

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

February 2006

EFTA SURVEILLANCE
AUTHORITY

INTERNAL MARKET SCOREBOARD No. 17

EFTA STATES of the EUROPEAN ECONOMIC AREA

February 2006

EFTA SURVEILLANCE AUTHORITY

MAIN CONCLUSIONS FROM THE 17TH EFTA INTERNAL MARKET SCOREBOARD

- The Internal Market Scoreboard shows that the transposition deficit of the EFTA States as a whole has increased to 1.6%, from 1.4% last July. The transposition deficit for the EFTA States matches the average for the 25 EU States.
- Norway's transposition deficit has decreased to 0.8%. The transposition deficits of Iceland and Liechtenstein have increased to 1.9% and 2.1%, respectively. Hence, both Iceland and Liechtenstein fail to meet the interim target of a transposition deficit below 1.5%.
- When comparing the 28 EEA States, Norway is ranked fourth, Iceland is ranked 22nd and Liechtenstein is ranked 23rd.
- Over the last eight years, however, the EFTA States have reduced their transposition deficit by 71%. This is more or less the same as for the 15 "old" EU Member States.
- With regard to the Financial Services Action Plan Directives, the transposition deficit for Iceland is 11%, for Norway 17% and for Liechtenstein 33%.
- The number of infringement cases initiated by the Authority against the three EFTA States remains stable. 50 cases against Norway, 36 against Liechtenstein and 30 against Iceland were open on 31 October 2005.

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 Norway,² 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, homogenous 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.

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.

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 1609 Internal Market directives that were incorporated into the EEA Agreement on 31 October 2005.³ It measures the transposition status for these directives as of 30 November 2005.

What the Internal Market Scoreboard does not tell us

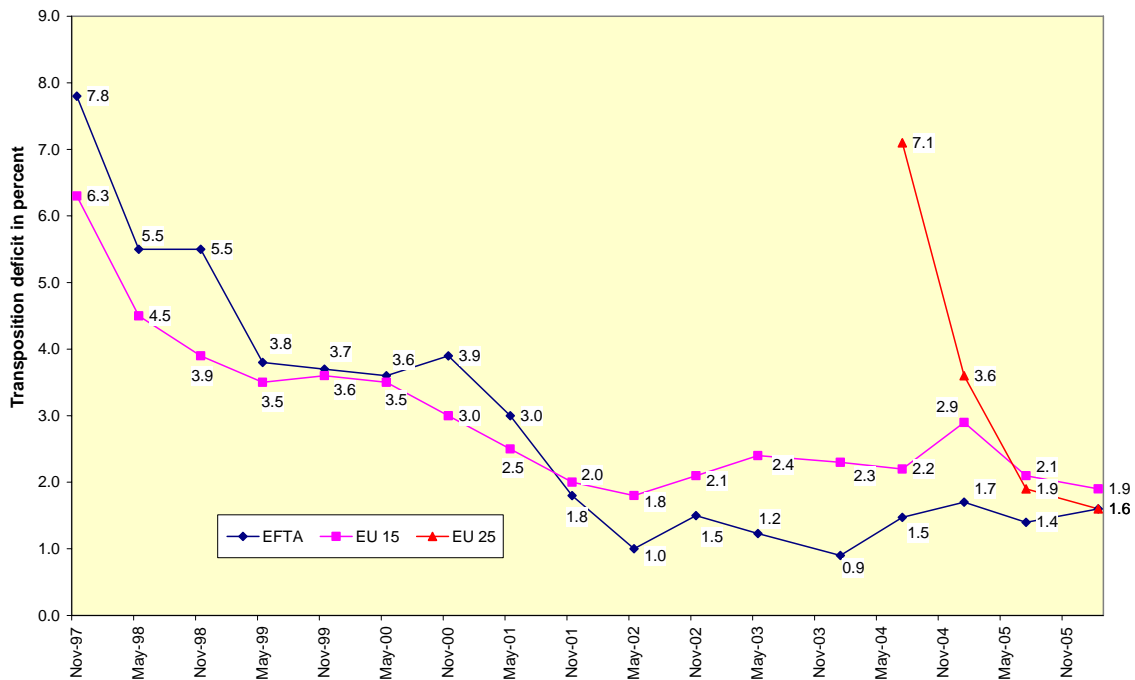
The Scoreboard concentrates on directives, and does not measure whether Iceland and Norway have made regulations part of the internal legal order. Furthermore, the Scoreboard transposition figures do not measure the quality of the implementing measures notified by the EFTA States, nor do they measure 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.

