

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 2006

EFTA SURVEILLANCE  
**AUTHORITY**

# **INTERNAL MARKET SCOREBOARD No. 18**

## **EFTA STATES of the EUROPEAN ECONOMIC AREA**

**July 2006**

**EFTA SURVEILLANCE AUTHORITY**

## **MAIN CONCLUSIONS FROM THE 18<sup>TH</sup> EFTA INTERNAL MARKET SCOREBOARD**

- The Internal Market Scoreboard shows that the transposition deficit of the EFTA States as a whole has improved slightly to 1.5% from 1.6% six months ago. The transposition deficit for the 25 EU Member States is 1.9%.
- Norway's transposition deficit has improved to 0.6%. Liechtenstein and Iceland are still significantly above the 1.5% interim ceiling: Liechtenstein's deficit is unchanged at 2.1%, while Iceland's deficit improved slightly to 1.8%.
- When comparing the 28 EEA States, Norway is ranked second (up from fourth), Iceland is ranked 17<sup>th</sup> (up from 22<sup>nd</sup>) and Liechtenstein is ranked 22<sup>nd</sup> (up from 23<sup>rd</sup>).
- Liechtenstein has an average delay of transposition of 9.10 months, Iceland of 7.20 months and Norway of 6.43 months. The EU average delay for directives which are not transposed on time is 8 months.
- The number of infringement cases initiated by the Authority against the three EFTA States has decreased slightly. 39 infringement cases are open against both Norway and Iceland, while 33 cases are open against Liechtenstein.

## 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 Agreement<sup>1</sup> is to extend this Internal Market to cover the three EFTA States Iceland, Liechtenstein and Norway,<sup>2</sup> thus ensuring, by and large, the same possibilities for business and individuals in those countries.

The benefits of the Internal Market include:

- free trade on equal terms within the EEA, which ensures more competition and lower prices for consumers;
- the right to seek work and establish a business in 28 States across Europe;
- competition between service providers, which leads to more innovation and better services; and
- more cross-border investment within the EEA.

The Internal Market does not deliver its benefits automatically. A prerequisite for the Internal Market to function is that equal conditions exist for competition, based on common, homogeneous rules across the 28 States that are parties to the EEA Agreement. These rules have to be adopted, transposed into national law and properly enforced.

### *The legal instruments used to create and regulate the Internal Market*

The common body of law that regulates the Internal Market consists first and foremost of directives and regulations adopted by the European Union.

Directives must be transposed into national legislation in the EEA States, but leave it to each EEA State to choose the form and method of implementation. Each directive provides a time limit by which transposition has to take place. Every month, directives adopted by the European Union are incorporated into the EEA Agreement through decisions made by the EEA Joint Committee. The obligation on the EFTA States to transpose a directive into national law is triggered by these EEA Joint Committee decisions.

The EFTA Surveillance Authority shall monitor that the transposition of the directives by the EFTA States takes place in a timely manner, and that the transposition measures provide for full and correct implementation of the directive in question. The European Commission is entrusted with the parallel task towards the EU Member States. In carrying out its tasks, the Authority co-operates closely with the Commission. This co-operation ensures a uniform implementation and application of the Internal Market rules and principles throughout the whole EEA.

Regulations shall, according to the EEA Agreement, be made part of the internal legal order of the EEA States as they stand. According to the legal tradition of Liechtenstein, a regulation is directly applicable once the EEA Joint Committee decision incorporating it into the EEA Agreement enters into force. In Iceland and Norway, however, regulations are not directly applicable, which requires that these are made part of the internal legal order by way of a national implementing measure.

<sup>1</sup> The Agreement on the establishment of a European Economic Area.

<sup>2</sup> 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.

*What is the purpose of the Internal Market Scoreboards?*

Since 1997, the European Commission and the EFTA Surveillance Authority have issued Internal Market Scoreboards to measure how well the EU and EFTA States comply with their obligations to ensure timely transposition of Internal Market directives.

The EFTA Internal Market Scoreboard measures:

- to what extent the EFTA States notify transposition of new EEA directives on time;
- the transposition backlog and average delays in transposition;
- in which areas the EFTA States face problems with transposition; and
- the number of infringement proceedings initiated against the EFTA States for failure to transpose EEA legislation correctly and on time, and failure in applying these rules correctly.

