

# Introduction

The objective of the Agreement on the European Economic Area (EEA Agreement) is to establish a dynamic and homogeneous European Economic Area between the EU Member States and the EFTA States parties to the Agreement (*Iceland, Liechtenstein and Norway*), based on common rules and equal conditions of competition. To this end, the fundamental four freedoms of the internal market of the European Community, as well as a wide range of accompanying Community rules and policies, are extended to the participating EFTA States.

The task of the EFTA Surveillance Authority is to ensure, together with the European Commission, the fulfilment of the obligations set out in the EEA Agreement. The Agreement contains both basic provisions and secondary Community legislation (EEA acts). New EEA acts are included in the Agreement through decisions of the EEA Joint Committee.

The European Commission issued its first *Single Market Scoreboard* in November 1997. Following the publication of the Authority's Annual Report'97 in February this year, the Commission informed the Authority that the Internal Market Ministers of the EU Member States had expressed interest in having comparable statistics on the transposition record of the EFTA States, to be set alongside the figures in the Commission's Scoreboard.

The Authority responded positively to the Commission's request and informed the EFTA States thereof. As the Commission had done earlier with respect to the EU Member States, the Authority requested the EFTA States to submit their transposition programmes regarding the Directives which had not been implemented or had only been partially implemented.

## Single Market Scoreboard - EFTA States

## *Background*

The European Commission's Single Market Scoreboard is a means of heightening awareness of the stakes involved in the implementation of the Commission's Single Market Action Plan of June 1997. It therefore deals with four different aspects of the implementation of the Action Plan, namely the putting into effect of the Plan, the effectiveness of Single Market rules, monitoring, feedback and problem solving, and Single Market economic integration.

For obvious reasons the EFTA Surveillance Authority's Single Market Scoreboard has a more limited scope. Thus the present *Single Market Scoreboard - EFTA States No 1-2* only deals with the effectiveness of the Single Market rules in the three EFTA States - more precisely with the implementation by those States of the Single Market Directives that are part of the EEA Agreement, and with the Authority's infringement proceedings against these States with respect to failures to comply with the relevant Single Market rules applicable to them.

As regards *implementation of Single Market Directives* the Authority's Scoreboard describes the transposition situation with respect to the Single Market Directives that were part of the EEA Agreement on 1 May 1998, and gives an account of the progress made since 1 November 1997 when the Commission published its first Scoreboard. In this way the Authority hopes to provide the comparative statistics called for by the Internal Market Ministers of the EU Member States.

The Commission's *Single Market Scoreboard No 2* deals with 1368 Single Market Directives that were part of the *acquis communautaire* on 1 May 1998. On the same date, the number of Single Market Directives which were part of the EEA Agreement - and which thus form the basis of the statistics set forth in the present *Single Market Scoreboard - EFTA States No 1-2* - was 1204.

There are mainly two reasons for the number of Single Market Directives being lower in the Authority's Scoreboard than in that of the Commission. Firstly, some Single Market Directives included in the Commission's Scoreboard *fall outside the scope* of the EEA Agreement. This is the case, for example, with respect to Directives which deal with various aspects of the citizenship of the European Union (right to vote and stand, visa/border controls), certain Directives in the field of free movement of goods (*e.g.* harmful organisms, plant diseases), and Directives on taxation. Secondly, while EEA relevant, some of the Single Market Directives included in the Commission's Scoreboard *have not yet been included* in the EEA Agreement through an EEA Joint Committee decision to amend the Annexes and Protocols of the Agreement.

Regarding *infringement proceedings* the Authority's Scoreboard gives similar statistics as those presented in the Commission's Scoreboard on the number of such proceedings.