³ The corresponding figure for the EU is 1639 Internal Market directives.

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.⁴ While the ideal 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 EFTA Surveillance Authority.

Figure 1:
The EFTA States' average transposition deficit has moved above the interim target of 1.5%



Note: Transposition deficit for the EFTA States, the EU 15 and EU 25, situation as per 30 November 2005.

Source EU figures: Internal Market Scoreboard N°14bis - February 2006.

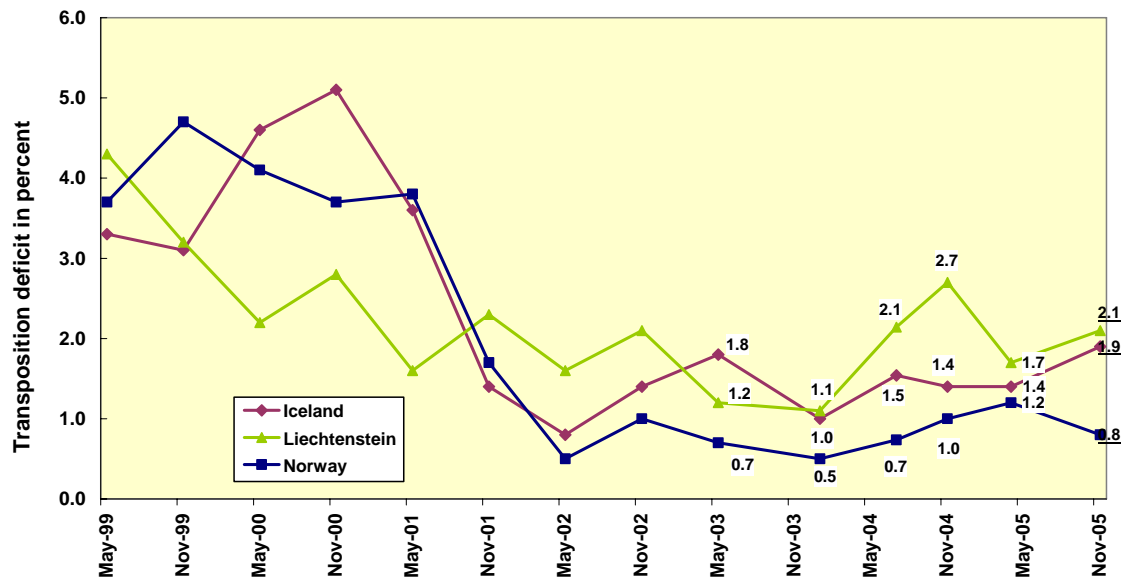
The average transposition deficit for the EFTA States as a whole is 1.6% (**figure 1**). This is a move in the wrong direction since July 2005 when the previous Scoreboard was published, and among the worst results within the last four years. In absolute terms, the 1.6% deficit implies that the EFTA States are late with 76 notifications of national transposing measures.

The EU average transposition deficit also stands at 1.6%. For the EU States, however, this is a record low. The EU States' improvement is influenced in particular by the good

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

performance of the “new” Member States (EU 10). Their average deficit is 1.2% compared to 1.9% for the “old” Member States (EU 15).

Figure 2:
Iceland and Liechtenstein are heading in the wrong direction...



