

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

January 2004

EFTA SURVEILLANCE
AUTHORITY

1. INTRODUCTION

The Internal Market of the European Community ensures the right for businesses and citizens of the European Union to trade their goods, 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 Norway², thus ensuring the same possibilities for business and individuals in those countries. The Internal Market is based upon the principles of free movement of goods, persons, services and capital. A prerequisite for the Internal Market to function is equal conditions for competition, based on common, homogenous rules across the 18 States that are party to the EEA Agreement.

On 1 May this year, the European Union will grow from 15 to 25 Member States. At the same time, the European Economic Area (*EEA*) is preparing to enlarge from 18 to 28 participating States. The 28-State EEA will make up an Internal Market of more than 450 million people. This makes it the largest common market in the world. A well-functioning Internal Market requires the adoption of common rules by all the EU and EFTA States, and the acceptance of the need to adjust national provisions to facilitate cross-border economic activities. Such common rules and principles follow first of all from the EC Treaty and the EEA Agreement itself. Furthermore, new laws, the *acquis communautaire*, are adopted by the EU, and incorporated into the EEA Agreement through decisions taken by the EEA Joint Committee, and thus made applicable to the EFTA States. Ensuring compliance with these common rules and obligations at national level is an obligation placed upon each individual State through the EEA Agreement. It is the task of the EFTA Surveillance Authority to monitor that the three EFTA States fulfil their obligations in this regard, and take legal action if it believes that an EFTA States is in breach of its obligations under the EEA Agreement. The Commission of the European Community has a parallel task towards the EU States.

Since 1997, the European Commission and the EFTA Surveillance Authority have issued Internal Market Scoreboards to measure to success of the EU and EFTA States in complying with their obligations under the EC Treaty and the EEA Agreement.

In this thirteenth Internal Market Scoreboard, the EFTA Surveillance Authority publishes figures comparable to those drawn up by the Commission of the European Community (*European Commission*). For the first time, however, the Commission's Scoreboard is issued as an Annex to its Internal Market Strategy Report instead of as a separate document. This report is due to be published 21 January 2004. The Surveillance Authority's Scoreboard continues to be issued as a separate report. Both Scoreboards gauge the success of the States participating in the EEA by ensuring compliance with Internal Market rules and principles. The EFTA Surveillance Authority's Scoreboard does this by providing information on:

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.

- Iceland, Liechtenstein and Norway's performance on transposition of EEA directives into national legislation,
- The actions taken by the EFTA Surveillance Authority to ensure that the EFTA States correctly implement and apply internal market rules and principles,
- The EFTA States' record on solving alleged infringements concerning correct implementation and application of internal market rules and principles.

The three EFTA States have shown again that new EEA Acts are incorporated into national legislation expeditiously. Compared with May 2003, Iceland, Liechtenstein and Norway have improved their implementation record, and all three EFTA States still rank among the EEA States that have the lowest transposition deficits.

Why do the Surveillance Authority and the European Commission publish the Internal Market Scoreboards?

A well-functioning Internal Market is the cornerstone of economic integration in Europe, bringing benefits such as lower prices, better services and more work opportunities. The citizens and businesses in the EEA will not be able to reap these benefits unless efforts are made to implement common rules and principles according to which this market functions. In other words, the EEA States must continuously live up to their obligations to transpose and apply the Internal Market rules timely and correctly. The Internal Market Scoreboards have been a useful tool in measuring how the 18 EEA States live up to their obligations to ensure a successful internal market and identifying which problems remain unsolved.

Directives are the main instruments used to regulate the Internal Market

The main legal instrument used in the regulation of the Internal Market is that of directives, which must be transposed into national legislation in the EEA States. Each directive provides a time limit by which transposition has to take place. Every month, directives adopted by the European Community are incorporated into the EEA Agreement through decisions taken by the EEA Joint Committee. The obligation on the EFTA States to transpose a directive into national law is triggered by this decision. It is the task of the EFTA Surveillance Authority to ensure that transposition takes place in a timely manner, and that the transposition measures provide for full implementation of the directive in question. In carrying out its tasks, the Authority cooperates closely with the European Commission, which is entrusted with the parallel task towards the EU Member States. This co-operation helps ensure a uniform implementation and application of the Internal Market rules and principles throughout the whole EEA.

How are the figures produced?

Both the EFTA Surveillance Authority and the European Commission maintain statistics on the EEA States' implementation of the Internal Market rules and principles, and on infringement proceedings. The figures in this Scoreboard concerning the EU Member States are provided by the European Commission, and appear in its Internal Market Strategy Implementation Report Scoreboard, January 2004. The figures concerning the

three EFTA States are based on the Authority's own databases. Further information concerning the EFTA States' implementation of Internal Market directives is found at the Authority's website³.