### ***Implementation of Single Market Directives***

#### ***(a) Situation at present***

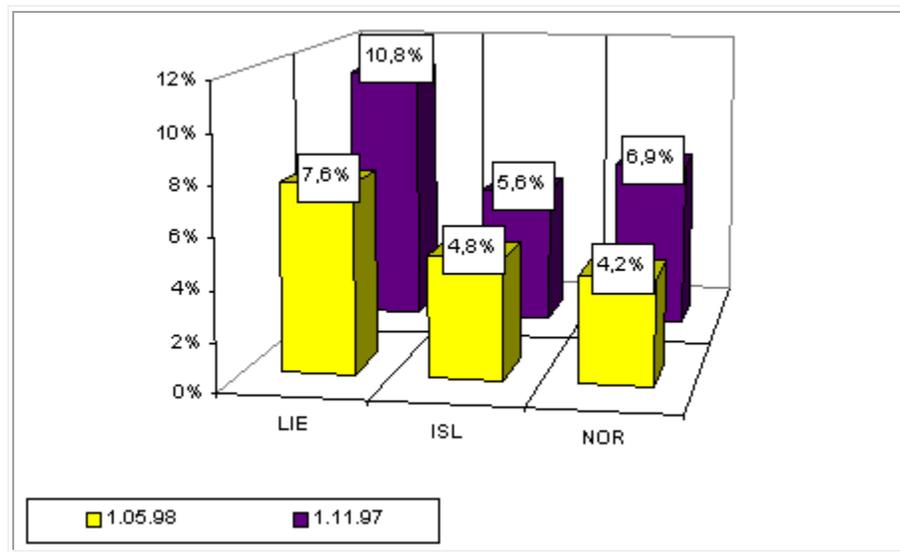
*Figure 1* sets forth numerical information on the *Single Market Directives* that were part of the EEA Agreement and had to be implemented by 1 May 1998, and on their transposition by *Iceland, Liechtenstein and Norway*.

**Figure 1: Number of EEA Single Market Directives and their transposition by the EFTA States, situation on 1 May 1998:**

	ISL	LIE	NOR
<b>Total number of Directives:</b>	<b>1204</b>	<b>1204</b>	<b>1204</b>
- Directives with effective transition periods:	<b>0</b>	<b>269</b>	<b>0</b>
- Directives where no measures are necessary:	<b>175</b>	<b>70</b>	<b>60</b>
<b>Applicable Directives:</b>	<b>1029</b>	<b>865</b>	<b>1144</b>
- Full implementation notified:	<b>971</b>	<b>773</b>	<b>1094</b>
- Partial implementation:	<b>26</b>	<b>50</b>	<b>33</b>

In line with Commission practice, *Figure 2* shows for each EFTA State the percentage of the total number of Single Market Directives regarding which *no national measures* had yet been adopted, or which had only been *partially* implemented. For comparison, the situation which prevailed on 1 May 1998 is presented against that of 1 November 1997. It should be noted that the method of calculating the performance of the EFTA States is the same as the Commission's, and different from that used earlier in the Authority's Annual and Interim Reports.

**Figure 2: Comparison of rates of failure to implement EEA Single Market Directives, between 1 November 1997 and 1 May 1998:**



When the numbers in *Figure 2* are compared with those in the *Commission's Single Market Scoreboard No 2* it can be noted that *Norway (4,2%)* and *Iceland (4,8%)* are between the *United Kingdom (3,8%)* and *Austria (5,2%)*, and that *Liechtenstein (7,6%)*, which has been party to the EEA Agreement for only three years, is not far behind *Belgium (7,1%)*.

As compared with 1 November 1997, all three EFTA States have improved their scores, *Liechtenstein* with 3,2, *Norway* with 2,7 and *Iceland* with 0,8 percentage points.

As can be seen from Figure 1, on 1 May 1998 *Liechtenstein* still enjoyed transition periods with respect to 269 Single Market Directives. For the Directives belonging to the *foodstuffs* and *veterinary* sectors the period will continue till the end of 1999. Following the expiration on 1 January 1998 of the transition period granted to Liechtenstein in Protocol 15 of the EEA Agreement with respect to the application of the provisions of the Agreement and its Annexes on free movement of persons, and pending conclusion of negotiations between Liechtenstein and the Commission on the subject matter, Liechtenstein had not notified transposition of any of the Single Market Directives on *right of residence* by 1 May 1998. Consequently, none of the Single Market Directives in these sectors can yet be applied across the three EFTA States.

As regards the other Single Market Directives *Figure 3* sets forth the twelve sectors where the rates of non-transposition across the EFTA States were the highest. The first number in brackets after the name of the sector indicates number of Directives transposed across the EFTA States, and the second the total number of Directives in that sector.