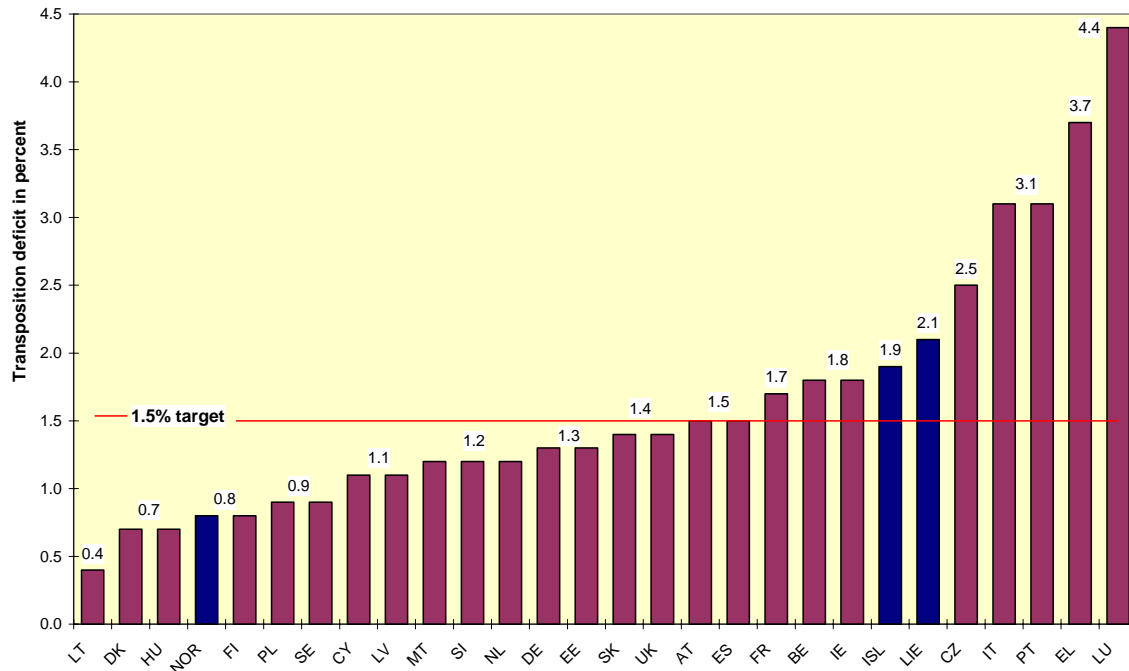
Note: Comparison of rates of failure to implement EEA Internal Market directives (transposition deficit) between May 1999 and November 2005.

Figure 2 shows that the increase in the EFTA States’ average transposition deficit is caused by Iceland’s and Liechtenstein’s poor performance, with deficits going up from 1.7% to 2.1% for Liechtenstein and from 1.4% to 1.9% for Iceland. Norway, on the other hand, improves its transposition deficit from 1.2% to 0.8%.

While Iceland and Liechtenstein have increased their backlog with 8 and 6 directives respectively, Norway has managed to reduce its backlog of outstanding directives with 5.

Out of the 25 EU Member States, 19 States manage to reduce or keep stable their backlog from the previous Scoreboard.

