

1. Introduction

EEA States apply common rules

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, which are parties to the Agreement (*Iceland, Liechtenstein and Norway*), based on common rules and equal conditions of competition. To this end, the four fundamental freedoms of the internal market of the European Community are extended to the EFTA States as are a wide range of accompanying Community rules and policies.

The Authority and the European Commission ensure fulfilment of EEA obligations

In parallel with the European Commission in the EU, the task of the EFTA Surveillance Authority is to ensure the fulfilment by the EFTA States of the obligations laid down 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.

Since May 1998, the EFTA Surveillance Authority has issued its *Single Market Scoreboard - EFTA States* at the same time as the European Commission's Internal Market Scoreboard. The present document contains Scoreboard No 9.

The Scoreboard measures EFTA States' performance

The *Single Market Scoreboard – EFTA States* is a tool to measure performance and to encourage timely transposition of EEA rules by the EFTA States. The Scoreboard deals, in particular, 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 were to be complied with by 15 October 2001. Furthermore, the Scoreboard contains certain information concerning the infringement proceedings commenced by the Authority against these States in order to ensure correct enforcement of the Single Market rules.

1366 EEA directives

The Commission's *Internal Market Scoreboard No 9* deals with 1490 Single Market directives that were part of the *acquis communautaire* on 15 October 2001. 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 9*, was 1366. It should be noted that *Iceland* and *Liechtenstein* enjoyed derogations and/or transition periods with respect to 192 and 257 Single Market directives respectively, mainly in the *veterinary* sector.

Some EC Directives are outside the scope of the EEA and some are not yet part of it

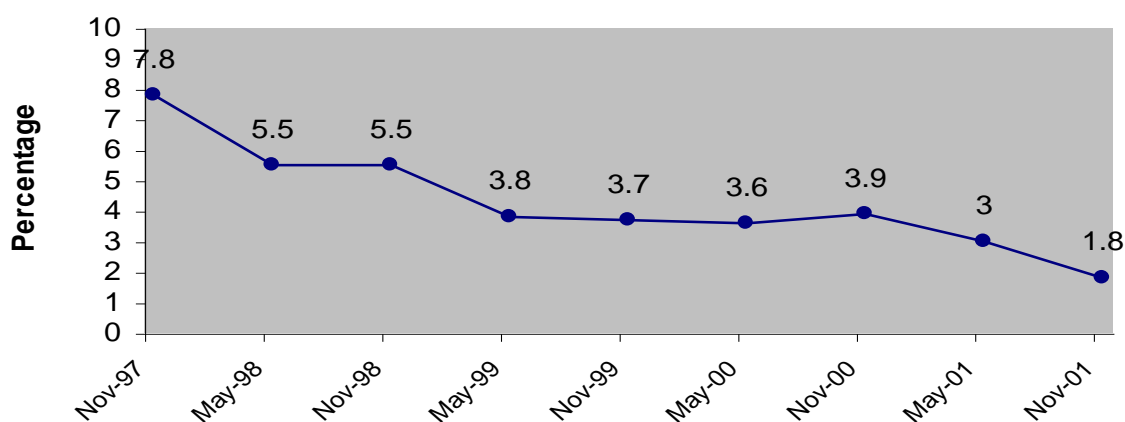
It is recalled that there are two main reasons that the number of Single Market directives is lower in the Authority's Scoreboard than in that of the Commission. First, some Single Market directives - for example, directives dealing with various aspects of the citizenship of the European Union - fall outside the scope of the EEA Agreement. Second, while of EEA relevance, 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

Late implementation creates market obstacles and limits rights of individuals and business operators

Timely and correct implementation of Single Market directives is a key factor in achieving the objective of a homogeneous Area based on common rules and equal conditions for competition. A different situation not only defies this aim but creates obstacles to the operation of the Single Market and can lead to circumstances in which individuals and economic operators are not able to realise their rights under the Agreement. Barriers will only be removed if the legislation that aims at dismantling these is fully in place and works in practice.