Differences between EEA and EC acquis

It is important to note that, whereas the Commission Implementation Report Scoreboard January 2004 deals with the 1535 Internal Market Directives which were part of the legal basis of the European Community, the statistics shown in this EFTA Scoreboard are based on the 1481 Directives that were part of the EEA Agreement on 15 November 2003⁴. The comparisons made between all the 18 EEA States in this Scoreboard should be read with this in mind.

³ The Authority's website may be accessed at www.eftasurv.int. Information on implementation status is found under "*Information and publications*", [Implementation status – AIDA Database](#)".

⁴ This difference in number of directives is due to two things: 1) Some directives, e.g. directives dealing with various aspects of the citizenship of the European Union, fall outside the scope of the EEA Agreement. 2) There is a time gap between the EC and the EEA implementation of directives, because EU directives must be made part of the EEA Agreement by an EEA Joint Committee decision.

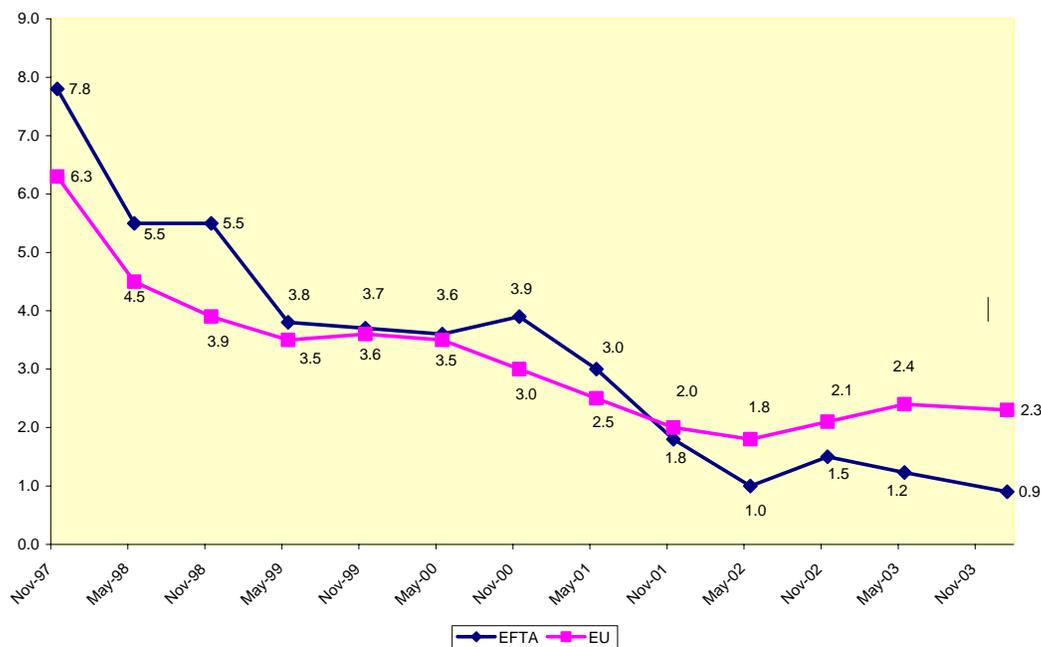
2. IMPLEMENTATION OF INTERNAL MARKET DIRECTIVES

The **first figure** illustrates the overall development when it comes to *implementation deficits*. The implementation deficit measures how many directives containing Internal Market rules and principles, the EU and EFTA States have failed to implement on time. The European Council has set a target of 1.5% as the highest acceptable implementation deficit. This target has been endorsed by the Authority.

The last Internal Market Scoreboard published in May 2003, showed that the EFTA States performed well overall, i.e. they managed to maintain a low implementation deficit. At that point, the overall implementation deficit for the EFTA States as a whole was 1.2 %, while the parallel deficit for the EU states was 2.4 %. The Authority notes with satisfaction that the EFTA States continue to do well when it comes to implementation of EEA directives. The figure below shows that the EFTA States have reduced the implementation deficit to **0.9 %**, while the EU States reduced their deficit to 2.3 %.

The Authority interprets this positive trend as an indication that the EFTA States now give high priority to the functioning of the Internal Market, and notes that the combined efforts by the three EFTA States helps to ensure a smooth functioning of the Internal Market in the EFTA States.