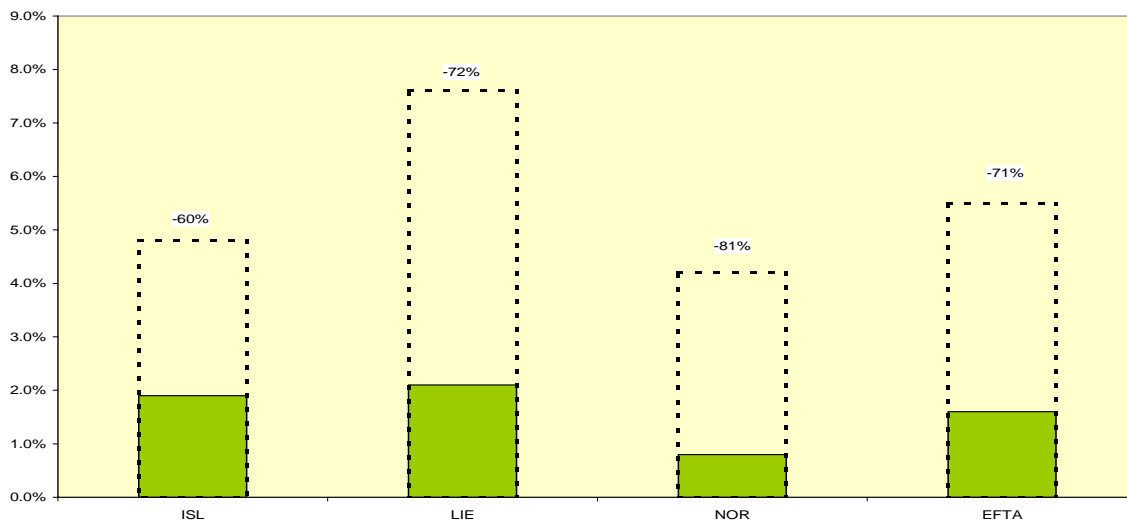
Figure 3:
Norway fourth in the EEA class of 28, Iceland 22nd and Liechtenstein 23rd



Source EU figures: The European Commission’s Internal Market Scoreboard N°14bis - February 2006.

Among the 28 EEA States, Norway now ranks no. four (**figure 4**). Iceland and Liechtenstein find themselves in the middle of the worst performing half, taking 22nd and 23rd places. Along with Norway at the top are, from the EU, a mix of “old” and “new” Member States, Lithuania heading the group for the second consecutive time; Denmark, Hungary and Finland remain in the top league as well.

Figure 4:
The average EFTA States transposition deficit has gone down by 71 percent since November 1997



Note: Long-term comparison of transposition deficits. Change from November 1997 to November 2005.

Figure 5 shows that, over a period of eight years, the EFTA States have reduced their transposition deficits considerably. The average reduction for the EFTA Countries (71%) compares to the same figure for the EU 15, which stands at 70%.

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. Since the previous Scoreboard, Norway has managed to transpose the one such “zero tolerance” Directive which it had outstanding at that stage.

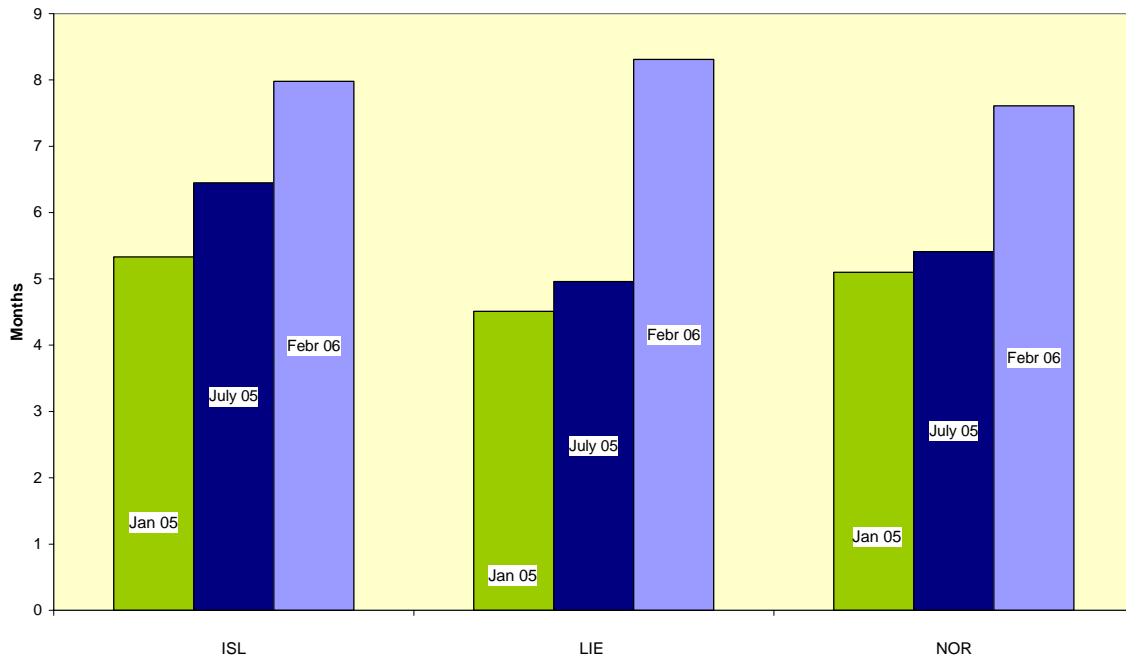
For Norway, all of the non-transposed directives have a transposition delay of less than a year, indicating that the transposition delays are caused by slow legislative processes rather than political unwillingness to transpose directives into national law (**figure 5**). Likewise, the majority of Iceland’s overdue directives are less than six months old. Most of Liechtenstein’s overdue directives are more that a year old.