Figure 1: Average transposition deficit of the EFTA States:



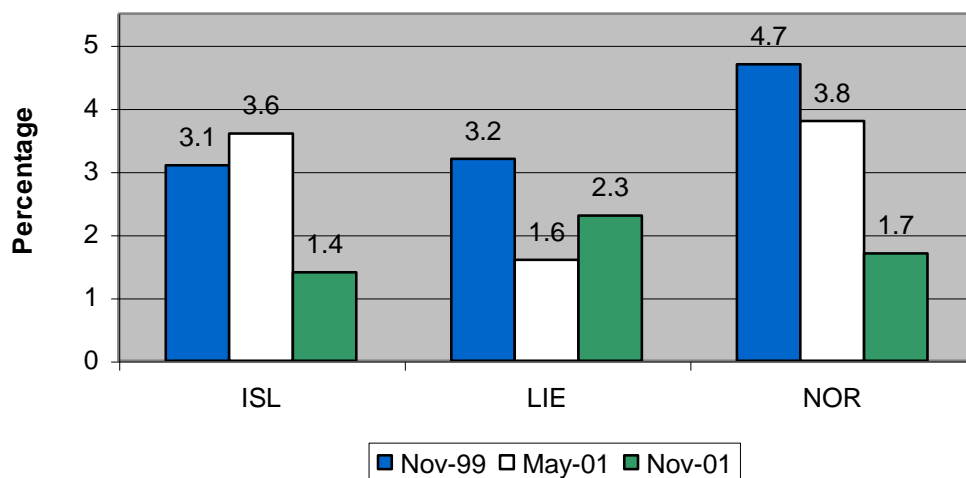
“Transposition deficit”

The so-called *transposition deficit* indicates whether the EFTA States have fulfilled their obligations relating to timely implementation of Single Market directives. The term is used for the proportion of Single Market directives for which *no national measures* have yet been adopted, or which have only been *partially* implemented.

The average deficit is 1,8%, down from 3% in May

The current average transposition deficit is 1,8% compared to 3% only six months ago, which shows a laudable improvement. Moreover, for the first time the EFTA average is below the EU average, which currently stands at 2%. The progress, which is shown in *figure 1*, has been even greater in comparison with the first Scoreboard in November 1997.

Figure 2: Comparison of rates of failure to implement EEA Single Market directives (transposition deficit) between November 2001, May 2001 and November 1999:



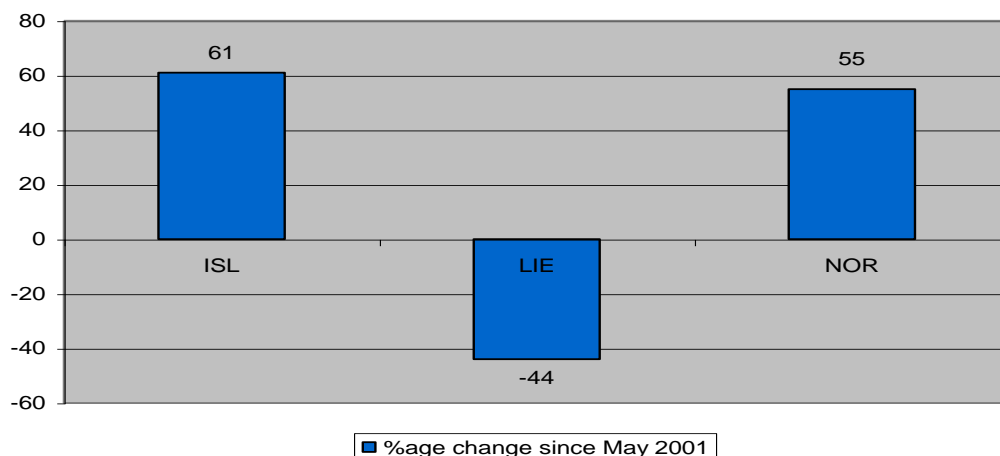
Iceland and Norway have considerably reduced their deficits, but Liechtenstein's performance gives cause for concern

Figure 2 sets out the effectiveness of implementation in each of the EFTA States and compares the rate of the current transposition deficit to the situation six months and two years ago. Both *Iceland*, with 1,4% deficit, and *Norway*, with 1,7% deficit, have considerably improved their performance. After a long period of improvement, *Liechtenstein's* performance deteriorates with a deficit of 2,3%. This should give cause for concern as it is easy to slide backwards due to the on-going nature of the implementation process. *Iceland* has already achieved, and *Norway* is close to, the aim of 1,5% deficit to be reached by spring 2002, set by the Stockholm European Council for the EU States. However, it should be underlined that, even though good progress should be recognised, the only acceptable deficit, living up to the obligations under the EEA Agreement, is a zero deficit.