Figure 1: The EFTA average transposition deficit is record low at 0.9 %



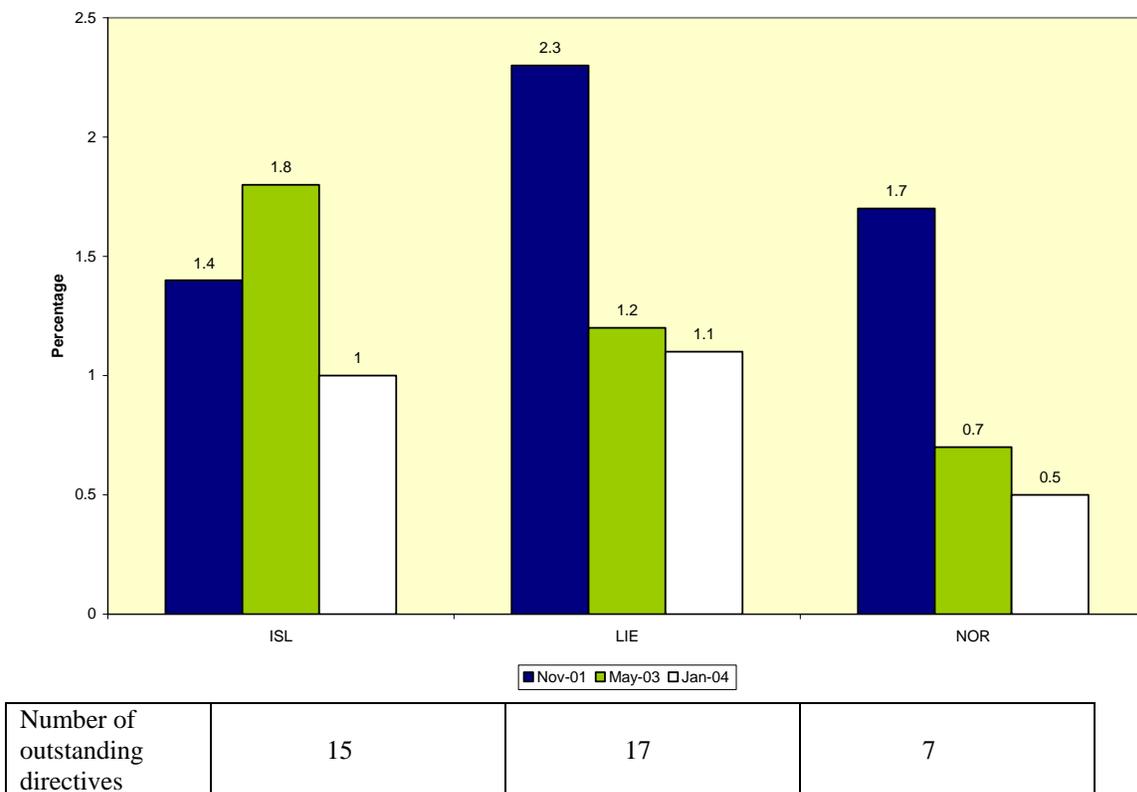
Source EU figures: European Commission's Implementation Report Scoreboard, January 2004

Note: The transposition deficit shows the proportion of Internal Market directives for which no national measures have yet been adopted or which have only been partially implemented into national law.

The figures measuring transposition deficits for each EFTA State individually (**figure 2**) reveal that Iceland, Norway and Liechtenstein have all made progress. Compared with May 2003, the three countries have reduced their deficits by 44 %, 29 % and 8 % respectively.

In terms of number of overdue directives yet to be transposed, a deficit of 0.9 % implies that, on 15 November 2003, the EFTA Surveillance Authority was still waiting for 39 notifications of full implementation from the EFTA States. In May 2003, this figure was 53. Some of these are directives that have been incorporated into the EEA Agreement only recently, while other directives have been overdue for a longer period of time.

