

Introduction

The objective of the Agreement of 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 laid down in the EEA Agreement. The Agreement contains both basic provisions and secondary Community legislation (EEA Act). New EEA Acts are included in the Agreement through decisions of the EEA Joint Committee.

The present document contains both the “*Single Market Scoreboard – EFTA States No 7*” and the second of the year 2000 issues of the “*Interim Report on Transposition Status of Directives*”.

Part A: Single Market Scoreboard - EFTA States

1. Background

Since May 1998, the EFTA Surveillance Authority issues its *Single Market Scoreboard - EFTA States* at the same time as the European Commission's Single Market Scoreboard.

In line with the approach taken in the previous issues, the *Single Market Scoreboard - EFTA States No 7* deals with the effectiveness of the Single Market rules in the three EFTA States - that is, with the implementation by *Iceland, Liechtenstein and Norway* 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.

The Scoreboard is a tool to encourage a timely transposition of new EEA rules by the EFTA States, as delayed implementation of the rules can lead to obstacles to the free movements which contravenes the very aim of the EEA Agreement.

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 and were to be complied with by 15 October 2000.

The Commission's *Single Market Scoreboard No 7* deals with 1489 Single Market Directives that were part of the *acquis communautaire* on 15 October 2000. On the

same date, the number of Single Market Directives that were part of the EEA Agreement, and form the basis of the statistics set forth in the present *Single Market Scoreboard - EFTA States No 7*, was 1361.

It is recalled that 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 - for example, Directives dealing with various aspects of the citizenship of the European Union - fall outside the scope of the EEA Agreement. Secondly, while EEA relevant, some of the Single Market Directives included in the Commission's Scoreboard have not yet been made part of the EEA Agreement through an EEA Joint Committee decision to amend the Annexes and Protocols of the Agreement.

2. Implementation of Single Market Directives

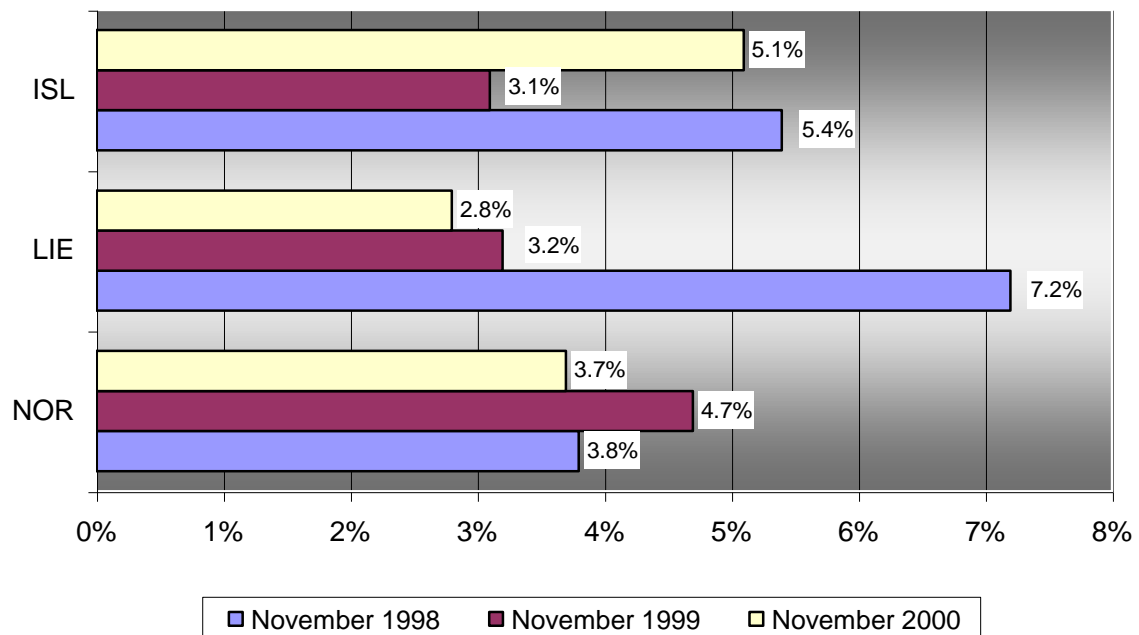
Figure 1 shows information on the Single Market Directives that were part of the EEA Agreement and had to be implemented by 15 October 2000, and on their transposition by Iceland, Liechtenstein and Norway.