Comparison between the 18 EEA States

A comparison between the 18 EEA States shows that *Iceland* (1,4%) holds 6th place after Finland (0,7%), Denmark (0,8%), Sweden (0,9%), the Netherlands (1,3%) and Spain (1,3%). *Norway* (1,7%) shares 7th to 8th place with Italy (1,7%), but *Liechtenstein* (2,3%) comes in 10th to 11th place with Belgium. Compared to Scoreboard No 8, both *Iceland* and *Norway* have moved from being among the most tardy States to the forefront of the list. The question is whether those two EFTA States will be able to keep momentum and maintain these good results when the next Scoreboard is due, or even improve on their most recent performance.

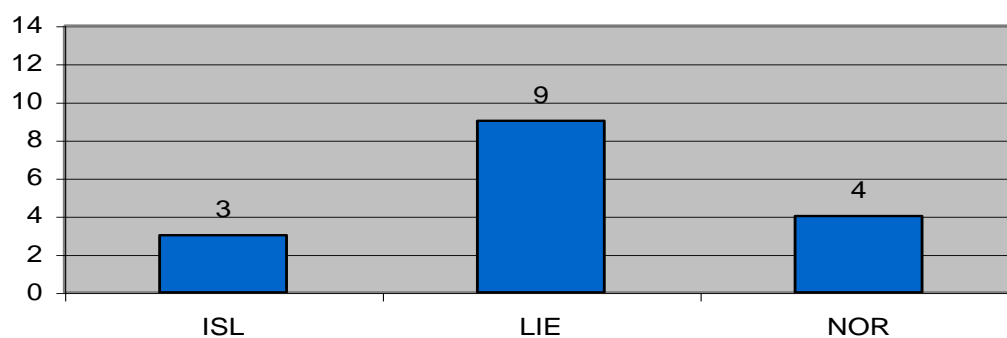
Figure 3: Improvement of transposition deficit since last Scoreboard:



Iceland and Norway lead the EEA progress in implementation

The result regarding Liechtenstein is very disappointing since its performance has worsened to a large degree compared to the last Scoreboard in May 2001, as is illustrated in *figure 3*. On the other hand, both *Iceland* and *Norway* have reduced their transposition deficit during the same period. When comparing the improvement since last Scoreboard between the 18 EEA States, *Iceland* (61%) and *Norway* (55%) are leading the progress, whereas *Liechtenstein* (-44%) is one of the three EEA States (Sweden (-80%) and Luxembourg (-1%)), which show a negative development during the last six months.

Figure 4: Recent directives (with compliance date in 2000) which are overdue:



Liechtenstein has still to implement 9% of directives with due date in 2000

The reason for differing transposition deficits among the EFTA States can, to some extent, be explained by the efforts made to implement recent directives on time. As *figure 4* demonstrates, *Iceland* and *Norway* have deficits of 3% and 4% regarding directives having a compliance date in the year 2000. *Liechtenstein*, however, has a 9% deficit, which is disappointing especially when taking into account that those directives should have been implemented last year. When looking at the situation in all the 18 EEA States the EFTA States rank in 3rd, 4th and 8-9th place.

Figure 5: Number of EEA Single Market directives whose transposition was overdue and average delays in notification:

Year of transposition deadline:	ISL	LIE	NOR
- 1999	3	0	0
- 2000	1	7	2
< 15.10.2001	12	15	15
Average delay (in months) by 15.10.2001	9,7	7,1	4,5

The increased delay in implementing directives that are already overdue points to inefficiency

Figure 5 shows the number of directives, from different years whose transposition was overdue when this Scoreboard was prepared and the average delay in their notification by EFTA States. Since November 2000, *Iceland's* delay in notification has increased by 2,4 months and *Liechtenstein's* delay by 4,3 months. *Norway's* delay has, on the other hand, decreased by 1,5 months. This trend towards an increased delay in two of the EFTA States is disturbing and indicates inefficiency somewhere in their implementation process.