Figure 2: EFTA transposition deficits

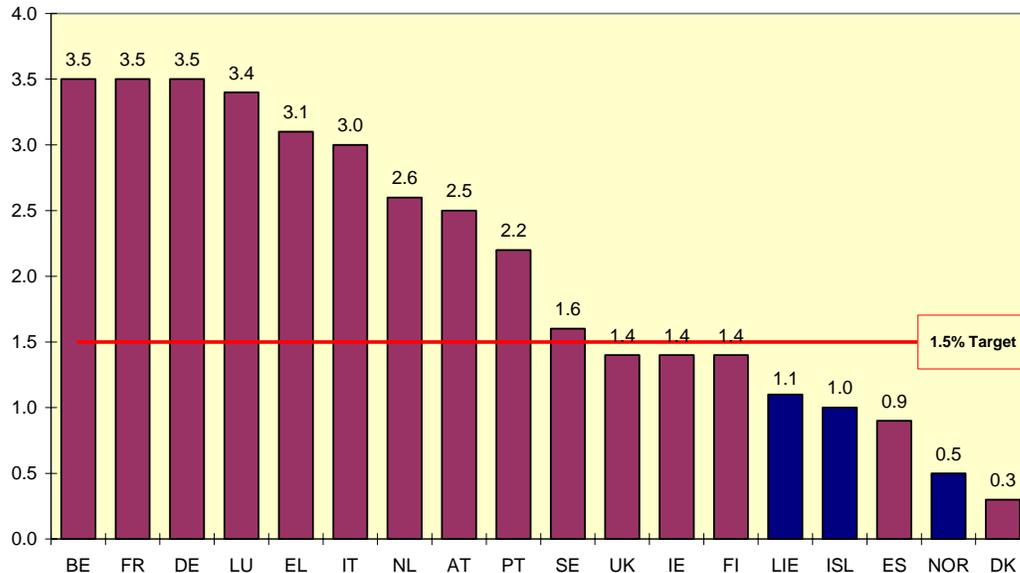


Note: Comparison of rates of failure to implement EEA Internal Market directives (transposition deficit) between November 2001, May 2003 and January 2004

With deficits well under the 1.5% target, the EFTA States are in the better performing half of the 18 EEA States (**figure 3**). Looking at each of the EFTA States individually, Norway maintains the second lowest implementation deficit of the 18 EEA States with a transposition deficit of 0.5 %. Only Denmark has implemented a higher proportion of the *acquis communautaire*. Iceland now ranks as number 4 (up from 8) with 1.0 %, and Liechtenstein is keeping its 5th place with a 1.1 % deficit. It is worth mentioning that in May 2002, Norway and Iceland stood at a record 0.5 % and 0.8 % transposition deficits, respectively.

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. The quality of the national implementing legislation is only assessed at a later stage. Later conformity assessments may prompt the Authority to take further action if it finds that the notified measures do not ensure full and correct implementation.

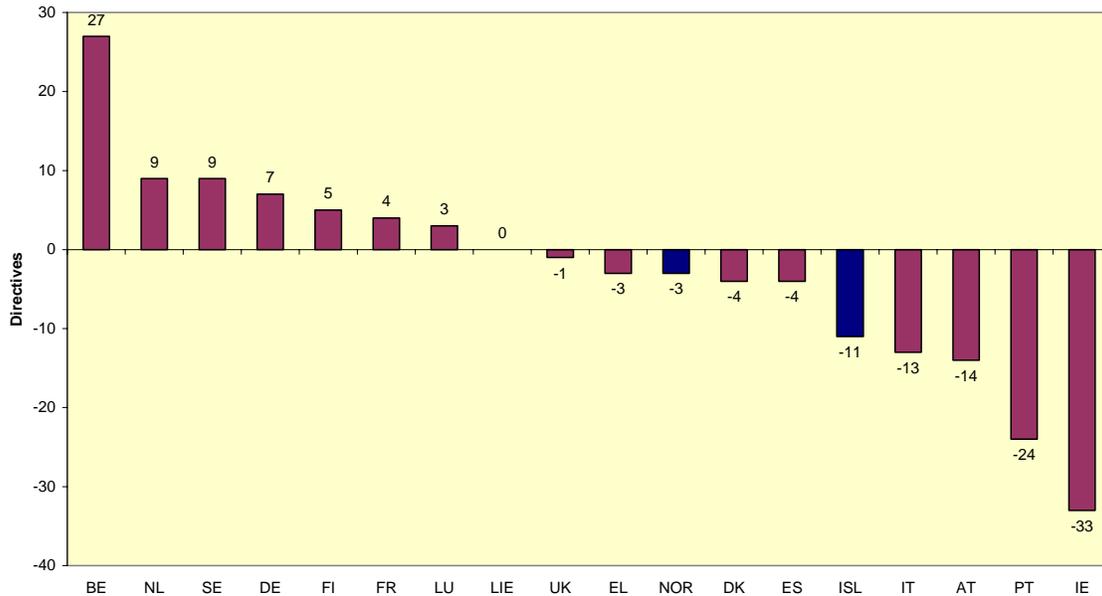
Figure 3: All three EFTA States within the 1.5 % target out of 7 in the EEA



Source EU figures: European Commission’s Implementation Report Scoreboard, January 2004

The EEA-wide comparison in **figure 4** shows that, while certain of the EU States have reduced their backlog of outstanding directives considerably, since May 2003, Iceland and Norway have reduced the number of overdue directives by 11 and 3 respectively. After a reduction of the backlog leading up to the May 2003 Scoreboard, Liechtenstein’s backlog now remains unchanged at 17 directives.