Figure 5: Breakdown of the EFTA States’ transposition delay

	Number of directives delayed					
	ISL		LIE		NOR	
Length of delay	02/06	07/05	02/06	07/05	02/06	07/05
Less than 6 months	10	9	1	15	1	11
6 to 12 months	3	6	6	5	5	5
12 to 24 months	4	2	10	2	0	0
24 to 36 months	0	0	0	0	0	1
Average delay (in months) by 30 November 2005	7.98	6.45	8.31	4.96	7.61	5.41

Note: Number of overdue Internal Market directives for which no notification had been received by 30 November 2005, broken down by length of delay.

Figure 6:
Transposition delays for the three EFTA States have increased again



Note: Development of the EFTA States' average transposition delay in months.

Figure 6 shows the average delay in the transposition of the directives that are not transposed on time. The average transposition delays for the three EFTA States are: Liechtenstein 8.3 months (up 41% from 5.9 in July 2005), Iceland 8.0 (up 23% from 6.5) and Norway 7.6 (up 41% from 5.4).

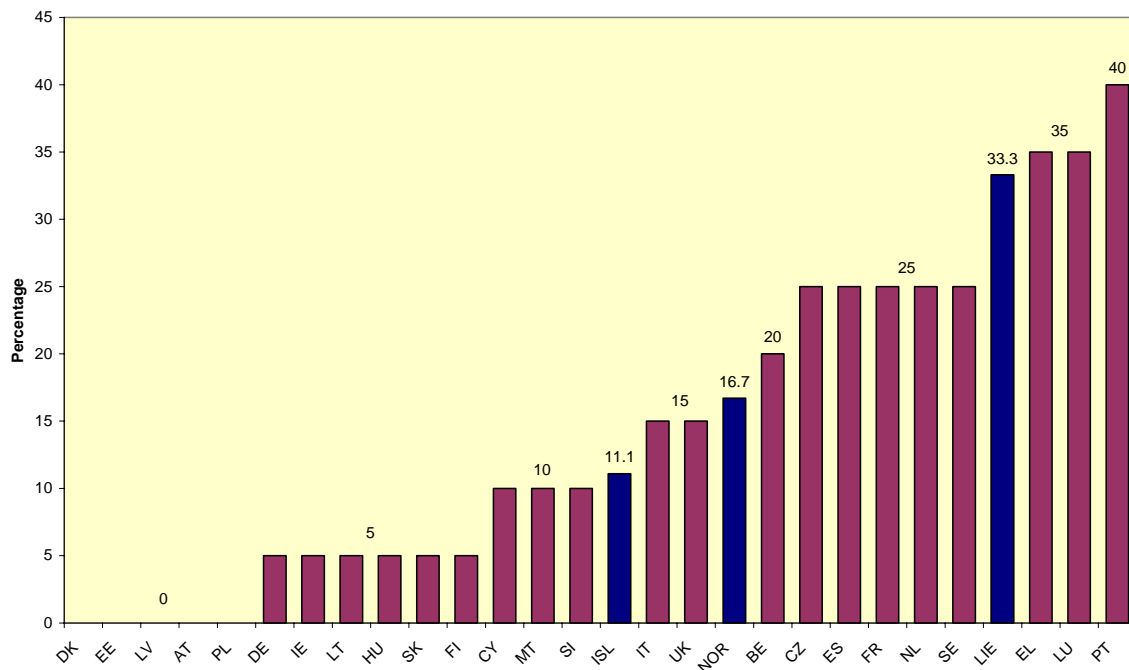
The average delay for the three EFTA States has gone up to 8 from 5.9 months. In the EU, the overall average for directives which are not transposed on time is down to 9.2 months from 10.7 half a year ago.

