

EU and the EFTA States parties to the Agreement (Iceland, Liechtenstein and Norway), based on common rules and equal conditions of competition

ess target EEA business rights



Internal Market Scoreboard

EFTA States

July 2004

EFTA SURVEILLANCE
AUTHORITY

INTERNAL MARKET SCOREBOARD No. 14

EFTA STATES

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EFTA SURVEILLANCE AUTHORITY

1. INTRODUCTION

The Internal Market of the European Community ensures the right for businesses and citizens of the European Union to trade their goods and services, to work, invest and establish wherever they want within the Union. The purpose of the EEA Agreement¹ is to extend this Internal Market to cover the three EFTA States Iceland, Liechtenstein and Norway², thus ensuring the same possibilities for business and individuals in those countries. A prerequisite for the Internal Market to function is equal conditions for competition, based on common, homogenous rules across the 28 States that are party to the EEA Agreement.

The 28-State EEA makes up an Internal Market of more than 450 million people. This makes it one of the largest common markets in the world. A well-functioning Internal Market requires the adoption of common rules by all the EU and EFTA States, and the acceptance of the need to adjust national provisions to facilitate cross-border economic activities. Such common rules and principles follow first of all from the EC Treaty and the EEA Agreement itself. Furthermore, new laws, the *acquis communautaire*, are adopted by the EU, and incorporated into the EEA Agreement through decisions taken by the EEA Joint Committee, and thus made applicable to the EFTA States. Ensuring compliance with these common rules and obligations at national level is an obligation placed upon each individual State through the EEA Agreement. It is the task of the EFTA Surveillance Authority to monitor that the three EFTA States fulfil their obligations in this regard, and take legal action if it believes that an EFTA States is in breach of its obligations under the EEA Agreement. The Commission of the European Community has a parallel task towards the EU States.

Since 1997, the European Commission and the EFTA Surveillance Authority have issued Internal Market Scoreboards to measure the success of the EU and EFTA States in complying with some of their obligations under the EC Treaty and the EEA Agreement.

In this fourteenth Internal Market Scoreboard, the EFTA Surveillance Authority publishes figures comparable to those drawn up by the Commission of the European Community (*European Commission*)³. Both Scoreboards gauge the success of the States participating in the EEA by ensuring compliance with Internal Market rules and principles⁴.

¹ The Agreement on the establishment of a European Economic Area.

² Switzerland is also a member of EFTA, but not party to the EEA Agreement. Hence, in this Scoreboard, the term 'EFTA States' refers to Iceland, Liechtenstein and Norway.

³ The Commission's January 2004 Scoreboard was not numbered as a separate document. Hence, the present Commission Scoreboard is no. 13, whereas the Authority's Scoreboard is no. 14.

⁴ The Commission's Internal Market Scoreboard also contains information on SOLVIT and the work undertaken by the European Standards bodies.

The EFTA Surveillance Authority's Scoreboard does this by providing information on:

- Iceland, Liechtenstein and Norway's performance on transposition of EEA directives relative to the Internal Market into national legislation,
- The actions taken by the EFTA Surveillance Authority to ensure that the EFTA States correctly implement and apply internal market rules and principles.

The Scoreboard shows that, when it comes to implementation, the positive trend for the three EFTA States has reversed. Compared with January 2004, **Liechtenstein's** transposition deficit has doubled. **Iceland** has fallen back, and now has a transposition deficit that matches the interim target ceiling of 1.5%. **Norway** has fallen back slightly, but still ranks as one of the two EEA States with the lowest transposition deficit.

Why do the Surveillance Authority and the European Commission publish the Internal Market Scoreboards?

A well-functioning Internal Market is the cornerstone of economic integration in Europe, bringing benefits such as lower prices, better services and more work opportunities. The citizens and businesses in the EEA will not be able to reap these benefits unless efforts are made to implement the common rules and principles according to which this market functions. In other words, the EEA States must continuously live up to their obligations to transpose and apply the Internal Market rules timely and correctly. The Internal Market Scoreboards have been a useful tool in measuring how the 18 EEA States live up to their obligations to ensure a successful internal market and identifying which problems remain unsolved.

Directives are the main instruments used to regulate the Internal Market

The main legal instrument used in the regulation of the Internal Market is that of directives, which must be transposed into national legislation in the EEA States. Each directive provides a time limit by which transposition has to take place. Every month, directives adopted by the European Community are incorporated into the EEA Agreement through decisions taken by the EEA Joint Committee. The obligation on the EFTA States to transpose a directive into national law is triggered by this decision. It is the task of the EFTA Surveillance Authority to ensure that transposition takes place in a timely manner, and that the transposition measures provide for full implementation of the directive in question. In carrying out its tasks, the Authority cooperates closely with the European Commission, which is entrusted with the parallel task towards the EU Member States. This co-operation helps ensure a uniform implementation and application of the Internal Market rules and principles throughout the whole EEA.