Figure 4: Iceland and Norway have decreased their backlog since the May Scoreboard



Source EU figures: European Commission’s Implementation Report Scoreboard, January 2004

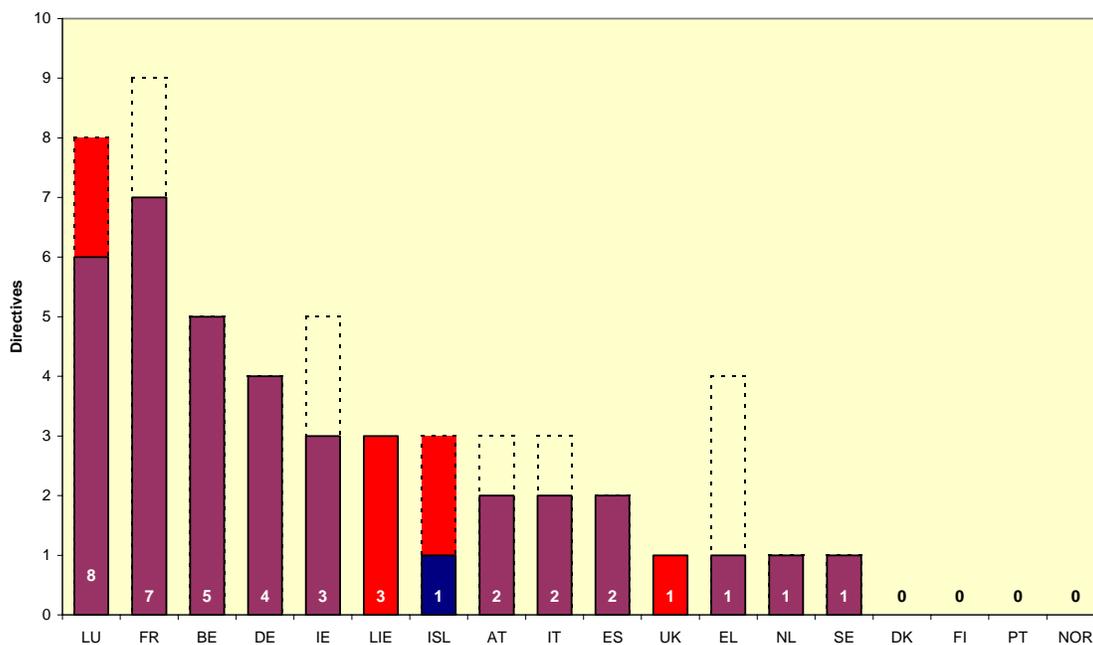
Note: Change in the transposition performance (number of directives overdue) since the last Scoreboard in May 2003 (backlog)

The Barcelona European Council of March 2002 set a ‘zero tolerance’ target for directives whose transposition is two or more years overdue (**figure 5**). Norway is among the four EEA States living up to this target. Liechtenstein and Iceland both have three directives within this category of “old sins”.

In Iceland’s case, two of the Directives in question regulate Part-Time Work and Fixed-Time Work. These Directives aim at introducing national agreements improving the quality of work and preventing abuse or discrimination of workers. Failure to implement these Directives in time would indicate that Icelandic workers do not enjoy the same protection as workers elsewhere in Europe. The last Directive concerns supplementary Pension Rights and aims at safeguarding the supplementary pension rights of workers and self-employed persons moving within the EEA.

Liechtenstein, on the other hand, has failed to implement one Directive on Conditional Access, which aims to ensure the legal protection of conditional access systems for pay-TV in the European Economic Area. Another Directive long overdue is the Parental Leave Directive, which puts into effect the framework agreement on parental leave concluded by the social partners at European level. Finally, Liechtenstein has failed to implement a Directive on consumer information relating to fuel economy which was due in September 2001.

Figure 5: Iceland and Liechtenstein have three directives overdue by more than 2 years



Source EU figures: European Commission’s Implementation Report Scoreboard, January 2004
 Note: “Zero tolerance”, i.e. directives overdue by more than 2 years; EEA-wide performance per State

It should be stressed that the implementation of directives is a continuous process and therefore requires steady effort by the EFTA States’ national administrations in order to keep pace with the incorporation of new acts into the EEA Agreement.

The EFTA Surveillance Authority encourages the EFTA States to prepare transposition of new directives by filling in transposition forecasts twice a year. **Figure 6** sets out the workload of the EFTA States to enable them to arrive at a zero deficit by the end of 2003. It also shows that the Icelandic, Liechtenstein and Norwegian national administrations have made transposition forecasts for all the directives that are due to be transposed by the end of 2003.