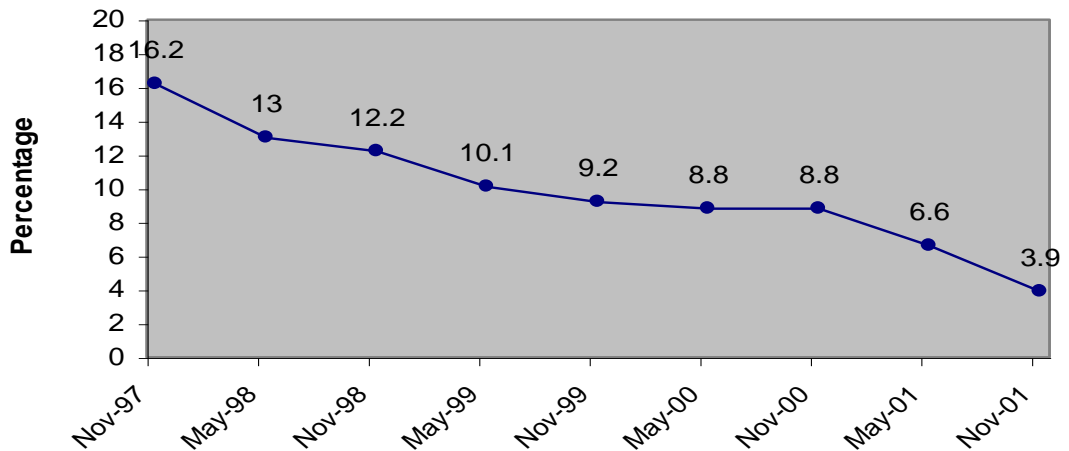
Figure 6: State of EFTA States' transposition planning and future implementation:

	ISL	LIE	NOR
Number of directives for which transposition forecast was requested in September 2001	43	38	49
Number of directives for which no planning provisions have been received	0	0	1
Number of directives overdue and to be implemented before the end of 2001	23	35	33

Full implementation requires increased effort and planning

In order to reduce their transposition deficit the EFTA States must deal both with new directives, which are continuously added to the EEA Agreement, and with their current backlog of implementation. *Figure 6* sets forth the number of directives which the EFTA States still had to implement in order to arrive at zero deficit before the end of this year, as the situation was when the Scoreboard was prepared. It also shows that the EFTA States seem to make plans regarding their transposition of directives and, in general, responded positively towards the Authority's request for transposition forecasts.

Figure 7: Comparison of percentage rates of EEA Single Market directives not transposed by all EFTA States (fragmentation factor):



The Single Market is becoming less fragmented in the EFTA States

To achieve the aim of a truly Single Market, the relevant rules must be in place and applied. As long as one directive has not been properly implemented in a given sector in one State there is a gap in the legislative framework and the Single Market is fragmented. *Figure 7* sets out the situation regarding directives included in the EEA Agreement which have not been transposed by all three EFTA States. The current “*fragmentation factor*” for the EFTA States stands at 3,9%. This can be compared to a “*fragmentation factor*” of 10% for the 15 EU Member States. As can be seen there has been a steady improvement in the level of the “*fragmentation factor*” for the EFTA States from the first Scoreboard and a notable progress from the last Scoreboard in May 2001.

Figure 8: Fragmentation factor by sector of EEA Single Market directives:

		%	ISL	LIE	NOR
1	Social Security (1)	100,0 %	1	1	1
2	Audio-Visual Services (4)	50,0 %	0	2	0
3	Medical Devices (2)	50,0 %	0	0	1
4	Labour Law (16)	25,0 %	3	2	1
5	Mutual Recognition – Professionals (25)	20,0 %	0	5	0
6	Environment Protection - TBT (11)	18,2 %	2	0	0
7	Consumer Protection (14)	14,3 %	1	2	1
8	Energy (7)	14,3 %	1	1	1
9	Telecommunications (21)	13,8 %	0	3	0
10	Environment (58)	10,3 %	4	3	5
	AVERAGE OF ALL SECTORS	3,88 %			

Problematic sectors

Figure 8 shows the most problematic areas where more than 10% of Single Market directives are not transposed by all EFTA States. It can be observed that some areas seem to be particularly problematic for the EFTA States and, in turn strongly contribute to the incomplete state of the EEA legal framework. If *Liechtenstein* would eliminate its transposition deficit in the field of Mutual Recognition the fragmentation factor would go down to 3,51%, and if *Iceland* would do the same concerning Environment Protection – TBT the fragmentation factor would go down to 3,37%. If, in addition all the EFTA States would make a concerted effort to transpose all the outstanding Environment acts the fragmentation factor would come down to 3%.