How are the figures produced?

Both the EFTA Surveillance Authority and the European Commission maintain statistics on the EEA States' implementation of the Internal Market rules and principles, and on infringement proceedings. The figures in this Scoreboard concerning the EU Member States are provided by the European Commission, and appear in its Internal Market Scoreboard No 13. The figures concerning the three

EFTA States are based on the Authority's own databases. Further information concerning the EFTA States' implementation of Internal Market directives is found at the Authority's website⁵.

Differences between EEA and EC acquis

It is important to note that, whereas the Commission Implementation Report Scoreboard No 13 deals with the 1528 Internal Market Directives which were part of the legal basis of the European Community, the statistics shown in this EFTA Scoreboard are based on the 1494 Directives that were part of the EEA Agreement on 30 April 2004⁶. The comparisons made between all the 18 EEA States in this Scoreboard should be read with this in mind.

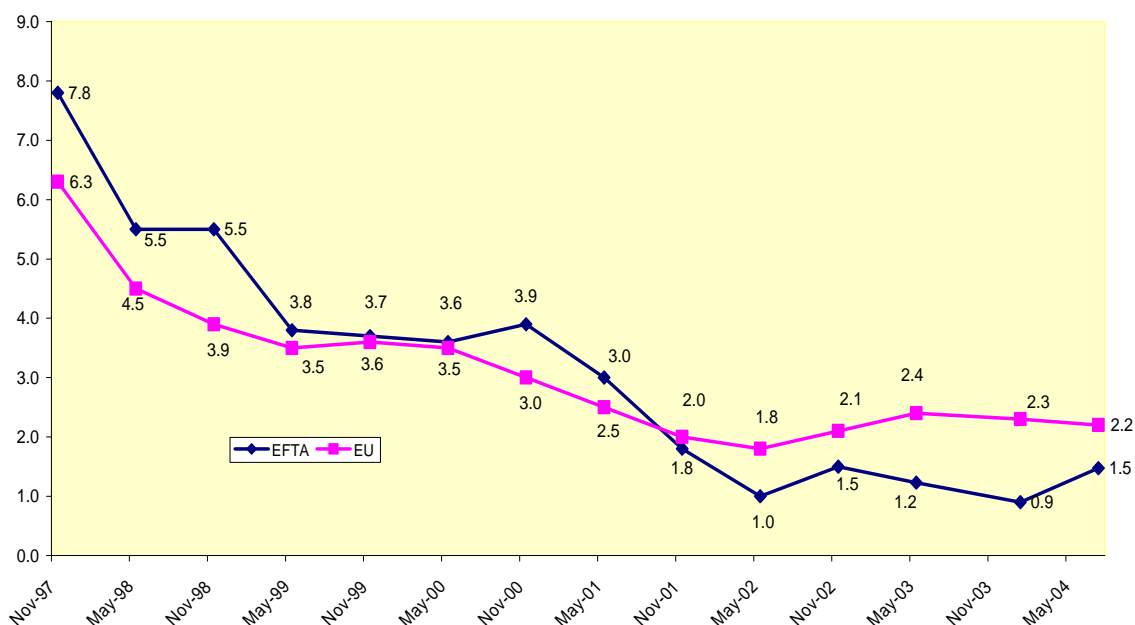
The comparisons made in the EFTA Scoreboard do not take into account the 10 new EU Member States. Further information about the transposition status of these States can be found in the Commission's Internal Market Scoreboard.

⁵ The Authority's website can be accessed at www.eftasurv.int. Information on implementation status is found under "*Information and publications*", "[Implementation status](#)"

⁶ This difference in number of directives is caused by two factors: 1) Some directives, e.g. directives dealing with various aspects of the citizenship of the European Union, fall outside the scope of the EEA Agreement. 2) There is a time gap between the EC and the EEA implementation of directives, because EU directives must be made part of the EEA Agreement by an EEA Joint Committee decision.

2. TRANSPOSITION OF INTERNAL MARKET DIRECTIVES

Figure 1: The EFTA average transposition deficit has increased to 1.5%.



Transposition deficit for the EU 15 and the EFTA 3 at 28 May 2004.