Figure 1: Number of EEA Single Market Directives and their transposition by the EFTA States, situation in November 2000:

	ISL	LIE	NOR
Total number of Directives:	1361	1361	1361
- Directives with derogation and/or transition periods or where no measures are necessary:	183	237	75
Applicable Directives:	1178	1124	1286
- Full implementation notified:	1108	1086	1236
- Partial implementation:	9	25	23
- Non-implementation:	61	13	27

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 that prevailed in November 2000 is presented against that of November 1999 and November 1998.

Figure 2: Comparison of rates of failure to implement EEA Single Market Directives between November 2000, November 1999 and November 1998:



Compared with November 1999, both Liechtenstein and Norway show improvement, while Iceland has moved significantly backwards and is almost at the same level as in 1998. The situation in Iceland seems to reflect systemic difficulties in transposing EEA legislation in a timely way, which is a cause of concern.

A comparison between the 18 EEA States shows that *Liechtenstein* (2,8%) holds the 7th place, *Norway* (3,7%) is in 14th place and *Iceland* (5,1%) is in the 17th place with only one EEA State having a higher transposition deficit.

It should be noted that *Iceland* and *Liechtenstein* enjoyed derogations and/or transition periods with respect to 183 and 237 Single Market Directives respectively, mainly in the *veterinary* sector.

Furthermore, following EEA Joint Committee Decision No 191/1999, which came into force on 1 June 2000, Liechtenstein may maintain certain measures in the form of sectoral adaptations when applying Annex V (Free movement of workers) and Annex VIII (Right of establishment). Consequently, although EEA acts relative to the *free movement of workers* and the *right of residence* are as such part of the EEA Agreement, this special situation has to be kept in mind when looking at the application of those acts across the three EFTA States.

Figure 3 sets forth the sectors where the rates of non-transposition across the EFTA States were above the average (8,8%). The total number of Directives is set forth in brackets after the name of the sector. The number of Directives that each State has not implemented in those sectors is also shown.

Figure 3: Percentage rates by sector of EEA Single Market Directives not fully transposed across the EFTA States in November 2000:

			ISL	LIE	NOR
1	Cultural Objects (2)	100,0 %	2	-	1
2	Machinery (2)	100,0 %	2	-	1
3	Information services (1)	100,0 %	-	1	-
4	Company Law (11)	90,91 %	-	10	-
5	Public procurement (8)	50,00 %	4	2	-
6	Medical devices (2)	50,00 %	1	1	1
7	Health and Safety at Work (21)	42,86 %	1	2	8
8	Audio-visual Services (3)	33,33 %	-	1	1
9	Telecommunication Services (17)	29,41 %	1	4	-
10	Consumer protection (11)	18,18 %	1	1	2
11	Insurance (23)	17,39 %	1	4	1
12	Transport (73)	16,44 %	8	2	2
13	Intellectual Property (7)	14,29 %	1	-	1
14	Agriculture and Forestry Tractors (51)	13,73 %	7	1	4
15	Feeding stuffs (104)	12,50 %	13	-	2
	AVERAGE	8,82 %			

When delays in implementation are broken down by sectors, it can be observed that in terms of the number of non-transposed Directives, some areas are problematic for the EFTA States. For *Iceland*, 8 of 73 Directives relating to transport are still outstanding

and 13 out of 104 Directives on feeding stuffs remain non-transposed. For *Liechtenstein* the company law area is still the main concern where 10 of 11 Directives are not fully transposed and for *Norway* there are important gaps relating to health and safety at work and agriculture and forestry tractors.

Figure 4 shows that, when the Single Market Directives with effective derogations and transition periods in November 2000 are excluded, 8,8% of the Directives included in the EEA Agreement are not transposed across the three EFTA States. This figure compares to a “fragmentation factor” of 12,8% across the 15 EU Member States. The percentage for the EFTA States has decreased by 0,4 points since November 1999 and by 3,4 percentage points since November 1998.