Implementation within the financial services sector

The Financial Services Action Plan (FSAP), presented by the European Commission in 1999⁵, aims, *inter alia*, at ensuring the continued stability and competitiveness of the EU financial markets. Of the 42 measures set out in the Plan to be adopted by 2005, 23 are directives, of which 18 should already have been transposed by the EFTA States by 30 November 2005.

⁵ COM (1999)232, 11 May 1999.

Figure 7:
Liechtenstein’s transposition deficit within financial services law is reduced, but remains high



Note: Comparison of rates of failure to implement EEA Internal Market directives (transposition deficit) included in the Financial Services Action Plan. The number of directives counted in the statistics is 20 for the EU States and 18 for the EFTA States.

Source EU figures: The European Commission’s Internal Market Scoreboard N°14bis - February 2006.

Liechtenstein has succeeded in reducing its transposition deficit to 33.3%, down from 42.9% six months ago. It still fails to implement six of the 18 FSAP directives for which the transposition deadline has already passed (**figure 7**). This is the same number of overdue directives as six months ago, which once more places Liechtenstein as number 25 in the EEA. Among the Directives that remain to be implemented by Liechtenstein are Directive 2001/86/EC on *Employees' Involvement in European Companies*, and Directive 2002/92/EC on *Insurance Mediation*.

Norway is late with transposition of three FSAP Directives, while the figure for Iceland is two. 23 of the 28 EEA States have one or more overdue directives in this sector.

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

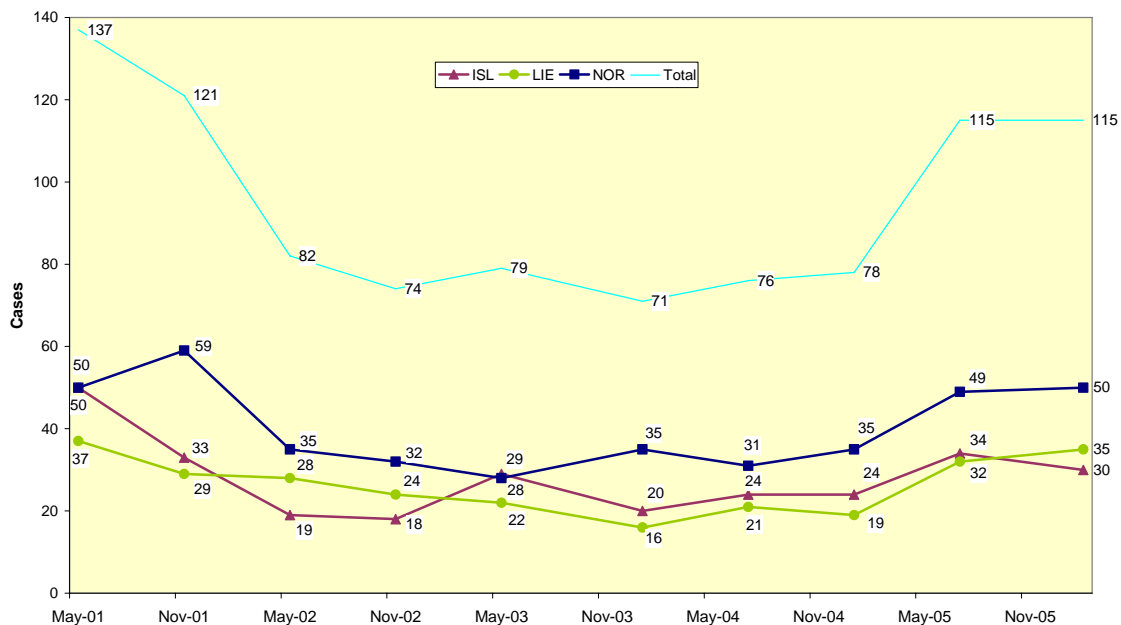
If the EFTA Surveillance Authority considers that an EFTA State has failed to fulfil an obligation under the EEA Agreement, it may initiate formal infringement proceedings. Such infringement proceedings are identical to those initiated by the European Commission.