Figure 6: EFTA States’ transposition workload to the end of the year and planning of this work, status as at 15 November 2003:

	ISL	LIE	NOR
Number of directives already overdue and directives to be implemented between 15 November 2003 and 31 December 2003	23	26	17
Number of directives for which transposition forecast was requested in October 2003	17	25	25
Number of directives for which no planning provisions have been received	0	0	0

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

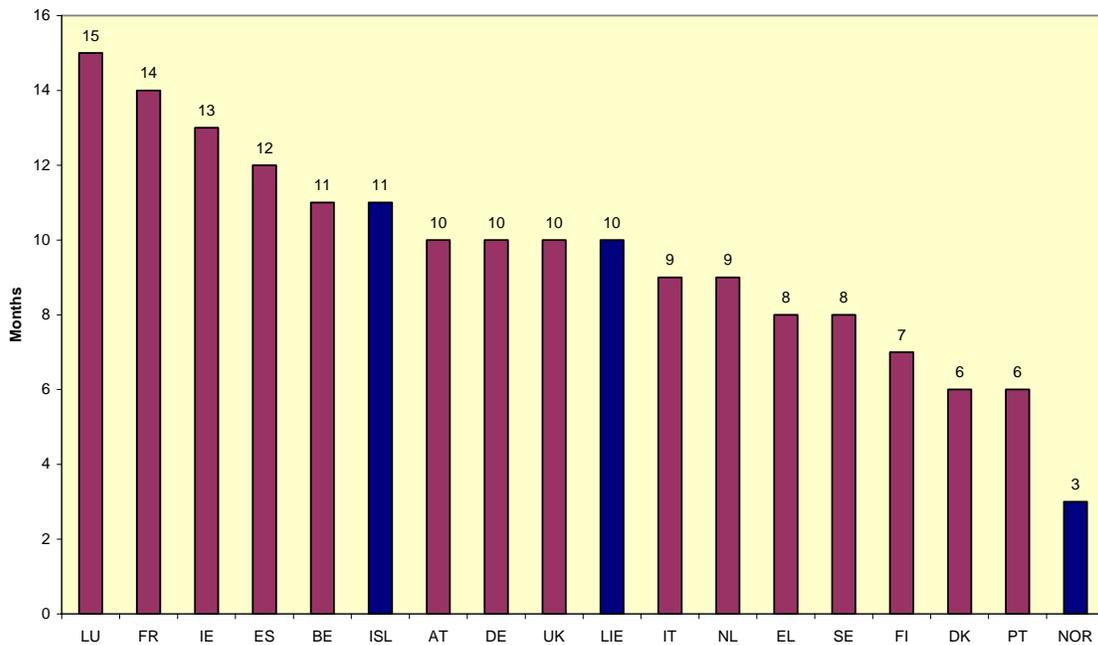
While the three EFTA States have low transposition deficits overall, **figure 7**, together with figure 5 above, illustrate that Iceland and Liechtenstein still take too long to comply with a number of outstanding directives. Since the May 2003 Scoreboard they have both added three months to their average transposition delay. For both countries, this increase is to a large extent related to the non-transposition of three directives that have been overdue for more than two years. Again, this figure indicates that there are a few problematic areas for these countries where the willingness to live up to the obligations under the EEA Agreement fails. Norway, on the other hand, is commended for having halved its transposition delay to three months, which means it now tops the EEA list in **figure 8**.

Figure 7: Number of EEA Single Market Directives whose transposition was overdue by 15 November 2003, and average delays in notification

Year of transposition deadline:	ISL	LIE	NOR
- 2001	3	3	0
- 2002	2	2	0
< 15 November 2003	10	8	5
Average delay (in months) by 15 November 2003	11.0	10.2	3.3

Note: Number of overdue Internal Market directives that had not been notified by 15 November 2003, broken down by year of transposition deadline, and the average delays in months that the EFTA States had incurred by that time. This table does not include directives where a partial notification has been submitted, i.e. where a State has indicated that some but not all of the provisions in a directive have been transposed.

Figure 8: Transposition delay: Norway tops EEA list, Iceland's and Liechtenstein's backlogs have increased



Source EU figures: European Commission's Implementation Report Scoreboard, January 2004

Note: Average delay in months of directives that have passed the transposition time limit.

The Authority's statistics indicate for Iceland and Liechtenstein, particular problematic sectors with respect to transposition. Iceland has seven directives left to transpose in the transport sector. The two directives in the field of labour law should also be mentioned. Liechtenstein faces particular problems ensuring that the Internal Market rules and principles on the environment are followed. It has yet to transpose five directives in this sector. When it comes to the free movement of services, Liechtenstein has eight directives overdue. These concern financial services (four directives), audiovisual services (two directives) and electronic communications (two directives). For Norway, the directives that remain to be transposed are thinly spread across a number of sectors, with two directives missing in the transport sector.

3. INFRINGEMENT PROCEEDINGS

All infringement cases

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.

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 no solution is found 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.