Figure 4: Comparison of percentage rates of EEA Single Market Directives not transposed across the EFTA States, between November 2000, November 1999 and November 1998:

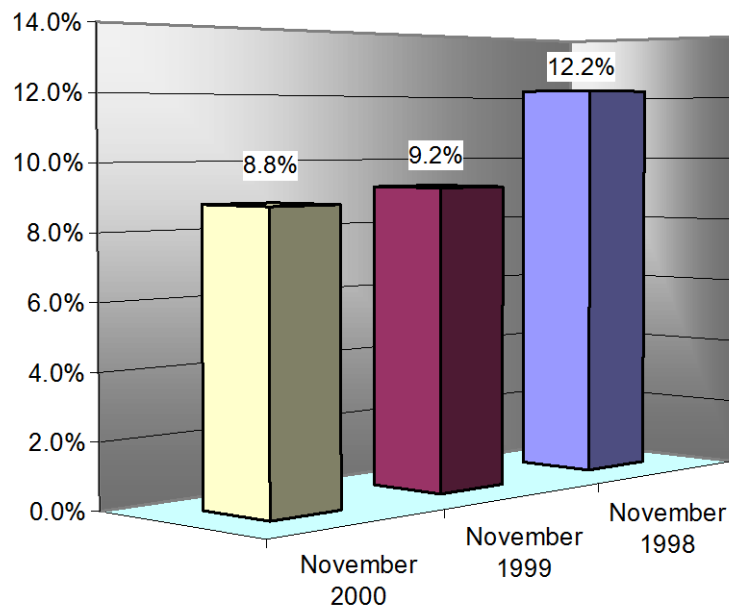


Figure 5 shows the number of Single Market Directives that had not been notified by 15 October 2000, broken down by year of transposition deadline, and the average delays the EFTA States had incurred by that time.

Figure 5: Number of EEA Single Market Directives whose transposition was overdue by 15.10.00, and average delays in notification:

Year of transposition deadline:	ISL	LIE	NOR
- 1998	1	-	-
- 1999	15	-	6
< 15.10.2000	46	13	21
Average delay (in months) by 15.10.2000	7,3	2,8	6,0

Since November 1999 *Iceland's* delay has decreased by 0,2 months, *Liechtenstein's* by 0,3 months, and *Norway's* by 2,3 months. As can be expected most delays relate to the implementation of recent Directives.

Figure 6 shows the state of EFTA States' *transposition backlog* and of their *transposition planning*. In September 2000 the Authority asked the EFTA States to submit to it transposition forecasts of Directives that were overdue or with compliance date before 31 December 2000. As can be seen, the EFTA States responded positively and sent in forecasts for the majority of the Directives listed by the Authority. The figure also indicates the number of Single Market Directives to be transposed before the end of the year; namely Directives remaining to be fully transposed and those with a future transposition date within the same period, based on the situation at the making of the Scoreboard.

Figure 6: State of EFTA States' transposition backlog and state of planning provisions:

	ISL	LIE	NOR
Number of Directives for which transposition forecast was requested	78	39	62
Number of Directives for which no planning provisions have been received	16	0	14
Number of Directives to be transposed at the latest 31.12.00	90	56	70

A significant number of Directives remain to be implemented before the end of the year, 90 Directives for *Iceland*, 56 Directives for *Liechtenstein* and 70 Directives for *Norway*. The corresponding figures for the EU Member States on the number of Directives remaining to be implemented by the end of the year range from 24 to 103.

Figure 7 shows the state of implementation of Single Market Directives related to the Information society services, as defined in the Commission's Single Market Scoreboard. The aim of this initiative is to show how quickly the EEA States align their regulatory framework towards the information society. As can be seen, at least one of those Directives has been transposed across the EFTA States whereas none has been completely transposed across the EU. It should be noted that Directives 98/48/EC (Transparency) and 98/84/EC (Conditional access) are not included as they have not yet been incorporated into the EEA Agreement. Furthermore, Directives 1999/39/EC (Digital signatures) and 2000/31/EC (E-Commerce), which are included

in the EU Scoreboard although their transposition deadline expires in 2001 and 2002 respectively, have been adopted by the EEA Joint Committee, subject to fulfilment of constitutional requirements by the EFTA States (necessary national procedures of approval).

Figure 7: State of implementation of Directives related to information society services:

	ISL	LIE	NOR
Protection of personal data (95/46/EC)		X	
Telecom sector data protection (97/66/EC)		O	
Legal protection of databases (96/9/EC)			

X = partially notified

O = not notified

3. *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 Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice. These proceedings are identical to those applied within the European Union in accordance with Article 226 of the EC Treaty. However, infringement proceedings are initiated only where the Authority has failed to ensure compliance with the Agreement by other means. In practice the overwhelming majority of problems identified by the Authority are 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. A failure to comply with the Court's judgement is in itself a breach of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice.