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

Figure 8:
All open infringement cases, development per EFTA State



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

On 31 October 2005, 115 infringement cases against the EFTA States were open with the Authority. This is still a high level compared to the last three years.

The 115 infringement cases cover an increase of cases of 9% by Liechtenstein and an increase by Norway of 2%, whereas the number of cases against Iceland has reduced with almost 12% (**figure 9**).

Iceland has decreased its share of all open cases to 26% (down from 30% in April), and Liechtenstein has increased its share to 30% (up from 28%). Norway still accounts for 43% of all open infringement cases.

Figure 9:
All open infringement cases against the EFTA States on 31 October 2005

	ISL		LIE		NOR		EFTA	
	02/06	07/05	02/06	07/05	02/06	07/05	02/06	07/05
Letters of formal notice	22	27	18	22	38	41	78	90
Reasoned opinions	8	7	17	9	10	6	35	22
Cases referred to the EFTA Court	0	0	0⁶	1	2	2	2	3
Total open cases	30	34	35	32	50	49	115	115

Compared to the situation in April, all three EFTA States have fewer new infringement cases (*i.e.* at letter of formal notice stage) open against them. At the same time, more cases, in particular those against Liechtenstein and Norway, have proceeded to the stage of a reasoned opinion. This fact indicates that the Authority is concentrating its efforts on the infringement procedures reported six months ago, many of which have yet to be solved.

During 2005, three cases referred by the Authority and relating to the Internal Market were either decided by or pending before the EFTA Court⁷. These cases concern:

- Liechtenstein requirements that at least one member of the management board and of the executive management must reside in the territory of that country⁸;
- Norwegian provisions requiring up-front payment of certain costs in relation to insurance contracts; and
- Norwegian rules requiring residence in Finnmark or parts of northern Troms counties in order to qualify for the “Finnmark supplement” to family allowances.

In the two first cases, the EFTA Court ruled that the national provisions in question breached Liechtenstein’s and Norway’s obligations under the EEA Agreement. The third case is still pending. Five cases concerning the failure by Liechtenstein to implement the electronic communication regulatory package have been submitted to the Court since then.

⁶ The EFTA Court delivered its ruling in one case against Liechtenstein (E-8/04) on 1 July 2005.

⁷ This figure does not include state aid cases or competition cases.

⁸ See footnote 6.

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 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, 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.

The figure below focuses on the second category. Both the EFTA Surveillance Authority and the European Commission include this figure in their Scoreboards to indicate the infringement problems faced by the EEA States in addition to mere non-transposition.⁹

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

Figure 10: Open infringement cases due to non-conformity or incorrect application on 31 October 2005:

	ISL		LIE		NOR		EFTA	
	02/06	07/05	02/06	07/05	02/06	07/05	02/06	07/05
Letters of formal notice	12	8	9	9	30	33	51	50
Reasoned opinions	2	3	7	7	9	6	18	16
Cases referred to the EFTA Court	0	0	0¹⁰	1	2	2	2	3
Total open cases	14	11	16	17	41	41	71	69

The total number of cases against the EFTA States falling into the more serious category – *i.e.* cases opened because of non-conformity or incorrect application – has increased by 4% since April. This increase is caused by three additional cases opened against Iceland during the last half year.