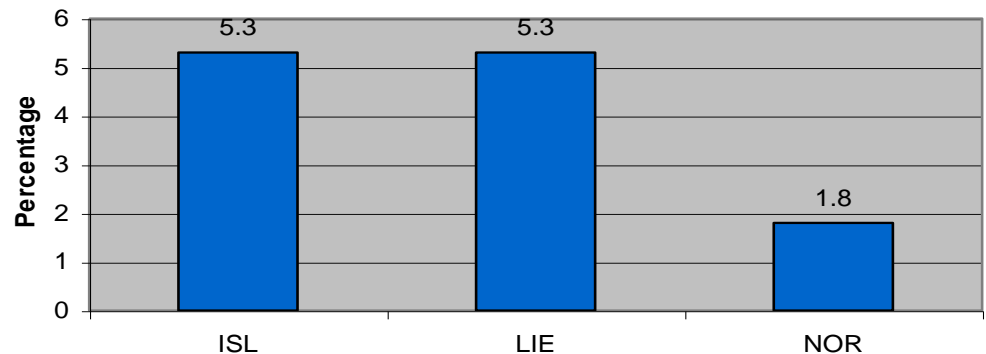
3. Focus on Implementation in specific sectors

3.1. Social policy

EEA Agreement reflects high regard for social issues

In this Scoreboard, as in the Commission's Scoreboard, special attention is paid to the implementation rate of directives in the field of Social Policy.¹ The EEA Agreement reflects the high regard its parties have for social issues and indicates a strong will to include social policy in the functioning of the enhanced internal market that was created by the Agreement.

Figure 9: Transposition deficit of social policy directives related to the Single Market:



¹ Directives in the EEA Agreement related to the internal market in the fields of Labour law, Health and Safety at work and Equal treatment of men and women.

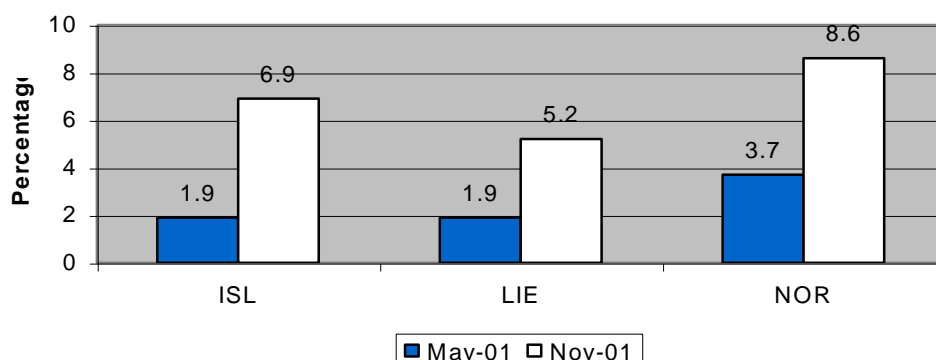
Disappointing implementation status of social policy directives in Iceland and Liechtenstein

The status of implementation in the area of social policy is disappointing, especially in light of the relatively good overall performance of the EFTA States. As can be seen from *figure 9*, both *Iceland* and *Liechtenstein* have a transposition deficit of 5,3% in this area, which is almost four times the general deficit in the case of *Iceland* and more than double the general deficit of *Liechtenstein*. Only *Norway*, with 1,8% deficit, seems to have made the same effort in this area as in general. On average the social policy transposition deficit in the EFTA States is 4,13% or more than double the average for all directives.