The findings in this Scoreboard takes into account the 1631 Internal Market directives that the EFTA States were obliged to transpose into national law before 30 April 2006.<sup>3</sup> It measures the transposition status for these directives as of 31 May 2006.

*What the Internal Market Scoreboard does not tell us*

The Scoreboard concentrates on directives, and does not measure whether Iceland and Norway have made regulations part of the internal legal order. Furthermore, the Scoreboard transposition figures do not measure the quality of the implementing measures notified by the EFTA States, nor do they measure problems with the application of the EEA Agreement itself or the *acquis communautaire*. The Scoreboard does not, therefore, provide the complete picture on how the EFTA States adhere to their obligations under the EEA Agreement.

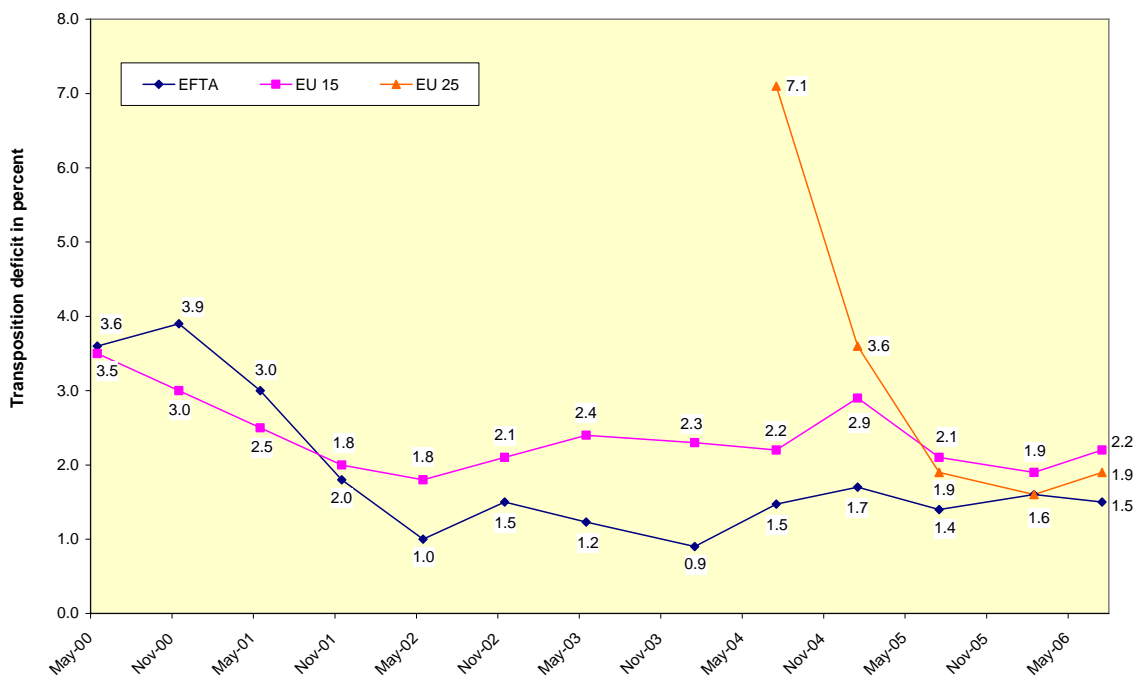
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<sup>3</sup> The corresponding figure for the EU is 1620 Internal Market directives. The difference is caused by the fact that some directives become applicable in the EU before they are incorporated into the EEA Agreement, and some directives are repealed in the EU before they are repealed in the EEA.

## TRANSPOSITION OF INTERNAL MARKET DIRECTIVES

The transposition deficit measures how many directives containing Internal Market rules and principles the EU and EFTA States have failed to transpose on time.<sup>4</sup> While the ideal transposition target is a 0% deficit, the European Council has set an interim ceiling of 1.5% as the highest acceptable transposition deficit. This interim ceiling has been endorsed by the EFTA Surveillance Authority.