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

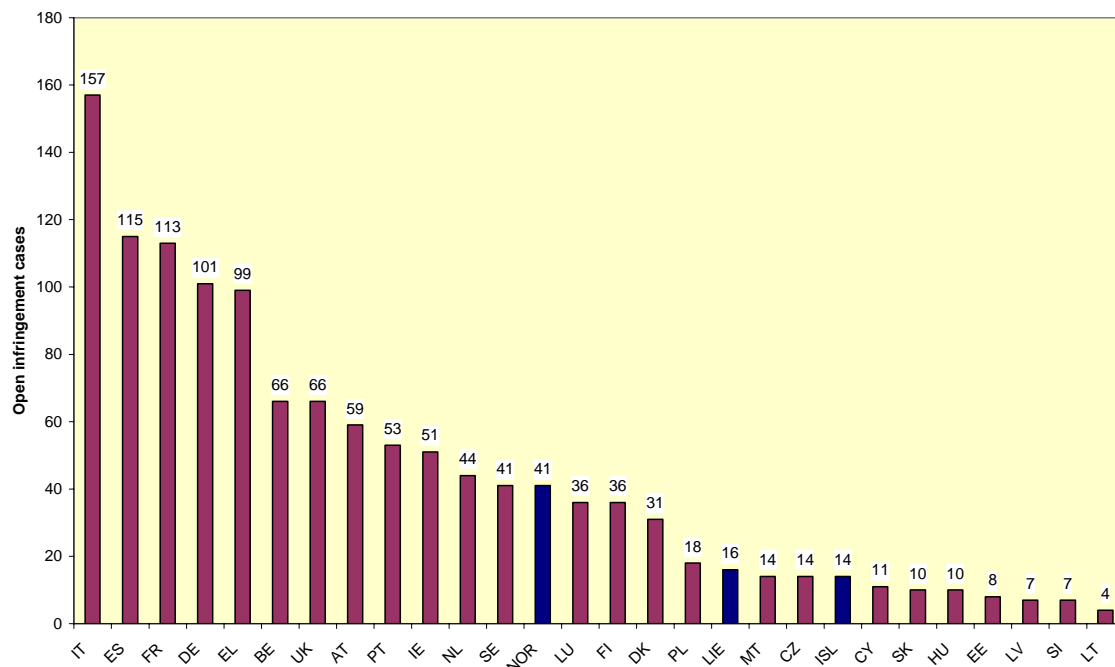
¹⁰ See footnote 6.

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. On 31 October 2005, complaints represented 28% of the 115 open infringement cases.

The vast majority of complaints received by the Authority concern Norway. Of the 33 complaints cases open on 31 October, 30 (91%) related to that country. Two complaints were against Liechtenstein, and one complaint was against Iceland.

Out of the total number of infringement cases, those initiated due to non-conformity or incorrect application make up 84% for Norway, 54% for Liechtenstein and 32% for Iceland.

Figure 11:
Infringement cases due to non-conformity or incorrect application, EEA comparison



Note: Open infringement cases due to non-conformity or incorrect application on 31 October 2005.
Source EU figures: The European Commission’s Internal Market Scoreboard N°14bis - February 2006.

A comparison with the 15 “old” EU Member States and the EFTA States shows that the number of infringement proceedings against the EFTA States is relatively low (**figure 10**). The number of cases against Liechtenstein and Iceland is again the lowest amongst the EU 15 and the EFTA States. Norway, together with Sweden, has the sixth lowest number of cases against it.

Of the “new” EU Member States, Poland, with 18 cases, has more cases open against it than Liechtenstein. Following Liechtenstein, Malta and the Czech Republic have as many cases as Iceland, *i.e.* 14.

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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