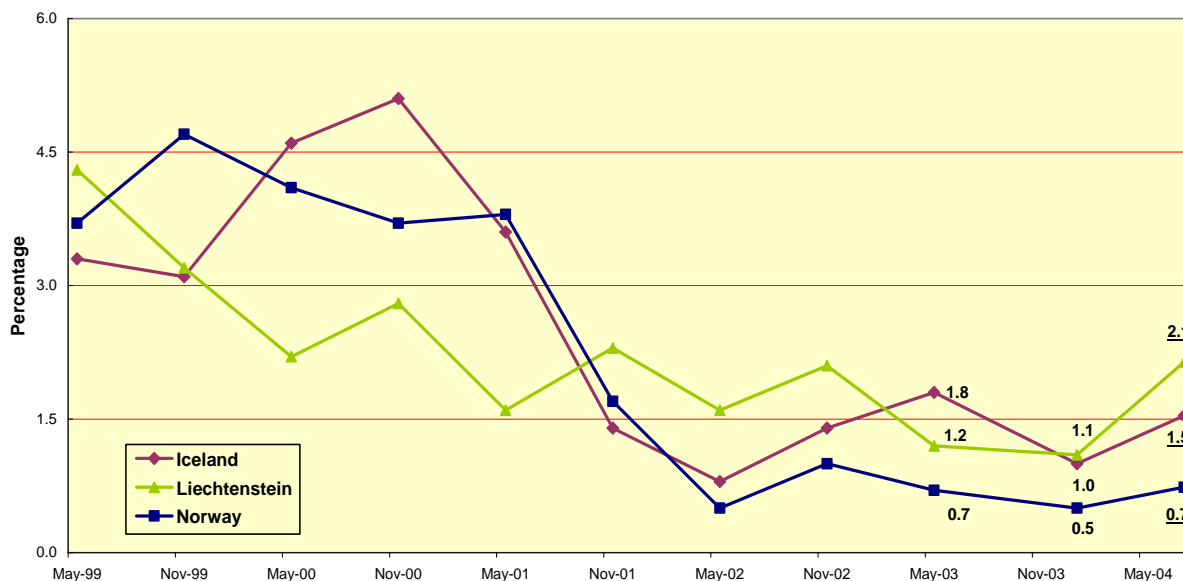
Source EU figures: European Commission's Implementation Report Scoreboard No 13.

Note: The transposition deficit shows the proportion of Internal Market directives for which no notification of full transposition has been received.

The **first figure** illustrates the overall development when it comes to *transposition deficits*. The transposition deficit measures how many directives containing Internal Market rules and principles the EU and EFTA States have failed to transpose on time. While the real transposition target is a 0% deficit, the European Council has set an interim target of 1.5% as the highest acceptable transposition deficit. This interim target has been endorsed by the Authority.

In January this year, the transposition deficit had dropped to 0.9%, which was an all time low. By comparison, the transposition deficit for the 15 EU States was 2.3%. Over the last half year the EFTA States have not been able to follow up on the performance from January. The average deficit for the EFTA States put together has risen sharply to 1.5%. The EU transposition deficit, on the other hand, improved marginally from 2.3% in January to 2.2% in May. All in all, the EFTA States compare well with the EU States, but the difference in average performance has been halved.

Figure 2: Since 1999, the EFTA States' implementation records have improved, but all three countries have slipped backwards over the last six months.



Number of outstanding directives, May 2004	Iceland 20	Liechtenstein 24	Norway 8
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Note: Comparison of rates of failure to implement EEA Internal Market directives (transposition deficit) between May 1999 and July 2004

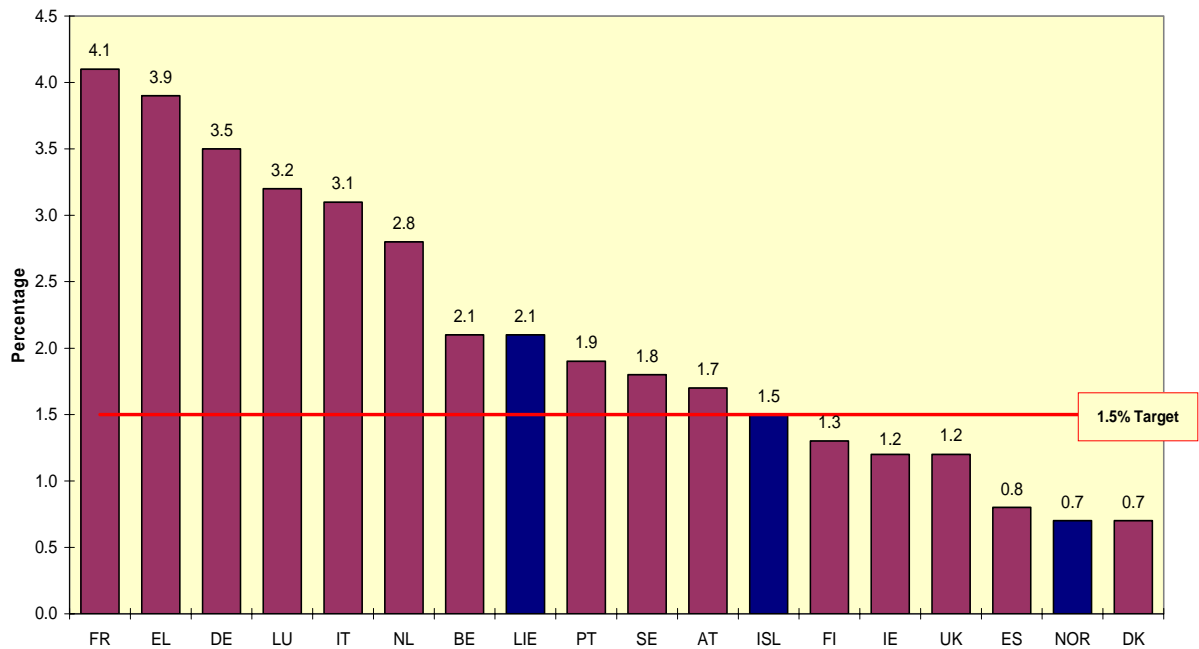
Figure 2 shows how the three EFTA States have improved their transposition records over the last five years. The figures show that, over this period, transposition deficits have gone down for all three States.