Compared to the situation in the EU, *Norway* is in 3rd place after *Finland* and *Spain*, which both have 0% deficit. *Iceland* and *Liechtenstein* are number 8 to 9, behind the *United Kingdom*, *Portugal*, *Denmark* and *Germany*, which all have 3,6% deficit in this sector. The average social policy deficit in the EU is 5,4%.

3.2. Environment policy

Figure 10: Transposition deficit of environmental directives in Annex XX related to the Single Market; situation in May and November 2001:



Environment transposition is worsening, indicating less priority given to it by the EFTA States

Article 73 of the EEA Agreement lays down ambitious goals for environmental protection, which shall be achieved, *inter alia*, by specific measures incorporated into Annex XX of the Agreement. In the last Scoreboard, in May 2001, special focus was brought on the implementation of those directives coming under Annex XX of the EEA Agreement. Since then the implementation status of the EFTA States has deteriorated significantly. As can be seen from *figure 10*, *Norway's* deficit now stands at 8,6%, *Iceland's* deficit is 6,9% and *Liechtenstein's* is 5,2%. The main reason seems to be that timely implementation of recent directives has not been given priority in those States. The average environment transposition deficit has gone up from 2,5% in May 2001 to 6,9%, which indicates that the EFTA States place less importance on the Environment than was previously the case.

Better situation when all directives relating to the Environment are taken into account

When looked at collectively, considering all directives in the EEA Agreement relating to the Environment and the Single Market, i.e. including directives on technical barriers to trade coming under Annex II and the free movement of goods, the picture looks a little bit better. Collective consideration reduces individual deficits, *Iceland's* deficit is 6,3%, *Norway* has deficit of 5,2% and *Liechtenstein's* deficit is 3,1%. Calculated in this way, the average deficit of the EFTA States is 4,9% compared to 6,2% in the EU. Unfortunately, there are no comparable figures from May 2001.

4. Infringement proceedings

Failure to fulfil EEA obligations can lead to 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, which are identical to those initiated by the European Commission within the European Union. Infringement proceedings are, however, 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 measures.

Two steps before a case goes before the EFTA Court

If formal infringement proceedings are initiated, as a first step the Authority notifies the Government concerned of its opinion that an infringement has taken place. This is done by a *letter of formal notice* which invites the Government to submit its observations on the matter within a specific time limit. 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 a reasoned opinion the Authority 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 judgment is binding on the State concerned.

Figure 11: All open infringement cases on 31 August 2001:

	ISL	LIE	NOR	EFTA
Letters of formal notice	26	21	46	93
Reasoned opinions	7	7	12	26
Cases referred to the EFTA Court	0	1	1	2
Judgments of the EFTA Court	0	0	0	0
Total open cases	33	29	59	121

In total, there were 121 infringement cases open with the Authority on 31 August

On 31 August 2001, 121 infringement cases against the EFTA States remained open with the Authority. More than three in every four open cases were at a letter of formal notice stage. Two cases had been referred to the EFTA Court. One case against *Norway* concerning the fact that beer with a maximum alcohol content of 4,75%, mostly produced domestically, is in free sale while other alcoholic beverages with the same alcohol content, mostly imported, are to be sold in the Wine Monopoly. A case against *Liechtenstein* relating to late transposition of certain parts of Directive 87/344/EEC (Legal Expenses Insurance). *Norway* accounted for 59 cases, *Iceland* for 33 and *Liechtenstein* for 29 cases.