Figure 8a compares the number of infringement proceedings initiated by the Authority against the EFTA States during two years.

Figure 8a: Infringement statistics - comparison between the periods 01.09.98 – 01.09.99 and 01.09.99 – 01.09.00:

		ISL	LIE	NOR	EFTA
Letters of formal notice	1.9.99 – 1.9.00	27	15	24	66
	1.9.98 – 1.9.99	33	30	31	94
Reasoned opinions	1.9.99 – 1.9.00	6	14	7	27
	1.9.98 – 1.9.99	3	2	10	15
Cases referred to the EFTA Court	1.9.99 – 1.9.00	0	0	2	2
	1.9.98 – 1.9.99	0	0	0	0
Judgements of the EFTA Court	1.9.99 – 1.9.00	0	0	1	1
	1.9.98 – 1.9.99	0	0	0	0

As can be seen, the number of *letters of formal notice* sent during the period September 1999 and September 2000 is considerably lower than the number of letters dispatched between September 1998 and September 1999. At the same time, however, the number of *reasoned opinions* has substantially increased from 15 to 27.

The figure demonstrates that the EFTA States in most cases respond to the letters of formal notice or reasoned opinions by taking the necessary measures, thereby avoiding that the infringement procedure goes further.

Figure 8b: Breakdown by sector of reasoned opinions sent 01.09.99 – 01.09.00:

REASONED OPINIONS:	ISL	LIE	NOR	EFTA
Social security			1	1
Free movement of goods	3		1	4
Quantitative restrictions			2	2
Establishment and provision of services		1		1
Banking		1	1	2
Insurance		3		3
Telecommunications			1	1
Aviation	1		1	2
Free movement of capital	2			2
Company Law		9		9
Total	6	14	7	27

Figure 8b breaks down by sector and by EFTA State reasoned opinions issued between September 1999 and September 2000. The sectors with the largest number of reasoned opinions are financial services and company law. It can be noted that *Liechtenstein* accounts for half of the total number of reasoned opinions issued during this period.

Two applications for alleged breaches of Single Market rules were sent to the *EFTA Court* during the period September 1999 and September 2000. The first case concerned partial implementation by *Norway* of the *Second General System Directive* (92/51/EEC). During the period the Court gave a judgement in the case, concluding that *Norway* had failed to fulfil its obligations under the EEA Agreement. The second case concerns *Norway's* prohibition of the import and marketing of fortified corn flakes, which the Authority considers to be a breach of *Article 11 of the EEA Agreement* (quantitative restrictions on imports and measures having equivalent effect). The case is still pending before the Court.

Figure 9a sets forth information on the ratio between cases closed after the receipt of letters of formal notice. As cases are not closed until a case has been solved, a high ratio can be interpreted as a sign of the EFTA States' willingness to solve swiftly alleged problems. In the case of both *Norway* and *Liechtenstein*, more than half of the infringement cases initiated against those States during the years 1998 and 1999 were closed by mid-October 2000. In the case of *Iceland* the situation was even better where more than 3 out of 4 cases had been closed. Comparable figures from the EU side run from 58,8% and down to 27,7% with an average ratio of 40,9%, which shows an excellent record in solving disputes for alleged breaches of EEA rules by the EFTA States.

Figure 9a: Comparison of EFTA States ratio of cases closed after receipt of letter of formal notice in 1998-99 – status in mid October 2000:

	ISL	LIE	NOR	EFTA
Letters of formal notice	56	45	54	155
Number of these cases closed	42	26	32	100
Percentage of cases closed	75,0	57,8	59,3	64,5

Figure 9b shows the ratio between cases which progress to a reasoned opinion after a letter of formal notice has been sent to the EFTA State in question. Conversely to figure 9a, a high ratio indicates a difficulty in finding a solution to alleged infringements of EEA rules. The EFTA States also perform well on this test where the EU-average is 41,9%, going from 15,8% up to 72,7%.