However, the figure also indicates that since January this year, the deficit has increased again. This is particularly true for Liechtenstein, whose implementation deficit has gone up from 17 directives in January to 24 in May, an increase of 41%. Iceland had 15 directives outstanding last January, while the number in May was 20 (33% increase). For Norway, the difference was marginal, from 7 directives in January to 8 in May (14% increase).

On 28 May, the Authority awaited 52 overdue notifications of transposition from the EFTA States. These notifications concern 40 different directives.

Figure 2 also shows a lack of consistency in transposition performance, in particular for Iceland and Liechtenstein, since improvements at one point is reversed at the next measurement.

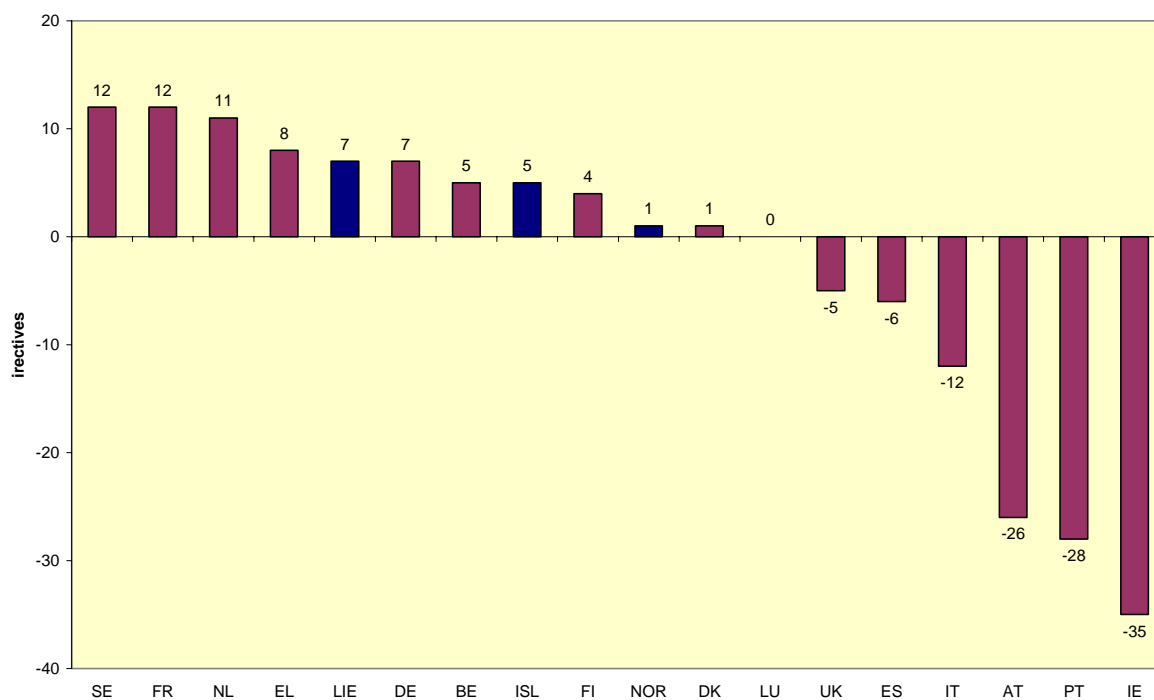
Figure 3: Norway and Denmark on top of the EEA, Iceland still within the 1.5% interim target, while Liechtenstein fails to meet the target.



Source EU figures: European Commission's Internal Market Scoreboard No. 13

In an EEA context, Norway is still succeeding well in transposing the *acquis communautaire*. Together with Denmark, Norway has the lowest transposition deficit among the 18 EEA States (0.7%). Iceland matches the interim transposition target with a deficit of 1.5%, and ranks as number seven all together. Liechtenstein, with a 2.1% transposition deficit, has slipped well above that target, and has dropped to 11th place in the ranking.

Figure 4: EFTA States' backlog have increased since the January scoreboard



Source EU figures: European Commission's Internal Market Scoreboard No. 13.

