

BACKGROUND NOTE FOR THE XLVII COSAC MEETING

22-24 April 2012, Copenhagen, Denmark

Prepared by the COSAC Secretariat

State of transposition and enforcement of Single Market directives in the EU Member States

Introduction

To prepare a political debate at the COSAC meeting of 22-24 April 2012 in Copenhagen on how to reinvigorate the Single Market, the Danish Presidency has asked the COSAC Secretariat to draft a background note.

The note summarises the most recent information with regard to the state of transposition and enforcement of internal market directives in the 27 EU Member States. Furthermore, the background note describes briefly the development in Internal Market infringements proceedings launched by the Commission against Member States. And finally, it includes examples of recent best practices put in place by Member States to ensure timely and correct transposition of Internal Market directives. The background note utilises information from the Internal Market Scoreboard no. 23 and no. 24 published by the European Commission.¹

1. The state of transposition and enforcement of internal market directives in the 27 EU Member States.

In May 2011, Member States missed for the first time since 2007 the European Council's 1% transposition deficit target with an average deficit of 1.2%. In November 2011 EU average transposition deficit remained at 1.2%. Only eleven Member States reached the 1% target. Nevertheless, at the same time Member States have decreased the number of long overdue directives.

¹ Internal Market Scoreboard no. 23 "Together for new growth", September 2011
And no. 24 included in the Annual Governance Check-Up 2011 "Making the Single Market deliver: Annual governance check-up 2011", February 2012 - http://ec.europa.eu/internal_market/score/index_en.htm



1.1. Four challenges

1.1.1. All Member States should meet the 1% target

During the six-month period from May to November 2011 the number of Member States which were in line with the European Council's 1% transposition deficit target remained the same (11). Malta is as before in first place, with only two directives away from a 0% deficit. Ireland, who achieved its best ever result with 0.3%, is in second place. Other countries with deficits of under or at 1% are: Latvia - 0.4%, Denmark - 0.5%, Slovakia and Sweden - 0.6%, Bulgaria, Estonia and Lithuania - 0.9%, Spain and France - 1.0%.

The figures for the rest of the EU countries were as follows: Germany - 1.1%, Greece and Romania - 1.2%, Netherlands, Finland and United Kingdom - 1.3%, Slovenia, Luxembourg, Hungary - 1.4%, Austria - 1.5%, Portugal - 1.7%, Czech Republic - 1.9%, Cyprus - 2.0%, Italy and Poland - 2.1%, Belgium - 2.2%.

In general the vast majority of Member States managed to reduce the number of outstanding directives.

1.1.2. All Member States should meet the "zero tolerance" target

This target aims to decrease the number of directives whose transposition is overdue by two years or more. The decreasing trend in the number of long-overdue directives continues in the recent past. In November 2011, 25 Member States met the "zero tolerance" target, in May 2011 this number was 23. The Netherlands and Sweden have only one remaining directive to transpose.

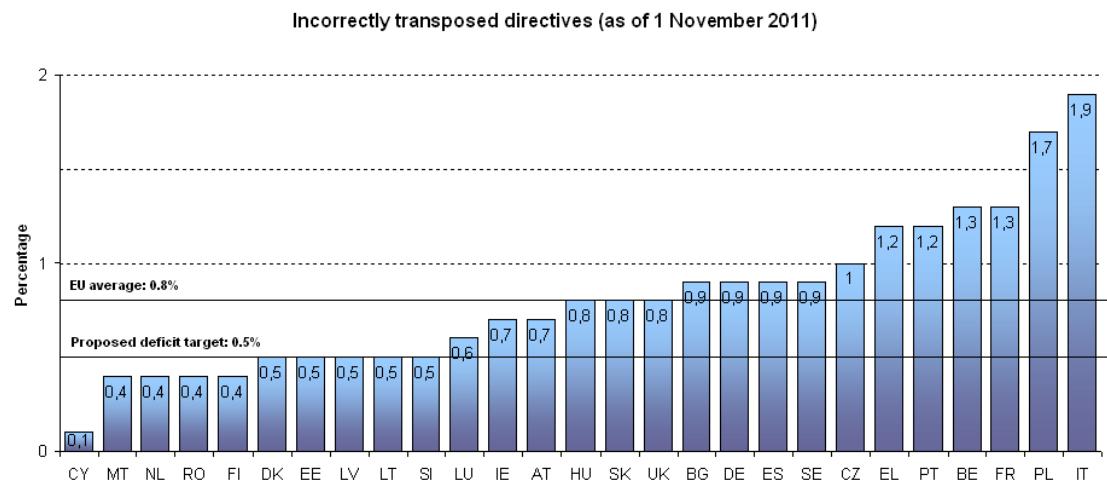
1.1.3. Reducing the transposition delays

In May 2011 Member States had an average transposition delay of 5.5 months, in November 2011 this number increased to 7.9 months. However, in reality most Member States have significantly reduced their backlog. They have focused transposition efforts on more recent

directives, while for the 34% of directives still to be transposed, the deadline expired over one year ago.