Figure 9b: Comparison of EFTA States ratio of cases progressing to a reasoned opinion after receipt of letter of formal notice in 1998-99 – status in mid October 2000:

	ISL	LIE	NOR	EFTA
Letters of formal notice	56	45	54	155
Cases progressed to a reasoned opinion	8	16	15	39
Ratio of reasoned opinions to letters of formal notice	14,3	35,6	27,8	25,2

Figure 10 demonstrates the status of infringement proceedings opened for failure to implement Single Market Directives due before 1 July 1998. As can be seen, when the Scoreboard was made there were 13 cases against Liechtenstein and 4 against Norway that fell within this category and have progressed to the state where a reasoned opinion has been sent. It should, however, be noted that the Authority has recently received notifications from Norway concerning three of those Directives, which have, however, not yet been assessed.

Figure 10: Status of infringement proceeding opened for failure to implement Directives due before 01.07.98:

	ISL	LIE	NOR
Referral to the EFTA Court			
Reasoned opinions		87/344 90/619 91/674 86/635 78/660* 83/349 84/253 68/151 92/101 77/91 78/855 89/666 89/667	92/25 89/105 75/319 92/29

* as amended by Directive 94/8/EC

Part B: Interim Report

1. Implementation of all Directives

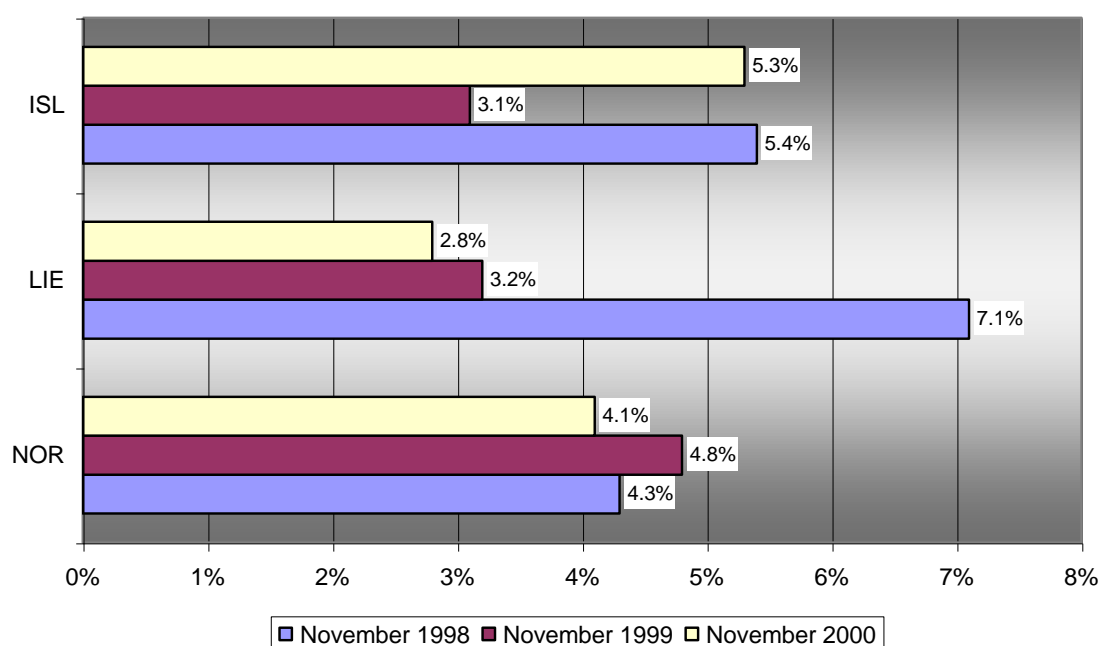
This *Interim Report* and the tables displayed herein are concerned with *all* the Directives which have been made part of the EEA Agreement and which were to be implemented by 15 October 2000. Thus, *Figure 11* contains numerical information on all Directives and on their transposition by *Iceland, Liechtenstein* and *Norway* by 15 October 2000.

Figure 11: Number of all EEA Directives and their transposition by the EFTA States, situation in November:

	ISL	LIE	NOR
Total number of Directives:	1397	1397	1397
- Directives with derogation and/or transition periods or where no measures are necessary	190	252	81
Applicable Directives:	1207	1145	1316
- Full implementation notified:	1131	1106	1259
- Partial implementation:	10	26	27
- Non-implementation:	64	13	30

Figure 12 shows for each EFTA State the percentage of all Directives included in the EEA Agreement regarding which *no national measures* had yet been adopted, or which had only been *partially* implemented. As in *Figure 2* the situation which prevailed in November 2000 is presented against that of November 1999 and November 1998.