Since May 2003, the number of cases opened by the Authority against the EFTA States has fallen to 71, a decrease of a little more than 10 % (**figure 9⁵**), thus reversing the upward trend observed in the last Scoreboard. This fall is thanks to the performance of Liechtenstein and Iceland; both these States have reduced their number of infringement cases, with 27 and 31% respectively, whereas the number of cases opened against Norway has risen with 25 %.

Figure 9: All open infringement cases on 31 October 2003

	ISL	LIE	NOR	EFTA
Letters of formal notice	10	10	19	39
Reasoned opinions	9	6	16	31
Cases referred to the EFTA Court	1	0	0	1
Total open cases	20	16	35	71

Norway now accounts for half of all open cases, Iceland for 28 % and Liechtenstein for 22.5 %. The main reason for this development is that the Authority has focused its limited resources on the complaints it receives with regard to the Internal Market. Complaints from Norway account for more than 90 % of the total number complaints received by the Authority. The high number of complaints from Norway may be explained by a higher degree of awareness among the general public in that country about the Agreement and how it affects the rights of citizens and businesses.

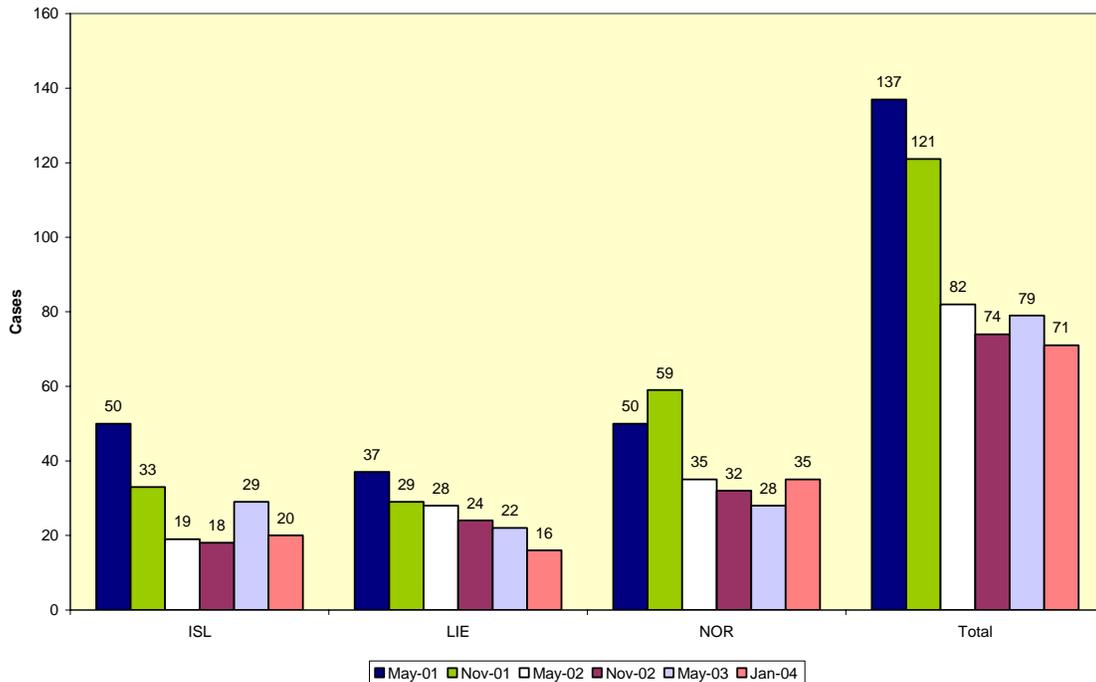
The proportion of letters of formal notice has fallen from around two thirds of all open infringement cases to 55 %. This reflects the development towards more complicated

⁵ Cases based on non-transposition of directives are included in figure 9.

cases concerning partial implementation, non-conformity and incorrect application, and fewer cases on late transposition. The one case remaining with the EFTA Court on 31 October was a case against Iceland concerning discriminatory air transport taxes. The EFTA Court ruled in this case on 12 December 2003, when it found Iceland to be in breach of its obligations under EEA law⁶.

Figure 10 illustrates the development the last couple of years of the transposition deficits per EFTA State and for the EFTA States in total. It shows, *inter alia*, that Liechtenstein's performance has been steady and positive.

Figure 10: All open cases, development per EFTA State



Note: Total number of open infringement proceedings against the three EFTA States. The numbers are collected from the Authority's six last Internal Market Scoreboards.

⁶ See the EFTA Court website at: http://www.eftacourt.lu/pdf/E_1_03Decision.pdf

Infringement cases concerning non-conformity or incorrect application of Internal Market rules and principles

Infringement cases can be divided into two categories. The first category relates to late implementation, meaning that directives are not transposed into the national legislation of the EFTA States within the set time limits. Infringement cases in this category 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, considers at a later stage, that the national legislation does not fully conform to the requirements of the relevant directive or that the application by the EFTA State is in one way or another incorrect.