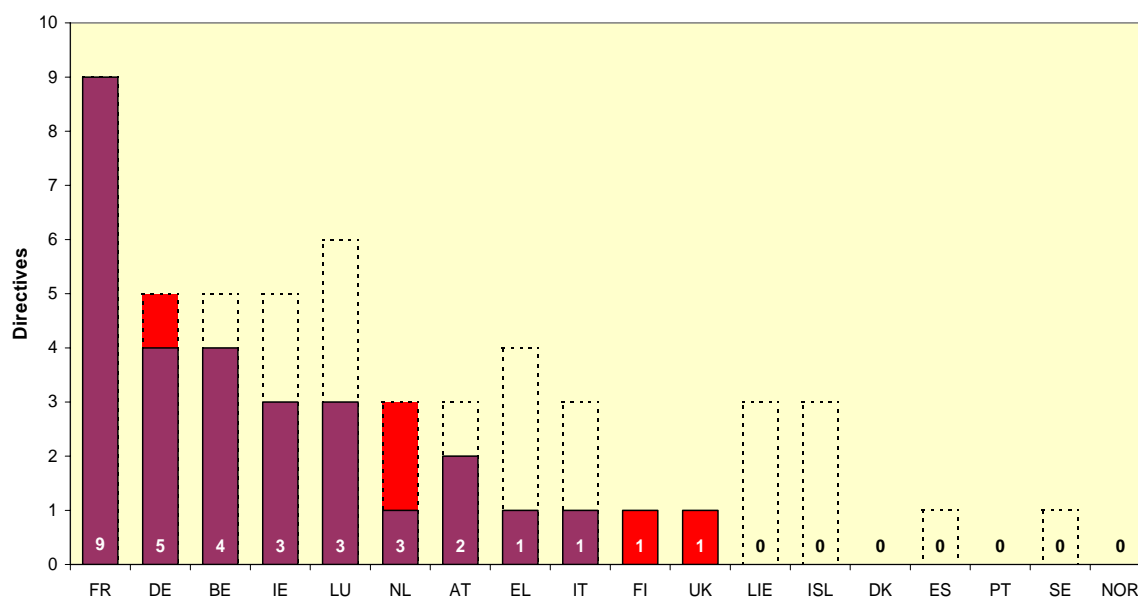
Note: Change in the transposition performance (number of directives overdue) since the last Scoreboard in January 2004 (backlog)

The EEA-wide comparison in **figure 4** shows a comparison of the changes in transposition backlog from the January Scoreboard.

Two Directives were not implemented by any of the EFTA States on 28 May. These were

- *Directive 2002/83/EC concerning life assurance and*
- *Commission Directive 2003/94/EC laying down the principles and guidelines of good manufacturing practice in respect of medicinal products for human use and investigational medicinal products for human use.*

Figure 5: The EFTA States have no transposition delays of more than two years



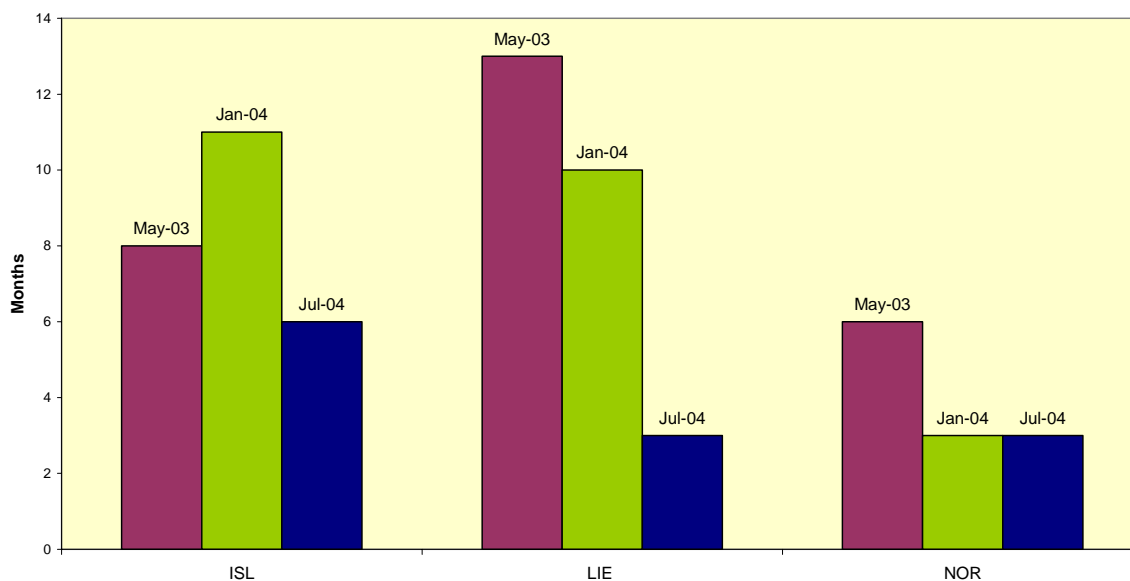
Source EU figures: European Commission's Internal Market Scoreboard No. 13

Note: "Zero tolerance", i.e. directives overdue by more than 2 years; EEA-wide performance per State. Red indicates an increase since the last Scoreboard, the dotted lines indicate a decrease since last scoreboard.