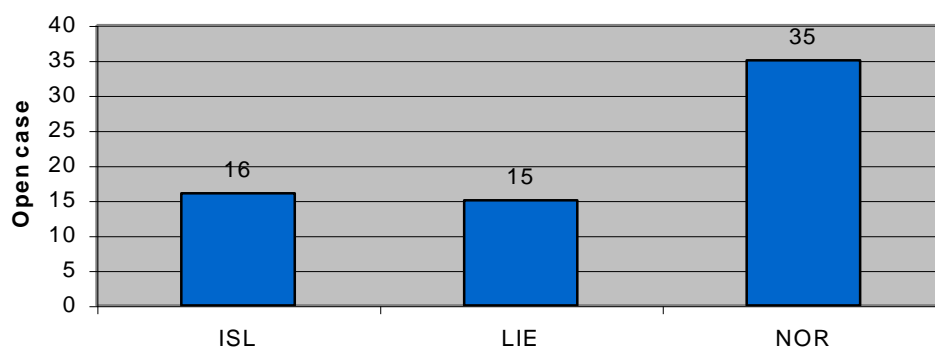
Two categories of infringement cases

Infringement cases can be divided in two categories. The first relates to late implementation, meaning that directives are not transposed into national legislative framework of EFTA States within set time limits. The second, relates to non-conformity or incorrect application, which concerns the situation where the Authority, having accepted a notification of transposition of a directive from an EFTA State, considers, at a later stage, that the national legislation does not conform totally to the requirements under the relevant directive or that the application by the Member State is in one way or another incorrect. Usually, there are few disputes about breaches falling in the first category (late implementation). The same is not necessarily true for the second category (non-conformity or incorrect application).

Focus on non-conformity or incorrect application

Following the practice used in the Commission Scoreboard and in order to have a comparable picture for the whole EEA, the focus in this chapter (except for figure 11 on All open cases) will be on infringement cases due to non-conformity or incorrect application, excluding cases of late implementation. Because of this, the infringement figures from the Authority's previous Scoreboards are not fully comparable with those in the present Scoreboard.

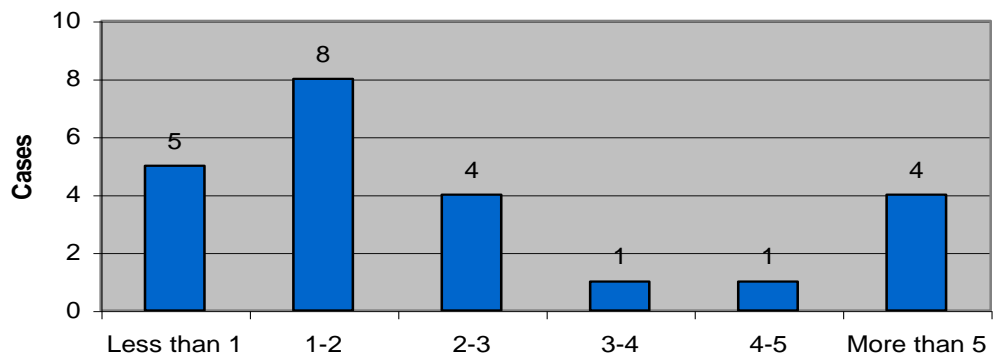
Figure 12: Open infringement cases due to non-conformity or incorrect application on 31 August 2001:



Most cases are open against Norway

Figure 12 sets forth information on the number of infringement cases opened due to non-conformity or incorrect application. More than half of all cases (35) have been opened against Norway. 16 cases have been opened against Iceland and 15 against Liechtenstein. Looking at the situation for the 18 EEA countries, Liechtenstein and Iceland have the fewest open infringement cases of this type. Thereafter comes Finland against whom 27 cases have been opened, 35 cases have been opened against Sweden, Luxembourg and Norway and 40 cases are open against Denmark. Most cases in the EEA (224) have been opened against France.

Figure 13: Time taken to resolve infringement cases due to non-conformity or incorrect application:



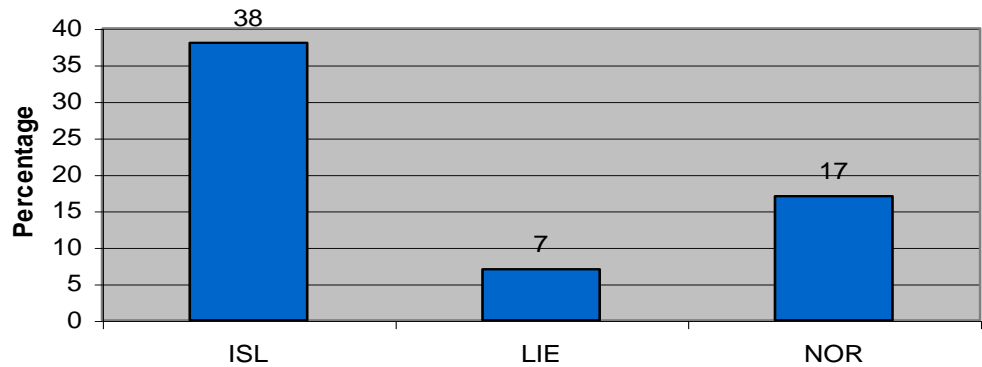
Note: Length of time between launch of infringement proceedings and resolution of those cases which were closed in 2000 and up to 31 August 2001