1.1.4. Improving the conformity of national legislation

The percentage of incorrectly transposed directives varied in November 2011 from 0.1% to 1.9%, as illustrated by the graph below. The average compliance deficit stands at 0.8% and 10 Member States are already in line with the proposed 0.5% deficit.



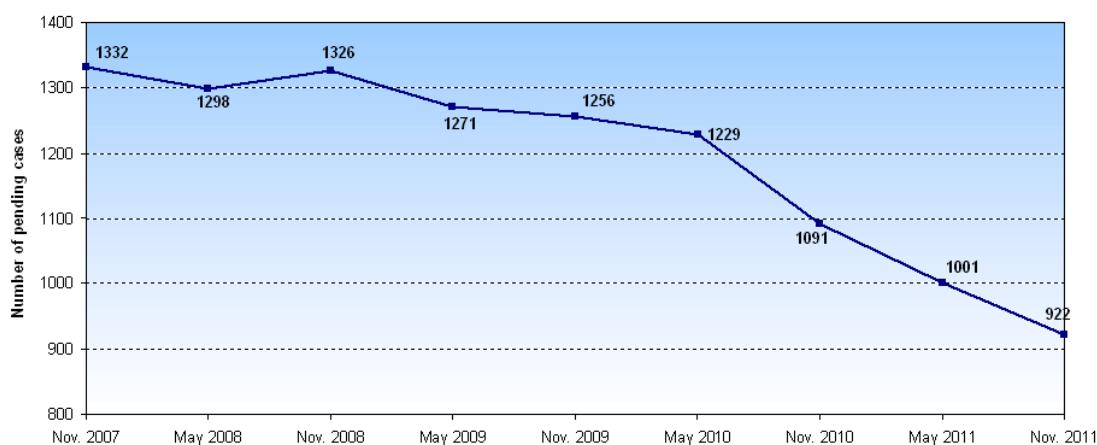
2. Infringement proceedings for incorrect transposition or application of internal market rules

The Commission ensures that Treaties and acts adopted by the Institutions of the European Union are both correctly and effectively applied by the Member States. Whether a breach of the EU law has occurred is ruled by the Court of Justice.

2.1. Number of infringement proceedings

The graph below illustrates the trend of the continuing decrease in the number of infringement proceedings. There has been a decrease of 31% compared to November 2007 and a decrease of 8% compared to May 2011. A large proportion of this decrease might be due to the improved working methods implemented in the last 12 months concerning complaint handling and early resolution of problems between Member State authorities and the Commission on the application of EU law before formal infringement procedures are launched.

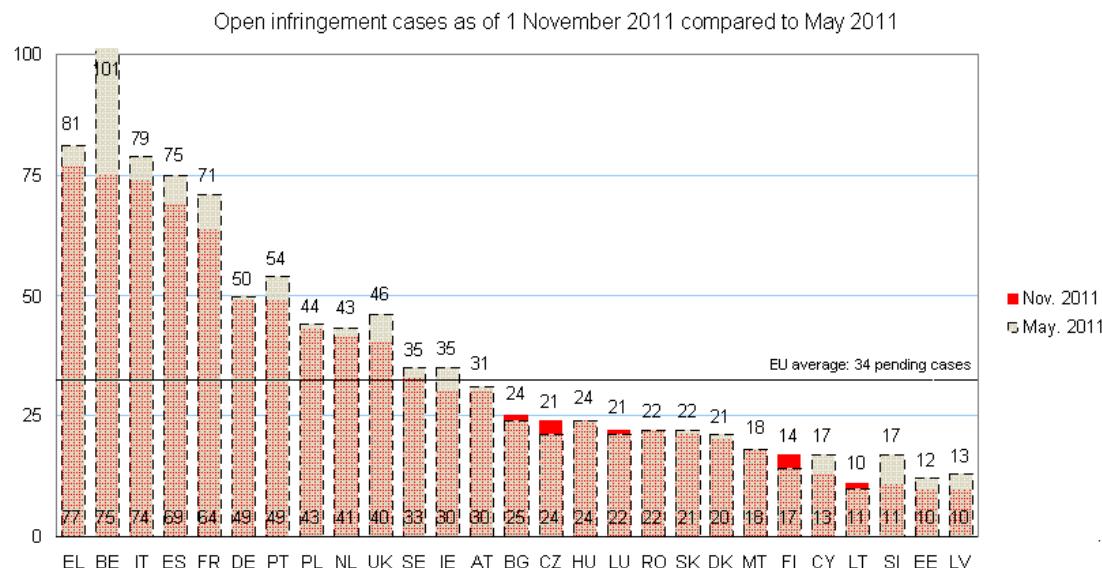
Trend in pending infringement cases: November 2007 - November 2011



2.2. Number of ongoing infringement proceedings by Member State

As of November 2011, 22 out of 27 Member States have improved or equaled their record of infringement proceedings compared to May 2011. Belgium accounts for the biggest improvement, by reducing its number of Internal Market Infringement proceedings from 101 to 75. Today, although Greece accounts for most infringement cases, this country has managed to reduce the number of cases by the highest combined share.