**Figure 1:**  
The EFTA States' average transposition deficit improves slightly to coincide with the interim ceiling of 1.5%



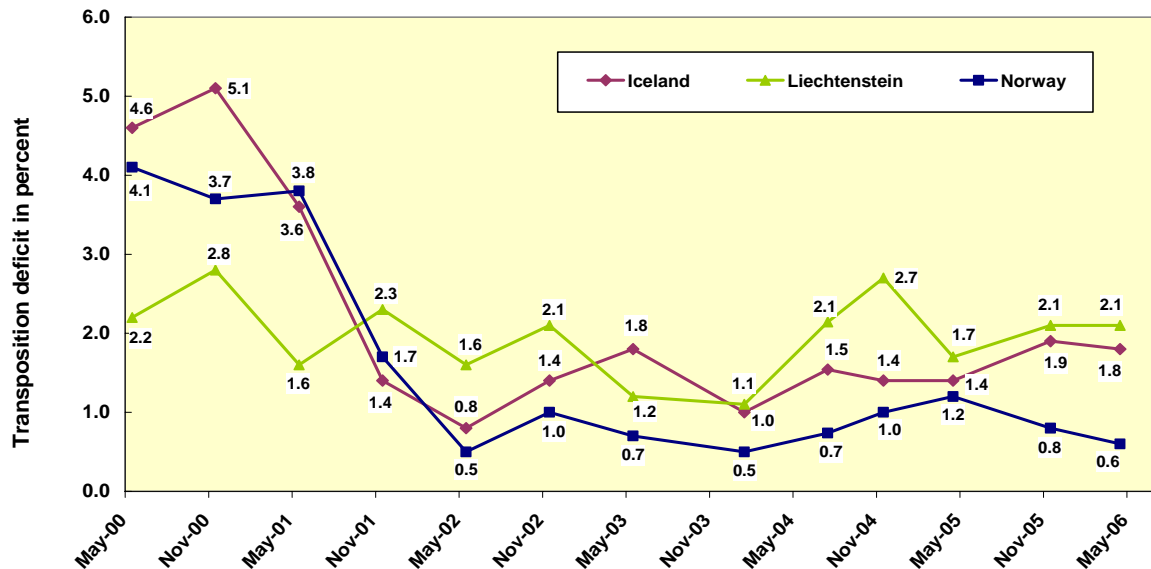
**Note:** Transposition deficit for the EFTA States, the EU 15 and the EU 25, situation as per 30 April 2006. Source EU figures: Internal Market Scoreboard N°15 - July 2006.

The average transposition deficit for the EFTA States as a whole is going down slightly from 1.6% to 1.5% (**figure 1**). This is a small improvement since February this year when the previous Scoreboard was published. In absolute terms, the 1.5% deficit implies that the EFTA States are late with 73 notifications of national transposing measures.

The EU average transposition deficit stands at 1.9%, up from 1.6% six months ago. Again this time around, the “new” EU Member States are performing better than the “old” Member States (EU 15), whose average deficit is 2.2%.

<sup>4</sup> The transposition deficit shows the proportion of applicable Internal Market directives not yet notified to the EFTA Surveillance Authority as fully transposed.

**Figure 2:**  
**Iceland and Liechtenstein are still significantly above the 1.5% interim ceiling**



**Note: Development of rates of failure to implement EEA Internal Market directives (transposition deficit) between May 2000 and May 2006.**

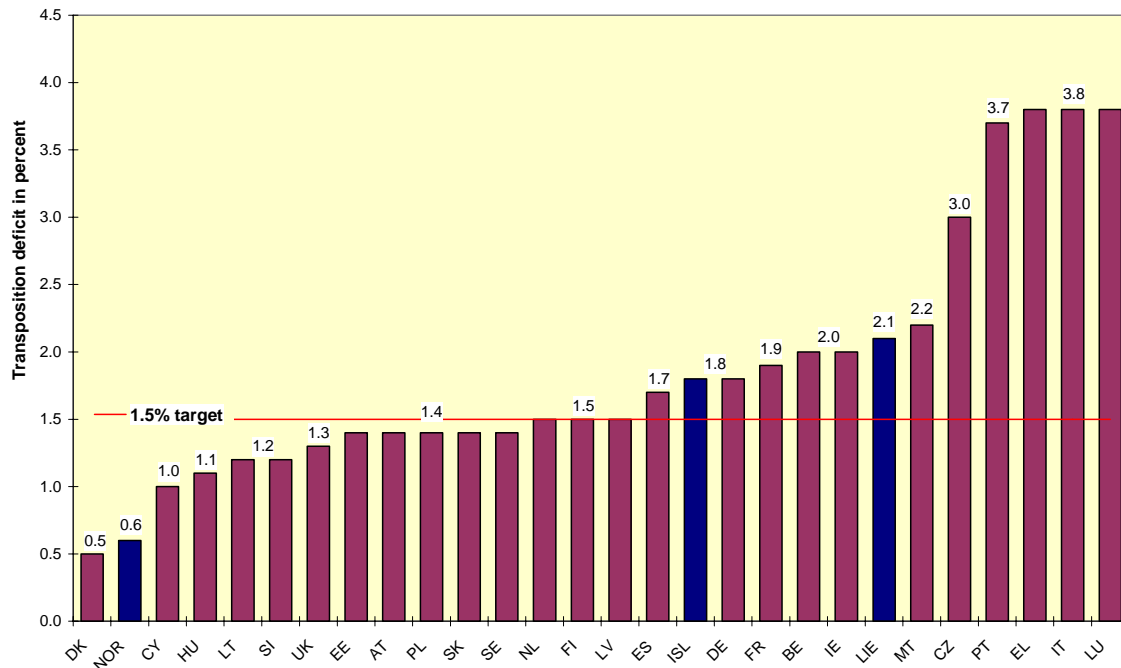
Liechtenstein has not managed to bring down its 2.1% deficit from the last Scoreboard (figure 2) while adding two more directives to its backlog of outstanding directives.