The Barcelona European Council of March 2002 set a 'zero tolerance' target for directives whose transposition is two or more years overdue. In January this year, both Iceland and Liechtenstein had failed to transpose three directives falling within this category. In Iceland's case, the Directives missing were those regulating Part-Time Work and Fixed-Time Work and Supplementary Pension Rights. Liechtenstein had failed to transpose the Parental Leave Directive, a Directive on Conditional Access systems for pay-TV, and a Directive on consumer information relating to fuel economy.

The present scoreboard shows that, since January, these Directives had all been notified as fully or partially transposed, and that on 28 May, none of the EFTA States had any directives overdue by more than two years.

Figure 6: Transposition delay: Iceland and Liechtenstein have improved, Norway still doing well



Ensuring timely and correct transposition of directives is a continuous process. It requires a steady effort by the EFTA States' national administrations in order to keep pace with the incorporation of new acts into the EEA Agreement. Failure to do so would undermine the functioning of the internal market.

Delays in transposition are sometimes due merely to the legislative processes in the EFTA States, and the directives are transposed relatively fast after the expiry of the time limits. Directives that have been overdue for a long period of time are of more concern to the Authority. Long delays indicate unwillingness on the part of the State concerned to take the measures necessary to ensure that the Internal Market is functioning.

Figure 6 shows that the average transposition delays have gone down for Iceland and Liechtenstein. These improvements are explained by the transposition this spring of directives that have been overdue for more than two years. Norway's average transposition delay remains short. Figure 7 below indicates that the transposition delays are caused by delays in legislative processes rather than political unwillingness to transpose directives into national law.

Figure 7: Number of EEA Single Market Directives whose transposition was overdue at 28 May, and average delays in notification

No. of months overdue:	No. of directives delayed		
	ISL	LIE	NOR
Less than 6 months	13	20	7
6 to 12 months	4	3	1
12 to 24 months	3	1	0

Note: Number of overdue Internal Market directives that had not been notified by 28 May 2003, broken down by length of delay. This table does not include directives where a partial notification has been submitted, i.e. where a State has indicated that some but not all of the provisions in a directive have been transposed.

Which sectors causes problems for the EFTA States?

Certain areas are more problematic than others with regard to transposition. EEA rules regulating the free movement of goods, in particular technical barriers to trade (TBT), appear to be a challenge for all the three EFTA States. On 28 May Iceland had failed to fully transpose 11 directives relating to TBT. Liechtenstein had 13 such directives outstanding, and Norway seven. Many of these TBT directives concern dangerous substances, of which Liechtenstein had failed to transpose eight, Iceland five and Norway two.

On 28 May, Iceland had failed to transpose on time eight directives in the transport sector. Several of these directives relate to maritime transport, namely the *Directive 2002/25 on Safety on passenger ships*, *Directive 2002/6 on Reporting formalities for ships*, *Directive 2003/75 on Safety rules and standards for passenger ships* and *Directive 2000/59/EC on Ship generated waste*.

Liechtenstein had on the same date failed to fully transpose nine directives related to the free movement of capital and financial services. These include *Directive 2001/65 on Fair Value Accounting*, *Directive 2000/53 on Late Payments*, *Directive 2000/64 on Exchange of Information* and two directives on solvency margins for insurance companies (Directives 2002/12 and 2002/13). In the audiovisual services sector Liechtenstein had failed to fully transpose three out of four directives, including the two directives on television without frontiers (Directives 89/552 and 97/36..

On 28 May, Norway had failed to implement two directives on maritime transport. These were *Directive 2002/6 on Reporting formalities for ships* and *Directive 2003/75 on Safety rules and standards for passenger ships*.

Does the Scoreboard indicate that all is well in the EFTA States?

The figures show that Norway rank as one of the countries with the lowest transposition deficits in the EEA. Iceland also matches the interim target of a 1.5% transposition deficit. It is however important to bear in mind that the implementation deficit figures measure the failure by the EFTA States to *notify* implementation of

directives into national law at a given point in time. The *quality* of the national implementing legislation is only assessed at a later stage. Later conformity assessments may prompt the Authority to take further action if it finds that the notified measures do not ensure full and correct implementation.

Furthermore, failure to comply with the basic principles of the EEA Agreement, such as the free movement of goods, persons, services and capital will impair the functioning of the internal market. The chapter of the Scoreboard highlights the infringement proceedings initiated by the Authority, many of which relate to the incorrect transposition of directives or incorrect application of the EEA Agreement itself.

3. INFRINGEMENT PROCEEDINGS

All infringement cases

If the EFTA Surveillance Authority considers that an EFTA State has failed to fulfil an obligation under the EEA Agreement, it may initiate formal infringement proceedings. Such infringement proceedings are identical to those initiated by the European Commission.