Figure 12: Comparison of rates of failure to implement all EEA Directives between November 2000, November 1999 and November 1998:



Liechtenstein has improved its score when compared with the situation prevailing in November 1999 by 0,4 percentage points, while *Iceland's* score has worsened by 2,2 percentage points. *Norway's* rate of failure to implement has also improved by 0,7 percentage points.

When the statistics in Figure 12 and Figure 2 are compared, it can be noted that *Norway's* and *Iceland's* performances are slightly better when only the Single Market Directives are being taken into account, whereas *Liechtenstein's* performance is the same for both groups of Directives.

2. *Explanatory note on the tables*

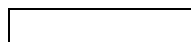
Reflecting the relevant entries made by the Authority's services in *its Acquis Implementation Database (AIDA)*, two basic types of information are given in the tables set forth in the following pages.

(a) *Shadings*

The Authority's understanding of the *actual transposition situation* is illustrated by the different *shadings* in the tables. The principles according to which the shadings appear are the following:

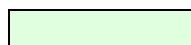
- (a) The fact that the respective field is left *blank (white)*, means that the EFTA State concerned has *a permanent derogation or no duty to implement* the Directive in question.

No duty to implement:



- (b) A field with a *light shading* means that the EFTA State in question has notified the Directive concerned as fully implemented, and also submitted to the Authority the legal texts of all the notified national measures:

Full implementation notified:



It should be noted that this shading will *not* appear in the table, even if an EFTA State has notified full implementation as described above, if the Authority or its services, after a preliminary examination of the legal texts received, or upon a detailed conformity assessment, are of the opinion that the Directive has *not* actually been fully implemented. (In that case one of the two shadings discussed below will appear, depending on whether implementation is considered to be only partial, or whether the measures notified by the EFTA State are not actually deemed to implement any provisions of the Directive in question.)

- (c) When a field has a *medium shading* it means either that the EFTA State in question has notified the Directive concerned as only partially implemented, or that the Authority or its services have come to the same conclusion following a preliminary examination of the notified legal texts or of a detailed conformity assessment:

Partial implementation:



- (d) A *dark shading* of the field means either that the Authority has received no notification relative to the Directive concerned from the EFTA State or, that following a preliminary examination of the legal texts that have been notified or of a detailed conformity assessment of the measures contained in the texts, the Authority or its services have concluded that no national measures exist in that State that would actually transpose any of the provisions of the Directive:

Non-implementation:



(b) Abbreviations

When appropriate, certain additional information is given in the form of *abbreviations*, which appear in the respective fields.

Thus, the abbreviation “*NNN*” in a blank field means that, due to the circumstances prevailing in the EFTA State in question, no *implementing measures are considered necessary* for the time being. For instance, in the sector of mutual recognition of diplomas and professional qualifications, no implementing measures are necessary either in Iceland or in Norway with respect to the Directives relative to the film industry, since in those EFTA States the respective activities are liberalised, and therefore no restrictions exist in the sense of the Directives. Consequently, the value “*NNN*” has been entered in the *AIDA* for both Iceland and Norway for all the four Directives concerned, and the abbreviation appears in the respective fields of the table.

The second abbreviation that may appear in a blank field is “*TRP*”. This means that the EFTA State in question enjoys *a transitional period* for the implementation of the *whole* Directive concerned.

The third abbreviation that may appear in a blank field is “*PWH*”. This means that the EFTA State in question enjoys *a derogation* for the implementation of the *whole* Directive concerned.

The fourth abbreviation that may appear in a blank field is “*SPA*”. This stands for “specific adaptation” and means that the EFTA State in question has a right to apply certain provisions of an act in a particular way.

When a Directorate concludes that a Directive has not been properly implemented, it may, instead of proposing to the respective College member that formal proceedings be initiated, decide to send an *informal* letter to the EFTA State concerned inviting it to adopt the measures necessary to comply with the Directive or, to provide the Authority with information on the actual status of implementation. Whenever this kind of *pre Article 31 letter* is sent, the value “*PRE*” is entered into the *AIDA*, and the abbreviation appears in the respective field with medium or dark shading.

By the same token, if the Authority has sent a letter of formal notice or a reasoned opinion for non-implementation or partial implementation to the EFTA State, the corresponding value - “*LFN*” or “*RDO*”, respectively - is entered into the *AIDA*, and

thus also appears in the respective field. The abbreviation “*EFC*” means that the Authority has referred the case to the EFTA Court.
