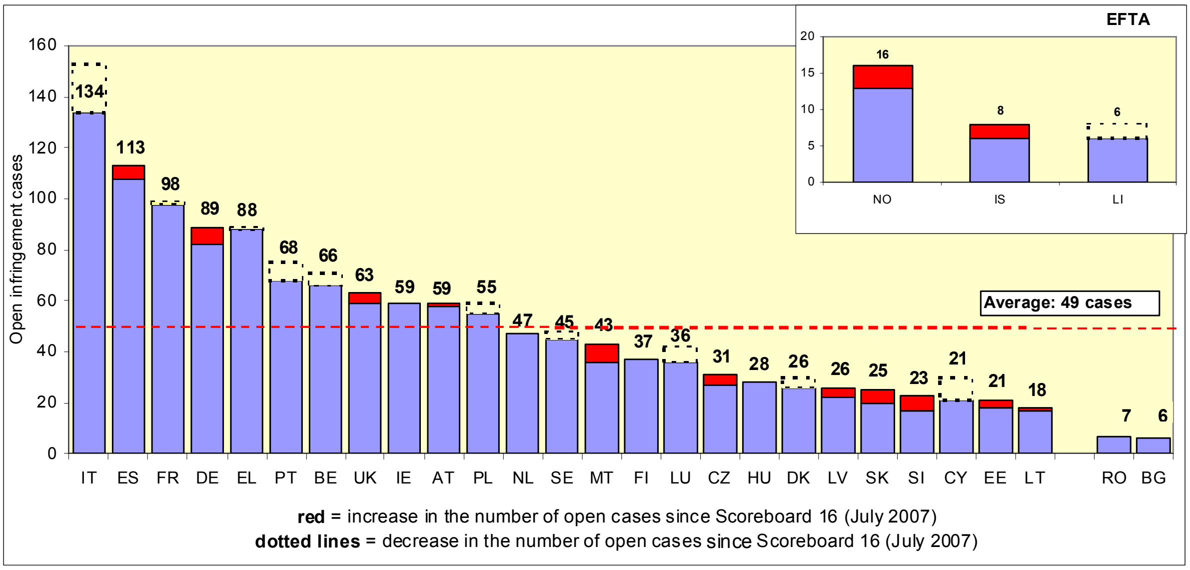
B. INFRINGEMENTS FOR INCORRECT APPLICATION OF INTERNAL MARKET RULES

The Commission has to ensure that both Treaty provisions and decisions taken by Community Institutions are correctly implemented. Therefore the Commission has been granted powers to do so through opening infringement proceedings. However, the main purpose of these is not to bring Member States before the Court of Justice, but to bring national law in line with Community law.

With regard to directives, the quality of and compliance with transposed measures is essential for the correct application of Community rules. If directives are not applied correctly by Member States EU citizens and businesses are deprived of their rights. This self-inflicted damage causes harm to the European economy and undermines the confidence that citizens and businesses have in the Internal Market and in the EU in general. Public consultations and polls on the Internal Market regularly highlight the strength of citizens' and businesses' expectations with regard to the enforcement of their rights in the Single market.

Number of infringement proceedings per Member State - compared to July 2007

Figure 11: No decrease in the number of infringement proceedings



Open infringement cases as at 1st November 2007 compared to the situation in July 2007. "Infringement cases" in the above figure include: cases where the transposition is presumed not to be in conformity with the directive it transposes or cases where Internal Market rules (both rules contained in the EC Treaty an 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.

- The EU 27 average of open infringement cases is now 49 compared to 53 cases 6 months ago but this is due to the accession of Bulgaria and Romania. These two Member States still have few infringement cases and this reduces the overall average. The EU 25 average is actually 53 cases, exactly the same as 6 months ago.

- 10 Member States managed a reduction of their infringement proceedings over the last half year. 11 Member States have recorded an increase of their cases. 4 Member States still have the same number.