Iceland has slightly reduced its transposition deficit to 1.8%. This corresponds to one less outstanding directive.

Norway has lowered its transposition deficit, which now stands at 0.6% by further reducing its backlog of outstanding directives by four compared to six months ago. It is remarkable that Norway has remained below the interim ceiling the last four years. This indicates the existence of the necessary political will and that a good organisation is in place for implementation of EEA directives.

Out of the 25 EU Member States, 6 States have managed to reduce or keep stable their backlog from the previous Scoreboard.

**Figure 3:**  
Norway 2<sup>nd</sup> in the EEA class of 28, Iceland 17<sup>th</sup> and Liechtenstein 22<sup>nd</sup>



Note: EEA comparison of transposition deficits

Source EU figures: The European Commission’s Internal Market Scoreboard N°15 - July 2006.

Among the 28 EEA States, Norway now ranks number two (**figure 3**). Iceland and Liechtenstein are still in the worse performing half. However, Iceland has moved up from 22<sup>nd</sup> to 17<sup>th</sup> (shared with Germany), and Liechtenstein from 23<sup>rd</sup> to 22<sup>nd</sup>. The improved ranking for Iceland and Liechtenstein indicates first of all that some of the EU States are doing worse than six months ago. At the top, Denmark (0.5%) and Norway are followed by four “new” EU Member States.

### How late are the EFTA States in transposing EEA directives?

Ensuring timely and correct transposition of directives is a continuous process. It requires a constant 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 potentially undermines the functioning of the Internal Market.

Delays in transposition are sometimes merely due 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 particular concern to the Authority. Long delays may indicate unwillingness on the part of the State concerned to take the measures necessary to ensure that the Internal Market is functioning.

In March 2002, the European Council set a “zero tolerance” target for Directives whose transposition is two or more years overdue.



In November 2005, the EFTA States had no directives which had been outstanding for more than two years. Now, six months later, Iceland has one such “zero tolerance” Directive, namely the Directive adapting, for the 27<sup>th</sup> time, the “Dangerous Substances Directive” to technical progress<sup>5</sup> (**figure 4**).

All of Norway’s non-transposed directives have a delay of less than a year, indicating that the delay is caused by slow legislative processes rather than political unwillingness to transpose directives into national law. Likewise, the majority of Iceland’s overdue directives are less than six months old.

Liechtenstein has 10 directives overdue by more than a year. Of these, five concern the Electronic Communication Regulatory Package, which has not yet been fully implemented by Liechtenstein. These five cases have prompted infringement actions before the EFTA Court<sup>6</sup>.

**Figure 4: Breakdown of the EFTA States’ transposition delay**

Length of delay	Number of directives delayed					
	ISL		LIE		NOR	
	06/06	02/06	06/06	02/06	06/06	02/06
Less than 6 months	<b>13</b>	10	<b>13</b>	1	<b>3</b>	1
6 to 12 months	<b>5</b>	3	<b>12</b>	6	<b>2</b>	5
12 to 24 months	<b>4</b>	4	<b>10</b>	10	<b>0</b>	0
24 to 36 months	<b>1</b>	0	<b>0</b>	0	<b>0</b>	0
<b>Average delay</b> (in months) by 31 May 2006	<b>7.20</b>	7.98	<b>9.10</b>	8.31	<b>6.43</b>	7.61

**Note: Number of overdue Internal Market directives for which no notification had been received by 31 May 2006, broken down by the length of delay.**

The average delay for the three EFTA States has gone down from 8 to 7.6 months. In the EU, the overall average for directives which are not transposed on time is down to 8 months from 9.2 half a year ago.