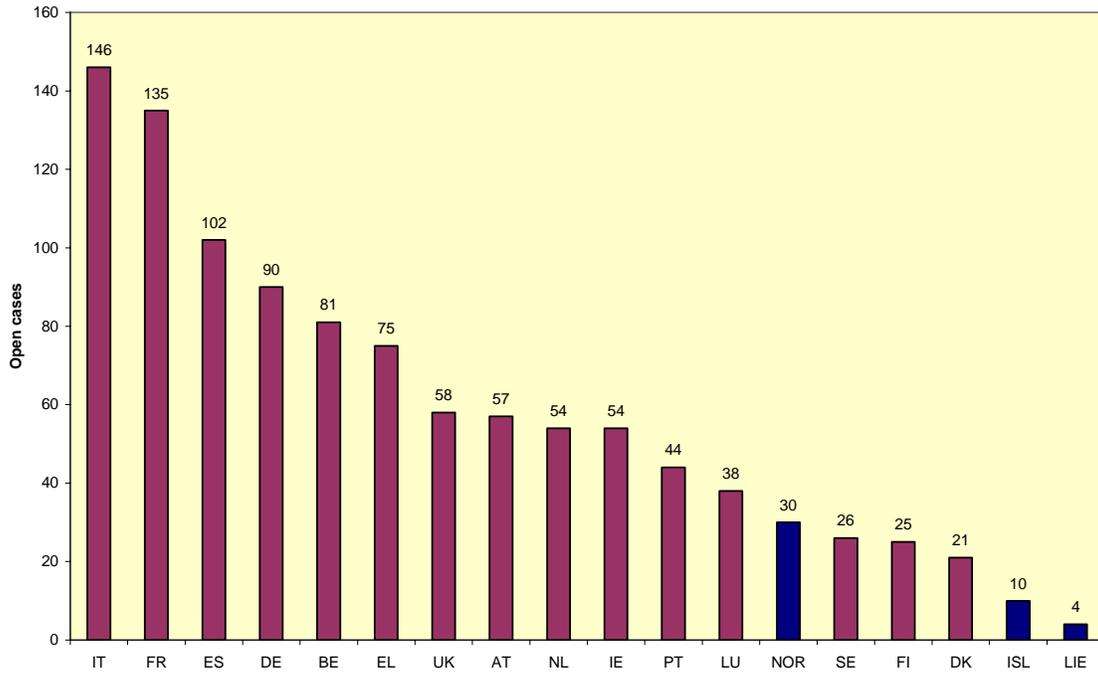
Whereas figures 9 and 10 above include both categories of cases, the figures below focus on the second category. Both the Authority and the European Commission include these figures in their Scoreboards to indicate the infringement problems faced by the EEA States in addition to mere non-transposition.⁷

A comparison between figures 9 and the EFTA figures from **figure 11** shows that non-transposition cases constitute half of Iceland's cases, 75% for Liechtenstein and 14 % for Norway. The corresponding figure for all cases in total is 38 %.

Looking at implementation cases separately, the number of cases against Iceland and Liechtenstein has been reduced with 7 (41 %) and 1 (20 %) respectively. With an increase of 5 cases (20 %) Norway has been passed by its Nordic EU neighbours Denmark, Finland and Sweden and has fallen from number 3 to number 6 among all EEA States.

⁷ Figures in EFTA Scoreboards prior to No 9 do not show this distinction and are therefore not fully comparable.

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



Source EU figures: European Commission's Implementation Report Scoreboard, January 2004

Note: Open infringement cases due to non-conformity or incorrect application on 31 October 2003

4. CONCLUSIONS

On the basis of this Scoreboard, the following conclusions may be drawn:

- The EFTA States have again succeeded in decreasing the transposition deficit. From 1.2% in May 2003, the deficit is now at a record low of 0.9 %. The EFTA deficit is considerably lower than that of the EU States, whose deficit has decreased to 2.3 %.
- Individually, all three EFTA States have decreased their implementation deficits. All three now have a transposition deficit below 1.5 %, which is the target set by the Authority.
- Both Iceland and Liechtenstein have failed to implement three directives that are overdue by more than two years. This is an increase of 2 and 3 directives, respectively. Both States rank among the States with the longest average transposition delay.
- The overall number of infringement proceedings against the EFTA States has gone down and remains low compared with the EU Member States.
- The duty under the EEA Agreement to ensure a well-functioning Internal Market is taken seriously by the EFTA States, and the EFTA States have put in good efforts to ensure the timely transposition of new *acquis communautaire*.

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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