**Figure 3: Percentage rates by sector of other EEA Single Market Directives not transposed across the EFTA States by 1 May 1998:**

<b>1</b>	Public procurement (0/7)	<b>100,0%</b>	<b>7</b>	Health and Safety (9/17)	<b>47,1%</b>
<b>2</b>	Company law (0/11)	<b>100,0%</b>	<b>8</b>	Insurance (14/22)	<b>36,4%</b>
<b>3</b>	Intellectual property (2/6)	<b>66,7%</b>	<b>9</b>	Environment (18/28)	<b>35,7%</b>
<b>4</b>	Telecommunications (4/11)	<b>63,7%</b>	<b>10</b>	Banking (13/20)	<b>35,0%</b>
<b>5</b>	Labour law (4/8)	<b>50,0%</b>	<b>11</b>	Mutual recognition (38/56)	<b>32,1%</b>
<b>6</b>	Medicinal products (17/34)	<b>50,0%</b>	<b>12</b>	Dangerous goods (54/79)	<b>31,6%</b>

*Figure 4* on the next page shows that, when the Single Market Directives with effective transition periods on 1 May 1998 are excluded, *13%* of the Directives

included in the EEA Agreement are not transposed across the three EFTA States. The percentage has decreased with 3,2 points since 1 November 1997.

**Figure 4: Comparison of percentage rates of EEA Single Market Directives not trans-posed across the EFTA States, between 1 November 1997 and 1 May 1998:**

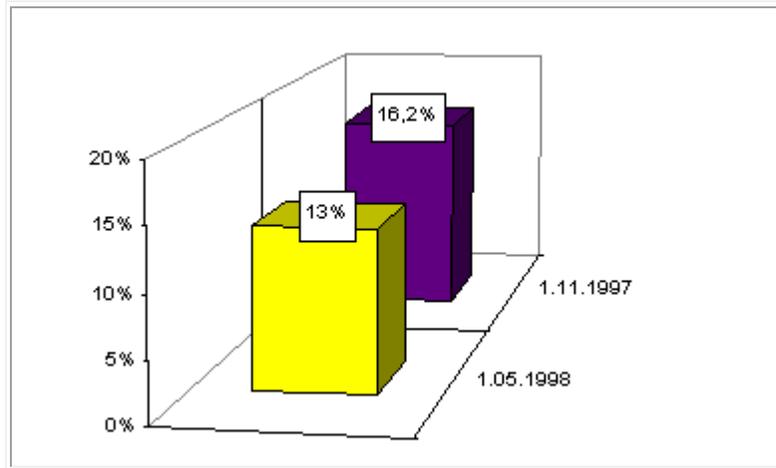


Figure 5 shows the average delays the EFTA States had incurred by 1 May 1998 with respect to Single Market Directives that should have been notified by that date.

**Figure 5: Average delays by 1 May 1998 in notifications by the EFTA States of EEA Single Market Directives whose transposition was overdue:**

	ISL	LIE	NOR
Average delays (in months) by 1 May 1998	18,9	28,3	23,4

When this information and that contained in the Commission's *Single Market Scoreboard No 2* are put together for an EEA ranking order, *Iceland* with its score qualifies as the 14<sup>th</sup> State after Greece, whereas *Norway* and *Liechtenstein* occupy the 17<sup>th</sup> and 18<sup>th</sup> places, respectively, after Germany.

***(b) Implementation programmes***

The Commission's Single Market Action Plan called upon the EU Member States to put forward detailed timetables showing their programmes for tackling delays in implementation and for ensuring that deadlines for transposition falling before 1 January 1999 were respected. The Commission therefore requested the Member States to provide the necessary information by having a form designed for that purpose filled in and returned.

With a view to obtaining corresponding programmes the Authority sent in March 1998 to each EFTA State pre-filled forms regarding all Single Market Directives regarding which the EFTA State concerned had failed to notify full implementation, requesting the forms to be filled in and returned to the Authority.

*Figure 6* contains information on the number of forms sent by the Authority, and on the number and percentages of forms returned and programmes provided by the EFTA States. It also shows the number and percentages of measures that were indicated by each EFTA State to enter into force during 1998, or in late 1998 or early 1999, respectively, or where there was no indication of entry into force.

**Figure 6: EFTA State implementation programmes regarding those EEA Single Market Directives which have not been fully transposed, situation on 12 May 1998:**

	ISL		LIE		NOR	
	Number	%	Number	%	Number	%
<b>Forms and programmes</b>						
Forms sent*	46	100%	99	100%	34	100%
Forms returned	43	93,5%	94	95%	29	85,3%
Programmes provided**	37	86,0%	83	88,3%	29	100,0%
<b>Measures in force</b>						
During 1998***	30	81,1%	81	98%	25	86,2%
During 1999	3	8,1%	2	2%	0	0,0%
Not specified	4	10,8%	0	0%	4	13,8%

\* If a returned form indicated that measures had already entered into force, that form does not appear in these statistics (either as a form sent or a form returned).