The EFTA Surveillance Authority initiates formal infringement proceedings by sending a *letter of formal notice*, inviting the EFTA Government in question to submit its observations on the matter within a specified time limit. If no solution is found at this stage, the Authority may take the second step in the proceedings by delivering a *reasoned opinion*. A reasoned opinion defines the final position of the Authority, states the grounds for the opinion and requests the Government to take the measures necessary to end the infringement. If a matter is not resolved following a reasoned opinion, the Authority may *refer it to the EFTA Court*, whose judgment is binding on the State concerned.

The number of open infringement cases in October last year stood at 71. In April, the number was 76. Figure 8 shows the distribution of cases between the three EFTA States.

Figure 8: All open infringement cases on 30 April 2004

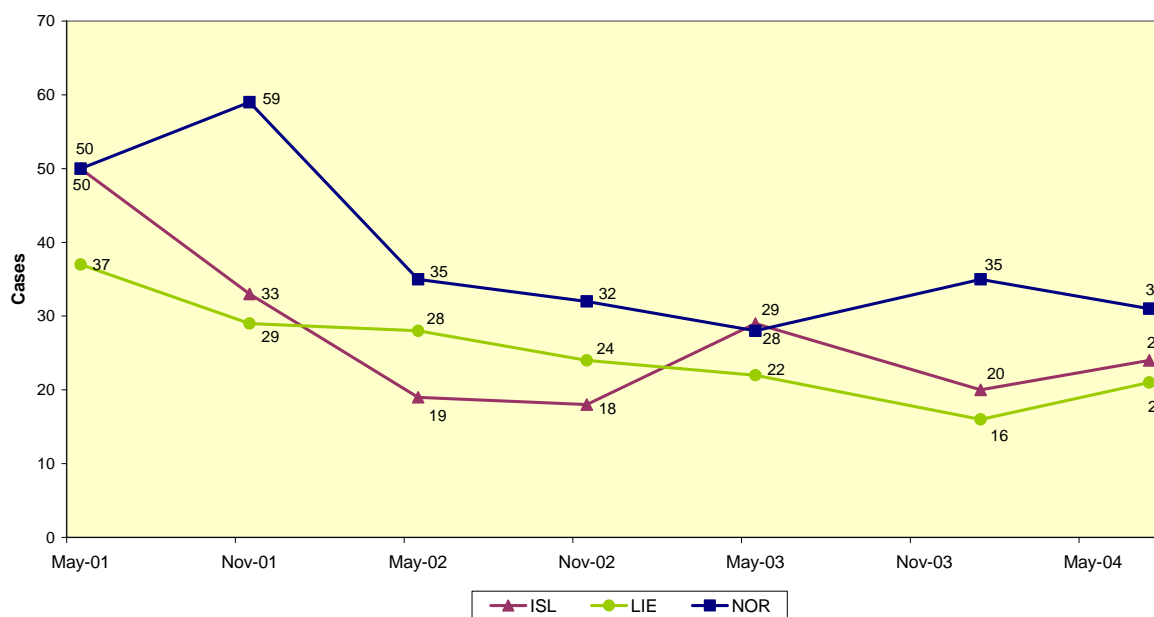
	ISL	LIE	NOR	Total for EFTA
Letters of formal notice	17	14	24	55
Reasoned opinions	7	7	6	20
Cases referred to the EFTA Court	0	0	1	1
Total open cases	24	21	31	76

The cases are relatively evenly distributed between the three countries. Norway accounts for 41% of all open cases, Iceland for 32 % and Liechtenstein for 27 %. A higher number of cases against Norway is explained by the fact that around 90% of the complaints received by the Authority concerns that country.

The increase in letters of formal notice reflects the increase in the transposition deficit. The number of reasoned opinions has gone down as a number of cases have been solved in a satisfactory manner during the last half year. One case remained with the EFTA Court on 30 April. The case concerned the failure by Norway to notify, in accordance with Article 8 Directive 98/34/EC, technical regulations at a draft stage. The EFTA Court ruled in this case on 5 May 2003, when it found Norway to be in breach of its obligations under EEA law⁷.

⁷ See the EFTA Court website at: http://www.eftacourt.lu/pdf/Judgment_E-04-03.pdf

Figure 9: All open infringement cases, development per EFTA State



Note: Total number of open infringement proceedings against the three EFTA States. The numbers are collected from the Authority's six last Internal Market Scoreboards.