Overall, an average of 34 infringement proceedings is pending per Member State.



The largest groups of cases (50% of the 922 pending infringement proceedings) are in the areas of taxation (both direct and indirect) and environment (water protection and management, waste management, atmospheric pollution and environmental impact).²

² Taxation is a source of numerous cases for most Member States, in particular in Belgium, Spain, France, the Netherlands and the United Kingdom. Spain, France, Italy, Portugal and Slovakia face problems in the area of environment, Greece and Italy in the social policy and Greece and the Netherlands in the area of public procurement.

2.3. Duration of infringement proceedings

The duration of pending infringement proceedings varies between Member States. The average duration increased from 24.7 months in May 2011 to 25.5 months in November 2011.

3. Examples of best practice

In this section three examples of best practice implemented by Member States to ensure timely and correct transposition of Internal Market directives will briefly be presented.

3.1 Portugal

Between May 2010 and September 2011, Portugal managed to transform its transposition deficit of 2.1% to its best transposition record ever, 0.9%. This transformation can be explained by the launch of the 'SIMPLEGIS' programme by the Portuguese Government. One of the objectives of SIMPLEGIS is to simplify legislation fixing a 'zero delay' target for the transposition of EU directives. The Presidency of the Council of Ministers and the Ministry of Foreign Affairs have, to this end, established new procedures to ensure more effective control with the transposition process. For example, periodic meetings are held by Secretaries of State to discuss and approve draft legislation to transpose EU directives. Furthermore, a 'Regulations System Control' (Sistema de Controlo de Actos Normativos - SCAN system) has been set up to provide an automatic and centralised control of the transposition of EU directives. The system is coordinated by the Presidency of the Council of Ministers and the Ministry of Foreign Affairs and the system allows national authorities to:

- 1) Define responsibilities - after the publication of an EU directive the SCAN-system registers the Ministry and the person in charge of drafting its transposition.
- 2) Better planning - the transposition timetable sends early warnings about milestones to be reached.
- 3) Better monitoring - the coordinators foresee and solve delays regarding the transposition of EU directives.

3.2 Greece

In 2010 Greece had the highest transposition deficit of 2.4% among all 27 Member States, however within a year Greece managed to transform this and by 2011 the country met the agreed transposition deficit target of 1%. This achievement is mainly due to the improved coordination between the different national agents in charge of the implementation of EU law. In March 2010, an Office for International and European Affairs was established as part of the General Secretariat of the Greek government. This new office is in charge of communicating all new EU directives to the relevant national authorities/ministries on the same day they are published in the Official Journal of the European Union. Hereafter, the Office monitors the transposition progress and seeks information on a regular basis on how the transposition work is progressing. The Office has a coordinating and steering function, but it also offers assistance to facilitate the finalising of the transposition - this being both logistical/technical support in addition to legal advice. Furthermore, the Office communicates a list of all the EU Directives which are still to be transposed to the relevant authorities/ministries twice a month.

3.3 Malta

Malta has had a consistently good transposition performance record and is the Member State which is closest to having a 0% transposition deficit. One of the main reasons for Malta's success has been the early preparation of the transposition of EU directives into national law. This preparation requires close monitoring of the entire decision-making progress in the EU, from the discussions of Commission proposals to the final adoption of legislation in the European Parliament and the Council. Once a proposal has been issued by the Commission, the relevant Ministry prepares an Explanatory Memorandum which sets out the main contractual, legal, economic and political aspects of the Commission's proposal and the Government's preliminary position on it. These Memoranda are then discussed in the Inter-Ministerial Committee for the European Union Affairs which is chaired by the Permanent Representative of Malta to the EU. Hereafter, the approved Memoranda are sent to the Parliament's Standing Committee on Foreign and European Union Affairs for scrutiny. National officials responsible for transposition of EU directives are involved during the preparation phase. This allows for an early assessment of Commission proposals by all key actors thereby ensuring that potential transposition problems are raised as early as possible. Once a final directive is published, the EU Secretariat ensures that the Ministry responsible for the transposition is informed.

7 March 2012