<sup>5</sup> Commission Directive 2000/33/EC of 25 April 2000 adapting to technical progress for the 27th time Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances.

<sup>6</sup> The EFTA Court ruled on this matter on 29 June ([joined cases E-5/6/7/8/9/05](#)) and found that Liechtenstein had failed to fulfil its obligations under the electronic communication regulatory package and Article 7 of the EEA Agreement, as the package had not been fully implemented in national law.

**The Scoreboard does not report on the quality of the national legislation**

It is 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 EFTA Surveillance 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 itself, such as the free movement of goods, persons, services and capital, will impair the functioning of the Internal Market. The next 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.

## INFRINGEMENT FIGURES

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.

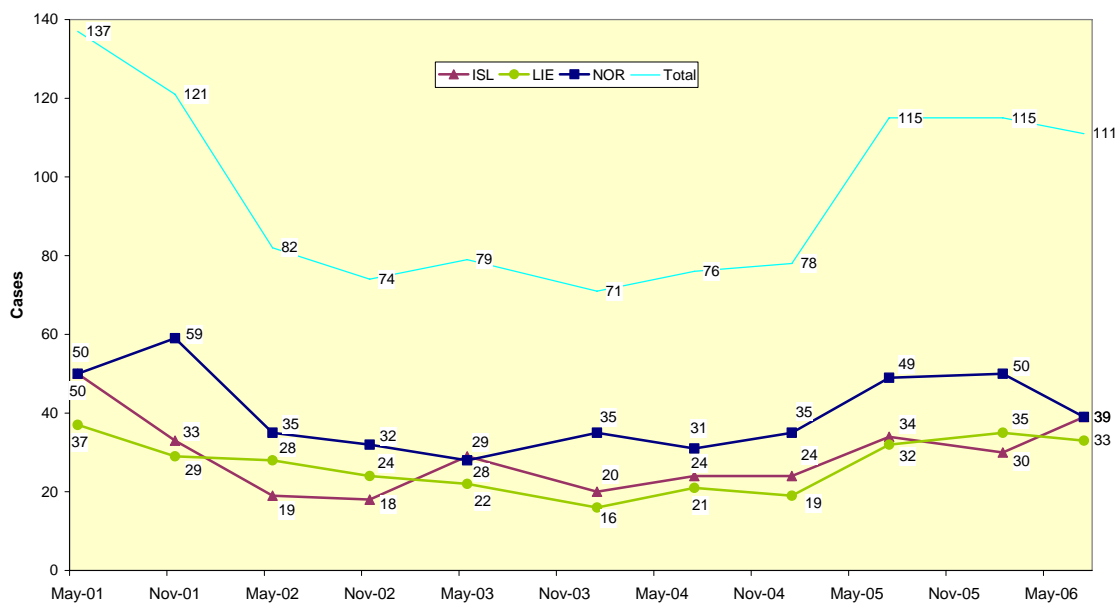
To the extent possible, the Authority endeavours to solve all matters by informal means, through contact with the national administrations concerned. Formal infringement proceedings will be opened only where an informal exchange of views fails to solve the problem at hand.

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 the matter is not resolved 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.

### All infringement cases

On 30 April 2006, 111 infringement cases against the EFTA States were open with the Authority (**figure 5**). This is slightly fewer cases than at the time of the two previous Scoreboards.

**Figure 5:**  
All open infringement cases, development per EFTA State



**Note:** Total number of open infringement proceedings against the three EFTA States.

The number of cases against Iceland has increased with 30% over the last six months. Norway and Liechtenstein, on the other hand, have succeeded in reducing the number of open cases against them with 22% and 6% respectively (**figure 6**).

With 39 open cases each, Iceland and Norway both account for 35% of all open infringement cases. For Iceland, this represents an increase, from 26%, while Norway has reduced its share of open cases from 43%. Liechtenstein’s share of cases, like half a year ago, stands at 30%.