\*\* Not every returned form actually contained a clear implementation programme.

\*\*\* Some returned forms indicated that measures would be in force either in late 1998 or early 1999. In these statistics such answers

are considered as indicating entry into force in 1998.

### ***Infringement proceedings***

If the Authority considers that an EFTA State has failed to fulfil an obligation under the Agreement, it may initiate formal infringement proceedings under Article 31 of the Surveillance and Court Agreement. These proceedings are identical to those applied within the European Union in accordance with Article 169 of the EC Treaty. However, infringement proceedings are initiated only where the Authority has failed to ensure by other means compliance with the Agreement. In practice the overwhelming majority of problems identified by the Authority is solved as a result of less formal exchanges of information and discussions between the Authority's staff and representatives of the EFTA States.

If formal infringement proceedings are initiated, as a first step the Authority notifies, in a *letter of formal notice*, the Government concerned of its opinion that an infringement has taken place and invites the Government to submit its observations on the matter. If the Authority is not satisfied with the Government's answer to the letter, or if no answer is received, the Authority delivers a *reasoned opinion*, in which it defines its final position on the matter, states the reasons on which that position has been based, and requests the Government to take the necessary measures to bring the infringement to an end. Should the Government fail to comply with the reasoned opinion, the Authority may bring the matter before the *EFTA Court*, whose judgement shall be binding on the State concerned.

*Figure 7* shows the number of *letters of formal notice* sent by the Authority to the EFTA States in relation to Single Market infringement procedures.

**Figure 7: Letters of formal notice relating to alleged breaches of Single Market rules, 1 March 1997 - 1 March 1998, and 1 September 1996 - 1 September 1997:**

	ISL	LIE	NOR	EFTA
1 March 1997 - 1 March 1998	13	28	19	60
1 September 1996 - 1 September 1997	27	22	27	76

When compared with the corresponding numbers set forth in the Commission's *Single Market Scoreboard 2*, it can be noted that in the period September 96 to September 97 the total number of letters of formal notice sent by the Authority (76) was almost one third of those sent by the Commission (242). In the period March 97 to March 98 the proportion was between one to six and one to seven, the Authority sending 60 and the Commission 392 letters of formal notice. Thus it can be said that the number of letters of formal notice sent by the Authority during the period September 1996 to March 1998 was in the average about one fifth of the number of letters of formal notice sent by the Commission. It may be recalled that the proportion 1/5 is also that of the number of States in the EFTA pillar (3) and the European Union pillar (15). The statistics thus seem to suggest that the two surveillance bodies follow similar policies when making decisions on the initiation of infringement proceedings

Corresponding numbers relative to *reasoned opinions* are presented in *Figure 8*. In the period September 96 to September 97 the number of reasoned opinions sent by the Authority (24) was about one third of the number of reasoned opinions issued by the Commission (68). In the period March 97 to March 98 the proportion was close to 1/5, as the Authority sent 26 reasoned opinions as compared with the Commission's 140. Here the statistics seem to suggest that, in the average, the Authority sent during the period September 1996 to March 1998 proportionally more reasoned opinions than the Commission.

**Figure 8: Reasoned opinions relating to alleged breaches of Single Market rules, 1 March 1997 - 1 March 1998, and 1 September 1996 - 1 September 1997:**

	ISL	LIE	NOR	EFTA
1 March 1997 - 1 March 1998	8	5	13	26

1 September 1996 - 1 September 1997	7	3	14	24
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By 1 March 1998 only three cases involving Single Market rules had been referred to the *EFTA Court*. In early 1996 one application was sent to the Court joining two cases against *Iceland* in the field of internal taxation, but since Iceland adopted the necessary measures soon thereafter the application was withdrawn. A case against *Norway* relating to non-implementation of a Single Market Directive in the health and safety at work sector was submitted to the Court in the autumn 1997. The proportionate number of Court referrals by the Authority (2 and 1) was thus much lower than that of the Commission (38 and 27), but this has its natural explanation in the fact that the EEA Agreement has been in force only a relatively short time.