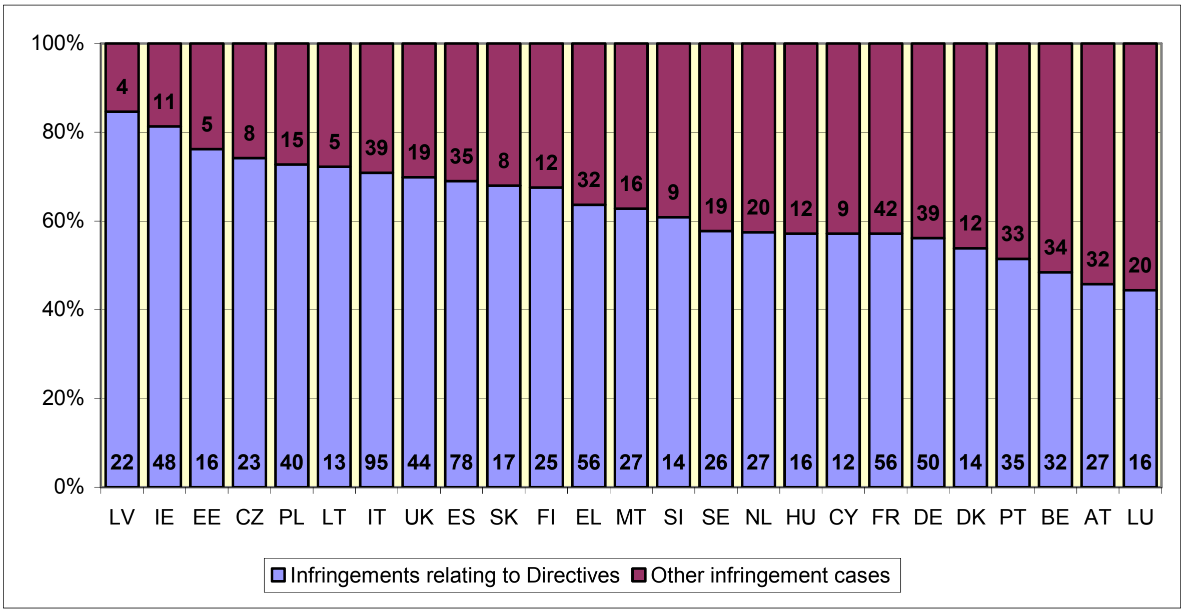
- Even if many Member States have seen an increase in their infringement proceedings caseload, this increase is quite limited between 1 (Austria and Lithuania) and 7 cases (Germany and Malta).

- Italy managed to reduce the number of its infringement cases by 19 over the last six months but still remains the country with the most cases. The second best performer is Cyprus which has reduced its caseload by 9 cases.

- On the other hand, the number of infringement proceedings against Spain, the Member state with the second highest number of infringement proceedings, has increased further with 5 new proceedings opened within the last 6 months.

Breakdown of infringement proceedings per Member State

Figure 12: Member States still need to ensure that Internal Market directives are correctly transposed and applied on the ground



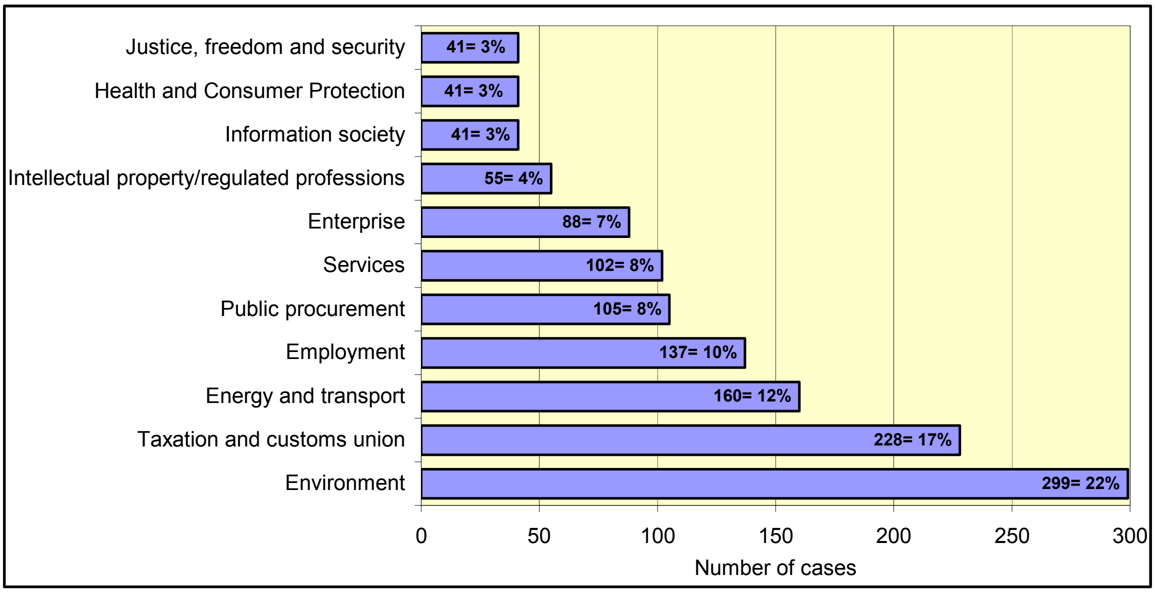
Number of infringement cases as at 31 October 2007.