**Figure 6:**  
**All open infringement cases against the EFTA States on 30 April 2006**

	ISL		LIE		NOR		EFTA	
	06/06	02/06	06/06	02/06	06/06	02/06	06/06	02/06
Letter of formal notice	<b>21</b>	22	<b>13</b>	18	<b>29</b>	38	<b>63</b>	78
Reasoned opinion	<b>18</b>	8	<b>15</b>	17	<b>8</b>	10	<b>41</b>	35
Referral to EFTA Court	<b>0</b>	0	<b>5</b>	0	<b>2</b>	2	<b>7</b>	2
<b>Total</b>	<b>39</b>	30	<b>33</b>	35	<b>39</b>	50	<b>111</b>	115

As for the stage of formal infringement proceedings, once again all three EFTA States have fewer new infringement cases (*i.e.* at letter of formal notice stage) open against them than six months earlier. This was also the case in the previous Scoreboard.

However, Iceland has only one less letter of formal notice open against it than six months ago. In the same period, the number of reasoned opinions against Iceland has more than doubled. Out of Iceland’s 39 cases, 15 cases (38%) relate to delays in incorporating regulations into its internal legal order. Of these, six cases are at a reasoned opinion stage. For further information on the incorporation of regulations, see the following box.

Liechtenstein and Norway have fewer cases at both letter of formal notice and reasoned opinion stage. On 30 April, Norway had no infringement cases relating to late implementation, down from 9 in the previous Scoreboard.

On 30 April 2006, seven cases initiated by the Authority for breach of Internal Market rules were pending before the EFTA Court. These cases concern:

- Five cases concerning the failure by Liechtenstein to implement the electronic communication regulatory package<sup>7</sup>;
- The introduction by Norway of a monopoly on the operation of gaming machines;<sup>8</sup> and
- Norwegian rules requiring residence in Finnmark or parts of the northern Troms counties in order to qualify for the “Finnmark supplement” to family allowances.<sup>9</sup>

<sup>7</sup> See footnote 6.

<sup>8</sup> [Case E-1/06](#).

<sup>9</sup> The EFTA Court ruled on this matter on 3 May 2006 ([E-3/05](#)) and found that the contested residence requirement did not amount to a breach of the EEA Agreement.

## Infringement cases due to 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 (non-transposition cases) are generally clear-cut and therefore seldom the subject of legally complicated disputes between the EFTA State concerned and the Authority, and largely reflects the transposition deficits reported in the first part of this Scoreboard.

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, for example, situations in which the Authority, having acknowledged transposition of a directive from an EFTA State, concludes at a later stage that the national legislation does not fully conform to the requirements of the relevant directive or that the EFTA State otherwise does not comply with EEA Internal Market rules and principles.

A particular situation arises with regard to the application of **regulations** in the EEA Agreement. For the EU States, adopted regulations automatically become part of the internal legal order. The same is the case for Liechtenstein, due to that State's monistic legal tradition. For Iceland and Norway, on the other hand, regulations only become part of the internal legal order following an act of incorporation by the appropriate national legislative body. The Authority initiates infringement action if such incorporation does not take place on time. Cases concerning regulations, due to their particular EEA-specific nature, are however counted within the second group of cases, *i.e.* non-conformity or incorrect application of EEA provisions.

The figures below focus on the second category. Both the EFTA Surveillance 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.<sup>10</sup>

When EEA Acts are not applied correctly in practice, citizens and businesses are often deprived of their rights.

**Figure 7: Iceland sees increase of 50% in non-conformity/incorrect application cases**

	ISL		LIE		NOR		EFTA	
Scoreboard time of issue	07/06	02/06	07/06	02/06	07/06	02/06	07/06	02/06
Letters of formal notice	14	12	3	9	29	30	46	51
Reasoned opinions	7	2	7	7	8	9	22	18
Cases referred to the EFTA Court	0	0	0 <sup>11</sup>	0	2	2	2	2
Total open cases	21	14	10	16	39	41	70	71

**Note: Open infringement cases due to non-conformity or incorrect application on 30 April 2006**

<sup>10</sup> Figures in EFTA Scoreboards prior to No 9 do not show this distinction and are therefore not fully comparable.

<sup>11</sup> See footnote 7, p. 11.