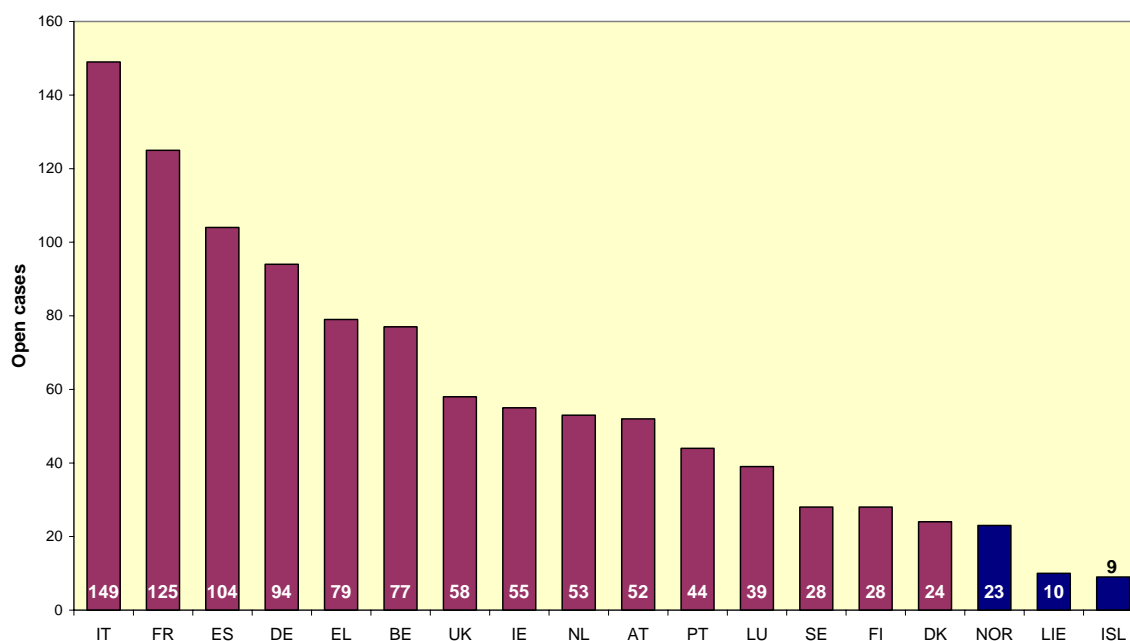
Figure 9 illustrates the development the last three years of the open infringement cases for each EFTA State. After a peak in 2001, the total number of open cases has remained relatively stable for the last two years. The sharp decrease from 2001 to 2002 is explained by the improved transposition records for the EFTA States, which led to a reduction in the number of non-transposition cases.

Infringement cases concerning non-conformity or incorrect application of Internal Market rules and principles

Infringement cases can be divided into two categories. The first category relates to late implementation, meaning that directives are not transposed into the national legislation of the EFTA States within the set time limits. Infringement cases in this category are generally clear-cut and therefore seldom the subject of legally complicated disputes between the EFTA State concerned and the Authority. The same is not always true when it comes to the second category of cases, which relate to non-conformity or incorrect application of EEA provisions. This concerns situations in which the Authority, having acknowledged notification of transposition of a directive from an EFTA State, considers at a later stage, that the national legislation does not fully conform to the requirements of the relevant directive or that the application by the EFTA State is in one way or another incorrect.

Whereas figures 8 and 9 above include both categories of cases, the figure below focus on the second category. Both the Authority and the European Commission include these figures in their Scoreboards to indicate the infringement problems faced by the EEA States in addition to mere non-transposition.⁸

Figure 10: Infringement cases due to non-conformity or incorrect application



Source EU figures: European Commission's Internal Market Scoreboard No. 13.

Note: Open infringement cases due to non-conformity or incorrect application on 30 April 2004.

⁸ Figures in EFTA Scoreboards prior to No 9 do not show this distinction and are therefore not fully comparable.

Non-transposition cases make up 63% of the cases against Iceland and 52% of the cases against Liechtenstein, but only 26% of the cases against Norway.

Since the last Scoreboard, the number of infringement cases due to non-conformity or incorrect application has gone down 23% percent for Norway. The figure remains almost unchanged for Iceland, while the number of such cases against Liechtenstein has more than doubled. Nevertheless, the number of infringement cases for the three EFTA States remain low compared to similar figures for the EU countries.

4. CONCLUSIONS

On the basis of this Scoreboard, the following conclusions may be drawn:

- The EFTA States have increased their transposition deficits since the January 2004 Internal Market Scoreboard. The average for the EFTA States together is now 1.5%, up from 0.9% in January. For the EU States, the deficit has gone down from 2.3% to 2.2%.
- Norway's transposition deficit has increased slightly, however at 0.7%, it still has the lowest deficit in the EEA, together with Denmark. Iceland's transposition deficit has increased, and now just matches the EEA-wide interim target of 1.5%. Liechtenstein's transposition deficit has gone up to 2.1%, which is above the interim target.
- The overall number of infringement cases concerning non-conformity or incorrect application is at similar levels as in the January Scoreboard, but remains low compared with similar figures for the EU Member States.

The objective of the Agreement of the European Economic Area (EEA Agreement) is to establish a dynamic and homogeneous EEA between the

future statistics directive progr



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