The compliance and quality of national implementing measures is essential for their correct application on the ground. Infringement proceedings are opened against a Member State either because it violates a directive or because it violates another source of EU law, such as a provision of the EC Treaty, a Regulation or a Decision.

The figure below shows the proportion of these two causes for each Member State. It appears from this table that the number of infringements related to incorrect transposition or wrong implementation of Directives is significant for each Member State and represents a large proportion of the total of infringement cases, between 85% (Latvia) and 44% (Luxembourg).

Breakdown of infringement proceedings per sector

Figure 13: 'Environment', 'taxation and customs union' and 'energy and transport' account for half of infringement proceedings



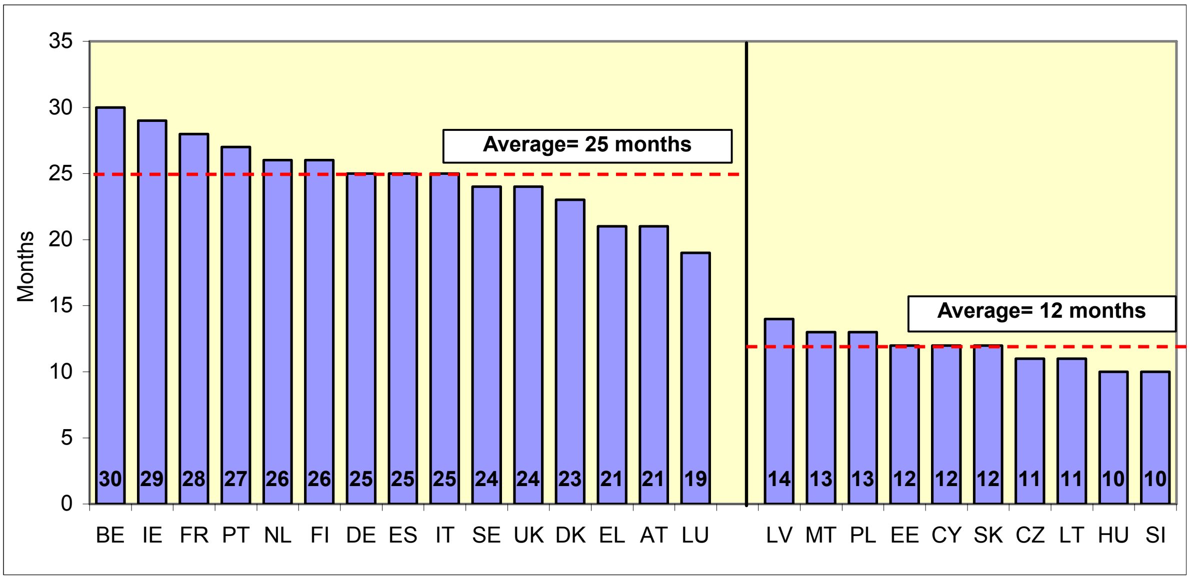
Number of infringement cases as at 31 October 2007.

The ranking of the most important sources of infringements remains the same compared to half a year ago. A breakdown of infringement proceedings by sector shows that the environmental rules are still the source of the biggest amount of cases (22%), followed by taxation and customs union rules (17%). Both sectors see an increase of 1.0% compared to six months ago. The energy and transport rules remain in third position with 12%. Employment which is in fourth position saw a reduction of its number of cases by 1.0%.

The first three sectors alone account for almost 50% of infringement cases, suggesting that if Member States were to focus their attention on correctly applying the rules in these three sectors they could reduce the number of infringement proceedings by a very significant amount.

Time required to resolve infringement proceedings per Member State

Figure 14: Average speed of infringement resolution continue to slow down for EU 10 but slightly decrease for EU 15



Infringement cases closed or brought before the ECJ between 31/10/2005 and 31/10/2007: average time in months needed to either close an infringement case or to bring it before the ECJ counted from the moment of the sending of the letter of formal notice.

The situation for EU 15 has remained almost unaltered with a small reduction from 26 to 25 months. The trend within the new Member States is that more and more time is required to resolve infringement proceedings. The time needed has increased from 9 to 12 months.