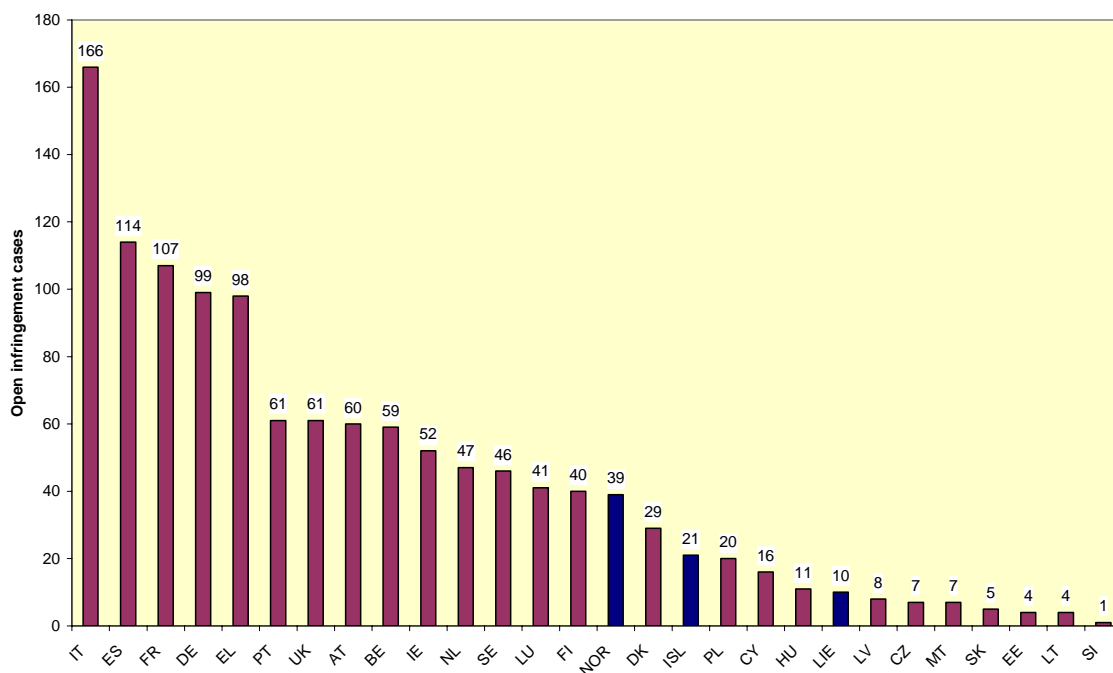
The total number of cases against the EFTA States falling into the second category – *i.e.* cases opened because of non-conformity or incorrect application<sup>12</sup> – is down with one to 70 cases.

Liechtenstein and Norway have managed to reduce the number of cases against them – Liechtenstein with 7 cases (70%) and Norway with 2 (5%). Iceland, on the other hand, has 50% more cases (21 in total) against it in this category than six months ago (**figure 7**). The increase in cases against Iceland is caused, to a large extent, by the Authority’s focus on timely incorporation of regulations into the national legal order. Iceland has a backlog of regulations that are incorporated late, mainly due to lack of translation capacity.

Out of the total number of infringement cases, those initiated due to non-conformity or incorrect application make up 100% (up from 89%) for Norway, 54% (up from 32%) for Iceland and 30% (down from 54%) for Liechtenstein.

All in all, however, compared to the 15 “old” EU Member States, the number of infringement proceedings against the EFTA States remains low (**figure 8**).

**Figure 8: The number of EFTA States infringement cases remains low in EEA context**



**Note:** Open infringement cases due to non-conformity or incorrect application on 30 April 2006, EEA comparison.

**Source EU figures:** The European Commission’s Internal Market Scoreboard N°15 - July 2006.

<sup>12</sup> For an explanation of the classification of cases between non-transposition cases and cases opened due to non-conformity or incorrect application, please see the text box on page 12.

### **Complaints to the EFTA Surveillance Authority**

Undertakings and citizens may complain to the EFTA Surveillance Authority if they believe that their rights under the EEA Agreement are infringed upon by an EFTA State. The number of complaints has increased over the last years, but within the last six months, the number of complaints at infringement stage remained stable at 33 (27% of the 111 open infringement cases).

As for the number of complaint cases per EFTA State, the situation is the same as in the last Scoreboard: 30 complaints (91%) related to Norway, two complaints were against Liechtenstein, and one complaint against Iceland.

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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