Majority of cases are solved within 2 years

Figure 13 gives an indication on the time it takes to find a solution once an infringement case has been started. The figure sets forth information on the time that passed from the commencement of infringement proceedings (sending a letter of formal notice) until a case was closed by the Authority. As can be seen, over 50% of the infringement cases, closed in the year 2000 and up to 31 August 2001, were solved within 2 years and 75% of the cases were solved within 3 years.

This result can be regarded as satisfactory when it is kept in mind that usually these are cases where, in the beginning, there are differences of opinions between the EFTA State and the Authority as regard the legal situation at issue. It also underlines the importance of maintaining a good relationship between the Authority and the national administrations of the EFTA States, despite different legal opinions. It is only on the national territory of the EFTA States that acute market restrictions can effectively be remedied by removal of the barriers which give rise to them.

Figure 14: The proportion of early closures of infringement cases due to non-conformity or incorrect application:

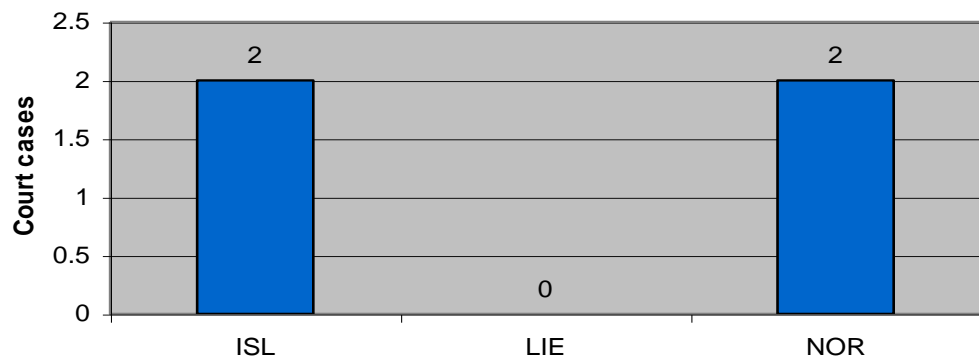


Note: Number of cases closed by 31 August 2001 as a percentage of the number of cases opened in 1999 and 2000

Iceland has excellent record when it comes to swift reaction to infringement cases

Figure 14 sets forth information on the proportion of cases closed after the receipt of letters of formal notice. As cases are not closed until they have been solved, the fact that a high proportion are closed following receipt of a letter of formal notice can be interpreted as a sign of the EFTA States' willingness to solve alleged problems swiftly. A swift solution and removal of barriers is of great importance for the good functioning of the EEA Agreement, but is of even greater importance for the individuals and/or economic operators faced with restrictions. As can be seen from figure 14 there are some differences between the EFTA States in settling disputes at an early stage of infringement proceedings. *Iceland* did best with 38% of the relevant cases closed swiftly, whereas cases against *Norway* (17%) and *Liechtenstein* (7%) seem to take longer time. In comparison the proportion of swiftly resolved cases on the EU side runs from 36% down to 27%, which shows an excellent record for *Iceland*.

Figure 15: Frequency of court cases against the EFTA States between 1995 and 2001 due to non-conformity or incorrect application:



The Authority has not been very litigious

If legal disputes between the Authority and the EFTA States cannot be resolved, the Authority has the alternative of eventually bringing a case before the EFTA Court. *Figure 15* demonstrates how often cases concerning non-conformity or incorrect application have been brought before the EFTA Court with respect to each EFTA State. As the number shows, the Authority has not been very litigious and in fact, the cases against Iceland were withdrawn as Iceland rectified the breach.

In the EU, the Commission has, during the same period, initiated two cases against Sweden, three against Denmark, four against Finland and 11 each against Austria, the United Kingdom and the Netherlands. More cases have been initiated against other Member States.

For the sake of information it should be mentioned that, if cases arising from late implementation were included the total number for Norway would be five, for Iceland two and for Liechtenstein one.